

Fleeing to the Oceans

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A review of Jeffrey S. Kahn, *Islands of Sovereignty: Haitian Migration and the Borders of Empire* (University of Chicago Press, 2019)

In 1981, U.S. border policing, long focused on land, took an aqueous turn. That year, the administration of President Ronald Reagan launched a program designed to deter Haitian “illegal migrants” fleeing Haiti by boat from reaching U.S. shores. The idea was to stop Haitians from accessing U.S. territory and the concomitant oversight of U.S. courts over their asylum determinations, via Coast Guard interception while Haitian seacraft were still in the international and foreign waters of the northern Caribbean.

Immigration and Naturalization Service (INS) screeners deployed on board the Coast Guard cutters interviewed the Haitians they intercepted, questioning asylum seekers to determine if their claims merited further processing. The vast majority of those interviewed failed this INS assessment. Between 1981 and 1989 a microscopically small number—only six of 21,461 intercepted Haitians—were brought to the United States to further pursue their asylum claims; the remainder were returned to Haiti.

Following the 1991 coup deposing the democratically elected Jean-Bertrand Aristide, tens of thousands of Haitians took to the seas, precipitating the perception in the United States of a “migration crisis.” With thousands held on board Coast Guard cutters functioning as “floating camps,” with no third-country processing option in sight, and with litigation staying repatriation to Haiti, the

United States decided to repurpose a naval base leased from Cuba on Guantánamo Bay. It evolved into a site to warehouse Haitian refugees free from judicial constraint—what became the world’s largest U.S.-operated migrant detention facility and a prison for those Haitians who tested positive for HIV.

Jeffrey S. Kahn’s stunning new book *Islands of Sovereignty* narrates the story of the creation and evolution of this new, offshore border. The book benefits from a rich array of source material, both archival and ethnographic, the product of fieldwork that Kahn, a legal anthropologist, conducted over the space of many years. *Islands of Sovereignty* is a book deeply engaged in large academic questions, enmeshing Haitian interdiction within questions of the liberal rule of law, racial pathologization, the architecture of jurisdiction, and the spatial imagining of U.S. law and empire. Bristling with intelligence, this book returns to the question of Haitian interdiction from multiple angles, each shedding new light on interdiction. With gorgeous prose and incisive analysis, Kahn shows how an “assemblage of currents, winds, steel, wood, graphic texts, viruses and humans” (p. 4) remade the northern Caribbean, as the U.S. tested and routinized a new form of border policing in the “peripheries of national space” (p. 5).

As Kahn suggests, both Haitians and the INS were “fleeing to the oceans” (p. 10),

the former to escape conditions in Haiti; the latter to escape judicial oversight. As he writes, interdiction at its core is a “technique of jurisdictional arbitrage”: a search for “the legally advantageous spaces of a landscape fractured by regimes of land and sea” (p. 7). This interdiction, in fact, was a “spatial backlash” (p. 86) against the successful litigation efforts of the Haitian rights movement that began in the 1970s.

“Islands of Sovereignty” elaborates in fine detail the players, the stakes, and the gains and losses of this litigation, from the initial challenges against the rapid expulsion of arriving Haitians placed in exclusion proceedings through the contestation of the legality of the HIV quarantine camp and the ultimately failed challenge to the practice of interdiction. In the 1970s, arriving Haitians, subject to the “entry fiction” of immigration law, even while physically inside the United States, were treated as if legally outside, with limited review and redress. Legal challenges contested this fiction with arguments claiming that both international and domestic constitutional due process protections demanded more robust review, thus aligning judicial power with the immigrants’ territorial presence. Lawyers also managed to push against accelerated deportations by presenting “overwhelming facts” (p. 73) about conditions in Haiti. Yet these initial successes also “unintentionally engineered the conditions of possibility for an escalating border-bending dialectic” (p. 76)—namely, interdiction. As then-Florida Republican Sen. Paula Hawkins put it: “[S]ince judges are ruling against the administration [with regard to Haitian asylum cases], we are going to stop [the Haitians] before they get here” (p. 7).

