The World is a Garden:

Nomos, Sovereignty and the (Contested) Ordering of Life

Traditional approaches to questions about the nomos in IR typically focus upon either its establishment and the formal structures that emerge through interaction within a clearly delineated spatial area, or an exploration of US hegemony in the post 2003 world. In this article I posit a different approach, building on the ideas of Giorgio Agamben, which grounds the nomos as a spatialisation of the exception within conditions of neoliberal modernity. I suggest that within the global nomos are more localized nomoi that are operate within the global nomos. These localized nomoi are a consequence of the spatialization of the exception and a fundamental tension between localization and ordering.

I argue that whilst sovereign power has been a source of contemporary scholarship, such explorations have paid scant attention to the regulatory power of normative values and their capacity to create order within space. Such norms allow for a greater awareness of how sovereign power can be mobilised in and of itself as a form of contestation. Locating such debates in the Middle East, I explore the concept of the nomos to understand how struggle over the localisation and ordering of space helps us to better understand contemporary political life

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In *The Nomos of the Earth* Carl Schmitt argued that the end of the First World War had a dramatic impact on the organisation of life across Europe, facilitating the collapse of the *Ius Europaeum Publicum* which had regulated life since the 17th century.[1] Since then, a growing number of scholars have engaged with questions

[1] Carl Schmitt, The Nomos of the Earth: in the International Law of the Jus Publicum Europaeum (Telos Press, 2003)

about the nature of spatial ordering, whilst also using the concept of *nomos* in explorations of sovereign power. A discussion about sovereignty and the state of exception – a legal-political concept that is central to contemporary efforts to retain power – contains implicit within a number of assumptions about space and the relationship between legal structures and territory. Typically, this work focuses upon the exception and the mechanisms of control used to regulate life, yet such approaches fail to adequately account for the complexity of political life in the post-colonial world and the myriad often competing visions of ordering that challenge sovereign power.

The concept of *nomos* is inextricably linked – semantically and politically – to notions of *law* and the ordering of life. For Giorgio Agamben, the convergence of democracy and totalitarianism through the state of exception and the resulting camp is the "nomos of the modern", as a consequence of the production of 'bare life' across society through the proliferation of the logic of the camp.[2] While the concept was traditionally understood as *custom* or *law*, it has become understood in myriad ways driven by the political, social, legal and normative contexts and conditions of the prescriber. Fundamentally, *nomos* allows us to speak of a law that "frames, locates and organises human, political and social existence".[3] It is a concept that is central to *order*, *life* and the *norms* that regulate existence. It is seen by some as a form of "root order",[4] yet as I shall endeavour to show, *nomos* should instead be viewed as the struggle over the *localisation* (*Ortung*) and *ordering* (*Ordnung*) of space. *Nomos* is thus comprised of the interaction of sovereign power and community within and across space.

In this article I seek to demonstrate how using the concept of *nomos* helps us better understand political life in the Middle East through understanding tension between competing visions of political order. Across the following pages I propose an understanding of *nomos* that complements the structural approach of Giorgio Agamben with a relational approach similar to those proposed by Hannah Arendt, Peter Berger and Robert Cover. Drawing on examples from the region, namely the construction of the state of Israel and the emergence of geo-sectarian politics, I use the concept to understand how struggle over the localisation and ordering of space helps us to better understand contemporary political life. I argue that amidst contestation over the means through which order is achieved, an existential threat to the very nature of the territorially grounded sovereign state arises which can be manipulated by forces seeking to destabilize political order.

Sovereignty, Nomos and Spatial Ordering

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[2] Giorgio Agamben, Homo Sacer: Sovereign Power and Bare Life (Stanford University Press, 1998), 1998 p166

[3] Julia H. Chryssostalis, 2013. Reading Arendt 'reading' Schmitt: reading nomos otherwise? in: Maria Drakopoulou, (ed.) Feminist encounters with legal philosophy Abingdon, Oxon Routledge. p, p162

[4] Martin Ostwald, *Nomos and the Beginnings of Athenian Democracy* (Oxford: Clarendon Press,1969), 20

The ability to *define* the exception - and *suspend* the rule - is seen to be the dominant characteristic of contemporary sovereign power, emerging from the work of Carl Schmitt.[5] Although deeply problematic, Schmitt's work has been taken up by scholars on both left and right – as an influential voice in neo-conservative thought and a powerful voice against liberal imperialism - offering insight into International Legal and Political Theory, yet his work has also had a large impact on International Relations, particularly evident in his work on sovereignty and *nomos.* Schmitt's ideas are predicated upon a reading of *the political* as one that is based upon the friend/enemy distinction, which creates a particular form of political and social organisation.

Schmitt's later work moved away from an interest in domestic affairs and took on an international focus underpinned by spatial concerns. Perhaps the most influential of this period of work is *Der Nomos der Erde,* (The Nomos of the Earth,) in which Schmitt focusses upon the apparent failure of the *Ius Publicum Europaeum* and the emergence of a new *nomos.* For Schmitt, *nomos* stems from the unity of space and law, driven by the complex interaction of *Ortung* and *Ordnung*, which create spatial limits through taking an outside.[6] This approach creates a particular form of legal and political life, wherein conflict is an inherent and daily part of life as *the political* underpins all interactions.[7] Ultimately, the earth "becomes a battleground, and the polity a vessel for conflict".[8]

For Schmitt, *nomos* is essential in rooting law to land, where appropriation is a fundamental act, restoring law's 'spatial character'. It is, "the original spatial order, the source of all further concrete order and further law. It is the reproductive root in the normative order of history."[9] In *The Nomos of the Earth,* "land appropriation is the primeval law-founding act" [10] a concept that takes us back to the beginning of political life, naming "the originary and primordial relation of law to the earth and to the soil" .[11] Schmitt's engagement with the concept of *nomos* is typically understood as an attempt to understand world order and has prominently featured in academic debates about US hegemony in the post 9/11 context. [12] Yet as Hannah Arendt

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[5] Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty.* (Chicago: University of Chicago Press, 2005). This concept is deeply problematic, removing all forms of agency and contingency, yet it is beyond the scope of the paper to address this in detail here.

[6] Agamben, 1998 p19

[7] Criticism of the Schmittian understanding of 'the political' is well known and is beyond the scope of this article to set out.

[8] Anna Jurkevics, 'Hannah Arendt reads Carl Schmitt's *The Nomos of the Earth:* A dialogue on law and geopolitics from the margins', *European Journal of Political Theory,* 16:3 (2017), p349.

[9] Schmitt, 2003 p42

[10] Ibid. p47

[11] Chryssostalis, 2013 p172

[12] See: Roland Axtmann, 'Humanity or Enmity? Carl Scmitt on International Politics', *International Politics* 44 (2007) 531-51. William Hooker, *Carl Schmitt's International Thought* (Cambridge: Cambridge University Press, 2009).

suggests – and as we shall explore in due course – this understanding of Law ignores inter-subjectivity and processes of interpretation. Moreover, it removes all traces of normative legal and political characteristics which offer an alternative ordering of life.[13]

Although problematic, Schmitt's work continues to shape a number of intellectual traditions. For Louiza Odysseos and Fabio Petito, Schmitt's account of *nomos* offers "the most compelling history of the development of international law", along with an "alternative historical account of international relations […] and demise of modern 'international society', often referred to as the 'Westphalian system'".[14] For others, Schmitt's work was central to a powerful critique of liberal world-ordering, political geography challenged by the "spaceless universalism" of the Anglo-American imperial agenda and the "end" of interstate politics.[15] Perhaps more importantly, Schmitt's work allowed for a return to the politics of exception, particularly that put forward by Agamben, and Hardt and Negri, along with a reimagining of figures of 'the partisan' and 'terrorist' in the post 9/11 world.[16]

It is the return of this exception that is of interest to our project and, in particular, the work of Giorgio Agamben. Building upon both Schmitt and Michel Foucault, particularly the decision to "take life or let live".[17] Agamben's understanding of sovereign power is concerned with the regulation of life through exception, which

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Stephen Legg, and Alex Vasudevan, (2011) 'Introduction: Geographies of the Nomos', in Stephen Legg (ed), *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos,* (London: Routledge) amongst others.

[13] Hannah Arendt, *Marginalia*, p49, cited in Jurkevics, 2013.

[14] Louiza Odysseos and Fabio Petito (eds) 2007. ''Introduction: the International Political Thought of Carl Schmitt.'' In The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order, edited by L. Odysseos and F. Petito, 1–17. London: Routledge. P1

[15] See: Slavoj Z̆iz̆ek, 1999. ''Carl Schmitt in the Age of Post-Politics.'' Chantal Mouffe (ed), In The Challenge of Carl Schmitt, (London: Verso 1999) 18–37; Peter Stirk Carl Schmitt, Crown Jurist of the Third Reich: On Pre-emptive War, Military Occupation and World Empire. (Lampeter: Edwin Mellen Press, 2005).
Kam Shapiro, 2008. Carl Schmitt and the Intensification of Politics. (Lanham: Rowman & Littlefield Publishers).
Sergei Prozorov, 2009. ''Generic Universalism in World Politics: Beyond International Anarchy and the World State.'' International Theory 1(2):215–47.
Gabriella Slomp 2009. Carl Schmitt and the Politics of Hostility, Violence and Terror. London: Palgrave.

