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THE *NOMOS* OF HONG KONG'S UMBRELLA MOVEMENT

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[The] error consists in... [the] belief that there is only one type of law, whereas there are at least two: state law, and a law that precedes the state and gives it an absolute value (Maurice Hauriou)¹

Introduction

Written in the early 1980s, Xi Xi's *Marvels of a Floating City* is an allegorical interpretation of Hong Kong's imminent transition from British to Chinese rule. The English language edition of this multi-media short story, comprising thirteen vignettes that obliquely respond to paintings by the French surrealist René Magritte, was published in 1997 to coincide with the formal handover of sovereignty. The text begins with an image of Hong Kong's foundation as a "floating city" and conjures a sense of a nebulous Hong Kong identity, forged in the midst of competing interests: "many, many years ago, on a fine day, the floating city appeared in the air in full public gaze, hanging like a hydrogen balloon. Above it were the fluctuating layers of clouds, below it the turbulent sea. The floating city hung there, neither sinking nor rising".² Caught between a colonial past and a Chinese future, Xi Xi captures the shifting sands on which Hong Kong cultural and political identity are founded. The sense of this complexity is brought to the fore in the text through multifarious references to both Chinese and Western cultural traditions. This assemblage of Eastern and Western references conjures a vivid impression of Hong Kong's variegated culture that, like the city itself, "floats" between shores.³ Unlike Eva Hung who suggests that Xi Xi's approach is "based on an assumption that... readers will take such diverse cultural references in their stride",⁴ I would argue that this broad range of references – from Song dynasty artists to Italian postmodern novelists – works precisely to *trouble* rather than *assert* any sense of stable identity. The cultural heterogeneity that Xi Xi brings out underscores a sense of unassuredness rather than confidence about questions of identity in Hong Kong. This was clearly a sign of the times. As the Sino-British negotiations got under way in 1982, many in Hong Kong felt that a return to Chinese sovereignty was the beginning of the end for this "floating city". Hong Kong's indeterminate status between East and West, offering a cultural and economic bridge between worlds, felt decidedly under threat in the 1980s as the future became unclear; as Xi Xi herself notes, this was "a dim and uncertain age".⁵

Marvels of a Floating City, though written for another time, has a particular resonance in the wake of Hong Kong's Umbrella Movement. The questions of space, place and identity that Xi Xi poses in the context of transition once again dominated the city's politics during the occupations in 2014. The nature of Hong Kong's distinct cultural heritage and its uncertain future as it grapples with the increasing influence of Beijing and the Chinese

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¹ Maurice Hauriou, *Précis de droit constitutionnel* (Paris: Recueil Sirey, 1923) 284; quoted in Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York: Telos Press Ltd., 2003) 83, n 7.

² Xi Xi, *Marvels of a Floating City and Other Stories* (Hong Kong: University of Hong Kong Press, 1997) 3.

³ On Hong Kong's "floating" identity see Ackbar Abbas, *Hong Kong: The Culture and Politics of Disappearance* (Minneapolis, University of Minnesota Press, 1997).

⁴ Eva Hung, "Editor's Introduction" to *Marvels of a Floating City and Other Stories* (Hong Kong: University of Hong Kong Press, 1997), xii.

⁵ Xi Xi, (note 2 above), p 68.

Communist Party (CCP) animated the Umbrella Movement. In what follows I aim to unpack some of these issues, focusing on how the movement engaged questions of space, belonging and identity by challenging the normative assumptions that structure everyday life in the territory. The movement posed, as Xi Xi's story does, the question of what it means to *belong* in Hong Kong and who has the right to shape the city's destiny. Whilst these questions are perhaps broader than the traditional cut and thrust of legal or constitutional analysis, without attention to the normative force of the spatial and cultural orderings that framed the movement our analysis of these events remains limited.⁶ My claim is that the great success of the movement was to temporarily rupture the background ordering of the city that we – as legal scholars – so often take for granted. This interruption of the existing normative order or *nomos* of the city re-posed the questions belonging and by paying due attention to the interruption that the movement enacted allows us to see its enduring significance for Hong Kong's legal and political settlement. The argument proceeds by first setting out the shift that I propose to take: away from "law" and towards the "nomos", a term that, as will become clear, opens our thinking to a broader and more dynamic sense of normative ordering than that afforded by a strictly legalistic lens. I then turn to two distinct senses of the "nomos" that I will discuss in relation to the Umbrella Movement. The first, inspired by the German jurist Carl Schmitt, foregrounds the normative force of *spatial* ordering and the second, inspired by sociologist Peter Berger and the legal theorist and historian Robert Cover, assesses the *discursive* dimension to normativity, stressing how shared normative commitments are central to the formation of community and a common identity. My claim is that, beyond raising technical, constitutional issues concerning voting rights, the Umbrella Movement's interruption of the city's existing spatio-normative distribution posed fundamental questions about the nature of identity and belonging in the territory that goes to the heart of its political significance.

