

1-1-1998

Censorship in Chinese Cinema

Mary Lynne Calkins

Follow this and additional works at: https://repository.uchastings.edu/hastings_comm_ent_law_journal

 Part of the [Communications Law Commons](#), [Entertainment, Arts, and Sports Law Commons](#), and the [Intellectual Property Law Commons](#)

Recommended Citation

Mary Lynne Calkins, *Censorship in Chinese Cinema*, 21 HASTINGS COMM. & ENT. L.J. 239 (1998).
Available at: https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol21/iss2/1

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Communications and Entertainment Law Journal by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

Censorship in Chinese Cinema

by
MARY LYNNE CALKINS*

I. A Brief History of Chinese Cinema.....	243
A. The First, Second, and Third Generations	244
B. The Fourth Generation	246
C. The Fifth Generation	248
D. Contemporary Chinese Filmmakers: The Sixth Generation	254
II. The Laws, Regulations and Governmental Bodies That Control Chinese Cinema	259
A. Government Bodies	259
B. Legal Mechanisms	262
1. The Constitution	262
2. The Film Administration Regulations	266
3. Definitions	274
a. "Censor"	274
b. "Banned"	275
III. External Censorship Factors	278
A. Cultural Codes	278
1. Li and Fa	278
2. Guanxi	281
B. Economics	282
C. International Diplomacy	285
1. International Film Festivals	288
2. The Importation and Censorship of Non-Chinese Films.....	291
IV. Film Production and the Censorship Process in Contemporary China	296
A. Five Methods of Film Production	297
1. State-studio Films	297
2. Co-productions	297
3. Changbiao	299

* J.D., Georgetown University Law Center, 1998; B.A. Dickinson College, 1992. Ms. Calkins is an associate at Holland & Knight LLP, and previously published "Make Friends First, Certify Later: China and ISO 14000" in the Georgetown International Environmental Law Review (1997).

4. Hong Kong-funded Films	299
5. Independent Films	302
B. Film Production and the Censorship Process.....	304
1. Script Approval	304
a. Content	306
b. Style.....	323
2. Film Processing.....	324
3. Approval Upon Completion	325
4. Taking the Film Out of China.....	326
V. Reactions and Responses to Censorship.....	328
A. International Reactions	329
B. The Response of Chinese Filmmakers and Actors	330
VI. Conclusion	336

Introduction

To publicize the U.S. release of Chen Kaige's film *Temptress Moon* (*Feng Yue*),¹ the film trailer proclaimed Chen's film "so controversial it was banned in China." Such a description tells an audience little these days, because so many artistic, prominent Chinese films get banned in their domestic market. Considering that any film or play produced in China receives close government scrutiny at each step of production, and must be approved by censors from inception to completion, how do films banned in China ever get made there in the first place? And just what does it mean for a film or director to be "banned"?

Within politics, of course, lay the answers to these questions, because politics traditionally play a large role in censorship of the arts in China. The government continues to adhere to the teachings of Mao Zedong, who explained the inextricable relationship between politics and art in this way:

In literary and art criticism there are two criteria, the political and the artistic. . . . [W]hat is the relationship between the two? . . . We deny not only that there is an abstract and absolutely unchangeable political criterion, but also that there is an abstract and absolutely unchangeable artistic criterion Literature and art are subordinate to politics, but in their turn exert a great influence on politics.²

By so elevating politics above art, and by presuming that the two are inextricably linked, China has left creativity vulnerable to governmental scrutiny, censorship, and co-optation. Film, as a particularly visible and communicative media, is particularly subject to governmental interference, and the Chinese government has exploited that vulnerability to the fullest.³

1. *TEMPTRESS MOON* (Shanghai Film Studio/Tomsen Films 1996).

2. Talks at the Yen'an Forum on Literature and Art (May 2, 1942), in 3 *SELECTED WORKS OF MAO TSE-TUNG* 69, 86-89 (1967) [hereinafter Mao Zedong].

3. Indeed, the Chinese government is so notorious for its censorship that when major U.S. studios unanimously passed on the chance to release the new film version of *Lolita*, it was called "a display of self-censorship that is positively Chinese." Tim Cornwell, *Morality on the march keeps 'perky' new Lolita off the screen*, *INDEPENDENT*, July 13, 1997, at 15.

However, the blanket explanation that film censorship is motivated by politics fails to explain certain decisions.⁴ As China's censors are not in the habit of explaining their decisions, even filmmakers themselves have to guess as to acceptable content, themes, and style. Looking below the surface of film censorship—at historical context, individual actors, cultural factors, and linguistic considerations—to discern nuances, patterns and purposes is therefore necessary.

This paper examines censorship in Chinese cinema in an attempt to make sense of a tradition of sometimes seemingly arbitrary decisions by the authorities. Providing examples of how particular filmmakers are affected by censorship decisions, this paper attempts to demonstrate that China takes a similar approach to film censorship as it does to contracts, in the sense that censorship involves continual "negotiations" rather than binding agreement, and in the sense that articulated standards are subject to overriding cultural norms and external factors.

Part I of this article describes the six "Generations" of Chinese filmmakers, the censorship they faced, and the implications for contemporary films and filmmakers. Part II discusses the legal mechanisms that exist for film censorship in China, including the governmental bodies involved, as well as the pertinent laws, regulations, and definitions. Part III explores the external factors that affect censorship in Chinese cinema, including cultural concepts, economic considerations, and issues of international diplomacy. Part IV details the process of film production in China, and analyzes the various factors considered in the censorship process on a film-by-film basis, including content, style, and temporal setting. Finally, Part V describes reactions and responses to the censorship of Chinese cinema. This paper concludes that film censorship in China, like contracts and constitutional law in China, is

4. The United States Trade Representative has called China's censorship guidelines "unpublished, and apparently arbitrary and vague." OFFICE OF THE U.S. TRADE REP., 1994 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 48 (1994).

contextual, individualized, and continuously negotiable rather than absolute or binding.

I

A Brief History of Chinese Cinema

Chinese cinema has been defined largely through the identification of six discernible "Generations" of filmmakers, each of which represents a specific period in China's tumultuous 20th Century history. The First Generation consisted of the early silent pioneers of the 1920s and 1930s. The Second Generation made films during World War II, with an emphasis on social realism. The Third Generation consisted largely of those filmmakers who could not afford traditional study during World War II, and who thus filmed with original, less Western-influenced style. The Fourth Generation made films under Mao, just before the Cultural Revolution. The Fifth Generation was comprised of the first wave of filmmakers after the Cultural Revolution interrupted Chinese cinema, and was influenced by the refined approaches of Akira Kurosawa and Jean-Luc Godard. The Sixth Generation is the contemporary group whose recent emergence demonstrates influence by such effects and suspense masters as Steven Spielberg and Alfred Hitchcock.

Although each generation does inherently tend to display some common themes and approaches, the generational categories reflect how, unlike "schools" of filmmaking that are identified by adherence to a particular artistic style or abstract philosophy, each of these "generations" is united more by its place in China's tumultuous 20th Century political history than by adherence to a particular artistic style or philosophy. Perhaps identifying these artists by political milieu is inevitable, considering that indeed, throughout China's history, its identity as a state and as a civilization has been shaped largely by the interaction between culture and politics.⁵

5. See Marguerite Gong Hancock, *The Nexus of Culture and Politics: A Study of Film in U.S.-China Relations*, 9 FLETCHER F. 325 (1985).

The Chinese government wields this interaction at times as a sword, other times as a shield. Whereas some regimes actively manipulated film in order to convey positive political messages, others passively manipulated film to prevent them from being a vehicle for negative political messages. In China's current cinematic climate, the government is holding up the shield, with intermittent periods of sword-wielding in the form of massive culture campaigns.⁶

A. The First, Second, and Third Generations

China created its first movies in 1905.⁷ China's first major film studio, Mingxing, began production in 1922,⁸ staffed by the First Generation silent filmmakers. By 1937, China had about 300 movie theaters, concentrated in Shanghai and a few other large cities.⁹ At that time, China's own film industry was in only its infant stage, so its cinematic market was dominated by foreign films, rather than the works of its Second Generation filmmakers. The Sino-Japanese War and the civil war between the Nationalists and the Communists caused China's domestic film industry—along with radio and print media—to languish for approximately a decade.¹⁰ The right-wing Guomindang government imposed strict censorship codes that allowed only a few films to be made that responded to the conservative establishment and the 1931 Japanese invasion of northeast China.¹¹

The Chinese Communist Party's (hereinafter "CCP") extensive and effective use of film carried Chinese film past

6. For further discussion of culture campaigns, see *infra* note 195 and accompanying text.

7. See Wu Ming, *Movies: An Aspect of Culture*, BEIJING REV., Feb. 5-11, 1996, at 4.

8. Most of China's early films imitated Hollywood musicals and serials. One 1927 costume fable, *The Rose of Pushu*, featured a local bandit fighting with an effete scholar who brandished a pencil that had grown to Freudian proportions. See Matt Severson, *Silent Behind the Great Wall*, FILM COMMENT, May 15, 1996, at 47.

9. See Jianying Zha, *China's Popular Culture in the 1990s*, in CHINA BRIEFING: THE CONTRADICTIONS OF CHANGE 109, 110 (William A. Joseph ed., 1997).

10. See *id.*

11. See Severson, *supra* note 8, at 48.

the fighting of the 1940s and engrained it into Mao's governance and into the Third Generation of filmmakers. Because the CCP saw uses for films in its campaigns,¹² the film industry benefited by getting swept up in the "New China" movement. The CCP established China's first "revolutionary film studio" in Changchun in October 1946, but it was only after the 1949 communist victory that Chinese cinema really begin to develop.¹³ In celebration of the CCP's victory and the birth of Communist China, another film studio was opened in Beijing.¹⁴ As Mao Zedong recognized the increasing uses to which he could put public communication channels to further his ideologies, cinema and all other media came under Communist Party control.¹⁵ He considered art and revolution to be two "fraternal armies,"¹⁶ allied in the struggle to create a "new China."

Harnessed in the double yoke of art and politics was the Third Generation's most prominent director, Xie Jin. The Chinese government used Xie Jin's films to symbolize China's communist liberalization,¹⁷ because they were about common people's suffering. Xie Jin remains in good graces with the government even today, because unlike later generations of filmmakers, he never pushed the limits of his craft.¹⁸ Throughout his half-century career, Xie Jin scrupulously avoided placing any blame upon the Communist Party or any

12. The educational uses of film were noted by revolutionary intellectuals such as Lu Xun, as he recounts in the following story: "Once I had a curious experience. In the course of a banquet I said that students could learn more from films than from textbooks and that probably a visual method of teaching would one day be adopted. But my words aroused only laughter." Gino Nebiolo, *Introduction to THE PEOPLE'S COMIC BOOK* at xiii (Endymion Wilkinson trans., Doubleday 1973).

13. See Zha, *supra* note 9, at 111.

14. See Hancock, *supra* note 5, at 337.

15. See *id.*

16. Mao accused the anti-communist reactionaries of separating these two "fraternal armies" in his Talks at the Yen'an Forum on Literature and Art, May 2, 1942. See Mao Zedong, *supra* note 2, at 70.

17. See Stuart Klawans, *Zhang Yimou: Local Hero*, FILM COMMENT, Sept. 1, 1995, at 13.

18. See Patrick E. Tyler, *The Medium and the Message: China's Film Wars*, INT'L HERALD TRIB., Dec. 3, 1996.

of its leaders for the issues his films have tackled.¹⁹ As a result, his films have never been banned.

B. The Fourth Generation

By 1953, China had a number of film studios, all opened by the CCP: the August 1st film studio, a studio for the people's Liberation Army, a studio for scientific and educational films, a film studio in Shanghai.²⁰ As a result, from 1949 to 1966, China's film production steadily increased, averaging a total of thirty-six features per year.²¹

Because filmmaking is an artistic medium that requires more equipment than paper and ink and therefore requires money and cooperation from others, filmmaking has been fairly easily controlled by the central authorities. This was particularly true for the Fourth Generation, which developed within a vastly improved cinema infrastructure, albeit under the strong control of communist ideology. The CCP replaced all of the independent institutions of culture that had existed prior to the 1949 revolution—such as artists' guilds, folk art troupes, literary associations, and publications—with nationalized media. Indeed, "because of its emphasis on the moral and ideological education of all citizens, the CCP had long viewed culture in general as an important tool for the party's cause and a sensitive area of power and influence."²² Culture, in Mao's view, must always serve the revolution and the masses. Mao made this aspirational assertion years before the CCP actually had the power to impose such a mandate on artists nationwide.²³

To align people in their proper roles, Mao called upon artists and intellectuals to participate in the revolutionary struggle:

Our literary and art workers must . . . shift their stand; they must gradually move their feet over to the side of the workers, peasants and soldiers, to the side of the proletariat,

19. *See id.*

20. *See* Hancock *supra* note 5, at 331.

21. *See id.* at 338.

22. Zha, *supra* note 9, at 111.

23. *See* Mao Zedong, *supra* note 2, at 84.

through the process of going into their very midst and into the thick of practical struggles and through the process of studying Marxism and society.²⁴

Mao's view of film, however, was not purely as a revolutionary tool. Film and other arts, he realized, could carry pollution as well as inspiration. Not only was film a weapon of revolution, but it could also be a target of anti-revolutionary tendencies. For this reason, many Third and Fourth Generation films and filmmakers were praised, then purged, then promoted again, according to the Party's political and ideological needs.²⁵

Eventually, Chinese filmmakers were stripped of their creative status when Mao carried his ideas to an oppressive extreme during the Great Cultural Revolution, which spanned the decade between 1966-76.²⁶ Artists and intellectuals alike were condemned as bourgeois and anti-revolutionary. They were rounded up into state-sponsored units to undergo "thought reform," which was socialist indoctrination in Maoist ideology.²⁷ "After all the institutional bases of old culture were thus swept away or taken over, the party emerged as the country's only cultural authority in full control of a new national culture that could now begin to penetrate every corner of Chinese society on an unprecedented scale."²⁸ Filmmakers, permitted to produce only pro-communist films, were deemed not artists, but cultural workers. In modern parlance, they might be considered campaign workers, due to their existence only for the sake of politics.

These "cultural workers," who comprised the Fourth Generation of Chinese filmmakers, set about producing new films that would affirm and convey the dominance of the newly established socialism. Believing that the party was indeed leading the nation to a bright, rich future, many filmmakers, writers and artists willingly collaborated in the creation of the new socialist mass culture. The highly politicized mass culture

24. *Id.* at 78.

25. See Hancock, *supra* note 5, at 328.

26. See *id.* at 338-39.

27. See Kenneth Lieberthal, *Governing China* 50 (1995).

28. H.L. FU & RICHARD CULLEN, *MEDIA LAW IN THE PRC* 111 (Asian Law & Practice, 1992).

ended artistic and intellectual freedom in China, with creative filmmaking suffering in a most visible way.

On the other hand, among the various accessible art forms, Mao especially embraced film for its communicative value. He used it to communicate complex ideological doctrine to illiterate peasants through lively verbal explanations. He also used it to display fighting techniques for guerilla warfare to untrained supporters who knew only farming.²⁹ For distant, would-be revolutionaries sprinkled across the country, film promoted unity by capturing the dynamism of the revolution and the voices and faces of its leaders.³⁰

Perhaps the most constraining legacy Mao Zedong left to contemporary filmmakers is the notion that art cannot exist independent of politics and ideology. Mao articulated this idea at the Yanan Forum on Literature and Art back in 1942: "There is in fact no such thing as art for art's sake, art that stands above classes or art that is detached from or independent of politics."³¹ This notion of no pure art persists in China today.³²

C. The Fifth Generation

The Fifth Generation refers to the first few classes of filmmakers to graduate from Beijing Film Academy after the Cultural Revolution.³³ The Academy had been shut down in 1966, and did not reopen until 1978. Four years later it graduated more than 2,000 students. Thus the Fifth Generation filmmakers "emerged from film school just as

29. See Hancock, *supra* note 5, at 328. For example, during the Sino-Japanese War, the People's Liberation Army produced training films such as *THE BATTLE OF THE MINE* and *TUNNEL WARFARE*. Apparently these films successfully illustrated techniques and equipment, because guerilla tactics "became a hallmark of the Communists, enabling them to sustain protracted fighting in the countryside with a peasant army." *Id.* at 333.

30. See *id.* at 328.

31. Mao Zedong, *supra* note 2, at 86.

32. See the discussion of Ye Daying and his 1995 film, *RED CHERRY* (Moonstone International 1995), *infra* notes 93-99 and accompanying text.

33. See Paul Clark, *Chinese Cinema Enters the 1990s*, in *CHINA BRIEFING*, 1992 125, 128-29 (William A. Joseph ed., 1993).

China was emerging from the chaos of the Cultural Revolution and Mao's last decade in power."³⁴

Mao's successor, Deng Xiaoping, used film, but for different ideological ends than Mao. Rather than suppress culture, Deng merely subordinated it, emphasizing pragmatism and modernization rather than political messages.³⁵ Deng's era was also marked by an emphasis on economic reform; some films of the early 1980's even articulated Deng's evolving policies of market reform.³⁶ For example, *Ways To Make Fortunes* dealt with "the contradictions" of trying to become rich, while imparting the message that "prosperity is possible for peasants who are resourceful, honest and upright."³⁷ Similarly, *He Is In The Special Zone* celebrates the urban workers of Shenzhen, one of China's special economic zones.³⁸ Glorifying modern technology, this film was a tool of Deng's reform propaganda.

Deng recognized that any ideological use of film presupposed an audience, but audiences would only go to see films that were entertaining.³⁹ The observation by Xie Tieli, a veteran film director and Deputy of the National People's Congress, that "[w]ith more money in their pockets, peasants want to see more and better films,"⁴⁰ integrates the socialist notion of serving the peasants with the market economics recognition that consumer demand shapes the film industry.

This emphasis on entertainment value has become the mantra of China's film authorities, who point to Hollywood as

34. Tyler, *supra* note 18.

35. See Hancock, *supra* note 5, at 328. Examples of such use of film include *Elimination of Wild Rats*, *Birth Control*, and *Chicken Raising*. See, 1983 *Outstanding Films*, 3 CHINA'S SCREEN 2 (1984).

36. See *id.*

37. *Ways to Make Fortunes*, 2 CHINA'S SCREEN 24 (1984).

38. *He is in the Special Zone*, 3 CHINA'S SCREEN 20 (1984), cited in Hancock, *supra* note 5, at 350.

39. This logical notion has been reiterated more recently, as Dou Shoufang, Deputy Director of the Film Bureau of the Ministry of Radio, Film and Television commented, "People should love to watch a film before they accept any of the artistic thoughts." Cui Lili, *Facing the Challenge from Hollywood*, BEIJING REV., Feb. 5-11, 1996 at 15.

40. See *id.*

the model in structuring a film industry.⁴¹ Members of China's film community admire the comprehensive Hollywood system of script selection, technical innovation, dramatic visual effects, huge investments and star power.⁴² To legitimize emulation of a capitalist film power, however, the Chinese are quick to dispel capitalist aspirations. Instead, they note that the United States has achieved its success through discipline. "Hollywood is very strict and meticulous in playwriting, image creation, plots and many artistic techniques. That's why Hollywood films have competitiveness and vitality."⁴³ In this way, attempted emulation has selected only certain dynamics of Hollywood film production—tight control instead of free-flowing creativity. This emphasis on strictness denies the role that freedom and permissiveness has played in the success of Hollywood films, but is an advantageous strategy to earn the Chinese authorities' support. To the authorities, strictness and discipline sound comfortably like political correctness.

For the film industry, Deng's leadership resulted in improvements to the infrastructure, and relative freedom from the imposition of political messages.⁴⁴ Decentralizing the industry, which had thus far been concentrated only in urban areas, the Ministry of Culture and the People's Construction Bank provided loans for the building of 4,000 cinemas in rural towns, which came to comprise about 80 percent of all the cinemas in China.⁴⁵ Feature film production increased from an average of only ten films per year among all China's studios to 46 films in 1978, then leveled off at about 100 per year after 1982.

As for increased artistic freedom, for most of the 1980s, the new dialogue between artists and leadership "prevented the pendulum swings in policy which typified Mao's era."⁴⁶

41. See Professor Zheng Dongtian of the Beijing Film Academy, quoted in Lili, *supra* note 39, at 15.

42. See *id.*

43. Film critic Hu Ke, quoted in Lili, *supra* note 39, at 15, 16.

44. See Hancock, *supra* note 5, at 329.

45. See AMERICAN EMBASSY AT BEIJING FILM IN CHINA 3 (China Cultural Background Series, Dept. of State, 1982) cited in Hancock, *supra* note 5, at 346.

46. See Hancock, *supra* note 5, at 329.

Realistically, any increase in creative freedom occurred not so much because of broad opposition to curtailment of free expression, but rather because the cultural regime of the preceding era had become unwieldy, extreme and even ridiculous.⁴⁷ Deng's broad policy in film and television was, at least until 1989, to allow exposure to foreign ideas, and to allow those ideas to have some influence within China, as long as they contributed to a stronger socialist China. However, Deng's policies translated into both cooperation and conflict between artists and government.⁴⁸ When the film industry attempted to take advantage of the relatively relaxed atmosphere by challenging the frontiers of artistic style and content in their art,⁴⁹ the Deng regime responded by launching the 1983 "spiritual clean-up campaign."⁵⁰

Overall, Deng's reforms, and the films that resulted therefrom, did improve the condition of Chinese cinema. In particular, two prominent 1984 films helped revitalize China's film industry, and even propelled it to international attention. Chen Kaige's *The Yellow Earth* (*Huang tudi*)⁵¹ and Zhang Junzhao's *One and Eight* (*Yige yu bage*)⁵² "dazzled film critics with their inventive cinematography, striking images, and ingenious reworking of the contents of orthodox revolutionary Chinese cinema."⁵³ Like the many Fifth Generation films to come, these two films were appreciated both by foreign critics and avante-garde Chinese critics. However, the films enjoyed neither high sales nor wide distribution within China.⁵⁴

47. See Fu & Cullen, *supra* note 28, at 118.

48. See Hancock, *supra* note 5, at 328.

49. See *id.*

50. See Pang Yangjie & Li Shanquan, *Building Socialist Spiritual Civilization*, BEIJING REV., May 2, 1983, at 16.

51. YELLOW EARTH (Guanxi Film Studios 1984). "A poetic tale of a 12-year old peasant girl and a Communist soldier," *The Yellow Earth* marked the beginning of the Fifth Generation era of filmmakers. Edward Guthmann, *Clear-Eyed Visions of a Better China—Chen Kaige Angers Beijing Again with Tragic Temptress Moon*, S.F. CHRON., June 15, 1997, at 58.

52. ONE AND EIGHT (1983).

53. Zha, *supra* note 9, at 143.

54. See *id.* at 143–44.

With the success of these films, particularly *The Yellow Earth's* foreign acclaim, Beijing began exhibiting confusion as to how to deal with "the novel phenomenon of ideas and information flowing beyond China's borders as art, and washing back as attention and acclaim."⁵⁵ Watching directors gain rapid fame overseas, the central authorities felt their control over this aspect of China's culture and social commentary slipping away. This indicates that China's strict censorship has less to do with the content of individual films, and more to do with the medium itself. At center is the government's desire to control public perception of China, particularly abroad; and film suddenly handed border-transcending microphones to Chinese voices besides the government's.

