

Chapter 28

Thursday 4 June 2020

The SAR Government Passes the National Anthem Ordinance (國 歌 條 例 草 案) Reinforcing the Architecture of Two Systems WITHIN One Country

The spectacle grasped in its totality is both the result and the project of the existing mode of production. It is not a supplement to the real world, an additional decoration. It is the heart of the unrealism of the real society. In all its specific forms, as information or propaganda, as advertisement or direct entertainment consumption, the spectacle is the present model of socially dominant life. It is the omnipresent affirmation of the choice already made in production and its corollary consumption. The spectacle's form and content are identically the total justification of the existing system's conditions and goals. The spectacle is also the permanent presence of this justification, since it occupies the main part of the time lived outside of modern production.¹

The situation in Hong Kong is in part driven by gesture. It has provided one of the great spectacles of the first third of the 21st century. Gesture, in turn is not merely an act, but it is an act in time. The spectacle of gesture acquires its power by its timing. Two events of note may be understood for their importance both as gesture and as important elements of the nationalization of the Hong Kong SAR within the "One Country, Two Systems" principle. The first, highly symbolic, was the determination, under cover of COVID-19, to cancel the traditional vigil traditionally held on 4 June. ²

The second, and the object of this essay, was the approval on 3 June 2020 of the National Anthem Bill (國 歌 條 例).³ "The law was passed with 41 votes for and one against. Those who were able to vote were largely from the pro-Beijing camp, as pro-democracy lawmakers were taking part in a noisy last-minute protest that meant they could not vote. "A murderous state stinks forever," they shouted."⁴

¹ Guy Debord, *Society of the Spectacle* (Fredy Perlman and Jon Supak, trans., St. Petersburg, FL: Red & Black, 1977), chp. 1 ¶6; reprinted by Marxists.org; available [<https://www.marxists.org/reference/archive/debord/society.htm>].

² Discussed essay Chapter 27, supra.

³ National Anthem Bill, Ordinance No. 2 of 2020; available [<https://www.legco.gov.hk/yr18-19/english/bills/b201901111.pdf>] (hereafter National Anthem Ordinance).

⁴ Verna Yu, "Hong Kong protesters hold banned Tiananmen vigil as anthem law is passed," *The Guardian* (4 June 2020); available

The deliberations provided a cavalcade of spectacle and the performance of gesture for the ages. The stage was set around a heavily guarded legislative complex (with memories of prior protests starting in June 2019 still fresh in the minds of those orchestrating events within the building. One member of the DAB party (supportive of the position of the central authorities) declared during the course of deliberations that "If lawmakers oppose the national anthem bill, they are violating basic political ethics."⁵ This appeal to political ethics was countered by appeals to the likelihood of arbitrary arrest. "Democratic Party lawmaker Wu Chi-wai said . . . "Are we going to see more and more draconian laws and harsher penalties?" he asked. "We used to have more tolerance and respect for the government."⁶

But the central spectacle of passage was reserved for Eddie Chu and Ray Chan who charged towards Legislative Council (LegCo) President Andrew Leung

holding protest placards reading "Murderous states stinks for eternity," and a container of foul-smelling liquid was dropped on the floor. The meeting was adjourned for several hours whilst police and fire service department personnel carried out an on-site investigation. * * * Upon resumption in a separate room, Leung pressed on with the final vote without allowing remaining lawmakers to speak. Ted Hui from the Democratic Party subsequently marched forward and spilt liquid on the floor before being removed by security.⁷

Together this theater of legislative action provided the appropriate backdrop to the longer term spectacle, the continuous gesture, that is the National Anthem Ordinance. For while the passage of the National Anthem Bill was itself spectacular, the resulting Ordinance is itself the constitution of a living and constant gesture--a gesture of reaffirmation, of the performance of the affirmation of allegiance to a territory and a political-economic order. It is a signal--it is the dynamic representation of the symbol of the state performed by those from which allegiance is required. It is the expression of belonging that augments the semiotics of allegiance represented by flags and

[<https://www.theguardian.com/world/2020/jun/04/hong-kong-tiananmen-vigil-ban-china-national-anthem-bill-protest>] ("The voting took place hastily late on Thursday afternoon after a pause of four hours. An earlier session was suspended after pro-democracy lawmakers Eddie Chu and Ray Chan tried to cause the bill to be delayed by protesting and throwing pungent liquid on the floor" Ibid.).

⁵ Jennifer Cherry and Rachel Wong, "Hong Kong passes law to criminalise insult of Chinese national anthem," Hong Kong Free Press (4 June 2020); available [<https://hongkongfp.com/2020/06/04/breaking-hong-kong-passes-law-to-criminalise-insult-of-chinese-national-anthem/>] (quoting Elizabeth Quat).

⁶ Ibid.