[16] Andreas Behnke, 2004. ''Terrorising the Political: 9/11 within the Context of the Globalisation of Violence.'' Millennium: Journal of International Studies 33(2):279–312. Chantal Mouffe (ed) *On the Political* London: Routledge 2005, Werner, Wouter. 2010. ''The Changing Face of Enmity: Carl Schmitt's International Theory and the Evolution of the Legal Concept of War.'' International Theory 2(3):351–80.

[17] Michel Foucault, "Governmentality". In *Ideology and Consciousness 6*, 5 no.2 (1979) Foucault, M. *The Will to Knowledge: The History of Sexuality – Volume 1.* (London: Penguin, 1976)

ultimately becomes the "nomos of the modern".[18] Agamben's work seeks to undertake a spatialization of the exception, driven by a desire to map particular "socio-geographical phenomena" where the exception is seen to operate.[19] It is within these sites that key aspects of Agamben's work emerge. Here, the ban is located, producing bare life through the exclusion of life from the *polis* and its inclusion through exclusion, a theme that will recur later in this essay.[20]

For Agamben, the ban is the state of exception; it is the process of creating an outside and conversely, an inside. Through this constitutive act, the sphere of the political is born[21] along with the "paradox of sovereignty".[22] This paradox is contingent on the idea that the sovereign is

> neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other. The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least claims not to be) unrelated to the juridical order.[23]

Put another way, the state of exception is "the preliminary condition for any definition of the relation that binds and at the same time abandons the living being to the law".[24] It is this inclusive exclusion that is at the heart of much of Agamben's thought, a *spatial* threshold, a zone of indistinction through which one can identify the structure of political relations and public spaces. From this, we can observe how political life and meaning is stripped from individuals, creating *hominus sacri* in the process.

Central to Agamben's work is the Aristotelean distinction between life as either *bios* or *zoe*, wherein life has political meaning or where such meaning has been eviscerated, excluded from what is viewed as a qualified political life and subjected to sovereign violence. In this position, individuals are simultaneously bound by legal structures yet abandoned by them, residing in a position wherein they are subject to

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[18] Part Three, Chapter 7 of *Homo Sacer* is entitled 'The Camp as the 'Nomos' of the Modern'.
[19] Oliver Belcher, Lauren Martin, Anna Secor, Stephanie Simon, and Tommy Wilson, 'Everywhere and Nowhere: The Exception and the Topological Challenge to Geography', *Antipode* 40 (2008) p499
[20] Richard Ek, 2006, 'Giorgio Agamben and the Spatialities of the Camp', *Geografiska Annaler Series B: Human Geography* 88B (2006) 363-86. Derek Gregory, 'The Black Flag: Guantanamo Bay and the Space of Exception', *Geografiska Annaler: Series B, Human Geography* 88(4) (2006) 405-27., Claudio Minca, 'The Return of the Camp', *Progress in Human Geography* 29 (2005) 405-12. , Claudio Minca (2006) Giorgio Agamben and the new biopolitical nomos, Geografiska Annaler: Series B, Human Geography, 88:4, 387-403, Reid-Henry, S. 'Exceptional Sovereignty? Guantanamo Bay and the Re-colonial Present', *Antipode* 39 (2007) 627-48.
[21] Astrid Deuber-Mankwosky, 'Cutting off Mediation. Agamben as Master Thinker', *Acta Poetica* 36:1 (2015) p55.
[22] Legg and Vasudevan, 2011 p13. See also: Belcher et al, 2008 p499, Debrix 2009, Minca 2006, 2007.
[23] Agamben, 2005 p23.
[24] Ibid., p23.

the laws yet not protected by them and can be killed by anyone but not sacrificed.[25] Here, *bare life* becomes increasingly political through its inclusion, bound in a more fundamental *political* relationship with sovereign power.

In doing so, we see the mechanisms of sovereign control in operation:

> The sovereign no longer limits himself [...] to deciding on the exception on the basis of recognizing a given factual situation (danger to public safety): laying bare the inner structure of the ban that characterizes his power, he now de facto produces the situation as a consequence of his decision on the exception.[26]

The situation referred to above brings about ideas of the camp, a zone of indistinction and the space that opens up amidst efforts to grant the unlocalizable a "permanent and visible localization".[27] It is a consequence of the fundamental ambiguity of the nexus between *Ortung* and *Ordnung* that characterises Agamben's *nomos.*[28]

For Agamben, the camp is the "hidden matrix of politics", where all political life is captured and regulated by "the governmental machine" that is formed by sovereignty, government, law and police.[29] It is a spatial form, existing *beyond* the normal juridical and governmental order.[30] In Agamben's thought this is *nomos*, the link between localization and ordering, the immediate form where "the political and social order of a people becomes spatially visible",[31] fundamentally, the localization of the unlocalisable.[32] This idea is a central feature of neo-liberal modernity, especially pertinent in the post 9/11 political context, with inherently spatial characteristics.[33] Accepting this view of the camp brings the formal and informal into discussion of sovereignty and the mechanisms of the state.[34] The camp is also a site of metaphysical potentiality, wherein all may be cast as *hominus sacri* by virtue of this potentiality.[35] As Edkins and Pin-Fat suggest: "We have all become homines sacri or bare life in the face of a biopolitics that technologizes, administers, and

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[25] Agamben, 1998.
[26] Ibid., p170
[27] Ibid., p37
[28] Minca, 2006, p390. See also: Bulent Dilken, 'Zones of indistinction: security, terror and bare life', in Anselm Franke and Kunst-Werke Berlin (eds) *Territories. Islands, camps, and other states of utopia.* (Verlag der Buchhandlung Walther König, Berlin 2003), p43.
[29] Agamben, 1998
[30] Ibid. p169
[31] Claudia Aradau, 'Law Transformed: Guantanamo and 'the Other Exception', *Third World Quarterly* 28:3 (2007) p492
[32] Dilken, 2003
[33] See: Legg, 2011; Claudio Minca and Rory Rowan, *On Schmitt and Space,* (Oxon: Routledge, 2016); Minca, 2006 Op. Cit., p388.
[34] Giorgio Agamben, The Use of Bodies (Stanford: Stanford University Press, 2016)
[35] Dilken, 2003

depoliticizes and thereby renders the political and power relations irrelevant".[36]

To illustrate this point, Agamben uses the idea of the wolfman to demonstrate spatial transgressions, crossing between the human and non-human realms. Drawing upon the figure of the wolfman, the individual who transgresses both law and society, appearing to simultaneously occupy the role of both man and beast. For Agamben this

> is not a piece of animal nature without any relation to law and the city. It is, rather, a threshold of indistinction and of passage between animal and man, physis and nomos, exclusion and inclusion: the life of the bandit is the life of the loup garou , the werewolf, who is precisely neither man nor beast , and who dwells paradoxically within both while belonging to neither.[37]

Whilst Schmitt and Agamben both offer persuasive accounts of sovereign power, a number of challenges emerge. One challenge stems from the idea that consideration of legal structures alone cannot account for the regulation of behaviour, highlighted by the tale of Antigone. Indeed, as we shall see, a range of factors are in play that shape agency, legal structures and the spatial order of the Westphalian system. A second challenge concerns the role of agency and the mechanisms through which change occurs within both political organisation and *bare life.* Reading Agamben, it is easy to conclude that political life is bleak, with sovereign power extending over those with authority over vital human activities and little scope to resist sovereign power,[38] yet as Edith Szanto and Patricia Owens persuasively argue, this is far from accurate: although *bare life* limits scope for the expression of agency, this does not remove it altogether.[39] Rather, *bare life* removes the capacity for political expression and representation which, of course, may impact upon expressions of agency but does not necessarily do so.

Perhaps the most damning challenge to sovereign power in the post-colonial world concerns the remnants of the Westphalian system and its spatial bordering where sovereign power plays out amidst competing manifestations of *Ortung* and *Ordnung* that play out in time and space. Whilst the nation-state has been reified within

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[36] Jenny Edkins and Veronique Pin-Fat V, 'Introduction: Life, power, resistance', in Jenny Edkins, Michael Shapiro, and Veronique Pin-Fat (eds), *Sovereign Lives: Power in Global Politics* (New York: Routledge, 2004), p9.