Besides the government's problems with the films, the Fifth Generation's work was not much appreciated by China's older school filmmakers, who viewed the newer films as elitist.⁵⁶ Accessibility, however, has not been a high priority of the Fifth Generation. Recognizing this, one prominent Fifth Generation director, Tian Zhuangzhuang, has commented only half jokingly that his films "were made for 21st - century audiences."⁵⁷ Regardless of tensions between old school and new wave filmmakers, however, the new generation was largely subsidized by state studios, which created the more popular B movies.⁵⁸

Marguerite Gong Hancock observed in 1985 that it was "uncertain whether the present style of modernization will be able to keep the forces for cultural censorship and disruption at bay."⁵⁹ Indeed, the events of 1989 and the subsequent cinematic climate of the 1990s have witnessed the forceful backwards swing of the censorship pendulum.

55. Godfrey Cheshire, *Chinese Checkers (filmmakers banned by Chinese authorities)*, FILM COMMENT, July 1, 1994, at 65.

56. See Zha, *supra* note 9, at 144.

57. *Id.*

58. See *id.*

59. Hancock, *supra* note 5, at 329.

The events of 1989⁶⁰ made artists and intellectuals run for cover, bringing both mainstream and underground creative and communication channels to a temporary halt. Once the dust settled somewhat, China's already-struggling film community had an even more difficult time resuming production. Now, with the previously evolving liberalizations sharply curtailed or even reversed, filmmakers had not only less creative freedom, but even less state funding than before.⁶¹

In 1991, the Chinese government took actions to revitalize China's film industry. A special "film fund" was created in order to garner percentages of box-office ticket sales.⁶² The funds were to be used to promote China's film industry. Also, many filmmakers were able to receive funds by producing officially assigned projects, such as the plentiful 1991 "commemorative films" celebrating the 70th Anniversary of the founding of the CCP.⁶³ Another important move by the government was to emphasize entertainment over ideology. In the wake of bloody political demonstrations, Deng encouraged people to focus on economic prosperity, rather than politics.⁶⁴ A mixed blessing for filmmakers, this meant not only that they must not imbue their films with political content, but also that they need not imbue their films with political propaganda. Thus, filmmakers were now forced or free to focus on the medium rather than the message, favoring form and style over political content.

Some rhetoric continued to be espoused about the educational role of culture in society, but at the same time, the leadership recognized that for Chinese filmmaking to hold its own in the market-reform economy, it had to develop more popular appeal. For example, in 1991, the CCP Politburo member with the sensitive post of ideology chief, Li Ruihuan,

60. Specifically, the June 4, 1989 massacre of students and other demonstrators at Tiananmen Square in Beijing. See generally Lieberthal, *supra* note 27.

61. See Zha, *supra* note 9, at 144.

62. See *China Adopts New Method to Charge Film Funds*, XINHUA ENGLISH NEWSWIRE, June 29, 1996, available in 1996 WL 10824298.

63. See Zha, *supra* note 9, at 145.

64. See Hancock, *supra* note 5, at 341.

declared that party leaders should understand that an artistic work must entertain first – otherwise it is pointless to attempt to use it to educate people. Thus, film was to appeal to the masses in order to educate the masses.⁶⁵

According to Li:

[L]eaders had come to realize that the influence exerted by the party must be subtle and imperceptible, and the people should be influenced without being conscious of it. In order to make socialist principles and moral virtues acceptable to the broad masses, the party must learn to use cultural forms that appeal to them.⁶⁶

Despite undertones of subliminal brainwashing, Li's approach recognized that the Party had to back off from its hit-people-over-the-head ideology, and instead convey its message in terms to which people would listen. After all, as people's options for amusement increased, the film industry's captive audience shrank.⁶⁷ As a result, China's film industry has developed away from art films, and even farther away from the ideological films of previous decades. Thrillers and urban comedies have come to replace ideological films as the mainstay of Chinese cinema.⁶⁸

D. Contemporary Chinese Filmmakers: The Sixth Generation

With the death of Deng Xiaoping, who ruled China during the period of the Fifth Generation of filmmakers, the notion of spiritual pollution became a greater focus for the CCP. To re-accentuate the Party's dominance, Jiang and his cronies reasserted the Party's control over the content and dissemination of information. This emphasis was articulated at the Sixth Plenary Session of the 14th Party Congress in 1992, where Party leaders made a pronouncement advocating the promotion of model characters – typically average Chinese citizens – that embody the "spirit of the times."⁶⁹ After the Session, the Central Propaganda Department promulgated

65. See Zha, *supra* note 9, at 120.

66. *Id.*

67. See *id.* at 145.

68. See *id.* at 145-46.

69. See Lisa Atkinson, *What's Entertainment?* *THE CHINA BUS. REV.*, Mar.-Apr. 1997, at 38.

eight regulations directed at the media to protect the Party's image and the nation's stability.⁷⁰ Along with extensive prohibitions on coverage, the regulations called upon the propaganda departments of different levels to strengthen censorship over the media and deal with problems promptly.⁷¹ Although directed at the media, the climate affected film censorship as well.

Then, in the months leading up to the 15th Party Congress in 1997, President and Party Secretary Jiang Zemin launched a campaign promoting non-material values. In a 15,000-character manifesto entitled the "Construction of Spiritual Civilization," the CCP documented the steps necessary to recreate this spiritual civilization. The document called upon officials to be "soul engineers" who should preserve the future of Chinese culture. In sum, the manifesto called for increased political intervention in virtually every aspect of popular culture, including film, television, and the print media.⁷² Propaganda Department chief Ding Guang'en acted upon these instructions by initiating a campaign to stress "politics at every level."⁷³ Official newspapers "exhorted Chinese citizens to emulate model citizens by buying Chinese rather than foreign goods and watching politically correct movies and television," thus promoting a dual policy of uprightness as well as market protectionism.⁷⁴ In addition, Beijing capped the amount and type of foreign television programming that could be aired, "strictly limiting the broadcast time allotted to foreign programs."⁷⁵ Internet access was also limited.⁷⁶ "Beijing blocked 'subversive' Internet sites,

70. Intended to "guarantee unity of thinking," the eight regulations prohibit, *inter alia*, coverage of "all cases which have a significant impact or wide involvement," including coverage of the Diaoyu Islands controversy, Beijing Municipal Party Committee former Secretary Chen Xitong, the overseas democracy movement, and demonstrations in urban and rural areas. *Further Control over the Media*, 4 CHINA FOCUS, Dec. 1, 1996, issue 12, available in 1996 WL 11751533.

71. See *id.*

72. See Atkinson, *supra* note 69, at 39.

73. *Id.*

74. *Id.*

75. *Id.*

76. See *id.*

ranging from home pages featuring pornography to websites of standard Western newspapers like the *Wall Street Journal*, though many of these restrictions have since been lifted.”⁷⁷ Studio chiefs, along with editors and publishers, were instructed to support current politics in their respective endeavors.⁷⁸ The result has been the production of a body of “entertainment” that audiences think is anything *but* entertainment.

In the last few years, major shakeups have taken place within the bodies regulating film in China. In 1996, at the same time China was relaxing its restrictions regarding foreign film imports, the authorities were also tightening control over China’s twenty-nine state-run studios.⁷⁹ Managerial and financial responsibility of the state studios was assigned to a single department within the Ministry of Radio, Film and Television.⁸⁰ The consolidation appeared “aimed at streamlining responsibility over the film sector by reducing the number of bureaucratic players involved.”⁸¹ State-controlled film studios underwent a wave of personnel changes. Managers who were deemed lacking in socialist enthusiasm were replaced by more ideological managers.⁸² “Beijing’s hope was that the reorganization would make it easier for many debt-ridden state film studios to climb out of the red.”⁸³ Meanwhile, the censorship system stalled as censors stopped approving scripts and started holding up films already in the censorship pipeline.⁸⁴

Currently, state financial support has been withdrawn from the struggling official film studios, yet they must continue to support a huge staff. Creatively, much of the top talent has defected to lucrative jobs in television and

77. *Id.*

78. *See id.*

79. *See id.*

80. *See id.*

81. *Id.* at 38.

82. *See* Tyler, *supra* note 18.

83. Atkinson, *supra* note 69, at 39.

84. *See* Tyler, *supra* note 18.

advertising.⁸⁵ In order to survive financially, many Chinese film studios have diversified their businesses into real estate, restaurants, and other ventures.⁸⁶ In addition to these economic changes, a 1996 political reorganization at the top of the Film Bureau has led to scripts being subjected to even heavier scrutiny than before.⁸⁷ This tightening of film censorship is part of President Jiang Zemin's "spiritual cleanup" of the arts.⁸⁸

The lack of state funding, combined with increasing political scrutiny, has posed a significant challenge to contemporary filmmakers. "Struggling in the shadows of the Fifth Generation's success,"⁸⁹ only a small number of Sixth Generation filmmakers have been able to scrounge enough private funding to make small films on shoestring budgets. This handful of Sixth Generation directors who have made their own films somewhat inadvertently launched China's new independent movement. In addition to feature films, the new independent film scene includes documentaries. Young filmmakers armed with minicams record and interpret modern-day China by shooting quasi-documentaries that address such topics as mothers of mentally retarded children, veterans of the Red Guard during the Cultural Revolution, and the daily workings of a Communist Party "neighborhood committee" in Tibet.⁹⁰ The documentaries are not meant as anti-government agit prop, and do not focus on countering repression, but are nonetheless frowned upon by the authorities.⁹¹

85. See generally, Zha, *supra* note 9, at 145 - 46.

86. See Brad Lee, *Shanghai Film Festival Loses Star Billing Over Censorship*, AGENCE FRANCE PRESSE, Nov. 1, 1997, available in 1997 WL 13424905.

87. See Richard James Havis, *Under Siege*, ASIA TIMES, Apr. 14, 1997 available in 1997 WL 10404202. This spiritual cleanup campaign affected a broad range of media. The Communist party closed down some publications and fired editors who strayed from the party line. For further discussion of spiritual clean up campaigns, see *infra* notes 169-176 and accompanying text.

88. See *id.*

89. Zha, *supra* note 9, at 145-46.

90. See Lewis Beale, *A Life More Ordinary than Banned-In Beijing, Works of Wu Wenguang and Other Filmmakers Reveal the Everyday Realities of Today's China*, N.Y. DAILY NEWS, Nov. 23, 1997, at 17.

91. See *id.*

Films that the government has strongly promoted in the last few years demonstrate how little the rhetoric and stated priorities have changed since the Mao era. Ye Daying, director of the domestically successful 1996 film *Red Cherry* (*Hong yingtao*), has observed that "[t]here has never been pure art. Of course the artists strive to pursue art, but one must always serve the interests of the party and the state."⁹² His words as well as his film harken back to Mao Zedong, who denied separability of politics and art.⁹³ *Red Cherry* is about children of Chinese leaders and revolutionaries in Moscow during World War II.⁹⁴ The children lived, studied and fought at the Ivanov International Children's School from 1940 to 1945.⁹⁵ Ye's remarks might help explain why *Red Cherry* became one of the most popular Chinese-produced films of 1996, and especially why it won the most domestic awards for that year.⁹⁶ He acknowledges that "the Ministry of Propaganda controls everything."⁹⁷ Directors like Ye, who cede control to the central authorities, go far in China.

Ye's recognition of who holds the reins of his projects illustrates the widely-perceived arbitrariness of China's system of censorship, as well as the sense of futility many directors feel regarding compliance with the rules. Since government officials often implement new rules not so much to further development of the film system but to further their own status within the party, the regulations may bear little relationship to common notions of content and style.⁹⁸ "The artists don't know what can pass censorship and what cannot pass . . . Even harmless films cannot be passed these days."⁹⁹

92. Tyler, *supra* note 18.

93. See *infra* Part IB and accompanying text.

94. See *Top '96 Film Events Announced in China*, XINHUA ENGLISH NEWSWIRE, Jan. 9, 1997, available in 1997 WL 3735627.

95. See *id.*

96. *Red Cherry* swept China's most prestigious film awards, including the Golden Rooster Film Awards, the Hundred Flowers Film Awards, and the China Huabiao Film Awards. See *id.*

97. Tyler, *supra* note 18.

98. See *id.*

99. *Id.*

These days, however, the recognition that “there is no pure art” springs more from cynicism than bygone revolutionary ideals. Like their predecessors, the Sixth Generation filmmakers combine art and politics, but with less lofty optimism or airs of complex historical symbolism. Instead, the Sixth Generation’s films might be considered more organically political, in the sense that people’s very existence is imbued with politics, even if there is no overt background political event. This current generation of filmmakers has placed on screen the moral ambiguity that has pervaded Chinese society at least since the Cultural Revolution. Torn between the Confucian pieties of China’s ancient culture and the materialistic ethics of the economic reforms, Sixth Generation films embody the inherent but sharpened conflicts of contemporary China.¹⁰⁰

II

The Laws, Regulations and Governmental Bodies That Control Chinese Cinema

A. Government Bodies

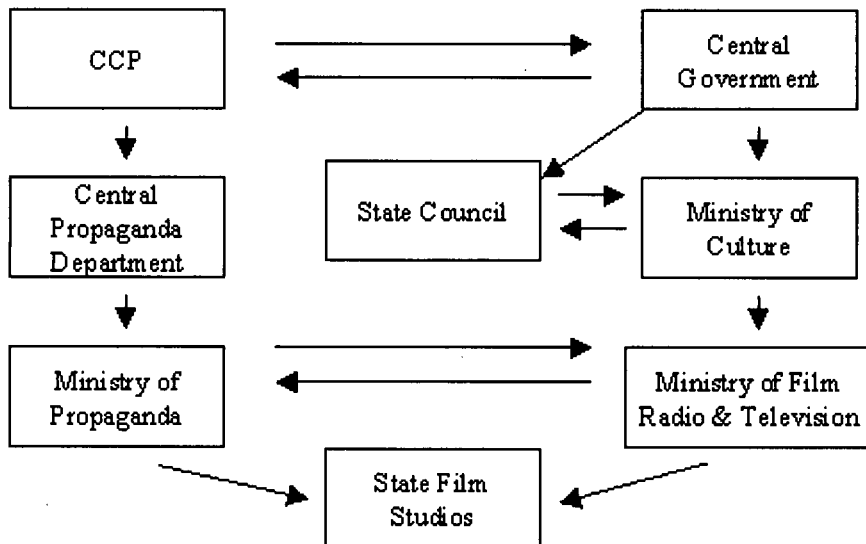
China follows the Marxist view that a society has both an economic basis and a “superstructure.” The superstructure includes entertainment, education, the mass media, and anything directly related to “thought.”¹⁰¹ The Central Propaganda Department, together with all the lower level propaganda departments in the PRC, is responsible for developing and maintaining the “superstructure” of society.¹⁰²

100. Examples of films that explore these themes include He Jianjun’s *The Postman* and *Red Beads*, and Wang Xiaoshuai’s *The Days*. *The Postman* is a film that explores urban despair and desolation and uses non-aesthetically pleasing imagery. *The Days* treats life in modern China in a cynical fashion, while *Red Beads* opts for philosophy and psychoanalysis over graphic images to express moral ambivalence. See generally THE POSTMAN (United Frontline 1995); THE DAYS (1993); RED BEADS (1993)

101. See FU & CULLEN, *supra* note 28, at 27.

102. See *id.*

This chart depicts the structure of the regulatory bodies involved in film production in China. As the arrows indicate, their functions sometimes overlap.¹⁰³



As shown in the chart, currently State film studios must answer to both the CCP and the Government through their respective arms, the Ministry of Culture, the Ministry of Propaganda, and the Ministry of Radio, Film, and Television.¹⁰⁴ The overlap illustrates how film serves more as an extension of the propaganda department in China than as a commercial venture, let alone a form of artistic expression.¹⁰⁵

In March of this year at the Ninth National People's Congress, the State Council announced a plan to eliminate eleven of China's central ministries, including the Ministry of Radio, Film and Television.¹⁰⁶ The latter ministry would shed

103. Chart modified from H.L. FU & RICHARD CULLEN, *Media Law in the PRC* 73 (Asia Law & Practice, 1996).

104. See *id.*

105. See *id.*

106. See Sun Shangwu, *Plan to Axe 11 Central Ministries*, CHINA DAILY, Mar. 7, 1998, available at <<http://www.chinadaily.net/cndy/history/d1-298.c07.html>>. The other ministries to be eliminated are the ministries of coal, power, metallurgy, machine-building, electronics, chemistry, internal trade, posts and telecommunications, forestry, and geology and mineral resources. This plan

its power over the television network, and merge with other ministries into one larger ministry under the State Council.¹⁰⁷ The restructuring is designed not only to cut down on bureaucratic red tape, corruption, and heavy financial burdens, but more fundamentally to bring the administrative system in line with the market reforms.¹⁰⁸ "The existing institutional system was established under the former planning economy and it obstructed the development of the socialist market economy."¹⁰⁹ Under the restructuring, the government would be less directly involved in the production and management of enterprises.¹¹⁰ This "revolution," as the State Council called it, would allow the market to play its intended fundamental role in resource allocation.¹¹¹

The implications of this restructuring for the film industry have not yet been widely examined, but if the new system brings any of the improvements the State Council proposes, filmmakers might find their projects handled more efficiently. Perhaps the resulting administrative body in charge of film censorship will have a significant number of other responsibilities, so as to make nitpicking of film projects less likely. Thus, filmmakers might benefit from a more streamlined system because there may be fewer officials looking over their shoulders.

In addition, if the new system does allow the market to play a larger role in shaping the film industry, quality films may prove themselves profitable and self-sustaining. This could prove to the Chinese government that audiences yearn for intelligent entertainment at least as much as they do for more pedestrian fare. On the other hand, Chinese art filmmakers may wind up disappointed in general audience

would reduce the number of central ministries from 40 to 29. In addition, the number of government officials would be slashed in half. Four new ministries would be established. See *id.*

107. See *id.*

108. See *id.*

109. Luo Gan, State Councillor and Secretary-General of the State Council, addressing the Ninth National People's Congress, Mar. 6, 1998, quoted in Shangwu, *supra* note 106.

110. See *id.*

111. See *id.*

tastes, as many independent film producers have been in the West.

Of China's moviegoing population, perhaps only a minority will patronize the serious films. Indeed, if the restructuring means allowing the market to shape China's struggling film industry, the government may withdraw any remaining financial support it has been providing to the industry. One can only wait and see whether China's film industry will fail or flourish under the new structure, or whether it will even be affected at all.

B. Legal Mechanisms

This section explains the articulated legal mechanisms related to film censorship in China.

1. The Constitution

On its face, China's 1982 Constitution¹¹² would appear amenable to protection of filmmaking against infringement by the government. A closer reading of the document, together with an analysis of Chinese constitutional theory and practice, however, reveal that the pertinent constitutional provisions have little more than symbolic value.

China's Constitution grants people the right to express themselves, but it is far from an absolute right. Article 35 reads: "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."¹¹³

The first nebulous word to consider is "freedom." What is significant is that "freedom" is used instead of the word "right" in China's constitution. Rights are more legally enforceable than freedoms, as freedom would probably be considered a type of right. As director Zhang Yuan has noted, "This word freedom is very hard to understand . . . I'm free here [in

112. P.R.C. CONST., (adopted Dec. 4, 1982 by the Fifth Session of the Fifth National People's Congress.).

113. *Id.* art 35.

Beijing] now, but I can't make films. I'm free, but I can't leave the country."¹¹⁴

The Chinese word for speech, as used in the Constitution, is a combination of the Chinese characters for "word" (*yan*) and "opinion" or "theory" (*lun*).¹¹⁵ Together the word *yanlun* is defined as "expression of one's political views."¹¹⁶ With such a seemingly broad definition of speech, a definition that recognizes political content, how can the government justify rampant censorship?

First, China's restrictions on cinematic speech might be explained through a specific reading of other words in Article 35. As is true throughout the Constitution, this article states that the freedoms listed apply to "citizens."¹¹⁷ In contrast to U.S. law, which sometimes considers corporations to be legal "persons" for certain purposes, China would not consider film studios to be citizens for purposes of enjoying speech rights.¹¹⁸ As a corollary, anyone making a film for a studio would not necessarily enjoy these rights.

Second, the authorities might apply a sort of *expressio unius* reading to the freedoms listed, so that the expression of one thing is the exclusion of another. Under this reading, the fact that the Constitution specifically lists the freedoms of speech, press, assembly, association, procession, and demonstration might indicate that freedom of expression in other forms is not protected.¹¹⁹ Under this reading, freedom of artistic creation is probably not included.

Although the constitution does not grant meaningful speech rights, it does purport to promote certain speech-dependent activities. Article 22 declares that "[t]he state promotes the development of literature and art, the press, broadcasting and television undertakings, publishing and

114. Quoted in Andrew Higgins, *GUARDIAN*, Aug. 1, 1997, at T006, available in 1997 WL 2394011.

115. P.R.C. CONST., *supra* note 112.

116. THE PINYIN CHINESE-ENGLISH DICTIONARY 793 (1979) [hereinafter CHINESE-ENGLISH DICTIONARY].

117. See P.R.C. CONST., art. 35.

118. See *id.*

119. See *id.*

distribution services, libraries, museums, cultural centers and other cultural undertakings, that serve the people and socialism, and sponsors mass cultural activities."¹²⁰ Certain built-in escape valves, however, prevent this article from holding much water. Although this provision would seem to bode well for the cooperation between the government and the "art" or "cultural undertaking" of filmmaking, state promotion of the activity is strictly conditional. The escape valve for the government is the clause "that serve the people and socialism."¹²¹ This phrase provides a catch-all excuse to censor or ban a film, because any content, style, or method the government finds objectionable can be deemed not in the service of the people and socialism.

Article 33 further conditions the exercise of rights on the simultaneous fulfillment of duties.¹²² "Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law."¹²³ The "duties prescribed by law" include the Four Basic Principles, which in effect trump Constitutional articulations of freedom of speech.¹²⁴ The Four Principles were officially established in the Sixth Plenary Session, and are the guiding slogan of Deng Xiaoping:

1. Uphold Marxism-Leninism-Mao Zedong thought.
2. Uphold the leadership of the Chinese Communist Party.
3. Uphold the people's democratic dictatorship.
4. Uphold the leading role of socialism.¹²⁵

These four principles, known as the "Four Upholds," became "the standard against which to measure thought, speech, and action, as well as any artistic product."¹²⁶ Accordingly, only those filmmakers who fulfill their obligation

120. P.R.C. CONST., art. 22.

121. *See id.*

122. *Id.*, art. 33.

123. *Id.*

124. Professor James V. Feinerman, Chinese Law Seminar (Spring, 1996) (unpublished course materials, Georgetown University Law Center) (on file with author).

