

Empire and Exception in Amy Kaplan's Works, and Beyond

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Abstract

This article revisits Amy Kaplan's works and reassesses their contribution to the study of American cultural studies. It foregrounds Kaplan's call to integrate American studies and postcolonial studies and contends that while Kaplan critiques American exceptionalism and empire, her critique is largely based on her notion of "culture," which in turn excludes any discussion of empire in the larger economic, political, and legal contexts. By situating Kaplan's works in the broader debates surrounding the concept of exception as it emerges in the works of theorists such as Carl Schmitt, Giorgio Agamben, and Jacques Derrida, this article argues that a true critique empire is incomplete without unconditional responsibility and exceptional justice for the others of empire.

Keywords: Empire, Exceptionalism, Responsibility, Justice, Decolonization

Introduction

Amy Kaplan's works are daring adventures into the ghosted house of the "imperial" America. If thinkers like Richard Rorty are against any attempt to think "otherness,"¹ Kaplan's works are pervaded by what she calls the disembodied, unincorporated, and spectral spaces of the "empire," and by the distorted subjects that inaugurate haunting in the hegemonic structures of the empire. Kaplan has given us so much to think about, and her thoughts are always directed and dedicated to the margins of the nation and the "others" of the citizens. Her Presidential Address to the American Studies Association gives a clear picture of her position on what she calls "the global politics of anti-imperialism," which is unthinkable for her without a simultaneous "call on grief and mourning for the uncounted dead and the unrepresented suffering" (Kaplan, 2002, p. 16) unleashed by the post-9/11 developments in world politics. She is a unique and enlightened thinker of globality and an advocate of the politics of responsibility against the norm (both in politics and academia) of denial and disavowal. This however does not mean that she is the only writer who critiques U.S. exceptionalism; there is a host of others including some prominent voices like Malini Johar Schueller, Susan K Gillman, Shelley Streeby, and John Carlos Rowe, whose works continue to shape and sharpen the critique of U.S. imperialism. Amy Kaplan's deployment of the term "exceptionalism" is indeed unique as

¹ In *Achieving Our Country* Richard Rorty argues that the politics of responsibility and justice is mere nuisance because it inclines more to Gothicize nation by conjuring up the ghosts of the long dead past. What we need to achieve "our" country, he advises, is to hold up all the "romances" given by Whitman and Dewey and not allow them to be displaced by Poe. For Rorty, theories of truth, grounds of normativity, the impossibility of justice, or the infinite distance separating us from the other are irrelevant compared to a simple formula Dewey proposed of solving "the problems of men," which requires us to move from the issue of otherness to our moral identity and democratic citizenship (Rorty, 1998, p. 97).

she evokes it in relation to exceptional legal decisions and responsibility towards the Other.

Kaplan's works vigorously attempt to speak what is left unspoken.² They outline a project of responsibility for repression, of the work of mourning for the dead and of listening to their receding voice; in short, her works attend to and witness the inescapable haunting and the ghostly presence of the Other. Kaplan audaciously voices her opposition to any attempt of exorcism of this Other and to the possibility of any reinstatement of a monolithic notion of culture, nation, identity, and discipline. Kaplan's critique of exceptionalism also requires a careful examination as it unfolds in her writings as a multifarious and rigorous rereading of nation, culture, history, race, colonization, and imperialism.

The present article is an attempt to read Kaplan as an important public intellectual. It contextualizes her contributions to the discourse of empire, especially her book, *The Anarchy of Empire in the Making of US Culture*, which opens new avenues of inquiry and thinking about exceptionalism. While acknowledging that Kaplan insightfully steers the critical discourse on exceptionalism into a new direction, from several nodal points left unelaborated in her writings, this article attempts to reconfigure a more intense grid of critical thoughts to examine the highly charged and debated topic of empire. Central to this reading, therefore, is the reworking of the notion of exceptionalism itself as it interfaces with empire. By transforming the concept of the "exception" with the help of the controversial and conservative German jurist and theorist Carl Schmitt's politico-legal philosophy, especially his 1950 book *The Nomos of the Earth*, this article argues that even though Kaplan foregrounds "empire" in the discourse of American studies, she takes the multiple narratives of empire as a single uninterrupted whole, thereby discounting the roles of interruptions, including her own, that interrogate them.