From Law to *Nomos*

The proposed shift away from the "law" may appear odd. Undeniably, the Umbrella Movement had a perspicuously legalistic tone and orientation. The subject of its concerns, the terrain on which opposition was mounted and the key actors involved all attest to the movement's juridical inflection. From interpretative battles over the meaning of "the rule of law" and "civil disobedience" to detailed proposals for constitutional change and debates about the legality of police tactics used to control the occupations, the law was on everyone's lips in late 2014. The unique constitutional settlement in the SAR plays an important role in explaining this fact. The rule of law – guaranteed by the Basic Law and the "one country, two systems" model – has played a decisive role in developing a sense of Hong Kong's exceptionalism with respect to the rest of China.⁷ In this sense, legal concepts, values and institutions have an uncommon cultural and political piquancy within the territory. This "legalistic" orientation is striking and worthy of careful reflection; indeed much of the existing literature on the events of 2014, including chapters within this very volume, focuses

⁶ As I have argued elsewhere, the purely legalistic analysis of events fails to address some of its key achievements and, in particular, privileges a statist perspective that disavows attention to the lived and felt reality of the occupations themselves. See, (forthcoming) Daniel Matthews, "Narrative, Space, Atmosphere: A Nomospheric Inquiry into Hong Kong's pro-democracy Umbrella Movement" (2016) *Social and Legal Studies* DOI:10.1177/0964663916649257. The present analysis seeks to explore these issues further with a particular focus on the intersection between the spatial (re)ordering the movement achieved and questions of cultural identity.

⁷ The increasing focus on the rule of law in China – the rule of law, *with Chinese characteristics* – might be seen to counter this claim. However, it is precisely the qualificatory supplement (*with Chinese characteristics*) that is revealing here. The rule of law in Hong Kong is indebted to the rendering promoted through the common law and is framed by reference to international instruments like the ICCPR. For an assessment of comparative approaches to the rule of law with a particular focus on Hong Kong see Benny Y. T. Tai, "Developing an index of the rule of law: Sharing the experience of Hong Kong" (2007) 2(1) *Asian Journal of Comparative Law*, art. 4.

on these very issues.⁸ As intimated above, I want to take a different approach. I argue that attention to the juridical effects engendered by the movement obscures and de-politicises some of the movement's key achievements. The occupation sites expressed not only a desire to change the procedures governing the election of the CE but temporally re-ordered the city's normative distribution in a way that has an enduring political significance.

As I set out below, this intervention within Hong Kong's spatial ordering is not simply a *quaestio facti* but engages the most fundamental of *legal* questions and concerns. The appropriation and distribution of space shapes the normative world of a given community, establishing the conditions of possibility for positive law. I refer to this spatial distribution as the *nomos*, a Greek term that is often rendered simply as "law" but "order" or "ordering" perhaps comes closer to the sense of *nomos* that I deploy here. *Nomos* refers to an originary ordering of the world, prior to and distinct from formal legality. With the risk of a somewhat Kafkaesque formulation, it is a *law before the law*, or as our epigraph from Hauriou has it, a "law" that precedes the state.⁹ This sense of *nomos* has been largely forgotten or misconstrued within the jurisprudential literature, particularly since the rise of positivism in Europe in the early 19th century. Even a thinking of *nomos* in antiquity offers mixed perspectives, Plato's *Nomoi* (*Laws*) suggests a certain synonymity between *nomos* and *thesmos* (legislation) and the famous distinction made by the Sophists between *nomos* and *physis* understands *nomos* as a matter of the formal dictates of political and juridical institutions in contradistinction to the "order" of the natural world. Carl Schmitt and Robert Cover have both sought, though in different ways, to reconnect legal thinking to the *nomos*, to a force that orders the world, quite distinct from a particular body of rules made and maintained by a set of juridical institutions. Schmitt and Cover's approaches to the term are divergent in many important respects, with Schmitt developing a purely *spatial* and Cover an exclusively *discursive* reading of the *nomos*. Whilst I follow Schmitt in grounding *nomos* in the concrete order of the material world, Cover's account of *nomos* as a discursive "force field"¹⁰ in which the normative life of a community is immersed offers a useful supplement to this account. In particular, Cover's examination of the role that narrative plays in shaping and giving direction to the normative life of a community provides a helpful heuristic by which we can assess the senses of cultural identity and belonging that animated the movement.

By relying on certain aspects of Schmitt and Cover's thinking I argue that we can attend to aspects of Hong Kong's Umbrella Movement that remain inaccessible through a purely "legalistic" or "constitutional" lens. A detailed account of Schmitt and Cover's accounts of *nomos* is beyond the scope of the present argument. Whilst I rely on their work in some respects, I am not claiming any fidelity to their broader projects; in fact I depart quite radically from Schmitt's thinking by reading the *nomos* at a local rather than global scale. As will become clear, assessing the movement through the language of *nomos* allows us to approach the movement's key strategies and understand the political aspirations that underpinned them.

Nomos denotes a background ordering of social life, made possible by the appropriation and division of material space and the mobilisation of conceptual and ideational demarcations and divisions. For Schmitt, *nomos* describes the means by which the social and political order becomes immediately visible, achieved through the appropriation of space.¹¹ But the operative power of the *nomos* is largely invisible in our daily lives, describing the *assumed*

⁸ See, in particular, Sebastian Veg, "Legalistic and Utopian: Hong Kong's Umbrella Movement" (March-April, 2015) 92 *New Left Review* 55-73; Samson Yuen, "Hong Kong After the Umbrella Movement: An Uncertain Future for 'One Country, Two Systems'" (2015/1) *China Perspectives* 49-53; Michael Davis, "Occupy protests breaking law, but not undermining Hong Kong's rule of law" *South China Morning Post* (7 November 2014).

⁹ See Franz Kafka, "Before the Law" in *The Complete Short Stories* (London: Vintage, 1999), pp 3-4 and Hauriou (n 1 above), p 284.