125. *See id.*

126. *Id.*

to adhere to the Four Upholds will enjoy a concomitant "right" to make their films and receive favorable treatment by the censors.¹²⁷

Given the careful limits imposed on speech rights, one would not expect China's constitution to articulate a right to political speech. Yet Article 41 states that "Citizens of China have the right to criticize and make suggestions to any state organ or functionary. . . . No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them."¹²⁸ Although this Article does not include its own limitation, like all rights in China's Constitution this right is subject to the overriding caveat in Article 51: "The exercise of citizens . . . of their freedoms and rights may not infringe upon the interest of the state, of society and of the collective or upon lawful freedoms and rights of other citizens."¹²⁹ This significant disclaimer, conditioning the exercise of rights on the non-existence of conflicting interests, arms the government with a catch-all justification for not recognizing what otherwise would be considered "rights." Thus, if a film is deemed to infringe on State interests, for example by portraying the State in a negative light, the authorities could easily find justification for censorship under this provision.¹³⁰

Perhaps most important in deciphering the parameters of the filmmaking freedom in China is the understanding that interpretations of rights operate retroactively and in a fluid context.¹³¹ "The degree to which citizens may exercise rights shifts in response to historical and social change, as well as to the demands of duties, on a situation-by-situation basis."¹³² Because the parameters of rights shift according to context, an official determination that a person, such as a filmmaker, has incorrectly evaluated those parameters can result in

127. *See id.*

128. P.R.C. CONST., art. 41.

129. *Id.*, art. 51.

130. For an application of this idea, *see infra* note 363 and accompanying text.

131. *See* ANDREW NATHAN, CHINESE DEMOCRACY 300 (1985).

132. *Id.*

sudden censorship of material that had seemed acceptable in a prior context, or worse, sudden banning of the filmmaker for operating in a manner that was not forbidden at the time.¹³³

Under the Chinese Constitution, such action would not even be recognized as inconsistent, because what serves the state's interests is presumed to serve the individual's.¹³⁴ Thus the constitution assumes a harmony of interest between state and citizens, and neither encourages nor even recognizes the possibility of conflict between the two.¹³⁵

2. *The Film Administration Regulations*

Frustrated by decades of unpredictable and opaque decisions made by censors, by 1994 filmmakers themselves began calling for a film law.¹³⁶ Such a law, they hoped, would end abuses under the existing system of decisions by individual officers whose whims were taking too brutal a toll on filmmakers as policies changed with every fluctuation in the political barometer.¹³⁷ Much like ongoing negotiations that never culminate in a handshake, the constantly shifting standards of the government kept the filmmakers perpetually worried and guessing.¹³⁸ If the filmmakers knew what was proscribed, they could either obey or not. An articulated film law, they hoped, would steady the official attitude toward film and clarify the parameters of film production.¹³⁹

Some Chinese leaders agreed that such a law was desirable, and supported the early promulgation of legislation relating to film censorship. Gao Honghu, chair of the Chinese Film Artists' Association, was quoted by *Xinhua* as saying that "senior leaders" as well as filmmakers, were alarmed by the

133. *See id.*

134. *See id.*

135. *See id.*

136. *See* Josephine Ma, *Filmmakers Call for Law to Regulate Censorship*, SOUTH CHINA MORNING POST, Nov. 15, 1994, at 9.

137. *See id.*

138. Regarding the constant changes occurring in the nation's capital, filmmaker Tian Zhuangzhuang has commented, "I worry about Beijing as if it's a woman that's getting plastic surgery all the time." *Quoted in* Phillip Lopate, *Odd Man Out: Tian Zhuangzhuang*, FILM COMMENT, July 1, 1994, at 60.

139. Ma, *supra* note 136.

inconsistency of decisions governing film censorship and called for legislation to lay down clear standards.¹⁴⁰ "Under the present censoring system, there are a lot of irregularities and they will do more harm than good to the development of the industry."¹⁴¹ "Legislation," Gao said, "will eliminate the individual factor."¹⁴² One of his suggestions was that the law should categorize films as "allowed to be shown," "encouraged to be shown," and "banned."¹⁴³ A member of the standing committee of the National People's Congress (NPC), Xie Tieli, said in response that he would formally propose such a law to the NPC in 1995.¹⁴⁴

Not everyone supported promulgation of such a law, however. For example, a spokesperson for China's Ministry of Radio, Film and Television criticized Xie's proposal as "unfair."¹⁴⁵ Gao's proposal, he noted, failed to consult what he called the Ministry's already clear standards based on the Constitution.¹⁴⁶ As discussed above, the Constitution provides little guidance on content and standards.

When the government promulgated its first film laws in 1996, it turned out not to be what the filmmakers had had in mind when they called for a film law years before.¹⁴⁷ The Film Administration Regulations not only tightened censorship, but they also outlawed independent productions.

China's first set of State regulations of film management, the Film Administration Regulations 560(96.06.19),¹⁴⁸ were promulgated on June 19, 1996, and took effect on July 1, 1996. Called "the most vigorous move so far to guarantee the prosperity of China's film industry and to protect intellectual property rights in the sector,"¹⁴⁹ these regulations aim to give

140. *See id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *See id.*

145. *See id.*

146. *See id.*

147. *See id.*

148. *Translated and reprinted in CHINA LAW & PRACTICE*, Sept. 1996, at 8 [hereinafter 1996 Film Regulations].

149. *State Regulations Target Films*, XINHUA ENGLISH NEWswire, June 29,

the government oversight of filmmaking through the stages of script approval, production, editing, and distribution.

The regulations were indeed designed to bolster the government's control over filmmaking, not to promote experimentation and creativity. Liu Jianzhong, Director of the Film Bureau under the Ministry of Radio, Film and Television, explained that the regulations were needed in a time when the country's film industry was facing increasing problems of film copyright piracy, smuggling of audiovisual products, and a growing amount of pornography.¹⁵⁰ Because China's own film industry was suffering less from piracy than were foreign film companies, Liu's stated purpose for the regulations was probably intended to appease countries like the United States, which had been pressuring China to tighten its control over piracy. Article 31 requires film importers to obtain a license from the owners of film copyrights and to use the films within the licensed scope, and Article 44 adds that such a license is also needed if a film is to be used for the production of audio or video products.¹⁵¹

Not even *Xinhua* attempted to distort the aim of the Regulations. Rather than running one of their typically sunny headlines designed for foreign readers, the *China Daily* headline read bluntly, "State Regulations Target Films."¹⁵² Although the regulations contain very few provisions dealing with intellectual property, apparently the authorities hoped Westerners' desire for Chinese intellectual property laws would be satisfied.

The Regulations introduce a film censorship scheme; ban certain content; regulate the import, export, distribution and screening of films through licensing and registration; protect freedom in film production; promote the development of the film industry by funding; and impose penalties on parties breaching the Regulations.¹⁵³ Of course, the provisions intended to protect freedom of film production and

1996, available in 1996 WL 10826164.

150. See *id.*

151. 1996 Film Regulations, *supra* note 148, arts. 31 & 44.

152. See *Xinhua*, *supra* note 149.

153. See generally 1996 Film Regulations, *supra* note 148.

distribution rights are likely to be enforced selectively. Accordingly, any protections in the Regulations probably would not operate to protect disfavored films, and restrictions are more likely to be eased for favored films.

A couple of months after promulgation of the Film Regulations, China's Ministry of Radio, Film and Television tried to emphasize what subject matter is impermissible. The Ministry issued a circular forbidding the broadcast of any program depicting "low-class" themes or "bad ideas."¹⁵⁴ These directions hardly clarified the matter, though they probably refer to base content such as pornography and violence, known in Chinese vernacular as "fists and pillows."¹⁵⁵ The China Culture Press, in September 1996, urged citizens to "be alert to the danger of violent content in films and TV plays."¹⁵⁶ In an effort to rouse people from desensitization to violence, the warning noted that while most people are ashamed of pornographic images on the screen, they are less sensitive to the violent ones.¹⁵⁷ Not only did the circular call for increased sensitization to violence, but also to scariness: "Action should be taken to remove the frightening scenes from the screen."¹⁵⁸ These guidelines are difficult to reconcile with China's eager import of such highly violent movies as *True Lies*,¹⁵⁹ which is a Schwarzenegger action flick that showcases some frightening scenes.¹⁶⁰

- **Article 2** stipulates that the regulations apply to activities involving the production, import, export, distribution and screening of films as seemingly diverse in nature as features, documentaries, science education films, cartoons, puppet films, and films on special subjects.¹⁶¹

154. See Tom Korski, *Warning Focuses on Violence in Films*, SOUTH CHINA MORNING POST, Sep. 24, 1996, at 8.

155. See Kim Gordon, *China: Raising the Red Flag*, (Reuter Textline Broadcast, Apr. 7, 1995), available in LEXIS: China Country Files.

156. Korski, *supra* note 154, at 8.

157. See *id.*

158. *Id.*

159. TRUE LIES (20th Century Fox 1994).

160. See *id.*

161. See 1996 Film Regulations, *supra* note 148, art. 2.

- **Article 22** requires processing and post-production of films shot by film production work units or jointly shot by Chinese and foreign parties to be completed in China.¹⁶²
- **Article 23** stipulates that films may not be distributed, screened, imported or exported without having been censored by the authorities.¹⁶³
- **Article 31** requires film importers to obtain a license from the owners of film copyrights and to use the films within the licensed scope.¹⁶⁴
- **Article 44** adds that such a license is also needed if a film is to be used for the production of audio or video products.¹⁶⁵
- **Article 45** provides that the amount of time for which a screening work unit screens Chinese-made films in a year should not be less than two-thirds of the total amount of the screening time in that year. In other words, foreign films must not constitute more than one-third of the total screening time on Chinese screens each year. This articulated proportion meant to cut back on the number of imported films that had been "invading" Chinese theaters.¹⁶⁶

The "final court of appeal" for any filmmaker who disagrees with official rulings is the Ministry itself.¹⁶⁷ Thus just as there is no independent judiciary to which persons whose speech rights have been infringed can appeal,¹⁶⁸ there is no independent body to which a filmmaker can turn to appeal a censorship decision. Lack of appeal to a separate forum

162. See *id.* art. 22.

163. See *id.* art. 23. The authorities that conduct the censorship include an "Important Issues Committee," comprised of approximately thirty elders from the Communist Party. Filmmaker Mabel Cheung blamed this committee for squabbling with her depiction of Chiang Kaishek in her historical film, *The Sisters Three*. See *infra* note 308 and accompanying text.

164. See *id.* art. 31.

165. See *id.* art. 44.

166. See *id.* art. 45.

167. See Ma, *supra* note 136.

168. See RANDLE R. EDWARDS, LOUIS HENKIN, & ANDREW NATHAN, HUMAN RIGHTS IN CHINA 26 (1986).

inherently stacks the deck against any filmmaker seeking review of censorship practices.

Some people voiced concern that in setting screening time limit in Article 45, Beijing was trying to prevent "cultural infiltration."¹⁶⁹ Spiritual clean-up campaigns, with China's Cultural Revolution as the most extreme example, are characteristic of Chinese politics.¹⁷⁰

The spiritual clean-up campaigns of the early 1990s created as much uncertainty among filmmakers as ever as to what content was and was not acceptable. Among the arts, film censorship has been particularly stringent. Zhang Yimou observed, "[i]deologically and spiritually, people today experience massive control. This is especially severe in the case of films. In music, painting and literature the pressure is much less."¹⁷¹ He further offered an explanation for the harsh treatment of film: "Film is something special because it reaches so many people. That is why the authorities are especially tough."¹⁷² Indeed, film can surmount abstractions common to media such as to literature by illustrating the ideas with moving characters. Such immediacy can be quite powerful, because it "allows the viewer to more readily identify with the victim and thus makes it more likely that someone sitting in the movie theater will be moved to action. . . ."¹⁷³ It is

169. See Vivien Pik-Kwan Chan, *Foreign film cuts 'won't affect imports,'* SOUTH CHINA MORNING POST, July, 7, 1996, at 5.

170. See Lieberthal, *supra* note 27 at 111-19. During China's "Great Proletariat Cultural Revolution," which spanned the decade from roughly 1966 to 1976, Mao Zedong led a violent political assault on China's cultural traditions and on party officials suspected of disloyalty. The late 1960s saw the most dramatic and violent purges, when Mao instigated the Red Guard youth movement to raid houses, burn books and antiques, beat and humiliate people, and kill those who tried to resist. See *id.*

171. Quoted in *Censorship on Rise in China*, Filmmaker Zhang Yimou Says, AGENCE FRANCE PRESSE, May 6, 1997, available in LEXIS, News & Analysis File. Zhang has said censorship is on the rise in China, and is more severe in film than in music, painting, and literature. See *id.*

172. *Id.*

173. Quoted in Jeremy Lehrer, *Bringing Abuses to Light: The Human Rights Watch International Film Festival Focuses the Public Eye on Human Rights Abuses*, 24 HUMAN RIGHTS 14, 14 (1997). One of the films shown at the 1997 Human Rights Watch International Film Festival was a documentary about Chinese labor activist Wei Jingsheng.

just this sort of inspiration that the Chinese government fears most.

The 1997 campaign, however, marked the first time this type of propaganda explosion had taken place since China opened its markets to foreign products. Accordingly, when President Jiang Zemin launched his "spiritual clean-up" campaign in a backlash against foreign "bourgeois" ideas, foreign films and other media were attacked as a threat to traditional Chinese values.¹⁷⁴ After a reorganization at the top of the Film Bureau, the film industry along with other media was instructed by the Propaganda Department to promote "model characters – typically average Chinese citizens – that embody the 'spirit of the times,'"¹⁷⁵ Official, as well as non-official, filmmakers are subject to the regulations. Anything considered socially unhealthy is declared forbidden, such as adulterous behavior or even long kisses.¹⁷⁶ "In practice [however] filmmakers [can] get around the more ludicrous edicts if the overall tone of the story line is sufficiently 'moral.'"¹⁷⁷

It "comes as no surprise that Beijing's latest attempts to favor ideologically correct Chinese-produced entertainment over foreign offerings seem to have backfired. Beijing's preferences notwithstanding, and although certain state studio-made films do quite well,¹⁷⁸ as in many Asian countries

174. Jiang probably launched this campaign in order to strengthen his popularity with the hardliners. See Mary Kay Magistad & Jackie Lyden, *Chinese Cinema from Beijing* (NPR radio broadcast, Dec. 14, 1997).

175. The Propaganda Department's instruction was consistent with the pronouncement made at the sixth plenary session of the 14th Party Congress in 1992. Atkinson, *supra* note 69, at 39. One of the examples used by Jiang Zemin was a cartoon series produced by the Shanghai Animation Film Studio. He praised the cartoon because it was based on the deeds of famous young heroes of China and other countries. See *Highlights of Today's Major Beijing Based Newspapers* XINHUA ENGLISH NEWSWIRE, Jan. 11, 1996, available in 1996 WL 5569730.

176. See Richard James Havis, *No End Yet to the Big Chill: Creativity is stifled but all is not lost in China*, ASIaweek, Feb. 27, 1998, at 38.

177. *Id.*

178. An example of a domestic movie that did very well in China in 1996 is *Trials of Strength*, a large-scale documentary film about "the war to resist U.S. aggression and aid Korea (1950-53). *Trials of Strength* reportedly set a box-office record in Guangzhou and other cities. See *Top '96 Film Events Announced in*

foreign films continue to outperform their domestic counterparts at the box office, and Chinese domestic film production has dropped dramatically."¹⁷⁹ Additionally, these latest strictures have resulted in falling state subsidies, stalled productions, and slack box office returns, plunging the Chinese film industry into its worst recession since 1989.¹⁸⁰ Audiences tend to pass over the official studios' stodgy propaganda in favor of arcades, karaoke bars, bowling alleys, and go-cart tracks.¹⁸¹

The promulgators of the 1996 Film Regulations, however, denied the rule requiring at least two-thirds of screening time be devoted to domestic films was motivated by the culture campaign. They also denied that there had been any new instruction from the State Council or the Propaganda Department on any policy change concerning importing foreign movies.¹⁸² Rather, officials explained that at present the percentage of foreign movies was slightly over one-third, and the aim was simply to reduce that percentage, not to drastically restrict the number of movies imported into China.¹⁸³

In light of the officials' further elaborations, however, allegations of their fear of cultural infiltration do seem accurate. For example, some films would be excluded due to violent content. "As we are paying increasing attention to the country's law and order, we become more cautious of the negative impact of violent crime scenes in foreign movies."¹⁸⁴ Further comments indicated even more restrictive content bars. Films, they explained, "are imported to expose audiences to foreign science and technology, customs and culture; films that promote separatism or interference in China's sovereignty would be banned."¹⁸⁵ Such a statement clearly indicates

China, XINHUA ENGLISH NEWSWIRE, Jan. 9, 1997 available in 1997 WL 3735627.

179. Atkinson, *supra* note 69, at 40.

180. See Havis, *supra* note 176, at 38.

181. See James Harding, *Not Satisfied With Success in Subtitles*, THE FINANCIAL TIMES, Jan. 31, 1998, at 3 (interviewing filmmaker Zhang Yimou).

182. See Chan, *supra* note 169, at 5.

183. See *id.*

184. *Id.*

185. *Id.*

exclusion of films on content and ideological grounds, not based on market share.

A China film official attempted to justify such censorship by pointing to the fact that China's film system does not use ratings.¹⁸⁶ Because China had no oversight of the film during production, the idea goes, the government must be able to scrutinize the finished products for appropriateness. The difference between this type of censorship and a ratings system, of course, is that while a rating system such as that of the United States assigns a rating according to what type of audience seems suited to that film, under China's system, the censors may decide no appropriate audience exists.

3. Definitions

Certain fundamental definitional questions follow from these regulations as well as from China's film practices. For example, just what does "censor" or "banned" mean in the Chinese context?

a. "Censor"

The English word "censor" conjures up images of the word stamped prominently across a document, indicating that it is not fit to be read or seen. However, the term might have different connotations in China; to the legislators, the filmmakers, and the general populace. Thus to understand Chinese censorship practices, it is necessary to examine how they refer to them. Although Chinese regulations cannot be subjected to the same type of statutory analysis common to United States legislation, looking both at the Chinese word for censorship as used in the statute, as well as the practices the film authorities have employed before and after the regulations were enacted, we can start to discern what "censorship" means in China.

As used in the statute, the Chinese word for the verb censor is "*shencha*." In the Chinese-English section of the Oxford dictionary, "*shencha*" means "to examine or investigate," and sometimes "censorship" is used

186. See *id.*

interchangeably with "approval" or "editing."¹⁸⁷ Already this differs from the English definition of censorship, which more specifically includes "to examine in order to suppress or delete anything considered objectionable."¹⁸⁸ Although the Chinese "*shencha*" as formally defined lacks the negative, suppressive element that English attaches to "censor," in Chinese the concept of "examination" can itself be quite grueling. What the comparison does show is that to the Chinese, "censorship" is a process, not a result, and that censorship is embarked upon without the inherent purpose of suppressing or deleting. Accordingly, submitting a project for censorship in China does not guarantee that the film will be suppressed or cut.

b. "Banned"

What does it mean when a filmmaker is "banned" by Chinese authorities? "Being banned in China may not be as bad as it sounds."¹⁸⁹ Generally, it has meant that the filmmaker is prohibited from making films for five years.¹⁹⁰ Sixth Generation director Tian Zhuangzhuang suffered this prohibition after making his internationally renowned film, *The Blue Kite*, in 1994.¹⁹¹ Set in the 1950s, *The Blue Kite*¹⁹² depicts that politically tumultuous decade from the viewpoint of a mischievous young boy. Idealism for China's future under Communism gets eroded by the Party's capricious injustices toward his ordinary extended Chinese family.

The indictment is made even more damning by the characters' inability to challenge openly, or even to lose faith in, the system that is rolling over and crushing them. In a

187. See *id.*

188. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1987). *Black's Law Dictionary* elaborates with its definition of "censorship": "Review of publications, movies, plays and the like for the purpose of prohibiting publication, distribution, or production of material deemed objectionable as obscene, indecent or immoral." BLACK'S LAW DICTIONARY 224 (6th ed., 1990).

189. Beth Accomando & Bob Edwards, *China and Film* (NPR radio broadcast, Nov. 20, 1997).

190. Telephone interview with Luo Jianfan, formerly a playwright with the China Youth Art Theatre in Beijing (Apr. 10, 1998):

191. *THE BLUE KITE* (Longwick Film 1993) For details on circumstances of *The Blue Kite's* banning, see *infra* notes 438-439 and accompanying text.

192. See *id.*

movie that never shouts, didactically or otherwise, it is left to the spectator to total up the sufferings and experience the full outrage.¹⁹³

Tian was one of seven young Sixth Generation filmmakers China banned in one sweep. A March 12 notice issued by the Ministry of Radio, Film and Television announced a ban on Tian Zhuangzhuang (*The Blue Kite*, *The Horse Thief*),¹⁹⁴ Zhang Yuan (*Beijing Bastards*),¹⁹⁵ Wu Wenguang (*Bumming in Beijing*),¹⁹⁶ Wang Xiaoshuai, He Jianjun (*The Postman*, *Red Beads*),¹⁹⁷ Ning Dai, and the collective Structure, Wave, Youth, and Film Group.¹⁹⁸ The government sent out the following directive to the country's sixteen official film studios, processing labs, equipment rental services and other film-related offices, notifying them of the ban: "Any units that discover the participation of the above-mentioned filmmakers in the production of a film, television programme or video must dismiss them, otherwise approval for the film will be withdrawn."¹⁹⁹

The ban followed what the Ministry called the "illegal participation" of the directors in the Rotterdam Film Festival that February. The illegal aspect of the directors' participation in the festival stemmed from the films having circumvented the censors when sent to the festival.²⁰⁰ One of the banned directors, Zhang Yuan, called the ban "outrageous," and compared it to telling him that he "can't eat or sleep."²⁰¹

The Ministry defended the ban as necessary to "correct wrongdoing in the film industry."²⁰² This action left the seven directors in limbo and sent a chill through the industry. Yan Xiaoming, a ministry official, said "if independent filmmakers wanted the public to see their movies then they should go

193. Lopate, *supra* note 138, at 60.

194. THE HORSE THIEF (Xian Film Studio 1986))

195. BEIJING BASTARDS (Independent 1993))

196. BUMMING IN BEIJING

197. RED BEADS (Independent 1993)

198. See Geoffrey Crothall, SOUTH CHINA MORNING POST, Apr. 26, 1994, at 7.

199. See Cheshire, *supra* note 55; see also Crothall, *supra* note 198.

200. See Crothall, *supra* note 198.

201. *Id.*

202. *Id.*

through 'normal channels,' rather than trying to circumvent government organizations by sending their work directly to foreign film festivals."²⁰³ Stressing that the "Ministry was not attempting to limit artistic expression and would 'strongly support' experimental filmmakers, as long as they remain within the law."²⁰⁴

Based on this explanation, the Chinese government's objection to some of these art films apparently has less to do with content than with process, and perhaps also with the proverbial "face" lost by Chinese officials when they lose control over films made in China. The timing of the 1994 events reinforces this idea: China banned the seven directors and issued the film industry directives against them within weeks after United States Secretary of State Warren Christopher's flummoxed mission to Beijing,²⁰⁵ and within the same week that *The Blue Kite* premiered in U.S. theaters.²⁰⁶

Perhaps the most telling evidence that the authorities use bans not to target films themselves but to make political statements is that "banned" films are not necessarily blocked from screening in China. For example, during the period in which Zhang Yimou's *To Live*²⁰⁷ was supposedly banned, a poster of the film was displayed on the marquis of a movie theater in a Shanghai neighborhood full of high-ranking communist officials.²⁰⁸ Although such advertising does not prove that the film did eventually screen there, it does indicate an attempt by theater authorities to generate interest in the film. Thus, had Chinese officials truly not wanted domestic audiences to see the film, such posters would not have gone up. In addition to the publicity the film enjoyed in Shanghai, *To Live* was actually shown in Xi'an, also during the time it

203. *Id.*

204. *Id.*

205. See Elaine Sciolino, *Slowly, Christopher's Talks in Beijing Come to an End*, N.Y. TIMES, Mar. 15, 1994, at A3.

206. See Cheshire, *supra* note 55, at 65.

207. *TO LIVE* (ERA International/Shanghai Film Studio 1994).