Kaplan evokes U.S. "exceptionalism" in her introduction to the landmark collection of essays on U.S. cultures of imperialism, in *The Anarchy of Empire in the Making of U.S. Culture*, and in her last book, *Our American Israel*. Kaplan employs it to mean at least three things: the construction of a unique and monolithic nationhood that disavows its imperial character; the tendency to keep concepts like "home" and "domesticity" away from the contamination of the foreign or the political; and the striking absence of the U.S. and its imperial cultures from the discourse of colonialism/post-colonialism in the academy.

Building upon the legal discourse of empire that opens *The Anarchy of Empire*, especially the insular tariff cases and Kaplan's astute critique of the "Doctrine of Incorporation," this article contends that Kaplan's critique of exceptionalism somehow tends to overlook the legal and political significance of the term "exception," thereby implying inadvertent support for normativity. Consequently, her project retains a theoretically noble silence about the issues of violence in law and justice, and about the global hegemony and sovereignty the U.S. exercises in the name of the rule of law, human rights, and democracy. The task of this study is not to critique Kaplan's position, but to point out the immense potential it has by exploiting a curious vantage point it offers towards thinking about the problematic of empire and law. The article delineates some of the theoretical positions Kaplan departs from. The third section of the

² Amy Kaplan's critique of U.S. cultures of imperialism owes to Toni Morrison's notion of speaking the unspeakable. Morrison writes that race remains a virtually unspeakable thing (Morrison, 1994, p. 370), which haunts the entire field of American literature. Whether it is the terms like "gothic," "romance," "sermonic," or "puritan," or the American fear of failure, powerlessness, boundarylessness, and terror, or of being an outcast, there is the black population to ground these anxieties. Africanism is inextricable from the definition of Americanness (Morrison, 1993, p. 65).

article discusses the problem of the homogeneity of the nation in Kaplan, and it deconstructs a probable resurfacing of a unitary and normative nation in Kaplan. Part four of the article brings in Hardt and Negri's works on empire and sovereignty to assess their influence on Kaplan and her revision of their position. And demonstrates how political and historico-geographical "exceptions" interface. With the help of two seminal Supreme Court cases, *Dred Scott v. Sandford* (1857) and *Downes v. Bidwell* (1901), the concluding part suggests that justice, as a rupture in the existing structures of hegemony, is possible only when one exception is brought to bear against the other.

Haunted House of the Nation

Kaplan's works examine the traces of "imperialism" and their narratives in the history of the nation building in the United States; and her depiction of the undulating space of modern nation-scape is, despite her friendly nod towards Edward Said, not his notion of the modern nation as the "horizontal, secular space of the crowded spectacle" (Said, 1983, p. 145). No ghostly structures are secular and horizontal. Kaplan opens her critique of U.S. exceptionalism by remarking that the "field of American studies was conceived on the banks of the Congo" (Kaplan, 1993, p. 3). At the level of the discursive foundation or formation of U.S. studies lurks the ghostly presence of Africa, the presence of the Other and the foreign. The unavoidable Africanist presence functions in Kaplan almost as "originary displacement," or as the "uncanny doubling" in the realization of the nation and its narrations (Bhabha, 1990, p. 295). The acknowledgment of this haunted moment for Kaplan is etiological enough to unveil the darkness and to articulate the silences, which help expose the systematic absences, namely, "the absence of culture from the history of U.S. imperialism; the absence of empire from the study of American culture; and the absence of the United States from the postcolonial study of imperialism" (Kaplan, 1993, p. 11). Kaplan's revision of nation-building is significantly different from the simplistic discourses of empire-bashing prevalent now among some writers, insofar as she envisions a theoretical strategy to expose exceptionalism by creating a methodological alliance between cultural studies, discourse analysis, and postcolonial theory.

For Kaplan, building bridges across disciplines and trying to connect several seemingly irrelevant geographical points in the globe are crucial in the examination of the imperial culture in the U.S. She sets herself apart from the so-called New Americanists, especially their rhetoric of regionalism. Philip Fisher, in his introduction to *The New American Studies* anthology, for instance, locates a shift from the traditional geographical regionalism, such as the New England mind, the Southern way of life, and the West of the pioneer, towards a more diverse regionalism based on race, gender, and ethnicity (Fisher, 1991, p. xii). Kaplan engages a much broader spectrum as she avoids Fisher's reduction of multiculturalism and the complexity of gender, race, and ethnicity to regionalism, and she explodes the consolidation of such regionalist rhetoric that eventually serves exceptionalism. Kaplan's transnationality, however, is not the same as another New Americanist - John Carlos Rowe's call for comparative study not only of U.S. cultures but also of "several Americas so often ignored and thus trivialized by the disciplinary title" (Rowe, 2002, p. 16). Rowe's comparativist model overlooks what, for Kaplan, is the fundamental category of connection, namely, the empire.

