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Hope in the Midst of Defeat: The Umbrella Movement

What helps a social movement succeed? On the other hand, what impedes its progress, or leads to its demise? These are issues that every activist must ponder, lest they direct their time and money to an unfruitful strategy. In the case of the 2014 Umbrella Movement in Hong Kong, there was an additional question: when is adherence to the *rule of law* useful? Later in this paper, it becomes evident that utilizing this "core value" of the territory would have been instrumental in winning the public's support (Pang 175). However, could adherence to this value be useless, or even detrimental? If so, how? Only time would tell. In the battle between the People's Republic of China (henceforth called the PRC) and the Umbrella Movement, both sides rushed to interpret the rule of law to its benefit, and thus confirm its own legitimacy while denouncing the other (Pang 175). Was that the correct decision for the activists? Ultimately, did adherence to the rule of law help or harm the Umbrella Movement?

Introduction

Firstly, it may be beneficial to examine the movement's context.

Hong Kong

A "special administrative region of China," Hong Kong has been a much disputed territory throughout history. Though the entire region first belonged to the PRC, one section "was

ceded to Britain by the Treaty of Nanjing" in 1842. After the Second Opium War ended in 1860, another section of the region was ceded. It was only after 1898, when the last section was "leased to Britain for 99 years," that the cessions stopped. The later Sino-British Joint Declaration confirmed the return of the entire territory to the PRC after 1997. Until then, Hong Kong would be under British rule (Leung). The impacts of this large-scale colonization can still be seen today, and is commonly divided into three areas: economics, politics, and the legal sphere (Pang 175). In particular, Hong Kong currently has a capitalist economy, whereas the PRC operates on a communist one. Politically, Hong Kong can self-govern in most aspects, and does so democratically. Finally, in the legal sphere, it "operates its own final court of appeal" and holds onto the British practice of common law, whereas the PRC practices civil law (Pang 175). Even if one does not understand these concepts in deeper detail, the simple existence of these differences show how even the foundations of the two societies are at odds.

Currently, Hong Kong is bound by the Basic Law and its "one country, two systems" model. The territory has been returned to the PRC (hence, "one country"). Though unable to govern in terms of foreign policy and defense, it still holds political autonomy in all other aspects (hence, "two systems"). Additionally, the Basic Law provides freedoms that are not found on the mainland, such as the freedoms of speech and of assembly ("Basic Law Full Text - Chapter 3"). Most significant to the Umbrella Movement is Article 45 of the Basic Law. This article calls for "universal suffrage" ("Basic Law Full Text - Chapter 4"), which is the right to vote for all adult citizens ("Universal suffrage"). These freedoms and protections separate Hong Kong from the PRC, and lay the foundation for the "two systems" aspect of the "one country, two systems" model. As one may predict, conflicts will arise when this unique balance is threatened.

The Umbrella Movement

The Umbrella Movement began as a smaller movement called "Occupy Central with Love and Peace," and was created by professor Benny Tai in 2013 (Pang 172). Tai proclaimed that if the PRC violated Hong Kong's universal suffrage in the upcoming chief executive election, then activists would "occupy Central" (a financial district similar to Wall Street). Though the movement morphed and changed names, demographics, and leadership throughout its lifespan, the goal remained the same: protest for universal suffrage. Eventually, the use of umbrellas as passive resistance in the name of civil disobedience overtook the original imagery of love, peace, and Central; henceforth, the "Umbrella Movement," as it is known today, was born (Iyengar). In total, the movement "lasted seventy-nine days...and obstructed the traffic of three very busy zones in Admiralty, Mong Kong, and Causeway" (Pang 172). However, it was ultimately unsuccessful. This paper will examine a potential reason for the movement's failure: the activists' adherence to the rule of law.

