

BOOK REVIEW

A Certain Justice: Toward an Ecology of the Chinese Legal Imagination

By Haiyan Lee. Chicago: University of Chicago Press, 2023. 352 pp.
\$105.00 (cloth), \$32.50 (paper)

Reviewed by Kwai Hang Ng 

University of California, San Diego, United States
Email: kwng@ucsd.edu

(Received 15 January 2024; accepted 16 January 2024)

doi:10.1017/jch.2024.4

In her new book, *A Certain Justice*, Haiyan Lee presents an ambitious treatise on the concept of justice by exploring law-related themes in Chinese films, TV dramas, theater, poems, novels, and memoirs spanning a period from the 1950s to the 2010s. Subtitled “Toward an Ecology of the Chinese Legal Imagination,” *A Certain Justice* should not be read as yet another study of the genre of crime or legal fiction—it pursues a bigger theoretical goal. In the introduction, Lee states that she is dissatisfied with the complacent and unreflective adoption of an ahistorical understanding of the rule-of-law ideal. Through analyzing law-related themes across multiple genres, Lee suggests the Chinese have a different way of understanding the concept of justice, an understanding that diverges markedly from the Western rule of law. *A Certain Justice* is an effort, as Lee writes, “to make sense of Chinese visions of justice in light of the divergent paths taken by China and the liberal West in pursuit of the universal goal of consolidating the normative order” (9).

The book develops several law-related themes across multiple genres of artistic creation, ranging from novels, movies, and poems to quite different material altogether. The chapters are not categorized by the different genres of work that they discuss. Instead, they are thematically organized by different types of justice. There is an overarching argument to which Lee adheres. The Chinese legal culture reflects its hierarchical social world. As such, the concept of justice is hierarchically organized and understood in China. At its most basic, there is the distinction between high and low justice. High justice is a moral doctrine that relates to the legitimacy and moral supremacy of the ruler. It is expressed in *yi* 義 and *zhengyi* 正義. In contrast, low justice refers to the demand for the fair treatment of people. In Chinese, low justice is expressed as *gong* 公, *gongzheng* 公正, and *gongping* 公平. Unlike the liberal West, where social justice reigns supreme, Lee claims that it is high justice that captures the interest and imagination of the Chinese people. In both Imperial China and the PRC, according to Lee, high justice claims pride of place in narratives of law.

Chapter 1 discusses how the state is projected as a valued and yet vulnerable entity that needs to be protected at all costs. Lee explains that detective fiction was rare in

Mao's China. It was a genre that rose in tandem with the liberal capitalist state of law, which promised an explainable reality. Moreover, detective fiction operates in the low justice register. By comparison, espionage fiction is about high justice. Lee accounts for the rise of the genre of spy thriller in relation to the romance of the state. The genre entered its golden period in the first two decades of the establishment of the PRC and experienced a resurgence in the new millennium. The chapter discusses early counterespionage films such as *The Murder Case of Xu Qiuying*, *The Invisible Front*, and *The Might of the People*. In her words, the genre "enchants the state as a sovereign power replete with arcana imperii and elevates the reason of state as the locus of august, sublime high justice" (33). Lee points out that espionage movies post-1949 never left people with any doubt from the beginning about who the villain would be. By moving away from the setup of a whodunit, these revolutionary spy thrillers trade on the visceral feeling the audience would share about the need to protect the new state of China from the constant threat of infiltrating spies and enemies. Government secrecy is celebrated rather than feared, as the audience is sometimes invited to see like a state, to borrow the phrase from James Scott.

Chapter 2 entails a discussion of the phenomenon of "subaltern hypocrisy." The key to the concept here is that oppression corrupts the oppressed. Though she does not address it explicitly, she seems to caution her readers about taking the position of the subaltern as one of absolute moral superiority. One should instead also take the oppressed's call for justice with a grain of salt. After briefly discussing Lu Xun's famous novella *The True Story of Ah Q*, Lee moves on to analyze *The Rooster Crows at Midnight* (*Banye jijiao*) at length. This is a well-known text, in part because it was later included in elementary school textbooks and adapted into a cartoon film. As Lee shows in the various versions of the story, hypocrisy is at once a strategy for class domination and an artful tactic of resistance. Class struggle is a battle of wits; and to imitate Lee's style of theorizing, one can say that there were many instances of Gricean "flouting" (not meaning what one says) in the battle. No words should be taken at face value. However, if the subaltern is capable of weaponizing hypocrisy, their subterfuge taints the purity of their voice along the way. In the last part of the chapter, Lee moves on to discuss the performative nature of socialist public transcripts, including how *The Rooster Crows at Midnight* was produced and how public rituals including *suku* 訴苦 and *fanshen* 翻身 were formularized.