208. When asked about the display, the managers of the Paradise Theater reportedly mumbled something about the film "coming soon." Rone Tempest, *Zhang: Still at the Heart of Chinese Filmmaking*, L.A. TIMES, Feb. 27, 1995, at 1.

was supposedly banned.²⁰⁹ Thus, despite the formal meaning of "banned," sometimes it is no more than lip service.

III

External Censorship Factors

Beyond the individualized factors that influence whether a particular film will be approved and produced, certain factors that have nothing to do with the specific filmmaker or content of a film also influence censorship decisions. Cultural codes, economics and international diplomacy are the most prominent of these external factors.

A. Cultural Codes

Formal laws and regulations play only a limited role in China's film industry. Film regulation instead relies heavily on political-managerialism, secondary regulations, ad hoc notices and administrative practice.²¹⁰ In addition, cultural codes come into play.

1. *Li and Fa*

For example, one reason China does not have more transparent censorship laws to guide its filmmakers is China's traditional preference for relying on *li* rather than *fa*.²¹¹ While *li* relies on propriety and moral force to guide behavior, *fa* emphasizes force and law.²¹² *Li* requires people to adjust their views and demands in order to accommodate the needs and desires of others, and thus yield to others for the sake of harmony when confrontation and conflicts arise. Concessions are expected from each side. In the context of film festivals, for example, *li* creates the expectation that filmmakers will bow out in order to preserve national "face." This is one plausible explanation for the government's preventing Zhang Yimou from attending the 1995 New York Film Festival, where his

209. See *id.* (quoting Zhang Yimou).

210. See Fu & Cullen, *supra* note 28, at 15.

211. See Feinerman, *supra* note 124.

212. See CHINESE-ENGLISH DICTIONARY, *supra* note 116, at 183, 418.

*Shanghai Triad*²¹³ had failed to capture a nomination in the foreign-language category.

Similarly, the Chinese authorities may have been trying to preserve a certain image of China when they pulled Zhang's recent film *Keep Cool* (*You Hua Hao Hao Shuo*) from the Cannes Film Festival.²¹⁴ Unlike Zhang's previous films, this one does not feed the Western taste for exotic old China, and instead exposed certain unattractive social realities of contemporary China.

This notion of *li* also prevents individual filmmakers from protesting censorship decisions. Working with the censors to seek more favorable treatment is preferable to challenging their decisions on principle in order to protect one's own interests. *Li* thus causes censorship practices to be addressed through compromise and mediation framed in terms of the circumstances of individual films and filmmakers, rather than in terms of bright-line standards handed down by the government.

Li's role in Chinese film censorship might be best analyzed by reference to the Confucian teaching "Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect. Govern them by moral force, keep order among them by ritual, and they will keep their self-respect and come to you of their own accord."²¹⁵

Under this idea of keeping order by ritual, the censorship process might constitute a form of ritual, as opposed to law. Filmmakers participate in the ritual conducted by the government, such that the whole process seems more voluntary.

On the other hand, the Chinese authorities seem to resort to *fa* when the "law" or "punishment" is for show to outsiders, particularly Westerners. This is because the government leans heavily on *fa*²¹⁶ to reinforce its authority when it has no ability

213. *SHANGHAI TRIAD* (Sony Pictures Classic 1995).

214. *KEEP COOL* (Guanxi Film Studio 1997).

215. *CONFUCIUS, THE ANALECS* 88 (Arthur Waley Trans., Bradford & Dickens 3d ed. 1949).

216. Although *fa* has become a synonym for punishment, since pre-imperialist days the ideogram has multiple meanings, including law, model, method,

to rule by *li*. In the international context, cultural moral suasion tends not to carry beyond a nation's borders, so the retributive force of *fa* is considered more effective.²¹⁷

In this way, *li* and *fa* may be comparable to the notions of "prior restraint," and its counterpart, "subsequent punishment," customarily used in reference to the press in the United States. Prior restraint includes any scheme that empowers public officials to deny expression in advance.²¹⁸ Like *li*, prior restraint emphasizes deflection of the disfavored act, as opposed to subsequent punishment, which emphasizes retribution after the act is committed.²¹⁹ Whereas under United States law, any system of prior restraint is presumed unconstitutional, prior restraint is inherent in China's system of censorship.

China's censors scrutinize Chinese-made films from their inception, and can halt the project and prevent the "expression" as they wish. Although guidelines and directions are provided as to each step in film production, editing, release, and distribution, compliance with such provisions does not necessarily seem to prevent subsequent punishment. As discussed below, the authorities may well find reasons to ban the film or filmmaker, even after tacitly approving the project a number of times along the way. For this reason, China's system of censorship is somewhat of a hybrid of *li* and *fa*, of prior restraint and subsequent punishment. The authorities try to rely on *li* and prior restraint until a film leaves their hands for distribution, then resort to *fa* and subsequent punishment if the filmmaker impermissibly distributes the film, such as to foreign film festivals.

technique, rule and regulation. See BENJAMIN SCHWARTZ, *THE WORLD OF THOUGHT IN ANCIENT CHINA* 321-22 (1985).

217. See *id.* at 323.

218. See BLACK'S LAW DICTIONARY 1194 (6th ed. 1990).

219. Fu & Cullen, *supra* note 28, at 48. As used here, "prior restraint" refers to the classic notion of pure executive control of the medium, rather than the judicially crafted meaning that has evolved in the United States, which inversely means prohibition of prior restraint. The difference in the two uses means that whereas in the U.S., the doctrine of prior restraint has developed to guard the citizenry from excessive regulation of freedom of expression, in China prior restraint is one approach the government takes to regulate expression. *Id.* at 66.

While the Chinese government seems to opt for "subsequent punishment" of its most prominent filmmakers, it also wields a significant amount of literal prior restraint on the artists themselves. For instance, Gong Li, the most sought-after Chinese actress, has complained that "every time I perform outside China, I have to seek approval."²²⁰ In contrast, if China's government opted for prior restraint, the result would likely be that no films would be produced that would be presented to the censors at all. In effect, China's government implicitly approves a dual market: the officially-recognized avenues of film production as well as the "subculture." Ever market-wary, the government thereby guarantees an acceptable number of films will be made. Depending on how badly China might need some international awards, certain art films may or may not be released. The decision has little to do with their content.

2. *Guanxi*

Another cultural notion that helps shed light on China's film censorship is *guanxi*, which refers to personal relationships or connections.²²¹ *Guanxi* has a strong presence in commercial and bureaucratic as well as interpersonal relationships. Commonly understood to refer to being well-connected, i.e., having friends in the right places, *guanxi* also has larger ramifications. Rather than being bound by the fetters of law as they appear in the written language of a contract, the precise codifications of terms, or individual rights or responsibilities; the Chinese traditionally prefer flexibility in adjusting to unfolding circumstances in light of

220. *China's star actress calls for less control on arts*, AGENCE FRANCE PRESSE, Feb. 28, 1997, available in 1997 WL 2067755.

221. See CHINESE-ENGLISH DICTIONARY, *supra* note 116, at 248. As used in conversation, "*guanxi*" can also have a connotation of "significance" or "consequence." For example, the phrase "*mei guanxi*" (literally "has no connection") is commonly used in conversation as "It doesn't matter" or "no problem," in response to apologies or expressions of casual concern. Reading these two uses together, then, the implication of a person not having *guanxi* in the sense of not being well-connected is that the person will have no significance or consequence – that the person doesn't matter.

the needs of their ongoing relationships.²²² Reliance on relationship over formal law, however, often leads to the association of *guanxi* with a host of corrupt business practices, and the opportunism, rent-seeking, and shirking that are endemic in China's state industries and administrative bureaucracies.²²³

Thus, in the film context, *guanxi* means not only that better-connected filmmakers will find the censorship procedures more amenable to their projects, but more generally that the process itself will not be articulated in formal laws or even guidelines.

B. Economics

Over the past decade, market reforms have caused Chinese authorities as well as filmmakers to view films more as commercial ventures. With this trend artistic expression seems the motive of only a limited number of filmmakers.²²⁴ China has learned to value its films according to box-office profits more than for any other quality: "[B]ox office income is drawing the attention of government and film personnel as a practical lever for value judgment."²²⁵ Chinese films that match the box office performances of Hollywood movies are especially hailed because, according to Dou Shoufang, deputy director of the Film Bureau of the Ministry of Radio, Film, and Television, "this at least proves that [Chinese] films are becoming worthy to watch."²²⁶ In reality, of course, strong box-office profits prove only that audience-pleasing films are now making it past the censors, consistent with Deng's policy of "entertain them first."

222. It is this notion of relational flexibility "that has rankled foreign investors in China since 1979 and has led to demands for transparency in trade regulations." Glenn R. Butters, *Pirates, Dragons and U.S. Intellectual Property Rights in China: Problems and Prospects of Chinese Enforcement*, 38 ARIZ. L. REV. 1081, 1113, 1123, n.176 (1996).

223. On corruption in contemporary China, see Helen Kolenda, *One Party, Two Systems: Corruption in the People's Republic of China and Attempts to Control It*, 4 J. CHINESE L. 187 (1990).

224. See Lili, *supra* note 39, at 14.

225. *Id.*

226. *Id.* at 13.

Although in the name of economic reform the authorities have tried to make it easier for the studios to do business, content remains firmly under the government's thumb. The government generally justifies restrictive social policies with the default excuse that China is still developing, and that tight governmental control is thus necessary to facilitate development.²²⁷ Zhang Yimou has observed, "What you are seeing is certainly an opening up of China, but this is taking place only in the economic and consumer domain."²²⁸ Instead of bringing about freer cinematic expression, economic reforms have forced films to be weighed as much for their entertainment value as for their educational value.²²⁹ This represents a major shift in paradigm: "To take entertainment as a major function of a film posits an ideological challenge to the traditional socialist requirement of cinema—that a film must first and foremost be didactic."²³⁰ In this way, the Chinese authorities may be allowing one Chinese maxim, that film should elicit appreciation from both the simple and the refined audience (*yia xu kuo xian*), to replace the previous maxim, that film should follow mainstream ideology (*zhu xuan ying pian*).

Echoing the Cultural Revolution, the authorities have rationalized their emphasis on commercial entertainment by couching it in populist terms. Whereas experimental and art film serves only the elite minority of intellectuals, entertainment film serves the masses. This view is consistent with the socialist emphasis on mass appeal.²³¹ Yet China's

227. For example, in reference to the August 1997 regulations banning private homes from using satellite dishes and making it illegal for the country's estimated 2,000 cable operators to beam foreign broadcasting to approximately 55 million homes, Director-general of the Foreign Affairs Department of China's Ministry of Radio, Film, and Television stated, "Our country's current task is to build the economy. We may [change the regulations] when China becomes richer." Rose Tang, *TV network gets through mainland's closed doors*, SOUTH CHINA MORNING POST, Dec. 8, 1997, at 3.

228. AGENCE FRENCH PRESSE, *supra* note 171 (quoting Zhang Yimou).

229. See Jenny Kwok Wah Lau, 'Farewell My Concubine,' *History, Melodrama, and Ideology in Contemporary Pan-Chinese Cinema*, FILM QUARTERLY, Sept. 1, 1995, at 18.

230. See *id.*

231. See *id.* at 16. For a translation of some of these debates about

measured transition from a socialist to a market economy has necessitated updated justifications for the emphasis on entertainment.

The dilemma is, of course, that as the censors keep stepping in, production costs skyrocket, investors lose money, and funding for future films dries up.²³² As a result, China's film studios continue to hurt for money and private investors are increasingly less likely to back films that are the least bit controversial.²³³

As some of the staunchest vestiges of China's once fully socialist system, the studios each maintain an enormous staff, with a large number of actors and directors sitting around waiting for projects. In China's market reform-driven economy, the authorities are trying to make it easier for the studios to make money. The industry is using Hollywood as an example of film's role in society: "Hollywood is well received all over the world because it realized from the beginning that film itself is not a refined art. Instead, it is little more than popular art, and its basic function is entertainment."²³⁴

For example, studios are now allowed to sell their films directly to distributors in China, eliminating the monopoly of the government's Chinafilm, which previously would buy films from studios at a flat fee and then sell the films elsewhere.²³⁵ Sometimes this new direct marketing takes place back at the script stage, as studios send copies of scripts to distributors "so that they can evaluate market potential."²³⁶ Moreover, in a bid to build its film industry into a Hollywood rival, China has reported spending 26 billion yuan (approximately three million

entertainment versus experimental film in China, see FILM IN CONTEMPORARY CHINA: CRITICAL DEBATES, 1979-89 (George Semsel, et al. eds., 1993).

232. See NPR radio broadcast, *supra* note 174.

233. See *id.*

234. Professor Zheng Dongtian of the Beijing Film Academy, *quoted in* Lili, *supra* note 39, at 15. Classical Hollywood cinema, in particular, has been held as the model by some filmmaker theorists such as Shao Mujun and Hao Dazheng. See Lau, *supra* note 229, at 16.

235. *China Lifts Film-Import Quotas, Keeps Censorship*, REUTERS, Apr. 18, 1995, available in LEXIS News File.

236. Zheng Quanguang, president of the China Film Co-Production Corporation, *quoted in* Havis, *supra* note 176, at 38.

dollars). That amount is just one percent of the budget of the Hollywood blockbuster *Titanic*,²³⁷ which is currently sweeping China and which is a film China would like to emulate.²³⁸

The government also encourages filmmakers to consider the bottom line in producing films. For example, the Film Bureau of the Ministry of Radio, Film and Television has encouraged filmmakers to be as sensitive as possible to the earning potential of their products.²³⁹

Last year another experiment was undertaken, whereby selected studios maintained the distribution rights to big United States films. This is quite a lucrative arrangement, as the ten United States films allowed into China each year tend to be blockbusters, such as *Toy Story*²⁴⁰ or, more recently, *Titanic*. This arrangement is supposed to channel the profits from the distribution of U.S. films back into the local film industry. However, creative freedom—not just money—is necessary to make good film.

C. International Diplomacy

"[C]ulture, as illustrated by film, is an accurate gauge by which to monitor Chinese temperament and an effective means of working toward political and economic goals."²⁴¹ As a particularly visible tool in the field of international diplomacy, film has played an important role in China's international relations, especially with the U.S. When U.S. Secretary of State Madeline K. Albright made an official visit to China in May of 1998, she was escorted around the Beijing Film Studio by none other than director Chen Kaige, who screened for her excerpts from his film *Farewell My Concubine*.²⁴² Albright had

237. *TITANIC* (20th Century Fox/Lightstorm Entertainment/Paramount Pictures 1997).

238. Yan Buting, deputy director of China's Film Bureau, *cited in China Aims to make its own Titanic*, AGENCE FRANCE PRESSE, Apr. 9, 1998, available in LEXIS News & Analysis File.

239. See Lill, *supra* note 39, at 15 (interviewing Dou Shoufang, deputy director of the Film Bureau of the Ministry of Radio, Film and Television).

240. *TOY STORY* (Disney/Pixar 1995).

241. Hancock, *supra* note 5, at 351.

242. See Barton Gellman, *Letter from China; Behind the Scenes and Between the Lines*, WASH. POST, May 5, 1998, at C1.

specifically requested a meeting with Chen, ostensibly to make a gentle point about artistic freedom, while avoiding any offense to her Chinese hosts.²⁴³

The influence movies derive from and have upon China's international relations stems from the importance film has historically had in China's domestic politics. The PRC leadership, under both Mao, Deng, and Jiang, has repeatedly used film to consolidate domestic power and influence foreign policy. Sporadically the U.S. has used films to bolster bilateral relations with China in times of war as well as peace, and to promote commerce.²⁴⁴

During the first several decades of cinema, China would import foreign movies only after the purchase price fell, leaving the audience with either propaganda films, or extremely out-dated westerns. By the 1980s, as China's economic reforms helped China afford foreign products such as films, China relaxed its controls on film imports, mostly by following "the pattern of overall diplomacy, with small private deals preceding the implementation of formal cultural accords."²⁴⁵ The U.S. film industry, for one, reacted to these relaxations with euphoria, as many American films escaped censorship. Soon enough, however, hard line Chinese policies rejected the customary royalty fees of the U.S. companies, replacing them with flat fees for each film purchased.²⁴⁶

243. According to her aides, Albright did want to make a subtle point about artistic freedom. *See id.* Chen served as the ideal candidate for such a meeting, because while his films have been subjected to strict censorship over the years, he remains in good standing with the government. Thus he was a better filmmaker to meet with than, for example, marginalized directors out of favor with the government, because such a meeting would have too blatantly signaled Albright's artistic freedom agenda.

244. *See* Hancock, *supra* note 5, at 350.

245. *Id.* at 342. China's markets opened only partway to imported films, and the government attempted to retain control over both selection and distribution of the films. In addition, the government offered reviews of each film accompanied by interpretations. For example, Charlie Chaplin's classic "Modern Times" was praised for its "deep social significance," "superb art," and "rich ideological content." *PRC Film Director Comments on Charlie Chaplin Films*, XINHUA, Jan. 19, 1979.

246. *See* Hancock, *supra* note 5, at 342-43.

In 1981, proud of its domestic films, China participated in a film festival exchange with the United States. The performance of the Chinese films in the United States, however, embarrassed China. "In contrast to the widespread popular reception the American films received in China, the Chinese films which toured the United States from October 1981 to January 1982 played to embarrassingly small audiences. No lines waited outside theaters. In fact, the tour of films went largely unnoticed."²⁴⁷ Although the U.S. government offered explanations for the small turnout for the Chinese films, such as competition from American films and other entertainment, as well as reliance upon small distributors for publicity, the Chinese disappointedly chose to blame the U.S.²⁴⁸

After four more years of Deng's "open door" policy, China sent another one of its films for distribution overseas. The film it selected, Xie Fei's *A Hunan Girl* [*Xiangnu Xiao Xiao*], illustrates the messages about China that the government wanted to export by way of cinema. With its turn of the century setting, childhood marriage, adultery and injustice, *A Hunan Girl*, the government figured, would introduce the stringent feudal structures of "old" China to Western audiences. The underlying message, of course, was that China had progressed into a modern nation under Communism, from those bad old pre-Communist feudalistic days.

Another of China's exports to the West was *Red Sorghum*,²⁴⁹ a 1988 film which won a Golden Bear award at the Berlin Film Festival. This story about a young rural bride forced to deal with brutality and resistance during Japan's occupation of China includes the generally favored content elements favored by the authorities: a setting in the past, an external enemy, and a nationalistic sacrifice. Popular for both its storyline and its style, *Red Sorghum* was the first Fifth Generation film to find a mass audience. Nonetheless, *Red*

247. *Id.* at 347.

248. *See id.*, (citing interview with John Thomson, Cultural Officer in American Embassy in Beijing 1979-1981, Mar. 30, 1983). The U.S. was equally disappointed at how China handled the films sent over by the U.S. *See id.*

249. *RED SORGHUM* (Xian Film Studio 1987).

Sorghum's popularity was considered incidental by the critics who still viewed it as an art film.²⁵⁰

1. *International film festivals*

China's participation in film festivals dates back as early as the 1950s, when it sent some feature-length films to represent China in international film festivals in other communist countries such as Yugoslavia and Poland.²⁵¹ In more recent years, China began to view international prizes as another way to revitalize its film industry.

The pressure to win international prizes intensified; with the domestic film market in a slump and foreign distribution growing more important, such prizes provided not only sorely needed critical recognition but also a seal of commercial viability.²⁵²

China recognizes the dual benefits that derive from hosting international film festivals. Not only do they promote good relations with other countries through exchange of culture, but they also promote development in China's domestic film industry. China hosts three major film festivals each year: the Shanghai Film Festival, the Changchun Film Festival, and the Zhujiang Film Festival.²⁵³

The Changchun Film Festival is held in the capital of northeast China's Jilin Province. Sponsored by the Ministry of Radio, Film and Television, the six-day festival has been held every two years since 1992.²⁵⁴ In addition to China, Hong Kong, Taiwan, and twenty-two other countries submitted films to the 1996 competition.²⁵⁵ Despite ample non-Chinese

250. See Zha, *supra* note 9, at 144.

251. See *Chinese Prize-winning films at international festivals (1949 - 1982)*, 1982/83 CHINA OFFICIAL ANNUAL REPORT (Hong Kong, Kingsway, 1983), at 708-710, cited in Hancock, *supra* note 5, at 338.

252. Zha, *supra* note 9, at 145.

253. See *Changchun to Hold Third Film Festival*, XINHUA ENGLISH NEWSWIRE, 1996 WL 10824035 (June 28, 1996).

254. Changchun is known as the "film city" of China because it is the home of China's first film studio. See *Changchun to Hold Fourth Film Festival*, XINHUA ENGLISH NEWSWIRE, 1998 WL 12153662 (May 6, 1998).

255. See Wang Chen, *The Third Changchun Film Festival*, BEIJING REV., Oct. 14-20, 1996, at 33.

participation, the festival granted no award for Best Foreign Language Film.²⁵⁶ Perhaps this failure to recognize the merit of films which did not even compete in the same language category as Chinese films is a symptom of China's current nationalistic attitudes. The biennial Shanghai Film Festival was established in 1995, and is the only PRC festival listed as one of the world's nine leading film festivals by the International Federation of Film Producers' Association.²⁵⁷

China's behavior regarding film festivals held elsewhere, however, has been less than exemplary. When things don't go its way, China's reaction has been to gather its films and go home. For example, China abruptly withdrew eleven films from the 1994 Hong Kong Film Festival after the programmers refused China's request that three films not be shown: Wang Xiaoshuai's *The Days*, He Yi's *Red Beads*, and Clara Law's *Temptations of a Monk*.²⁵⁸ And in 1997 China pulled the mainstream China-backed film *King of Masks* from the Hong Kong International Film Festival after protesting to no avail the inclusion of underground mainland works in the Festival.²⁵⁹

With regard to the seven young directors banned in one sweep, one Chinese film critic wondered:

Why, if they claim to support the film industry, are they banning the work of seven of the country's best young directors? It simply doesn't make sense. The real reason is obvious. They don't like the movies or the movie makers, and this business with the Rotterdam Film Festival is just an excuse to crack down on them.²⁶⁰

Participation or lack thereof in film festivals may thus be a ruse for China when it feels that it cannot control its filmmakers by other means.

256. See *id.*

257. *Id.*

258. See Godfrey Cheshire, *supra* note 55, at 65. Clara Law is a Hong Kong director, so China was trying to extend its suppressive reach beyond its own filmmakers.

259. *Owners Expected to Turn Screw, Anxious Not to Upset Beijing*, SOUTH CHINA MORNING POST, Apr. 21, 1997, at 3.

260. Crothell, *supra* note 198.

In her 1985 article, Marguerite Gong Hancock noted that "[t]he cancellation of a film event, although seemingly trivial from an American point of view, is regarded by the Chinese as a carefully considered response to a serious political problem."²⁶¹ This comment was made before the Chinese government began to ban Chinese films and filmmakers from film events seemingly out of hand. Thus it seems that in the 13 years that have passed, the Chinese authorities are now acting not out of consideration of a "serious political problem," but rather out of habit or reflex.

