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Tracing the Legal Boundary between Empire and Multitude: Wavering with Hardt and Negri (2000–2005)

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Abstract

Since its publication in 2000, Hardt and Negri's book *Empire* has been at the centre of significant debates within international relations (IR) and international law (IL) communities, both academic and other. Hardt and Negri's recently published *Multitude* (2004) is likely to add momentum to these debates. Outlining the importance of both *Multitude* and *Empire* for legal scholarship and practice, this contribution sets out to give a brief overview of the core issues that are to be distinguished in the debates amongst IR and IL academics, and includes a number of criticisms that could be levelled at Hardt and Negri's work. The focus of the paper, however, is on the ambiguities that mark Hardt and Negri's flawed attempt to deal with the issue of the boundary of Empire and the liminality of (the) multitude. Indeed, this contribution maintains that precisely this rather fundamental flaw in Hardt and Negri's work is why their intellectual 'tour de force' is ultimately unconvincing.

Key words

Michael Hardt and Antonio Negri; logic of Empire; multitude; sovereign subjectivities; biopower; resistance

1. Introduction

Hardt and Negri's jointly written work, *Empire*[1] and *Multitude*[2] in particular, has been, and still is, at the heart of much debate in international relations (IR) as well as, albeit to a lesser extent, international law (IL) communities. The aim of this article is twofold. First it attempts to explore the main outlines of both aforementioned works and their relevance for scholarship in the fields of IR and IL. In doing so, the paper sets out to evoke, rehearse, and discuss the main criticisms that, to date, have been levelled against Hardt and Negri's work. The article, however, also aims to focus on, and develop, one theme in particular that, it could be argued, has been dealt with only ambiguously by Hardt and Negri, i.e. the boundary between Empire and the multitude. While this boundary, in *Empire*, was left largely untraced, and, to the extent it *was* traced by Hardt and Negri, had a certain vagueness, haziness, and

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1. M. Hardt and A. Negri, *Empire* (2000). Citations and quotations from *Empire* will be indicated as, e.g. *Empire*, at 189.
2. M. Hardt and A. Negri, *Multitude. War and Democracy in the Age of Empire* (2004), henceforth *Multitude*. Citations and quotations from *Multitude* will be indicated in footnotes as, e.g. *Multitude*, at 223 et seq.

porosity about it, in *Multitude*, a book that was written as a response to earlier criticisms, a book also that tried to identify the sources of and resources for democratic resistance against or alternatives to Empire, the boundary appears to be much more distinct. This ambiguity needs to be explored in more detail and its relevance for the fields of IR and IL needs to be spelt out more clearly. This task is taken up in this article.

To trace the limits of Empire, or, to put it slightly differently, to trace the boundary between Empire and its *outside*, ultimately boils down to a search for the limits of authority, that is, the authority of the law of Empire. And this in turn implies the notion of sovereignty, or, more specifically, sovereign subjectivity. In or by what kind of imperial subjectivity is the law of Empire authored? Who authors this law? Who authorizes this law? Where does this process of *authorization* take place? How and where is this law legitimized? By whom? Which sovereign subjectivity, or, to be more precise, subjectivities, is or are at work in such acts or events of legitimization? These are very fundamental questions that should not leave scholars working in the fields of IR or IL indifferent.

Now, although Hardt and Negri do not themselves focus on law in particular, they do extensively deal with the notion of sovereignty. In fact, the first of their projects, *Empire*, is, to a significant extent, constructed around this notion. In this book it is claimed that we have now entered a new age – Empire – that is marked by a 'new form of sovereignty'.[3] This 'new form' goes some way to achieve Hans Kelsen's utopian global governance, albeit with a twist: Empire's sovereignty is not peaceful. It is not organized. It is highly mobile, polycentric, and restless. It emerges and evolves in and through the workings of a number of layered organizations and networks, all intertwined in a 'pyramid' of governance.[4] At the pinnacle of this pyramid – Empire's mode of governance – we find the only remaining superpower, acting, as it may be, 'under the umbrella' of organizations such as the UN. What goes on at the pinnacle of governance is largely determined by and fed from dynamics in the lower layers of the pyramid. The interstitial layer comprises international or multilateral regulation and control by and between nation states and supranational organizations or networks and forums such as G7 (or G8). At the base of the pyramid Hardt and Negri locate networks of capital and non-governmental organizations. Dynamics in this basic layer are again closely intertwined with those that go on in both other layers. This, in a nutshell, is, according to Hardt and Negri, the infrastructure – the 'form' – underpinning Empire's sovereignty and authority: a pyramidal network of networks. Let us now have a closer look at this 'new form of sovereignty'.

2. Empire's sovereignty

It is worth noticing that Hardt and Negri begin their exploration of Empire with a reference to the work of Hans Kelsen. That is also where both authors deal with IL explicitly. Empire, they claim, has sprung up in the spaces left by the 'inadequacies' in

3. *Empire*, at xi.
4. *Empire*, at 308 et seq.