On the one hand Kaplan, in the revised collection of her influential essays on the theme of the empire, very insightfully unmasks the academic exorcism that tries to promote and maintain U.S. exceptionalism. She argues that there is a "jarring proximity" between Catherine Beecher's kitchen and the battlefield of Mexico in 1846. Kaplan reopens the cold case of the "culture" (and this time meaningfully in the singular) of United States Imperialism with *Downes v. Bidwell*, a

Supreme Court case that belongs to the so-called “insular cases” legislating the fate of the U.S. protectorate “abroad.”

This invocation of the legal critical subject gives Kaplan considerable leverage to mount criticism on a number of theoretical fronts. She seems to have, for instance, argued through, if not beyond, a certain circumscribing or exhausting of the issue of imperialism by the “spectacle” talk. Nikhil Pal Singh precautions all readers against the temptation to interpret Kaplan as a theorist of the spectacle and argues that Kaplan urges to see the underlying mechanism of the imperial through the spectacle and not to lose sight of the matters and methods pertaining to less “spellbinding” issues like kitchen, wars, laws and court decisions.³ Overcoming the “spectacle-speak” in the field of U.S. studies is somehow equivalent to overcoming metaphysics in philosophy, at once unthinkable and formidably forbidding, but essential. The problematic of the spectacle in Kaplan needs to be taken seriously as it could easily be conflated with the euphoria of “the end of history” and the subsequent victory of the VCRs and dishwashers (Fukuyama, 1992, p. 312), or with a certain justification of neocolonialism coming from conservative propagandists such as Dinesh D’Souza, who encore empire for its benevolence and liberatory presence in the Third World as it offers “Titanic. . . baseball caps . . . technology” (D’souza 2002).

To continue with the theoretical positions that Kaplan re-envisions, she, perhaps unbeknownst to herself, is also responding to a vehement exorcism of the resurgence of the legal and constitutional questions by the American Left. For instance, Fredric Jameson bemoans the untimely return of political philosophy, along with its “ancient” issues of constitution and citizenship; Jameson calls it one of the regressions of the current age (Jameson, 2002, p. 2). By referring to the insular cases like *Downes v. Bidwell* and the space of the legal limbo that the cases unfold only to relegate the inhabitants of these “unincorporated” and “disembodied” territories like Puerto Rico into beings at once inside the jurisdiction of law and outside it, Kaplan very successfully wields a critique against the perpetual production of the threshold figures that are “neither citizens at home nor aliens from another nation” (Kaplan, 2002, p. 3).

Kaplan also cuts her way through a conceptual fix another Americanist, Paul Lauter, points out between American studies and various forms of ethnic studies. According to Lauter, there is a tension between the “unconsidered internationalizing impulse” on the one hand, and the “exceptionalist parochial tendencies in the US academy” (Lauter 2001, p. 133). Kaplan pushes the argument to its limit by contending that the ambiguous limbos opened by Perry Miller’s jungle epiphany in the “Congo,” and by the “Doctrine of Incorporation” in the insular cases on “Porto Rico” unsettle the manifest domesticity of America as a nation by turning it into a “haunted house” (Kaplan, 2002, p. 6).

Nation as Homogeneity

Kaplan is perspicacious enough to notice that the drive to hegemony is also the crisis of hegemony. She notes that “imperialism does not emanate from the solid center of the fully formed nation; rather, the meaning of the nation itself is both questioned and redefined through the outward reach of the empire” (Kaplan, 2002, p. 12). In order to instantiate various machinations of empire, she turns to Williams Appleman Williams’ concept of the U.S. Empire

³ In his review of Kaplan’s *Anarchy* Singh outlines the modern resonance of anarchy, especially US humanitarian intervention in Iraq. He writes that the American folk tradition of public lynching and the statue’s fall captures Kaplan’s characterization of the American fantasy of global conquest without colonial annexation, her way of pulling back the curtain on the imperial spectacle (Singh, 2004, p. 431).

as a public phenomenon or a way of life that could as much be observed in the kitchen, novels, movies, and theaters as in the battlefields. However, for Kaplan, the “United States” remains a unitary and concrete whole. On the one hand, she acknowledges, with Hardt and Negri - two of only a few theorists of empire that make it to *The Anarchy* - that empire does not have a fixed center, and nation and its narrations are always in the making; on the other hand, by foreclosing empire from foreign policy, diplomacy and international relations conducted by what she calls the diplomatic elites and by extricating empire from economy, she foregrounds only a certain notion of “culture” so that one could examine the formation of “a dominant imperial culture at home” (Kaplan, 2002, p. 14). Thus Kaplan, who starts by invoking specters of the repressed other, employs the same mechanism of repression and exorcism of the economic and political dimensions of the empire. Even a casual reader would be able to locate the sources of her anxieties as she painstakingly disengages empire from economy and conflates “culture” with empire without ever stopping to define what she means by “culture.”

