

**A New *Nomos* Offshore and Bodies as their Own Signs**

**Stephanie Jones and Stewart Motha**

**Abstract:** This paper begins with the paradoxes that accrue around the appearance of Robinson Crusoe and his “Man Friday” within recent judgments relating to the Chagos Archipelago. These references are understood as revealing the complex of anxieties and limits that are the final legacy of these rulings. In particular, we trace the ways in which – through Daniel Defoe’s iconic characters – these judgments enact a troubling retreat from review of executive action, and a fuller withdrawal of sensibility from situations of “otherness” that both bear and cannot bear analogy to that of Friday. The paper then more briefly considers a similar complex of anxieties and limits, retreats and withdrawals enacted by recent judgments relating to Australian territory in the Indian Ocean. This allows us to suggest that between these two series of highest court rulings, the Anglophone common law is currently constructing the Indian Ocean as an offshore: a site excised from judicial review, and a site in which certain figures – peoples, individuals – are not considerable in both senses of the word. But in fathoming this, we turn to Derrida’s insights on sovereignty to argue that, far from being new, this construction of a common law of the Indian Ocean tells us about the affront of an archaic sovereignty that always already determines and is determined by law. Across the arguments of this paper, these perceptions of judgment, geography and sovereignty are enabled by literature, and specifically by reading the return of Crusoe and Friday in a recent novel form (by J. M. Coetzee) that also broaches the limits of judgment and recognition, but through a kind of vigilant silence – an abstinence – that craves an alternative commonality: and in this very longing, resists the silencing complicities of the UK and Australian judgments with the disembodiment of a littoral *nomos*, offshore.

**Keywords:** Chagos Archipelago, J. M. Coetzee, Indian Ocean, judicial review, *nomos*, offshore, Robinson Crusoe, sovereignty

**<A>NOTES ON CONTRIBUTOR**

Stephanie Jones BA and LLB (ANU) PhD (Cambridge) is an Associate Professor in English at the University of Southampton. She currently works on texts about the Indian Ocean, and

within the field of law and literature. Her publications include papers on the poetics of maritime law; fictional and historical piracy and privateering; literary and legal belonging; and East African and South Asian literatures.

Stewart Motha BA, LLB (Hons.) (Macquarie), LLM (Osgoode Hall), PhD (Birkbeck, London) is Reader in Law and Deputy Dean, School of Law, Birkbeck, University of London. He works on sovereignty and political violence, and law and literature. His publications include works on postcolonial and post-apartheid jurisprudence, and modes of archiving violence in Sri Lanka, Australia, and South Africa.

## <A>INTRODUCTION

In a world of chance, is there a better or a worse? We yield to a stranger's embrace or give ourselves to the waves; for the blink of an eyelid our vigilance relaxes; we are asleep; and when we awake, we have lost the direction of our lives. What are these blinks of an eyelid, against which the only defence is an eternal and inhuman wakefulness? Might they not be the cracks and chinks through which another voice, other voices, speak in our lives? By what right do we close our ears to them?<sup>1</sup>

In *The Nomos of the Earth* Carl Schmitt characterizes *nomos* as the “first measure of all subsequent measures.”<sup>2</sup> *Nomos* is linked to the first land appropriations, the partition and classification of space, and to primeval divisions and distributions.<sup>3</sup> For Schmitt *nomos* is what gives a spatially concrete unity by which a people or tribe becomes settled or historically situated; becomes *visible* in the appropriation of land during the founding of a city or colony.<sup>4</sup> Schmitt compares *nomos* to the English term “radical title” (to be treated as original spatial ordering).<sup>5</sup> *Nomos* also has a future. There will be perpetually new manifestations of *nomos* when space is apportioned in every historical epoch.<sup>6</sup> This is not to say that Schmitt offers an account of *nomos* adequate for all time.