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the process of supra-nationalization of law (the inadequacy of the UN in particular is meant here). The failure of supra-national organizations such as the UN 'adequately' to embody Kelsen's dream, i.e. 'the organization of humanity' in and through a fully legitimate, sovereign authority, in and through a fully sovereign expresser and giver of humanity's universal Kelsenian *basic norm*,[5] this failure is what constitutes the lack whence Empire has emerged. In other words, it is the failure to constitute humanity, to 'express' it, and *thus* to govern it 'adequately', that gave birth to Empire.

Much in Hardt and Negri's normative project, particularly in *Multitude*, tries to think through the conditions and the resources that might be available in our age of Empire for something like this utopian humanity to yet emerge. We will come to that later. Let us for now focus on Empire's sovereignty. A number of organizations and networks emerged and intertwined in the wake of the demise of Kelsenian governance. NGOs in particular seem to loom large in Hardt and Negri's tableau. The 'charitable campaigns and the mendicant orders of Empire',[6] working in and from the pyramidal base of Empire, proved to be essential and instrumental in the construction of Empire. Although its infrastructure comprises a number of layered networks and organizations, Empire appears to be subjectless. It seems to be a 'series of national organisms united under a single logic of rule'.[7] This begs the question as to the location, or the subject, that controls this 'single logic of rule'. The answer to that fundamental question, however, is not too forthcoming. In the face of a post-Westphalian 'decline of international law',[8] Empire is a 'systemic totality',[9] a 'collective biopolitical body',[10] but also a 'machine that is self-validating, autopoietic',[11] or, as it says elsewhere in *Empire*, 'a new economic–industrial–communicative machine'.[12]

Hardt and Negri's choice of metaphor and imagery ('bodies' on the one hand, 'machines' on the other) should not come as a surprise to anyone who, like Hardt and Negri, takes their cues from Deleuzean thought. Gilles Deleuze starts from desire.[13] His is a world of flows of desire. Those flows of desire, like geological flows, coagulate with various materials and produce sediments or 'crystals' that may, or may not, 'assemble' into 'desiring machines'. These in turn do nothing but cut into flows of desire, assembling or producing yet more 'desiring machines' and more flow. Deleuze's vitalist world is at the same time also a deeply machinic world, and one could argue that in Deleuze's cyborg world of desire and *becoming*, the boundary between the vital and the machinic has collapsed. It is, however, important to note that Empire, despite the *multitude* of networks and organization, and the multiplicity of desire(s) in a 'completely fluid'[14] world, appears to be *one*, i.e. a single one 'totality',

5. Ibid., at 5.
6. Ibid., at 36.
7. Ibid., at xii.
8. *Multitude*, at 29.
9. *Empire*, at 14.
10. Ibid., at 30.
11. Ibid., at 34.
12. Ibid., at 40.
13. See e.g. G. Deleuze, *Negotiations* (1995).
14. *Empire*, at 16.

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one 'body', one 'machine', 'united under a single logic of rule'. This Empire is an 'it' that attempts to 'take control of and dominate' the restless fluidity of the world, and acts as an 'intervening *authority*' (emphasis added) presiding over 'a state of permanent exception'.[15]

The exact nature of this 'it', that is, its location and its subjectivity, remains as yet unclear. What we do know is that, according to Hardt and Negri, the 'it' of Empire emerges – and paradoxically so, one might add – in a world that has churned up 'a new milieu of maximum plurality and uncontainable singularization', a world of 'immanence', of singular 'events' rather than structured or patterned relations. In this Spinozean world, governance, and productive life as such, have turned 'biopolitical'. Now, this notion, i.e. 'biopolitics', is derived from Foucault,[16] who developed it in relation to other notions such as 'biopower'. Both, according to Foucault, denote the typically modern preoccupation with the ordering and managing of populations (defined or circumscribed as such), the ordering and managing of *forms of life*, indeed of *life* as such. This ordering of life, or, more precisely, the spatial and demographic distribution of populations, their desires, their bio-characteristics (fitness, productivity, etc.), and ultimately their social forms and subjectivities, is, on the one hand, the result of 'biopower', but also, and simultaneously so, of unrelenting strategies and mobile 'microphysics' of warring forces.[17] These warring forces, and their control and management, are what constitutes 'biopolitics', the struggle for the production and distribution of *forms of life*. Now, in Empire, 'biopolitical production', according to Hardt and Negri in *Empire*, produces immanent forms of life and events of control and regulation in and through 'informational networks', involving 'interactive labor of symbolic analysis and problem solving' and 'the labor of the production and the manipulation of affects'.[18] These forms and events of immanent control and regulation are *bio*political *also* in the sense that they tend to cut across all spheres of life (gone are the Marxist days of the separation of the 'relatively autonomous' spheres of the economy, politics, and culture). Indeed, they are about the distribution of forms of *life* and subjectivity as such.