⁷ Ibid.

banners.⁸ Indeed what can be noted about flags has equal applicability in the context of anthems:

What is needed is something far more direct and simple, an object that can serve as a sign, the shared meaning of which produces the incarnation-disembodiment-reconstitution at the heart of identity. A color field is needed that can incarnate the abstract and disembody the physical. A flag is needed through which the collective can become the individual and the individual the collective. What is needed is a standard, a banner, a coded field of color and drawing, that makes the meaning of identity visible.⁹

Its importance then, cannot be underestimated in the transformation of Hong Kong away from its internationalist to a more nationalist allegiance wrapped within the rituals of allegiance. The national anthem is understood as the incarnation of the state, "a symbol and sign of the People's Republic of China."¹⁰ The signification of that sign is expressed through the performance of rituals of respect, dignity and positive affirmance (in this case through playing and singing).¹¹ This meaning making is then mandatory--the law of the rituals of the signification of the state must be structured through the coercive symbolism of law and the performance of the police power of the state.¹² The ends of this meaning making are hardly esoteric or difficult to grasp--through the complex interplay of gesture and spectacle, which enriches, may sometimes serve as a veil of the obvious: the purpose for all of this spectacle is "to promote patriotism."¹³ That is a critical element, one that the central authorities have adopted an "all around" (comprehensive) approach.¹⁴

It is in that context that it is worth considering the passage of the National Anthem Ordinance (the text of which follows below) in the context of the transformation of Hong Kong as an international City, and the premises around which "One Country, Two Systems" will be interpreted going forward well beyond the end of the term of its mandatory term in 2047 under the increasingly irrelevant (within China) terms of the Sino-British Joint Declaration.

⁸ Larry Catá Backer, "Bannermen and Heralds: The Identity of Flags; the Ensigns of Identity," in *Flags, Identity, Memory: Critiquing the Public Narrative through Color*, Anne Wagner and Sarah Marusek, eds. (Dordrecht: Springer 2020).

⁹ Ibid.

¹⁰ National Anthem Ordinance, supra, Preamble (1).

¹¹ Ibid., Preamble (2).

¹² Ibid., Preamble (3) ["Ordinance is to be enacted to preserve the dignity of the national anthem, to regulate the playing and singing, the broadcast and the use of the national anthem, to enhance citizen awareness of the People's Republic of China"].

¹³ Ibid.

¹⁴ See discussion essay Chapter 25, supra.

The National Anthem Ordinance runs 23 pages (and follows in full below). That itself is a telling gesture--the weight of the document suggests the weightiness of the matters it covers. Size, in this case, matters. The physical extent of the Ordinance serves as an objectification of its importance. It consists of 6 parts, a Preamble, and three schedules. Beyond its semiotics,¹⁵ the Preamble is simple and direct--the national anthem as a symbol of the singular state, gives rise to both positive and negative obligations. *The positive obligations* are to sing the national anthem at appropriate occasions as directed now by statute. *The negative obligations* are to avoid acts of disrespect against the symbol that will now be taken as disrespect for the state.

Part 1 provides basic definitions of key terms. Defined are concepts such as "national anthem" and "national flag."¹⁶ Both lyrics and score are set forth in Schedules that are quite precise. There is a history here that echoes the turbulence of the early era of the history of the People's Republic of China. The "March of the volunteers" was adopted in 1949 with the establishment of the current government and political system. However, it was suppressed during the Cultural Revolution, and, when restored in 1978, it reappeared with a new set of lyrics. The original lyrics were restored in 1982.¹⁷

Part 2 focuses on the playing and singing of the national anthem. It provides an official recording for popular use and references the standard score.¹⁸ It details anthem etiquette, and specifies the occasions when it is to be played. Lastly it imposes a "principle of dignity" respecting both playing and singing.¹⁹ The question of the mechanics of offense to dignity (and the power relations it reinforces) remains to be developed and applied. More to the point, perhaps, to some extent the "etiquette" rules²⁰ provide a conduct baseline for judging dignity. The performance of respect, however, is the critical element of this regulation.

Part 3 specifies the offenses for breaching the responsibilities set out in Part 2. It prohibits citizens from using the national anthem in certain settings, such as for commercial purposes, at private funerals, or as background music.²¹ It also bans citizens from insulting

¹⁵ Text and notes 10-14, *supra*.

¹⁶ National Anthem Ordinance, *supra*, Part 1 §2(1).

¹⁷ Tim F. Liao, Gehui Zhang, and Libon Zhang, "Social Foundations of National Anthems: Theorizing for a Better Understanding of the Changing Fate of the National Anthem of China," *Journal for the Theory of Social Behavior* 42(1):106-127 (2012).

¹⁸ National Anthem Ordinance, *supra*, Part 2 §4.

¹⁹ *Ibid.*, Part 2 §3 ("The national anthem must be played and sung in a way that is in keeping with its dignity")

²⁰ *Ibid.*, Part 2 §4 (stand solemnly, deport oneself with dignity, avoid disrespectful behavior).

²¹ *Ibid.*, Part 3 §§6(1)-(2).

the national anthem in any way, such as altering its lyrics or singing it in a distorted way. The National Anthem Ordinance makes it clear that it is for the state to control the spectacle of Anthem performance; there is very little space for popular "ownership of the National Anthem--the national anthem, then is a state function that calls for popular participation at the instance of officials.²²

Part 3 also signifies the baseline offense as a form of public counter-gesture. These are gestures that take on the character of insult. "A person commits an offence if the person publicly and intentionally insults the national anthem in any way."²³ The nature of the spectacle of insult is also precisely (though still vaguely) described: altering the lyrics of the national anthem or performing it "in a distorted or disrespectful way;"²⁴ or otherwise publishing the anthem in an insulting way.²⁵ Part 3 defines "insult (侮辱), in relation to the national anthem, means to undermine the dignity of the national anthem as a symbol and sign of the People's Republic of China."²⁶ Publication (發布) is also defined broadly to include any communication to the public in any form, or the distribution of any such communication.²⁷ Provision is made for distinguishing the words and sounds of the Anthem from similar word groupings and sounds.²⁸ But notice the tension and thus the tight control of music and lyrics--does one insult the national anthem by signing the lyrics officially required between 1978 and 1982? The Anthem, then, as a site of contestation, itself reminds the singer of the political affirmation built into its performance.

