

# **Lawyer, Lawyer: Albert Venn Dicey, Joe Ma, and the Rule of Law in Hong Kong**

**Marco Wan**

## **Introduction**

Joe Ma's *Lawyer, Lawyer*, a film about a lawyer's attempt to rescue his former servant from a false accusation of murder in the colonial courts of Hong Kong, was released in 1997, the pivotal year of Hong Kong's retrocession to China and a time when anxieties about the rule of law were very much in the air. A quintessentially 'Hong Kong' movie, it casts the comedian Stephen Chau – one of the most iconic figures in Hong Kong cinema – as the lawyer. The film's box-office success can to a great extent be traced to its clever use of puns and conventions in Cantonese, the dialect spoken in Hong Kong. Moreover, as a film with a specifically legal focus, it resonated with audiences by raising relevant questions about the legal construction of Hong Kong identity, the place of English law in a former colony, and the future of the rule of law in the city after its return to China.

This article attempts to establish a dialogue between law and film by arguing that *Lawyer Lawyer* can be understood as a post-colonial critique of the notion of the rule of law. It will take the work of the English jurist Albert Venn Dicey as its focus, for Dicey's seminal writings on the English constitution is widely regarded as the key to the popularisation of the term 'rule of law' in the common law world.

This article therefore builds on the existing literature on ‘law and film’ studies, especially works on the relationship between legal theory and film studies, and extends their frame of analysis to the ways in which the genre of film responds to the dissemination of English constitutional ideas to former colonies in East Asia.<sup>1</sup>

The possibility of reading Ma’s film as a response to legal questions was first acknowledged by Paul Fonoroff, a local film critic who also has a cameo appearance as the judge in the film. As Fonoroff points out in his op-ed piece in the *South China Morning Post*, *Lawyer, Lawyer* came out ‘as the new judicial process’ came under ‘critical scrutiny’, and can be regarded as ‘an attack on pre-July 1 [1997] notions of justice’ (*South China Morning Post* August 12 1997). My argument takes its cue from Fonoroff, but shifts the lens to focus specifically on the rule of law.

This article is divided into four parts. While *Lawyer, Lawyer* is well known in Hong Kong, it may be less familiar to an international readership. Part 1 provides the basic narrative arc and the cultural-legal context of the film. Part 2 analyses Dicey’s conception of the rule of law, and Part 3 offers a reading of Ma’s film as a critique of the Diceyan vision. The Conclusion gestures towards an interpretation of the film as the embodiment of an alternative theory of the rule of law in post-colonial Hong Kong.

## **1 The Narrative Premise of Lawyer Lawyer**

Ma’s film revolves around the relationship between a Chinese lawyer, or *songshi*, called Chan Mong-Kut, and his servant, Foon.<sup>2</sup> It opens in late-nineteenth-century China, in the southern province of Guangzhou. After a heated dispute between master and servant, Foon leaves the Chan household to start a new life in the British colony of Hong Kong. Unfortunately, while in Hong Kong, Foon is framed for murder. When Chan hears that his former servant is in trouble with the law, he hurries to Hong Kong to assist him. A trial, presided by an English judge, is held in a colonial court in Hong Kong, and Chan acts as Foon’s defense lawyer. There is a twist in the story: during the course of the trial, it gradually transpires that the prosecutor in the case

is not only the murderer, but he is in fact Foon's half brother. As Foon's close relative, the prosecutor has a monetary motive for framing Foon, namely, securing the family fortune for himself.

The film portrays the colonial court in a negative light: its rules are arcane and convoluted, the colonial (Caucasian) judge is arrogant and unsympathetic, the jury is amateurish and clueless, and the witnesses are corrupt. Worst of all, the court privileges legal rules over justice; the judge instructs the jury to disregard Chan's defense because he had spoken at the wrong time during the trial and had not followed the rules and protocols of the courtroom. The court determines that Foon is indeed guilty of murder despite a preponderance of evidence to the contrary. Foon is sentenced to death by hanging under the Qing Penal Code in force in late nineteenth-century Hong Kong. However, in the execution scene, Chan manages to convince the judge that Foon should not have to die. Foon walks free, and marries his true love, Lotus.