[37] Agamben, 1998, p105

[38] See: Paul Rabinow, & Nikolas Rose, (2006). Biopower today. BioSocieties: An Interdisciplinary Journal for the Social Study of the Life Sciences, 1(2), 195–218. Ewa Plonowska Ziarek, (2008). Bare life on strike: Notes on the biopolitics of race and gender. South Atlantic Quarterly, 107(1), 89–105. Louisa Cadman, (2009). Life and death decision in our posthuman(ist) times. Antipode, 41(1), 133– 158. Michalinos Zembylas, 'Agamben's Theory of Biopower and Immigrants/Refugees/Asylum Seekers: Discourses of Citizenship and the Implications For Curriculum Theorizing', *Journal of Curriculum Theorizing* 26:2 (2010)

[39] Edith Szanto, Sayyida Zaynab in the State of Exception: Shi'I Sainthood as "Qualified Life" in Contemporary Syria", *International Journal of Middle East Studies* 44 (2012) 285-299 and Patricia Owens, "Reclaiming 'Bare Life'?: Against Agamben on Refugees." *International Relations* 23:4 (2009): 567–582. .

International Relations amidst the organisation of power and knowledge[40] - in some cases serving to further state interests[41] – in recent years a growing number of scholars have moved away from the state as the focus of international politics.[42] From such inquiries, territorial borders are now no longer given, but contested,[43] raising serious questions about the sovereignty of the Westphalian system itself.[44] Both Agamben and Schmitt recognise the importance of space within discussions of sovereign power and, for some, Agamben should be read as a spatial theorist given his efforts to localise the unlocalisable.[45] Echoing this point, Derek Gregory suggests that sites such as Guantanamo Bay must be reconceived, not as "paradigmatic spaces of political modernity" but instead as "potential spaces whose realization is an occasion for political struggle".[46] Gregory's observation leads to the assumption that the exception also possesses a *geopolitical* potential.[47] Exploring such a view prompts greater engagement with the exception, seen as a set of dynamic and fluid power relations.[48]

For Agamben, the sovereign exception is a fundamental localisation whilst the link between *Ortung* and *Ordnung* serves as *nomos* of the Earth.[49] This link identifies a zone of indistinction, a space "excluded from the law" where the state of exception "is not external to the *nomos* but rather, even in its clear delimitation, included in the *nomos* as a moment that is in every sense fundamental".[50] Much like Schmitt, Agamben appears to suggest that a previous *nomos* has broken down to be replaced by a new *nomos* in the process of taking shape, determined by the power of international forces.[51] Whilst the idea of the camp as the hidden matrix of contemporary politics is generally accepted amidst an array of challenges to the political, the idea of sovereignty constructed in such a way is predicated upon flawed premises. The conceptual groundings provided by Schmitt of clear distinctions between Law/Politics, friend/enemy, inside/outside bear little resemblance to

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[40] John Agnew, 'The territorial trap: The geographical assumptions of international relations theory', *Review of International Political Economy* 1(1) 1994. 58-89.and John Agnew, *Globalization and Sovereignty* (Lanham MD: Rowman and Littlefield, 2009).

[41] Neil Smith, *American Empire: Roosevelt's Geographer and the Prelude to Globalization* (Berkeley, CA: University of California Press, 2003) Rachel Woodward, 'From Military Geography to militarism's geographies: Disciplinary engagements with the geographies of militarism and military activities', *Progress in Human Geography* 29(6) 2005 718-740.

[42] Agnew, 1994,

[43] John Agnew 'Sovereign regimes: Territoriality and state authority in contemporary world politics', *Annals* 95. 2005 437-461.

[44] RBJ Walker, R.J., *After the Globe, Before the World* (New York: Routledge, 2010)

[45] Minca, 2007

[46] Gregory, 2006, p405

[47] Debrix, F. 'The Nomos of Exception and the Viruality of Political Space in Schmitt and Agamben, Paper presented at the 2009 Annual Meeting of the American Political Science Association, Toronto, 3-7 September (2009). Cited in Legg, 2011 p7

[48] Belcher, et al, 2008

[49] Legg, 2011 p14.

[50] Agamben, 1998, p37.

[51] Legg, 2011

contemporary political life.[52] Neat demarcations that facilitated such an exception and the creation of bare life have themselves become zones of indistinction amidst the erosion of both territory and the distinction between inside and outside. Here, we see how sovereign power is contingent upon the contextual and spatial contingency of the political.

Areas of contestation and conflict over spatial reach and nature of sovereign power emerge from ambiguous – or contested – sovereignty.[53] Amidst such contestation, regimes struggle to exert influence within and across borders, creating zones that have been conceptualised as enclaves, exclaves and islands; [54] it is hardly surprising that a great deal of work has been undertaken on the concept of the border, particularly with regard to its enforcement, location and securitization.[55] Yet with the collapse of demarcations identified earlier requires further exploration of the spatial aspects of order.

As Doreen Massey opines in *For Space*, spatial concepts can be understood in myriad ways, yet she suggests that 3 propositions are central: first, space is the product of interrelations, of interactions from the global to the "intimately tiny"; second, as a sphere of possibility, heterogeneous and multiplicity, which is central to space; and third, that space is always under construction.[56] This understanding allows for different understandings and futures, (re)constructed by changing variables. Such propositions map neatly onto the ideas of this article, with regard to a constant set of interactions within and between states, affecting the regulation of life and the sphere of possibility. Such zones are characterised by indistinction, defined by interactions between territoriality and legality, inside and outside, time and space; from this definition of the outside, the *Ordnung* emerges.

In particular moments of time and space, sovereign power clashes with a range of contingent factors, allowing for new possibilities to emerge along with new manifestations of *Ordnung*, potentially with spatial repercussions, contesting the definition and closure of the outside. For Agamben, the state of exception opens a "space devoid of law, a zone of anomie in which all legal determinations – and above

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[52] Brad Evans, and Michael Hardt, "Barbarians to Savages: Liberal War Inside and Out." *Theory & Event*, 13:3 (2010).

[53] Alison Mountz, 'Political geography I: Reconfiguring geographies of sovereignty', *Progress in Human Geography* 37(6)829-841.

[54] See: Stefan Berger, S., 'The study of enclaves – some introductory remarks', *Geopolitics* 15(2) 2010 312-328; Ghazi-Walid Falah, 'Dynamics and patterns of the shrinking of Arab lands in Palestine', *Political Geography* 22(2) 2003 179-209.

[55] Amongst many others, see: Wendy Brown, *Walled States, Waning Sovereignty* (New York: Zone Books, 2010); Lucy Budd, Morag Bell, and Adam Warren, 'Maintaining the sanitary border: Air transport liberalization and health security practices at UK regional airports', *Transactions of the Institute of British Geographers* 36. 2011 268-279. Corey Johnson, Reece Jones, Anssi Paasi., et al, 'Interventions on rethinking 'the border' in border studies', *Political Geography*. 30. 2011. 61-69.

[56] Doreen Massey, *For Space* (London: Sage, 2005) p9-11.

all the very distinction between public and private – are deactivated."[57] Yet Massey's understanding of space brings contestation to the fore as recourse to norms, narratives and communities of belonging are often evoked, many of which transcend demarcated borders and sovereign power itself. Put another way, contestation opens the possibility of alternative forms of *Ordnung*.

Such contingency is easily seen when considering spatial and non-spatial aspects of the political in the Middle East, where competing sources of authority from political, tribal and religious figures – that easily transcend the moribund internal/external dichotomy – challenge the autonomy, legitimacy and capacity of ruling elites to regulate life, whilst the power of trans-state movements challenges the territorial characteristics of the nation-state.[58] This array of challenges has created instability and uncertainty within and between states, once again demonstrating the failings of the Westphalian spatial order, stressing the precariousness of the sovereign order. Within this political order, rulers derive legitimacy through reference to a range of different mechanisms that located state projects within broader ideological, political or religious narratives, referred to henceforth as informal structures. Yet as we shall see, reference to such projects proves problematic as they also bring division and contestation and are not necessarily couched in spatial borders. By consideration of alternative *orderings*, we are better placed to understand the construction of the ban and the mechanisms through which sovereign orders are contested.[59]

Reflecting on *Ordnung*

At this stage of our exploration *nomos* appears concerned with the regulation of space, the "hidden matrix of government", serving as the pre-condition for political organisation, yet there is more to the concept that shapes this hidden matrix, particularly in the post-colonial world. Fragmented systems of quasi sovereign power and authority can be found across political life in the post-colonial word, where powerful actors exert influence across space, shaping relationships between states, institutions, and populations in the process. Historically, many different forms and practices of sovereign power existed in the colonial world, operating under the tutelage of the sovereign. The complexity of configurations of sovereign power in such societies has given rise to "a complex range of informal sovereignties" which, as a consequence, challenge the relationship between *Ortung* and *Ordnung*.[60] Whilst regimes can seek to tame these 'informal sovereignties', incorporating them into the governmental structures of the state, they have at other times offered serious opposition to the state.[61]

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[57] Agamben, 2005, p50

[58] Simon Mabon, 'Sovereignty, bare life and the Arab Uprisings', *Third World Quarterly,* 38:8 (2017) 1782-1799

[59] Ibid.