This should not come as too much of a surprise in a post-institutional age: 'as the walls of the institutions break down, the logics of subjectification . . . now spread out, generalized across the field'.[19] Life as such, in the age of Empire, is produced and reproduced in and through networks of collective, affective communication, and this process is 'one' that evolves immanently, in singularized 'events' that do not necessarily connect onto each other. In *Multitude*, Hardt and Negri argue more extensively that it is precisely this biopolitical dimension of our age (i.e. the fact that the reproduction of forms of life, indeed *life as such*, tends to be a matter of immanent symbolic and affective communication) that will provide resources towards the democratic production of 'humanity' – a more Spinozean, immanent humanity of

15. Ibid., at 167.
16. First, in his *The History of Sexuality: Volume 1, An Introduction* (1979), but also in his recently translated *Society Must be Defended* (2003), particularly at 239 et seq.
17. For an elaboration and intricate analysis of these notions, see G. Deleuze, *Foucault* (1988), at 70–93 in particular.
18. *Empire*, at 30.
19. Ibid., at 329.

singularities than the transcendent one Kelsen had in mind, by the way. In *Empire*, though, the emphasis remains largely on a single unified 'logic' of Empire that, as a series of singular biopolitical events, somehow, and again paradoxically so, manages to crystallize in, and out of, a bigger sea of singular biopolitical events. This subjectless series of events, this 'logic', called Empire, emerges out of the restlessness of a sea of biopolitical events, the multitude, which 'it' tries to control and subject. The sovereignty of Empire, in other words, appears to be a subjectless, machinic–organic series of biopolitical controls, 'united' under a 'logic of control', that is firmly dependent – a dependent sovereignty, indeed – on that which gives rise to it, i.e. the multitude of immanent biopolitical events. Let us now explore in more detail this relationship between Empire and the multitude.

3. Empire and multitude

In *Empire*, it is claimed that Empire, although 'united' under a 'single logic of rule', is, however, dependent on the biopolitical productivity of the multitude, which in turn is fuelled by the 'multitude's desire for liberation'. Indeed, the authors claim, once again in a Foucauldian vein,[20] 'the multitude called Empire into being'.[21] Elsewhere, Hardt and Negri explain how, yes, Empire – 'it' – subjects the multitude's desires and productivity to 'the rule of its overarching machine, as a new Leviathan', but that, from 'the ontological perspective, the hierarchy is reversed'.[22]

However, we learn, still in *Empire*, how the 'mobility and hybridity' that results from and again provides the conditions for biopolitical, that is, immanent, communicative, singular production, are not in themselves 'liberatory', but – Foucault again – that 'taking control of the production of mobility and stasis, purities and mixtures is'.[23] The question, however, remains as to who or what this 'it' is that, in a 'liberatory' fashion, 'takes control' of biopolitical production. Is this 'it' the non-coherence of an immanent multitude (of events), or is 'it' the 'single logic of control' that (1) has formed out of this sea of the multitude of immanent events, (2) then 'controls' it, (3) prompting yet more biopolitical events which, in turn, (4) generate adaptations in this ever-flexible 'it', this 'single logic' that structures and determines the workings and functionings in a 'unified' pyramid of interlaced networks and organizations. Hardt and Negri remain silent on this issue in *Empire* and it may indeed be very hard to distinguish, in the book, Empire from the multitude.

Multitude, however, defines the multitude as 'singularities that act in common'. The singularities of the multitude, and the immanence of events of biopolitical communication and affect therefore combine 'commonality' as well as 'difference'.[24] The 'flesh of the multitude is maddeningly elusive', Hardt and Negri claim, and will always be able to ultimately escape 'the hierarchical organs of a body'.[25] Here

20. *Supra* note 16.
21. *Empire*, at 43.
22. Ibid., at 62.
23. Ibid., at 156.
24. *Multitude*, at 105.
25. Ibid., at 192.

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a dichotomous picture is gradually emerging. On the one hand we have Empire, a 'single logic' machine of control, or, evoking somewhat different imagery, a 'hierarchy' of networks and organizations ('organs' in a single 'body'). On the other hand, we have wildly, 'maddeningly', growing 'flesh', indeterminate and elusive. This, the multitude, is the realm of immanent desire. If and when the 'flesh' acts 'in common' and forms the 'multitude', the promise of 'liberation' opens up.