Part 4 concerns the promotion of the national anthem. Appropriate gestures--and the rituals of spectacle that reify the state--require education. This reflects a long developing position of the central authorities, and one that is meant to cure what the central authorities understood to be a primary cause of the disruptions of the protests in Hong Kong since June 2019 (and possibly back before the 2014 Umbrella Movement).²⁹ It reinforces the drive toward the development of a national patriotic front and the elimination of foreign elements within Hong Kong's political culture. Spectacle, then, is seen as an important element of re-education in the service of the state and the protection of the integrity of its political-economic model.

²² *Ibid.*, Part 3 §6. Exculpation for offense is possible where a person can put forward a "reasonable excuse" the scope of which remains to be clarified.

²³ *Ibid.*, Part 3 §7(2)

²⁴ *Ibid.*, Part 3 §7(1).

²⁵ *Ibid.*, Part 3 §§7(3)-(4).

²⁶ *Ibid.*, Part 3 §7(8).

²⁷ *Ibid.*

²⁸ *Ibid.*, Part 3 §8.

²⁹ Discussed essay Chapter 7, *supra* (patriotic education of the young).

More specifically, Part 4 directs that primary and secondary educations must incorporate the national anthem in their curriculum, including its singing, history and the etiquette regarding it.³⁰ Such education is focused not just on ritual but on its signification: "on the history and spirit of the national anthem."³¹ It also requires all sound and television broadcasters to play the national anthem when requested by the Communication Authority. It distinguishes, as well between the National Anthem Ordinance for Hong Kong, and the National Anthem Law of the People's Republic of China, the supremacy of which in matters relating to the anthem is acknowledged.³²

Part 5 includes a number of supplementary provisions. provides the basis for treating the Hong Kong version of the National Anthem Law differently from the one otherwise applicable to the rest of the nation. It states that in case of inconsistencies between this ordinance and the Law of the People's Republic of China on National Anthem adopted by the NPC, this ordinance should be applied. Part 6 contains consequential amendments to other ordinances, for example adding passages regarding the use of national anthem to the Trade Marks Ordinance. In addition, the National Anthem Law includes three Schedules. Schedule 1 sets out the lyrics and score of the national anthem in a stave notation. Schedule 2 sets out the lyrics and score of the national anthem in a numbered musical notation. Schedule 3 sets out the occasions on which the national anthem must be played and sung under clause 5.

Taken as a whole, then the National Anthem Ordinance (國歌條例草案) is a comprehensive regulatory system for the observance of the primary gestures of sovereignty, order, and fidelity to the nation, and it follows, to the political-economic model under which it is organized. Its symbolic importance cannot be underestimated. It is passed within a context in which the Anthem itself has been a source of political challenge in Hong Kong especially after 2014 and the beginning of the last phase (in retrospect) of the internationalist movement in Hong Kong. "The anthem has been booed at football matches, where soccer fans have at times sang "Glory to Hong Kong", a song that has become a rallying cry for the democracy movement in the city. "³³

³⁰ National Anthem Ordinance, *supra*, Part 4 §9.

³¹ *Ibid.*, Part 4 §9(1)(b)(i).

³² *Ibid.*, Part 5§11(3)(National Anthem Law (《國歌法》) means the Law of the People's Republic of China on National Anthem, adopted at the 29th Meeting of the Standing Committee of the Twelfth National People's Congress on 1 September 2017.

³³ Twinnie Siu and Clare Jim, "Hong Kong passes China national anthem bill amid protests by democracy lawmakers," Reuters (3 June 2020); available [https://www.reuters.com/article/us-hongkong-protests-anthem/hong-kong-

The anti-anthem protests appear to have arisen in the shadow of heightened feelings that emerged during the 2014 Umbrella Movement and the battle over the nature of representative government within the SAR. The anti-anthem protests appear to have arisen among heightened feelings that emerged during the 2014 Umbrella Movement and the battle over the nature of representative government within the SAR. It became visible during the 2015 World Cup Campaign. And ironically it appears to have been fueled by missteps among Mainland Chinese organizations.

Mr Sutcliffe [Hong Kong Football Association Chief Executive] traces the surge in tension to June, when the Chinese Football Association (CFA) issued a promotional poster ahead of the qualifier against Hong Kong. The poster shows images of three players and warns: "This team has players with black skin, yellow skin and white skin. Best to be on guard against such a multi-layered team!" Unsurprisingly, some Hong Kong fans derided the poster as racist. Following the controversy, the booing began during a qualifier against Bhutan, and continued until last weekend's friendly with Myanmar.³⁴

The regulation is not unusual as to type,³⁵ but its timing and its scope tends to emphasize the transformation of the understanding of Hong Kong within the organization of the Chinese State.

More importantly, the National Anthem Ordinance is a strong gesture directed to the international community. It serves as a spectacle for the consumption of domestic and international audiences for the performance of a ritual of separation--in this case of the detachment of Hong Kong from its international connections. It serves as another gesture reinforcing the line of the central authorities that Hong Kong's character as an international city has fundamentally changed. That change now produces a quite different manifestation of Hong Kong's global position. Hong Kong has now begun decisively to develop away from an identity marked by the

passes-china-national-anthem-bill-amid-protests-by-democracy-lawmakers-idUSKBN23BOBT].