The Rule of Law

As stated before, Hong Kong's colonization period can explain why the territory is still so influenced by many British practices and ideals. One such ideal is the rule of law, which is simultaneously a "core value" of Hong Kong as well as a "legacy of the British institution" (Pang 175, 176). In the most basic sense, the rule of law states that every member of society, from the citizen to the judge to the law-maker, is under the law. No one can be above it, and thus the very concept "[secures] the equality of all before it" (Pang 177). It is key to justice. Therefore, in a democratic society like Hong Kong, the rule of law is paramount.

Aside from the basic definition, there are two competing interpretations. The PRC accepts the ultra-positivist interpretation; a state-run news source clarifies that the rule of law must "uphold the party's leadership" (qtd in Pang 177). Instead of upholding certain values or the country's constitution, this interpretation almost deems the current ruling party as above the law. The law does not hold authority over the government; rather, it must allow and disallow whatever the government desires. In this case, positive law (law enacted by the government) trumps natural law (a set of principles not bound to specific governments, times, or cultures). As such, the law is what it is, and the people must obey. If they do not, then they have committed a crime worthy of punishment. Naturally, it follows that authoritarian or dictator-like regimes will abide by this interpretation. Additionally, democratic regimes will reject it.

On the other hand, Hong Kong accepts the liberal interpretation, which prizes "judicial independence." With judicial independence, the judicial and executive branches act separately—the former is free to disagree with and strike down the latter's laws. Thus, there is a checks-and-balances system that can handle a corrupt or power-hungry establishment. The liberal interpretation also prioritizes basic "respect for human rights" (Abel 14). If a law threatens or eliminates a human right, then the fact that it was passed by the executive branch is of no consequence. Natural law would inspire activists to take a stand in the name of civil disobedience. If the regime truly held the liberal interpretation, the judicial branch would void the violating law. Though civil disobedience calls activists to accept the consequences of their actions, activists would eventually be cleared of all charges. Ultimately, by upholding the natural law instead of the positive law, they would be remembered and celebrated throughout history. This process can be seen in movements such as the Civil Rights Movement in the United States and the Anti-Apartheid Movement in South Africa. If these two regimes had strictly held onto

the ultra-positivist interpretation, then change would not have occurred the way it did; the law would have continued to "uphold the party's leadership," no matter how flawed it was. At that point, only overthrowing the establishment would have generated the same result.

The only question was, which interpretation did the public hold? Though the PRC had lawmaking power, public support could greatly increase the length (and thus costs and inconveniences) of the movement and impact the PRC's reputation. Due to Hong Kong's recent past as a British colony, many people remember and admire those practices and ideals. In fact, "Hong Kong's solicitors are still fighting to wear the same wigs" that most former British colonies have long abandoned (Pang 176). Moreover, support for the liberal rule of law is so unanimous and prevalent that some scholars have even called that support a "general fetishization" (Pang 171). The ardor for a past central government does not appear favorable to a few academics, let alone to the current central government. With these many fundamental differences, it is no surprise that the metaphorical gulf between Hong Kong and the PRC is wide.

Currently, the people of Hong Kong fear being "transformed into yet another PRC city" (Pang 175). Therefore, they do not wish to bridge that gulf. One scholar argues that the distrust has grown so large that the public even "[tends] to attribute the causes of divergent social problems, fairly or not, to the 'PRC'" (Pang 173). As such, all roads of dispute may lead towards the mainland, perpetuating distrust towards the PRC in a positive feedback loop that only amplifies with each wave of distrust. Not only are the people of Hong Kong predisposed to the liberal rule of law and non-PRC practices and ideals, but there is also little to no positive sentiment towards the PRC. For these reasons, it is quite apparent that the public would initially support Occupy Central. However, would that hold true for the movement's entire duration? Now, it may be helpful to follow the Umbrella Movement from the very beginning.