Things are, however, a little more complicated than that. The multitude, say Hardt and Negri, 'needs a political project to bring it into existence'.[26] Now this 'political project' can be neither Empire – although Hardt and Negri are not clear on this issue – nor any other 'hierarchy' of 'organs' or a 'political body'. It can only be the multitude itself. Only immanent biopolitical production in and through the multitude – 'flesh acting in common' – can bring the multitude – 'flesh acting in common' – into existence. I believe it is circular arguments like this which might lead us to understand why a number of critics have accused Hardt and Negri of 'theoretical ecstasy'[27] and of employing an overabundance of 'idealism and mystification'.[28]

The fact that they often deploy somewhat unfortunate imagery to denote the productivity of or within the multitude is not always helpful. At some stage both authors describe the multitude's productive cunning as 'swarm intelligence',[29] which evokes a whole range of meanings (utter collectiveness, absence of singularity, mechanistic or instinctive activity rather than reflexive co-operation, etc.) that do not necessarily match with the notion of an 'elusive' and 'uncontainable' multitude that combines commonality as well as difference in democratic engagements. Elsewhere, Hardt and Negri betray a Bakhtinian, romantic admiration for the *carnivalesque*,[30] and seem to conveniently forget how it often is the case that the norm, the law, Empire, or authority as such, are themselves to some extent fuelled by libidinous excess and whimsical desire(s). Is it not the case indeed that, at the 'mystical foundations of authority', we often find violent transgression, the inevitably violent 'force of law'[31]? And what about the often massive authority and desire to be sovereign that gathers in and works from the excessive *carnivalesque?* What about the law that is *in* libidinous transgression? And what, as Malcolm Bull has argued, really distinguishes the multitude's desire to freely migrate, autonomously, from the freely migrating autonomy of global capital[32]?Well into *Multitude*, Hardt and Negri seem to sense something about all this when they state that 'since finance capital is oriented toward the future and represents vast realms of labor, we can perhaps begin to see in it, paradoxically, the emerging figure of the multitude', although they hastened to add: 'albeit in inverted, distorted form'[33] (I shall argue later that there should be no real reason for Hardt and Negri to use words such as 'paradoxical', 'inverted', and 'distorted' in this context).

26. Ibid., at 212.
27. G. Balakrishnan, 'Hardt and Negri's Empire (review)', (2000) 5 *New Left Review* 142–8, at 148.
28. B. Abu-Manneh, 'The Illusions of Empire', *Monthly Review*, June 2004.
29. *Multitude*, at 91.
30. Ibid., at 208–11.
31. J. Derrida, *Force de Loi* (1994).
32. M. Bull, 'You Can't Build Society with a Stanley Knife', *London Review of Books*, 19, October 2001.
33. *Multitude*, at 281.

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Elsewhere in *Multitude*, however, both authors link biopolitical communicative production – 'flesh acting in common' – with the notion of 'resistance'. So, while the multitude *does* need a 'political project' to come into existence, this project need not be a positive one. Resistance *against* a number of events or conditions might be sufficient. Although such a position would leave one wondering how this rhymes with the idea of a multitude that 'calls the Empire into being' (see above); a multitude, that is, that precedes Empire, does present a solution of sorts. Indeed, throughout *Multitude*, we find a number of explorations of this notion of *multitude as resistance*. Resistance 'against the permanent global state of war', for example, might unleash the democratic potential in the multitude.[34]

That does not, of course, mean that the multitude, if and when it produces 'resistance', and therefore, itself, or, better, itself as democratic potential, should abstain from the use of violence. There is something like 'democratic violence'. Democratic use of violence occurs when the flesh of the multitude, acting in common, resists the 'war of sovereignty', any 'war of sovereignty' for that matter, and when it achieves the only thing democratic violence can achieve, i.e. to 'defend society' ('create it' it cannot).[35] This, together with the requirement for the 'commons' to combine 'commonality' as well as 'difference' (see above) goes some way to explain why, in Hardt and Negri's view, Al Qaeda and similar 'events' are not included in the democratic promise of the 'commons'.

Hardt and Negri wrote *Multitude* largely as a response to critics such as Slavoj Zizek,[36] who deplored that both authors' conception, in *Empire*, of the multitude's rights to global citizenship, to social income, and to the reappropriation of the newly emerging means of production ('immaterial labor', we shall get back to this shortly), as universal human rights, was nothing short of 'anticlimactic'. Although the book repeats this earlier endorsement of 'international legal structures that guarantee [human] rights',[37] *Multitude* sets out to locate, within the age of Empire, the conditions necessary for a more democratic form of what David Held would call global, democratic 'cosmopolitan governance'[38] to emerge. According to Hardt and Negri these resources are to be found in the conditions of 'biopolitical production' themselves, i.e. in the permanent creation of 'social relationships and forms through collaborative forms of labor'[39] that seem to be the hallmark of the age of Empire itself. Indeed, in an age that has moved beyond the realms of material necessity, 'immaterial labor', i.e. the production of 'communication, social relations, and cooperation', is what life, including global capitalism, is all about.[40]

In an age when the fruits of 'immaterial labor' (communication, information, and affective relationships) are most valued, claim Hardt and Negri, conditions

34. Ibid., at 67.
35. Ibid., at 342–4.
36. S. Zizek, 'Have Michael Hardt and Antonio Negri Rewritten the Communist Manifesto for the Twenty-First Century?', (2001) *Rethinking Marxism* 3–4.
37. *Multitude*, at 277.
38. D. Held, *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance* (1995).
39. *Multitude*, at 93–5.
40. Ibid., at 113.

