

# I am an ordinary citizen: Human rights discourse and the limits of human rights law

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## Abstract

Hong Kong LGBT activists contend with an on-the-ground discourse of human rights that constrains their ability to use human rights law as they pursue legal gender recognition that allows trans people to legally change their gender. Mainstream Hongkongers lay claim to an “ordinary” identity in which human rights is central to being a Hongkonger. This use of human rights discourse is not based on human rights law but is used to define “ordinary Hongkongers” in opposition to mainland Chinese people. Thus, some LGBT activists employ humanizing interactions with trans people to reframe ordinariness to include trans Hongkongers, using human rights law only when it is demonstrative of expertise. Other LGBT activists continued use of human rights law in public fora contravenes hegemonic discourses of human rights, and these activists are interpolated as relying on foreign law to force social change in Hong Kong.

## KEYWORDS

Hong Kong, human rights discourse, human rights law, queer activism, transgender activism

## Resumen

Los activistas LGBT de Hong Kong luchan con la base de un discurso sobre los derechos humanos que limita su habilidad para usar la ley de los derechos humanos en la medida que ellos buscan reconocimiento legal de género que permita a las personas trans legalmente cambiar su género. Los hongkoneses convencionales reclaman una identidad “ordinaria” en la cual los derechos humanos son centrales a ser hongkoneses. Este uso del discurso de los derechos humanos no está basado en la ley de los derechos humanos, pero es usado para definir “ordinarios hongkoneses” en oposición a los residentes de la China continental. Por tanto, algunos activistas LGBT emplean interacciones humanizadoras con las personas trans para recontextualizar la ordinariez a fin de incluir a los trans hongkoneses, usando la ley de los derechos humanos cuando es demostrativa de conocimiento. Otros activistas LGTB continuaron el uso de la ley de los derechos humanos en los foros públicos que contraviene los discursos hegemónicos de los derechos humanos, y estos activistas son interpolados como dependiendo de la ley extranjera para forzar el cambio social en Hong Kong. [discurso de los derechos humanos, ley de derechos humanos, activismo queer, activismo transgénero, Hong Kong]

In October 2017, the ad hoc Hong Kong Inter-departmental Working Group on Gender Recognition (IWG) was holding its second and final public forum on a consultation paper they had released several months prior regarding gender recognition—or the process through which transgender people change their legal gender to align with their gender identity (Inter-departmental Working Group on Gender Recognition 2017).<sup>1</sup> Throughout the forum, a local trans man, Eric, sat silently in the audience with his arms crossed over his chest and wearing a shirt that said “This is what trans looks like.”<sup>2</sup> Afterward, I asked him why he did not say anything as LGBT activists and opponents to gender recognition debated before the IWG whether it should recommend to the Hong Kong Legislative Council to adopt a comprehensive gender-recognition scheme.<sup>3</sup> “I was mad,” he said. “I was mad that my human rights were being put up for discussion and that these so-called ordinary citizens were able to say that I shouldn’t be able to legally transition and the government had to listen.”

Eric’s comments raised important questions about how human rights should be discussed in Hong Kong and who was an “ordinary citizen,” which built upon the larger issues of how human rights law was practiced and what human rights treaties actually covered. The difference between law on the books and law in practice is central to legal anthropological projects, but here I shift this analysis slightly to examine the overlaps, comparisons, and disjunctions between the law on the books (human rights law) and the multiple ways in which law was talked about in Hong Kong (human rights discourse).<sup>4</sup> As with law on the books and law in practice, there is a mutually constitutive relationship between human rights law and discourse. My analysis of Hong Kong LGBT activists’ fight for gender recognition unveils the ways in which the discursive power of human rights could foreclose the use of human rights law to address individual harm and instead be mobilized to exclude certain populations. When human rights were perceived of by ordinary citizens as a mode of distinguishing themselves from the mainland Chinese, these same ordinary citizens understood human rights law—particularly the right to privacy and the right to bodily integrity—as being an inappropriate framework for producing legal change to simplify the gender-recognition process.

Much of the anthropological literature on the vernacularization of human rights, or the process by which human rights are “translated” into local terms, has focused on the translation process, the individuals involved in translating, and how locals come to understand issues as concerning human rights (Merry 2006; see also Englund 2006; Holcombe 2018; Moreira 2016). Other anthropologists of human rights have analyzed how international human rights laws and discourses have shaped locals’ daily lives and their interactions with domestic, religious, and international legal systems (Clarke 2009; Goodale 2005; Riles 2006). My intervention, however, shifts the focus away from the ways in which the global impacts the local to how the local restricts the uses of the global. I argue that by analyzing how ordinary citizens already understood human rights to work, we can see why human rights law could not be used to advocate for a gender-recognition ordinance in public fora.

The IWG emerged from a 2013 Hong Kong Court of Final Appeal’s ruling in the case *W v. The Registrar of Marriages*. The Court held that,

for the purposes of marriage, a postoperative transgender woman must be recognized as a woman (*W v. The Registrar of Marriages* 2013). The decision only applied to instances of transgender Hongkongers who had completed a gender-confirmation surgery, however, and it was only when they applied for marriage licenses that trans people’s legal gender would match their gender identity. The Court acknowledged that, while important, the question of individuals who did not want to, could not afford to, or were medically unable to go through gender-confirmation surgeries was outside the scope of their judicial review. Instead, the Court directed the Hong Kong government to study and adopt a gender-recognition scheme that would avoid fractional legal decisions concerning the transgender community.

