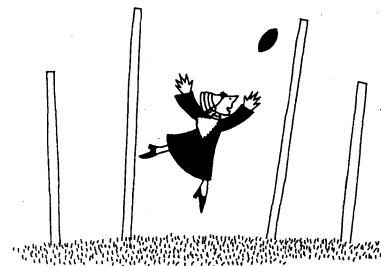


SPORT AND THE LAW

The Olympics, China and Law



As the Olympic torch relay made its tumultuous way through the cities of the world in April this year, I was reminded of the stir I unwittingly created in August 1993. Then, just prior to the IOC decision as to whether the 2000 Olympics would be hosted by China or Australia, I attended the month-long session of the UN Human Rights Sub-Commission in Geneva to gather material for my book on China, the United Nations and human rights. The consternation of the Chinese delegation, until I reassured them that my interest in the subject was purely scholarly, left me with the abiding impression that China was very conscious of the implications of its human rights policies for its Olympics bid.¹ China, like every other state, was aware of the first of the 'Fundamental Principles of Olympism' in the IOC Charter:

Olympism seeks to create a way of life based on the joy of effort, the educational value of good example and respect for universal fundamental ethical principles.²

It was for this reason that, when China was finally awarded the right to host the 2008 Olympic Games, it promised that it would improve its human rights.

I also learned that, for China, the Olympics was politics. Winning the Olympics was about national prestige, national status, national pride, and national legitimization. Peace and the brotherhood of man were not in the race. In this, of course, China was not alone. The same is true of most states, not to mention Nazi Germany in 1936. Why did Australia compete so hard with China to win the endorsement of the IOC back in 1993? It was to promote national goals — the accrual of higher international status and reputation, and national and local economic benefits. Politics is embedded in the very process of bidding.

By the same token, as each state seeks to showcase its power and status through the attainment of this sought-after prize, minorities within that state bring the world's attention (when else is the world likely to care?) to their essential powerlessness, their lack of status and their social, economic and cultural impoverishment. Just as Australia's Aboriginal peoples sought to call attention to their plight by peaceful protest before and during the 2000 Olympics, so the Tibetan minority peoples, denied that right to peacefully protest, rose up in March 2008. None of this should be surprising.

Minorities, moreover, are not the only groups to use the Olympics to express dissent. Even states have used the Olympics to express disapproval of the host state's policies. Hence the US boycott of the Moscow Olympics to highlight its objections to the Soviet occupation of Afghanistan.

So let us dispense with the myth that politics and human rights are not an integral part of the actual, as opposed to mythical, Olympic movement. What is new about the 2008 Olympics in China, at least since the Berlin Olympics, is the way in which

they have brought liberal and non-liberal states into direct conflict over competing value systems. The 2008 Olympics have exposed not just problems of human rights within China, critical as these are. They have also impacted on the integrity of Western liberal democracies. Unwittingly, the world-wide passage of the torch allowed the authoritarian reality of the Chinese state to temporarily penetrate Europe, the United States, Latin America, Asia and Australia. As Robert Menard, of Reporters without Borders, prophesied on 7 April, 'The Chinese have made sure that for a few hours, Paris will look like Tiananmen Square'.³ And so it came to pass.

As the bearers of the torch, with their accompanying band of Chinese security agents, wended their way through city streets, national authorities worked hard both to achieve a smooth passage of the flame and to ensure that the human rights and sovereignty of each host nation were not compromised in the process of protecting it. The former goal risked the adoption of authoritarian methods of crowd control: the latter sought to protect the human rights entrenched in international treaties, which are our common heritage and which otherwise would have been sacrificed to protect the interests and values of an authoritarian state that does not respect those rights. Hence Prime Minister Rudd's concern that, while in Australia, the flame should be protected by Australian, and not Chinese, security guards. Some states stressed one side, some the other. Few achieved the perfect balance between state control and the protection of human rights. On the streets, the contest of values was replicated by the sea of red flags proclaiming China's national virtues on the one hand, and the groups of demonstrators calling for human rights in Tibet and China on the other.⁴

Robert Kagan recently argued that China is unlikely to become a 'responsible stakeholder' in the international system because he doubts that a 'determinedly autocratic government' can really join a liberal international order.⁵ He pointed out that while 'we' want to make the world safe for democracy, 'they' want to make it safe for autocracies, or at the very least, their own. There is a superficial elegance in Kagan's notion. However, as a general observation it lacks the support of empirical evidence.