[AQ2]<fig 1>

Schmitt has become a handy source of blinding paradigms and binary oppositions. Norm and exception, friend and foe, land and sea have all come to mark contemporary legal and political analyses with a seemingly timeless logic. These frameworks have become a feature of engagements with neo-imperialism, the “new world order,” “post 9/11,” and the “war on terror.” Taking turns at rounding a corner of history and marking it as a paradigm shift seems to be what is at stake in deploying concepts that formulaically stand in for saying

that “everything is different now.” We are regularly told that we live in a “state of exception,” or, as Giorgio Agamben has put it:

the state of exception is therefore the principle of every juridical localization, since only the state of exception opens the space in which the determination of a certain juridical order and a particular territory first becomes possible. As such, the state of exception itself is thus essentially unlocalizable (even if definite spatiotemporal limits can be assigned to it from time to time).<sup>7</sup>

Agamben goes on to argue that the concentration camp is the “space that corresponds to the originary structure of the *nomos*.”<sup>8</sup> This *nomos*, unlike Schmitt’s *Nomos*, is an “unlocalizable zone of indistinction,” and is evidence of Agamben’s central thesis that the state of exception has become the rule.<sup>9</sup> While paying attention to transformations in the nature of sovereign power is important, we want to probe how bodies feature in juridical encounters with persons who have seemingly been rendered outside law in constituting and sustaining the juridical order. Such persons are often cast as indistinguishable object bodies – as wholly other, bare life, or beyond the mediation of legal systems. Occasionally, judges deploy tropes, metaphors – or as in the cases we examine here – characters in novels to mark the encounter with a body that must be placed in an imperial historical continuum, but without conceding any substance or quiddity to that person.

Our paradoxical aim, then, in suggesting the emergence of a new *nomos* “offshore” is precisely to counter the assertion that the exigencies of exceptional sovereign power can account for the placement of bodies inside or outside a territorially determined juridical order.<sup>10</sup> Far from being “unlocalizable,” sovereign power operates by attributing signs to bodies whose localization offshore is central to the production of their juridical status and that of the sovereign authority they come in contact with. We seek to displace the sense that land, sea, island – on- and offshore – are matters of fact. By focusing on bodies and their signification through the geographical and juridical formation of islands in the Indian Ocean – in the Chagos Archipelago and on Australia’s Christmas Island (Figure 1) – we stress that a littoral jurisprudence must pay attention to the terms in which bodies are encountered. There can be no *nomos* without the signs that mark bodies. Our intention is to open a discussion of the ethics and politics of “bodies as their own signs.”

*Nomos* is the juridicalized combination of animal and human bodies marked in space. As Cornelia Vismann has argued, this is the “primordial scene of the *nomos*” which “opens

with a drawing of a line in the soil.”<sup>11</sup> It is the opening scene of law – initiating a concept of law tied to agriculture, the tilling of soil, a sign of ownership.<sup>12</sup> This economy of cultivating is also “writing by an ox.”<sup>13</sup> This is “boustrophedon [ox turning] writing” – a writing that moves like an ox pulling a plough, back and forth, changing direction, mirroring the previous line.<sup>14</sup> Schmitt’s opposition between *nomos* as the concrete order of space and *nomos* as abstract normativism (Kelsen) is characterized by Vismann as a battleground between *jus terrendi* and *jus scriptum*. Our analysis draws particular attention to the *jus scriptum*. *Nomos* manifests orders of territorial space *and* writing. This reflects a tension between land/economy and the writing of figures into and out of a juridical order. But it is also the (animal) “body that marks the soil” and “attests to the human power executed in the land.”<sup>15</sup> We want to stay with the ox, the many beasts such as the beast of burden pulling the plough. And it is that relation between the beast and man, beast and sovereign, that we develop below.

The “offshore” is a spatial ordering that carries the primordial scene of *nomos* into the present. If *nomos* gives form to the spatial visibility of the social and political order of a people, it is doubtful whether it can be *immediate* in the sense of not being mediated. Mediation – and for our purposes, legal mediation and signification – may in fact be the key to a *nomos*, so that to divide and to pasture would not be *material* acts alone, but ones that inaugurate a *nomos* precisely because they are the site of signification. This signification would mark the putting in to relation of beings (human and animal) and the putting into relation of beings in space (as land, ocean, territory).

Through the examination of a series of court rulings, this paper argues that the Anglophone common law is constituting the Indian Ocean as an archive of sovereign violence. Sovereign violence is taken offshore, and thus more readily removed from the reach of judicial review. These offshore sites of sovereign violence become places where certain figures – peoples, individuals – are beneath consideration. That is, they become a space in which individuals or peoples cannot be seen, heard, felt: and in which their insubstantiality comes to define the Indian Ocean and its islands as ghostly, haunted, unfathomable. In fathoming this, we finally argue that, far from being new, this construction of a common law of the Indian Ocean tells us about the affront of an archaic sovereignty that always already determines and is determined by law.