The IWG was the manifestation of the Court’s order to investigate whether to adopt a gender-recognition scheme and what kind of gender-recognition scheme to adopt after the Hong Kong Legislative Council failed to pass a gender-recognition ordinance (GRO) of their own. Tasked with compiling the arguments for and against a gender-recognition scheme, the English and written Chinese consultation paper was to be discussed by the public before the members of the IWG, which would end the first stage of their mandate. Compiling the comments from a Cantonese-language public forum that happened before I arrived in Hong Kong with those of the English-language forum, along with individual and organizational written submissions, the IWG in its second stage would make a recommendation to the government about whether Hong Kong should adopt a gender-recognition scheme, and if so, what it should contain.

I return to Eric’s comments after the IWG forum for signposts both of what needs to be unpacked and for the larger significance of LGBT human rights activists’ fight for a GRO in Hong Kong. Eric was upset because he understood gender recognition to be a matter of human rights and one that was being put up for discussion by cisgender Hongkongers. What Eric saw as owed to him—as he phrased it, because “I’m human, just like everyone else”—could be heavily influenced by a majority who perhaps did not understand or sympathize with why he needed a comprehensive method of changing his legal gender. Eric also made clear that “ordinary citizens,” an identity that many of the non-LGBT people at the public forum claimed before giving their testimony, did not see him and other gender-variant people as ordinary citizens. If trans and nonbinary Hongkongers were not ordinary citizens, who were they? And what made a particular section of Hong Kong’s population ordinary? In addition, if Eric and the other LGBT activists—many of whom Eric worked closely with—understood a GRO as an issue of human rights, why did many of them avoid claiming their human rights when speaking with these ordinary citizens?

In this article, I analyze when and in what ways LGBT activists were able to talk about human rights or make claims under human rights law. Human rights discourse and law play a critical role in Hong Kong, and many scholars of the region have identified them as “core values” of Hong Kong identity (C. Chan 2014; S. Chan 2015; see also Madson 2020, 2021). Prior to the United Kingdom’s 1997 return of Hong Kong to the People’s Republic of China, the final British governor incorporated the International Covenant on Civil and Political Rights (ICCPR) word-for-word into the Hong Kong Bill of Rights, domesticating one

of the backbones of the international human rights legal system. This move was both to ease Hongkongers' anxieties about the transferal of sovereignty and a partial method to protect Hongkongers from complete absorption into the Chinese state. More than twenty years later, "human rights," or *jankyun* (人權), were still frequently talked about by everyday Hongkongers. For them, *jankyun* were not a system of law but a means to differentiate Hongkongers from the mainland Chinese. As one of my local interlocutors noted, "Most people will tell you 'ngodei jau jankyun, daailukjan mou' [我地有人權, 大陸人有; We have human rights, but the mainland Chinese do not], but that's about all they know about human rights."<sup>5</sup>

She was right. After hearing local advocates critique ordinary citizens' limited knowledge about human rights, I began to ask non-activists in Hong Kong whether they believed LGBT issues, including gender recognition, were protected by human rights. Many of the people I asked used "human rights" in the same way my interlocutor and many other activists said they would, sometimes repeating her verbatim. This presented a problem for local activists—ethnic Chinese activists who primarily used Cantonese in their daily lives and were largely working class. Local activists saw the existing process of gender recognition as a violation of transgender people's human rights and that passing a GRO would fulfill Hong Kong's obligations under international human rights law. At the same time, they believed they could not invoke human rights in public fora because ordinary citizens understood human rights in the Hong Kong context as a way to differentiate Hongkongers from the mainland Chinese. Other uses of human rights, such as, but not limited to, supporting gender recognition, were unimaginable and foreclosed by the ways in which human rights discourse shaped how human rights law was understood. For many Hongkongers, then, human rights had not failed, but the use of human rights would be a failure *in certain contexts*.

I draw much of my data for this article from the IWG public consultation because of the rich ethnographic data I was able to collect from individuals' testimonies. The setting of the English-language public forum was useful because it provided the space to analyze interactions between four different groups of people: *gwailou* activists, local activists, opponents of the GRO, and government bureaucrats. *Gwailou* is a slang term that roughly translates to "expat" and encompassed both expatriates from Europe, North America, and Australia living in Hong Kong and middle-class and wealthy ethnic Chinese Hongkongers who primarily used English in their work, social, and home lives. At the same time, the forum was limiting in that it only allows for analysis of English-language activism and tactics.<sup>6</sup> Unlike day-to-day participant observation, conversations, or interviews with individual activists within their respective organizations, the public consultation was an opportunity to witness local and *gwailou* activists interacting with each other, with members of the government, and with people who opposed a GRO or, more broadly, legal gender recognition.

The public consultation was the second and final forum open to members of the public to hear from and give feedback to the members of the IWG on their report. Many of those who came out in support of a gender-recognition scheme were specifically advocating for a gender-recognition ordinance, which would provide a legislative solu-

tion to transgender people being able to change their legal gender.<sup>7</sup> As one of my interlocutors reasoned, "A law can cover all of the issues of transition. If a transgender person has to go to the court every time some new issue arises about their legal gender, it's going to be a problem." What that GRO should include and what would be required of transgender people wishing to transition varied across supporters, from a self-declaration model that allowed transgender people to make legally binding declarations that they were changing their gender and would not require (though not prohibit) any medical or psychological intervention to a model that required hormones, lived experience, and genital-confirmation surgery before someone could change their gender. So, too, did the GRO's opponents express various concerns, including that activists' arguments that human rights law mandated a GRO was a turn to "foreign" legal systems to resolve Hong Kong issues.