Just as China is eager boost its status as a world player by acting as host for a wide variety of international conferences and events,²⁶² China also has tried to make itself an international film presence by hosting film festivals and other cinema-related events. For example, in October of 1996, Beijing hosted the Symposium on Film Collections in Asia. Proudly, if inaccurately, touted in China's official press as "the first ever international film symposium for the world's film industry," the event was actually initiated and organized by the United Nations Educational, Scientific and Cultural Organization [UNESCO].²⁶³

More than 80 film and cultural experts from 20 countries and regions, including Japan, Thailand, Sri Lanka, the United States, France, China and Hong Kong, as well as UNESCO representatives, participated in the symposium. Experts discussed the film history of Asia, the archival heritage of films, the characteristics of China's early films, and the development process of China's film industry.²⁶⁴

Stretching the significance of this event almost to absurdity by linking it to other events China has hosted, China's Vice-Minister of Film, Radio and Television commented, "The fact that China hosted both the film symposium and the 13th International Conference on Archives indicates that the international community and the Chinese

261. See Hancock, *supra* note 5, at 329.

262. The events China has jockeyed to host range from the 1995 International Women's Conference, to its failed bid for the 2000 Olympics. J.T. Nguyen, U.P.I., Aug. 17, 1995.

263. Wang Chen, *Beijing Hosts Film Collections Symposium*, BEIJING REV., Nov. 4-10, 1996, at 40.

264. *Id.*

government attach great importance to archives."²⁶⁵ His remark displays yet another opportunity to highlight China's status as an international player.

2. *The Importation and Censorship of Non-Chinese Films*

The generally archaic ways of China's film bureaucracy has stunned and confused visitors from foreign film industries. China has attempted to counter these reactions with reassuring words, such as those of Wu Mengchen: "China's film industry is in a time of transition. One of the main characteristics is that it is changing from a welfare-state mode to a moneymaking mode."²⁶⁶

In 1995, China made groundbreaking deals to import foreign films. Replacing the previous low, flat rate for second-run Hollywood pictures, Chinese authorities allowed ten recent blockbusters to be released in China. The studios that made the movies were to receive a share of box office receipts.²⁶⁷ Among the movies imported under this new system were *The Lion King*,²⁶⁸ *The Fugitive*,²⁶⁹ and *True Lies*.²⁷⁰ Theater attendance jumped back up, giving hope to Hollywood studios for further collaboration and profit. Eager executives from almost every major Hollywood studio, lured by China's potentially huge movie market and eager to position themselves for future deals, flocked to China's Shanghai Film Festival in October 1995, where an official announced that the state-run monopoly on film distribution would be broken in 1996, allowing individual studios and producers to distribute American movies for the first time.²⁷¹

265. Wang Chen, *Beijing Hosts Film Collections Symposium*, BEIJING REV., Nov. 4-10, 1996, at 40 (quoting Zhao Shi, Vice Minister of Radio, Film and Television).

266. Zha, *supra* note 9, at 149.

267. *Id.*

268. *THE LION KING* (Disney 1994).

269. *THE FUGITIVE* (Warner Bros. 1993)

270. Among the U.S. films that have been excluded "on political grounds" are the James Bond film, *GOLDENEYE* (United Artists 1995), as well as the unabashedly pro-U.S.A. *APOLLO 13* (Universal Pictures 1995). James Harding, *Multiplex cinemas plan for China*, FINANCIAL TIMES, June 11, 1997, at 4, available in LEXIS, News & Analysis File.

271. Seth Faison, *A Chinese Wall Shows Cracks*, N.Y. TIMES, Nov. 21, 1995, at D1.

Hollywood's dreams of huge Chinese audiences, American-style theater complexes, and movie-related theme parks may yet come true, but Hollywood's entrepreneurs must still contend with China's shifting cultural policy and wrestle with Chinese film bureaucrats who are likely to fight to preserve control over their fiefdoms. "It should not take long for Hollywood executives to figure out what many foreign investors learned in the 1980s: China may be a gold mine, but it is also a minefield."²⁷²

In 1994, Beijing's film distributor, the China Film Import & Export Corporation [Chinafilm],²⁷³ promised to import the ten most popular foreign films each year.²⁷⁴ This promise, however, was subordinate to the less trumpeted but more consequential conditions that the numbers of imported films would still be influenced by Chinafilm's capacity and market fluctuations, and that "China will keep the examination of foreign films to make sure their contents are in line with the Chinese situation and laws."²⁷⁵ Thus, importing the ten most popular films really refers to the films China can afford to import, and that survive strict censorship. Audience demand had almost nothing to do with it. China viewed film imports as healthy competition and thus stimulation for its domestic film industry.²⁷⁶ The promise, then, rang somewhat hollow in light of these underlying provisions and motivations, indicating that the authorities were simply telling both U.S. film distributors and Chinese filmgoers what they wanted to hear. Despite the crossed-fingers-behind-the-back disclaimers of the Chinese government, in 1996 the Chinese government allowed eleven U.S. movies to be shown in theaters, and also increased the number of foreign films allowed to be shown at international film festivals.²⁷⁷

272. Zha, *supra* note 9, at 149.

273. Chinafilm was a monopoly until 1996. Atkinson, *supra* note 69, at 38.

274. See *China Lifts Film Import Quota*, XINHUA NEWS AGENCY, Apr. 19, 1995, available in 1995 WL 7711741.

275. *Id.* Wang Zengfu, Deputy General Manager of Chinafilm, commenting on the 1995 renewal of the 1994 promise to import the ten most popular films each year.

276. See Lili, *supra* note 39, at 13.

277. See Atkinson, *supra* note 69, at 39.

This ten-imports-per-year quota was eliminated at the June 1996 intellectual property rights talks between China and the United States. In addition, China ended Chinafilm's monopoly over distribution, by beginning to allow Chinese film studios to sign cooperative agreements with U.S. film producers to distribute foreign films. The government conferred this privilege on those studios deemed to produce "higher quality" [read, "politically correct"] films.²⁷⁸ Chinese studios jumped at this opportunity. That year, the Changchun Film Studio won the rights to distribute *Waterworld*,²⁷⁹ and the Shanghai Film Studio signed a deal to distribute *Toy Story*.²⁸⁰ Movies such as *The Piano*,²⁸¹ *Schindler's List*,²⁸² *Forrest Gump*,²⁸³ and *True Lies* earned high revenues at Chinese box offices.²⁸⁴

However, China soon backpedaled on these newly agreed-to policies. That July, China's Central Propaganda Department issued an order demanding self-criticism, "from a political point of view," of the just-consummated policy of importing large quantities of U.S. movies. The Ministry of Radio, Film and Television decided to cancel the implementation of the plan to import ten foreign films per year. Airtime for imported programs was cut in half, from thirty to fifteen percent. A large influx of American movies, according to Ding Guang'en, head of the Central Propaganda Department, was extremely harmful to China's culture and traditional values.²⁸⁵ China's importation of U.S. films has thus been threatened by President Jiang's campaign against "cultural infiltration."²⁸⁶

278. See He Bian, *Why Prohibit the Importation of Foreign Movies?*, CHINA FOCUS, Aug. 1, 1996 available in 1996 WL 11751443. See also Atkinson, *supra* note 69, at 39.

279. *WATERWORLD* (MCA 1995).

280. See Atkinson, *supra* note 69, at 39.

281. *THE PIANO* (Spectrum Films 1993).

282. *SCHINDLER'S LIST* (Universal 1993).

283. *FORREST GUMP* (Paramount 1994).

284. See He Bian, *supra* note 278.

285. See *id.*

286. This campaign to "build traditional [Chinese] values" has been criticized as ineffective.

[C]orrupt officials like Wang Saosen (Vice Mayor of Beijing, who committed suicide when his debauched lifestyle and embezzlement of

Underlying this ideological tightening, bitter disputes between China and the U.S. about market access and intellectual property protection have threatened the bilateral film exchanges. That U.S. films are now screened in China at all these days is the result of recent understandings between the two nations.

When blocking foreign films' entry into China, often officials attempt to frame their objections in ways to make China seem victimized. In January, Director General of the Ministry of Radio, Film and Television, Ma Yuanhe, denounced the Hollywood film *Seven Years in Tibet* as being among those films that "attack China viciously" and "hurt the feelings of the Chinese people."²⁸⁷ His edict called upon China to "maintain sharp vigilance" against such films.²⁸⁸ Ma admitted that he had not even seen the film, but was speaking out on the basis of rumors.²⁸⁹ A more savvy reaction to these U.S. films about Tibet has been the release of at least one Chinese film that purports to tell the Chinese side of the story. Shanghai Film Studios, for example, produced Feng Xiaoning's jingoistic 1997 film *Red River Valley* [*Hong He Gu*].²⁹⁰ Describing an abortive British invasion of Tibet in the early 1904, the film attempts to counter what it considers Western anti-Beijing propaganda.²⁹¹ Despite generous publicity and government

funds were about to be exposed) are everywhere. The Propaganda Department demanded resistance of "bad influences from abroad," but in fact bad influences within China (violent crime, corruption, bribery, tax evasion, smuggling, prostitution, and pornography) are everywhere, and they alone are sufficient to jeopardize the preservation of "traditional values." Why look "abroad" to find sources of bad influence?

He Bian, *supra* note 278.

287. H.K. *Free to Show Anti - China Films*, SINGAPORE STRAITS TIMES, Jan. 12, 1998.

288. Maggie Farley, *Company Town; Hong Kong Bows to Beijing in Turning Away 3 U.S. Films*, L.A. TIMES, Nov. 4, 1997, at D1.

289. See *supra* note 287. "I have not time to see it," Ma stated, "but I have heard a lot." *Id.*

290. RED RIVER VALLEY (Shanghai Film Studios 1997).

291. Producer Zhang Jianmin proudly declared that the studio made 8 million yuan in China and another 7 million from Korea and Japan, from their 14 billion yuan (\$1.7 million) investment in the film. *Quoted in Havis, supra* note 176, at 38-39.

backing, the film won no prizes at the third annual Shanghai Film Festival.²⁹²

In 1996, foreign films accounted for roughly 40 percent of all Chinese movie ticket sales.²⁹³ The U.S. films China has agreed to import are illustrative of its censorship policies and emphasis. For instance, in the summer of 1996, film distributors in China strenuously promoted *Waterworld*.²⁹⁴ Proud that the Chinese market had somehow "attracted" the most lavish, expensive film ever made, Chinese authorities also supported the messages contained in the film.²⁹⁵ *Xinhua* described the underwater world depicted in the film as one in which "men and women have to struggle for survival, often against evil forces."²⁹⁶ Struggles for survival sit well with China's proclaimed human rights policy, which is that citizens have a right to subsistence first, with political and speech rights more incidental. In this way, the theme of *Waterworld* could be safely used by the CCP as a metaphor for the communist revolution, as long as no one construed the flooded city as "drowned" ideas. Thus being a close-enough parable for the communist revolution, the movie was deemed fit for Chinese audiences.

Another telling import was *Bridges of Madison County*, shown in China in the spring of 1996.²⁹⁷ The title itself is ideal for the diplomatic exchange the film deal represented, as the title contains an attractive metaphor of bridging, such as between China and the United States, where the film was made. Besides the title, the movie's theme exemplifies safe entertainment in the eyes of the Chinese authorities. The film's "heroine" is a rural housewife in a loveless marriage. Her decision to fulfill her family responsibilities instead of running off with her itinerant lover helped the film secure a stamp of

292. See Farley, *supra* note 288, at D1.

293. See Atkinson, *supra* note 69, at 39. That market share did not increase from 1995, when the nine lone imported films released in Beijing brought in the same percentage (40%) of Beijing's box office revenues of \$11.4 million. See *id.*

294. See *Waterworld to be shown in Chinese theaters*, XINHUA ENGLISH NEWSWIRE, Aug. 19, 1996 available in 1996 WL 11051742.

295. See *id.*

296. *Id.*

297. BRIDGES OF MADISON COUNTY (Warner Bros 1995).

approval from China's film censors, as well as positive reviews from the semi-official Chinese press.²⁹⁸ Both the censors and the film reviewers recognized the entertainment value of the film. According to film critic Liang Xiaosheng,

Bridges of Madison County tells a love story that not only caters to modern people's contemporary sexual ideas, but also gives consideration to modern people's attachment to traditional family values. . . . I think that *Bridges* is like a meteorological balloon that has floated to the skies above China and through it we can measure our social climate.²⁹⁹

However, such a film does not measure China's social climate so much as maintain it. Chinese audiences, many of whom are themselves in loveless marriages,³⁰⁰ may feel comforted watching their own dilemma played out on screen, especially by rich Hollywood stars, no less. One Chinese man who had seen the film remarked, "Chinese people can relate to the movie because seven out of ten Chinese marriages are loveless. People here got married for other reasons."³⁰¹ Rather than inspire social change, such a film bolsters the status quo by making people content with their own situations.

IV

Film Production and the Censorship Process in Contemporary China

This section describes the realities of film production and censorship in contemporary China. It begins by describing the financial options for producing a film in China, and goes on to detail the process by which a film is created and censored. Particular attention is given to the actions and rationales of the censors, who not only control release of finished productions, but also initial script approval and exportation.

298. See Steve Mufson, 'Madison County' Bridges Two Cultures, WASHINGTON POST, Apr. 27, 1996, at C1.

299. *Id.*

300. A 1996 poll suggested that nearly 40% of Chinese said that love was not the basis for marriage. See Mufson, *supra* note 298.

301. *Id.*

A. Five Methods of Film Production

1. State-studio films

In terms of complex, far-reaching control systems designed to micro-manage style and content, China's official, state-sanctioned (but now financially independent) film studios like the Shanghai or Beijing Film Studios arguably resemble closely controlled big film studios in the West. Just as Chinese commercial law favors the big economic players over the little guys—in contrast to the U.S. notion that commercial law should level the playing field—the same is true of Chinese film law. Accordingly, the bigger studios and the films they produce receive the most favorable treatment by the Chinese authorities.

2. Co-productions

The second option for producing movies is through big co-productions, known as “associated productions,” between the studios and foreign companies. Generally these are not co-productions in a strict sense, because the Chinese side does not usually contribute any money of its own. Foreign companies need to partake in a joint venture to make a film in China, so an associated production gives the foreign company a local partner. While the foreign company benefits by gaining access to China's film market, the Chinese studio essentially hires out its crew, equipment, and services to the foreign company.

When the time was ripe for China's film industry—like many other Chinese industries—to look outside for financial sustenance, many top mainland filmmakers turned to co-productions with foreign investors who would cover most of the budget and assume control of production and distribution outside China. As a result, China could no longer shoot films for its domestic market alone; for its movie industry to remain viable, it had to place more emphasis on foreign distribution. This prioritization, however, has grown to overshadow China's domestic market. Many of the big Fifth Generation films like

*Raise the Red Lantern*³⁰² have been made through joint ventures.³⁰³

Another example of such a co-production is *The Sisters Three*,³⁰⁴ a true story about three Chinese women who were born into a privileged Shanghai household at the turn of the century and who ended up playing significant roles in China's 1949 communist revolution.³⁰⁵ The \$9 million epic was produced by Hong Kong's Golden Harvest movie company, and financed by a joint fund set up by three companies: Hong Kong's Golden Harvest Studio, Hong Kong's Citicorp Asia, and the Television Corporation of Singapore.³⁰⁶ Golden Harvest set up the joint fund for this picture in order to be able to film in China. Not only did the filmmakers obtain permission to shoot there, but China provided 2,000 People's Liberation Army personnel to work as extras in the film.³⁰⁷

For a while, co-productions were a buyer's market for foreign companies because China was desperate for the money.³⁰⁸ China felt torn, however, between the need for foreign investment and the desire for independent development.³⁰⁹ Zhu Yongde, president of the Shanghai Film Studio has remarked, "[f]oreign help and co-productions are important but every country should rely on its own talents to develop the film industry."³¹⁰ Increasingly suspicious of foreign involvement, Chinese authorities have allowed only about 20 to 30 co-productions with overseas partners per year,³¹¹ and foreign investors have in turn become increasingly nervous

302. *RAISE THE RED LANTERN* (Century Communications 1991).

303. Judy Stone, "Will he or won't he? Chinese director of *Ju Dou* not expected to attend Oscars," S.F. CHRON., Mar. 23, 1991 at C3. *RAISE THE RED LANTERN* is a Taiwan-China co-production. *Id.*

304. *THE SISTERS THREE* (Golden Harvest 1997).

305. See Sandi Tan, *The Sisters Three—The Soong Women in \$9m epic film: "About the three sisters" and "18 minutes cut by Chinese censors,"* SINGAPORE STRAITS TIMES, May 7, 1997.

306. See *id.*

307. See *id.*

308. See Shanghai-based independent film producer Megan Gathercole, quoted in Lee, *supra* note 86.

309. See *id.* (Lee, *supra* note 86.)

310. *Id.*

311. See Lili, *supra* note 39, at 17.

about increased political meddling. As a result, associated productions have slacked off, and Chinese filmmakers have increasingly looked to domestic investors to back their films.³¹² *Red Cherry* and *Warrior Lanling*³¹³ are two examples of Chinese films sponsored exclusively by domestic companies.³¹⁴

3. *Changbiao*

In a *changbiao* production, a private company effectively buys an official studio's right to make a film.³¹⁵ The private company goes ahead and makes the film, then stamps an official studio name on it to gain legitimacy.³¹⁶ In exchange for lending out its official stamp, the studio gets some much-needed free cash.³¹⁷ *Changbiao* films are often substantially different from studio films. In *Expectation*,³¹⁸ a 1996 film made by a private company and the Beijing Film Studio, demonstrates how a film that would normally encounter roadblocks as a studio film can get made and released because of its *changbiao* status. Despite its politically sensitive setting in a small town that will be flooded out by the controversial Three Gorges Dam, and despite its examination of a customarily sensitive topic, a possible rape offense, *In Expectation* managed to get past the censors. Since authorities tend to look favorably upon films that depict civil employees as diligent and upstanding, the film's positive portrayal of a local police investigator probably helped in its release.

4. *Hong Kong-funded films*

Hong Kong companies fund Chinese films on the mainland. In the past, these films were often featured at film festivals, such as Media Asia's *Swordsman Tale*,³¹⁹ Sun

312. See *id.*

313. *WARRIOR LANLING* (Shanghai Film Studios 1995).

314. See Lili, *supra* note 39, at 17.

315. See *id.*

316. See *id.*

317. See *id.*

318. *IN EXPECTATION* (Beijing Film Studio 1996).

319. *SWORDSMAN TALE* (Media Asia).

Valley,³²⁰ or Ocean Films' historical epic, *The Emperor's Shadow*.³²¹ However, the practice of Hong-Kong funding has tailed off in recent years, due to the new restrictions and the fact that few foreign corporations are currently interested in buying the finished products.³²²

This aversion may soon change, however, because of the way China's film regulations treat Hong Kong movies. Even fully Hong Kong-made movies— famous traditionally for kung fu and action, not social commentary— are not exempt from China's censorship. A full decade before Hong Kong would revert to Chinese rule, Hong Kong already anticipated the more restrictive censorship atmosphere, and embarked upon self-censorship to ingratiate itself with the mainland government.³²³ At first, such censorship was unofficial, without legal foundation.

In March of 1987, the *Asian Wall Street Journal* reported that Hong Kong's government had banned films for political reasons, without legal authority.³²⁴ The following month, the government gave itself that lacking legal authority by introducing a bill that would in turn give its censors the right to ban films which might damage ties with China.³²⁵ One of the bill's sponsors elaborated that the bill would give censors legal authority to ban films "seriously prejudicial to good relations with territories outside Hong Kong."³²⁶ Thus, the government seemingly conceded to the accusations of banning films out of political motivations without legal authority— not by eliminating politics from the equation, but rather by simply declaring it legal to leave them in.

320. SUN VALLEY (Media Asia).

321. THE EMPEROR'S SHADOW (Ocean Films 1996).

322. See Higgins, *supra* note 114.

323. See *Hong Kong Introduces New Law to Censor Anti-China Films*, REUTERS, Apr. 3, 1987; available in LEXIS, International News File.

324. The article quoted a Hong Kong senior government official as saying legislation was necessary to prevent import of Taiwanese propaganda films aimed at creating tension between Hong Kong and China. Between 1974 and 1987, Hong Kong had twenty films for political reasons. Most of those films were made by Taiwan or Pro-Taiwan studios. See *id.*

325. See *id.*

326. *Id.*

Nonetheless, Hong Kong's Broadcasting, Culture, and Sport Deputy Secretary, Rita Lau-ng Wai Lan, denied that censorship has tightened in Hong Kong since the handover.³²⁷ According to her, films remain subject to the usual censorship requirements, but the process does not involve political judgments about the movies.³²⁸ Despite such reassurances, however, self-censorship rose in Hong Kong not only since the handover, but also leading up to it. For example, award-winning Hong Kong director Wang Kar-wai deliberately completed his film *Happy Together*³²⁹ before the handover, which is about a gay relationship. "We agreed that if we wanted to do something like this, we should do it now," Wang explained in early 1997.³³⁰ Another Hong Kong filmmaker, Clara Law (*A Floating Life*³³¹) put the same sentiments more bluntly: "In terms of censorship, it's obvious what's going to happen. I don't think the future looks very bright."³³²

In January of 1998, Beijing tried to allay fears and allegations of centrally-imposed censorship in Hong Kong by pledging not to block anti-China films from being shown in Hong Kong.³³³ One Chinese official stated that a Hong Kong film distributor's purchase of the rights to screen *Seven Years in Tibet*,³³⁴ a move expected to test freedom of expression in post-handover Hong Kong, was not an issue for Beijing.³³⁵ Notably, this statement was made by the same official, Ma Yuanhe, who had denounced the same film as "hurting the feelings of the Chinese people."³³⁶

Testing the bounds of permissibility is not the typical response by Hong Kong's film industry. Rather, many film executives opt for an ample margin of safety between their

327. See Hong Kong Free to Show Anti-China Films, *supra* note 287.

328. See *id.*

329. HAPPY TOGETHER (Block 2 Pictures 1997).

330. Quoted in Richard James Havis, *New Script Needed: Hong Kong movies are in a reel fix*, ASIAWEEK, Dec. 5, 1997, available in 1997 WL 13178260.

331. A FLOATING LIFE (Southern Star 1996).

332. *Id.*

333. See Hong Kong Free to Show Anti-China Films, *supra* note 287.

334. SEVEN YEARS IN TIBET (Columbia/TriStar 1997).

335. See Hong Kong Free to Show Anti-China Films, *supra* note 287.

336. See *infra* note 287 and accompanying text.

decisions and the government strictures. Self-censorship, thus, dominates the Hong Kong film as well as other media industries. For example, Tony Wong of Hong Kong's Cinemation Films International has said that he will not buy very politically sensitive films: "There are a lot of good movies— why buy one that might cause trouble?"³³⁷ Although he admitted wanting to see films such as *Kundun* and *Seven Years in Tibet*, Wong said that because distribution rights are usually sold in a package, he would instead wait for the pirated disks.³³⁸

Even after Hong Kong has officially become part of China, Hong Kong movies still count as "foreign" for purposes of China's limit of ten imported films per year.³³⁹ This categorization will probably encourage more Hong Kong producers to make their films in China if that market is a target for their film.