³⁴ Juliana Liu, "Hong Kong-China: A Growing Football Rivalry or Just Politics?," *BBC News* (17 November 2015); available [] ("'We've been requesting that fans respect the anthem. That they behave, generally,' he says. 'But at the end of the day, it's very difficult when you have a crowd of 6,000 people, and there is an element in that crowd that wants to voice their opinion. It's very difficult to stop them.'").

³⁵ Ng Kang-chung and Laurie Chen, "Explainer: how do countries around the world foster respect for their national anthem?," *South China Morning Post* (9 November 2017); available [https://www.scmp.com/news/hong-kong/politics/article/2118933/explainer-how-do-countries-around-world-foster-respect-their].

autonomy of its political and civil model (and guaranteed by international instruments), to one marked by its position on China's Silk Roads as a purveyor of economic and financial services within the greater Pearl River City complex (and guaranteed by the Chinese constitutional order). To keep the state and its Silk Road free of danger, that new positioning for Hng Kong then requires protection against the three evils of separatism, extremism, and terrorism. The external manifestation of that protection has been an object of the Shanghai Cooperation Organization and the security arm of the Belt and Road Initiative.³⁶ The internal manifestation necessarily requires the cultivation of patriotism and its outward symbols, along with mechanisms for punishing those who would corrupt this system.³⁷

What does One Country, Two Systems mean in this context? It means principally that Hong Kong must be subject to national objectives, national priorities, and be faithful to core national principles that further the integrity of the state, and its political-economic model. Beneath that, local variation (substantial from the perspective of the Central Authorities--and thus the Two Systems part of the principle) is permitted to take local context into account, in this case including the common law traditions and organization of Hong Kong along with local culture. Sensitivity to this was already apparent in the 2018 version of the National Anthem Bill that included a chart showing the differences between the Mainland and the SAR versions of the Ordinance.³⁸ But events after June 2019 produced a retreat of sort from sensitivity to the practices of Hong Kong. The current version of the Ordinance appears to be closer to the national model with less leeway for regional variation. That, too, is a strong gesture, by the central authorities now convinced that autonomy and sensitivity to local variation must be more carefully managed through the imposition of national rituals of patriotism.

It is not surprising, then that these transformations continue to meet local resistance. That resistance crystallizes the old and now receding conceptualization of Hong Kong as an international city; the protestors use brilliantly the language of a conceptualization of Hong

³⁶ Sam Dupont, "China's war on the "Three Evil Forces," *Foreign Policy* (25 July 2007); available [https://foreignpolicy.com/2007/07/25/chinas-war-on-the-three-evil-forces/] (terrorism, ethnic separatism, and religious extremism).

³⁷ See discussion essays Chapters 7, 13, *supra*.

³⁸ Legislative Council Panel on Constitutional Affairs, *Local Legislation to Implement the National Anthem Law*, LC Paper No. CB(2)1063/17-18(03) (For discussion 23 March 2018); available [https://www.legco.gov.hk/yr17-18/english/panels/ca/papers/ca20180323cb2-1063-3-e.pdf], Annex 2 Outline of the Proposed Content of the National Anthem Bill of the Hong Kong Special Administrative Region "Our legislative principle is to maintain the purpose and intent of the National Anthem Law to fully reflect its spirit and to preserve the dignity of the national anthem, so that our citizens would respect the national anthem, whilst taking into account our common law system and the actual circumstances in Hong Kong." ¶5 2018 Legislative Bill, *supra*).

Kong, and the internationalist foundations of its law, based on the primacy of civil and political rights. For those sympathetic to the protesters and their aims, the National Anthem Ordinance is seen as an encroachment by Beijing on Hong Kong's autonomously protected personal rights, especially individual freedom of speech.³⁹

"It is a restriction on personal liberties, freedom of expression," Au Nok-hin, who served as a legislator from 2018 to 2019, tells TIME. Past moves by Chinese authorities perceived to be quashing freedoms have sparked huge demonstrations in Hong Kong. Thousands of protesters turned out on Sunday to march against a national security law, which China's top lawmaking body announced last week it plans to implement for Hong Kong. Maya Wang, a China senior researcher at the rights group Human Rights Watch says the national anthem bill would be a "grim development" for Hong Kong. "Looking at this law and the upcoming national security legislation, there is an unmistakable trend towards the end of Hong Kong as a place where people can speak without fear," she says. "It is a step towards greater and more comprehensive restrictions on freedom of expression that tracks with the trend overall in the rest of mainland China."⁴⁰

For some, the cancellation of the vigil and the passage of the National Anthem Bill are closely inter-related. "Thousands of people have defied a police ban in Hong Kong to mourn the victims of the Tiananmen Square massacre, after the city's legislature passed a law criminalising the mockery of China's national anthem."⁴¹ And local resistance is not always suppressed, even after a year of sometimes quite violent street action. "Thousands flooded Hong Kong's Victoria Park on Thursday night for the annual candlelight vigil to mark the anniversary of the 1989 Tiananmen Square crackdown, defying a ban on the mass gathering imposed by the police for the first time on health protection grounds."⁴²

³⁹ The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China; available [https://www.basiclaw.gov.hk/pda/en/basiclawtext/chapter_3.html], Art. 27.