Since 1978, the People's Republic has been developing a 'rule by law' for its municipal legal system that does not bear close resemblance to a Western 'rule of law'. There is an instrumental use of law for the promotion of the interests of state control rather than an enabling mechanism to guarantee the rights of the individual. On the other hand, China has adapted more readily to the international rule of law. In major international regimes of nuclear non-proliferation and disarmament, political economy and the environment, it has acceded to treaties, complied procedurally and substantively

with their rules, and internalised their norms by implementing them legislatively and politically and incorporating them in domestic institutions. When measured against the base level of its international compliance in 1980, nine years after it replaced Taiwan as the official representative of China in the United Nations, its progress has been remarkable.⁶

The exception in its compliance with its obligations under international law has been human rights, because, to China, human rights are critical to questions of state sovereignty, internal security and the survival of its authoritarian political system. This is despite the fact that China has ratified the major international human rights treaties, with the exception of the International Covenant of Civil and Political Rights (ICCPR), which to date it has only signed. Human rights are the one area where Kagan's observation is reasonably accurate.

To some extent, the West itself is to blame for these developments. For more than a decade, it has been avoiding an open critique of China's human rights, for the most part leaving to China's own intellectuals, lawyers and activists the responsibility of chipping away at the great wall of the invincible Chinese state.⁷ In 1997, at the UN Human Rights Commission, China persuaded Western states, in the interests of 'cooperation' over 'confrontation', and with an eye to the booming Chinese economy, to forego the important annual resolution critical of China's human rights in favour of a series of bilateral human rights dialogues. These have been non-transparent, unaccountable and largely ineffectual.

From this success, China learned how easy it was to divide and rule the international community. The diversion of responsibility for international human rights supervision onto individual states and away from the Commission also undermined that body's authority. The later resolution replacing the Commission with the UN Human Rights Council was opposed by China. Nevertheless, China sought, and was awarded, a place on the Council — a body which, to date, has failed to meaningfully address China's human rights abuses, even though some expert UN human rights bodies dealing with discrete rights violations have been more successful. For this reason, in its bid to host the 2008 Olympics, China may well have assumed that, given Western amnesia about its poor human rights record, the coast was clear. That assumption would appear to be borne out by its decision to expand the relay around the world. China also mistakenly assumed that its self-constructed image as a benevolent state respectful of human rights would be accepted as unquestioningly by the rest of the world as it was by the majority of its domestic audience, especially given the apparent success of its policy to simultaneously loosen controls (by releasing certain dissidents) and tighten them (by detaining and sentencing others).⁸

Now that the torch is back in China and (at the time of writing) the one hundred day countdown to the actual Games has begun, how will the conflict of values be handled? The IOC's Charter mirrors the dual responsibilities shouldered by governments during the relay. It incorporates rules whose purpose

is, on the one hand, to ensure an orderly, successful Games and, on the other, to uphold universal ethical principles. However, in preparing for the Beijing Olympics, the Committee has placed emphasis on the former rather than on the latter. In May 2008 it felt it necessary to send a letter to athletes in which it elaborated on art 51.3 of the Charter, which states that 'no kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas' and adjured them while in China to obey Chinese law.⁹ It thus appeared to emphasise the Chinese interpretation of law as 'rule by law' rather than the Western concept of 'rule of law'. In the interests of a successful Olympic Games, it is now stressing the maintenance of order over the fundamental principles enshrined in the IOC Charter.

China has recently commenced negotiation with the Dalai Lama's envoys, so some normative ground has been ceded to human rights. However, the pressure needs to be maintained to ensure that the talks are not just symbolic and have a meaningful outcome. Given the unfortunate results of China's divide and rule policy of the last decade, Western states would now do well to unite and adopt coordinated human rights responses that are both consistent and open. While states like France may choose to boycott the Opening Ceremony failing meaningful negotiations with the Dalai Lama, others like the US and Australia may well argue that sanctions such as boycotts do not work and, moreover, are no longer appropriate given that China has commenced negotiations.

However, to maintain their own and international standards of human rights, and to ensure a reasonable balance between 'control' and fundamental ethical norms, all state representatives and foreign media attending the Olympics must feel free to voice their own values and make open statements critical of China's treatment of Tibet, and other human rights violations if they so wish. The prior muzzling of sportsmen and women through contracts signed before the Games, especially by British contestants, is a betrayal of the value systems both of Western liberal democracies and the international community as a whole. Fortunately, the Australian Olympic Committee recognised this and reversed its previous requirement that no Australian athletes should voice their opinions while on the Olympic site, so as to allow Australian athletes freedom of expression.¹⁰ States that are members of the UN Human Rights Council should also begin to speak out. China may be able to stage-manage its own events, but it should not be allowed to stage-manage the world. The decision to award China the right to host the Olympics in 2008 can only be justified if, as originally intended, it maintains and protects, rather than undermines, fundamental Olympic principles and international human rights law.

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