As Kaplan is left alone with the overwhelming ambiguities of “culture,” the homogeneity she evokes in the name of “multiple interpretations” of empire in terms of culture, therefore, leaves her alone with a monolithic notion of the United States, thereby completely obfuscating the terms of her critique.

In his response to the Russell Tribunal held in April 2004 to examine “The Project of New American Century (PNAC)” that proposed a program of rebuilding America’s defense in order to maintain global supremacy, Jacques Derrida cautions us exactly against this type of wholesale critique of America without the careful examination of the democratic forces within it:

Personally, I have a critical attitude towards the Bush administration and its project, its attack on Iraq, and the conditions in which this has come about in a unilateral fashion, . . . But notwithstanding this criticism. . . I would not wish for the United States in general to have to appear before such a tribunal. I would want to distinguish a number of forces within the United States that have opposed the policy on Iraq . . . It is a very legalistic country rich in displays of political liberty which would not be tolerated in a good many other countries (Derrida, 2004).

Kaplan’s critique of empire and exceptionalism may be strong but not stringent as it does not strive towards what Derrida would call rigorous critique and calculation, often misunderstood for being destructive or deconstructive. In other words, once she reverts to William A. Williams’ theoretical position that empire is *a way of life in the U.S.*, it is impossible for her not to homogenize empire, let alone find a critical locus within empire to counteract it. To make matters worse, since her term of critique is “culture,” her resistance yields neither the critique of capitalism that we find in Lauter, nor a pragmatic vision to deal with problems of “selfishness and sadism” we witness in Rorty. This is not to separate the sphere of culture from being implicated in empire and colonialism. In fact, culture, as the etymology of the term suggests, is inherently complicitous with colonialism. But at the same time, we need to distinguish, as Raymond Williams has taught us, the dominant from the residual culture, and to acknowledge the emergent culture that could be oppositional to the hegemonic culture (Williams, 1977, p. 121-23).

From Exceptionalism back to Normativism?

Kaplan’s indulgence in the singularity of culture devoid of any politico-economic overlay owes a great deal to Hardt and Negri’s work on empire, to which, she admits, she has “more in

common than with their description of imperialism” (Kaplan, 2002, p. 15). As we know, Hardt and Negri distinguish “Empire” from “imperialism” by arguing that American sovereignty which is true to the spirit of Empire differs from the “modern” or traditional form of sovereignty based on transcendental models outlined in the works of Hobbes and Rousseau. American sovereignty, for Hardt and Negri, not only returns to the “origin,” or to the signatures of the founding fathers, but it also has an internal arrangement of the multitude through the checks and balances in the legislative, which in turn, makes it, “an extraordinarily secular and immanentist” empire (Hardt & Negri, 2000, p. 165). The immanentist or “postmodernist” sovereignty of the United States (as opposed to the modernist and transcendentalist sovereignty of the old Europe) is also a democratic sovereignty, for in spite of its “tendency towards the open, its expansive projects on an unbounded terrain,” the democratic expansionism of the United States is inclusive rather than exclusive. Hardt and Negri continue, “When it expands, this new sovereignty does not annex or destroy the other power it faces, but on the contrary opens itself to them, including them in the network” (Kaplan 2000, pp. 165-166).

Not that Kaplan shares Hardt and Negri’s euphoria for the immanent and postmodernist sovereignty of the United States. In fact, she distances herself very clearly from the distinction Hardt and Negri create between empire and imperialism. She clarifies:

They [Hardt and Negri] regard Theodore Roosevelt as pursuing old-style European imperialism, and Woodrow Wilson with his League of Nations as foreshadowing the emergence of today’s postmodern regime, in which sovereignty of the nation dissolves in the borderless world of Empire. I would argue that these two tendencies are not as distinct as Hardt and Negri contend, but that both are at work in varied configurations throughout the history of U.S. imperialism. . . To separate Empire from imperialism is to foreclose the history of American imperialism and breathe new life into the belief in American exceptionalism. (Kaplan, 2002, pp. 15-16)

On the one hand, Kaplan puts Hardt and Negri’s project back on track by pointing out that Theodore Roosevelt and Woodrow Wilson’s empires intersect in the course of their apotheosis of American nation-form itself; yet, on the other hand, she immediately retracts from her critique of the U.S. national particularism to limit her analysis only to the “cultural expressions [that] reveal an anxiety about the anarchic potential of imperial distension underlying this exceptionalist ideal” (Kaplan, 2002, p. 16).