As a human rights attorney and a queer activist myself, I was welcomed as a fellow advocate in the three local and *gwailou* organizations I worked in. In the *gwailou* organization, I was asked to help write reports, attend meetings, and, at times, represent the organization at coalition meetings with advocates from across Hong Kong's civil society. At the local organizations, however, I was often asked to refine funding applications in English that needed to go to international granting organizations. I also became the "international" face of support for these organizations when they interacted with members of the Hong Kong government—the embodiment of transnational confidence in locals' undertakings. Though the organizations and the activists that made them up had very different priorities and approaches to achieving their advocacy goals, they all said they were fighting for "LGBT equality." They also relied on human rights in their work. *Gwailou*, across all audiences, were explicit in their use of human rights law and often cited the international legal instruments from which human rights emerged and the sections of the Hong Kong Bill of Rights that quoted the ICCPR. Locals, however, recognized that while human rights law was the foundation on which their advocacy was built, using human rights language (in English or in Cantonese) with "ordinary citizens" that did not mirror already-existing human rights discourse had the potential to be dismissed as "too foreign." This illuminated a relationship between law on the books and law in practice in which a narrower practice (discourse) restricted the use of the more expansive black-letter law.

## ABSENCE: TRANS VOICES AND THE PROBLEM OF SOCIAL CLASS

A particular absence from both this article and the IWG public forum are trans voices. I understand that by not centering trans activists' voices and work I fall into the same type of violent erasure in which trans people and the particular issues that they grapple with are subsumed within the LGBT or queer umbrella (Stryker 2004; Valentine 2004). The erasure is intended only in that there were no publicly identified trans people at the English-language forum who chose to speak. Other than Eric, who sat quietly throughout the IWG forum, no other local or expat trans activists were present during the session.<sup>8</sup> One of these missing advocates later told me that she did

not want to attend because it would be in English and that she's "just a local."

"Local" was often code for "working class" and "Cantonese-dominant," and this raises the question of whether an analysis of an English-language forum could ever be truly representative of Hong Kong society (for a more detailed analysis of complicated and inconsistent connections between locality, language, and socioeconomic class, see Madson 2020). The self-identifications of local and expat among Hong Kong's LGBT activists were not as fixed as many of the activists made them out to be, but rather were fluid and, at times, contradictory. Both local and expat advocates viewed locals as being poor users of professional English, and yet nearly all of my local interlocutors could use, and in fact insisted on using, English with me as a point of pride.<sup>9</sup> This did not prevent them, however, from experiencing moments of anxiety about using English in public settings like this meeting or from casting doubt on their English abilities.

It is true that some of the voices represented in this article come from the middle class, but so, too, were there working-class locals participating in the forum in support of and against the GRO. George, who identified as a local and had only recently left the working class, was a vocal supporter of the GRO. Some of the ordinary citizens who were opposed to or neutral toward a GRO gave clues that they were working class, including mentioning the names of the working-class areas of the city in which they lived and the small businesses for which they worked. I suspect that if I had been in Hong Kong for the Cantonese-language forum, I would have had more and greater exposure to the ways in which working-class advocates and opponents engaged in human rights discourse, but it would be disingenuous to assert that the English-language forum was only filled with middle-class and wealthy Hongkongers.

So, too, might the question be raised as to whether expats can be considered part of Hong Kong society or whether their contributions to the fight for a GRO should be seen as not included in an indigenous or local fight for trans recognition. Scholars of expatriates note that they often remain distant (both physically and socially) from the communities in which they are located (Fechter 2007; Hindman 2013). Though some may see expats as Georg Simmel's (1950) "wanderers," in that their time in Hong Kong is temporary, I argue that expats' relationships to the territory and society of Hong Kong is more complex. For example, "expat" activists were not only expatriates from abroad who had moved to Hong Kong but also native-born Hongkongers who were middle class or wealthy, as well as foreign-educated Hongkongers who returned after years abroad. It is perhaps more accurate to classify expats as Simmelian "strangers" whose relationship to working-class Hongkongers will be one always marked by distance. Though Simmel theorizes distance to be ever-present, that distance can change as strangers draw nearer or further away from the other group.

It is important to recognize that there was considerable difference between the multiple forms of advocacy being done within Hong Kong, both by locals and others.<sup>10</sup> Work done by LGBT expats was one of these multiple forms, and recognizing this work as valid avoids privileging one particular form of activism as being truly Honkongese and relegating others to being less authentic. This is important because

claims that expat advocacy is less authentic and not worthy of study fails to contend with the complicated flows of ideas, methodologies, and people between local and expat activist groups. While non-LGBT expats and locals often had few connections with each other, the LGBT communities had more interactions beyond the local-expat continuum. There were, of course, some within LGBT social circles who would not associate with someone from the "other side," nor were the exchanges that locals and expats had always long-lasting or meaningful. At the same time, despite what the existing literature on Hong Kong LGBT studies might imply, expats were members of the broader Hong Kong LGBT society (Chou 2000; Kong 2012; Tang 2011; but see Kong [2011], which argues that Western ideals of beauty played significant roles in the valuation of local gay men's bodies).

## THE MAKING OF THE "ORDINARY" HONGKONGER

How ordinary citizens talked about human rights had a large effect on how they understood human rights law to operate, largely restricting activists from using law to advance their claim that a GRO fulfilled Hong Kong's obligations under both its domestic legislation and the international human rights legal system. This discursive power lay in the work done by the phrase "We have human rights, but the mainland Chinese don't": to differentiate Hongkongers from the mainland Chinese. There was widespread anxiety, hatred, and disgust directed toward mainland Chinese people following the failure of the 2014 pro-democracy Umbrella Movement, and many of these ordinary citizens engaged in rhetorical exercises that distinguished themselves from the mainland Chinese. As Shui-Yin Sharon Yam (2016, 2019) argues, "mainstream" Hongkongers saw mainlanders as physical embodiments of their own anxieties of creeping takeover by the mainland Chinese government. At the same time, because the majority of mainstream Hongkongers—many of whom would likely classify themselves as ordinary citizens in discussions on gender recognition—have racial, ethnic, linguistic, and historical ties with the mainland Chinese, there is greater pressure to interpolate mainlanders as an abject Other.