Problematization

Why would people agree to unite and fight all sorts of obstacles, from counter-movements in their own backyards to invisible yet undeniably powerful forces like the desire for wealth and power? When it is easier to passively endure or when other stressors can so easily hold one's attention, what inspires the ordinary person to stand up for an issue much bigger than themselves? Creating that drive, willpower, and engagement is the activist's first responsibility in starting a movement. In order to do so, they have to focus on an oftentimes invisible facet of society, and transform it into a *problem.* They have to show that the issue is too important to be ignored. Thus, the birth of every movement begins with *problematization.*

In 2013, Tai predicted that democracy would be compromised in the 2017 chief executive election. As a result, he created Occupy Central with Love and Peace. The territory's colonial past had already solidified democracy and the liberal rule of law in the legal consciousnesses of the people in Hong Kong. Therefore, the subject of the movement--the potential violation of universal suffrage--was perfect for problematization, because people already cared. Tai never had to convince the public that universal suffrage was important; he only needed to draw attention to its potential violation. As such, Occupy Central "quickly received the wide public attention it deserves" (Pang 172). Tai's problematization was successful.

Classical collective behavior theory provides another reason as to why the movement attracted so much initial support: relative deprivation. The theory states that relative deprivation exists "when people judge themselves as lacking resources enjoyed by their reference group," (Beuchler 28). In this case, the reference group was the territory's former self as a British colony. The aforementioned fear of becoming "yet another PRC city" demonstrates how greatly the public favored the past regime.

This shared sentiment is powerful. Indeed, the public may have inaccurately "[fetishized]...the local and the past," or "(mis)conceptualized" its time as a British colony (Pang 170). It may even have held an incomplete interpretation of the Basic Law's Article 45, by ignoring phrases (such as "ultimate aim" and "gradual...progress") that give the central government more time to crawl towards universal suffrage ("Basic Law Full Text - Chapter 4"). However, a shared sentiment, no matter how accurate its foundation, can inspire and unite. Since the public shared a perspective on the territory's history and a sentiment towards the PRC, then it easily found a shared goal for the future: democracy. In addition, the closeness of the reference group (Hong Kong's past self) may have further pushed people to support Occupy Central. After all, if they achieved universal suffrage before, why could they not do it again?

Moreover, Tai's call for activists to resist peacefully and accept punishment in the name of civil disobedience legitimized his claim to the rule of law by demonstrating that he would accept the consequences. Once he legitimized his adherence to Hong Kong's "core value," he captured the public's support. In fact, even his choice of the chief executive position was an intelligent tactical move. By the Basic Law, the chief executive holds executive authority while operating "under the jurisdiction of the central government" (Leung). If the PRC interfered in the election, it would be seen as overstepping the boundaries in the "one country, two systems" model found in the Basic Law. Furthermore, it would give the central government immense power over the law by installing a figure who would "uphold the party's leadership." After all, the checks-and-balances system falls short when those in power have been filtered to the ruling party's needs. In short, interfering in the chief executive election would violate the universal suffrage and rule of law that the people of Hong Kong hold so dear.

In 2014, the central government did just that, and declared that they would pre-screen candidates for the position. By alarming the public to a potential violation of its "core value," the problematization around the rule of law's fragility benefitted the movement. Tai's prediction came true, and the movement was set into motion.

Mobilization

As protests began to take shape, the original movement (Occupy Central with Love and Peace) emphasized one key tenet in its manifesto: "Any act of civil disobedience...has to be absolutely nonviolent" (*Manifesto*). Since activists would be fighting for the rule of law, they would have to abide by its stance on protests in order to retain legitimacy. In particular, with the rule of law, everyone is under law's jurisdiction. Though people may protest positive law in the name of civil disobedience, they must still obey. Activists in Hong Kong chose the "crimes of dissent," and were called to submit to the consequences (Lovell 2).

Some unfamiliar with the context may ask, why did they not use political lawyers? Yes, the authoritarian central government still had power, but didn't the democratic local government have power as well? Why did activists not target the state, instead of "merely" expressing their disapproval? Would nonviolent protests in this small, distant territory really threaten the PRC? In this case, the activists did not have a choice. As with many other social movements, "citizens did not have access to the ballot box" (Lovell 2). There was no other way to protest the decision to pre-screen candidates; the path to change through the legal sector was blocked. As such, the "crime of dissent" became the only option "when law [was] absent or when it [failed] to provide for the aggrieved party" (Lovell 19). Utilizing the legal sector would not be helpful.