¹⁰ Robert Cover, "The Supreme Court, 1982 Term – Foreword: *Nomos* and Narrative" (1983) 97(4) *Harvard Law Review* 10.

¹¹ Schmitt (n 1 above), p 70.

order of things in a given situation. In the main, lawyers are particularly guilty of overlooking the normative force of a given spatial distribution.¹² A focus on posited rules and conventions is the natural attitude for the jurist, who too often takes the spatial (and discursive) *nomos* on which such rules ultimately rest for granted. The near-total dissimulation of the *nomos* remains effective until that order is interrupted, challenged or mis-performed, when a normally busy highway is converted into a space for public deliberation or a nondescript concrete wall or pavement is transformed into a canvas for the expression of dissent. This chapter inquires into how the Umbrella Movement's intervention in the city's *nomos* (re)attunes our senses to the normative force of the city's extant normative order. In tracing the nomic affects of the Umbrella Movement, I ape the phenomenological strategy of *epoché* (or "bracketing") whereby the "natural attitude" is suspended in an effort to reveal a more radical appreciation of "things themselves". My argument temporally "brackets" the jurists usual concerns with ordinance, statutes and case law in order to trace the implications of the movement in the distinct, prior register of the *nomos*. I will start by focusing on the ordering of space, exploring the spatial and material intervention that the movement made.

Nomos I – Lawscape and rupture

Etymologically, *nomos* is tied to *neimen* the Greek verb generally taken to mean "take", "assign" or "manage". In his account of *nomos* Schmitt identifies three specific meanings of *neimen*, each describing an aspect of his tripartite understanding of *nomos*: (i) to take or appropriate, (ii) to divide or distribute, (iii) to pasture or set to productive use.¹³ A decisive stage in the more than three thousand year history of the term is the connection made between *nomos* and *oikos* noted by both Plato and Aristotle. As Plato describes it, the nomad-shepherd was engaged in a particular form of *neimen* that involved nourishing his flock, achieving an order and just distribution through the quotidian search for pasture. The *nomos* of a household – an *oiko-nomia* or "economy" – is quite distinct from the nomad's *nomos* because it presupposes the appropriation and settlement of land. For Schmitt the binding of *oikos* and *nomos* reveals the term's most originary sense: that of land-appropriation. For Schmitt, it is this that is the basis of all social and legal systems: "prior to every legal, economic, and social order, prior to every legal, economic, or social theory are these elementary questions: *Where and how was it appropriated? Where and how was it divided? Where and how was it produced?*"¹⁴ It is the processes of land appropriation – conquest, expropriation or discovery – that provides the basis for all forms of division and distribution, every subsequent form of social or legal order. Schmitt uses *nomos* to explain the changing fortunes of land appropriation and the distribution of space on an international scale, arguing that a global – but unashamedly Eurocentric – "*nomos* of the earth" emerged in the age of discovery. Relative stability and mutual recognition amongst European states was predicated on a radical spatial division between European and non-European land. Those tracts of land beyond the reach of the *jus publicum europaeum* were considered free for occupation, exploitation and appropriation. This fundamental division purported to order the entire globe and remained dominant until the end of 19th century. The rise of American power and the emerging political settlement in Europe in the wake of World War I saw this "*nomos* of the earth" come to an end.

Schmitt moves very quickly from a concrete and local *nomos* – the *nomos* made possible through the settlement of land and the establishment of an *oikos* – to global questions

¹² The burgeoning scholarship in law and geography is an obvious exception to this. For an overview of this literature see, Nicholas Blomley, David Delaney and Richard T. Ford (eds.), *The Legal Geographies Reader* (Oxford: Blackwell, 2001). Indicative recent publications include: Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Abingdon Routledge, 2015); Chris Butler, *Henri Lefebvre: Spatial Politics, Everyday Life and the Right to the City* (Abingdon: Routledge, 2012); and David Delaney, *Nomospheric Investigations: The Spatial, the legal and the Pragmatics of World-Making* (Abingdon: Routledge, 2010).

¹³ Schmitt (n 1 above), pp 324-355 (emphasis in the original). See also, pp 67-80.

¹⁴ *Ibid.*, p 328.

concerning the movement of peoples and the conquest of land over the *longue durée* of European history. Nonetheless, Schmitt's thinking provides us with a key insight that will help in our analysis of the Umbrella Movement. What is stressed here is the normative force of spatial distribution and appropriation. Following both Locke, Rousseau and Kant, Schmitt stresses the fundamental importance of land appropriation and distribution. Before formal law – written or otherwise – there is first a law of *mine* and *thine*, of circumscription and of a radical claim to possessive control of land. Through the language of the *nomos* we can inquire into this register of spatial ordering, the immediately present and affective distribution of space that is constitutive of a community's normative order. As Schmitt suggests, *nomos* describes a "legal power, not mediated by laws... it is an act of *legitimacy* whereby the legality of a mere law is first made meaningful".¹⁵ It is this prior register that is of interest to me. However, it is worth noting here that I depart from Schmitt in two respects. Firstly, I want to explore the *nomos* at a different scale to Schmitt. It is the local and quotidian rather than the global and epochal that is my concern here. Secondly, I want to stress how the *nomos* – at this more local level – is routinely dissimulated or obscured; we remain largely oblivious to the normative force of our spatial surroundings, taking for granted affects of spatial distribution. The Umbrella Movement, through its intervention within the existing *nomos* of the city, suddenly made visible this normative distribution and its re-ordering of the cityscape was central to understanding the political ambitions by which it was animated.