As we will see below, the trial scenes and the execution scene turn on questions about the supremacy of legal rules, and provide an entry point into a consideration of the rule of law. By way of contextualising this representation, I will now consider two short texts which give us a sense of the debates surrounding the rule of law in Hong Kong in the years leading up to 1997. In his introduction to *Precedent in Law*, a frequently-cited volume of papers on legal precedent, Laurence Goldstein notes that while 'democracy (of a sort) exists here, and the English system of common law prevails,' at the same time 'a body of opinion says that neither of these institutions is desirable' (Goldstein 1987: 1). The view of those who were against democracy and the common law seemed to be that since the rule of law was a notion inextricably tied to the law of the colonial master, as such, it was at least questionable whether it would be applicable after the retrocession.

Margaret Ng, who represented the legal constituency of Hong Kong's legislature at the time of the Handover, provides a contrary position. Speaking at an international conference on human rights and the rule of law in Hong Kong only a few months before the actual transfer of sovereignty, Ng notes that Articles 8 and 18 of Hong Kong's

mini-constitution, the Basic Law, together guarantee that the common law, amongst other elements of English law, would persist after the colonial period. In other words, the fact that Hong Kong continued to enjoy the protections provided by the common law would remain unchanged. She asks:

Now, what does 'remaining unchanged' mean to us? It means not only the ordinances but the system of law, and I emphasize particularly one point, and that is the continuity of the common law system with its well-established legal principles. Now ... the common law in itself, as its fundamental spirit, protects the liberty of the individual .... There is within the Basic Law this, from the mental spirit, which is that the freedom, the liberty of the individual has to be protected. There is to be no arbitrary detention, no arbitrary arrest. And that has lasted as long as the common law has existed (Ng 1997: 373).

Ng goes on to note that:

it is inherent in the common law that there are certain things about the law which the executive must not do. You can change a law, you can repeal it, you can enact a new law, but everything has to be done according to due process (Ng 1997: 373).

For Ng, the rule of law is not a colonial relic that should be discarded in post-colonial Hong Kong. On the contrary, it is the most valuable feature of the common law order that sets Hong Kong apart from the rest of China. However, despite the legal protections that she cites, Ng's attitude is not an altogether confident one. She warns that the rule of law was being eroded even before the colonial period had officially come to an end, urging lawyers to be vigilant about safeguarding the rule of law in the years after 1997 (Ng: 1997: 374).

## **2 Albert Venn Dicey, Englishness, and the Rule of Law**

*Lawyer, Lawyer* appeared at a time of lively debate and profound anxiety about the nature and future of the rule of law in Hong Kong. As we have seen, some, like Ng, regarded the rule of law as crucial dimension of Hong Kong's distinctiveness from China, while others openly doubted whether a concept of such colonial underpinnings

should have a place in a post-colonial legal order. To understand the film's place in the wider cultural discourse on the rule of law, it is necessary to define the term more closely.

The term 'rule of law' was popularised by the nineteenth-century English jurist, Albert Venn Dicey. In his seminal work, *Introduction to the Study of the Law of the Constitution*, published in 1885, Dicey identifies three key elements to the rule of law. First, no one is legally punishable except for a breach of law as defined by the courts, which also means that no one can be subject to the exercise of arbitrary power by the government. Second, every man is subject to the law and no one is above the law. He notes that in England 'every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen' (Dicey 1885: 193). As evidence, he points to

the Reports abound with cases in which officials have been brought before the Courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority.

Third, the constitution represents the accumulation of concrete judge-made laws rather than abstract declarations or definitions of rights, and the general rules of the constitution are the result of the ordinary law of the land. He argues that a corollary of this third dimension is that 'there runs through the English constitution that inseparable connection between the means of enforcing a right and the right to be enforced' (Dicey 1885: 199). In other words, the pivotal role of the courts reflects the fact that 'Englishmen ... fixed their minds far more intently on providing remedies for the enforcement of particular rights or (what is merely the same thing looked at from the other side) for averting definite wrongs' than on empty formulations of their nature.