[60] Thomas Blom Hansen and Finn Stepputat, 'Sovereignty Revisited', *Annual Review of Anthropology* 35 (2006) 305

[61] For example, see: Fariba Adelkhah, *Being Modern in Iran* (New York: Columbia University Press, 2000), Thomas Blom Hansen, *Wages of Violence: Naming and Identity in Postcolonial Bombay* (Princeton, NJ: Princeton University Press, 2001), Filip de Boeck, and Marie-

As Humphey – drawing on Agamben – argues, "localized forms of sovereignty" are found "nested" within "higher sovereignties" which "retail a domain within which control over life and death is operational".[62] From this, similar claims can be made about *nomos* and *nomoi.* Whilst the two may coalesce, this is not a necessary feature of post-colonial politics. Indeed, tensions between *nomos* and *nomoi* – and competing interpretations – play an important role in facilitating contestation through the legitimisation of competing claims to power. [63] With this in mind, we must consider different ways of reflecting on *Ordnung* which are not necessarily directly related to *Ortung* and, similar to Massey's argument in *For Space*, we must focus relational aspects.[64]

To understand this, let us consider the ideas of Hannah Arendt, whose approach suggests that *nomos* emerges through a process of contract-making and the ensuing establishment of principles and institutions, through defining the inside by demarcating an outside,[65] evoking parallels with Agamben's ideas of sovereign power. Arendt's interpretation of *nomos* holds it to be related to *Ortung* is bounded, wall like and constitutive of the polis. From this, all laws "first create a space within which they are valid, and this space is the world in which we can move in freedom" [66] creating a bounded space for the interaction of legal structures whilst also facilitating stability and permanence. Yet this does not presuppose that *nomos* is foundational or that is possesses an ontological priority; rather, *nomos* is coeval with the foundation of the *polis*.

Francoise Plissart *Kinshasa: Tales of the Invisible City* (London: Ludion, 2006). A brief distinction between formal and informal structures must be drawn at this point. I take formal structures to be those legal, normative, economic and social that have been enshrined within the institutional fabric of the state, in statutes and constitutions. Informal structures are those that are not, stemming from norms, custom and tradition, which regulate life but are not legally binding. Competing legal structures evoke ideas of legal pluralism, the sense that a range of different structures operate concurrently, challenging the formal legal structures that compose governance structures. Whilst certainly compelling, this approach struggles to differentiate between legal and normative structures, along with broader jurisprudence questions about the nature of law.[61] An alternative approach would be to refer to hybrid sovereignties and the struggle between *de facto* and *de jure* legal structures.[61] Again, however, this focuses upon the more formal aspects of political and legal life, of states and institutions rather than communities and people. Whilst this remains of paramount importance, our inquiry seeks to focus more explicitly on normative values and ideas found in religion, tribalism, and culture, which may challenge the established political order. For a discussion of this in the Middle East see: Gokhan Bacik, Hybrid Sovereignty in the Arab Middle East: The cases of Kuwait, Jordan and Iraq (Palgrave Macmillan, 2008)

[62] Humphrey, p420

[63] Thomas Blom Hansen and Finn Stepputat, 'Sovereignty Revisited', *Annual Review of Anthropology* 35 (2006) pp306-308

[64] Massey, 2005

[65] Jurkevics, 2013 p347

[66] Hannah Arendt, *The Human Condition* (Chicago: Chicago University Press, 1998), p190

With this in mind, *nomos* was originally "identified with boundary line which in ancient times was still actually a space, a kind of no man's land between the private and the public, sheltering and protecting both realms while, at the same time, separating them from each other".[67] This line is important, allowing for the limitation of space through the identification of communal membership. Whilst the concept evolved over time, it retained a spatial bordering, from which Arendt derived the idea that whilst territory is important, it is the interaction of those within a particular territory that meaning is derived. For Arendt, all laws create spaces within which they are valid, creating territorial limits of internal order through law. In doing so, horizontal legal relationships amongst citizens are created, whilst vertical legal relationships are created between citizens and the state. From this, the *nomos* is a space of belonging and of validity, a bounded legal space for a political community and for Arendt, those excluded are stateless.

Put another way, "All legislation creates first of all a space in which it is valid, and this place is the world in which we can move in freedom. What lies outside this space is lawless and properly speaking without a world."[68] Such a view is metaphysical, requiring the necessarily bounded definition of an inside against an outside through which the community is able to close itself off as an inside, although as we shall see, this does not necessarily coalesce with the sovereign state.[69] Thus, the concept of *nomos* is predicated upon spatial boundaries, the existence of a clearly bounded territorial area within which such debates can occur. This position is neatly articulated in *On Revolution:*

> Freedom, wherever it has existed as a tangible reality, has always been spatially limited. This is especially clear for the greatest and most elementary of all negative liberties, the freedom of movement; the borders of national territory or the walls of the city-state comprehended and protected a space in which men could move freely. Treaties and international guarantees provide an extension of this territorially bound freedom for citizens outside their own country, but even under these modern conditions the elementary coincidence of freedom and a limited space remains manifest.[70]

The Arab philosopher Ibn Khaldun, writing 700 years before Arendt, makes similar claims about the importance of bounded spatialities:

> 1] The world is a garden the fence of which is the dynasty.(*) [2] The dynasty is an authority through which life is given to proper behavior. [3] Proper behavior is a policy directed by the ruler. [4] The ruler is an institution supported by the soldiers. [5] The soldiers are helpers who are maintained by money. [6] Money is sustenance brought together by subjects. [7] The subjects are servants who are protected by

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[67] Ibid. p63

[68] Arendt, *Was ist Politik? Fragmente aus dem NachlaB,* cited in LHansindahl, Hans. "Give and Take: Arendt and the Nomos of Political Community." *Philosophy & Social Criticism* 32, 7 (2006), p882

[69] Lindahl, 2006., p882

[70] Hannah Arendt, *On Revolution,* (New York: Penguin, 2006), p275

> justice. [8] Justice is something familiar, and through it the world persists. The world is a garden...[71]

Although different in myriad ways from both Arendt and Schmitt, Khaldun's approach to space and political organisation offers important insight into the idea of *nomos* and regulation, couched in religious belief which depicts a more complex form of *Ortung*, requiring a more considered examination of the role of norms, ideas and faith.

With this acceptance of the predominance of normative values, we begin to move towards a more nuanced, reading of *nomos*. As we shall see, however, the act of ordering opens up contestation and questions about the authority to impose order and the conditions that give rise to its creation. As Arendt acknowledges, the omission of the normative from contract making is of paramount importance. Whilst not addressed in the above quote, Khaldun populates his conception of the *nomos* with a discussion of religion, which goes some way into resolving some of the tensions in the Arendtian approach, although problems over the role of religion in shaping *nomos* that does not coalesce with sovereign borders remain underexplored.

Peter Berger's work on the sociology of religion helps shed light on such aspects and the role of religion within society and the power of the community within *nomos.* For Berger, society is a dialectic phenomenon as a product of humanity yet acting back upon its creator. Each individual plays a part within this broader and continuous dialectic, wherein each individual story is "an episode within the history of society, which both precedes and survives it". [72] With this in mind, Berger argues that the dialectic is comprised of three interrelated aspects: *externalization*, *objectivization*, and *internalization*.[73] Through understanding how such aspects interact, we can understand how the world is shaped and, as a consequence, how the world shapes agency.

Through this series of interactions, Berger argues that *nomos* is created. This *nomos* is viewed as an "ordering of experience […] imposed upon the discrete experiences and meanings of individuals",[74] a social construction:

> The socially established nomos may thus be understood, perhaps in its most important aspect, as a shield against terror. Put differently, the most important function of society is nominization. The anthropological presupposition for this is a human craving for meaning that appears to have the force of instinct. Men are congenitally compelled to impose meaningful order upon reality. This order, however, presupposes the social enterprise of ordering world construction. To be separated from society exposes the individual to a multiplicity of dangers which he is

[71] Khaldun, *Muqaddimah* 1:82
[72] Peter Berger, *The Sacred Canopy* (Garden City, N.Y: Doubleday, 1967) p3
[73] Ibid.
[74] Ibid.