Let us begin, then, by attuning ourselves to the *nomos* of the city. Given Hong Kong's geographic restrictions and the predominance of corporate power, meaningful public space is extraordinarily limited within the city. Indeed, such space is often included within the footprint of buildings designed for commercial use. This means that "public space" is not uncommonly found *within* shopping malls or other retail sites, achieving the near-complete capture of public space by corporate power.¹⁶ The private ownership of networks of pedestrian walkways within the city centre attests to this; even "the street" – that much vaunted site of public encounter and refractory assembly – is often not "public" in Hong Kong. Large corporations have the power to police these walkways, ensuring the steady flow of consumers through the city's spaces. These factors are key aspects of the city's *nomos*, shaping the comportment of citizens, prohibiting stasis and enforcing a continual movement in search of the next bargain. This imbrication of legal and spatial ordering is made possible through the everyday engagements and interactions of citizens, producing what Andreas Philippopoulos-Mihalopoulos calls a city's "lawscape", referring to the enfolding of space and law that constructs a distinct normative fabric within the urban environment.¹⁷ The lawscape encompasses a range of spatial demarcations and signs that control the normative ordering of space. Philippopoulos-Mihalopoulos argues that the "lawscape" is animated by a play of in/visibility where its normativity becomes more or less visible at any moment. On our daily commute, for example, the normative ordering of space retreats and we become barely conscious of the various materialities that shape our behaviour and express a particular normative imposition: from the front door or gate that determines the public/private division to the ticket barriers in the subway that police your contractual obligations to your carrier, from the panoply of signs and instructions that order your travel, to the shifting rules of etiquette that emerge in the different spaces you inhabit on your journey. What the notion of the lawscape stresses, then, is that a city's *normative architecture* is not reducible to the sum total of its legal texts and executive orders but must include the spatial and material, *architectural* even, ordering of the city.

One of Philippopoulos-Mihalopoulos's key insights, relevant for the present argument, is that the lawscape is reproduced through the habituated *performance* of our spatial

¹⁵ *Ibid.*, p 73.

¹⁶ Alexander Cuthbert and Keith McKinnell, "Ambiguous space, ambiguous rights – corporate power and social control in Hong Kong" (1997) 14(5) *Cities* 295-311.

¹⁷ See Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Abingdon: Routledge, 2015) and Andreas Philippopoulos-Mihalopoulos (ed.) *Law and the City* (Abingdon: Routledge, 2012).

surroundings. As Schmitt reminds us, once land appropriation has occurred and a community is able to distribute, divide and produce within a given space, the underlying spatial matrix recedes into the background.¹⁸ However, we should not approach this underlying *nomos* of a city as being static or somehow abstracted from the lives of citizens. The everyday engagement with the city, through the repetitive, re-tracing and re-affirmation of its spatial divisions, is key to the maintenance of its *nomos*. Like any normative coding, the division and production of space requires constant engagement; indeed, what is the *nomos* of the city apart from these repetitive inscriptions in its fabric, the reproduction of private/public divisions, the re-affirmation of the boundaries of personal space and the re-iteration of normative codes of behaviour that attach to the city's locales? It is precisely this repetitive re-production of the city's *nomos* that re-enforces, amongst other things, the expropriation of public space by private actors in Hong Kong, mentioned above. And it is this that the Umbrella Movement challenged and in so doing made suddenly visible the spatial ordering that is so often simply assumed.

The movement ruptured the city's lawscape through the strategy of occupation: an act, to give it a Schmittian gloss, of land appropriation. In political terms, the strategy of occupation is about making immediately visible dissent and discontent within a polity through the seizure of physical space. Within an established normative order, the occupation of a library, a public square or a street corner is also an act of normative creativity. The existing spatial order, is temporally suspended and the contingency of these existing divisions revealed. As we saw throughout the uprisings in the "Arab Spring" and in the occupations of the squares in southern Europe in 2011, public space became sites of normative experimentation with the dominance of state law being directly challenged and new forms of decision making and modes of representation taking hold. It is the public square or park – Tahrir, Syntagma, Taksim or Pueto de Sol– that provides a space for such dissent. A city's square is a small fissure within the *nomos* of the city that can be re-appropriated and re-imagined in times of political contestation or unrest.

Nowhere do we find such a public space in Hong Kong. As Lisa Law has argued, one possible candidate, "Statue Square" in Central, is more closely aligned with either exclusionary colonial power or to the might of the city's financial institutions than it with "the people" of Hong Kong.¹⁹ This was what was so striking about the creation of "Umbrella Square" in the city's Admiralty district. Echoing the occupations of Tahrir, Syntagma and beyond, the Umbrella Movement fashioned its very own public space. The "square" was a space for public discourse and debate: a temporary *polis* within the streets of the city, it was a space dedicated to political creativity through shared speech and action. As Hannah Arendt argues, the *polis* is a space in which "I appear to others and others appear to me, where men [sic]... make their appearance" as explicitly political actors.²⁰ For the ancients, the *polis* necessitated a spatial division. The political space it names is made possible through an act of circumscription, produced by the division of the land and the establishment of walls that divide within from without. If for Arendt a key political task involves rediscovering the classical political divisions between the public and private realms, the Umbrella Movement's rupture of the city's *nomos* worked precisely to undo them. The daily rituals of private life – breakfast, afternoon naps, homework and late night gossiping – took on a new significance when performed in the street, distorting easy delineations between private and public spaces. Umbrella Square was only roughly delimited, marked by porous borders that, rather like Antonin Artaud's "theatre of cruelty" troubled any easy distinctions between actor and audience, participant and passer-by. The square became a messy assemblage of actors, observers, critics and commentators. This invention of a new *polis* where political contestation and debate was rife was engendered by the opening in the city's *nomos* made possible by the occupation. This revealed the possibilities of new spatio-normative orderings

¹⁸ Schmitt, (n 1 above), p 341.