Before reflecting more on the “imperial distension” that Kaplan refers to here, let us return shortly to Hardt and Negri’s *Multitude*, wherein at the outset they re-invoke the same juxtaposition between empire and imperialism, but with a different key. This time they substitute the problematic of empire and imperialism with the contradiction between the legal and political “exception” and U.S. exceptionalism. Citing former Secretary of State Madeleine Albright’s justification of the use of force: “If we have to use force, it is because we are America. We are an indispensable nation,” Hardt and Negri argue that Albright’s very ambiguous statement has two often mutually exclusive implications. On the one hand, the idea of an “indispensable nation” implies, according to them, that the U.S. is an exception from the corruption of the European forms of sovereignty, and it is the beacon of republican virtue in the world; on the other hand, it also means, in the legal tradition, exception from law, a pretext to exempt itself from international agreements such as conventions on environment, human rights, criminal courts, etc. For Hardt and Negri these two aspects of U.S. exceptionalism are contradictory and mutually self-exclusive, so much so that to read them as compatible and

mutually reinforcing is a blatant ideological confusion and mystification (Hardt & Negri, 2004, pp. 8-9).

Hardt and Negri's projects on empire and multitude not only fail to grasp the interface, as Kaplan shows, of two imperial tendencies, but they also miss (as do, unfortunately, Kaplan's works) the intertwining of the legal/political and historical "exceptionalisms." In spite of her insightful discussions of law and court decisions, and in spite of her invocation of the important world-historical juncture of the 1890s around which, to recall the German jurist and philosopher Carl Schmitt's *The Nomos of the Earth*, the old nomos of the earth was dissolved and the new global nomic lines emerged by putting the United States at the sacral center of the earth, Kaplan fails to bring in the history of legal exceptions that the United States has time and again appropriated in the name of the security of the Western Hemisphere.

No surprise therefore that such an important document of U.S. exceptionalism as the Monroe Doctrine (1823) was mentioned neither by Hardt and Negri nor by Kaplan. Carl Schmitt notes that nobody seemed to notice the political significance of the doctrine when it was declared by President James Monroe on December 2, 1823. Schmitt historicizes various global lines starting from the Spanish-Portuguese *rayas* based on the dichotomy of the Christian/non-Christian territories that endowed the Pope the authority to grant missionary mandate to occupy non-Christian territories. The second major global legal line, according to Schmitt, is the French-English friendship lines, or the European amity lines that belong to the 17th-century religious civil wars between land-appropriating Catholic powers and Protestant sea powers followed by the lines drawn in the name of President James Monroe's "Western Hemisphere," the third and the last global line raised by the new world to counteract the old.

The amity lines created the so-called "free space of the sea" beyond the European states, thereby bracketing war among themselves and in turn converting the "free space" of the sea and the rest of the world, particularly Africa, America, and Asia into the theatre of European wars. Monroe's idea of the Western Hemisphere is a zone of security and self-defense against the perpetration of European powers. But in essence it, along with the other two global lines, is the construction of exceptional territories. Schmitt locates the modern jurisprudential notion of the state of exception in the "idea of a designated zone of free and empty space," which lies beyond the pale of law, therefore it is a zone of pure war" (Schmitt, 2003, p. 98).

These states of exceptions that in fact were not States per se included the New World (until Monroe Doctrine); and they were extra-legal spaces, therefore "open" and "free" spaces for occupation, and they remained, according to Schmitt, beyond the amity lines and hence beyond European public law until the Congo Conference of 1885, which was at once the culmination of the European race for legal rights, land-appropriation and occupation and the beginning of the relativization of Europe and eventually the disappearance and dissolution of the European international law. For Schmitt, the Congo conference was not purely European due to the significant presence and decisive role of the U.S. in the conference, especially the unprecedented recognition by the U.S. of the flag of the International Congo Society, which was at the time a non-state or free soil.