Although seminal, Dicey's work has not been without its critiques, reevaluations or reconsiderations. As Paul Craig (1997) has pointed out, Dicey's theory constitutes a formal, rather than substantive, conception of the rule of law. Craig observes that the problem of arbitrariness in the first limb only applies to laws that do not have a proper legal basis,

or that are passed in the correct manner but are nonetheless so vague or imprecise that they do not provide a clear indication of how they should be followed; the requirement of equality in the second limb refers to access to justice rather than to the content of legal rules; and there is no reference to substantive rights in the third limb. Dicey posits that ‘the singularity of England was not so much the goodness or leniency as the *legality* of the English system of government’ (Dicey 1885: 189). As such, his focus is on the way in which laws are passed and applied, as well as on their clarity, rather than on their content. As we shall see, *Lawyer, Lawyer* can be understood as a critique of the strict legality in Dicey’s formulation of the rule of law.

When one reads Dicey’s 1885 discussion of the rule of law in the early twenty-first century, it quickly becomes apparent that he was very much a product of his time; Dicey’s notion of the rule of law is firmly premised on a Victorian sense of English superiority and is an inextricable part of English racial and cultural identity. Dicey variously describes the rule of law as ‘one of the most marked peculiarities of English life’, ‘a trait of national character’, and ‘the distinguishing characteristic of English institutions’ (Dicey 1885: 187). He reiterates that while ‘modern Englishmen may at first feel some surprise that the:

‘rule of law’ ... should be considered as in any way a peculiarity of English institutions, since, at the present day, it may seem to be not so much the property of any one nation as a trait common to every civilised and orderly state,

they can be assured that it is indeed ‘peculiar to England, or to those countries which, like the United States of America, have inherited English traditions’ (Dicey 1885: 188).

Most tellingly, Dicey advances his argument about the rule of law by contrasting the benefits of this distinctly national concept with ‘Oriental despotism’ and with the practices of the people who in his comparisons always seem to be inadequate, excessive, or simply misguided, namely, the French (Dicey 1885: 191). As Stephen Humphrey points out, for Dicey ‘the rule of law not only distinguishes English law from other bodies of law, it renders it superior’ (Humphreys 2010: 32). According

to Dicey, the people of France lived under the wide discretionary authority of their government, the conduct of their officials was insufficiently regulated, and their constitution failed to secure the effective enforcement of rights. According to him, even an observer as astute as Alexis de Tocqueville failed to fully comprehend the nature of the rule of law in English culture (Dicey 1885: 187). He further points out that when Voltaire came to England, the *philosophe's* predominant sentiment was that 'he had passed out of the realm of despotism to a land where the laws might be harsh, but where men were ruled by law and not by caprice' (Dicey 1885: 189-90). Dicey concludes that, unlike the inhabitants of other nations, 'Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else' (Dicey 1885: 202).

For Dicey, then, the rule of law is a distinctly English virtue. The question of the national dimension of the rule of law arose around the time of Hong Kong's decolonisation in 1997, and the place of the rule of law in the city continues to resonate politically today. The following section will provide an interpretation of *Lawyer, Lawyer* as a response to the Diceyan vision of the rule of law. It argues that the film can be said to critique Dicey's vision of the rule of law as an English virtue, first by interrogating whether the rule of law is indeed a virtue, and second by interrogating whether it is necessarily English.

### **3 *Lawyer, Lawyer* and the Rule of Law**

One of the most distinctive features of *Lawyer, Lawyer* is its comic mode: films starring Stephen Chau as the lead actor are often marked by his distinctive humour known as 'moleitau'. Moleitau can loosely be translated as 'absurdity', 'silliness' and 'ridiculousness'. This humour is premised on a mixture of word play in the Cantonese dialect, the yoking together of incongruous ideas or arguments, and the exaggeration of traits and concepts. One critic refers to it as a 'cinema of nonsense' (Lai 1997: 95). It is the third trait of 'moleitau' humour – comic exaggeration – which primarily anchors the film's depiction of the rule of law. By magnifying or exaggerating the strict legality upon which the

Diceyan rule of law insists, the film makes the colonial legal process seem amusing, funny, and even laughable. Rather than trivialising the law, however, this transformation of a legal event into the focus of a form of popular entertainment in turn enables the film to articulate a unique form of jurisprudential critique, what the jurist William MacNeil has termed 'lex populi' (people's law, or pop law) whereby 'low' cultural forms engage with ideas and issues in traditions of 'high' culture such as legal discourse (MacNeil 2007: 1). *Lawyer, Lawyer*, through its comic mode and in particular its comic exaggeration, can be said to enact an exposition and critique of the potential for injustice inherent in the notion of the rule of law underpinning the colonial legal process.