¹⁹ Lisa Law, "Defying Disappearance: Cosmopolitan Public Spaces in Hong Kong" (2002) 39(9) *Urban Studies* 1630-1635.

²⁰ Hannah Arendt, *The Human Condition* (Chicago: Chicago University Press, 1998), 198-199.

within the city. The creation of a “public square” in the heart of the political and business district of the city re-appropriated space that had been consigned to very different uses. The “square” interrupted the existing spatial distribution of the city, re-ordering the city’s *nomos*. The Lennon Wall, covered in fluorescent notes of solidarity and political aspiration used the street as a canvas for creative artistic expression,²¹ gestures made possible by the fundamental act of land appropriation. The division of the “square” into study areas; kitchens; first aid tents; sites for public meetings, prayer and relaxation are all part of the spatial ordering at the register of the *nomos*. The occupation site asserted the public’s role at the heart of city, allowing for the expression of an alternative form of life to emerge which re-ordered the relation citizens had with their spatial surroundings.

In this sense, the movement disavowed the typically modern attitude that understands space as empty and abstract, a neutral backdrop against which social life is played out. Through the re-appropriation of space within the city, the Umbrella Movement underscored the lived reality of (social) space, reminding us – and following Henri Lefebvre – that space itself is always being *produced*.²² The interruption of city’s *nomos* posed the spatial ordering of the city *as a question* and refused to reduce the spatial to a background issue. The force of Umbrella Square came in part through its interruption of the normal routes of transit through the city: bus routes changed, commutes were suspended, shopping trips stymied. This rupture of the quotidian production of space was one of the movement’s key affects. Beyond the disputes over the constitutional settlement and the “legalistic” terrain on which much of existing debates have been conducted, the Umbrella Movement asserted a more radical questioning of the *nomos* of the city. The occupations of space in the heart of the city performed – through a creative “acting out” – a key claim: *the normative ordering of space matters*. In a city with exceptionally small apartment spaces and in which almost all young people live in the family home well into their twenties, the opportunity to occupy, divide and produce space on one’s own terms was seized by young Hongkongers. The existing order that has erased public space, isolated individuals and alienated living space from the communal environment, largely prohibits political expression and abstracts citizens from a sense of the *polis*, a public realm fashioned through a shared creative endeavour. It was an effort to reinvent an immanent and temporary sense of this very *polis* that animated the movement.

To draw on another Lefebvrian motif, we can perhaps associate the invention of Umbrella Square with a specific normative claim: the “right to the city”.²³ This right re-asserts the fact that cities are shared creative endeavours in which all residents participate. The city, Lefebvre claims, is “more or less the *oeuvre* of its citizens”²⁴ to which all members of the community have a right of participation. Emphasising the way in which certain groups or classes within the city are excluded from its central spaces through ghettoization and other forms of urban exclusion, he asserts the right to the city as “refusal to allow oneself to be removed from the urban reality”.²⁵ In its most fundamental expression, this right is expressed through the physical presence of citizens within the city’s spaces, it is a right performed through the appropriation of space in which space is *used, created and managed* by citizens themselves.²⁶ This is a “right” – and therefore a matter of law – but a right that is more at home in the street than in the courtroom, a material and practical right that is claimed through the assembly of bodies in urban space. As Judith Butler suggests in the context of the emergent politics of

²¹ See, Janny Leung, “Umbrella Movement” (2014) 18(12) *Law Text Culture* 134-137.

²² Henri Lefebvre, *The Production of Space* (Oxford: Blackwell, 1991).

²³ Henri Lefebvre, *Le Droit à la Ville* (Paris: Economica, 2009).

²⁴ Henri Lefebvre, *Writing on Cities*, (Oxford: Blackwell, 1996) 117

²⁵ *Ibid.*, p 195.

²⁶ Central to Lefebvre’s understanding of the right to the city is the claim that the *use value* of space be privileged over its *exchange value*. Lefebvre sees the commodification of space as a key aspect of it becoming increasingly abstracted from the lives of citizens in late modernity.

protest in post-2008 America, we should understand the right to the city as a right that “comes into existence *when exercised*, and exercised by those who act in concert, in alliance”.²⁷