⁴⁰ "Hong Kong's National Anthem Bill Is Sparking Renewed Protests. Here's What to Know," *Time* (27 May 2020); available [https://time.com/5842352/hong-kong-national-anthem-bill-protests/].

⁴¹ Verna Yu, "Hong Kong protesters hold banned Tiananmen vigil as anthem law is passed," *The Guardian* (4 June 2020); available [https://www.theguardian.com/world/2020/jun/04/hong-kong-tiananmen-vigil-ban-china-national-anthem-bill-protest].

⁴² "Tiananmen vigil in Hong Kong draws thousands despite coronavirus-related ban," *South China Morning Post* (5 June 2020); available [https://www.scmp.com/news/hong-kong/politics/article/3087623/tiananmen-vigil-hong-kong-draws-thousands-despite] ["Police, who had warned they had thousands of riot officers ready and would enforce anti-coronavirus rules limiting

Here one is brought closer to the spectrum of spectacle, and of the ritualized gestures that make for spectacle, in Hong Kong. Social spaces for symbolic expressions⁴³--the anthems of protests--are now matched by the formalized ritual of the overarching architecture of an imagined community now made real by the ritual expression of its superior reality in the rituals of anthem.⁴⁴ That supra ritual then expresses not just control but the manifestation of the social order which it has its performers affirm.⁴⁵ But each of these rituals is itself a site for contestation. The rituals of the observance of the June 4th Incident in Hong Kong signals societal and political fracture within Hong Kong; the lyrics and music of the National Anthem itself is a contested site, the memory of which exposes the larger historical fractures of the nation as it moves from one historical era to the next.⁴⁶

These two spectacles of remembrance,⁴⁷ one of the source of difference, and the other of the nature of unity, seek both to unite and separate in accordance with the thrust of the memory. Thus, though it "is an implicit rule that participants in any social order must presuppose a shared memory,"⁴⁸ the juxtaposition of the shared memory of the June 4th Incident in Hong Kong and the allegiance ritual of the national anthem suggest that the thrust of unity necessarily also draws boundaries. Both spectacles and their ritual expressions, "are modern totems--signs by which nations distinguish themselves from one another or reaffirm their 'identity' boundaries."⁴⁹ The link between language and gestures,⁵⁰ and between gesture and meaning is clear as the abstractions that shape both are ritualized and concretely manifested.

The spectacle of the anthem may contribute to continued international reaction. That reaction is bound up in the potency of the

groups to a maximum of eight people each, stood back as the crowds poured into the park in Causeway Bay and took up a couple of soccer pitches").

⁴³ Alberto Abruzzese, Alberto "La piazza come spazio sociale e simbolico," Laura Barbiana (ed.) *La Piazza Storica Italiana: Analisi di un sistema complesso*, pp. 77-119. Venezia : Marsilio, 1992).

⁴⁴ Benedict Anderson, "Imagined Communities: Reflections on the Origin and Spread of Nationalism" (London: verso, 1983).

⁴⁵ Karen A. Cerulo, "Sociopolitical Control and the Structure of National Symbols: An Empirical Analysis of National Anthems," *Social Forces* 68(1):76-99 (1989)

⁴⁶ Tim F. Liao, Gehui Zhang, and Libon Zhang, "Social Foundations of National Anthems: Theorizing for a Better Understanding of the Changing, supra.

⁴⁷ Paul Connerton, *How Societies Remember* (Cambridge, 1989).

⁴⁸ *Ibid.*, p. 3 (our images of the past commonly serve to legitimate a present [and sometimes a future] social order"; *Ibid.*).

⁴⁹ Karen A. Cerulo, "Sociopolitical Control and the Structure of National Symbols: An Empirical Analysis of National Anthems," supra, p. 78

⁵⁰ Edward T. Hall, *Silent Language* (New York: Anchor Books, 1959) ("The link between language and gestures is much closer than between language and . . . other cultural systems" *Ibid.*, p. viii).

Anthem as well as its symbolic signaling. Here the National Anthem Ordinance will likely be understood as an overt (if banal) continuation of efforts to construct a new identity for Hong Kong as a national rather than an international space.⁵¹ One of the most intriguing is the Inter-Parliamentary Alliance on China (IPAC) an informal multilateral effort beneath the formal layers of government but deeply embedded within it.⁵² But it is likely that unless it plays a collateral role in the decoupling of the Chinese and American post global trade empires, or plays into the domestic politics of Europe, there is little that will be done other than, as the UK (and Taiwan) indicated, will be the taking in of refugees.

Formal passage of the National Anthem Ordinance (along with the national security law) will further strain relations with the US. Donald Trump has threatened to revoke economic and trading privileges Hong Kong enjoys on the basis that its wide-ranging autonomy has been undermined by Beijing. This speaks to another level of spectacle and gesture, to its cultural politics in the international sphere.⁵³ Mike Pompeo, the US secretary of state, on Wednesday met four former student leaders of the 1989 Beijing protests and asked how the US could "help China move towards democracy", according to Wang Dan, a Tiananmen activist. Mr Wang has previously been barred from entering Hong Kong.⁵⁴ But absent the protection of the spectacle of affirmance, it is hard to imagine that the Americans will have much to offer beyond the rituals of contestation at the international level.