The semantic place of human rights or *jankyun* was already occupied when LGBT activists began their fight for a GRO. The intense fear that occupied many ordinary citizens' minds that Hong Kong was on the path toward becoming "just another Chinese city," as one of my interlocutors put it, necessitated identifications with what made Hong Kong unique, such as human rights. A loss of human rights or an acknowledgment that mainland Chinese people possessed human rights would draw Hongkongers closer to their mainland counterparts, not further apart. The primacy of this form of human rights talk, then, was linked to ideologies of the defense of home and the nation-family (Yam 2019) and foreclosed the possibility to use human rights law to advocate on behalf of trans Hongkongers.

While in Hong Kong, I lived on the only subway line that included a border-crossing with mainland China, a fact for which many of my interlocutors pitied me. When someone found out where I lived, they would ask "How can you stand all those mainlanders on the train with you?" or say "I'm sorry you have to spend time with the 'invaders' every

time you want to go anywhere in Hong Kong." When I started to plan a move to mainland China, where my husband was working, many of my interlocutors asked if it were not possible for him to find work in Hong Kong, for surely, as Eric noted, I would "hate moving from Hong Kong where human rights, rule of law, and even manners are respected more than in China." These kinds of comments were not unique to my largely activist interlocutors. As I rode the train from Tai Wo station in the New Territories to Mongkok or Hong Kong Island, standing among crowds of Hongkongers and mainland Chinese, I would often hear Hongkongers muttering *wongcung* (蝗蟲) or "locust" when they would hear Mandarin spoken or see mainland tourists with large suitcases that were likely to be filled with merchandise before returning to mainland China. Perhaps ironically, some of these same Hongkongers were carrying already-full suitcases of merchandise they had purchased across the border in Shenzhen.

In her study of the rhetorical construction of citizen-subjects and outsiders in Hong Kong, Yam (2019, 15) argues that unlike other "marginalized Others," many Hongkongers cannot or will not empathize with mainland immigrants "because they stand in as proxy of the encroaching Chinese government, and because the shared lineage between Hongkongers and mainlanders threatens to undo the distinction between the two."<sup>11</sup> She differentiates between mainlanders as abject Others and other forms of "strangers"—namely South Asian Hongkongers and Indonesian care workers—opining that mainstream Hongkongers, or who I call "ordinary citizens," "painstakingly mark the distinction between themselves and the abject Other to prevent the dissolution of boundaries" (146). Movements of mainlanders to Hong Kong have produced linguistic and economic changes as more Mandarin is used and there is an uptick in the number of luxury stores whose primary clientele are wealthy mainland shoppers. Yam writes that this has produced anxiety among these mainstream Hongkongers that their home is "increasingly unfamiliar," and it is due to an influx of mainland bodies, which they interpret as forces of colonization by the mainland (Yam 2019, 150). By analyzing the intense affective stances produced by mainlanders among mainstream Hongkongers, Yam concludes that

To be empathetic toward mainlanders, in other words, is to accept that they in fact are not unlike the mainstream citizenry. Recognizing such commonality, however, is risky for Hongkongers as it reveals the fragility of the boundary they have created over time to separate themselves from both the mainland Chinese people and the Chinese government. Protecting this boundary and their sense of superiority<sup>12</sup> over mainlanders is important because it gives Hongkongers the feeling of control amid the increased political and economic encroachment from mainland China that diminishes their cultural capital. (190)

In contrast to ordinary citizens, whose repetition of human rights discourse was a means to maintain that boundary between mainlanders and Hongkongers, the Hong Kong government and members of

the bureaucracy often rewarded activists' use of human rights as evidence of their expertise. The government's response to human rights discourse and law stemmed from the fact that they were not considered to be ordinary citizens. Instead, the government has often been the target of mainstream Hongkongers' ire for their dispassionate response to what many Hongkongers see as an invasion by mainlanders (Yam 2016) and their double role of both supporting Hong Kong's autonomy from and facilitating greater integration with mainland China (Yam 2019). As such, members of the IWG were not beholden to ordinary citizens' use of human rights discourse. LGBT activists, then, had to navigate when and how to use human rights discourse and law in their work, recognizing that in certain contexts human rights were used to exclude specific communities, not protect them.

## HUMAN RIGHTS DISCOURSE IN HONG KONG

The ties between ordinariness and the repetition of "We have human rights, but the mainland Chinese don't" was not surprising given the domestication of human rights law by the outgoing colonial government in response to widespread fears by ordinary Hongkongers of a return to China. In this light, Patten's decision to adopt the language of the ICCPR as the language of the Hong Kong Bill of Rights can be read specifically as a mobilization of human rights to protect Hongkongers from absorption by the mainland. As Chi Kit Chan (2014) and Stephen Ching-kiu Chan (2015) both note, the construction of a Hong Kong identity has been done in contradistinction to mainland China. It is perhaps unsurprising that the ways in which ordinary Hongkongers thought about, talked about, and understood human rights as a means to differentiate themselves from the mainland Chinese. Furthermore, as Yam (2016, 2019) notes, certain discourses toward the mainland Chinese have become hegemonic, and contradicting how mainstream Hongkongers referenced the mainland and its inhabitants was read as a rupture with ordinariness (on affect and the legibility of justice discourses, see also Clarke 2019).