It was this communal re-ordering of the city’s spaces that was perhaps the most powerful effect of the movement. The collective expression of a right to belong in the city’s space, to have an active role in shaping the city and its future posed the question of belonging in Hong Kong: whose space is this and who has the power to control the city’s *nomos*? Viewing the Umbrella Movement through the spatial lens in which the *nomos* and the spatio-normative takes precedence over formal law, we can reveal some of the deeper problematics that the movement revealed. Beneath the technical and legalistic disputes over the election of the CE was a political and normative claim by a generation that feels an increasing detachment from Hong Kong’s institutional politics and the material ordering of the city’s spaces. To ignore this spatio-normative dimension to the Umbrella Movement de-politicises its strategies and practices, transforming the movement into a technocratic debate about election procedures and constitutional interpretation rather than being closer to the more radical “right to the city” that seeks to re-claim the city’s spaces. I have sought in this section to offer an unorthodox perspective on the Umbrella Movement by stressing the normative affects of its spatial intervention. Notwithstanding the importance of this move, an exclusive attention to the spatial represents, in itself, an incomplete account of the pro-democracy campaign. The Schmittian approach to the *nomos* as a purely spatial and material ordering of things ignores the discursive constructions that affect our normative worlds. In the following section I turn to these issues through a very different thinking of the *nomos* developed by Robert Cover. Through Cover – along with Peter Berger’s work, the sociologist of religion who inspired Cover’s thinking – we can develop a richer account of the motivations that animated the Umbrella Movement from within. Still the language of *nomos* will dominate our thinking but in the next section we move from the material to the cognitive, from the spatial to the discursive, in an effort to expand the analysis.

Nomos II – Narrative trajectories and shifting identities

Our normative worlds are concretely constructed. The panoply of material techniques used to impose a set of norms over human activity – whether international borders, picket fences or speed bumps – are key to the ordering of social life by attaching norms to a concrete locale. But what of our discursive normative constructions? The socially contingent empire of “dos and don’ts”, “oughts and ought nots” is as affective – sometimes more so – than the outward, material manifestations of a given normative order. Our socially constructed and immediately *invisible* normative worlds are “made real” – as Elaine Scarry puts it²⁸ – through the feelings of guilt, shame and instincts of obedience without which normative orders could not function. These purely discursive “inventions” are not without their operative affects. The purely spatial account of the *nomos* outlined above approaches these issues at a different register of analysis, suggesting that discursive normative formations are superstructures built on the purely material notion of land-appropriation and spatial division. This stark distinction between the material and the discursive, however, cannot hold. The acts of land appropriation that make immediately visible a given social order can only be efficacious in the context of a shared discursive milieu in which such divisions and demarcations are themselves associated with particular categories like “ownership” or “property” and national borders can only be effective if “imagined communities” with a shared sense of identity have been formed to bind actors in a common endeavour. Let’s turn then to an alternative account of the *nomos* that will offer a supplement to the materialist sense on which we have focused until now.

The sociologist Peter Berger uses the *nomos* to describe the everyday, background discursive ordering of social life.²⁹ The *nomos*, for Berger, is something that is constantly

²⁷ Judith Butler, *Notes Towards a Performative Theory of Assembly* (Cambridge MA: Harvard University Press, 2015), 80 (my emphasis).

²⁸ Elaine Scarry, “The made-up and the made-real” (1992) 5(2) *The Yale Journal of Criticism* 239.

²⁹ Peter Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor Books, 1969).

being produced by actors within a community; to this end he speaks of *nomizing acts* more often than the *nomos* itself, emphasising the creative activities that produce a given order. The original “nomizing act” is to distinguish between *this* and *not that*, to make clear delineations in discursive space. Indeed, Berger’s reliance on spatial metaphors is striking, as he comments: “seen from the perspective of society, every *nomos* is an area of meaning carved out of a vast mass of meaninglessness, a small clearing of lucidity in a formless, dark, always ominous jungle”.³⁰ Berger here mobilises the very same notions of appropriation, division and demarcation, but here in the discursive register, that Schmitt emphasis in the material. Berger’s *nomos* is a shared world that, whilst socially constructed, is precisely what allows community members access to “reality”, a shared body of meaning and knowledge through which social interaction is possible. As with the spatial *nomos*, this discursive register very quickly recedes into the background and passes-by largely unquestioned; until, that is, it is interrupted, disputes arise or one is dislocated from one’s indigenous discursive order. In fact, Berger argues that the *nomos* very often becomes completely dissimulated, with communities assuming that their particular and contingent *nomos* is co-extensive with the *cosmos* or natural world. Drawing on this account, Robert Cover ties the *nomos* to an explicitly *normative* ordering, describing the *nomos* as a normative universe in which we constantly create distinctions between valid and void, the interdicted and the permissible. The *nomos* is an expansive normative register that infiltrates our everyday lives. This allows Cover to position the particular claims and proscriptions made by formal legal regimes against a grander set of concerns. As he suggests, the administrative functions of state law are a part of our normative universe but only “a small part... [of what] ought to claim our attention”.³¹ In this way, Cover argues directly against jurisprudential orthodoxy that understands normative authority as being tied to a commonly recognised, sovereign authority. For Cover, the *nomos* offers a different perspective. Normativity is generalised and radicalised in Cover’s hands, describing it as being akin to the physical forces of “gravity or momentum”, or a “force field” through which we are constantly moving.³² Julen Etxabe suggests that we understand the *nomos* as a “language” by which particular claims or statements are charged with a normative force.³³

Cover’s crucial intervention, and one that will assist in the context of our account of the Umbrella Movement, is the function of *narrative* in relation to the *nomos*. For Cover, the linguistic divisions and distinctions that Berger sees as founding the *nomos* only tell part of the story. More significant than the distinctions between *this* and *not that* is the narratological context in which such divisions are made. All normative systems are mobilised by narratives that give a normative proposition or a linguistic designation sense and direction: “for every constitution there is an epic and each decalogue a scripture”.³⁴ Cover describes the function of narrative in his theory of the *nomos* in the following terms:

To live in a legal world requires that one know not only the precepts, but also their connections to possible and plausible states of affairs. It requires that one integrate not only the “is” and the “ought” but the “is”, the “ought”, and the “might be”. Narrative so integrates these domains.³⁵

For our present concerns, Cover’s insistence on the connection between *nomos* and narrative allows us to approach the deep political divergences within Hong Kong and shed light on some of the defining features of the Umbrella Movement. The emerging narratives within the pro-democracy caucus, in particular, deserve a little unpacking.