Thus, they chose the "crimes of dissent" and began to protest. During this mobilization period, activists' adherence to the rule of law benefitted them by further legitimizing the movement in the eyes of the public. Through problematization, Tai had already set the groundwork by revealing how a "core value" was vulnerable to attack. Now, he gained the moral high ground. The PRC did not respect the law, and that was shown through its usage of sneaky loopholes and tricky interpretations. However, even if activists had to accept punishment at the hands of a corrupt and unfair system, they would still respect the law. As such, their power and legitimization came from their unselfish adherence to the rule of law. The ball was now in the central government's court.

Resistance from the People's Republic of China

The PRC pushed back against the movement by emphasizing its own interpretation of the rule of law. It claimed that "there is no universal version of democracy" and that "every country practices its own form suitable to its specific circumstances" (qtd in Pang 179). With these claims, the government blamed the Hong Kong people's ardor for the rule of law, a "legacy of the British institution," on its fixation for another country. The PRC was not Britain, and thus it did not need to adhere to British practices or ideals. Their aforementioned "general fetishization" blinded them to the fact that they now lived as a special administrative region of *China.*

Utilizing the ultra-positivist interpretation, the central government declared that the law was the law; there was no use distinguishing between natural and positive law. Everyone must obey for there to be law and order. Therefore, when the movement polled the public to decide "how they could choose the next chief executive," central government officials called the move "illegal" yet "meaningless." As much as activists may have wanted to bestow that ability, they

had no practical influence over the election process—while their words were empty and devoid of action, they still targeted and opposed the law. In 2014, once the central government decided to pre-screen candidates, that was the end of the case. Nothing further could be done.

When the poll was released, social media sites were "scrubbed...clean of references" to the movement, indicating that though the PRC publicly scoffed at the movement by calling its actions "meaningless," it still believed that anything in opposition to the regime could not be tolerated (Kaiman). Once again, according to the ultra-positivist, whatever the state says, goes.

Therefore, the central government had no qualms in subduing those acting in the "crimes of dissent." At one of the first protests, police sprayed tear gas on and arrested much of the student-dominated group. These actions greatly backfired. "Many citizens took to the streets in sympathy with the students," and studies would later discover that "citizen participation reached its peak in the initial days" (Yang 473). Activists started using umbrellas to shield and protect themselves; the imagery of bright, colorful umbrellas against a dreary city landscape inspired countless news reports, and the term "Umbrella Movement" was born. This result was exactly the opposite of what the PRC had wanted. As a result, it discovered that if it wished to win over the public and cease the protests, it could not staunchly follow the ultra-positivist interpretation of the rule of law. Adherence to this interpretation would only anger the public even more. It had to learn to tread carefully.

However, the move to the liberal interpretation did not necessarily signify defeat. The PRC was aware of law's importance for political stability; as an authoritarian government, it had already been utilizing law as "a tool...to control people" (Pang 177). Even if it adopted the liberal interpretation, it could still be in control. It just needed to shift the narrative. In one of the first protests, the public saw a government willing to do anything to break the willpower of innocent

students and maintain its regime. Therefore, it taught the central government the importance of appearances. If the PRC could use the law to its advantage without wielding dictator-like control, then it might still have a chance at victory. While it lost the battle, it might still win the war.