Not content to narrate a “mere chronicle of the rise of maritime migrant interdiction and its wider entanglements,” Kahn insists on repeatedly showing underlying forces at issue (p. 5). Thus, interdiction provides an opportunity to examine “one

of the central animating dynamics of liberal constitutionalism[.]” the tension between the constraining legalities valorized as the rule of law, and the desire for flexible expression of sovereign will (p. 5). Kahn traces this tension to the classifying framework of reason versus will, which is fundamental to modern ideas of the person; describes it as a dialectic contained within the liberal rule of law; and argues it is producing a new geography in our present. How can interdiction—untrammelled discretion, conducted by petty bureaucratic tyrants immune from judicial constraint who function as “islands of sovereignty”—be understood as legitimate within any ideal of law’s rule? The answer: through a “spatial fix” that also depends on perceptions of time (p. 13). Interdiction expresses sovereign power beyond U.S. territory into a “space-time of relative oceanic freedom” (p. 6)—a wild and “vast external realm” imagined to lie beyond U.S. borders, in a perceived time of (perpetual) emergency. The new maritime border and its associated prison camp thus became accepted as a tool of U.S. national statecraft, without threatening U.S. identity as a liberal constitutional, rather than an imperial, order.

This new “sphere of oceanic exception” drew upon images of maritime freedom, a *mare liberum*, while not being actually free of law or norms. But it also relied on the racial pathologization that depicted Haitians as a destabilizing contagion, representing the “pestiferous tropics” (p. 113), and threatening the sanitary, well-ordered social body of the American nation. Kahn does a masterful job historicizing and theorizing the vision of Haiti in the fevered Reagan-era U.S. political imagination as an “ulcerated body” whose “decrepit boats and decaying bodies” appeared as pestilence from a “sore that had ruptured” from a “rotten world” (pp. 119-120). The spread of HIV/AIDS, and the identification of Haitians as one of the “four H” high-risk groups (along with homosexuals,

hemophiliacs and heroin users) by the Center for Disease Control as a high risk group congealed the association of Haitians with disease. This association lingers in some minds still, including that of President Donald Trump, who, as Kahn notes, was reported by the New York Times to have “grumbled” at a meeting where Stephen Miller presented on the national origins of recipients of visas in 2017 that Haitians “all have AIDS ” (p. 131).

Offering a second example of the persistence of the idea of Haitian contagion and its containment, Kahn points to the idea of the terrorist sleeper cell, invoking homologies between the conceptualization of AIDS (invaders replicating within one’s own body) and that of terrorists, and between the site of Haitian detention in the 1990s and the “war on terror” prison for which Guantánamo is now best known today. An evocative linkage to which Kahn refers is the 2003 Board of Immigration Appeals decision *In re D-J-*, which then-Attorney General John Ashcroft certified to himself—in order to declare a blanket detention of Haitians seeking asylum, without bond, for the entirety of their cases—in a suit brought by a teenager named David Joseph who had arrived on the coast of Florida by boat. In the decision, Ashcroft writes that the State Department “asserts that it has ‘noticed an increase in third country nations (Pakistanis, Palestinians, etc.) using Haiti as a staging point for attempted migration to the United States. This increases the national security interest in curbing use of this migration route.’” Here, Kahn points to the specter of “Islamic terrorism” invoked to quarantine Haitian bodies, a specter one could add is conjured up not only through the explicit equation of threat to national security with the hailing of “Pakistanis, Palestinians,” but also through the stylistic use of parentheses and “etc.,” specifying which “third country nations” spring to the fore

while also suggesting an indefinite, unnamed replication.

Looking to more recent uses of *In re D-J-* suggests additional afterlives and trajectories of the case and of Haitian interdiction not mentioned in “Islands of Sovereignty.” *In re D-J-* expressly justified detention of asylum seekers on the basis of the deterrent effects on future arrivals. It was relied on as the predicate for the 2014 Department of Homeland Security policy creating family prisons for women and children fleeing violence in Central America, with the rationale that detention was necessary in order to deter other Central American migrants from coming to the United States. As a policy pursued under the Obama administration, a key justification was detention in the name of “humanitarianism,” in the form of detaining some to promote the welfare of others who should not be undertaking the risky journey to the United States. We could consider these family prisons an emergent current still flowing from Haitian interdiction, in Kahn’s evocative phrasing, as “a bit of the ocean [that] came to the land” (p. 236).