I often asked my interlocutors, activist and nonactivist alike, "What are human rights and what are they used for?" One woman I met at the Hong Kong Pride Parade but who did not identify as an activist told me that human rights were part of being a Hongkonger. She told me that Hongkongers respected human rights but that they were also concerned that their human rights were being threatened by the mainland Chinese government. She said that every day she saw mainland Chinese people in Hong Kong and that she believed the government in Beijing was sending them to Hong Kong to erode "our culture, including human rights." If they were being sent by the Chinese government, she speculated, they could not respect human rights because the Chinese government did not respect human rights. I followed up to ask her whether she thought LGBT issues fell under human rights. "Well," she said, "I'm a trans woman and I have human rights, but I don't know if I have human rights because I'm a trans woman or because I'm a Hongkonger. I just want to be treated like other Hongkongers." Our discussion about human rights and the place of LGBT issues within

human rights was similar to many of the discussions I had with LGBT Hongkongers who did not self-identify as activists. With others, I often asked about specific enumerated rights, both those rights frequently used by LGBT activists in their reports to the government and others, such as the right to a free and fair trial. I was generally met with a non-committal “Maybe that’s human rights” or an “I don’t know.” For many ordinary Hongkongers, human rights existed as a discourse, not as a concrete legal system upon which individuals or groups could call to argue for governmental action.

Mark Goodale (2007) has identified a gap between the human rights legal system and human rights discourse, arguing that rights bearers or claimants believe the human rights system to be more expansive than it actually is. Thus, the way people speak and think about rights is often-times beyond the scope of the enumerated rights found in international human rights law. Ordinary Hongkongers, however, were using human rights discourse in a particular way—to differentiate themselves from mainlanders—which forces us to reconceptualize Goodale’s argument. Instead of a human rights discourse that exceeds the boundary of law, for ordinary Hongkongers, law exceeded the boundary of discourse. Moreover, for many of these Hongkongers, the connection between the ways in which human rights were talked about and the legal framework from which human rights law emerged was tenuous at best. “Human rights” were not a right to privacy, for example, but something integral to being an ordinary Hongkonger. I do not mean to suggest that human rights discourse was unimportant to ordinary Hongkongers beyond identification, for in declaring that Hong Kong was a land of human rights and mainland China was not, Hongkongers were also linking these rights to the rule of law and respect for (semi-)democratic forms of governance.

The need to differentiate Hong Kong from mainland China emerged from many Hongkongers’ belief that the Chinese government in Beijing was exerting a creeping control over the Hong Kong government and ordinary citizens’ access to this broadly conceived human rights. My activist and lay interlocutors were afraid that Beijing would violate the 1985 Sino-British Joint Declaration, which maintained Hong Kong’s legal, political, and cultural autonomy. They pointed to instances in which the Chinese government clearly violated the declaration and Hongkongers’ human rights in turn, namely the 2015 disappearance of booksellers from Hong Kong territory and their appearance in Chinese state police custody on the mainland. After I left Hong Kong in 2018, concerns have only increased due to the introduction of an extradition bill in 2019 that many Hongkongers were convinced would open up Hong Kong territory and ordinary citizens to arrest and removal to the Chinese mainland for speaking out against the Chinese state. More recently, in 2020, the Standing Committee of the National People’s Congress in Beijing passed a national security law after the Hong Kong Legislative Council failed to do so under its obligations under the Hong Kong Basic Law, which has renewed Hongkongers’ fears that they are in danger of becoming “just another Chinese city.” It was due to these fears that ordinary Hongkongers drew on one of their core values—human rights—as a tool to distinguish themselves and their territory from mainland China.

## HUMAN RIGHTS LAW AT THE IWG

In order to better understand how human rights discourse worked among ordinary citizens and how they responded to a rupture in this discourse, I turn to the ways in which human rights law was used by a select few activists during the IWG public forum. The first member of the public to stand and give testimony before the members of the IWG was an ethnically Chinese but Irish-raised activist named Thomas. When he spoke, he looked the part of an established barrister engaged in oral arguments before a court. He was wearing an expensive suit, had a typed-up outline of what he was going to say, and commanded the attention of the IWG. He spoke extensively about the international human rights obligations to which Hong Kong had committed itself and the incorporation of the ICCPR into the Hong Kong Bill of Rights, as well as various international bodies’ calls to remove compulsory gender-confirmation surgery prior to gender recognition. He spent ten minutes going through United Nations Development Programme and World Health Organization reports on gender recognition and the primary issues facing transgender people, such as the inability to legally live in one’s gender identity. He outlined the Committee Against Torture’s previous report on Hong Kong that noted the territory needed to remove surgical requirements for gender recognition. The Committee Against Torture, the body of human rights experts who are tasked with reviewing a state’s compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), had previously found that forcing transgender people to go through gender-confirmation surgery as a condition of gender recognition amounted to a violation under the terms of the convention. He concluded by saying, “So, from our perspective, it shouldn’t be a question of *are* you going to introduce a scheme, it should be that in order to comply with our various international human rights obligations, the IWG *must* introduce a scheme.”

Thomas’s speech was similar to the English and Cantonese work that other *gwailou* advocates did. In their organizational meetings, they spoke at length about needing to explain human rights in ways that ordinary citizens might understand, but doing so meant translating human rights into the Cantonese word for human rights, *jankyun*. The legal training or Western LGBT rights experiences of many of these *gwailou* activists conditioned them to reproduce a heavy reliance on human rights law, albeit in Cantonese, as a way to localize their work. These speeches, social media postings, letters to the editor, and other public-facing materials were often bilingual, but they were, nonetheless, messages in which human rights law was the foundation of their argument for adopting a GRO. Outside of the forum, the leader of one of the *gwailou* organizations explained his approach toward gender recognition: “It’s a human rights issue. Human rights law is clear: all people, including transgender people, have a right to privacy and a right to bodily integrity. Not everyone in Hong Kong will necessarily understand that in English, so we translate it into Cantonese for them.” I pressed him further, and he said, “We tell Hongkongers, ‘Look, the ICCPR and the Hong Kong Bill of Rights clearly says that these rights apply to everyone. So, if Article 17 [of the ICCPR] says there’s a right

to privacy, human rights law requires there to be some kind of legal gender recognition that protects transgender people's privacy."