The most jurisprudentially significant moments in the film are arguably the trial scenes, in which Foon is found guilty, and the execution scene, in which Chan rescues Foon from the fate of death by hanging. Foon's trial takes place in a late nineteenth-century colonial courtroom, an English legal setting which would have applied the rule of law at the time. The character of the judge, with his firm belief in the superiority of the colonial legal system and his unwavering commitment to the rule of law, can be read as a representation of Diceyan values. Early on in the proceedings, this judge admonishes Chan for his lack of understanding of English law: he says 'This is a court of the Great British Empire, not some random Chinese tribunal. ... If you don't know the law, you should go and do some studying before coming back here'. The simple caricature of the Caucasian judge as an arrogant, supercilious colonial administrator prevents the audience from taking him too seriously, yet the harsh sentence he imposes on an innocent man nonetheless keeps firmly in view questions of justice which are at stake in the film.

The first trial scene lays the foundation of the critique by depicting the courtroom as a space of both social disorder and excessive procedural rigidity. It opens by giving the viewer a sense of the majestic nature of the colonial courtroom: the camera follows Chan into the building, and in doing so it shows its grand stairwell, the large number of uniformed



guards and judicial officers protecting it, the grandiose architecture of the legal space, and the colonial crest hanging proudly and prominently above the participants in the trial and which oversees the proceedings. However, the setting's solemnity is quickly undercut by the proceedings themselves. The prosecutor spits everywhere as he speaks, a ludicrous act that not only provokes laughter amongst the audience, but which literalises the Cantonese expression 'spraying one's saliva', a phrase used to describe utterances that are mere verbiage.

The film's 'moletiau' humour implicitly represents the discourse of law as devoid of legal significance. Moreover, even though there is a rigorous jury selection process, the jury members constitute a motley crew, and one of its members is so clueless as to expressly state that she regards Foon as a murderer even before the cross examination begins. The exchange between Foon and this jury member is one of the comic high moments of the narrative. The witnesses against Foon also represent the absurdity of the trial: the witnesses' false testimony is evidenced by the ridiculous weapons which they claim Foon used, all of which have been drawn from martial arts novels. These elements, together with the shoe throwing, name calling, and the repeated use of colorful Cantonese swear words throughout the scene, combine to create a critical distance between the viewer and the law. In other words, by comically exaggerating the flaws of the colonial legal process, the film displaces the sense of reverence a colonial subject normally feels for it, and arguably creates a frame of mind in which the viewer would not be too deferential to find the foundational ideas upon which the law operates at least potentially problematic.

In the second trial scene, Chan uncovers the prosecutor's plot to frame Foon not once, but twice, but in both instances the court's strict adherence to the letter of the law prevents justice from being done. In the first instance, Chan invites the father of the prosecutor, the tycoon Ho-Sai, to give evidence. The viewer quickly learns that Ho-Sai is also Foon's father. However, Ho-Sai only knows Foon as Nim-Sai, the name he was given at birth. To further complicate things, Ho Sai does not know what Nim-Sai currently looks like, because they had been

separated for over 20 years. The only means Ho-Sai has of identifying his son is a birthmark on his buttock. Prior to the trial, the prosecutor had cleverly shown Ho-Sai a corpse with a fake birthmark drawn onto its buttock, which led Ho-Sai to believe that Nim-Sai was already dead. However, when Ho-Sai enters the courtroom, he is struck by Foon's resemblance to his former concubine. Chan then tells Foon (or Nim-Sai) to show Ho-Sai his birthmark. The birthmark confirms Foon's real identity in front of the entire courtroom, including the judge, the jury members, and the prosecutor. Ho-Sai is delighted to be reunited with the son whom he had wrongly believed to be dead, but the shock of recognition is too much for him to bear: he dies of a heart attack in the courtroom.