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are favourable for the gradual 'becoming common'[41] of humanity. Now one could seriously doubt whether or not we have indeed arrived in an age of immaterial production. Radical critics such as James Petras,[42] for example, have been at pains to outline the continuing neo-imperialist division of labour and the unequal exchange that have developed globally during the past few decades. But Hardt and Negri are adamant nevertheless: they insist 'on a *legal* conception of the common against both the private and the public'[43] (emphasis added), which means that they make a plea for the legal recognition of the production of the 'commons' – something which, as they claim, is ongoing anyway – as the only viable democratic alternative to, on the one hand, the wild capitalism of private ownership and exploitation and, on the other, the hierarchy of Leviathan. Their use of the word *legal* is notable here. Who is going to have to sanction this legality? Where are the commons going to have to be authorized?

One more issue that Hardt and Negri leave undealt with is that the envisaged result of biopolitical production by or within the multitude, i.e. 'events' of 'commonality', out of necessity, will have to *take place*, that is, those events will be situated in time and space. 'Commonality', out of necessity, is *situated* 'commonality'. The 'flesh' of the multitude may be 'maddeningly elusive' and uncontrollable, but it always eludes particular, i.e. situated, controls and containments, and it always eludes those controls in particular, situated ways. 'Commonality' is hardly universalizable. 'Commonality' for some is to the detriment of others (and vice versa). Rhiannon Morgan, for example, has recently demonstrated how, in international legal forums, indigenous groups (such as 'first nations') often tend strategically to couch their *particular* indigenous aims and projects in the more global or allegedly *universal* language of 'human rights' or 'environmental rights'. But only strategically do they do so.[44]

Somehow, Hardt and Negri seem to think that a truly global form of 'commonality' is imaginable, and indeed their admiration for the Zapatista revolution, whose ultimate goal has been to combine local commonalities with 'global' democratic interests, to some extent does betray such assumptions. They never analyze, however, how the Zapatista movement only managed to retain briefly some 'global' momentum by stubbornly refusing to abandon, in their revolutionary rhetoric, very high levels of vagueness and opacity.[45] Viewed from this perspective, Hardt and Negri may well be right in recognizing the 'flesh' of the multitude to be 'maddeningly elusive' and uncontrollable. The biopolitical productivity of the multitude will not neatly settle within the bounds of any authority's demand, and that includes Hardt and Negri's.

41. Ibid., at 114.
42. J. Petras, 'Empire with Imperialism', (2001) *International Journal on Socialist Renewal*, 29 October at: http://www.rebelion.org.
43. *Multitude*, at 206.
44. R. Morgan, 'Advancing Indigenous Rights at the United Nations: Strategic Framing and Its Impact on the Normative Development of International Law', (2004) 13(4) *Social and Legal Studies* 481–500.
45. See on this e.g. R. Lippens, 'Negotiating Humanity. Subcommanding the Tender Fury of Justice', (2002) *Alternatives* 513–31; and R. Lippens, 'The Imaginary of Zapatista Revolutionary Punishment and Justice. Speculations on "the First Postmodern Revolution"', (2003) 2 *Punishment & Society* 179–95.

4. Resistance in Empire

Let us now have a closer look at Empire's 'single logic of rule'. Particularly in *Empire* this 'logic' – the location of Empire's legal subjectivity – is less read as one side of a dichotomy. Hardt and Negri define it as a 'new global lex mercatoria',[46] a sprawling network of capitalist and merchant custom and inventiveness that, it too, holds some potential for commonality and liberation. The origins of this highly mobile 'logic' of Empire are situated in the 'network power' of the US Constitution,[47] whose desire for ordered liberation, and for liberatory order, have meanwhile spread across the globe, in and through the interlaced networks of Empire. The US as such remains in place as the world's policeman, 'not in imperialist interest, but in imperial interest'.[48] This imperial 'network power' of Empire, in *Empire*, appears less as a hierarchical force of control than as an inclusive dynamic: 'this new sovereignty does not annex or destroy the other powers it faces but on the contrary opens itself to them, including them in the network',[49] controlling and administrating them with 'local effectiveness'.[50] Hardt and Negri would later, in *Multitude*, stress the vulnerability of hierarchy and fixity – any hierarchy and fixity – in biopolitical production.[51] The inclusive network logic of Empire, however, aims to 'control' the 'autonomous forces of productive co-operation', rather than 'destroy' them.[52] 'It' feeds on them; 'it' depends on them, like a 'parasite'.[53] Hardt and Negri are clear about this: 'If the Vietnam war had not taken place, if there had not been worker and student revolts in the 1960s, if there had not been 1968 and the second wave of the women's movements, if there had not been the whole series of anti-imperialist struggles, capital would have been content to maintain its own arrangement of power'. Indeed, the 'logic' of Empire need not do very much, 'because the truly creative moment' has always 'already taken place'.[54] Empire is *reactive*. *Creative* biopolitical production takes place elsewhere. But where is this 'elsewhere'? Is there an outside to the 'it' of this all-inclusive, all-controlling Empire?