Chapter 3 discusses transitional justice. Lee expands the term to include the transitional moments of politics of the PRC regime, most noticeably the aftermath of the Cultural Revolution. She addresses famous political trials in the PRC, both fictional and real. This is the longest chapter of the book, covering real-life events, works of fiction and plays, and movies that reconstruct famous political trials. The chapter first discusses the film *The Red Detachment of Women* (*Hongse Niangzijun*), which was later adapted into a ballet and became a *yangban xi* (model theater) of the Cultural Revolution. Lee also discusses the historic trial of the Gang of Four. The event, despite being a show trial, Lee argues, presented a subdued vision of bureaucratic justice and marked the return of order in post-Mao China. Lee observes that while crime was conceived of as a political affair in China, the trial of the Gang of Four promoted a certain vision of socialist rule of law that was more rule-based. Whether it is political or bureaucratic, revolutionary justice tends to treat the perpetrator as part of the collective reactionary class. The tension between designating enemies by their "objective" class positions and criminals by their "subjective" state of mind was never resolved. Such a tension was at the heart of Jin He's short story "*Chongfeng*" (Reencounter), which

Lee also discusses. The story concerns the fictional public trial of a man, Ye Hui, that took place after the fall of the Gang of Four. Ye was branded a “disorderly element” because he had killed two people during the Cultural Revolution. Yet he killed to protect a local party cadre, Zhu Chunxin, who is now in charge of the hearing. As the story unfolds, the line separating those who are victimized and those who are implicated becomes more and more blurred.

Chapter 4, entitled “Exceptional Justice,” discusses the PRC’s treatment of Japanese and Nationalist POWs in the 1950s. The POWs, especially the Japanese, were treated leniently, leading to some commentators characterizing the approach as “an aberration of benevolence.” The PRC’s approach was typified by its generous leniency. Fundamentally, for the party-state it was not about condemning the crimes of the POWs but rather about reliance on thought reform to solicit confessions. The legal language of rights and redress was largely suspended or subordinated to the moral and ideological language of confession, penance, and reform. The second half of the chapter discusses a documentary, a film, and a television serial drama that reconstructed the process that reformed the minds of the POWs. In the last part of the chapter, Lee veers into a fascinating translingual history of brainwashing.

Chapter 5 explores the style of socialist realism and magical realism. Lee argues that socialist realism, in its celebration of collective action, sells the human experience short. Magical realism entered the Chinese literary scene almost by necessity, as the new magical elements are needed, in her opinion, to make literature a powerful tool once again for making sense of the social world. Chapter 6 discusses a few multispecies Chinese novels that treat animal characters as subjects in their own right. The chapter includes discussions of several contemporary animal-themed novels. Lee argues that species egalitarianism is fundamentally incompatible with the hierarchical sense of justice that the Chinese culture upholds. She proposes the adoption of a more pragmatistic model of justice that comes to terms with the complicated entanglements between humans and animals.

One can enjoy Lee’s book even when strongly disagreeing with it. As I was reading it, I marveled at her theoretically informed reading of contemporary Chinese films and novels. Lee demonstrates an amazing ability to weave into her analysis authors as diametrically opposed as Carl Schmitt and Hannah Arendt, and as variant as Albert Camus and Yann Martel. Each of the chapters is a rich theoretical essay in its own right. Her analysis is interspersed with rapid-fire intellectual name-dropping and is at once creative and virtuosic. In one chapter, Judith Shklar, Roberto Unger, Luc Boltanski, and Bruno Latour, among others, all appear within the space of two pages. The book is a valuable contribution to the field of law and humanities. It brings a focus on contemporary Chinese literature and film that is sorely needed.

So what do I disagree with? It is the claim that when put together, the chapters present an ecology of the Chinese legal imagination. In this regard, I am conscious that I am commenting on a book rooted in a different disciplinary background and intellectual tradition. In what follows, I confine myself to questions that I believe are of importance and relevance to literary scholars and historians.

Lee’s ecology is unmistakably state-centric. After Lee sets up the high justice versus low justice dichotomy in the introduction, the subsequent chapters (with the exception of the chapter on multispecies justice) focus predominantly on high justice; that is to say, how justice is understood and carried out under the Chinese statist framework. Low justice is set aside, because in Chinese thinking, low justice, according to Lee, is often abandoned in the pursuit of high justice. Lee arrives at this conclusion based

on her analysis of the popular stories of the legendary Judge Bao in Imperial China. The book touches on themes such as espionage, mass trials, political trials, trials of POWs, and socialist realism literature that all orbit around high justice at the center. Even Chapter 2, entitled “Low Justice,” considers how the subaltern voice is altered by the control of the party state regarding the socialist public transcript. In other words, she does not discuss low justice per se, but rather state-sponsored low justice. This is of course a high-justice view of low justice.