The revelation of the relationship between Foon and Ho Sai leads to the greater revelation that the prosecutor committed the murder and framed Foon in order to secure the family fortune; with Foon behind bars, he would inherit all of his father's property upon his death. The truth is out, yet the jury is instructed by the judge to disregard the evidence about Foon's true identity and the subsequent developments to which it gave rise. This is because Ho-Sai had not completed the oath which he had to undertake as a witness; he was so distracted by the resemblance between Foon and his former mistress that he stopped reciting the oath halfway. By the time Chan realised the importance of the oath, the witness was already dead. The prosecutor points out that since the evidence, in the form of Ho-Sai's testimony, was not obtained according to proper procedure, it was inadmissible in court. As such, the jury was to treat the words 'as if they had never been uttered'. The judge agrees with the view of the prosecutor. He says to Chan: 'I'm sorry ... the law is the law, and not a word can be changed. I cannot help you'. Chan is shocked at this procedural rigidity, because the supremacy of law meant that legal rules trumped common sense. The rule of law here means that legal formalism takes precedence over the demands of justice.

The overly formalist approach of the court is an integral part of the film's comic exaggeration: no common law court in real life would

insist on a complete recitation of the oath under those circumstances, therefore, the film presents a caricature of what it means to adhere to the rule of law. The point of the exaggeration is not to create a sense of *vraisemblance* or verisimilitude but to indicate the absurd consequences of following the logic of the rule of law to its conclusion; it shows what happens when the letter of the law is taken to an extreme. *Lawyer, Lawyer* seems to suggest that the rule of law, while important, is a concept that needs to be handled with care and cannot be embraced uncritically.

Despite this setback, Chan regains his composure and subsequently catches the prosecutor off guard, and through a rapid bombardment of questions Chan forces the prosecutor to admit that he knew about the plot to frame Foon. Chan begins by speculating on the prosecutor's motive for framing Foon before the jury, a move which causes the prosecutor to break out in a cold sweat. Then, seeing that the prosecutor is becoming increasingly nervous, Chan asks:

Chan: What were you doing the night of the murder?

Prosecutor (clearly nervous): I already told you, I was reading...

Chan: Not the night you killed the victim, because the night before...

Prosecutor: The night before I killed the victim, I...

(Prosecutor gasps. Uproar in the courtroom.)

The exchange produced an unwitting, yet unequivocal, admission by the prosecutor that he committed the crime. However, even though the prosecutor admits to the entire court that he was involved in the plot, the judge instructs the jury, once again, to disregard the evidence because it was not given according to proper procedure; once again, justice is sacrificed to maintain the absolute supremacy of legal rules. Chan, flabbergasted, criticises the judge's excessively literal adherence to the rules of evidence and is consequently found guilty of contempt of court. An unwavering commitment to the rule of law thus leads to an absurd outcome: the real culprit not only walks free but remains an agent of the law, Chan becomes imprisoned for contempt, and the innocent Foon is sentenced to death by hanging. Chan can hardly bring

himself to believe that English justice would allow this to happen: 'Your Honour, surely we don't need to follow the legal rules so closely?' he exclaims.

Once again, the trial scene can be understood as showing that a strict adherence to law cannot be uncritically presumed to be a virtue, for it can handicap the legal system and lead to gross injustice. The courtroom dynamic demonstrates that when followed to its logical conclusion, the rule *of* law turns into rule *by* law, whereby formal precepts take precedence over the duty to do justice. The legality of the English mind, which Dicey regarded as a source of national pride, is here depicted as something that can be unimaginative and dangerous. The device of comic exaggeration in the film functions as a way of raising the viewer's awareness of potential injustice in the legal system.

If the two trial scenes question whether the rule of law is necessarily a virtue, the execution scene can be read as questioning whether it is necessarily an English trait. In that scene, Foon is led up to the scaffold by a guard. All seems lost, but Chan saves the day at the last moment. He does so through an excessive fidelity to the letter of the law that exactly parallels the logic of the judge. Chan's argument is as follows: Foon is sentenced to death by hanging. The Chinese term for death by hanging is 'wuan sao ji ying' (環首之刑), which literally means 'a sentence whereby a hoop is placed around one's neck'.<sup>3</sup> Chan argues that since the rope had already been placed around Foon's neck, the sentence had already been carried out to the full according to the letter of the sentence; nothing in the expression 'wuan sao ji ying' (環首之刑) stipulates that the hoop needs to be tightened. Chan's legal interpretation is perversely literal, but the judge cannot deny Chan the force of his argument given that he himself had insisted that the rules of procedure in the courtroom be followed to the letter in a similar fashion. Foon is therefore released. I have written elsewhere about the significance of this scene from the perspective of the role of precedent in legal interpretation (Wan 2013). Here, my focus is on the film's critique of the link between Englishness, legality and the film's comic exaggeration.

