Contextualising the National Anthem Law in Mainland China and Hong Kong

Football as a Field of Political Contention

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Introduction

On 1 October 2017, the National People’s Congress passed a new law that punishes people who disrespect the national anthem. Soon after the law was implemented in mainland China, the Congress then inserted it into the Annex III of the Hong Kong Basic Law in its amendment on 4 November 2017, requiring the Special Administrative Region to apply it “locally by way of promulgation or legislation.” (1) The decision came at a time when Hong Kong football fans, in the wake of the Umbrella Movement in 2014, have been booing and jeering the Chinese national anthem during matches since early 2015. Amplified by a series of criticisms directed at the booing in recent months, the prospect of local legislation has aroused substantial public attention to and long-lasting debate over issues such as freedom of speech, the practicality of law enforcement, retroactive criminalisation, and the potential threats to the city’s rule of law.

Divided into two parts, this current affairs article seeks to contextualise the controversy over the national anthem law and its implications to Hong Kong society. First, it will provide an overview of the history of football rivalry between mainland China and Hong Kong and argue that the football landscape provides a useful perspective that at once nourishes, reflects, and is shaped by the evolving mainland-Hong Kong political tensions. Second, it will analyse the contexts of the legislation and implementation of the national anthem law in mainland China and Hong Kong by comparing the respective societies’ legal frameworks, ongoing legal debates, and people’s attitudes toward the anthem. In doing so, this article will highlight the challenges of law enforcement and promoting patriotism in Hong Kong.

Articulating the football landscape: Sports history, fan culture, and the politics of dis-identification

Citing behavioural psychologists who characterise football as an "extreme form of social bonding," Newson (2017: 1) argues that “the football landscape provides a useful perspective that at once nourishes, reflects, and is shaped by the evolving mainland-Hong Kong political tensions. Second, it will analyse the contexts of the legislation and implementation of the national anthem law in mainland China and Hong Kong by comparing the respective societies’ legal frameworks, ongoing legal debates, and people’s attitudes toward the anthem. In doing so, this article will highlight the challenges of law enforcement and promoting patriotism in Hong Kong.

4. Ibid.
And in response to the unanticipated result, Chinese football fans barred the Hong Kong team from exiting the stadium, leading to a riot known as the May 19 Incident (wuyiju shijian 五一九事件),[9] where “[a]t least 40 people were injured, 25 cars and a dozen buses were burned or overturned, and a nearby subway station was also partially damaged,”[10] and “eventually 127 people were arrested.”[11] Given the event’s severity, Frank Chen states that it was “the first known case of football hooliganism in China’s history.”[12]

Thirty years after Hong Kong’s famous win, another World Cup qualifying match between Hong Kong and China in 2015 was perhaps the next football event that most exemplified the transformation of Hong Kong-mainland relations. Partly due to Hong Kong (145th in Fifa’s world ranking) holding China (84th) in a surprise 0-0 draw in the first match in Shenzhen on 3 September,[13] and with China needing to win the next game “to keep its qualification hopes alive,”[14] the second match at home on 17 November prompted one of the largest displays of community solidarity among Hong Kong people since the Umbrella Movement in 2014. But unlike the violent disturbance in 1985, and apart from some Hong Kong fans booing the Chinese national anthem, holding signs stating “Support Your Own People,” “Hong Kong is not China,” and “Boo,” and chanting “We are Hong Kong” in the stadium,[15] this time public sentiment was further conveyed through community organising in support for the Hong Kong team—and arguably the city in general—beyond the football field.[16] Reacting against the official decision that the game be played at the 6,700-seat Mong Kok Stadium instead of the 40,000-seat Hong Kong Stadium, local citizens unprecedentedly staged a number of public live screenings in various locations across the class divide, including the Western District, Mei Foo, Ngau Tau Kok, Shatin, the campuses of the University of Hong Kong, the Chinese University of Hong Kong, and Hang Seng Management College, as well as Tung Chau Street in Sham Shui Po, where many homeless people live.[17] In the end, Hong Kong held another 0-0 draw against the stronger rival, keeping China from progressing to the next round and delaying the materialisation of President Xi Jinping’s three wishes for Chinese football development voiced in 2011: “For China to qualify for the World Cup finals, host a World Cup, and win a World Cup.”[18]

Other than the games played against China where “only one anthem had to be played before kick-off” (Zuser 2017), the booing and jeering of the Chinese national anthem whenever it is used to represent the Hong Kong team has “become a fixed ritual at every single home game” (ibid) since 2015: from World Cup qualifiers against Bhutan and Qatar,[19] and Asian Cup qualifiers against Lebanon and Malaysia,[20] to friendly matches against Bahrain and Laos.[21] Despite the Hong Kong Football Association (HKFA) being fined twice (CHF5,000 and CHF10,000) by Fifa in 2015 and 2016,[22] and US$3,000 by the Asian Football Confederation (AFC) in 2017 for violating the football governing bodies’ disciplinary codes,[23] such actions did not seem to influence Hong Kong football fans, who have been repeatedly warned about the consequences of their behaviour. And it is anticipated that their anti-mainland sentiments and dis-identification with mainland China as expressed through booing are unlikely to change even after the national anthem law has been locally legislated and enforced.
land China on 1 October 2017. According to the new law, the anthem should only “be sung at formal political gatherings,” such as the Party’s meetings and official ceremonies (e.g., flag-raising and constitutional oath-taking), as well as at important diplomatic and sports events. To ensure the proper use of the anthem, the law bans the playing of the song on occasions that are considered inappropriate such as funerals, “commercial, or as background music in public places,” and would detain offenders “who maliciously modify the lyrics, play or sing the national anthem in a distorted or disrespectful way (…) for up to 15 days, even be held criminally liable.” Deeming the 15-day detention too low a punishment, members of the National People’s Congress voted on and approved an amendment on 4 November 2017 that extended the scope of punishment to “include deprivation of political rights, criminal detention, and imprisonment of up to three years.” In their understanding of the swift change to the law, Chris Buckley and Keith Bradsher of The New York Times suggest that “the move reflects the deepening demands for patriotic devotion that have been encouraged by Xi Jinping, the president and party leader who has made the ‘Chinese Dream’ his signature political theme.”