Immediately following Thomas, a woman in a floral dress stood up. "I'm just an ordinary citizen of Hong Kong," the woman began,

I want to respond to the gentleman who just spoke. The gentleman mentioned international human rights. He said something like a gender-recognition scheme has to be adopted because of human rights and mentioned obligations and consensus and something about the Hong Kong Bill of Rights. I just want to say, we have to consider the social values and the norms and the cultures of Hong Kong. The grass is not always greener on the other side. . . . You have to consider the acceptance of the general public in Hong Kong. . . . This will have a tremendous negative impact on Hong Kong. Yes, I am completely against applying and introducing any foreign gender-recognition scheme into Hong Kong. . . . Most people, if they were aware of this consultation and fully aware of what this consultation meant, they would not agree.

She did not have notes, but she spoke passionately to both the IWG and the members of the public that came to the forum. The nods from those in agreement spurred her on before she concluded by repeating "I'm just an ordinary citizen."

More and more people who had come to protest the adoption of a GRO started their comments with "I'm an ordinary citizen," asserting that their ordinariness—and by extension, their opposition to using human rights law to adopt a GRO—was more representative of "traditional Hong Kong culture." This "traditional culture" was being used as a straw man to fight against legal gender confirmation, as it was widely recognized that Hong Kong had a history of gender variance (Chou 2000). As many of my trans interlocutors told me outside of the public forum, their desire for a simplified process of legal gender recognition was less a concern about active discrimination by these self-proclaimed ordinary citizens and more to align their legal gender with their gender presentation for those instances in which they needed to present identification. As Eric explained to me, "Most people don't care that I'm trans. There have always been people who we would now consider trans in Hong Kong. What a GRO is about is when I present my Hong Kong ID it says that I'm a woman. I can't go to a gym, for example, and use the changing rooms because when I sign up for a membership, the gym records me as a woman."

In the weeks following the forum, I sought out some of the people who had declared themselves ordinary citizens before giving testimony. Many of these people were reluctant to speak to me, perhaps because, as one person said, "You are a *gwailou* [expat]. I don't know if you will understand how ordinary citizens think." One of the individuals who agreed to speak with me told me, "I have nothing against people who think they are another gender. My problem is when they say, 'I have a right to change my gender.' What right is that? What about my rights? If you want to live your life as a man, fine, but you can't use human rights

to force Hong Kong to change to your whim." When I asked about what human rights should be used for, she said, "I guess to protect us. To protect Hong Kong. There are a lot of threats to Hong Kong and we use human rights to protect, not to pass laws." I also asked her and other opponents why they started their testimonies with "I am an ordinary citizen." For many, their response was "Because I am. I'm from Hong Kong. I'm a Hongkonger." As one man elaborated, "I'm a Hongkonger. I represent the majority of Hongkongers. We should not be accepting policies and laws from overseas." To the ordinary citizens at the public forum, then, Thomas's invocation of human rights law as a means to protect individual transgender people broke with how they understood human rights to work. Human rights were a protection against outside threats, including the one posed by mainland China.

## FIGHTING FOR GENDERrecognition WITHOUT HUMAN RIGHTS LAW

Since ordinary Hongkongers already understood "human rights" as a means to enforce a boundary between Hongkongers and mainland Chinese and that going against this hegemonic discourse would be interpreted as a break with ordinariness, LGBT activists needed to mobilize non-human-rights discourses when dealing with the public. Although the activists themselves saw adopting a GRO as a matter of human rights, as evidenced by the ways in which they communicated with the government (analyzed more below), many of them recognized that, at least in public fora, they could not cite human rights law in order to garner support from ordinary citizens. Instead, they turned to rhetorical questions and personal narratives that sought to reshape the boundaries of ordinariness, drawing transgender Hongkongers into this imagined community.

After several opponents to the GRO spoke, nearly all of them using the phrase "I am an ordinary citizen," George stood up. George was a newly licensed solicitor and had been trained in Hong Kong, the United Kingdom, and the United States. Though he could easily have been classified as working with expats because of his career and his current socioeconomic status, he deeply identified as a local. Prior to the forum, he had told me that he was from a family that had always struggled right at the cusp of working- and middle-class status. Moreover, he was unsure about his English abilities, which he identified as a more local than expat trait.

In an effort to disrupt the opponents' singular claims to representing Hongkongers' interest in the matter, George's first words were "I am an ordinary citizen, too." He continued:

I do not personally know what it feels like to be transgender, but I have a lot of transgender friends. I know how difficult it is for them to live without having surgery to change their gender, but it is also very expensive for most Hongkongers to have that surgery. Not everyone wants it, either, but does that mean that they have to be seen as their birth gender forever? Does it mean that they have to use the toilet [that corresponds to the

one] that is listed on their Hong Kong ID? Don't they have a right to privacy? Imagine looking just like any woman who was born a woman. Imagine having to go into a men's toilet like that. Imagine having to deal with the stares. Just by going into the bathroom that is on their ID, transgender people have to come out every day to people they may not want to come out to. For this reason, we need a GRO that lets transgender people change their gender without surgery.

Here, George only directly referenced the right to privacy once, but he used a series of rhetorical questions to explain that right. He gave a concrete example of having to share information daily, often unwillingly, just to comply with the law as it was. Furthermore, he referenced his ties to Hong Kong by being an ordinary citizen and made it clear that this was an issue that affected other ordinary citizens. He explained that for some transgender people it was not a matter of not wanting gender-confirmation surgery but that it was financially unobtainable. His speech was in line with the ways in which these ordinary citizens thought about human rights in that he was not asking for their support because human rights law demanded it. Instead, he sought to mark transgender people as similar to these ordinary citizens but needing a new law that allowed them to continue living their ordinary lives.