There are two ways of interpreting the execution scene. On the one hand, Chan's argument could be regarded as an uncritical or literal colonial mimicry of the English notion of the rule of law. According to this interpretation, Chan observes the operation of the English legal mind while he is defending Foon in the colonial courtroom, and he mimics the English mode of reasoning in the execution scene out of reverence for the logical premise and structures of English legal discourse. However, this is ultimately not a very convincing reading of Chan's behavior, because his character does not fit that of the colonial mimic man. Even though his adoption of the mentality of the rule of law arguably derives from his observations in the English courtroom, he does not blindly imitate the norms and thinking processes of the judge or the prosecutor. On the contrary, he is very critical of English legal logic and of the English presence in Hong Kong more broadly.

Chan's dislike of the colonisers is evident from the beginning of the film, when he proposes a truce with his enemies in China. He says: 'The nation is under threat because Hong Kong, Kowloon and the New Territories have fallen into the hands of Westerners. We should put aside our differences and join forces against the foreigners'. Moreover, when Foon first decides to move from China to the British colony, Chan urges him to stay by saying that 'Hong Kong is a colony. It is not for the habitation of real people, it is only for the habitation of Western people'. Finally, during the trial, he becomes irritated by the judge and the opposing counsel in the Hong Kong court: he says 'Will they shut up about their great British Empire! Have they forgotten that they only borrowed Hong Kong from us, and that they need to return it in the future!' This is an explicit reference to the Handover of 1997. Chan's impatience with the British presence in Hong Kong, his criticism of English attitudes, and his at times overtly racist remarks betray his deep suspicion of English law and indicate that he is unlikely to adopt English legal logic uncritically. Against this background, it would be difficult to interpret his understanding of the rule of law as a form of adulating colonial mimicry.

It would be more convincing to interpret Chan's strategy here as a

colonial appropriation of the logic of the rule of law, through which the idea of the supremacy of law and the centrality of adherence to legal rules is not uncritically imitated, but becomes combined with Chan's own ingenuity and knowledge of the Qing Penal Code and wielded as a weapon against the colonial legal system. In other words, what the execution scene seems to suggest is that despite Dicey's understanding of the rule of law as a peculiarly English trait, there is no necessary link between the rule of law and Englishness. The rule of law is in fact a concept that is universal, capable of transplantation, adoption, and reinterpretation across different cultural contexts, and most importantly, it can be used to undermine the colonial judicial edifice that served as one of the building blocks of British rule in Hong Kong.

By taking on the analytical framework and judicial mindset of the judge, Chan can be said to make the rule of law an uncanny, and hence disruptive, version of the original Diceyan formulation: there is the same investment in the words of the legal rule, but that investment, when combined with Chan's understanding of Chinese law, produces a result that undermines the authority of colonial legal system. It is in the split between the sameness of the concept of rule of law as deployed by Chan, and its difference from the Diceyan formulation, that the possibility of resistance emerges. For instance, when the judge hesitates over releasing Foon from the scaffold, Chan throws the words which the judge had said to him in the courtroom back to his face. Chan says sternly to the judge:

Your Honour, the law is the law, and not a single word or punctuation can be changed. I cannot help you. ... Think before you make a decision (about whether or not to release Foon). If you make the wrong decision, you'd not only bring shame to your nation, I'll also sue you for murder.