> unable to cope with himself.... The ultimate danger of the individual separation from society is meaninglessness. [75]

Although concerned with society, there is nothing that directly relates *Ordnung* to *Ortung* in this reading of *nomos.*

Importantly, Berger stresses that the *nomos* exists simultaneously as both objective and subjective, providing scope for a range of different interpretations and identities. Thus, the *nomos* provides an arena for individuals or groups to perform their identity in "spaces of appearances", through both word and deed. It creates an opportunity for myriad (often competing) *nomoi* to emerge, existing within *nomos.* Sharing Berger's position, in *The Human Condition,* Arendt argues that the world is given meaning through the interaction of people[76] achieved through the "sharing of words and deeds".[77] The same applies to the ideas of both *nomos* and *polis.* Thus, "the organisation of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be […] can find its proper location almost anytime and anywhere" .[78]

Supporting this position, F.M Cornford suggests that religion and culture help to understand the ordering of life. For Cornford, *nomos* is "a dispensation or system of provinces, within which all the activities of a community are parcelled out and coordinated".[79] In the Middle East where shared culture and religious belief is found across the region. As Hamid Rabi observes,

> cultural heritage (*turath*) is the means to self-recognition. The national Self is one and indivisible. It is the expression of a fixed continuity, in spite of some diverse manifestations on the individual and collective levels. Self-recognition cannot spring up except from the past. Just as a tree may not be complete without a multiplicity of branches, its ability to survive will obtain only as to the depth to which its roots can reach.[80]

From this, although shared cultural practices transcend state borders and provide alternative visions of *Ordnung*, they can also be harnessed by regimes, built into the fabric of a number of states for their regulatory capabilities. In Saudi Arabia, for instance, tribal values are reflected in the style of dress and also the channels through which political voices are heard, namely the *shura* council. The importance of *turath* is also found within constructions of legitimacy. Typically this has been viewed through an analysis of the performance of institutions, but within the context

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[75] Ibid., p22.
[76] Arendt, 1998 p207.
[77] Ibid p197.
[78] Ibid., pp197-8.
[79] Francis .M. Cornford, *From Religion to Philosophy: A Study in the Origins of Western Speculation* (London: E. Arnold, 1912), p30.
[80] Hamid Rabi, *Suluk al-malik fi tadbir al-mamalik: ta'lif al-'allamma shihab al-Din ibn Abi al-Rubayyi'* (Cairo: Dar al-Sha'b, 1980) p218.

of rentierism, justice and *turath* play an important role[81] perhaps best seen in the role of tribal norms in Saudi Arabia, which simultaneously legitimize and de-legitimize the ruling Al Saud.[82]

The power of cultural practice transcends subjective perceptions and resonates in the creation of the state's formal structures, ultimately shaping the ban and the creation of *hominus sacri*.[83] Yet such cultural practices also have the capacity to transcend *Ortung*, having an impact beyond the territorially grounded polis through the capacity to propose an alternative form of ordering. As Raymond Hinnebusch argues, the Middle East is characterised by porous borders, both physically and ideologically, which poses problems for this construction of the territorially grounded *nomos*, resulting in ideas of community and order spilling out across the region.[84]

As we shall see, ideas that transcend the territorially defined state can result in the emergence of a *nomos* that is not coeval to political spatial boundaries, giving individuals the possibility to find meaning – and belonging – in a number of broader communities. In *The Human Condition,* Arendt talks of how "each man is as much an inhabitant of the earth as he is an inhabitant of his country". [85] By extension, we can make similar claims about individuals possessing membership of both state and broader collective. Three examples are quickly apparent when considering memberships in the Middle East: ideas of Arab nationalism, the pan Islamic *umma,* and membership of sectarian collectives. Yet in such claims a tension emerges between membership of a territorial form of organisation and the broader collective, particularly with regard to the regulation of action.

In the case of pan Islamism, tensions also emerge between the divine and the ruler over the sources of sovereign authority in the manifestation of a long-standing claim that the separation of religion and politics is denied. For Majid Khadduri,

> A distinction […] must be made between an authority which is directly derived from and exercised by God, and an authority which is derived from a divine code

[81] Nazih N Ayubi *Over-Stating the Arab State: Politics and Society in the Middle East* (London: I.B. Tauris,1995), p32

[82] See: Simon Mabon (2012) Kingdom in Crisis? The Arab Spring and Instability in Saudi Arabia, Contemporary Security Policy, 33:3, 530-553

[83] An obvious criticism emerges when considering the application of a Western theory, couched in Christianity, to the Middle East. Initially, such an attempt may fall foul of intellectual neo-colonialism and essentialism, yet when looking at the work of Wael Hallaq, particularly in *The Impossible State,* one can make the case that the metaphysics of states in the region share a number of characteristics with states across the world. See: *An Impossible State*

[84] Raymond Hinnebush, *The International Politics of the Middle East* (Manchester, Manchester University Press, 2003).

[85] Arendt, 1998

> endowed by God but enforced by His viceregent (or by a secular ruler) which is equally binding upon the latter and the people.[86]

This fundamental tension is central to debate about the relationship between religion and politics, made all the more complex in the Middle East as a consequence of the emergence of religious groups within the context of particular social, political and economic milieu that shaped the regulation of life whilst such regulatory bodies often based claims to legitimacy on Islam. In spite of this, the prominence of *ijma' al-fi'l* (consensus) within Islam demonstrates the plurality of positions within Islam with regard to politics.[87]

Political communities are traditionally territorially grounded which, historically manifested in the Islamic concepts of *dar al-Islam* and *dar al-harb*, terms used to identify membership of communities that are territorially grounded, albeit in a fluid way and not necessarily representative of the international community of sovereign states. Although contested, *dar al-Islam* is fundamentally understood as "the whole territory in which the law of Islam prevails" [88] whilst *dar al-harb* is the area within which Muslims are ruled by a non-Muslim. Parvin and Sommer suggest that it should be considered as "a political-territorial expression of that community in which Islamic religion is practiced and where it is protected by a Muslim ruler".[89]

As Islamic expansion and consolidation met Western colonialism, political organisation in the form of the territorial state began to shape Islamic pluralism and debate about the relationship between religion, law and politics became dominated by questions about obligation and sovereignty. With this, fluid, sociological concepts character of Islamic sovereignty became enmeshed within territorially grounded political structures.[90] The embodiment of Islamic principles within nation states helped solidify the sovereign states system, yet membership of a broader community remained.

Scholars working on the *umma* have undertaken a great deal of work understanding the construction and mobilization of transnational Muslim identities in the context

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[86] Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: John Hopkins Press, 1955), p14

[87] A great deal has been written on this point which is beyond the scope of this essay. See: James Piscatori, *Islam in a World of Nation States* Cambridge: Cambridge University Press, 1986. p46. Such debates are found across scholarship both in the Middle East and the West. See: Ira Lapidus, 'The Separation of State and Religion in the Development of Early Islamic Society', *International Journal of Middle East Studies* 6:4 (1975) and Ali Abd al-Raiz, 'Message Not Government, Religion Not State' in Charles Kurzman (ed) *Liberal Islam: A Sourcebook* Oxford: Oxford University Press, 1998.

[88] Encyclopedia of Islam 2nd ed: (London: Luzac and Co., 1960) s.v. *dar al-Islam* p127

[89] Manoucher Parvin and Maurie Sommer, 'Dar al-Islam: The Evolution of Muslim Territoriality and Its Implications for Conflict Resolution in the Middle East', *International Journal of Middle East Studies* 11:1 (1980) p5

[90] Ibid. p11

of globalisation and tension with the sovereign state.[91] This body of work seeks to consider the construction of a transnational, pan-Islamic community, spanning sovereign borders, replete with cultural diversity but often exclusionary. Critical reflections on the concept are built upon ideas of Muslims and *umma* as constitutive of localised traditions with discursive claims to a timeless religious community. Such expressions occur within a relational capacity, discursive and political.[92] It is through exploring the way in which often competing communities interact and evolve, particularly the tension between concepts that appear dichotomous, that we are better placed to understand how political communities – *umma* and nation (amongst others) - are reproduced.

Ordnung, Nomos and Contestation

To get a more nuanced picture of how life is regulated (and contested) we must consider other forms of ordering – and how they interact with Agamben's vision - namely the normative, cultural, historical and social values that help to enforce and regulate sovereign power and give meaning to action. Of course, such values are context specific, meaning that we cannot talk about one set of Jewish or Islamic norms, tribal dynamics or national social practices. Instead, *nomos* is shaped by the range of factors operating amidst the acknowledgement of particular communities.

As we noted earlier, ideas of order are fundamental to the organisation of a community, yet as Robert Cover argues, *nomos* itself is an ordered community: "to inhabit a *nomos* is to know how to *live* in it".[93] Put another way,

> A legal tradition is hence part and parcel of a complex normative world. The tradition includes not only a corpus juris, but also a language and a mythos - narratives in which the corpus juris is located by those whose wills act upon it. These myths establish the paradigms for behavior. They build relations between the normative and the material universe, between the constraints of reality and the demands of an ethic. These myths establish a repertoire of moves - a lexicon of normative action - that may be combined into meaningful patterns culled from the meaningful patterns of the past.[94]

Accepting the complexity of such a normative world, comprised of a conflation of narratives, creeds and principles, one can then consider them brought together in a corpus, which reveals the existence of a transparent, *paiedeic nomos*. Yet the

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[91] Peter Mandaville, 2001. Transnational Muslim Politics: Reimagining the Umma. London: Routledge. Olivier Roy, 2006. Globalised Islam: the Search for a New Ummah. New York: Columbia University Press. See also the introduction (and ensuing special issue) Carla Jones and Ruth Mas, 'Transnational conceptions of Islamic community: national and religious subjectivities', *Nations and Nationalism* 17:1 (2011) pp2-6. Jocelyne Cesari, *Why the West Fears Islam: An Exploration of Muslims in Liberal Democracies* (New York: Palgrave Macmillan, 2013)

[92] Jones and Mas, 2011

[93] Robert Cover, 'The Supreme Court, 1982 Term – Foreword: Nomos and Narrative', *Faculty Scholarship Series.* (1983) Paper 2705. p10

[94] Ibid., p9

establishment of *nomos* is a fleeting instance, where unison brings about its own demise. Such commitments establish a fleeting unitary community that is destroyed as quickly as it is created amidst the conflation of myriad debates about creed, identity and worship, leading to dispute about the nature of the community and political project.