5. *Independent films*

"While film and political theorists continue to ponder the subtext of films emerging from China and Hong Kong," another response to censorship has been simply to make films without permission.³⁴⁰ Just as there is a distinction between established and non-established media in China, so is there a distinction between official and independent or underground film in China.³⁴¹ However, the distinction between official and independent or underground media is often more sharp in cinema than in other media, because of the capital-intensive nature of filmmaking.³⁴² As a result, some films, particularly the "new documentaries," get made outside of the official

337. *Interviewed in* Farley, *supra* note 288. Although the interviewer notes that Wong made this latter comment "with a laugh," it is likely true that such politically sensitive films will indeed get seen in Hong Kong, just not through official channels. *Id.*

338. *See id.*

339. *See* Bruce Einhorn, *What Hit Hong Kong's Film Industry?*, *BUSINESSWEEK*, May 4, 1998, at 34.

340. Lehrer, *supra* note 173, at 15.

341. For general details about the media aspect of this point, *see* Fu & Cullen, *supra* note 28, at 17.

342. *See id.*

financing structure altogether.³⁴³ Although some of these documentary filmmakers are film school graduates who were denied jobs due to their participation in the 1989 Tiananmen events, their films are not meant as anti-government agit prop, and do not focus on countering repression. Nonetheless, these essentially illegal films are frowned upon by the authorities. Like all films in China, they are still subject to regulation, but as underground films they are actually “regulated” by a combination of the new free market forces operating in the economy and government administrative systems for controlling media and culture.³⁴⁴

Independent productions gradually became common practice in China in the 1990s, particularly among the younger Sixth Generation filmmakers such as Zhang Yuan, Wu Wenguang, and Wang Xiaoshuai.³⁴⁵ “Although often obliged to carry a state studio’s insignia, these films were independent projects shot with privately raised funds and by privately organized crews.”³⁴⁶ If a completed movie failed to pass the official censors, it would be blocked from domestic release; showings within China would be limited to small discreet groups in apartments or dorm rooms.³⁴⁷ However, copies of the film often turned up in foreign film festivals, where Chinese films frequently won awards.³⁴⁸ Later the films are sometimes released domestically, after Chinese audiences have had an opportunity to hear the international hoopla. Plus, having garnered some international attention, the

343. See Lehrer, *supra* note 173.

344. See Einhorn, *supra* note 339, at 47.

345. Zha, *supra* note 9, at 147. Xie Jin, the established Third Generation director, has criticized the Sixth Generation for bucking the system. “Some young directors send films out of China without first receiving permission for public showing from the film bureau. This is illegal. According to regulations, filmmakers who break these laws will be criticised, fined, and their productions confiscated.” *Xie Jin Speaks Out*, (visited Mar. 26, 1998) <<http://filmfestivals.com/mtreal97/mnew21.htm>>.

346. *Id.*

347. For example, when Zhang Yuan wanted to show his film *East Palace, West Palace*, the director had to invite his friends to his tiny Beijing apartment where he showed his film on the video machine. See *Chinese Cinema from Beijing*, *supra* note 173; see also Havis, *supra* note 176.

348. See Zha, *supra* note 9, at 147.

filmmakers can often raise more private funds or receive film grants from abroad for their next projects.³⁴⁹ "Shot on a small budget and often with extremely limited distribution, these works have been uneven. Perhaps reflecting certain fixations of the filmmakers' common age and background, these films almost all deal with themes of contemporary urban alienation."³⁵⁰

This unofficial, outlying "category" has allowed room for the fresh and essentially illegal "new documentaries" to proliferate. Without much funding from any source, these filmmakers make do without studios, often simply using hand-held video cameras out in the street or in private apartments.³⁵¹

B. Film Production and the Censorship Process

According to a Chinese political maxim, "to control a matter, one first must control the personnel involved."³⁵² Accordingly, the Chinese government controls filmmaking by making sure government officials are involved in film production, from early stages. At the official studios, of course, such government presence is expected. But government representation makes its way into most film production in China, including joint projects with foreign co-producers. The following discussion of the steps involved in producing a film, from script approval, film processing, approval upon completion, to taking the film out of China, illustrate the points along the process where the government throws up obstacles, how some films have succeeded or failed at deflecting them, and what factors seem important in decisions to approve, interfere with, or ban films.

1. Script approval

The Chinese treat script approval in much the same way they treat contracts. Contracts in China function more as official recognition of a relationship, rather than binding

349. *See id.*

350. *Id.*

351. *See Lehrer, supra* note 173.

352. *Fu & Cullen, supra* note 28, at 37.

agreements about obligations.³⁵³ Similarly, script approval does not grant conclusive approval of a project, but rather marks the starting point of the censorship process. A director submits a script to the Film Bureau as a proffer of what the film will include, and the Bureau's agreement that the script meets government standards allows the filmmaker to take the project to the next stage. After that, the censorship continues to function as a process of negotiations.³⁵⁴ Script approval, then, is not a thumbs-up or thumbs-down on the project as a whole, but rather grants narrow permission to the filmmaker to continue navigating the system.

Film officials might, for example, approve a script but condition production on a director's promise to work on a separate project as well. Thus, just as a contract does not, in the Chinese view, bind the parties under all foreseeable circumstances,³⁵⁵ script approval does not guarantee a project can go forward without subsequent governmental requirements and interference. Should the authorities determine at some point that the filmmakers' interests have diverged with the government's, the authorities are unlikely to simply pull the plug on a film, but will instead stall until a new agreement can be reached as to the form the film should take. In this way, approval of a film script does not constitute endorsement of the project, but rather a green light to keep working for the time being.³⁵⁶

Disapproval of a film script does not necessarily halt the project. If a film is to be made by an official studio, the writer of the rejected script may be replaced by a different writer. Reworking the script within the theme and parameters set forth by the studio sometimes requires even a third writer until the Film Bureau is satisfied with the script.³⁵⁷ Under

353. Professor James V. Feinerman, Lecture given to Chinese Law Seminar at Georgetown University Law Center (Feb. 25, 1998) [hereinafter Feinerman Lecture].

354. Jenny Kwok Wah Lau has argued that symbolic productions such as film can be viewed as a site of negotiation for different cultural traditions. See Lau, *supra* note 229, at 16.

355. See Feinerman Lecture, *supra* note 353.

356. Feinerman, *supra* note 124.

357. See Havis, *supra* note 330.

these conditions, writers learn to work within the official system if they ever want to see scripts they wrote produced.

By the same token, sometimes directors are yanked from projects, too. For example, in the fall of 1993, after shooting only a few scenes of *Chicken Feathers*,³⁵⁸ Zhang Yuan was abruptly removed from the project.³⁵⁹ Zhang was replaced, and the shooting went on without him. *Chicken Feathers* was not even financed by the Chinese government—it was to be Zhang's third privately-financed feature film.³⁶⁰ Although no reason was given for the order to discharge Zhang, word had it that his film *Beijing Bastards* had sufficiently irked the authorities with its portrayals of hooliganism that they wanted to punish him.³⁶¹ These changes in personnel demonstrates that the censors had a problem not with *Chicken Feathers'* content, but rather with the person involved.

China's authorities have not declared objective criteria for scripts; rather they decide on a case-by-case basis. A ruling on one film may have no consequence for a similar film, depending on a myriad of other factors, like timing, persons involved and the current international climate. However, the two most significant factors considered by censors are content and style.

a. Content

Despite a lack of articulated guidelines as to what content is favored in Chinese films, throughout China's post-liberation film history, the films that have successfully passed the censors to enjoy distribution in China generally contain certain elements: positive acknowledgment of the Communist Party, protection of national dignity, and adherence to socialist agendas.

As early as 1954, the CCP issued an official statement to filmmakers stating the messages that films were allowed to impart. The *People's Daily* (*Renmin Ribao*), which remains the

358. CHICKEN FEATHERS (1993).

359. Godfrey Cheshire, *Chinese Checkers, Filmmakers Banned by Chinese Authorities*, 30 FILM COMMENT 65, (1994).

360. See *id.*

361. See *id.*

approved newspaper of the CCP, summarized film's dual function in post-liberation China in these colorful words:

[Feature films] must reflect from all aspects the excitement and liveliness of our motherland, the true contradiction in life, and growing new forces in it, and must deal merciless blows to those dying things that obstruct our progress.³⁶²

This official statement, designed to make film guidelines clear, nevertheless contains some serious contradictions. "Excitement and liveliness" indicates that films should have a positive, upbeat tone. Today's authorities seem to hold Chinese films to this standard, if only when useful to do so. Perhaps the notion that films must not present "the ugly side" of culture derives from this official statement. On the other hand, the words that follow in the statement instruct films to reflect "the true contradiction in life," which seemingly allows a depiction of conflict, even discord, among unspecified forces. While the CCP could not have been referring to contradictions between, say, that individual and society, nor socialist ideals and the realities of survival, the term "contradiction" does seem to recognize that certain negative ideas should receive treatment.

This official statement can be compared with the CCP's 1956 Hundred Flowers slogan.³⁶³ It is significant that Mao's speech had referred to style, not content. China's 1990s leadership has adhered to this by arbitrary, non-transparent censorship, rather than declaring a particular style to be banned.

362. Hancock, *supra* note 5, at 337 (quoting RENMIN RIBAO, Jan. 17, 1954).

363. The Hundred Flowers phrase derives from the following quote:

Letting a hundred flowers blossom and a hundred schools of thought contend is the policy for promoting the progress of the arts and the sciences and a flourishing socialist culture in our land. Different forms and styles should develop freely and different schools in science should contend freely. We think that it is harmful to the growth of art and science if administrative measures are used to impose one particular style of art or school of thought and to ban another. Questions of right and wrong in the arts and sciences should be settled through free discussion in artistic and scientific circles and through practical work in these fields. They should not be settled in summary fashion.

Mao Zedong, *On The Correct Handling of Contradictions Among the People* (Feb. 27, 1957), in 5 SELECTED WORKS OF MAO TSE-TUNG 408 (Foreign Languages Press, 1977).

Perhaps then, one could argue that today's leadership in China has taken content standards even further toward the unattained extreme than Mao's leadership. The films made in compliance with the 1954 guidelines may illustrate the proper interpretation of the guidelines. For example, the studios made "features and documentaries on such topics as land reform and liberation, lauding the work of the Communists in overturning corruptions of the old order."³⁶⁴ Herein may lie the seemingly different interpretations of the early guidelines. Films could depict the old order in a negative light, but must depict the contemporary order in a positive light,³⁶⁵ or at least in a way that does not constitute a backhanded criticism of the current regime.³⁶⁶ Just as Mao-era films had to show the communist revolution in a positive light, now films must show post-liberation China in a positive light.

As an example of suspected backhanded criticism, the censors may have found Chen Kaige's depiction of 1920's China disagreeable in his film *Temptress Moon*. Comparisons have been drawn between China of the 1920s and China of the 1990s.³⁶⁷ Although Chen has asserted that the opium craze depicted in *Temptress Moon* is "just a symbol"

364. Hancock, *supra* note 5, at 337, 338.

365. This interpretation would be consistent with the Constitutional provision that exercise of rights may not infringe upon the interest of the state. P.R.C. CONST., art. 51 (1982).

366. The well-known Chinese opera, "The Peony Pavilion" was censored for containing such backhanded criticism of the Manchus. When the Manchus assumed power and established the Qing Dynasty (1644-1911), they banned two acts in the opera because they were interpreted as disrespectful of the Manchus. The disrespect took an indirect form. The Peony Pavilion's story was set in the Song Dynasty during the Mongol invasion. The play portrays the invading Mongols as licentious, mutton-eating buffoons. It has been suggested that by setting the opera during that period, author Tanzi Xianzu was warning his Ming government to beware the Manchus, who would overthrow the dynasty in less than 50 years. Thus, to an audience of Tang's day, the derogatory portrayal of the invaders would have implied criticism of the Manchus. To this day, the music for seven arias remains missing. See ASIAN WALL STREET JOURNAL, Jan. 23, 1998, at 9.

367. For example, according to Chen Kaige, "China and Shanghai in the '20s are very similar to China and Shanghai in the '90s." Gary Dretzka, *Against the Wall: Chinese films can't break through Chinese censorship*, CHI. TRIB., June 22, 1997, Arts & Ent., §7, at 6.

representing the poisons that erode cultural traditions,³⁶⁸ he has also admitted that he does indeed use history “as a mirror to reflect what’s going on now . . . Shanghai is booming, just as it was in the ‘20s, when there was corruption, prostitution . . . (and) life was barbaric but full of vitality.”³⁶⁹ Thus, one may infer that the censors probably deemed his film a warning against the direction China’s government is leading the country.

Contemporary themes—especially pointed social commentary, which have always been difficult to get made and distributed—are frowned upon by the censors. One response to this storyline censorship has been to mask political messages in seemingly benign story lines,³⁷⁰ but often the censors catch on to such gimmicks, though not necessarily at the script approval stage.

Overt sexual themes are out as well.³⁷¹ A number of films have been censored or banned because of their sexually explicit themes. For example, one of Best Actor Ge You’s films, *Relations Between Man and Woman*,³⁷² got chopped by the censors, due to what an official circular called the film’s “delight in showing ugliness.”³⁷³ Although this film’s title rather bluntly suggests some sexual content, the titles of other films condemned by the circular suggest benign, if not bland subject matter, such as *How Steel is Made*,³⁷⁴ directed by Tian Zhuangzhuang, and *Rice*,³⁷⁵ directed by Huang Jianzhong. The censors apparently dislike these films because they eschew

368. Guthmann, *supra* note 51, at 58.

369. *Id.*

370. Some filmmakers in other communist regimes made such subversion into an art in itself. For example, in Eastern Europe filmmakers “developed elaborate codes and extended parables to conceal subversive political messages.” Hence nice musicals and love stories were actually political statements. Bruni Burres, director of the Human Rights Watch International Film Festival, *quoted in* Lehrer, *supra* note 173, at 14.

371. See Havis, *supra* note 87.

372. *RELATIONS BETWEEN MAN AND WOMAN.*

373. Eddie Rivera, *Asiamania: Asian Major Leaguers*, TRANSPACIFIC, Mar. 1996 available in 1996 WL 136447755.

374. *HOW STEEL IS MADE.*

375. *RICE.*

depiction of an "exemplary communist lifestyle" in favor of rawer depictions of sexual promiscuity and drug addiction.³⁷⁶

Some sexually-themed films, however, do make it past the censors. For example, a strong undercurrent of eroticism runs through the 1995 mystical drama *Warrior Lanling*. A "bloody raw tale of magic in ancient China," the film contains suggestions of incest, rape and murder.³⁷⁷ For this reason, it is surprising that the film made it past the censors. Usually trumpeted as a fully-fledged Shanghai Film Studios Production, perhaps the fact that *Warrior Lanling* was financed by a U.S. company (Vanke) and directed by an expatriate Chinese (Hu Xuehua) facilitated its smooth sailing.³⁷⁸

A better-known example of the censors making allowances for allusions to sex in film is Chen Kaige's 1993 film, *Farewell My Concubine*,³⁷⁹ which strongly alludes to a gay relationship between two young members of a Beijing Opera Troupe.³⁸⁰ Subjected to torturous training in their Beijing Opera troupe, the two young performers grow into celebrated stage partners onstage and intimate friends offstage.³⁸¹ Although the censors held up the film's release until some "minor editing" had

376. An official film produced for the Beijing Film Studio, *How Steel is Made* features a young worker who pursues a debauched life in a rock and roll band. The film had to be cut several times before the censors would approve it. "The final version still makes some kind of sense, but there is a feeling that something exceptional was destroyed." Nonetheless, drugs, booze and sex abound in the movie. Audiences appreciate it, as one student remarked after a Shanghai screening, "It was nice to see a film that was really about modern life, rather than another historical epic." Havis, *supra* note 176.

377. *Id.*

378. *See id.*

379. *Farewell My Concubine* won the 1993 Palm d'Or at Cannes. *See* Erika Milvy, *Four New Collaborations*, S.F. CHRON., Nov. 28, 1993, at 21.

380. Chen cleverly increased audience curiosity about his film by casting pop music superstar Leslie Chang as one of the two young protagonists. For some time, Chang's suspected homosexuality had titillated fans, so his participation in *Farewell My Concubine* was a major selling point. *See* Lau, *supra* note 229, at 16. Thus as a commercial product, *Farewell My Concubine* attracts audiences by using Beijing opera to arouse nostalgia, and homosexuality to arouse curiosity. *See id.*

381. *See id.*

eliminated certain scenes, this film was not banned,³⁸² and the final version leaves no question as to the boys' relationship.

One reason the homosexual content was tolerated by the censors is historical. Because it is common knowledge that homosexual practices did take place in opera troupes, the film's treatment of homosexuality was considered acceptable in its historical context, even though gays are not accepted in mainstream Chinese society. Another reason is more strategic: the authorities may have decided that good politics trumps social taboo. The censors were willing to overlook the gay content because the film's theme was consistent with the current ideology. The film subtly endorsed the direction China's government has led since the Cultural Revolution. The three-hour melodrama spans China's precommunist era to the Cultural Revolution, and depicts the torment directed at intellectuals and artists by Party fanatics.³⁸³

Whereas the Cultural Revolution had called for a life of sacrifice in accord with a pure patriotic ideology, the Deng administration sought pragmatically to reverse the national non-productivity wrought by the Cultural Revolution. The scene in *Farewell My Concubine* that reflects this reprioritization features the actor who played the female performing for the invading Japanese in order to save his friend. Because Beijing Opera embodies Chinese nationalism, performing for the enemy carries major implications of national betrayal. In this way, the film emphasized the self-interest of two individuals over national affairs, much as Deng emphasized lifestyle improvement at the individual level over concern for national politics.³⁸⁴ *Farewell My Concubine* was

382. Guthmann, *supra* note 51, at 58.

383. In one scene, a crowd of interrogators screams, "Sweep away all cow demons and snake spirits," as the film's leading man betrays his lover and childhood friend. "Reveal the true face of the class enemies! Uncover the black gangs!" *FAREWELL MY CONCUBINE* (Tomson Films 1993).

384. The film has been criticized on this point. Some claim that this scene not only "trivializes one of the most horrific wars of resistance that the Chinese have fought against invaders," but also distorts history because the actor upon which that female role was based did refuse to perform for the Japanese, and even grew a mustache to make his intentions clear. See Lau, *supra* note 229, at 16. In addition, some within the Chinese intellectual community became critical and suspicious of Chen and this film for joining the move toward the commercial

screened for U.S. Secretary of State Madeline K. Albright when she visited China this spring.³⁸⁵

The authorities are rumored also to be cracking down on film violence. Three weeks after implementing censorship of the Internet in September of 1996, China's authorities took another swipe at the film industry as well, by warning the public about unwholesome movies as well as television programs.³⁸⁶

Other scripts particularly subject to scrutiny include any movie about famous Chinese personalities.³⁸⁷ Such scripts are not prohibited per se, of course, because the leadership encourages films that celebrate certain good comrades. However, the censors look closely at portrayals of well-known figures, in order to ensure political correctness, if not historical accuracy. Indeed, personalities that fit well with current political priorities will be most favored by the censors.

For example, the 1997 *changbiao* movie *Zhang Qian*³⁸⁸ portrays a Chinese historical figure who played a key role in the economic and cultural East-West interchange. Called the "Chinese counterpart" to Marco Polo and Matteo Ricci,³⁸⁹ Zhang Qian is credited with having started the Silk Road during the Western Han Dynasty (206 B.C.-A.D. 24). This film about Zhang Qian probably received early and enthusiastic approval because it reflects China's pride about an historical figure who shaped early international commerce. Jiang's administration has demonstrated hostility toward Western

mainstream. By then, however, such criticism sounded increasingly like isolated, academic grumbling as almost all filmmakers took stock of the reality of the bottom line and made various efforts to adjust and adapt. See Zha, *supra* note 9, at 147.

385. Lewis Dolinsky, *Notes From Here and There*, S.F. CHRON, May 6, 1998, at C2. Chen showed Albright around the Beijing Film Studio. When their conversation turned to the U.S. blockbuster, *Titanic*, Albright reportedly said twice that she thought it was a terrible movie, and Chen said he did not like it, either. See *id.*

386. See Havis, *supra* note 87.

387. *Censors and Sensibility: Cuts to Historical Film Wound Hong Kong Director*, WASH. POST, June 5, 1997, at C11.

388. ZHANG QIAN (1997)

389. Zhu Linyong, *Film Hails Zhang's Brave Mission*, CHINA DAILY, Feb. 26, 1998, available in 1998 WL 7594308.

domination of both trade and culture, so celebrating a figure such as Zhang Qian gives China an opportunity to reclaim its formative role in international trade.³⁹⁰

Notably, the film was adapted from an historical "novel,"³⁹¹ which indicates embellishment and fictionalization of historical events and people. The censors apparently cared less about a historically accurate portrayal of Zhang Qian, than about the example of the ideal manufactured by the film, as embodied by the director's description, which echoes party-line praise of many other films: "This film is a eulogy to the noble spirit of ceaseless struggle for success despite difficulties and obstacles."³⁹² Even more illuminating is one film critic's remark: "We do not know what Zhang was really like, but we feel that he should be the type depicted in the movie."³⁹³

The censors took a somewhat similar approach to *The Sisters Three*.³⁹⁴ Completed in 1995, the film was submitted for censorship in China. Even though the film is Hong Kong-made, all films shot in China must obtain a release permit from China's censorship board.³⁹⁵ After holding on to the film for a whole year, the censors returned it—less eighteen minutes of film.³⁹⁶ Director Mabel Cheung complained that the cuts were to major scenes, and therefore greatly harmed the movie's overall balance.³⁹⁷

Eight minutes were cut out of a sequence in which Chiang's wife, Meiling, makes a solo voyage to Xi'an to save Chiang after his capture by communist warlords.³⁹⁸ In this

390. A review of *Zhang Qian* in the *China Daily* takes the opportunity to list the innovations China exported along the Silk Road: "silk cloth-making, smelting, well-digging, and peach and pear tree-planting techniques, as well as its four great inventions—printing, pepper-making, compass and gunpowder." *Id.* "Zhang also introduced acupuncture and moxibustion to the Huns." *Id.*

391. The movie was adapted from "Envoy Who Created the Silk Ribbon of the Earth" by Wang Xiangyu and Li Shengyi. *See id.*

392. *Id.* (quoting Wang Xingjun, director of *Zhang Qian*).

393. *Id.* (quoting Film critic Li Erwei).

394. *THE SISTERS THREE*.

395. *See* 1996 Film Regulations, *supra* note 148, art. 22.

396. *See Censors and Sensibility*, *supra* note 387.

397. *See id.*

398. *See id.*

scene, Meiling was the only woman in a conference room, negotiating with "all these male chauvinist warlords," according to Cheung.³⁹⁹ The censors seemed to have an historical squabble with that scene, because they felt it was inaccurate to depict Meiling as having saved Chiang.⁴⁰⁰ This decision, according to Cheung, would have been made by the Important Issues Committee.⁴⁰¹ As an element of this historical interpretation, Cheung hints that the censors took issue with the rather feminist portrayal of a strong, independent Meiling.⁴⁰² "The authorities didn't like the portrait of Soong Meiling growing from a young girl to a very mature and independent woman—a powerful politician who helped Chiang, her husband."⁴⁰³

Aside from that particular scene, Cheung believes the censors had a political/historical squabble with the film as a whole.⁴⁰⁴ Traditionally, films about Chiang Kaishek treat him as a two-dimensional class enemy because he was the leader of the Nationalist Party "which fought the commies for a long time in the '30's."⁴⁰⁵ In contrast, Cheung approached Chiang's character in a more balanced way, as three-dimensional human with thoughts, feelings and a personal life.⁴⁰⁶ Thus, much to Cheung's chagrin, she discovered that China is quite particular about how its national enemies are depicted.