Chan here takes the court's argument and re-directs it, word for word, against its own decision. Chan here performs the distinctly anti-colonial gesture of turning the concept against the ruling of the English court, challenging its unjust decision and securing freedom for a man whom it wrongly sentenced to death. This transformation of the rule of law into one with Hong Kong characteristics simultaneously changes

the power dynamic between master and servant, center and periphery, coloniser and colonised. By reading the Chinese Penal Code in light of the rule of law, and by turning the concept against the colonial court, Chan can be said to be wielding a distinctly Hong Kong notion of the rule of law. It may have English origins, but it is not indissociable from English nationhood and can in fact be deployed as part of an anti-colonial strategy to bring about justice.

#### **4 Conclusion**

By way of conclusion, I want to suggest that in addition to critiquing the Diceyan view of the rule of law, the film can be interpreted as positing an alternative understanding of the place of law in Hong Kong society. This view is encapsulated by the speech made by Chan's wife, Wo Man, towards the end of the film. Chan is imprisoned for contempt of court, and his wife is given the responsibility of making the closing speech for the defense.

Wo Man begins her closing speech with a strong awareness of how she would be viewed in the nineteenth-century colonial courtroom: 'I'm a mere woman, with little knowledge or formal education'. From this premise, however, she articulates the most piercing question about law in the trial: 'I therefore do not understand what is at stake here: is legal procedure more important, or is human life more important?'. She then proceeds to give the most direct, and the most fierce, critique of the Diceyan rule of law in the film: she tells the judge that if we insist on nothing but legal rules, if we are blinded by the absolute superiority of law over common sense, then the law is worth nothing, it is less desirable than a pile of dirty diapers (a Cantonese metaphor which she uses but which is not translated in the subtitles).

On one level, her speech can be read as gesturing towards a more substantive conception of the rule of law in the Western tradition: if the rule of law is to have any meaning at all, then it needs to encompass substantive rights which protect the innocent. An obsession with formal precepts will not lead to justice. On another level, the speech can be read as not only gesturing towards a more substantive understanding

of the rule of law, but also towards a fusion of Chinese and Western conceptions of law. Chinese law, at least in the Confucian tradition, emphasises not only legal rules and reason, but also the concept of *li* (禮), often translated as ‘propriety’ but which also encompasses an emphasis on humanity, harmony and good sense<sup>4</sup>. The Confucian schema focuses on the roles an individual plays within the family and in society, and *li* can be regarded as a set of moral principles governing the relations between individuals in those contexts. In the words of one scholar of Chinese legal culture, *li* can be conceived of as ‘the rules governing the behavior of the individual in his own social role and governing his behavior toward others in their social roles’ (Swartz 1997: 162).

When deployed correctly, *li* can restore common sense and meet the demands of justice which are sorely lacking in a system that places legal rules above all else. When brought together, the Western and Chinese notions of law reinforce and bolster one another: the more humanistic notions in Chinese law counter-balance the rigidity of Western law, while Western laws give form to the arguably more amorphous concepts in Chinese law so as to ensure that society remains one which is ruled by law rather than ruled by man. Wo Man’s intervention in the trial scene brings to the forefront the importance of acting justly towards a fellow human being in light of the evidence, rather than being strictly bound by legal rules; the social roles played by the judge and the jury members dictate that they should place justice and fairness before doctrine and procedure. Both the racial and gendered dimensions of Wo Man’s character is significant: as a Chinese woman without any formal knowledge of English legal doctrines, Chan’s wife speaks from outside the male-dominated, rule-based frame of Western law, and brings to the courtroom a sense of what an alternative conception of the rule of law might look like, one through which we respect the place of legal rules without allowing our hands to be tied by their absolute supremacy.

As Sir Yang Ti-liang, the first Chinese person to serve as Hong Kong’s Chief Justice, once noted, law in a post-colonial context is necessarily part of an evolution,



## Wan

a process by which the spirit of the legal system is so mingled with the culture and ethos of the new society that a new system emerges, still largely based on the ancestry whence it came, but evidencing a metamorphosis which has eradicated its foreignness' (cited in Lau: 1997, 131).

Wo Man's speech in the courtroom can be understood as part of a film depiction of this process of legal evolution. *Lawyer, Lawyer*, appearing at the cusp of a new era in Hong Kong's constitutional history, not only responded to the legal debates of the time, but can also be said to gesture towards a new conception of the rule of law for the post-colonial period.