³⁰ *Ibid.*, p 23.

³¹ Cover (n 1 above), p 4.

³² *Ibid.*, p 10.

³³ Julen Etxabe, “The legal universe after Robert Cover” (2010) 4(1) *Law and Humanities* 115-147.

³⁴ Cover (n 1 above), p 4.

³⁵ *Ibid.*, p 10

Since the return of Hong Kong sovereignty to China in 1997, the pro-democracy movement has become dominated by an increasingly radical student movement. Two recent actions stand out. Firstly, the movement to stop the passing of national security legislation – due to be implemented according to Article 23 of the Basic Law that provoked widespread popular protests on Hong Kong’s streets, politicising a new generation of Hongkongers. And secondly, the civil action led by high school students in 2012 to resist the introduction of the “Moral and National Education” programme. The latter campaign gave birth to the “Scholarism” association that played a decisive role in the Umbrella Movement and ended with the occupation of government offices and a student-led hunger strike. These recent mobilizations evidence a growing sense that the pro-democracy organisations and parties formed in the 1980s and 1990s are no longer able to effectively manage the desired transition to a more democratic settlement in the SAR.³⁶ The intransigence of pro-establishment parties and the conservative tactics of LegCo’s pan-democrats have led to increasing frustrations, particularly amongst young Hongkongers who have shown that more radical and confrontational methods can be effective in bringing about change.

These insurgent political tactics should be understood in the context of shifts in political and cultural identity in recent years. As Veg points out, recent campaigns to save iconic Hong Kong landmarks from destruction like the old Star Ferry pier and the Choi Yuen Tsuen village, evidence a growing civic and cultural attachment to a local, rather than national, heritage.³⁷ These local attachments are part of a changing dynamic concerning ethnic and cultural identity in the SAR. Polling conducted in 2015 suggests that only 18% of the population identifies as “Chinese” with over 40% identifying as “Hongkongers”, an identification that has risen dramatically since its 18% low in 2008.³⁸

The shifting foci of social and cultural identification in Hong Kong has been the subject of intense scrutiny and debate since the transfer of sovereignty in 1997 when “a distinctive social identity associated with being both Hong Kong and Chinese” was established.³⁹ This identification that pushed against Western or expressly British influence spiked in 1997⁴⁰ in the wake of the handover. But the superordinate identity in the complex imbrication between “Hongkonger”, “Hong Kong–Chinese”, and “Chinese” associations has shifted back and forth along with the changing social and political winds. These complexities were born out in the occupations themselves that displayed a wide range of local, national and international influences. In his analysis of artworks created during the movement – whether large scale installations or ad hoc street art – Marco Wan argues that a *bricolage* of identities was present in the occupation sites.⁴¹ Strikingly, colonial nostalgia, with the former Colonial flag of Hong Kong and British establishment slogans like “Keep Calm and Carry On” being appropriated for new localist ends by some.⁴² Perhaps more significant is Wan’s attention to the cultural specificity of many of the artworks that used puns, word play and specifically *local* references that necessitated an intimate knowledge of both the Cantonese language and Hong Kong pop

³⁶ For a fuller account of the background to the pro-democracy movement in HK see: Joseph Cheng, “The democracy movement in Hong Kong” (1989) 65(3) *International Affairs* (Royal Institute of International Affairs 1944-) 443-462; Benjamin Leung, “The Student Movement in Hong Kong: Transition to a Democratizing Society” in Chiu and Lui (eds.) *The Dynamics of Social Movements in Hong Kong* (Hong Kong: Hong Kong University Press, 2000); and Ming Sing, “Mobilization for political change – the pro-democracy Movement in Hong Kong (1980s-1994)” in Chiu and Lui (eds.) *The Dynamics of Social Movements in Hong Kong* (Hong Kong: Hong Kong University Press, 2000).

³⁷ Veg (n 8 above), p 70.

³⁸ HKUPOP survey, available at:

<https://www.hkpopop.hku.hk/english/popexpress/ethnic/eidentity/poll/datatables.html>.

³⁹ Marilyn B. Brewer, “Multiple Identities and Identity in Transition: Implications for Hong Kong” (1999) 23(2) *International Journal of Intercultural Relations* 191.

⁴⁰ Anthony Fung, “What makes the Local? A brief Consideration of the Rejuvenation of Hong Kong Identity” (2001) 15(3/4) *Cultural Studies* 591-601.