And that brings the global order back full circle to a post-global age whose characteristics sometimes mimic that of a time when global integration was viewed with a certain amount of terror. In the meantime, Western academics will continue to interpret the Sino-British Joint Declaration, perhaps in the hope that if they study it hard enough, the parties will be convinced that it is something worth considering going forward. China will invest substantially more effort into singing its way to unity⁵⁵--an effort that is likely to be far more effective than the high level discourses of those great doctors of international law interpreting a document made effectively inscrutable by the necessities of politics.

⁵¹ Caroline Brooke, "Changing Identities: The Russian and Soviet National Anthems," *Slavonica* 13(1):27-38 (2013).

⁵² Discussed in essay Chapter 29, *infra*.

⁵³ Michael Herzfeld, "The cultural politics of gesture: Reflections on the embodiment of ethnographic practice," *Ethnography* 10(2):131-152 (2009).

⁵⁴ Nicolle Lu and Tom Mitchell, "Hong Kong defies ban to mark Tiananmen Square crackdown," *Financial Times* (4 June 2020); available [<https://www.ft.com/content/223449ca-15e9-45ba-9287-9ff8729e4faf>].

⁵⁵ Stanley Waterman, "National Anthems and National Symbolism: Singing the Nation," in Brunn S., Kehrein R. (eds) *Handbook of the Changing World Language Map* (Dordrecht: Springer, 2020); pp. 2603-2618.

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A BILL

To

Provide for the playing and singing of the national anthem, for the protection of the national anthem, and for the promotion of the national anthem, in Hong Kong; and for incidental matters.

Preamble

⁵⁶ Original available
[<https://www.legco.gov.hk/yr18-19/english/bills/b201901111.pdf>].

[<https://www.legco.gov.hk/yr18-19/english/bills/b201901111.pdf>].

WHEREAS—

(1) the national anthem of the People's Republic of China is a symbol and sign of the People's Republic of China;

(2) all individuals and organizations should respect the national anthem, preserve the dignity of the national anthem, and play and sing the national anthem on appropriate occasions; and

(3) an Ordinance is to be enacted to preserve the dignity of the national anthem, to regulate the playing and singing, the broadcast and the use of the national anthem, to enhance citizen awareness of the People's Republic of China, and to promote patriotism:

NOW, THEREFORE, it is enacted by the Legislative Council as follows—

1. Short title

Part 1 Preliminary

This Ordinance may be cited as the National Anthem Ordinance.

2. Interpretation

(1) In this Ordinance—***national anthem*** (國歌) means "March of the Volunteers" (a translation of 《義勇軍進行曲》), the national anthem of the People's Republic of China under the Constitution of the People's Republic of China; ***national flag*** (國旗) has the same meaning as in the National Flag and National Emblem Ordinance (116 of 1997).

(2) In this Ordinance, a reference to the lyrics, and the score, of the national anthem is a reference to—

(a) the lyrics, and the score, set out in the stave notation of the national anthem in Schedule 1; or

(b) the lyrics, and the score, set out in the numbered musical notation of the national anthem in Schedule 2.

(3) In this Ordinance, except in section 5, a reference to playing and singing the national anthem includes—

(a) singing the national anthem;

(b) playing the national anthem on musical instruments; and

(c) playing a recording of the national anthem.

Part 2

Playing and Singing of National Anthem

3. Standard for playing and singing

The national anthem must be played and sung in a way that is in keeping with its dignity.

4. Etiquette for playing and singing

(1) This section applies in relation to an occasion on which the national anthem is played and sung.

- (2) While the national anthem is being played and sung, the etiquette to be followed by the persons who take part in or attend the occasion is—
- (a) to stand solemnly and deport themselves with dignity; and
 - (b) to not behave in a way disrespectful to the national anthem.

5. Occasions on which national anthem must be played and sung

(1) On each occasion set out in Schedule 3, the national anthem must be played and sung.

(2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 3.

(3) In this section, a reference to the national anthem being played and sung is a reference to the national anthem being played on musical instruments in accordance with the standard score, or an official recording of the national anthem being played, for the singing of the national anthem.

(4) In this section—

official recording (官方錄音), in relation to the national anthem, means a recording of the national anthem provided for the purposes of this section on a website of the Government;

standard score (標準曲譜), in relation to the national anthem, means a score of the national anthem provided for the purposes of this section on a website of the Government.

Part 3

Protection of National Anthem

6. Offence of misuse of national anthem

(1) The national anthem, or the lyrics or score of the national anthem, must not be used—

- (a) in a trade mark or commercial advertisement;
- (b) at a private funeral event; or
- (c) on an occasion, at a place, or for a purpose, prescribed under subsection (5).

2) The national anthem must not be used as background music in a public place.

(3) A person commits an offence if the person, without reasonable excuse, uses the national anthem, or the lyrics or score of the national anthem, in contravention of subsection (1) or (2).

(4) A person who commits an offence under subsection (3) is liable on conviction—

- (a) for a contravention of subsection (1)(a)—to a fine at level 5; or
- (b) otherwise—to a fine at level 2.

(5) The Chief Executive in Council may, by notice published in the Gazette, prescribe an occasion, place or purpose, for the purposes of subsection (1)(c).

(6) In this section—
public place (公眾場所) means a place to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise.

7. Offence of insulting behaviour

(1) A person commits an offence if, with intent to insult the national anthem, the person publicly and intentionally—

- (a) alters the lyrics or score of the national anthem; or
- (b) plays and sings the national anthem in a distorted or disrespectful way.