## Notes

Marco Wan is Associate Professor of Law and Honorary Associate Professor of English, University of Hong Kong. He is also Associate Dean (International Affairs) of the HKU Law Faculty (mwan@hku.hk).

- 1 For a sense of the range of scholarship in 'Law and Film' studies, see Steve Greenfield, Guy Osborne and Peter Robson, *Film and the Law: the Cinema of Justice* (Oxford: Hart, 2010); Omit Kamir, *Framed: Women in Law and Film* (Durham: Duke University Press, 2006); Paul W. Kahn, *Finding Ourselves at the Movies: Philosophy for a New Generation* (New York: Columbia University Press, 2013); William MacNeil, *Lex Populi: the Jurisprudence of Popular Culture* (Stanford: Stanford University Press, 2007); Connal Parsley, 'The Animal Protagonist: Representing "the Animal" in Law and Cinema', in *Law and the Question of the Animal: a Critical Jurisprudence*, ed. by Yoriko Otomo and Ed Mussawir (Abingdon: Routledge, 2013); Tim Peters, "'The Force" as Law: Mythology, Ideology and Order in George Lucas's Star Wars', (2012)36 *Australian Feminist Law Journal* 125-143; *Law on the Screen*, ed. by Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Stanford: Stanford University Press, 2005); Richard K. Sherwin, *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* (New York: Routledge, 2011); Alison Young, *The Scene of Violence: Cinema, Crime, Affect* (Abingdon: Routledge-Cavendish, 2009).
- 2 'Songshi' and 'lawyer' are not, strictly speaking, cultural parallels, but I will treat them as such because the film largely elides their distinctions.

- 3 Wuan (環) = hoop or circle; sao (首) = neck; ji (之) = of; ying (刑) = punishment or penalty.
- 4 I am indebted to Li Sha for discussions on *li* in Chinese legal culture.

## **References**

- Craig P 1997 'Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework' *Public Law*: 467-87
- Dicey AV 1979 *Introduction to the Study of the Law of the Constitution* Macmillan London (first published 1885)
- Fonoroff P 1997 'Nothing Funny About Lawyers' *South China Morning Post* 15 August
- Fifty Years of Electric Shadows* 1997 Urban Council and Urban Services Department Hong Kong
- Freeman M and F Smith eds 2013 *Law and Language* Oxford University Press Oxford
- Goldstein L ed 1987 *Precedent in Law* Clarendon Press Oxford
- Greenfield S, Osborne G and P Robson 2010 *Film and the Law: the Cinema of Justice* Hart Oxford
- 'Hong Kong: Preserving Human Rights and the Rule of Law' 1997 *American University International Law Review* 12/3: 361-508
- Humphreys S 2010 *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice* Cambridge University Press Cambridge
- Kahn P 2013 *Finding Ourselves at the Movies: Philosophy for a New Generation* Columbia University Press New York
- Kamir O 2006 *Framed: Women in Law and Film* Duke University Press Durham
- Lai L 1997 'Nostalgia and Nonsense: Two Instances of Commemorative Practices in Hong Kong Cinema in the Early 1990s' in *Fifty Years of Electric Shadows*: 95-100
- Lau CK 1997 *Hong Kong's Colonial Legacy* Chinese University Press Hong Kong
- Lee T V ed 1997 *Basic Concepts of China Law* Garland Publishing New York
- MacNeil W 2007 *Lex Populi: the Jurisprudence of Popular Culture* Stanford University Press Stanford

## Wan

- Peters T 2012 “The Force” as Law: Mythology, Ideology and Order in George Lucas’s *Star Wars*’ *Australian Feminist Law Journal* 36: 125-143
- Sarat A, Lawrence D and M Umphrey eds 2005 *Law on the Screen* Stanford University Press Stanford
- Sherwin R 2011 *Visualizing Law in the Age of the Digital Baroque: Arabesques & Entanglements* Routledge New York
- Swartz B ‘On Attitudes Toward Law in China’ in Lee 1997: 159-172
- Wan M 2013 ‘Literal Interpretation and English Precedent in Joe Ma’s *Lawyer, Lawyer*’ in Freeman and Smith 2013: 246-259
- Young A 2009 *The Scene of Violence: Cinema, Crime, Affect* Routledge–Cavendish Abingdon