Prior to the March of the Volunteers (Yiyongjun jinxingqu 义勇军进行曲) becoming the provisional national anthem shortly before the People’s Republic of China was established in 1949 (Chi 2007), it was first featured in the patriotic film Children of Troubled Times (Fengyun Eru 风云儿女) in 1935. With the lyrics written by the famous playwright Tian Han while he was imprisoned for his political activism in Nanjing in 1934, the song “exploits the then-newfangled technical form of the sound film in its effort to mobilize its audience into mass political action” (Chi 2007: 223), such as during the second Sino-Japanese War that broke out in 1937. The song came under attack during the Cultural Revolution, and Tian was imprisoned as a counterrevolutionary in 1966 and died in 1968. Although it was allowed to be sung again after the Cultural Revolution, the National People’s Congress rewrote the lyrics in 1978, replacing Tian’s “explicit thematization of the endangered body and voice” (Chi 2007: 230) with “the formalistic waving of flags and the abstractions of rushing, constructing, defending, and struggling” (ibid.). Failing “to supplant the older lyrics in the minds, hearts, memories, or mouths of many people” (ibid.), the 1978 decision was eventually overturned and the March of the Volunteers finally gained its status as the official national anthem of China in 1982, as well as of Hong Kong after the transfer of sovereignty in 1997.

Other than affecting mainland China, the amendment also inserted the national anthem law into Annex III of the Basic Law, meaning that the Hong Kong government must draft a local law forbidding abuse of the anthem is based on. According to the South China Morning Post (accessed on 7 January 2018), “the law will undermine our freedom of expression and infringe on our education system.” Likewise, legal experts have called into question the practicality of law enforcement. At the level of legislation, Dennis Kwok, a legislative councillor representing the legal profession, has pointed out that it is difficult to implement the law’s content in the city, considering that, for example, the legal framework has no such thing as a 15-day administrative detention. At the level of everyday life, Craig Choy, a convenor of the Progressive Lawyers Group, and Eric Cheung, a law lecturer at the University of Hong Kong, have both argued that it is unrealistic if the law includes a provision that requires people to stand up when the national anthem is heard.

Another issue that the public was most concerned about is whether the law will be applied retroactively, although Article 12 (“No retrospective criminal offences or penalties”) of the Hong Kong Bill of Rights Ordinance states that “[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed.” However, Elsie Leung Oi-sie, the former Secretary for Justice and current Secretary for Constitutional and Mainland Affairs, warned “we might start taking Hong Kong fans’ names to Curb National Anthem Booing, FA Director Says,” South China Morning Post, 8 November 2017, http://www.scmp.com/news/hong-kong/politics/article/2118985/we-might-start-taking-hong-kong-fans-names-curb-national (accessed on 4 January 2018).

21. Xing Bingyin 邢丙银 and Zeng Yaoping 曾雅青, “刑法修正案十表决通过：侮辱国歌情节严重的最高可判三年” (Xingxia xiezhang an shi biaojue tongqiu, wu wu gongjie yiyanhong de zuzuo kepan sanqian, Amendment to the Criminal Law is passed, insulting the national anthem is a serious offense leading to up to three years imprisonment), The Paper, 4 November 2017, http://www.thepaper.cn/newsDetail_forward_1843801 (accessed on 8 January 2018).


23. Ibid.

24. Ibid.


29. Ibid.


31. Ibid.


34. Benjamin Haas, op. cit.


36. Hong Kong Bill of Rights Ordinance (Cap. 383).
Deputy Director of the Hong Kong Basic Law Committee, said that “the city’s Bill of Rights Ordinance does not ban retroactive laws,” (37) and remarked that “if there is large-scale breach before legislation, (...) the Legislative Council has the right to make it retroactive after [the government] submits a draft bill if necessary.” (38) Responding to Leung’s suggestion, which “came as local football fans have been criticised for continuously jeering the national anthem,” (39) Grenville Cross, the former Director of Public Prosecutions and Leung’s top aide while in government, nevertheless dismissed the possibility by saying that “[i]f the proposed national anthem legislation contained a retrospective criminal offence, it would inevitably be struck down by the courts on the basis that it was unconstitutional.” (40) He added that “any suggestion to apply criminal laws retroactively would be inconsistent with an international covenant enshrined in the Basic Law” (41) — such as the International Covenant on Civil and Political Rights (ICCPR). Despite Cross’ assertion, Ronny Tong Ka-wah, a non-official member of the Executive Council, suggested otherwise; he said, “The constitutional status of ICCPR is not as high as the anthem law.” (42)

**Conclusion**

As shown in the above discussion, the ambiguous and somehow unpredictable conversion of the national anthem law from mainland China’s legal context to Hong Kong’s has sparked a controversial series of debates over the potential problems and effects of local implementation. While politicians of the pan-democratic camp and much of the general public in Hong Kong are seen to have a pessimistic view of the local legislation, the process, at the time of writing, is nevertheless only in its early stage and is expected to undergo waves of negotiation among different parties in the coming months. And even if local voices are overwhelmed in the legislative process, the football field will perhaps continue to serve its present function as a site for advocacy and crystallisation of political contention in the foreseeable future.

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**References**