Holding such a position entails the acceptance of the plurality of systems of belief, meaning and interpretation, resulting in a plethora of different sets of behaviour. The richness of this *nomos* includes paradigmatic materials, acquiescence, contradiction and resistance. Thus

> Legal precepts and principles are not only demands made upon us by society, the people, the sovereign, or God. They are also signs by which each of us communicates with others. There is a difference between sleeping late on Sunday and refusing the sacraments, between having a snack and desecrating the fast of Yom Kippur, between banking a check and refusing to pay your income tax. In each case an act signifies something new and powerful when we understand that the act is in reference to a norm. It is this characteristic of certain lawbreaking that gives rise to special claims for civil disobedients. But the capacity of law to imbue action with significance is not limited to resistance or disobedience. Law is a resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate, or dignify[95].

Knowing how to live within a particular society requires one to obey the norms created through interaction, which hold the normative universe together through interpretive commitments some of which are small and private whilst others are colossal and public, with some spatially grounded and others not. This structural organisation of the *nomos*, contingent upon commitments and promises, emerges with birth itself, as responses to "personal otherness" that are central to the definition of the normative world. [96]

To know how to live, one must learn those structures that are not necessarily codified and thus, the *nomos* must include a form of education, wherein the collective is immersed within the corpus. This direction may be derived from history or religion:

> For Simeon the Just spoke in the context of his generation in which the Temple stood, and Rabbi Simeon ben Gameliel spoke in the context of his generation after the destruction of Jerusalem. Rabbi Simeon b. Gamaliel taught that even though the temple no longer existed and we no longer have its worship service and even though the yoke of our exile prevents us from engaging in Torah and good deeds to the extent desirable, nonetheless the [normative] universe continues to exist by virtue of these three other things [justice, truth, and peace] which are similar to the first three. For there is a difference between the [force needed for the] preservation of

[95] Ibid., p8
[96] Ibid., p5

> that which already exists and the [force needed for the] initial realization of that which had not earlier existed at all. [97]

Whilst the Torah shapes the normative life for Jews, the normative universe established by the interaction of Quran, hadith and *sunna* shapes contemporary life for Muslims, where recourse to justice truth and peace is central. For instance, the following two verses of the Quran[98] denote this importance: "We have revealed to you the scripture with the truth that you may judge between people by what God has taught you"; [99] moreover, "the Word of your Lord has been fulfilled in truth and in justice. None can change His Words." [100] Although framed as objective, judgement and subjectivity is couched in the engagement with the verses.

We should also stress the importance of *darurah* (necessity) as a means of justifying transgression, taking action away from the righteous path. Within the Quran, whoever "is driven by necessity, neither craving nor transgressing, it is no sin for him. For Allah is Forgiving, Compassionate." [101] Building on this, the Surah of Al Mai'dah expands on how acts against the Quran can be forgiven;

> Forbidden to you for food are carrion, blood, swine-flesh, and that which has been dedicated to any other than Allah; that which was strangled; that which was beaten to death by a blunt instrument; that which fell a long fall; that which was gored by horns; that of which predators have eaten - saving that which you make lawful by slaughtering before they die; and that which has been sacrificed to idols. (…) That is corruption. (…) Whomever is forced by hunger, not by will, to sin, for him Allah is Forgiving, Compassionate. [102]

Thus transgression is permitted through recourse to *darurah*, albeit leading to plurality and subjectivity, through interpretation of necessity. From such an acknowledgement, we can also see how a range of opposition groups emerge across the Middle East – from the very systems they oppose – whose transgressions challenge the legitimacy and authority of regimes on the basis of non-compliance with religious edicts. Whilst a number of rulers have created links with the *ulemma* as a mechanism through which to cultivate legitimacy and *darurah* for particular actions, such as the seizure of the Grand Mosque. Yet such recourse creates plurality, wherein religion serves as a 'double-edged sword', simultaneously legitimizing and delegitimizing action.[103]

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[97] Ibid., p12., citing Joseph Caro, *Beit Yosef at Tur: Hoshen Misphat 1* (translation by R. Cover).

[98] Quran, verses 4:105 and 6:115

[99] Quran 4:105.

[100] Quran 6:115).

[101] Quran, 2:173

[102] Quran, 5:3, "Surah of Al Mai'dah"

[103] See: Joseph Nevo, 'Religion and national identity in Saudi Arabia', *Middle Eastern Studies*, Vol. 34, No. 3 (1998), p50. And Madawi Al-Rasheed, *A History of Saudi Arabia* (Cambridge: Cambridge University Press 2002) p144.

Moving beyond focus on regimes, zones of indistinction that emerge from the prominent role of religion within sovereign spaces also provide opportunities for voices from the subaltern to challenge patriarchal and hegemonic narratives that have previously justified their exclusion. Whilst Asef Bayat suggests that this coincides with the retreat of religion from the public sphere, in what he terms 'post-Islam', the idea remains that a space of possibility emerges for those previously excluded.[104]

A fundamental part of Cover's discussion in *Narrative and Nomos* explores the idea that the law serves to create singularity amongst a multiplicity of normative views.[105] Given the capacity for individuals to derive a plurality of views from *nomos,* a key part of the discussion of sovereignty must also concern efforts to shape, regulate or destroy *nomos*, for it is only through recourse to hegemonic narratives and the monopolization of identity, culture, religion and history that a sovereign can fully lay claim to the establishment of biopolitical life. Attempts to regulate *nomos* include the establishment of institutions designed to control but being run in accordance with legal structures must allow people to express their sentiments.

> The civil community embraces everyone living within its area. Its members share no common awareness of their relationship to God, and such an awareness cannot be an element in the legal system established by the civil community. No appeal can be made to the Word of Spirit of God in the running of its affairs. The civil community as such is spiritually blind and ignorant. It has neither faith nor love nor hope. It has no creed and no gospel. Prayer is not part of its life, and its members are not brothers and sisters.[106]

The shared vision at the heart of *nomos* simultaneously drives and divides the community, as the vision's creation immediately creates division amongst those who debate the very meaning of the community and membership, rendering the unification as illusory. Thus, the very creation of *unity* results in *contestation* and, ultimately, *disintegration*, from which *nomos* continues to serve as an arena for the interaction of normative structures that regulate life. It is the consistent process of tension and reconciliation. Control of the narratives and myths that themselves constitute informal structures and feed into *nomos* are contested yet remain free from regulation. Such narratives and myths reveal ideals of community, belonging and order, whilst also releasing concepts of resistance and rebellion. Whilst formal legal structures are designed as a means of imposing order and power across political organisation (and metaphysical *nomos*) they are not always able to regulate *nomos.* Moreover, informal structures also exist as a source of meaning, providing context and justification for political action that may challenge formal structures and potentially erode the power of the ban.

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[104] Asef Bayat, *Life As Politics: How Ordinary People Change the Middle East* (Stanford, CA: Stanford University Press, 2010).

[105] Judith Resnik, 'Living Their Legal Commitments: Paideic Communities, Courts and Robert Cover' (2005). Faculty Scholarship Series. Paper 757.

[106] Karl Barth, 'The Christian Community and the Civil Community', in *Community, State and Church 149* (1960) p151

Whilst our understanding of sovereignty is predominantly concerned with the regulation of life through the use of political structures to create *zoe,* failure to understand *nomos* means that meaning that gives context to action is lost. Within *nomos*, narratives and informal structures set the paradigms for behaviour, through the establishment of a "repertoire of norms", whilst also aiding the closure of a community. From this repertoire, paradigms emerge through interaction amongst the community and thus, may not be established by regimes. Although traditionally taken as coeval with the establishment of the sovereign state, there is nothing that precludes the establishment of *nomos* beyond territorial borders, into new spaces and geographies. As Massey argues, space is essentially a site of possibility – akin to many of the ideas discussed previously – which provides the capacity for *nomos* to spill beyond *Ortung*, with repercussions for the ordering of neighbouring states and sovereign power.

Complicating this issue is the subjective interpretation of structures, shaped by *nomos.* Although the meaning of legal structures may be agreed upon – in this case, the meaning and consequences are understood – the norms that underpinned such structures may be rejected. For example, an individual residing in a state may understand the meaning of a particular law, but their normative position may result in a rejection of the law. Thus, structures that facilitate the regulation of life must also be placed within the context of a relationship between vision and norm; put another way, to understand political life we must consider the relationship between the law, how it is perceived, and the normative environment shaping action. The remainder of the article considers how such ideas have shaped political and geographical life across the Middle East, beginning with a discussion of spatial aspects in Israel before considering the construction of sectarian communities as a political tool within the context of the rivalry between Saudi Arabia and Iran.