A few weeks after the public consultation, I asked George why he used the phrase "I am an ordinary citizen, too." He told me that the opponents were making the claim that the particular ways in which Thomas and some of the other high-profile expat activists had advocated for a GRO prior to the public forum—namely, asserting that human rights required the Hong Kong government to adopt a GRO—were causing friction with ordinary citizens. He was concerned that the opponents had started associating a GRO with these inappropriate human rights discourses, so his testimony was meant to lay claim to being both an ordinary Hongkonger and to be in support of a GRO: "I'm from Hong Kong, too, and I can want transgender Hongkongers to be able to change their gender more easily."

When I asked him how he knew that the people who were calling themselves ordinary citizens were not simply against allowing transgender Hongkongers from changing their legal gender or believed that transgender Hongkongers could never be seen as ordinary citizens, his husband, William, spoke up. William told me that he and George had gone to a city forum (a debate open to the public) around the time of the consultation that specifically dealt with transgenderism and gender recognition:

I remember a lot of the locals, a lot of the disinterested locals, were there. They'd call themselves ordinary citizens, too. The audience is always very diverse because they were not attending specifically for the topic, but for the event itself. I remember a lot of the older-generation people, like they were older than forty or fifty, said, "We never really cared about this at all. We have always known that there were people who didn't conform on the gender spectrum. If they think that they

are a guy, they go to the guys' toilet. If they think they are girls, they go to the girls' toilet." It's quite striking when that is the norm that we expect from the general public instead of when they say, "I'm from Hong Kong and I don't accept it."

George added, "Of course, some of them may just be transphobic, but I think it had more to do with the ways in which many of the *gwailou* activists had talked about gender recognition before the forum. All they talked about was that this was a matter of human rights law. I wanted to make sure these 'ordinary citizens' knew that they could support a GRO even if they didn't think this was a matter of human rights law."

George and other local activists recognized that it was not only discourses of human rights at play, but also discourses of ordinary citizenship. They recognized that if they wanted legal reforms for the transgender community, they could not contradict how ordinary Hongkongers already spoke about human rights. Instead of further marking themselves as different, activists sought to highlight that the law as it stood prevented trans Hongkongers from being just as ordinary as everyone else. Linking LGBT rights to one's ability to conform to a public is not a novel tactic, and queer and trans communities both inside and outside of the region have used proof that they are an unremarkable part of the larger community to make claims for specific legal changes (Kong 2011; Puar 2007). Indonesian gay zine producers, for example, have curated articles that utilized nationalist rhetoric to demonstrate that gay people desired and were worthy of national belonging (Boellstorff 2012).<sup>13</sup> Karen Zivi (2014, 291) also argues that in the fight for same-sex marriage in the United States, gay and lesbian couples needed to demonstrate their "repronormativity," or "a very particular understanding of good citizenship that promotes a narrow range of family forms and elides the distinctions between the marriage and parenting. . . . [I]t contributes to the normalization and homogenization of the intimate associations of same-sex couples." By mobilizing the repronormative arguments that gay and lesbian people make good parents and that same-sex marriage is good for children, marriage activists are reconfiguring LGBT people from threats to a heteronormative US society to people whose good citizenship *depends* upon the right to same-sex marriage. Such demonstrations sometimes face intense scrutiny when dominant rhetorics define national identity as being anti queer or antitrans (Ayoub 2014; Wilkinson 2014). Queer theorists also critique the performance of citizenship as homonormative and nonliberatory for all queer and trans people (Duggan 2003).

Many of the local trans activists I spoke with after the public consultation were quick to point out how ineffective Thomas's testimony had been, arguing that what George and other local activists had said had done more to convince some of the undecided attendees of the need for a GRO. "Hongkongers don't really understand human rights. You saw them say that human rights are foreign. How can you convince people to support a GRO if they think it is foreign law that is making the government pass a GRO? No, you have to get them to know more about transgender Hongkongers and the struggles they face," said one local trans woman. During the consultation, many local activists either specifically named transgender people as ordinary citizens who were

having trouble living their lives because of a lack of a clear and all-encompassing gender-recognition scheme or implied that transgender Hongkongers were not so different from those who were opposed to a GRO.

Not only was the work of George and other local activists an attempt to redefine ordinary citizenship to be inclusive of trans Hongkongers, but it also avoided *gwailou*'s reliance on citations to human rights law. Instead, their work sought to resolve the tension raised by Thomas's testimony by both reasserting trans Hongkongers' connections to Hong Kong and demonstrating that they were just as mundane as the people claiming to be ordinary citizens.

## HUMAN RIGHTS LAW AS EXPERTISE

While many local activists avoided talking about human rights in public in ways that contravened ordinary Hongkongers' hegemonic discourses, they did not completely abandon human rights law. Rather, their use of human rights law was dependent upon the audiences they were trying to reach with any given action. As part of my work for a local transgender organization, I was tasked with referencing many of the same international human rights treaties, opinions, and reports in funding applications and grant reporting that Thomas had used in his testimony. I asked my supervisor why she wanted me to use human rights language when she rarely claimed her work dealt with human rights when she was talking with the public. "We need to use their [the funders'] language in these reports. If we don't mention human rights in our applications, they won't think our work is important enough to give us money. But, if we used human rights in our programs, people will ask if we are pushing a Western agenda," she said. Another local activist with whom I worked closely similarly explained that when he was talking with the government, he would not hesitate to tell them that the Hong Kong government was failing in its international human rights obligations by requiring all transgender people to undergo gender-confirmation surgery in order to receive gender recognition. He told me that using the same language he used with the public would not work because he would not be taken seriously. "Plus," he said, "the government knows what its responsibilities are. It understands human rights." Both of these activists assured me, however, that despite the way they spoke to the public, they saw passing a GRO as an issue of human rights.