Lee’s book presents a monistic, coherent picture of the ecology of justice. Readers are likely to come away with the thought that high justice trumps low justice in the Chinese moral universe. The problem here is that Lee does what social scientists describe as “selecting on the dependent variable,” or, to put it more colloquially, stacking the deck. High justice is proven to be valued because Lee furnishes her proof by largely drawing from state-sponsored law-related literature. Many of the works analyzed are political propaganda classics—*The Red Detachment of Women* and *The White-Haired Girl*, for example. There is a sense of irony that, when Lee explains she stayed away from the legal system fiction (*fazhi wenshuo* 法制小說) in post-Mao China, the subject matter of Jeffrey Kinkley’s pioneering *Chinese Justice, the Fiction* (2000), because works in this genre were mostly produced by people associated with the state justice organs.

And yet Lee sees the work she analyzes as a clear window into the universe of Chinese justice. Lee’s thesis is, to say the least, strongly culturalist. As a sociologist who studies Chinese law and legal institutions, I lack the expertise to comment on the vast terrain of Chinese literature and film that Lee traverses. This said, I cannot help but suspect that it would be quite a different ecology if we were to turn our gaze to popular literature, both classic and modern.

There, in popular literature, low justice looks alive and well. The Chinese classics are redolent of a heterodox view of low justice that is far removed from the state-centric notion of justice that Lee meticulously outlines in the book. Take, for example, the famous example of *The Water Margin*, one of the most popular classical Chinese novels. The novel (or at least some editions of the novel) celebrates righteous rebellion against a corrupt state. Its glorification of banditry is the polar opposite of state-centered justice. There is also the celebration of loyalty and friendship outside of blood-tie kinship in *The Romance of the Three Kingdoms*, the concept of *yiqi* 義氣 that is celebrated by the triad societies (and law enforcement officers alike) in Chinese societies. And while there are not many detective stories, there is the widely popular genre of martial arts and chivalry (*wuxia xiaoshuo* 武俠小說). These stories almost always happen in the fictional world of in which the state often simply fades into the background.

While Lee insists on understanding Chinese justice in its own terms, she makes lavish use of concepts rooted in liberal legality to interpret Chinese justice. Sometimes this works quite well. For example, she extends Shklar’s discussion of the difficulty of finding *mens rea* (guilty mind) in political trials by pointing out how, in China, the notion of the “objective enemy” underscores the logic of revolutionary justice. Other times, the results are less satisfying—for example, her insistence that there is a distinction between legal truth and factual truth. Yet, according to Chinese-style socialist rule of law, there is only one truth. To assert that there is a legal truth that stands apart from other types of truth is a gesture of formalism.

Lee also translates some phrases rather eccentrically. One example is the Chinese term *taose shijian* 桃色事件, literally meaning a “peach-color event.” The Chinese term is gossipy and suspenseful—the event can be a love affair or a sex scandal or both. Lee displays an eagerness to convict by translating it as a “crime of passion.” A

bigger translation/interpretation problem is the way Lee understands low justice. Lee equates low justice to *gongzheng* 公正. The Chinese term is admittedly tricky to translate into English. However, its semantic focus is not so much about, as Lee suggests, fairness in the form of equal treatment. *Gongzheng* in the Chinese context does not entail the assertion of a system of absolute equal treatment. It is about a person fighting for fairer or more just treatment after the fact. *Suku* is by definition a post-hoc petition for justice. Due process and procedural justice are habitually overlooked in contemporary China, not just by litigants who appeal to the law, but also by judges and government officials. While authoritarian, the Chinese judicial system is notorious for its open-ended or embedded nature. The court system is putatively a one-appeal system in which finality can be quickly reached, yet the reality is anything but. Retrial applications and repeat petitions mean that finality is often undermined and deferred.

In the conclusion of the book, Lee finally discusses *Qiuju da guansi* (Qiuju goes to court), arguably the most analyzed legal dramas of the reform era. The ambivalence expressed by *Qiuju* in the last scene exposes, according to Lee, the gap between law and morality. Does law serve justice? It is worth noting that the movie is more than thirty years old. Back in 1992, the party was disseminating law to the countryside, and it wanted to convince the public that it was acceptable to litigate against officials. There was a show trial element in the court scenes, which Lee acknowledges. Subsequent portrayals of the judicial process (for example, Liu Zhenyun's 2012 popular satire *Wo Bu Shi Pan Jinlian* (English title: *I Did Not Kill My Husband*)) took a more unflinching look at the problem of access to justice in China.

Lee's *A Certain Justice* offers an erudite analysis of Chinese justice through the lens of law and humanities. Her ability to make use of different theoretical apparatuses to underline unobvious connections is impressive. I intend to go back to many of the works that she brilliantly discusses. However, the ecology of the Chinese legal imagination that she presents is lopsided. Her central claim, that the vocabulary of statism is the final vocabulary of the Chinese legal imagination, suggests that Chinese legal culture has no room for universal justice—the most that Chinese justice can promise is a certain justice, but not justice per se, not even aspirationally. It is a bold claim that presumes an astounding degree of cultural continuity. What the book does show, I believe, is the persistence of the statist project that continues to valorize high justice in the PRC.