Transformation and Contesting Sovereign Power

The establishment of the State of Israel in 1948 provides opportunity to reflect on how *nomos* can aid our understanding of political life. In the aftermath of its formation, a plethora of competing views and creeds emerged from the myriad understandings of Zionism that contested – and thus shaped – the very nature of the new state, opening a space between *Ordnung* and *Ortung,* stemming from competing visions of *nomos*. After its formation, territory took on an existential importance for the nascent state, integral for the very *idea* of the state of Israel.[107] A series of conflicts between Arab and Israeli armies transformed the landscape of the former mandatory Palestine, including the seizure of large swathes of territory in 1948, known amongst Arab audiences as the *nakba*. Although important strategically, land possessed a far greater symbolic political and theological importance, as groups with competing interpretations of Judaism – and visions of political manifestations – struggled to shape the characteristics and definitions of the nascent state.

[107] See: Shlomo Sand, *The Invention of the Land of Israel*(London: Verso, 2012).

After the seizure of the Old City of Jerusalem after the 1967 war one of the first acts of the Israeli Defence Forces was to destroy the 'Moroccan Quarter' of the city – that which sat in front of the Western Wall – to facilitate easier access.[108] In the following years, architecture and urban planning would take on an existential importance in transforming Jerusalem.[109] Similar events would transform the landscape of the West Bank, as land was divided into Areas A, B and C, before numerous settlements were established, laying claim to Palestinian land. In the years after the failure of the second *intifada*, the Old City would undergo increased militarization and the installation of a range of security measure to regulate life. An additional signifier was the routine use of Stars of David, flown from the rooftops, windows and washing lines of houses across the Old City. Transforming land was part of a broader project of both *Ordnung* and *Ortung,* imposing meaning upon space in accordance with meaning derived from the Torah, albeit interpreted in competing ways.

State actors do not possess a monopoly on such transformative acts. Take for example, the actions of a number of settler groups – such as Gush Eminim and the Hilltop Youth – who in following the teaching of Rabbis Ginsburgh and Kook, rejected the legitimacy of the state. For Rabbi Ginsburgh,

> the ultimate goal of our yearning is the complete redemption, the arrival of Mashiach and the construction of the Temple. There is no doubt that a Jewish state is an essential and central component of the grand picture of the redemption of the Jewish People. Yet, it is clear that the state that was established...[in](1948), as it stands today, is still a far cry from that dreamlike vision that has warmed our hearts for almost two thousand years. It is not difficult to understand why many Torah and mitzvah observant Jews are reluctant to identify themselves with the state and its symbols.[110]

In following such proclamations, settler groups began to play a prominent political role, seizing land and transforming it in accordance with a particular rabbinical vision, opening up competing visions of *Ordnung* and *Ortung*, contesting sovereign power.

The transformation and regulation of space is essential in working towards the vision of Eretz Israel. Housing played a prominent role in transforming the landscape of the West Bank through settlement of civilian communities on Palestinian land. Although International Law prohibited civilian presence in occupied territories, members of Religious Zionist groups sought to settle civilians across the West Bank to facilitate the transformation from 'enemy territory' to Jewish homeland.

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[108] See: Thomas Philip Abowd, *Colonial Jerusalem: The Spatial Construction of Identity and Difference in a City of Myth 1948-2012* (Syracuse: Syracuse University Press, 2014) and Dina Jadallah, 'Colonialist Construction in the Urban Space of Jerusalem', *Middle East Journal* 68:1 (2014) pp77-98 amongst others

[109] Eyal Weisman, *Hollow Land: Israel's Architecture of Occupation* (London: Verso, 2007)

[110] Rabbi Y. Ginsburgh (2014), *On the Way to a Jewish State: Israeli Politics According to Kabbalah* (United States of America and Israel: Gal Einai).

In discussions with Prime Minister Levi Eshkol, the settler group was given permission by the Prime Minister to ascend, as he famously pronounced "well kids, if you want to – ascend". A different recollection of the quote has it as "Children, you may return home".[111] Upon receiving permission, a convoy of cars and lorries set off for the hills of the West Bank to establish new settlements and transform Palestine towards Eretz Israel.[112] Settler groups were keen to proselytize their goals, regularly publishing documents detailing their activities. [113] Zvi Slonim, the Secretary of Gush Emunim spoke of life in settlements characterised by ""basement" conditions yet "penthouse" morale […] the settlement gradually constructed itself as a separate entity […] Supporters who came here saw the making of a new form of pioneer life […and] were sparked with the seed that fruited with more and more Elon Moreh [settlements] in Judea and Samaria." [114]

For political reasons, the Israeli state later decided to disengage from Gaza and to raze a number of unofficial settlements, whilst simultaneously continuing to build new homes across the West Bank. The response to disengagement was traumatic for many of the settlers. In remembering these events, one settler

> burst into tears, telling those present that over the past 80 years of his life, he cannot remember a time where thousands of Jewish families were being expelled from their homes in such a manner, when 25 Jewish towns were set to be utterly destroyed, when the destruction of dozens of synagogues and houses of Torah study was to take place, as well as the desecration of Jewish graves.[115]

The severity of this response reveals a lot about the varying interpretations of the Israeli state building project but also Jewish obligations under the Torah.

The transformation of territory across Israeli and Palestine was an integral part of both political and theological projects, yet the conflation of political laws with theological commandments from the Torah reveals the capacity for tensions to emerge from *nomos* and contesting sovereign power. After the establishment of the state of Israel – perhaps the fleeting instance discussed earlier – divisions emerged within the corpus, creating schisms that would have serious political ramifications in the decades to come, both politically and spatially.

Sectarian Games

As we have seen, *nomos* is not necessarily territorially grounded and, as such, can exist across the spatial borders which characterise contemporary international

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[111] See: Ariyeh Ruttenburg and Sandy Amichai, *The Etzion Bloc in the Hills of Judea* (Kfar Etzion Kfar Etzion Field School, 1997)

[112] Yael Allweil, 'West Bank Settlement and the Transformation of the Zionist Housing Ethos from Shelter to Act of Violence' *Footprint: Spaces of Conflict,* 2016, pp13-36.

[113] Shafat, *Gush Emunim.*

[114] Zvika Slonim, 'Daf Lamityashev' (Gush Emunim 1980) pp1-2) cited in Yael Allweil, 'West Bank Settlement and the Transformation of the Zionist Housing Ethos from Shelter to Act of Violence' *Footprint: Spaces of Conflict,* 2016, pp13-36.

[115] http://www.israelnationalnews.com/News/News.aspx/87399

politics. In recent years, amidst often violent contestation, new geographies emerge, driven by the cultivation of *nomoi* based on shared identities but contingent upon the political calculations of dominant actors. In the Middle East, regional rivalries seek to capitalize on the possibility of such *nomoi*, perhaps best seen in the rivalry between Saudi Arabia and Iran which plays out across space, driven by competing visions of political and religious order, as regional forces interact with the "intimately tiny" intricacies of local politics.[116]

In the immediate aftermath of revolutionary activity in Iran, Saudi Arabia sought to erode the nascent Islamic Republic's legitimacy by framing events through a sectarian lens, widening competition between Sunni and Shi'a. The Kingdom's vast petro-dollars provided funding to clerics across the world in return for proselytizing the Wahhabist vision of the *umma*, expanding the Saudi influence and opening up new spaces of competition between Riyadh and Tehran.[117] In the years that followed, competing visions of Islam and communities of faith emerged, driven by sectarian loyalty, (geo)political aspirations and relationships with political projects.[118]

Amidst this rivalry, sectarian networks have been mobilised in attempt to shape regional dynamics and for both Riyadh and Tehran to exert influence beyond their sovereign borders. Both states have sought to cultivate networks through recourse to membership of a collective *nomos,* framing and securitizing events as part of a broader 'religious' struggle.[119] Yet to do this requires the presence of a shared *nomos* which provides fertile ground for discourses to find meaning. Consequently, membership of *nomos* – in this case, a community with shared sectarian identity – provides opportunities for actors to regulate life through recourse to communal membership, transcending territorial borders but not necessarily eroding them, leading to a process of (re)negotiation between local contingency and the role of states within regional politics.

Recourse to *nomos* and the closing off of a community has become an increasingly common phenomena, particularly amidst the contestation of political projects. In Iraq, Syria, Bahrain, Yemen and Lebanon, sectarian communities have been constructed and manipulated amidst political and geopolitical struggles through the cultivation of sect-based *nomoi*. The widespread presence of sectarian difference across states in the region creates the possibility of competing orderings in pursuit of

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[116] Simon Mabon, *Saudi Arabia and Iran: Power and Rivalry in the Middle East* (London: I.B. Tauris, 2015). See also: Nader Hashemi and Danny Postel, *Sectarianization: Mapping the New Politics of the Middle East* (London: Hurst, 2017)

[117] Gilles Kepel, *Jihad: The Trail of Political Islam* (London: I.B. Tauris, 2009)

[118] For consideration of how this shapes the rivalry between Saudi Arabia and Iran see: Simon Mabon, 'Muting the Trumpets of Sabotage', *British Journal of Middle East Studies;* Simon Mabon, 'End of the Battle of Bahrain', *Middle East Journal*, Forthcoming.