(2) A person commits an offence if the person publicly and intentionally insults the national anthem in any way.

(3) A person commits an offence if, with intent to insult the national anthem, the person intentionally publishes—

- (a) altered lyrics or an altered score of the national anthem; or
- (b) the national anthem played and sung in a distorted or disrespectful way.

(4) A person commits an offence if, with intent to insult the national anthem, the person intentionally publishes the insulting in any way of the national anthem.

(5) Except as provided under subsection (3) or (4), a person does not commit an offence under this section by publishing—

- (a) altered lyrics or an altered score of the national anthem;
 - (b) the national anthem played and sung in a distorted or disrespectful way;
- or
- (c) the insulting in any way of the national anthem.

(6) A person who commits an offence under this section is liable on conviction to a fine at level 5 and to imprisonment for 3 years.

(7) Proceedings may only be commenced for an offence under this section before whichever is the earlier of the following—

- (a) the end of the period of 1 year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police;
- (b) the end of the period of 2 years after the date on which the offence is committed.

(8) In this section—

insult (侮辱), in relation to the national anthem, means to undermine the dignity of the national anthem as a symbol and sign of the People's Republic of China;

publish (發布) includes—

- (a) to communicate to the public in any form, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material; and

(b) to distribute, disseminate or make available to the public.

8. Music, words or score to be regarded as national anthem, or its lyrics or its score

For the purposes of this Part—

(a) a piece of music (whether or not including words intended to be sung or spoken with the music) is to be regarded as the national anthem if the piece of music so closely resembles the national anthem as to lead to the reasonable belief that the piece of music is the national anthem or a part of the national anthem;

(b) words (whether or not in writing) are to be regarded as the lyrics of the national anthem if the words so closely resemble the lyrics of the national anthem as to lead to the reasonable belief that the words are the lyrics of the national anthem or a part of the lyrics; and

(c) a score is to be regarded as the score of the national anthem if the score so closely resembles the score of the national anthem as to lead to the reasonable belief that the score is the score of the national anthem or a part of the score of the national anthem.

Part 4

Promotion of National Anthem

9. Inclusion in primary and secondary education

(1) The Secretary for Education must give directions for the inclusion of the national anthem in primary education and in secondary education—

(a) to enable the students to learn to sing the national anthem; and

(b) to educate the students—

(i) on the history and spirit of the national anthem; and

(ii) on the etiquette for playing and singing the national anthem.

(2) In this section—

primary education (小學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);

secondary education (中學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279).

10. Inclusion in sound broadcasting and domestic television programme services

(1) This section applies if, under the terms and conditions of a broadcasting licence, the licensee may be required by a determination or direction of the Communications Authority to broadcast announcements in the public interest, or to include material in the public interest, in the licensed service.

(2) By a determination or direction that has been made in relation to the broadcasting licence, the licensee may be required to broadcast the national anthem by an announcement in the public interest, or material in the public interest, in the licensed service.

(3) The Communications Authority must make a determination or direction in relation to the broadcasting licence, requiring the licensee to broadcast the national anthem by an announcement in the public interest, or material in the public interest, in the licensed service on each date that is or may be stipulated under subsection

(4) The Chief Executive may stipulate a date for the purposes of subsection (3).

(5) A stipulation under subsection (4)—

(a) must be published in the Gazette as soon as practicable after it is made; and

(b) is not subsidiary legislation.

(6) In this section—**broadcasting licence** (廣播牌照) means—

(a) a licence granted under section 13C(2) of the Telecommunications Ordinance (Cap. 106), or such a licence renewed under section 13E(2) of that Ordinance; or

(b) a licence granted under sections 8(1) and 10(1) of the Broadcasting Ordinance (Cap. 562), or such a licence extended or renewed under section 11(1) of that Ordinance; **Communications Authority** (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616).

Part 5 Supplementary Provisions

11. Application of laws of Hong Kong

(1) Offences in relation to the national anthem in Hong Kong are investigated, and persons are prosecuted, according to the laws of Hong Kong.

(2) If there are inconsistencies between this Ordinance and the National Anthem Law, this Ordinance is to be interpreted and applied as a special application or adaptation of the National Anthem Law.

(3) In this section—**National Anthem Law** (《國歌法》) means the Law of the People's Republic of China on National Anthem, adopted at the 29th Meeting of the Standing Committee of the Twelfth National People's Congress on 1 September 2017.

Part 6 Consequential Amendments

Division 1—Enactments Amended

12. Enactments amended

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

Division 2—Amendments to Trade Marks Ordinance (Cap. 559)

13. Section 11 amended (absolute grounds for refusal of registration)

(1) After section 11(6)(a)— **Add** "(ab) the national anthem;".

(2) Section 11(9), Chinese text, definition of 國旗 and 國徽—

Repeal the full stop Substitute a semicolon.

(3) Section 11(9)—**Add in alphabetical order** "**national anthem** (國歌) means the national anthem and its lyrics and score within the meaning of the National Anthem Ordinance (of 2019) as extended by section 8 of that Ordinance;". Clause 14

Division 3—Amendment to Legislation Publication Ordinance (Cap. 614)

14. Section 4 amended (contents of database)

After section 4(1)(a)(v)—Add C35 “(vi) the National Anthem Ordinance (of 2019);”.