The decisive entry of the U.S. into the Congo Conference and its recognition of a space of exception herald not only a shift from European public law to a new global order but also mark the beginning of the expansion of the American security zone beyond the traditional three miles limit. By the time of the Panama Declaration of 1939 the line of the neutral security zone extended three hundred miles into the Atlantic and the Pacific from the American coasts

(Schmitt 2003). Like every true empire, he continues, America also claimed a sphere of spatial sovereignty beyond its borders, thereby pushing, especially after the Spanish-American war (1898), Monroe doctrine's security proviso into an "open imperialism":

The war did not abide by the old continental concepts of the Western hemisphere, but reached deep into the Pacific Ocean and into the old East. . . From a global geographical perspective, this was a step from the West to the East. In relation to the new East Asian sphere rising in world history, the American continent was now in a position to displace the Eastern continent, just as one hundred years earlier old Europe had been thrust aside in the eastern hemisphere by the world-historical rise of America. (Schmitt, 2003, p. 292)

Thus, the idea of the space of exception allows a curious peek into the constant manifestations of these spaces throughout American history; and the Monroe Doctrine, in its multiple incarnations over the centuries, is seminal insofar as it at once helps explain American intervention in the Congo, the continental expansion in the Americas, and America's eastward movement.

Kaplan is aware of the paradigms of "linear" thinking in the history of the United States. However, she argues that "the confrontation between white settlers and Native Americans" as represented by the notion of the Westward movement of Empire, "overlooks how intimately the issues of slavery and emancipation and relations between black and white were intertwined with each stage of U.S. imperial expansion" hence a necessity to explore "the representations of U.S. imperialism. . . not through a West/East axis of frontier symbol and politics, but instead through a North/South around the issue of slavery, Reconstruction, and Jim Crow segregation" (Kaplan, 2002, p. 18).

Unless one decodes this paradigm shift from the East/West axis to the North/South axis as the invocation of the "global south," often conjured up in the works of postcolonial theorists like Gayatri Spivak, or as the invocation of the "global color line" found in the works of W.E. B. DuBois and recently in the works of the critical legal race theorist, Charles W. Mills,⁴ Kaplan's inversion of the axes implies a mere change of vantage points rather than a subversion. Whether she stays in one axis or the other, both are, and equally so, the reproductions of the multiple teleological narratives of imperialism. Mere switching of the perspective does not confront the issue of the "exception" at all. Kaplan's cultural analysis helps project a homogenous nation with merely immanentist sovereignty. Her substitution of the East-West axis of empire by the North-South model makes her perspective one-sided. As a result, her analysis not only suffers from a lack of rigorous interpretation of the exception, it also fails to do "justice" to the exceptional zone of "pure war" beyond the politico-legal lines, especially to the "bare life" inhabiting the exceptional zone.

⁴ For the discussion of the global south as the constituency of postcolonial discourse, especially women not as victim but the base of the metropolises of the empire see Gayatri Chakravorty Spivak's *The Critique of Postcolonial Reason* (Cambridge: Harvard UP, 1999). Charles W. Mills' treatise on race and empire, *The Racial Contract* (Ithaca: Cornell UP, 1997), can be taken as an extended discussion of W.E.B. DuBois's prophetic assertion: "The problem of the twentieth century is the problem of the color line - the relation of the darker to the lighter races of men in Asia and Africa, in America and the island of the sea" (DuBois, 1999, p. 17).

Bare Life and the Question of Justice

When we move from Kaplan's critique of American exceptionalism – that is, from her critique of America as an exceptional nation – what we gain is exceptionalism from below. In other words, if Kaplan focuses on the cultures of Empire, the theories of legal exception focus on the subjects of imperialism. To put it differently, we move from exceptionalism from above (the nation) to exceptionalism from below (those excluded from that national culture or its boundaries). And that is the sphere of bare life.

Kaplan refers to the insular cases and some other legal quandaries associated with the question of the American empire, but her analysis falls short of expanding itself into a more rigorous examination of the question of the bare life and the creation of the exceptional zone, which can be said to be one of the favorite sports of imperialism. Even though Kaplan is perceptive enough to correlate Justice White's demurral to granting citizenship to the Puerto Ricans in *Downes v. Bidwell* and the stripping of African Americans of full citizenship at home; she fails to notice that all nations and all laws are founded upon some originary violence. It is thus an exceptionalist position to take if we only focus on America or on Israel by arguing that the proximity of the US and Israel can only be explained through exceptionalism – through their being exceptional nations – one the land of refuge and another of "exceptional suffering," a tie that makes Israel "as much a domestic as a foreign issue" (Kaplan, 2018, pp. 7-8). All institutions of citizenship and belonging, incorporation and interiority are created on or against the body of what philosopher Giorgio Agamben calls the "bare life" created in and through exception:

The exception does not subtract itself from the rule, rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule. The particular "force" of law consists in this capacity of law to maintain itself in relation to an exteriority. We shall give the name *relation of exception* to the extreme form of relation by which something is included solely through its exclusion. (Agamben, 1998, p. 18)

The "rule" of exception, Agamben would argue, is inclusion through exclusion; and this is exactly what happens in the exemplary insular tariff case, *Downes v. Bidwell*, where contrary to Kaplan's images of the hybrid or graft, Puerto Rico and its "alien races" are included only through exclusion. Therefore the imagined threat of the alien races that resounds the majority decision in the case is far from Kaplan's fantasy of imperialism for a "borderless world where it finds its own reflection everywhere [to the effect of shattering] the coherence of national identity, as boundaries that distinguish it from the outside world promise to collapse" (Kaplan, 2002, p. 16); rather it is the imperial auto-immunity with which the empire suspends its "exceptionalism" in order to incorporate the "exception" through exclusion.

This double meaning of "exceptionalism" that Hardt and Negri unsuccessfully tried to grapple with in the *Multitude* can be seen fully at work in *Downes v. Bidwell*. In order to answer what it means to have an exception as the general rule of a polity, or what it means to have this exclusionary and violently unjust core in every law, we need also to recall *Dred Scott v. Sandford*, an influential and decisive precedent to *Downes v. Bidwell* itself. *Dred Scott v. Sandford* is a case of trespass in which Dred Scott is moved by his "master," Dr. Emerson from Missouri to a military post in Rock Island and from there to Snelling situated on the west bank of the Mississippi. After returning from the federally governed and free territory Dred Scott claims that he is free. The Supreme Court summarizes the case as follows:

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by the instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the case specified in the Constitution. (1857, p. 403)

Without implying a homology between these two cases that are historically and contextually different from each other, one can maintain that these cases nevertheless exemplify what we have been trying to grasp as the exceptional or free zone (Puerto Rico) or the exceptional beings, the bare life (the descendants of the slaves). Both deal with the question of the borderland between a mere human being and a legal citizen, and both try to grapple with the issue of legal and constitutionally protected territory and, by extension, the “zone of war” that lies beyond it.

In *Downes v. Bidwell* the Supreme Court holds that the tariff imposed on goods imported from Puerto Rico does not violate the constitutional requirement that all duties, imposts and excises should be uniform throughout the United States. This is an interesting moment at which the interface of the legal and the illegal, the constitutional and the unconstitutional become problematic and indeterminate. President Jefferson, for instance in his 1803 letter to John Dickinson, expressed his doubt about the powers of the government to constitutionally acquire foreign territories.⁵ And here is an argument that not only legitimizes holding of such a territory, but also tries to maintain that the revenue collected on the goods imported from Puerto Rico is constitutional.

Kaplan's characterization of Puerto Rico as an exceptional space or case therefore does not go beyond anarchy and hybrid liminality. Even though the North/South axis allows her to bring in the issue of slavery, it does not address the issue of the figure of the exception, the bare life, who invariably bears the brunt of the imperial legal decisions. These decisions are obviously made at overdetermined junctures where constitutionality and legality are pushed to their limit. To put it differently, they are made at the critical moments at which constitution and legality justifiably suspend themselves to defend themselves against what they deem to be or project as unconstitutional and foreign.

Whereas Kaplan believes that the foreign lodged within the domestic casts a dark enough shadow to render the borders at home extremely unstable; exceptionalism, on the contrary, operates through self-suspension. In the process it betrays the violent nature of law, and produces the figure of the exception, the bare life without citizenship and without any legal and political protection, whose mere existence is perpetually exposed to the violence of the exceptional decisions, and whose bare life, too savage and raw to be a full member of a polity, occasions the manifestations of the imperial sovereignty. When the majority decision in *Dred Scott v. Sandford* very self-consciously states that it is “not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws,” and when it further remarks that since the decision of the question regarding who the “people of the United States” are, is already taken by the law-making power, the duty of the court is “to interpret the instrument they have framed” (405), we immediately realize what is left out of the picture of the legal

⁵ Jefferson writes that the “general government has no power but such as the constitution has given it, and it has not given it a power of holding foreign territory, and still less of incorporating it into the Union. An amendment of the Constitution seems necessary for this” (Jefferson, 1895, p. 262).

violence masquerading as justice.