Trouble Brews: The Movement Fractures

As the movement gained momentum, people with different ideas and goals joined the fray. In particular, the student groups of Scholarism and the Hong Kong Federation of Students quickly took over. In fact, Tai's original plan to "occupy Central" never even came to fruition, as only one of the three occupied sites--Admiralty--was near the financial district (yet not in it). Moreover, Tai's original timeline was pushed forward due to the new class action initiated by the Hong Kong Federation of Students. Evidently, the students struggled to share the leadership space with the original Occupy Central organizers, pan-democratic political parties, and civil society organizations. How should they mobilize protestors? How should they formulate claims? How should they make important decisions? These were all questions that the five parties had to face, and the presence of four additional, competing visions hampered the movement by causing the leadership to stall.

"After approximately three weeks, the students gradually started making decisions by themselves and only gave briefings to the other partners." The leadership shifted, and the original founders, including Tai, left the movement because "they believed it had lost direction" (Yang 474). Though now there was one less party to convince, the students were unprepared to lead the movement they had inherited. Should they still abide by Tai's manifesto? Is civil disobedience and passive resistance still their main strategy? As the protests began to drag on with no end in sight, public support began to decline. By December, around three months after the protests

began, “76.3% of respondents thought that the protestors should leave the occupied sites” (Yang 469). Public support was dwindling. The movement’s inconvenience to daily life, along with this new stalemate, was the shift in public opinion that the PRC needed. Hesitations concerning the rule of law caused directionless leadership, which in turn caused the decline in public support. Now, activists were being encouraged to desert the cause by their neighbors, family, and friends. Thus, aimless adherence to the rule of law played a part in the movement’s downfall.

The End is in Sight

Once the public opinion began to change, the PRC used this critical time to dismantle the movement behind the scenes. It had learned from its previous mistakes; the police force should not rush in and violently round up protestors just because the Police Force Ordinance said that it could—the public’s anger would only reignite (Yang 475). Instead, “while seemingly tolerating the street occupation...the government attempted to make use of the judiciary as an impartial third party” (Yang 472). Due to Hong Kong’s ardor for the rule of law, the territory had judicial independence, and the public trusted in the system. Why not work within that trusted system?

Rather than using brute force and engaging with activists itself, the government used “intermediaries” to approach private companies and ask them to utilize the courts. By applying for injunctions to clear the occupied sites, these companies appeared to be using the government, and not the other way around. However, in reality, the government was still in charge. It simply found another way to achieve its desired outcome. In fact, “it was widely suspected that some companies had agreed to apply for injunctions in exchange for political and economic returns” and not because the activists were truly an inconvenience (Yang 474). Furthermore, academics pointed out how other companies had no practical incentive to initiate civil proceedings, because

they could "hardly bear the cost of a lawsuit" (Yang 475). However, the public did not investigate the companies' background, intent, or connections with the PRC. Thus, appearances played in the government's favor as it began to dismantle the movement behind the scenes. Fears of the violation of universal suffrage were alleviated when the public thought that the PRC had adopted the liberal rule of law; after all, the government was only serving the inconvenienced companies and businesses by clearing the occupied sites. As public opinion soured towards the movement, the public began to warm (or at least defrost) towards the PRC.

The Movement's Response

As stated before, when the Umbrella Movement welcomed new activists with varying ideas and goals, it began to fracture. In particular, the movement saw the rise of two factions: the "moderate" and the "radical." While both "shared the same grievances, claims and mobilizing structures," they had vastly different ideas on how to protest. The moderate faction self-segregated into Admiralty, whereas those who were "dissatisfied with the mainstream protestors" self-segregated into Mong Kong (Yang 477). Those in Admiralty protested peacefully, with music, murals, and makeshift study rooms; at the same time, those in Mong Kong often did not practice nonviolence when faced with a violent police force. They did not accept the consequences of their actions. The break in civil disobedience and passive resistance, and thus in the rule of law, threatened the legitimacy of the movement.