Hardt and Negri sometimes give the impression that, even though Empire is a largely *reactive* 'logic' of networked inclusiveness, it is very difficult to imagine an outside to it. Indeed, they claim, 'we should be done once and for all with the search for an outside, a standpoint that imagines a purity for our politics'.[55] They expressly ask themselves whether there is 'still a place from which we can launch our critique and construct an alternative?'[56] There is no particular place, it seems. Not in *Empire* at least. 'New productive forces', they continue, 'occupy all places, and

46. *Multitude*, at 169 et seq.
47. *Empire*, at 160 et seq. For a critique of precisely this point, see P. Fitzpatrick, 'Laws of *Empire*', (2002) 15(3) *International Journal for the Semiotics of Law* 253–71.
48. *Empire*, at 180.
49. Ibid., at 166.
50. Ibid., at 342.
51. *Multitude*, at 336.
52. *Empire*, at 344.
53. Ibid., at 359.
54. Ibid., at 275.
55. Ibid., at 45.
56. Ibid., at 208.

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they produce and are exploited in this indefinite non-place'.[57] In other words, there is only productive biopolitical production and unbounded subjectivity, everywhere, anywhere, and some of this biopolitical production *then* gets controlled (and very strangely so, one might wonder), included, and bounded in and by a *reactive* Empire that is almost impossible to resist.

But *then* they go on to claim that the only effective way to resist Empire is to 'desert'[58] it, to leave it, and to live out, 'well beyond the simple experiences of mixture and hybridization', 'a desire that creates a new body'.[59] To 'desert' something that has no 'outside'? A number of other questions can be raised at this point. Can biopolitical production be completely liberatory? Can it be utterly free from Empire's control, from any control? Can it, and should it, be free from the 'commons' control as well? Can it move into an absolute outside, beyond mixture and hybridization? Can one 'create' a completely 'new body', something which Hardt and Negri previously, in *Empire*, described as a 'counter-Empire'[60]? Who can? And this 'counter-Empire', this 'new body', is it inside Empire,[61] or without?[62] It seems that here Hardt and Negri appear to be 'evangelists'[63] of an out-of-this-worldly Utopia, an angelic world where biopolitical production takes *non-place*, completely unstained by Empire's 'logic', reaching a kind of impossible political 'purity' which Hardt and Negri themselves have argued 'we should be done once and for all with' (see above), and which, one might add, is very unlikely to have existed at all, ever.[64]

Passages such as the above seem to indicate how, despite recognizing the fundamental importance of desire, liberatory desire, in *all* biopolitical production, Hardt and Negri reintroduce a firm dichotomy around which they construct their world view. On the one hand, there is an all-controlling Empire. On the other hand there is resistance, a 'new body' of commonality, that emerges in and again heads towards a utopian 'non-place', feeding Empire in the process.

All liberatory desire, however, seems to disappear in and through this feeding process: Empire appears to retain but very little, if anything, of liberatory desire, much less of 'commonality'. The promise of liberatory desire, and the potential for 'commonality' in biopolitical production, as soon as Empire has touched it, dissipate, or better, flow back into a Utopian *non-place*. Which is rather odd. Not just because one would expect traces, within any 'reaction', of that which is reacted against. But also because Hardt and Negri themselves are often at pains to paint a picture of Empire as a network of relentless subversion and uprooting. Indeed, 'it certainly appears', say Hardt and Negri, 'that the postmodernist and postcolonialist theorists who advocate a politics of difference, fluidity and hybridity in order to challenge

57. Ibid., at 210.
58. Ibid., at 212.
59. Ibid., at 216.
60. Ibid., at xv.
61. As it should be, according to one reading of *Empire*.
62. As it should be, according to (another reading of *Empire* and) *Multitude*.
63. In A. Shuman, 'Empire', (June 2000) *Bad Subjects*, at: http://bad.eserver.org.
64. See on this the huge body of postcolonial literature on the inevitable hybridity of culture both 'subaltern' cultures as well as 'dominant' cultures. See, amongst very many, R. Young, *Colonial Desire: Hybridity in Theory, Culture and Race* (1995).

the binaries and essentialism of modern sovereignty have been outflanked by the strategies of power'.[65] In other words, both authors seem to forget that Empire too might inherently have something of resistance about it, and that 'it' too originates in the very networks of biopolitical production. There might be resistance *in* the 'logic' of Empire. Hardt and Negri do not seem to recognize this possibility, and cannot ultimately abandon typically 'modern binaries and essentialisms'. Resistance in Empire, in their world view, tends to emerge from and again flow into its alleged 'outside' (an 'outside', it will be remembered, the existence of which they deny on various occasions).

At best they are ambiguous about the boundary between Empire's 'biopower' and the multitude's 'biopolitical production' of 'resistance'. Rob Walker has similarly criticized Hardt and Negri's dichotomous 'opposition between immanence as a revolution against transcendence and sovereignty as a counterrevolution against immanence'.[66] As if immanence is only about the desire of resistance. As if only the law, the 'logic' of Empire is transcendent. As if there is no law and order in the biopolitical production of (and by) the 'commons'. As if there is no liberatory desire in the biopolitical production of imperial law.