Whenever justice is not a point of reference, any formalistic execution of law in the name of law, as Derrida has shown us, is violence;⁶ and law here is not limited to law proper, rather it includes all structures built on the figure of exclusion. Whether it is the law/structure of patriarchy or imperialism, colonialism, or capitalism, all are violent and exclusionary, therefore it is imperative to invariably invoke justice as responsibility towards the ones that are excluded.

Kaplan is aware of the simple reversion of the categories when she detects a Wilsonian tenet in W.E.B. Du Bois's Pan-African leadership (Kaplan, 2002, p. 200). Any programmed counter-structure to existing hegemony is not necessarily the end of exclusion and exception. The resurgence of a Du Boisian "world citizenship," argues Kaplan, also helps resurface the Wilsonian vision of "the United States of the World." But what she leaves unelaborated is how the force of justice, the disrupting event that justice is, exceeds simple calculation of the reversal of the structure, again built on the figure of the exception.

The exception against itself is discernible, albeit never present, on almost every page of the court decision over *Downes v. Bidwell*, which is not only a complicated case about the issue of imperial territories but also about the battle between two constitutional bodies: the Congress and the Court. It becomes obvious when the court gets divided exactly on this issue as the concurring judges uphold the unlimited authority of the Congress over the ceded or acquired territories, and the dissenting opinion inclines more towards judiciary interventions into the alleged power of the Congress over the territories. The Court opinion at the outset sets the background for this division:

The case also involves the broader question of whether the revenue clauses of the Constitution extend their own force to our newly acquired territories. The Constitution itself does not answer the question. Its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, and in the decisions of this court. (1901, p. 244)

Unlike Kaplan, who thinks that Justice White resurrects the memory of chattel slavery, the majority decision opines that the 13th Amendment applies to the territory, whereas the 14th does not. Which is to say the inhabitants of the territories are protected by law against any attempt at involuntary servitude, but they are not citizens. As a result, the insular cases also surface the same legal distinction between the mere human and the citizen that we encountered in *Dred Scot v. Sandford*. The majority opinion, therefore, cites the special provision made by the Congress for organizing the territory of Louisiana by the act of March 26, 1804, whereupon Chief Justice Fuller, in his dissenting opinion, along with three other judges concurring, invokes the same "force" of exception:

Aliens in the territories are made citizens of the United States, and bankrupts residing in the territories are discharged from debts owing citizens of the states, pursuant to uniform rules and laws enacted by Congress in the exercise of this power. (357)

Court cases like *Downes v. Bidwell* are not only testimonials of the history of legal exceptions,

⁶ The reference here is to Jacques Derrida's monumental treatise on law and violence, first delivered as the keynote address to a colloquium at the Cardozo Law School in October 1989, "Force of Law: The "Mystical Foundation of Authority," (*Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, et. al. (London: Routledge, 1992), 3-67). In this work, Derrida discusses justice both within and outside of the constellation of the laws.

but they also foreground, as the dissenting Chief Justice clarifies, the possibility of exceptional decisions by which justice is granted even to the aliens and the bankrupts. Simple negation of the exception, therefore, is not sufficient. This is what perhaps Frederick Douglass meant when exasperated by Judge Taney's decision on *Dred Scott v. Sandford*, he said: "Judge Taney can do many things, but he cannot perform impossibilities" (Douglass, 1857, p. 31). Justice beyond calculation is performing an impossibility, which is possible only through exceptional decisions against all exceptionalisms.

Conclusion

Amy Kaplan's works have transformed the field of American cultural studies through their critique of empire and exceptionalism. Her call to open American studies to the field of postcolonial studies truly makes her a unique but globally involved American critic. While her engagement with empire makes her approach truly transnational and decolonial in its spirit, it must be expanded beyond the context of culture that she limits it to. In the same way, her evocation of exceptionalism must also be situated in the broader theoretical debates on the legal concept of the exception as it relates to sovereignty. A wholesale renunciation of exceptionalism is like throwing away the baby with the bathwater in the same way as arguing that there is no outside to empire is like resurrecting and reinstating the totalizing narrative of imperialism. In order to envision a theory of decolonization, we must expose the constraints Kaplan imposes on her theory in the name of the everydayness of culture. Such an expansion is impossible without deploying a certain radical form of decisionism that challenges the very notion of everydayness by attending to the emergence of exceptional moments of justice and responsibility.

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