The censors cut another ten minutes at the end.⁴⁰⁷ In that scene, the two younger Soong sisters escaped Japanese attackers by jumping out of a plane.⁴⁰⁸ As they fall, sharing a single parachute, their lives flash before their eyes.⁴⁰⁹ The censors gave no reason for this cut. "I've been trying to think what was wrong with this ending," commented Cheung, "Some

399. *Id.*

400. *See Censors and Sensibility*, *supra* note 387.

401. *See id.*

402. *Id.*

403. Tan, *supra* note 305.

404. *See id.*

405. *Id.*

406. *See Censors and Sensibility*, *supra* note 387.

407. *See id.*

408. *See THE SISTERS THREE*, *supra* note 394.

409. *See id.*

said that it's not true, [that] it never happened, but many of the things in my film never happened."⁴¹⁰ Again, this suggests historical squabbles, and that perhaps the censors were willing to overlook a certain number of historical inaccuracies, but not particularly exaggerated or romantic ones, as Cheung admitted the ending might have been.⁴¹¹ If her suggestion that "[m]aybe they thought it was too romantic," is accurate, it indicates that the censors were concerned about believability.⁴¹²

The executive producer of *The Sisters Three*, Raymond Chow, who is also chair of Golden Harvest, commented that the cuts may have been made because the version submitted differed from what the censors thought the film would be like after only reading the script.⁴¹³ "Reading the script, every reader forms his own visual version of the picture. But [later] when a picture is well-made, it's a lot more dramatic and a lot more powerful, so I can understand that the cut scenes were quite different from what the censors anticipated originally."⁴¹⁴ If this is the case, then the censors' motivation was apparently no more sinister than their attempt to make the film conform to their own ideas about the script.

Notwithstanding these speculations as to why particular cuts were made, a couple of external factors likely played a role in the censorship process. First, personnel at China's film bureau had changed between the original script approval in 1993 and the film's completion and submittal for censorship in 1995.⁴¹⁵ The new censors had different instructions and agendas: they were reportedly "hard-liners loathe to allow any positive depiction of the Chiangs."⁴¹⁶ Second, the long turnaround time during which the film and filmmakers were at the mercy of the censors caused the film's release date to coincide

410. *Id.*

411. *See id.*

412. *See id.*

413. *See Tan, supra note 305.*

414. *Id.*

415. *See Censors and Sensibility, supra note 387.*

416. Betsy Sherman, *An Epic Struggle for Chinese Epic*, BOSTON GLOBE, Apr. 14, 1998, at C2.

with the Hong Kong handover. Neither the director, Mabel Cheung, nor Golden Harvest Chairman and the movie's executive producer, Raymond Chow, admit to having timed it that way.⁴¹⁷ According to Chow, the timing "had nothing to do with the handover."⁴¹⁸ Cheung's denial is somewhat more disturbing. According to her, the film release's coincidence with Hong Kong's handover was merely "an act of God."⁴¹⁹ Although this comment was probably made for the public record, so as not to incur the wrath of China by admitting purposeful timing, the tone suggests resentful satire of China's film authorities.⁴²⁰

The Chinese censors have not demonstrated an affinity for historical accuracy in movies. Domestic award-winning director Song Jiangbo's film *Lighthouse Keepers* ambitiously spans five decades of China's post-liberation history, but in doing so glossed over some very difficult times.⁴²¹ This flaw in the film, according to one critic, "threatens the authenticity of the story. For example, the film does not give enough space to showing how the lighthouse keepers stick to their principles in a society [that] is becoming more and more commercialized."⁴²² The very reason the reviewer criticized *Lighthouse Keepers* is probably the reason the censors approved the film. The authorities only allow positive treatments of China's modern, communist history, because they view any critical social commentary as a condemnation of the central government. Thus the harmoniousness of *Lighthouse Keepers* not only facilitated approval by the censors, but also got the film into an official English-language newspaper review. Because the leadership promotes the most positive elements of China's

417. See Tan, *supra* note 305.

418. *Id.*

419. *Id.*

420. U.S. distributors have manipulated release dates of Chinese films, as well. For example, Miramax held up the U.S. release of Zhang Yimou's *Temptress Moon* until 1997 in an effort to capitalize on the Hong Kong transition. See Dretzka, *supra* note 367.

421. LIGHTHOUSE KEEPERS (Changchun Film Studio 1998).

422. Zhu Linyong, *Deep Drama in Lighthouse*, CHINA DAILY, Mar. 12, 1998 (last visited Apr. 8, 1998) <<http://www.chinadaily.net/cndy/history/d9-198.b26.html>>.

culture to foreigners, films and other arts that show up in the *China Daily* tend to be the most benign and free of political viewpoints.

While China seeks to downplay official political content of its films to foreigners, it actively encourages political content to its film industry.⁴²³ By way of example, the official in charge of the nation's political content in general, Minister of Propaganda Ding Guang'en, attended the 1996 Changsha film conference.⁴²⁴ His presence at a film conference demonstrates the acknowledged influence of the Propaganda Department in Chinese filmmaking, and thereby explains the censors' justification and mandate to require certain types of content.

At the meeting, Ding declared "Chinese movies should be rooted in the country's history and reality."⁴²⁵ His statement may well constitute the informal guidelines for acceptable Chinese films. For the last decade or so, authorities have censored most films and filmmakers who color outside the lines of safely-past history, mundane day-in-the-life depictions, and congratulatory celebrations of social progress.⁴²⁶ The past is a favored setting for films, according to Zhang Yimou, because "it is easier to get them through the censorship process if they have an historical theme."⁴²⁷ The emphasis on history and reality leaves room for neither aspirational nor progressive politics. Any progress to be addressed should be that of past accomplishments, rather than present recommendations.⁴²⁸ So filmmakers discovered

423. *China Plans 50 Blockbuster Movies*, XINHUA ENGLISH NEWswire, Mar. 27, 1996, available in 1996 WL 9726169. 200 film artists attended this meeting, along with State Councillor Li Tieying. See *id.*

424. See *id.*

425. *Id.*

426. See Harding, *supra* note 181.

427. *Id.* The authorities' affinity for period-films has created certain problems such as costuming crises, because ancient costumes often must be hand-sewn, which is very expensive and time consuming. Relief for this and other problems has come in the form of regional leasing companies that serve as support facilities for film companies. These firms develop film, lease movie sets, and provide special effects experts, costume and set designers, as well as information and promotional services. See Zeng Xixing, *Calls for the Construction of a Film Production Base in China*, BEIJING REV., July 29-Aug. 4, 1996, at 31.

428. Telephone interview with Luo JianFan, formerly a playwright with the

that the safest time period in which to set their films was the pre-communist era.⁴²⁹ "[S]hooting films set in the pre-communist era . . . provided political safety."⁴³⁰ Hence the 1980s and early 90s proliferation of Chinese films reaching back to the 1940s or earlier.

"If you drew your vision of China from the Chinese films that make it onto foreign screens, you might think that the country never progressed into the modern era."⁴³¹ Marketing plays a role in this preference, as well, because investors want the films to sell well abroad.⁴³² Foreign audiences feel a film is more "Chinese" when it is filled with exotic representations of "old" China.⁴³³ Accordingly, sets resembling the Forbidden City and actresses dressed in silk *qigong* gowns make for high box office earnings abroad.⁴³⁴

By setting their stories in decades and centuries past, however, filmmakers cannot necessarily please the censors. For example, Chen Kaige and Zhang Yimou have each been criticized by the Chinese authorities for pandering to Westerners' appetite for China's feudal-era decadence.⁴³⁵ Thus filmmakers are not allowed to be critical of either past or

China Youth Art Theatre in Beijing (May 9, 1998). This precedent may actually have been set back in the days of the Cultural Revolution. A play called *Hai Rui Dismissed from Office* [*Hai Rui Ba Guan*] has been credited with compelling Mao to embark on the anti-rightist campaign, and the subsequent Cultural Revolution. Set in the late Qing Dynasty, the play is about a member of the emperor's court who resigned to protest the emperor's corrupt ways. The emperor asked him to continue serving because Hai Rui was such a good, loyal representative of the emperor's court to the people. Meanwhile, Mao was about to unfold his anti-rightist movement in order to dismiss his Minister of Defense, Peng De Huai. Peng had sharply criticized Mao's communes after seeing people suffering in the countryside.

429. See Zha, *supra* note 9, at 147.

430. *Id.*

431. Richard James Havis, *Casting Light on Today: A Chinese filmmaker dares to move on*, ASIaweek, Aug. 30, 1996, available in 1996 WL 11653176. Commenting on the Fifth Generation directors' affinity for films set in past eras, Chen Kaige has said, "We have lost our culture, so contemporary life is quite boring." *Id.*

432. See *id.*

433. See *id.*

434. See *id.*

435. See Anthony Kuhn, *Movies: Epochal Ruler, Epic Treatment*, L.A. TIMES, Jan. 4, 1998, at 26.

present regimes. The censors want films to draw parallels neither between past and current excesses nor past and current repressions.⁴³⁶

Tian Zhuangzhuang's 1994 film *Blue Kite* must have been deemed too close to the present, especially because it is set during the Cultural Revolution. A "personal and subtle portrait of growing up during the Cultural Revolution," *Blue Kite* was immediately banned by Chinese censors,⁴³⁷ and probably helped inspire the blackout on Cultural Revolution themes.⁴³⁸ In the summer of 1996, the government issued a series of twenty prohibitions.⁴³⁹ While most of these

436. Chen Kaige has observed, "There's a dilemma now in China: We don't want to go back to the decadence and corruption of that time, but we also don't want to return to the repressive period of Mao Tse-tung." Dretzka, *supra* note 367.

437. Zha, *supra* note 9, at 147.

438. An earlier admonition against discussion of the Cultural Revolution occurred in 1981, when the Party's Central Propaganda Department issued document No. 7, advising writers not to write too much about the Cultural Revolution. Then in 1985, Deng Liqun, the authoritative leftist ideologue and secretary of the Central Party Secretariat at the time, banned a book called *History of the Ten Years of the Cultural Revolution*, co-written by Yan Jiaqi and Gao Gao. The following year, a proposal for the establishment of a "Cultural Revolution Museum" was flatly rejected by the Party Central. The suggestion was set forth by Ba Jin, author of the well-known novel *Jia* and who was otherwise respected by the authorities. Various dictionaries and encyclopedias of the Cultural Revolution were compiled after 1987, but none was allowed to be published. See Jin Dabai, *What Are They Afraid Of?*, CHINA FOCUS, June 1, 1996, available in 1996 WL 11751441.

439. These prohibitions were translated by Chu May, and are listed in Zhong Yanbo, *The Increase in Ideological Control*, CHINA FOCUS, July 1, 1996, available in 1996 WL 11751485. Several of the prohibitions sought to gag the press on topics of China's economy, leadership, ideology, racial conflicts, or election year reporting:

1. Discussion and follow-up reports on hot topics among the people concerning the economy and society are not permitted;
2. Discussion and debates on the systematic reform of the domestic economy, especially on the reform of the state-owned sector, are forbidden;
5. The study of traditional Chinese culture and philosophy must be closely watched. Any intention of substituting Marxism, Leninism, and Mao Zedong Thought with Confucianism must be severely prohibited;
6. All newspapers and broadcasting stations located in Beijing and most provincial centers are forbidden to relay reports of racial confrontations in the border areas in order to avoid negative impacts on readers;
7. The international hot topics about this "election year" should not be

prohibitions targeted the press, a couple of them referred specifically to film.⁴⁴⁰ Prohibition Number Three stated: "All articles and books about the Cultural Revolution are not to be published; films about the Cultural Revolution are also forbidden."⁴⁴¹

Particularly with the publication of these prohibitions, some said the government's current degree of control over expression, production and publication in 1996 was nearing the level of the Cultural Revolution.⁴⁴²

This prohibition helps explain the otherwise mysterious banning of Zhang Yimou's 1994 film, *To Live*, depicting the life of an ordinary couple during the Cultural Revolution. What the leading clique of the Central Communist Party is afraid of, apparently, is waking up the forces of protests that had been silenced during the Cultural Revolution, and that pose a threat to the present regime. "The specters of those opposed to the regime during the Cultural Revolution are still haunting China. This makes the rulers immensely nervous."⁴⁴³

The other relevant prohibition forbade themes of individualism.⁴⁴⁴ Prohibition Number Four states:

Any portrayal of individualism is not permitted in literary works, including TV films, short stories, and novels. Reversals of conclusions and verdicts on political events and personages in history already made by the party are strictly forbidden;⁴⁴⁵

followed. When reporting on this topic, emphasis should be placed on the scandals that have occurred during the electoral process so that the readers can fully understand the hypocritical side of Western democracy; 8. All Party papers are not allowed to publish contributions from freelance writers without first being reviewed by the censors or without permission from the Party Committee in charge.

Id.

440. *See id.*

441. *Id.*

442. *See id.*

443. Dabai, *supra* note 438. As another example, Director Li Shaohong avoided the Cultural Revolution in his film *Rouge (Hongfen)* by going back one decade earlier to the 1950s and focusing not on reform-through labor, but on reforming of prostitutes. *See id.*

444. For a more complete list of the prohibitions, *see* Yanbo, *supra* note 439.

445. *See id.*

By declaring such a prohibition, the government thereby elevated a cultural norm, a form of *li*, if you will, to the status of a legal directive.⁴⁴⁶ The prohibition also confirmed that any constitutional rights of expression are trumped by the chief goal of the constitution, which is to strengthen the state and promote collective welfare, rather than to protect individual interests against state power.⁴⁴⁷

The prohibition against individualism may have been a further basis for preventing Zhang from accompanying *Keep Cool* to the Cannes Film Festival. Zhang himself has speculated, "I think it's because they didn't like the film: there's too much that's about an individual and his philosophy. It's me expressing myself, and maybe there's too much of me in it, it's too strong."⁴⁴⁸ Indeed, *Keep Cool's* hip slang and surging hand-held camera effects broke with Zhang's pattern of historical, aesthetically pleasing films.⁴⁴⁹ The director's speculation hearkens back to socialist strictures against films that focus on the individual, and particularly recalls the trouble Bai Hua encountered in the early 1980s. If a film is to explore an individual, that character had better be an exemplary communist figure, rather than a street-wise hipster.

Condemnation of individualism in films reflects Maoist teachings. "Since many writers and artists stand aloof from the masses and lead empty lives, naturally they are unfamiliar with the language of the people. Accordingly, their works are not only insipid in language but often contain nondescript

446. Outside the filmmaking context there are penalties for demonstrating excessive individualism, including disciplinary action such as public criticism, written self-criticism, and in extreme cases, transfer to another work unit and even another city. See JUDITH SHAPIRO & LIANG HENG, *COLD WINDS, WARM WINDS* 58 (1986).

447. See EDWARDS ET AL., *supra* note 168, at 27.

448. Joan Dupont, *Zhang Yimou, Keeping Cool in the Face of Censorship*, INT'L HERALD TRIB., Aug. 20, 1997, at 10. Moreover, Zhang suggested that the government's problem with *Keep Cool* stemmed from a sort of personal vendetta against him. "I really believe they feel, like when you see someone, and that person makes you ill at ease . . . They can't think of any specific reason, but they feel uneasy . . ." This observation, however, begs the question of why Zhang and his films made the authorities uneasy in the first place. *Id.*

449. See *id.*

expressions of their own coining which run counter to popular usage."⁴⁵⁰ Though Mao was, of course, speaking generally rather than describing experimental film, his comments would apply even more forcefully to certain highly intellectualized filmmakers of today.

Mao advocated a "mass style," which meant that the "thoughts and feelings of . . . writers and artists should be fused with those of the masses of workers, peasants and soldiers."⁴⁵¹ An artist, to Mao, should not be "a hero with no place to display his prowess," meaning that artists' collection of great truths is not appreciated by the masses.⁴⁵² "The more you put on the airs of a veteran before the masses and play the 'hero,' the more you try to peddle such stuff to the masses, the less likely they are to accept it."⁴⁵³ Interestingly, China's 1990s leadership seems to have adopted this philosophy, and positioned itself as "the masses." Today's octogenarian leaders are the artistic ignorants unwilling to accept filmmakers' nonconformist perspectives. Declaring many films "incomprehensible" and "incomprehensible to the masses," the leaders may as well declare that the films are above their heads.

One might expect the authorities to be more amenable to critical portrayals of the West, because nationalism and unity is less at stake and may even be bolstered by painting Western lifestyles and people as less deserving of emulation, but indeed when it comes to foreign films, they favor films that paint idealized or romantic pictures of the West. This preference probably stems not from an official respect and etiquette toward foreign cultures, but rather from the pragmatic recognition that Chinese audiences would rather pay to see feel-good films than more critical, unsentimental fare. Regardless of the underlying reasons for such a preference, one guidepost for any film's approval in China is that it paints a positive, even rosy picture of its subject.

450. Mao Zedong, *supra* note 2, at 72.

451. *Id.*

452. *Id.* at 73.

453. *Id.*

b. Style

Humor can act as an effective lubricant in helping films ease through the approval process. Satirist Huang Jianxin has lampooned many aspects of contemporary Chinese society, such as bureaucracy in his 1986 black comedy *The Black Cannon Incident*,⁴⁵⁴ and China's newfound obsession with money in his 1993 comedy *Stand up, Don't Bend Over* [*Zhan zhi le, bie pa xia*]⁴⁵⁵ and his 1996 *Signal Left, Turn Right* [*Xiang zu zhuan, wang you guai*].⁴⁵⁶ These film titles alone would seemingly attract consternation from the authorities, as one alludes to guarding against, shall we say, hoodwinking, while the other bluntly highlights the hypocrisy of China's leadership. Despite such frank parody of Chinese society and government, however, Huang's comedies have fared well with the censors. Greasing social and political commentary in humor seems to help films slip through the approval process. Whether this means the censors understand the satire but assume audiences will not, or whether the censors do not understand the brunt of the jokes, is unclear. In any event, "[j]ust keep them laughing" seems the best strategy for keeping censors' scissors still.⁴⁵⁷

Another example of humor as grease for the censorship gears is Zhou Xiaowen's 1994 film *Ermo*, about a woman who sets her sights on owning the largest television in her village.⁴⁵⁸ Even though the film is set in contemporary China and explores the dark side of capitalism, the censors apparently found it non-threatening because it was a comedy rather than

454. *THE BLACK CANNON INCIDENT* (Xian Film Studio 1986).

455. *STAND UP, DON'T BEND OVER* (1993). According to film journalist Richard James Havis: "Huang has a wicked eye for detail and leads his characters through a wicked song and dance as they try to manipulate the system in their favor. Indeed, to watch his films in order would be a lesson in the development of Chinese society over the last 10 years." Havis, *supra* note 87.

456. *SIGNAL LEFT, TURN RIGHT* (1996). Set in a Shenzhen police driving school, *Signal Left, Turn Right* is a comedy about a motley bunch of students, including a heroin addict, a streetwise journalist, and a cell-phone packing entrepreneur, as interested in making a fast buck and currying favor with officials as in passing their tests. See Alison Dakota Gee, *In Praise of Local Heroes: Asia's 10 best films touched the right spots*, *ASIaweek*, Dec. 27, 1996, at 73.

457. Havis, *supra* note 431.

458. *ERMO* (Ocean Film Corp. 1994).

a drama. It is also possible, of course, that the censors who viewed *Ermo* happened to be old-line communists suspicious of current capitalist policies. Whatever the underlying reasons, the authorities did not conclude that *Ermo's* social commentary sufficiently undermined the current regime to merit banning it.

Huang's subsequent experiences underscore this point. While making *Surveillance*,⁴⁵⁹ which is a drama rather than a comedy, Huang reportedly had a lot of trouble with the censors.⁴⁶⁰ As a result, the film makes fewer jabs at modern society than did his previous films. Instead, *Surveillance* focuses on the ailing love life of a security guard forced to spend his nights on a stake-out.⁴⁶¹ Notwithstanding the censorship, *Surveillance* remains a relatively honest drama "by mainland standards."⁴⁶²

2. Film processing

Whereas in the past, foreign companies often used labs in Japan to process their film, under the 1996 Film Administration Regulations (Article 22), all film processing of movies shot in China, whether the film was shot by state studios or co-productions, must take place within China.⁴⁶³ Moreover, films must be substantially edited within China.⁴⁶⁴

Post-shooting production is a crucial point for censors to interfere with a film; as a result many filmmakers try to structure their project to avoid film processing and editing in China. Chen Kaige managed to do so on his latest project, *The Assassin*,⁴⁶⁵ by virtue of his extensive foreign financing of the film.⁴⁶⁶

459. *SURVEILLANCE* (1996).

460. See Havis, *supra* note 87.

461. See *id.*

462. *Id.*

463. See 1996 Film Regulations, *supra* note 148, art. 22.

464. See *id.*

465. *THE ASSASSIN*.

466. See *infra* notes 327-521 and accompanying text.

3. Approval upon completion

Even after a film reaches completion in the director's eyes, it remains vulnerable to the censors. Films must be approved by the censors upon completion,⁴⁶⁷ and will not be released until the censors have finished, because the censors hold the negatives of the film until they have approved it.⁴⁶⁸ Often films whose scripts were approved before production nevertheless fail to win approval after completion. A financially-based explanation for this pattern has been offered by Tian Zhuangzhuang, maker of *The Blue Kite* and *The Horse Thief*. "They don't care as long as you have production money – in this case, Hong Kong money. Nobody from the government's in charge of what you're doing while making the film. They only interfere after you're finished."⁴⁶⁹

Sometimes the interference even occurs well after the film is submitted for approval upon completion. Zhang Yimou's *Shanghai Triad*, about the 1930s Shanghai crime world, was slated to open the 1995 New York Film Festival but again Chinese authorities prohibited Zhang from attending.⁴⁷⁰ Set in a city of lots of money and lots of people trying to grab it, *Shanghai Triad* tells of a powerful old man "who seems ripe for gangster retirement, but who plans to lord it over everybody for at least another twenty years."⁴⁷¹ It would not have been difficult for the government to perceive the parallels Zhang drew between China's wicked pre-communist capitalism and the wickedness of capitalism in China today, particularly because during production the film crew working on *Shanghai Triad* wore sweatshirts emblazoned with the following words: "What appears bad is not necessarily bad. What appears good is not necessarily good. The whole story takes place in what

467. See 1996 Film Administration Regulations, *supra* note 148, art 23.

468. See Kate Watson-Smyth, *Irons says the US censors of 'Lolita' are as bad as Chinese*, THE INDEPENDENT (LONDON), Sept. 5, 1997, at 2.

469. Lopate, *supra* note 138. Maintaining his sense of humor about the difficulty of getting his completed films approved, Tian has commented, "I'm always lucky when I'm making a film. My only problem is, I waste all my luck during production. When it's time to face the censor, then I have bad luck." *Id.* at 62-63.