5. Empire in Resistance

Empire, in order to be able to control the multitude, must of course take account of the latter's multitude of specificities. Indeed, 'the old administrative principle of universality, treating all equally, is replaced by the differentiation and singularization of procedures, treating each differently'.[67] Empire's 'unified single logic of control' tends to be of a diverse nature. It follows, reactively, the winding vicissitudes of the multitude's desiring production, and 'it' does so in order to manage them, and to include or even integrate them in 'its' networked 'logic' of control. But what if, again, there is no 'single logic'? What if there is no 'it'? What if there is no new imperial sovereign subject(ivity)? What if the logic of Empire is 'itself' made up of a number of projects or perhaps even mere practices of resistance? And, perhaps more importantly, what if projects of resistance, the multitude's hopes, are shot through with imperial productive desire? What if, finally, the world hasn't changed all that much?

Quite a few radicals and Marxists have a problem with Hardt and Negri's world view. There are some who criticize their eclecticism (self-avowed eclecticism, to be sure, but eclecticism nevertheless), or, in Benita Parry's words, their 'dizzying conceptual promiscuity induced by the heady cocktail of Marxist, autonomist and

65. *Empire*, at 138.
66. R. Walker, 'On the Immanence/Imminence of Empire', (2002) 31 *Millennium: Journal of International Studies* 337–45, at 342–3. Other authors too have meanwhile criticized Hardt and Negri's relapses into dichotomous thinking. See e.g. C. Minca, 'Empire Goes to War, or, the Ontological Shift in the Transatlantic Divide', (2003) 2 *ACME: An International E-Journal for Critical Geography*: 227–35. In his critique of *Empire*, the legal theorist Peter Fitzpatrick too tackles the Empire/multitude dichotomy, claiming that, if they had focused on law, Hardt and Negri would have realized that (the laws of) Empire and the multitude, both 'insubstantial' and 'unachieved', combine determination and irresolution. See Fitzpatrick, *supra*, note 47.
67. *Empire*, at 341.

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postmodern paradigms'.[68] According to other radicals such as James Petras, for example, there seems to be nothing much new under the sun in this age of ours. Petras, who frowns upon Hardt and Negri's 'intellectual froth', establishes in today's world on the one hand a continuation of US market imperialism and, on the other, a continuation of state interventionism and multilateral agreements and competition.[69] To critics such as Petras, or Judt,[70] a gathering in Davos does not mean that a global elite is playing out a 'single logic of rule'.[71] It just means that a number of competing forces have gathered to do what they have always done: compete and resist. Now this may entail some level of co-operation or even agreement, but it should not be read as the expression, much less as the *becoming*, of a unified 'logic' of control.

Viewed this way, claim Barkawi and Laffey, the age of Empire is still the old Westphalian world of more or less 'autonomous political–military entities in a condition of anarchy'.[72] And if there is a unified 'logic' of Empire, then a very 'lite' one, claims Michael Ignatieff,[73] one with a 'lite' touch fit for a neo-liberal age of desire, competition, and resistance. If anything, says Francis Fukuyama, in his review, from a neo-Hegelian perspective, of *Multitude*, there is, in the anarchic age of Empire, a need for more hierarchy and for more strong states in order for the disastrous consequences of particularism – whether 'communal' or not – to be transcended adequately.[74] Empire, in other words, is too much about resistance and desire – competitive resistance and competitive desire, dressed up mostly as 'commonality'.

Now, as to resistance. This might not just be the prerogative of a multitude that, scattered across intertwined networks, mobilizes democratic potential and a capacity to produce 'commons'. Empire itself, equally scattered across networks (the very same, one might argue), is made up of resistance. In 'it', in all its competitive incoherence, 'commonality' as well as hierarchical rule and competitive neo-liberal control are all evoked and produced. Much of what goes under the heading 'resistance' expresses itself as revolutionary, '*transformative* nationalism',[75] for example, or as the small scale imperialism of the 'quasi-imperial states of the non-West', as Martin Shaw has demonstrated.[76] But that should not come as a surprise to anyone who, in a Deleuzean vein, assumes a world of interconnected, rhizome-like networks of networks.