Schedule 1

Stave Notation of National Anthem * * *

Schedule 2

Numbered Musical Notation of National Anthem * * *

Schedule 3

Occasions on which National Anthem must be Played and Sung

1. Oath-taking Ceremony—

- (a) for taking the Oath of the Chief Executive under section 16A of the Oaths and Declarations Ordinance (Cap. 11);
- (b) for taking the Oath of the Principal Officials under section 16B of that Ordinance;
- (c) for taking the Judicial Oath under section 17 of that Ordinance;
- (d) for taking the Oath of Fidelity and the Executive Council Oath under section 18 of that Ordinance; or
- (e) for taking the Legislative Council Oath under section 19 of that Ordinance

2. A national flag raising ceremony, including—

- (a) Flag Raising Ceremony held by the Government at Golden Bauhinia Square;
- (b) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Founding of the People’s Republic of China; and
- (c) Flag Raising Ceremony held by the Government to celebrate the Anniversary of the Establishment of the Hong Kong Special Administrative Region of the People’s Republic of China

3. National Day Reception held by the Government to celebrate the Anniversary of the Founding of the People’s Republic of China

4. Reception held by the Government to celebrate the Anniversary of the Establishment of the Hong Kong Special Administrative Region of the People’s Republic of China

5. Ceremony held by the Government to commemorate the victory day of Chinese people’s war of resistance against Japanese aggression

6. Ceremony held by the Government to commemorate those who died in the defence of Hong Kong

7. Ceremony held by the Government on Nanjing Massacre National Memorial Day

8. A major sporting event held by the Government

9. Ceremonial Opening of the Legal Year

Explanatory Memorandum

The objects of this Bill are to provide—

- (a) for the playing and singing of the national anthem;
- (b) for the protection of the national anthem;
- (c) for the promotion of the national anthem; and
- (d) for incidental matters.

2. The preamble sets out certain information to provide a context in which to understand the Bill. The Law of the People’s Republic of China on National Anthem is listed in Annex III to the Basic Law. The Bill is to implement the Law of the People’s Republic of China on National Anthem in Hong Kong.

Part 1—Preliminary (Clauses 1 and 2)

3. Clause 1 sets out the short title.

4. Clause 2 contains the definitions of *national anthem* and *national flag*. It also explains the meaning of a reference to the lyrics, and the score, of the national anthem, and a reference to playing and singing the national anthem.

Part 2—Playing and Singing of National Anthem (Clauses 3 to 5)

5. Clause 3 provides for the standard for playing and singing the national anthem.

6. Clause 4 provides for the etiquette to be followed by the persons who take part in or attend an occasion while the national anthem is being played and sung.

7. Clause 5 provides for the playing and singing of the national anthem on each occasion set out in Schedule 3.

Part 3—Protection of National Anthem (Clauses 6 to 8)

8. Clause 6 prohibits misuse of the national anthem or its lyrics or score. A contravention of the prohibition is an offence.

9. Clause 7 prohibits a person from publicly and intentionally altering the lyrics or score of the national anthem, and from so playing and singing the national anthem in a distorted or disrespectful way, with intent to insult the national anthem. This clause also prohibits a person from publicly and intentionally insulting the national anthem in any way. It further prohibits a person from intentionally publishing the altered lyrics or score, intentionally publishing the national anthem played and sung in a distorted or disrespectful way, or intentionally publishing the insulting in any way of the national anthem, with intent to insult the national anthem. Clause 7(8) contains the definitions of *insult* and *publish* for the purposes of the prohibitions. A contravention of any of the prohibitions is an offence.

10. Clause 8 provides that a piece of music, words or a score is to be regarded as the national anthem or its lyrics or score for the purposes of Part 3 if the piece of music, words or score so closely resembles the national anthem or its lyrics or score as to lead to the reasonable belief that the piece

of music, words or score is the national anthem or its lyrics or score, or part of the national anthem or its lyrics or score.

Part 4—Promotion of National Anthem (Clauses 9 and 10)

11. Clause 9 requires the Secretary for Education to give directions for the inclusion of the national anthem in primary education and in secondary education.

12. Clause 10 applies if, under the terms and conditions of a sound broadcasting licence or domestic television licence, the licensee may be required by a determination or direction of the Communications Authority to broadcast announcements in the public interest, or to include material in the public interest, in the licensed service. By a determination or direction that has been made in relation to the licence, the licensee may be required to broadcast the national anthem by an announcement or material in the public interest in the licensed service. Moreover, the Communications Authority must make a determination or direction in relation to the licence, requiring the licensee to broadcast the national anthem by an announcement or material in the public interest in the licensed service on each date that is or may be stipulated by the Chief Executive.

Part 5—Supplementary Provisions (Clause 11)

13. Clause 11 provides that offences in relation to the national anthem in Hong Kong are investigated, and persons are prosecuted, according to the laws of Hong Kong. This clause also provides that if there are inconsistencies between the Ordinance and the Law of the People's Republic of China on National Anthem, the Ordinance is to be interpreted and applied as a special application or adaption of that Law.

Part 6—Consequential Amendments

14. Clauses 13 and 14 contain consequential amendments.

Schedules

15. Schedule 1 sets out the lyrics and score of the national anthem in a stave notation.

16. Schedule 2 sets out the lyrics and score of the national anthem in a numbered musical notation.

17. Schedule 3 sets out the occasions on which the national anthem must be played and sung under clause 5.