It was more than just using the language of funders or the government; rather, activists used human rights law as a way to demonstrate their expertise. In the numerous written briefs that local activists submitted to the IWG, nearly all of them included citations to the ICCPR, the CAT, or reports written by UN special rapporteurs. When I asked Eric why he did not speak during the IWG when his written submission was a well-researched argument of human rights law, he said, "I couldn't use this argument at the public forum. Those 'ordinary citizens' would have hated me using human rights like that. On the other hand, to the government, human rights law and legal arguments show you know what you are talking about. That's how experts talk, even if the government doesn't like to hear it."

Beyond the gender-recognition ordinance, many of my activist interlocutors used human rights law when interacting with the government as a way to be taken seriously. For a meeting with members of a governmental committee on HIV/AIDS, a local gay activist asked me to help him write a presentation that drew upon extensive reports by human rights NGOs and the United Nations to argue that Hong Kong should pass sexual-orientation antidiscrimination legislation as a means to reduce HIV discrimination. "When bureaucrats see me, they don't see someone who they need to listen to," he said, "I didn't finish university. I'm not a legal scholar. I'm just a regular, working-class Hongkonger. But I've also been a gay activist for twenty years and I've read the same human rights reports these bureaucrats have. If I cite the reports, if I make my argument based on human rights law, I'm showing them I know what I'm talking about." As in the public forum, using human rights law disrupted ordinariness, but when extraordinariness was performed for the government or international funders, it was interpreted positively.

## CONCLUSION

At the time of writing, the IWG process has not finished, nor has the Hong Kong Legislative Council adopted a GRO. Its passage, however, does not affect my arguments because the focus of my analysis has not been to measure the efficacy of different forms of activism. Instead, I have examined the possibilities and potential—or lack thereof—of human rights discourse in this particular urban and grassroots context. Popular thinking may conceive of human rights discourse narrowly as nearly always good and a method for checking governmental harm. An analysis of human rights discourse in practice, however, needs to address the possibility that "human rights" can also be used to harm, to discriminate, or to exclude.

The situation in Hong Kong may be the result of a unique history of colonialism, transfer of sovereignty, and ideologies of Hong Kong exceptionalism vis-à-vis the mainland Chinese, but that does not mean that the ways in which human rights discourse is used to shore up an ordinary Hongkonger identity cannot be instructive beyond the territory. What this article asks anthropologists of human rights to do is to pay close attention to the discursive work of human rights and how it may open up or foreclose the use of human rights law. Studying either how people talk about human rights or the way they use human rights law is not sufficient. Instead, we must pay attention to how these two phenomena—arguably two of the cornerstones of legal anthropology—shape and are shaped by each other. When there already exists an on-the-ground meaning of "human rights," can activists use human rights law in ways that go against established discourse? If they do, how will they be interpolated by other members of the community? The answers to these questions can help answer a much larger question: In what context might human rights fail?

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## NOTES

<sup>1</sup>The IWG and the move for a gender-recognition scheme in Hong Kong worked with a binary understanding of gender, failing to recognize non-binary identities. Though I note that a gender-recognition scheme would align legal gender and gender identity, it would only do so if transgender individuals' gender identities fell on the gender binary.

<sup>2</sup>All names are pseudonyms.

<sup>3</sup>I use the term "LGBT" because that is what most of my interlocutors used to refer to themselves in English (and often in Cantonese). The more commonly used term in academia, "queer," was not widely used or accepted within Hong Kong. I am aware of the violence of subsuming transgender people within the queer or LGBT umbrella, but of the three organizations in which I embedded myself, only one was specifically a transgender organization (Stryker 2004; Valentine 2004; see also Chaudhry 2019). The other two organizations, however, were active in the fight for a gender-recognition ordinance and had active transgender members. Despite this, both of the organizations were led primarily by gay men.

<sup>4</sup>"Human rights discourse" should always be read as multiple and never unified, as there was considerable variations in the ways in which people spoke about human rights, what they meant by human rights, and who had access to them. These differences often depended on the positionality of the speaker and to whom the discourse was directed. I often use "human rights discourse" in the singular not to reduce the ways in which people talked about human rights to a hegemonic, unitary articulation, but to refer to human rights discourse in the abstract.

<sup>5</sup>I use the Jyutping method of romanization for Cantonese. The system was developed by the Linguistic Society of Hong Kong in 1993 (<https://www.lshk.org/jyutping>). There is no standard romanization system for Cantonese in Hong Kong and many Hongkongers may not be familiar with other systems of romanization.

<sup>6</sup>Language in Hong Kong inherently raises questions and presuppositions about class. These assumptions about class and language will be discussed more later.

<sup>7</sup>This is different from, say, a judicial route which relies on court decisions like the one in *W v. The Registrar of Marriages* to decide issues of gender recognition on a case-by-case basis or, as some opponents were reluctant to propose in lieu of a formal method of gender recognition, a public education campaign to reduce stigma toward transgender people (but largely left the questions surrounding legal gender unanswered).

<sup>8</sup>It is possible that there were trans activists present, but had not identified themselves to me as trans.

<sup>9</sup>Expat activists often said that locals' use of Cantonese was evidence of their inability to use English to do advocacy, because if they could use it, they would.

<sup>10</sup>Though I do not address it here, there were also individual activists and organizations that catered to LGBT ethnic minority communities and domestic workers within Hong Kong.

<sup>11</sup>The shared lineage that Yam refers to is that the majority of both Hongkongers and mainland Chinese are ethnically Han Chinese, as well as most Hongkongers' ancestral ties to various regions in mainland China.

<sup>12</sup>This "sense of superiority" refers to earlier depictions of mainland Chinese as rural, uneducated, poor refugees coming to Hong Kong for a better life. As mainland China's economic situation has improved for many of its citizens, the mainlanders crossing into Hong Kong are often no longer poor, but wealthy tourists in search of luxury brands.

<sup>13</sup>Boellstorff uses "gay" with italics to denote that the word, while English in origin, is being used in a distinctly Indonesian manner.

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