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68. B. Parry, 'Internationalism Revisited, or In Praise of Internationalism', (2003) 2 *Variant*, at 27. A version of that paper, a review of *Empire*, is reproduced in B. Parry, *Postcolonial Studies: A Materialist Critique* (2004).
69. Petras, *supra* note 42.
70. T. Judt, 'Dreams of Empire', *New York Review of Books*, 4 November 2004.
71. *Multitude*, at 167.
72. T. Barkawi and M. Laffey, 'Retrieving the Imperial: *Empire* and International Relations', (2002) 31 *Millennium: Journal of International Studies* 109–27, at 112.
73. M. Ignatieff, 'America's Empire is an Empire Lite', *New York Times*, 10 January 2003. See also R. Lippens, 'Viral Contagion and Anti-Terrorism: Notes on Medical Emergency, Legality and Diplomacy', (2004) 2 *International Journal for the Semiotics of Law* 125–39, and R. Lippens, 'Deep Structures of Empire: A Note on Imperial Machines and Bodies', (2005) 1 *Social Justice* 126–33.
74. F. Fukuyama, '"Multitude": An Antidote to Empire', *New York Times*, 25 July 2004.
75. G. Laxer, 'Radical Transformative Nationalisms Confront the US Empire', (2003) 51(2) *Current Sociology* 133–52.
76. M. Shaw, 'Post-Imperial and Quasi-Imperial: State and Empire in the Global Era', (2002) 31 *Millennium: Journal of International Studies* 327–36. See also, in the same venue, A. Callinicos, 'The Actuality of Imperialism', (2002) 31 *Millennium: Journal of International Studies* 319–26.

Such 'resistance', however, need not always be malignly imperialist. As Zygmunt Bauman has recently argued in respect of the 'unfinished' European project (an 'adventure', he calls it), a distinctly emerging European zone of 'law, negotiation, and co-operation', although hardly the outcome of multitudes producing 'commons' in a biopolitical fashion, tends to be a stabilizing force for the good (of peace).[77] There is, and should be, much Empire in resistance. There is, or should be, much Empire in the multitude's 'communal' aspirations. That might not necessarily be a bad thing, and one of Jaap de Wilde's contributions might suggest why:[78] for reasons of what one, with Hardt and Negri, might call 'democracy'. Indeed, the word is not mine, it is Hardt and Negri's, in *Multitude*, where it is claimed that the interstitial commons produced by a desiring and authorless multitude, in Hardt and Negri's view, seem to provide a richer and more fuller *democratic* potential than either neo-liberalism, hierarchical ordering and control, or any current form of cosmopolitan governance, for that matter, whether Kelsenian or other. However, without a designated author, or authors, of rule, without legal authority, de Wilde argues, there is no accountability. And without accountability, there is no democratic potential.

6. Conclusion

While Hardt and Negri, in *Empire*, did seem to waver on a number of vagaries in or around an alleged boundary between Empire and the multitude, in *Multitude* they seem to assume a clear distinct line between both more readily. In the latter book Empire emerges in and through a global network of control. Its 'new sovereignty' is unified under a 'single logic of control'. Although 'it' is fed by the biopolitical energies of the multitude, which 'it' then includes and transforms into 'its' own – 'own'? – logic, Empire, all-devouring and all-subverting Empire, even though 'it' is ubiquitous, is distinct from its outside – an outside which it suddenly, and unexpectedly, seems to have after all. Its 'outside', a utopian 'non-place', is where the multitude's biopolitical productivity finds a space to evoke, mobilize, produce or indeed 'create' a 'new body' politic, i.e. the 'commons', an interstitial realm between on the one hand the private anarchies of neo-liberal capital and, on the other, the rule of hierarchical authority. Those 'commons' resistance then, inexplicably, and enigmatically, *does* seem to hold at least the capacity to stay out of reach of Empire's feeding–inclusion–transformation cycle after all.

Empire's 'new sovereignty' is 'one' – 'one' indeed – of intermittent anarchic controls and hierarchical rule. The multitude's biopolitical 'resistance', particularly in its 'commons' mode, though multiple, is potentially democratic and liberating. This dichotomous picture is not very convincing. Not just because, as a number of 'realist' IR scholars and researchers have argued, the Westphalian order is far from dead in this neo-imperialist age of ours. But also, and more importantly, because there seems to be much Empire *in* resistance, and much resistance *in* Empire. Much of what goes

77. Z. Bauman, *Europe: An Unfinished Adventure* (2004).
78. J. de Wilde, 'Flagging Democracy', (2004) 17(2) *International Journal for the Semiotics of Law* 211–27.

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under the name of Empire, as has been argued, *is* resistance. And much of what goes under the heading of resistance *is* Imperial. And all this is not necessarily a bad thing.

Nor is it just a matter of mere semantics. One might argue that Hardt and Negri have not been able to think through one of their own analytical premises, namely that if biopolitical production of communication, affect, and therefore commonality is a globally emerging hallmark of our age (at least to some extent – some may want to contest this), then it is so in all networks. Both 'Empire' as well as 'multitudes' will thrive on this biopolitical productivity. Both share networks. Particularly in an age of immanent desires and immanent production, as Hardt and Negri have been eager to note, networks do cut across (imaginary) boundaries. Biopolitical productivity does not necessarily lead to the 'creation' of 'commons', nor does it necessarily entail anarchy or hierarchical rule. Where it *does* lead to is not for us to decide or even try to predict: multitudes, whether imperial, communal, or anarchical, will do so themselves, in globally interlaced, though ever-situated, networks.