We of course now have as the U.S. head of state a president for whom moral humanitarianism is no guidepost and who seeks to keep out refugees he casts as an “alien invasion” through every possible means. The “bit of the ocean [that] came to the land” on which Kahn does focus is expedited removal, the summary exclusion processing to which those who have no immigration documents or who have what appear to be false immigration documents are subjected. Historically limited first to cases of noncitizens encountered at ports-of-entry and to those interdicted in international or U.S. waters, then to those encountered within 100 air miles of the border within 14 days of their date of entry, in July 2019 the Department of Homeland Security issued notice of an expansion of expedited removal against any noncitizens found anywhere in the United States who cannot satisfy an

immigration officer that they have been continuously physically present for the past two years.

In “Islands of Sovereignty,” Kahn posits that interdiction “would have required far more revolutionary interventions to achieve within, say the terrestrial deserts of the U.S.-Mexico divide than it did in the Florida Straits and Windward Passage,” with interdiction on the water enabled by the “fusion of physical and juridical apartness of maritime interdiction” (p. 14). The Trump administration, in fact, is now conducting various forms of land-based interdiction, building on the history of maritime interdiction Kahn details in this work. These include a purported “safe country agreement” with Guatemala—deporting back to Guatemala any asylum seekers who passed through that country on their way to the U.S. border; financial and other incentives pressuring Mexico to stop migration at its southern border; and the “Remain in Mexico” policy, formally titled “Migrant Protection Protocols,” which forcibly returns those who arrive at the Southwest border to claim asylum back to Mexico to await the processing of their cases.

Such pushbacks of refugees today are facilitated by logics well explicated in this book. “Islands of Sovereignty” contains an excellent chapter examining the dichotomy of political and economic realms apparent in U.S. refugee law and in the casting of asylum seekers as either really refugees or mere “economic migrants,” a dichotomy that presumes the economic is somehow an autonomous zone of self-regulation. As Kahn observes, divergent interventions are authorized by this polarity. If asylum seekers are fleeing for political reasons, responses are to recognize their movement as legitimate, accept their refugee claims and engage in international policing. If asylum seekers are fleeing for economic reasons, the response is containment of movement, and economic remedies to quell that movement. Kahn traces the development

of Haiti as an export-processing zone to the U.S. Department of State view of Haitians, particularly in the second Duvalier regime, as simply “desperately poor people” (p. 40). As he writes, this “market solution to the perceived refugee crisis” required massive public and private-sector investments supporting both neoliberal development and militarized border policing, all in the name of supporting a “free market” to save it from “distortion” by undocumented labor and welfare entitlements (p. 45).

The bifurcation of public and private that Kahn points to in relation to market ideology raises the casting of other asylum claims as “private” and therefore insufficiently political to merit recognition. We could think of then-Attorney General Jeff Sessions’s decision in *Matter of A-B-* (2018), yet another important immigration case self-certified by a more recent attorney general. Here, in the case of a woman fleeing domestic violence in El Salvador, Sessions held that persecution by private actors will not generally qualify for asylum. As with the “free market,” the family is likewise imagined as a zone of autonomous self-regulation, suggesting here the political specter of an invisible hand of gendered relations.

Slightly less compelling—or perhaps registering as less original to a legal academic reader—is material on the citational architecture and bureaucratic practice of asylum screening and immigration exclusion and on forms of jurisdiction. The gaze of the anthropologist at the work of the lawyer can feel a bit much (I quote): “This architecture [of judicial references to legal sources] was one source of the production of felicity with regard to a particular set of practices: at various points within each citational strand was a concrete anchor for the professionally appropriate affective reaction within the habitus of the properly socialized adjudicator—the textual mooring to which attorney, inspector, or arbiter could point in support of his or her

cultivated judgment” (p. 163). Yet this material also contains valuable insights explaining how constitutional law and its “spatial cosmologies” ordained the acceptability of border exceptionalism existing outside of due process ideals, and vividly illustrates the dissonance between the INS screening interview and an affidavit drafted by advocates in the same asylum case to show the “interwoven juridical architectures and material geographies” (pp. 148, 139) that produced these two versions of the same narrative.

Overall, “Islands of Sovereignty” is a tremendous work of scholarship that will be required reading on the subject of interdiction. Kahn’s diagnosis, that the

notion of national security seems to now require “extraterritorial excess of the militarized state,” protecting a “territorial core” through multiple, shifting exteriors, feels exactly right (p. 231-232). At several moments in the volume Kahn points to a companion book in the works, focused on Haitian ways of being in these same seascapes. We eagerly await its appearance.

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