[119] May Darwich, & Tamirace Fakhoury, (2016). Casting the Other as an Existential Threat: The Securitisation of Sectarianism in the International Relations of the Syria Crisis. *Global Discourse* 6(4): 712-732.

political and geopolitical power through closing off communities against an (external) other.[120]

In Lebanon, sectarian difference is embedded in a power-sharing political system which facilitated the end of a 15 year long civil war. Religious divisions cut across socio-economic currents, leaving a complex political situation that has often been a site of external interference.[121] From such divisions – and reflecting the strategic importance of Lebanon in the Middle East[122] – Saudi Arabia and Iran have sought to capitalize on domestic instability and exert influence over co-sectarian kin at the expense of other groups – and their sponsors – across the state. Whilst this has been driven by efforts to create cohesion amongst communities, it also involves the framing of the *other* as a threat, best seen in the cultivation of the narrative of the 'Shi'a Crescent', the insidious suggestion that Shi'a groups across the Middle East are 5th columnists doing the bidding of Iran.[123]

Communal difference manifests in power-sharing agreement underpinning the Lebanese political system but also in the construction of urban life, notably in Beirut. The southern suburbs, beyond the Camille Chamoun sports city are predominantly Shi'a areas, controlled by Hizballah and whilst Lebanese police patrol the area, they are subservient to the Party of God.[124] Road names reveal a great deal about the area, demonstrating the importance of the group's leader Hassan Nasrallah, but also Ayatollah Ruhollah Khomeini and other prominent Shi'a figures. Symbols that adorn the streets demonstrate this loyalty to the Shi'a – and by extension, Iranian cause – from the posters and banners, to the graffiti sprayed across the walls; it is a space of Shi'a influence where ideas and beliefs have travelled. Shi'a values, of martyrdom and sacrifice are prominent features of such symbolism, revealing a rich normative environment that regulates life.[125]

Iran's long-standing relationship with Hizballah since its formation in 1982 – facilitated by the provision of financial and ideological support – ensures that they have a great deal of cultural capital, but it is the existence of a shared normative environment that is the real strength of the relationship.[126] In the aftermath of the

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[120] See: chapter 6 of Simon Mabon, 2013.

[121] Including from colonial actors, Syrian forces until the Cedar Revolution of 2005, and Saudi Arabia and Iran.

[122] See Graham Fuller, "The Hizballah-Iran Connection: Model for Sunni Resistance," *Washington Quarterly* 30/1 (2006); Laurence Louer, *Transnational Shia Politics: Religious and Political Networks in the Gulf* (London: Hurst, 2008) and International Crisis Group, *Lebanon's Politics: The Sunni Community and Hariri's Future Current*. Middle East Report No.96 26.05.10 p2.

[123] Ian Black, *Fear of a Shia full moon* (The Guardian, 26.01.07).

[124] See: Simon Mabon, *Houses built on sand: Sovereignty, sectarianism and revolution in the Middle East* (Manchester: Manchester University Press, 2020) forthcoming.

[125] Ibid. chapter 5.

[126] Simon Mabon, 'The Circle of Bare Life: Hizballah, Muqawamah, and Rejecting Being Thus', *Politics, Religion and Ideology* 18(1) 2017. See also: Edward Wastnidge, 'The Modalities of Iranian Soft Power: From Cultural Diplomacy to Soft War', *Politics,* 35:3/4 (2015) 364-377.

2006 war between Israel and Hizballah which led to the destruction of Dahiyeh – Hizballah 'heartland' – Iran provided $120 million for post-war reconstruction of southern Beirut; in contrast, Saudi Arabia – seeking to get cultural capital through provision of financial support to Hizballah, albeit deeply problematic to many in Riyadh – provided $1.2 billion.[127] In spite of this, it is images of Khomeini that look down on anyone walking around Dahiya, suggesting that *nomos* is a resource far more powerful than money with the capacity to shape spatial areas in a way that financial resources are unable.

Across the region, similar stories are told, of the cultivation and manipulation of sectarian difference for political ends. In Bahrain, a sectarian master-narrative framing Shi'a as insidious Iranian agents doing the nefarious bidding of Iran decimated the popular protests that took place across 2011, playing on long-standing fears of Iranian influence – notably the failed (Iranian supported) 1981 *coup d'etat*[128] – albeit disregarding the complexity of competing *marja'iyya* in Qom and Najaf.[129] In propagating such a narrative, regime officials sought to ensure the support of their Sunni citizens amidst a fear of perfidious Iranian interference in Bahraini politics. Similar claims are routinely made in Iraq, Yemen and even Saudi Arabia.[130] Yet national identities remain important, revealing the importance of localized contingent factors in the face of seemingly much stronger religious currents but revealing a fundamental tension between sovereign power, *Ordnung* and *Ortung.*

Conclusions

Fundamental to political projects are efforts to regulate life. This is, as Agemben suggests, the ultimate expression of sovereignty: the ability to strip political meaning from life and reduce it to *bare life*. Agamben's use of the camp adds a spatial dimension to sovereign power and the exception, both localised and metaphorical. Amidst conditions of neo-liberal modernity, this spatialized exception is referred to

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[127] Mabon, 2013, Op. Cit.

[128] Tariq Alhasan, 'The Role of Iran in the Failed Coup of 1981: The IFLB in Bahrain', *The Middle East Journal* 65:4 (2011) 63-617

[129] In 1981, the Islamic Front for the Liberation of Bahrain sought to overthrow the Al Khalifa ruling family with support from the Iranian Revolutionary Guards Coprs. See: Sossie Kasbarian and Simon Mabon 'Contested spaces and sectarian narratives in post-uprising Bahrain', *Global Discourse*, 6:4 (2016), 677-696
. See also: Laurence Louer, *Transnational Shia Politics: Religious and Political Networks in the Gulf* (London: Hurst, 2008).

[130] See: Simon Mabon and Ana Maria Kumarasamy, 'Da'ish, *stasis* and bare life in Iraq', in Jacob Erikson and Ahmed Khaleel (eds), *Iraq After ISIS* (Palgrave Macmillan, 2018), Simon Mabon, 'The Apocalyptic and The Sectarian', Tim Clack and Rob Johnson (eds) *Upstream Operations.* (Palgrave Macmillan, 2018); Toby Matthiesen, *The Other Saudis: Shiism, Dissent and Sectarianism* (Cambridge: Cambridge University Press, 2015), Toby Matthiesen, *Sectarian Gulf: Bahrain, Saudi Arabia, and the Arab Spring That Wasn't* (Stanford University Press, 2013); and Morten Valbjørn, 'Unpacking a puzzling case: on how the Yemeni conflict became sectarianised', *Orient*, 59:2 (2018) amongst others.

as the hidden matrix of modernity, Agamben's *nomos* upon which the international system of states is built. Yet this view of *nomos* only goes so far in helping us to understand the contemporary nature of political life and sovereign power. Possessing both a spatial dimension – *Ordnung* – and ordering principles – *Ortung* – *nomos* becomes a site of contestation amidst the presence of structures that contest the regulation of space, yet our understanding of *Ortung* requires further exploration. Much like Antigone, in contemporary political life sovereign power is challenged by ordering that can challenge the localized, spatialized exception. Political systems play a prominent role in regulating life, facilitating recourse to a state of exception that appears to have permanence yet is contingent upon the relationship between *Ordnung* and *Ortung.*

As noted, the ban is central to the exception, yet such moves are in many cases contingent on the power of informal structures which may facilitate and contest the ordering of political life. Legal structures, institutions and the zone of indistinction do not exist in a vacuum; rather, they are shaped by conditions and cultural relations that are prominent features of political dynamics. How one interprets such interactions shapes their behaviour and the performance of their identity. Civil society and political space may be regulated and restricted by political elites, the ordering and localisation of space serves as a source of possibility.

Although initially grounded within a particular territory, the nature of contemporary political organisation sees the development of an array of different forms of membership and belonging which defines an inside against an outside, closing off a community against the other. Such communities possess their own systems of ordering, which may run against the formal mechanisms of state governance structures, opening up a space of potentiality. The power of religious norms and cultural values often transcends state borders, posing a challenge to the sovereignty of a state but also creating new spaces of political life. Here, sovereign power can be contested and circumvented from within and beyond as our case studies show.

With such issues in mind, we must bring the normative back into discussion of *nomos* which helps to understand the processes that simultaneously regulate life and close a community off against an outside. By bringing the normative back into political life we can explore the contingency and complexity of *Ortung*, revealing not only how political order is established but how geopolitical aims can be achieved. Fundamentally, however, by focussing on *nomos* – and the normative environment - we are able to glean a better understanding of how life is ordered, regulated and, moreover, the way in which sovereign power operates and is contested from within and beyond.