⁴¹ (forthcoming) Marco Wan, “The Artwork of Hong Kong’s Occupy Central” (2016) ([book title TBC can confirm at proof stage])

⁴² *Ibid.*, 11.

culture; as Wan suggests, “one needs to be a Hong Konger” to understand the subtleties of much of the aesthetic output of the occupations.⁴³

Any effort to offer definitive statements on the complex nature of the shifting modes of identification in the territory is a fool’s game that I will not enter into here. What is perhaps clearer are the prominent and divergent narratives concerning Hong Kong’s political and social trajectory to which the Umbrella Movement points. As the pro-establishment forces in Hong Kong mount a firm footing for ever-closer bonds with the CCP in the build-up to the expiration of the Basic Law in 2047, young Hongkongers are becoming increasingly reticent about these ties. The tactics in the fight for a democratic future and the increasing tendency to foreground a unique Hong Kong identity rather than a broader “Chinese” categorisation evidence a marked division between those who want to stick to the narrative of “orderly and gradual” democratic progress that leads inexorably towards ever-closer ties with Beijing and those who imagine another story to be told; perhaps most dramatically, this is a narrative that rejects any easy connection between the Basic Law and the quest for democracy. Cover’s evocation of the “might be” which any normative order must marshal is no longer, for many, tied to the possibilities mapped out by the Basic Law. As I have argued elsewhere the emerging localist narrative can also be sensed in the key shift that took place in September 2014 when the limited civil disobedience action proposed under the banner of “Occupy Central with Love and Peace” (OCLP) gave way to the more radical tactic of prolonged occupation, giving birth to the “Umbrella Movement” proper.⁴⁴ Here a shift took place that took the movement away from arguing for change within the existing constitutional framework of Hong Kong towards a more radical, performative *living out* of a democratic alternative in the occupation camps themselves.

It was these changes in narrative orientation that allowed for the articulation of a deeper political claim to the spaces and modes of belonging in the city that we discussed above. The performative claim of a “right to the city”, the presence of bodies in the city centre demonstrating a new generation’s desire to have a stake in their city’s future that appeared to be no longer possible through existing channels and modes of representation. By tracing this more radical gesture within the movement we can appreciate how the seeds were sown for the now growing localist politics that has dominated the post-Occupy landscape in Hong Kong.⁴⁵ My suggestion here is that by understanding the movement at the register of the *nomos* that stresses the importance of situating its claims in the context of socio-cultural narratives about the identity and trajectory of Hongkongers and the material orderings that the movement interrupted we can reveal some of the underlying, and perhaps tacit, political commitments that have an enduring significance in Hong Kong’s current political climate.

Conclusion

By shifting to the register of the *nomos* I have sought to offer an alternative perspective on the Umbrella Movement. In particular, I have resisted the temptation to view events through a purely “legalistic” interpretative frame by inquiring into how the movement affected a deeper

⁴³ *Ibid.*, 18.

⁴⁴ Matthews (n 6 above), pp 10-12.

⁴⁵ The localist movement has taken hold in the territory in the wake of the Umbrella Movement. The “Hong Kong Indigenous” group – whose political leanings are pithily captured in their motto, “Local Values, Valiant Resistance” – put up a very strong fight against the mainstream pan-democratic Civic Party’s candidate in a recent by-election. Student bodies at both HKU and CUHK have recently voted to support localist groups and leaders indicating strong sympathy for the movement amongst young Hongkongers. As Suzanne Pepper suggests, the localist movement is orientated around a robust identity politics that seeks to support all aspects of Hong Kong’s local culture, economy and politics, including the “disruptions” caused by cross-border traders operating in the New Territories. The movement is associated with a more radical set of tactics than the mainstream pan-democrats and was directly involved in the violent unrest in Mong Kok in support of local street food hawkers. See Suzanne Pepper, “Holding the line... But only just” (2 March 2016), available at <http://chinaelectionsblog.net/hkfocus/>.

sense of the “ordering” of the city. Drawing on Schmitt’s account of the *nomos* as an originary spatial ordering of the world and Lefebvre’s understanding of the “right to the city”, I underscored the normative significance of the movement’s intervention within Hong Kong’s spatial matrix. By interrupting the everyday production of (social) space in the city, the movement brought to the fore the spatio-normative constructions that shape urban life and, in temporarily suspending them, re-imagined the city’s *nomos*. Beyond the technicalities of constitutional interpretation and voter reform, the movement made a more fundamental assertion of a right to belong in the city’s spaces and have a stake in its future. Through Cover and Berger’s account of the *nomos* as a discursive normative world through which communities are always shaping their future commitments, we were able to trace the shifting dynamics of identity within Hong Kong and examine some of its key tactical choices the movement made. The imagined future for the territory is precisely what was at stake in the movement. For those involved in the messy process of post-Occupy institutionalisation and electioneering, this remains an open question: the “might be” of Hong Kong’s future.

The expansive and rather nebulous register of the *nomos* in no way provides all the answers for unpicking this complex social movement, but I hope that shifting our attention away from legalistic technicalities to an “other law” that precedes and prefigures these matters has revealed another dimension to the normative significance of the Umbrella Movement. I stressed above that the *nomos* of the city – understood as a spatio-normative ordering – is produced through the quotidian practices of citizens, re-iterating its demarcations and networks. In this sense, the real test for any campaign for political change is to alter these everyday practices, to intervene within these deep structures and habits that shape the lives of actors in a community. By any measure the situation for the pro-democratic movement in Hong Kong is today worse than was before the Umbrella Movement took hold of the streets in September 2014. There is no realistic prospect of LegCo passing democratic reform of any sort in the near future, a situation that cannot be said for the pre-Occupy context. The question of the legacy of these encampments remains open to debate: was the Umbrella Movement an ultimately failed act of self-indulgence, a training ground for future political action or simply a signal of the deep political and generational divisions that mark the city? Plato used the term *nomos* to refer to those customs and convention that were of educational significance, describing as *nomoi*, those rules which instilled values within the young. The hope must remain that that the *nomos* of the Umbrella Movement will fulfil precisely this *paideic* function, inculcating democratic values within a new generation of activists. However, the results of these “lessons in dissent” remain to be seen.