By this point in time, the loss of direction had already led to the transfer of power from Tai to the Hong Kong Federation of Students and Scholarism. Perhaps, the new leaders might be more appealing, due to their hesitancy on strictly adhering to the rule of law. Even so, activists in Mong Kong disliked the idea of *any* main organizer; therefore, "the students only had symbolic

leadership power" there (Yang 479). Thus, competing ideas from every faction, party, leader, *and* protest site stalled decisions. While "the student leaders could only take a passive position and wait for the government to act," those in Mong Kong paid no attention (Yang 474). When faced with injunctions, the overall movement had no choice but to obey in order to retain legitimacy and end with its integrity intact—in fact, this was what it was waiting for. At the same time, the radical group diverged from the path of passive resistance and civil disobedience. However, this action was not as disastrous as one may expect. Even though those in Mong Kong left with a trail of chaotic violence in their wake, they did not comprise the mainstream movement. In fact, the Mong Kong activists' constant disdain towards those in Admiralty may have actually aided the movement by indicating that the actions in Mong Kong did not reflect the overall movement. The mainstream activists could still manage to keep their legitimacy by accepting the injunctions, and thus they did. One by one, they cleared the occupied sites, and the movement ended after seventy-nine days.

Is It Really the End?

Due to the overall movement's adherence to the rule of law, the activists effectively dug themselves into an inescapable trap. Admittedly, if they had left civil disobedience behind, then they would have lost their legitimacy; public support would have decreased even further, and the movement would have collapsed even earlier. However, since the activists chose to adhere to the rule of law, they had to obey the injunctions. Though they managed to hold onto the sliver of public support that was left, they failed in securing universal democracy. No progress was made, and the central government has continued its practice of pre-screening elected officials. It even

recently “disqualified six popularly elected legislatures” in 2016 (Yang 487). Therefore, one could say that adherence to the rule of law harmed the movement and led to its downfall.

However, doing so would neglect the crucial difference between the short run and the long run. While “it looks like Beijing won,” professor Yvonne Chiu remarked, “the cost was that you have a much more politically engaged population, which is not at all what [the PRC] wanted” (qtd in Connors). Since the Umbrella Movement ended in 2014, multiple pro-democracy movements have formed and perished in the “social movement city” of Hong Kong (Yang 468). Indeed, the latest movement just mobilized in 2019, and is ongoing at the time of writing. The PRC has gotten bolder and more violent; not only did the police force use tear gas in the current movement, but it also shocked the world by shooting an 18-year-old protestor. However, the protestors are getting more violent as well, and have responded with “poles, petrol bombs, and other projectiles” (*The Hong Kong Protests Explained in 100 and 500 Words*).

The violent nature might cause some to dismiss the new movements’ effectiveness; certainly, logic suggests that the moderate activists from the Umbrella Movement may have retreated, thus reducing the number involved until only the most radical (and most disliked by the mainstream public) activists are left. However, the facts state otherwise. While each new wave of protests is indeed more galvanized and radical than the one before, each new wave is also more diverse. While the Umbrella Movement was dominated by college-age student groups such as Hong Kong Federation of Students and Scholarism, the most recent movement led to the arrest of a 12-year-old boy, and inspired “hundreds of...protestors...under the age of 18” (BBC News). Although the 20- to 29-year-old age range was the most common in 2019, all other age ranges still had a sizable proportion involved, with 14.2% of the protestors being 50 years or older (Buchholz). In addition, the ratio between male and female protestors remained relatively

stable, as did the ratio between different economic classes (Buschmann). Evidently, a movement's surrender does not necessarily indicate failure. Rather, it may represent a "silent denunciation of a heartless government" that inspires more support for the next protest against the state (Connors).

Indeed, "people who weren't interested in politics before are now and aren't afraid to get arrested," politician Lee Cheuk-yan said (ABC News). Though the Umbrella Movement failed in its goal, it still left an impact on the territory of Hong Kong. In particular, it has demonstrated that a graceful defeat and adherence to its original principles are not done in vain and do not go unnoticed. More people have seen the injustice since 2014, and have decided to join the fray. It is plain to see that a war is not won with singular victories or losses. Perhaps, these new waves of protests indicate that losing the battle does not always signify losing the war. There is hope still.

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