470. See Klawans, *supra* note 17, at 11.

471. *Id.* at 18.

seems like the old Shanghai, but it is not just a story of old Shanghai⁴⁷²

Thus anyone on the set, including the usual censors, would have seen this less-than-subtle explication of the film's social comment; if the censors missed the point while reading the script, Zhang and his crew seemed all too willing to spell it out for them. Given such an explanation, the authorities may have rightly assumed that audiences would catch on that the decadence of the 1930 looked remarkably like the decadence of today. In turn, the authorities feared, viewers might be compelled to ask: "Why did we have the revolution?"⁴⁷³ Because this is one question the Chinese government does not want posed, this may be one reason the authorities seemingly turned against Zhang between script approval and the New York Film Festival.

The fact that the censors did not shut down Zhang's production when they spotted the sweatshirts illustrates how the authorities prefer to employ subsequent punishment to prominent filmmakers, rather than prior restraint.⁴⁷⁴ Subsequent punishment—in this case, banning the director from a film festival—makes a much louder statement both to other directors and to the public, and it also serves as a marketing gimmick. Foreign audiences apparently believe banned films are inherently more controversial and thus more interesting.

Not only are Chinese studio-produced films subject to this post-completion step, but so are films co-produced by foreign companies.⁴⁷⁵ At this stage companies hope for permission to distribute the film, especially outside China.⁴⁷⁶

4. *Taking the film out of China*

After the film has been approved by the censors, filmmakers still must receive permission before they can send the film out of China, and even then only the exact footage

472. *Tempest*, *supra* note 208, at F6.

473. *Id.*

474. See discussion *infra* Part III.A.

475. See Havis, *supra* note 87.

476. See *id.*

approved by the censors can be sent out.⁴⁷⁷ For a number of reasons, many filmmakers hope for this permission, even if it is not accompanied by permission to distribute their films within China. The apparent strategy of many directors is to get their films to foreign audiences first, in the hopes that success abroad will inspire the Chinese authorities to allow domestic distribution.

Zhang Yimou has successfully pursued this strategy with a number of his films, a strategy that has led to fierce debates about the meaning of Zhang's continued success abroad. Both in the mainland and outside, and within both Chinese and non-Chinese intellectual circles, many have wondered "if Zhang owed his popularity to the shrewd marketing of oriental exotica to the West."⁴⁷⁸ The fact that Zhang's films seemed outlandish and looked so different from ordinary Chinese life, yet captured so many foreign prizes and praises, caused some to suspect that his films were made precisely with that aim in mind.⁴⁷⁹ Critics pointed to many "grating inauthenticities" in films such as *Raise the Red Lantern*, and concluded "this kind of film is really shot for the casual pleasures of foreigners."⁴⁸⁰

Raise the Red Lantern came closer than Zhang's earliest films to discernible criticism of the current regime. With its obsessive, claustrophobic symmetries of doorways framing doorways, courtyards leading into other courts, and repetitive patterned tiles, the film exudes control. Such a smothering, fanatical tone is somehow appropriate for a post-Tiananmen massacre film. Indeed, perhaps it was this sense of discipline that made the censors give the film the go-ahead at the screenplay stage—the film matched the renewed dominance the central authorities felt over China's society, and expressed a societal order the leaders felt China needed to prevent distraction from reformist ideals. However, the tone of control was not the image China wanted to export at that point.

477. See *id.*

478. Zha, *supra* note 9, at 146.

479. See *id.*

480. *Id.*

Nevertheless, Zhang's films have been popular both at home and abroad.⁴⁸¹ Generally his films are released abroad first, only later to be released in China. Official bans on *Ju Dou*⁴⁸² and *Raise the Red Lantern* only added to their attraction.⁴⁸³ When shown on Chinese screens, domestic audiences have shown great enthusiasm, elevating actors like Jiang Wen of *Red Sorghum* and Gong Li of nearly all Zhang's films to superstar status.⁴⁸⁴ "With so many young filmmakers striving to emulate his success and the media's tireless coverage of him and his star Gong Li, Zhang emerged as one of the country's susperstars on the pop culture scene."⁴⁸⁵

Some filmmakers do not want their films distributed in China at all. After Tiananmen, for example, many Chinese intellectuals have felt ambivalent toward China's pop culture.⁴⁸⁶ In contrast to a somewhat more aspirational, overtly political, tone of China's 1980's pre-Tiananmen culture, the 1990's have been a more commercial, "mass-audience-oriented, politically ambiguous popular culture."⁴⁸⁷ Thus, as members of the intellectual elite that held sway in the 1980s, some filmmakers feel reluctant to participate in the mass-marketing now necessary to shape general awareness. In other words, they may feel "above all that," and prefer to reserve their creations for more sophisticated circles, including the more cinema-savvy West.

V

Reactions and Responses to Censorship

China's censorship of domestic and foreign films has triggered international criticism and a variety of responses from Chinese filmmakers. China's official response to international criticism of its censorship policies has been

481. See Zha, *supra* note 9, at 146.

482. *JU DOU* (1990).

483. See Zha, *supra* note 9, at 146.

484. See *id.*

485. *Id.* For more on Zhang Yimou and Gong Li, see CHINA TODAY, Jan. 1993, at 55-61.

486. See *id.* at 121-22.

487. *Id.* at 121.

brusque, but the actions of the members of China's film industry indicate that success, persistence, a sense of humor, and a pragmatic willingness to compromise are the best weapons against the censors.

A. International Reactions

China has received strong reactions against its censorship from abroad. In late 1996, forty-one actors, producers, and directors wrote a letter to China's U.S. Ambassador Li Daoyu, expressing alarm at Beijing's ongoing policy of artistic censorship.⁴⁸⁸ Spurred on by China's effort to thwart Disney's release of *Kundun*⁴⁸⁹ by threatening to bar Disney's entry into the Chinese market, the letter referred specifically both to attempted interference in production and/or distribution of non-Chinese films, and to restrictions placed upon Chinese filmmakers, the latter of which twelve were listed.⁴⁹⁰ Indicating that China's warning to Disney was only the latest incident in a persistent effort by the Chinese government to censor the film industry, the letter accused Beijing of attempting "to impose worldwide censorship" on films in or about China.⁴⁹¹ The letter declared "wholly unacceptable" the Chinese government's restrictions on the right of producers, directors, distributors, writers, and others to freely express themselves.⁴⁹² Urging foreign film companies to "actively and

488. The list of celebrities included prominent members of China's film community as well as Hollywood names such as Bernardo Bertolucci, Barbra Streisand, Susan Sarandon, Tim Robbins, Richard Dreyfuss, Richard Gere, and Paul Newman. See Atkinson *supra* note 69, at 40.

489. *KUNDUN* (Disney 1997). The reason China cited for protesting the release of *Kundun* is that they contend the movie glorifies the Dalai Lama, who rose up against communist rule of Tibet in 1959. After the uprising failed, the Dalai Lama fled his Himalayan homeland. His non-violent campaign for autonomy of Tibet won him the 1989 Nobel Peace Prize. Chinese officials also cited the default complaint that the movie interferes in China's internal affairs. See, e.g., *China denies pressuring Disney over Dalai film*, REUTERS NORTH AMERICAN WIRE, Dec. 12, 1996 available in LEXIS, News & Analysis File; Atkinson, *supra* note 69, at 39; Susan Bickelhaupt & Mauren Dezell, *Hollywood heavyweights bear down on Beijing*, BOSTON GLOBE, Dec. 13, 1996, at D2 (A Chinese foreign ministry spokesperson denied that the Ministry had ever threatened Disney).

490. See *China denies pressuring Disney over Dalai film*, *supra* note 489.

491. *Id.*

492. Atkinson, *supra* note 69, at 40.

publicly oppose" all Chinese government efforts to censor films, the letter even demanded that Beijing stop designating which Chinese studios could sign agreements to sign foreign films.⁴⁹³

In response to this letter, China's Foreign Ministry spokesperson Cui TianKai suggested that while Hollywood can make movies of whatever content it wishes, if the content is perceived by Beijing to be "anti-China," the U.S. studios had better be ready to face the consequences of those decisions, such as negative repercussions on a studio's efforts to do business in China.⁴⁹⁴

B. The Response of Chinese Filmmakers and Actors

Filmmakers generally know better than to protest censorship by attempting to confront the authorities with legal arguments. Instead, they pursue production and distribution of their films through more subversive channels, such as diplomacy in the international context, or wait it out or settle for more private venues on the domestic front.

Very few members of China's film community are secure enough in their status to be able to oppose China's censorship without endangering their ability to make films, not to mention their ability to carry on without other trouble from the government. A few, however, are sufficiently well-known internationally that they would probably be well-protected by foreigners should they incur the wrath of the Chinese government. One such person is actress Gong Li, who took advantage of the international fame that shields her by calling for less control on the arts.⁴⁹⁵ Invoking Mao's well-known dictum of letting "a hundred flowers blossom,"⁴⁹⁶ she has called upon the government make it a real policy by easing censorship and taking a more tolerant approach to opening the film industry to producers. The conservatism of the Chinese authorities, she told Hong Kong reporters in Beijing,

493. *Id.*

494. *See id.*

495. *See supra* note 220.

496. *See supra* note 363 for the full quotation from which the phrase "hundred flowers blossom" derives.

depressed the state of the film industry by limiting the variety of subjects permitted in films.⁴⁹⁷

Zhang Yimou is another internationally-prominent member of China's film community who can get away with some criticism—even mockery—of the censorship system. The sweatshirt slogans worn by *Shanghai Triad*'s film crew were a thinly-veiled nose-thumbing at the censors, implying that censors would not understand the film and needed T-shirt slogans as a big hint.⁴⁹⁸ This is probably one of the bolder moves by a filmmaker subject to censorship, and a director of lesser status likely would not have gotten away with such attitude.

Zhang and Gong's actions may indicate a realization that the Chinese authorities, with their often arbitrary bans and censorship, may be engaging in the scapegoating technique colorfully articulated in the Chinese proverb, "Killing the chicken to scare the monkeys." While the authorities seek to enforce a certain level of accountability for high-profile filmmakers whose works and celebrity are known, those very filmmakers are sufficiently well-connected that enforcement measures against them amount to scare tactics aimed at the more subversive directors whose ideas actually could undermine the regime.

Despite the T-shirt incident, it would be inaccurate to categorize Zhang as rebellious; indeed, Zhang's career exemplifies the negotiative approach China takes to filmmaking. From the earliest days of his film career, he had to persuade the authorities to allow him to proceed, step by step. For example, although Zhang passed the entrance test for the Beijing Film Academy when it had just reopened in 1977, he was denied admission because he was 27 and the maximum age for matriculation was 22.⁴⁹⁹ Zhang appealed to Deng Xiaoping's pragmatic, reformist policies by explaining to the Ministry of Culture that the Cultural Revolution had stolen ten years of his life. His appeal succeeded, and Zhang

497. See *supra* note 220.

498. These sweatshirt slogans are quoted in Part IV.B.3, *infra*. See also, *supra* notes 472-476 and accompanying text.

499. See Klawans, *supra* note 17, at 12.

enrolled in the Academy's class of '82.⁵⁰⁰ Thus embarked Zhang on his navigation of politics surrounding the politics and legalities of filmmaking in China.

The price exacted by China's film authorities for Zhang's critical international success with *Red Sorghum* was for Zhang to make his next film a more populist crowd-pleaser. The result was his rarely screened *Code Name Cougar*,⁵⁰¹ a thriller about an hijacked airliner. Strikingly different in style and content from Zhang's earlier and later films, this one looked "like a made-for-TV movie."⁵⁰² Despite its B-grade look and approach, though, this film is significant for its surprisingly overt politics. The hijacked airliner is not just any airline, but a Taiwanese airline. After the airline is forced down on the mainland, the People's Republic agrees to cooperate with Taiwan on a rescue mission. The cooperation is secret, however, and expresses an optimism and agenda that underlying humanity and common goals would reunite Taiwan with mainland China.⁵⁰³

That Zhang would direct such a mainstream propaganda vehicle for the government suggests it was part of a quid pro quo—his end of a deal that would allow him to produce his next artful project. In this way, *Code Name Cougar*'s "pre-Tiananmen theme of reconciliation now seems the most interesting aspect of a production that was probably a potboiler for Zhang, while he negotiated the financing and review-board clearance for *Ju Dou*," Zhang's plaintive, painterly film about oppressed love.⁵⁰⁴

Another example of Zhang's pragmatism is his response to the actions of the Chinese censors who banned his *Keep Cool* from the Cannes Film Festival. Zhang's response was neither to admit defeat and send his film home, nor to object that the Chinese government had trampled his freedom of expression.⁵⁰⁵ Instead, he immediately contacted the Venice

500. See *id.*

501. *Code Name Cougar* (1988). See Klawans, *supra* note 17, at 14.

502. *Id.*

503. See *id.*

504. *Id.*

505. See Dupont, *supra* note 448, at 10.

Film Festival to see if his film could be shown there. "I know that the last thing you should do when dealing with Chinese censorship is to respond with declarations on freedom of expression. My motto has been, get them to let the film out first, make statements later."⁵⁰⁶

In addition to Zhang Yimou, other previously experimental Fifth Generation directors have compromised their once relentless avant-garde standards in favor of more entertaining or acceptable subject matter. For example, Tian Zhuangzhuang had been "one of the most intractable *enfants terribles* of the Fifth Generation."⁵⁰⁷ After making a number of artsy, experimental films in the early and mid-1980s, Tian made *Rock 'n' Roll Kids* (*Yaogun qingnian*) in 1988, reportedly "to prove he was capable of shooting flashy commercial entertainment."⁵⁰⁸ In 1990 Tian returned to safe territory by directing an historical drama, *Li Lianying, The Imperial Eunuch* (*Da taijian Li Lianying*),⁵⁰⁹ a film set safely back in imperial China.⁵¹⁰

The careers of these directors indicate that, given the options of either serving the government with their works or risking chastisement by satisfying their own creativity, the Fifth Generation carved out a third option by learning to navigate back and forth between their own sensibilities and those of the government. The most fruitful filmmakers are not those who adhere to their artistic principles for the sake of an idealized artistic nobility, but those who take a more entrepreneurial approach of savvy give-and-take with the government. The filmmakers who seem most agile at navigating the sea of censorship are those who test the bureaucratic winds, then tack in a direction that best fills their sails.

Another response by some directors to China's strict film censorship has been to learn to work the censorship system in their favor, particularly the system's human element. For

506. *Id.*

507. Zha, *supra* note 9, at 147 (emphasis added).

508. *Id.*

509. LI LIANYING, *THE IMPERIAL EUNUCH* (1991).

510. See Zha, *supra* note 9, at 147.

example, Mabel Cheung, who directed *The Sisters Three*, has noted that the censors' instructions do not always get carried out. When calling for cuts, the censors dictate the designated segments to their secretaries. However, because these secretaries are writing down the instructions, without the use of tape recorders or dictaphones, they have significant control over what gets written down. "So if you are friendly to the secretary, he will conveniently forget to write something, and you don't have to make the change."⁵¹¹

Another savvy director facilitated approval of his film in a particularly creative way. One of the first Sixth Generation directors, movie star Jiang Wen made his directorial debut with *In the Heat of the Sun* (*Yangguang canlan de rizi*)⁵¹², a rite-of-passage story about a Beijing boy and his teenage pals growing up in the mid-1970s. Based on a novel by Wang Shuo⁵¹³ and set during the Cultural Revolution, the film was a prime candidate for censorship trouble due to both the ban on Wang Shuo's works as well as the ban on films and literature about the Cultural Revolution. One reason this film received approval may be that it does not treat the Cultural Revolution directly, but rather uses the political history as a backdrop for the "intense personal drama of adolescent violence and romance."⁵¹⁴ A likely more important reason the censors approved the film, however, was a clever move by the director. During production, Jiang dealt with the on-set censor by

511. Sherman, *supra* note 416, at C2.

512. Aside from the censors, *In the Heat of the Sun* was roundly criticized by local critics for treating the Cultural Revolution too lightly. "The period, they argued, is too painful a memory to serve as the backdrop for a movie about rowdy adolescents." Alison Dakota Gee and Anne Naham, *China has a new breed of writers: They believe in nothing and mock everything*, *ASIaweek*, Aug. 9, 1996, at 38, available in 1996 WL 11652854. Such negative reviews demonstrate the continued ambivalence Chinese society as a whole feels toward the Cultural Revolution. Despite the reviews, however, and thanks mostly to Jiang Wen's star power, *In the Heat of the Sun* opened in China in 1995 to theaters packed with young audiences and "caused such a buzz that some local reporters claimed it was beating imported Hollywood blockbusters in box office returns." Zha, *supra* note 9, at 148.

513. For more details on Wang Shuo's own experiences with the censors, see Teresa Poole, *China's 'Hooligan' Author Falls Foul of the Censor*, *THE INDEPENDENT*, Dec. 15, 1996, at 16.

514. Zha, *supra* note 9, at 148.

soliciting his participation in the film. Jiang gave the censor a role, to "help him understand and stop acting like a policeman."⁵¹⁵ The director's strategy apparently worked, because the film was completed and approved. The censors did hold the film for thirteen months and did require a few cuts. The authorities also stuck to their familiar pattern by subsequently banning Jiang from participating in the 1996 Golden Horse Awards ceremony in Taiwan, where *In the Heat of the Sun* won six awards.⁵¹⁶

These considerable obstacles the government throws in the way of Chinese filmmakers have driven some to leave the country. Chen Kaige, for example, tired of all this apparent control over production and participation in international film festivals, has moved to New York. He does, however, maintain a working relationship with the Chinese film authorities. Due to his good standing, both with the authorities and financially, he has been able to carve out some exemptions for his projects from the censorship rules.

Chen's most recent film, another lavish historical epic titled *The Assassin*, addresses political succession and the corruption born of absolute power by describing Qin Shihuang,⁵¹⁷ a Chinese emperor who reigned in the 3rd Century B.C. Although Chen declined to submit a script for this film to China's Film Bureau, he remains in sufficiently good standing with the film authorities to have received permission to use the state-run Beijing Film Studio's extensive

515. JIANG WEN: *China's hippest director and actor*, ASIaweek, Mar. 6, 1998, at 33, available in 1998 WL 7904991. Jiang Wen's "blend of attitude and servitude," not to mention his fame and considerable fortune in China, has helped him survive the political minefield of China's censorship system. "It's not that Jiang Wen, 35, doesn't test official tolerance. It's just that when he does, it's with a smile." *Id.*

516. See *supra* note 512.

517. In contrast to China's last monarch, "the impotent puppet who could barely feed and clothe himself" described in Bernardo Bertolucci's film, "The Last Emperor," Qin Shihuang was "a classic tyrant whose power and brutality have awed and disgusted Chinese for centuries." He completed his conquest of five other kingdoms in 221 B.C. to become the first emperor to rule over a united China. The dynasty he founded was short-lived but crucial in China's history. Qin Shihuang is credited with many surviving innovations, such as China's earliest bureaucracy, legal codes, highway network rivaling that of the Roman Empire. See Kuhn, *supra* note 435.

outdoor sets.⁵¹⁸ He retains his independence through foreign funding, and foreign investment in this biggest independently financed film ever made in China has allowed Chen to conduct his post-production work outside of China, away from Chinese censors' scissors.⁵¹⁹

Considering *The Assassin's* politically loaded content,⁵²⁰ and considering that Chen could not say whether *The Assassin* would receive approval to be shown in China, he and his investors took a major gamble with this film.⁵²¹ The Sixth Generation filmmakers have responded to censorship "by manipulating the loopholes of the official studio system and obtaining the support of various foreign festivals" in order to carve out a lively film subculture in China.⁵²² They have also documented the difficulties of filmmaking by creating films about the subject itself.⁵²³ Similarly, Han Jianwei shot interviews of numerous directors who told their bleak stories about their censorship experiences.⁵²⁴

VI Conclusion

Having analyzed how Chinese law treats films, a look at how a particular film treats Chinese law seems appropriate in conclusion. Zhang Yimou's 1992 film *Qiu Ju goes to Court* (*Qiu ju da guan*)⁵²⁵ not only exemplifies certain principles and approaches that facilitate film approval in China, but it also provides an interesting metaphor for China's bureaucracy of film oversight.

518. See Gellman, *supra* note 242, at C4.

519. See Kuhn, *supra* note 435.

520. Although some have perceived allusions to Mao Zedong in Chen's depiction of the emperor, the director admitted no such intent. "A film about the revolutionary leader would not be allowed," he said, despite his independence in working on *The Assassin*. Gellman, *supra* note 242.

521. See Kuhn, *supra* note 435.

522. Zha, *supra* note 9, at 148.

523. One example of this type of film is Ning Dai's *Discussions Caused by a Film Being Stopped*.

524. See NPR radio broadcast, *supra* note 174.

525. *QIU JU GOES TO COURT* (Youth Film Studio of Beijing Film Academy 1992).

In this film Zhang broke from his pattern of artful cinematography to create a more documentary-like portrayal of a woman's struggle. Like many of his films, *Qiu Ju* is set in China's rural northeast, but this time in more or less contemporary China. Navigating China's nearly impenetrable legal system in order to avenge her husband's injury, the character Qiu Ju struggles with bureaucracy and inertia.

Despite its critical, relatively straightforward portrayal of China's lack of meaningful legal recourse, this film received a warm reception from China's censors. Even Deng Xiaoping is said to have viewed and approved it.⁵²⁶ This is probably due not to the censors' recognition that the film told truths about China's civil justice system as much as the fact that Zhang kept the mood light and humorous with a jocular soundtrack,⁵²⁷ and perhaps also because the censors accurately forecast that the film would not attract as wide an audience as Zhang's prettier films.⁵²⁸ In any event, the film reached audiences both in China and abroad.

In the end, the character Qiu Ju discovers that her search for justice has changed her, and not necessarily for the

526. See Tempest, *supra* note 208. Such a warm reception by the authorities stands in stark contrast to China's more recent outrage over the U.S. film *Red Corner*, which angered Chinese authorities by portraying China's judicial system as inadequate, corrupt and sinister. Although *Red Corner*'s U.S. star Richard Gere has received much publicity and wrath from China due not only to this film but also due to his pro-Tibet activities, the film's Chinese star Bai Ling risked more worrisome consequences. Mostly her consequences involved isolation, because mainland directors have decided against casting her in movies to avoid any problems from the authorities, and journalists killed stories about her for the same reason. A visiting friend here in the U.S. who contacted the Chinese embassy to locate her was warned not to contact her. Bai Ling did not even tell her family about *Red Corner* because she did not want them to worry, and did not want the authorities to give them trouble. See *A Chinese star risks her country's wrath with 'Red Corner,'* NEWSWEEK, Nov. 10, 1997, at 78.

527. Whether it was Zhang or the censors or both who decided they liked the humor and music of *Qui Ju* so much that it should be emphasized even more in Zhang's subsequent film *To Live* is hard to know, but the film's humor and music probably were instrumental in getting the screenplay past the censors.

528. This was not for lack of a pretty star—in a break from her usual roles, Zhang's favorite actress Gong Li played an unglamorous peasant, padded clothes and all. The film won a Golden Lion at the 1992 Venice Film Festival. See David Robinson, *Sequels to the Glory Days*, THE LONDON TIMES, Sept. 14, 1992, at arts 3.

better.⁵²⁹ The system through which and against which she struggled so hard left its mark on her. China's filmmakers, too, are products of a censorship system that is generally vexing and often impenetrable. In turn some of them react by vexing the authorities, or by expressing their ideas in increasingly impermeable or disguised ways. Or, they learn the give-and-take with the government that is necessary to carry out their projects.

529. See Klawans, *supra* note 17, at 11, 14.