## <A>PART I: THE OTHER BODY

In April 2013, the UK High Court ruled American Embassy “cables” obtained and published by WikiLeaks inadmissible as evidence (*WikiLeaks*).<sup>16</sup> The document at issue purportedly

summarizes a May 2009 meeting between UK and US government officials. The subject of the meeting was the Chagos Archipelago, or rather the area of islands and sea controversially constituted as “British Indian Ocean Territory” (BIOT). The discussion focused on a Foreign and Commonwealth Office plan to declare BIOT a Marine Protected Area (MPA), and involved reassurance that this would “not impact the [US military] base on Diego Garcia [the largest of the Chagos islands constituting BIOT] in any way.”<sup>17</sup> As recognized by the court, the case was a “further chapter in the history of litigation arising out of the removal and subsequent exclusion of the local population from the Chagos Archipelago” by the UK government in the late 1960s and early 1970s.<sup>18</sup> The cable was central to the applicants’ allegation that the creation of the MPA was driven by an “improper motive, namely an intention to create an effective long-term way to prevent Chagossians and their descendants from resettling in BIOT.”<sup>19</sup> A key paragraph involves a description of Colin Roberts, then Commissioner of BIOT, guaranteeing that “there would be ‘no human footprints’ or ‘Man Fridays’ on the BIOT’s uninhabited islands.” The cable continues that “He asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago’s former residents.”<sup>20</sup>

In his judgment for the court, Richards LJ does not permit the Foreign Office to rely on Neither Confirm Nor Deny (NCND) policy to prevent the use of the cable as evidence. He worries that this could “in principle [...] conceal an improper and unlawful motive for an executive act which is claimed to have had an adverse impact upon the rights of a significant number of individuals of Chagossian origin or descent.”<sup>21</sup> He further determines that the Official Secrets Act 1989 does not “prevent its use in proceedings,” mostly for the practical reason that the information is already in the public domain.<sup>22</sup> But he does conclude that the 1961 Vienna Convention on Diplomatic Relations, brought into force by the Diplomatic Privileges Act 1964, demands the exclusion of “illicitly obtained diplomatic documents and correspondence” as evidence.<sup>23</sup> Through this reasoning, Richards LJ allows the court to avoid making a finding on the authenticity of the cable,<sup>24</sup> but provides some room for a questioning of Roberts and others on its veracity. The judgment includes a detailed summary of Roberts’s response to cross-examination:

[Roberts] accepted that it was government policy that there should be no human footprint in the Chagos Archipelago other than on Diego Garcia and it is likely he would have said words to that effect. He adamantly denied making any reference to “Man Fridays,” for reasons which he explained: it was a quote from a colonial official

from the 1960s and was considered in the FCO [Foreign and Commonwealth Office] to be highly regrettable in every sense and offensive to the Chagossians. He accepted that he recognised that the declaration of an MPA, if “entrenched” (i.e. in a law which would be impossible or difficult to repeal) would create a serious obstacle to resettlement.<sup>25</sup>

This summary is not necessary to Richards LJ’s legal reasoning. As such, it has a curious rhetorical value within the judgment. There is a sense that the court must consider the invocation of “Man Fridays” and consolidate Roberts’s denial in order to produce a narrative that is affectively and manifestly just.<sup>26</sup> This sensibility is continuous with earlier judicial approaches to that infamous FCO memo.<sup>27</sup>

In his 2000 judgment that the expulsion of the Chagossians from the archipelago was unlawful, Laws LJ spends not insignificant time on FCO correspondence in order to “lay bare the concerns and attitudes of British officials and ministers at the material time” (*Bancoult I*).<sup>28</sup> He draws out:

A note dated 24 August 1966 quotes a minute from the Permanent Under-Secretary (I assume at the Colonial Office). The Permanent Under-Secretary unburdened himself thus:

“We must surely be very tough about this. The object of the exercise was to get some rocks which will remain *ours*; there will be no indigenous population except seagulls who have not yet got a Committee (the Status of Women Committee does *not* cover the rights of Birds).”

This attracted a comment from another official, a Mr Greenhill, who spoke the same language:

“Unfortunately along with the Birds go some few Tarzans or Men Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius etc. When that has been done I agree we must be very tough and a submission is being done accordingly.”<sup>29</sup>

As in Richards LJ's judgment, it is not necessary to Laws LJ's reasoning to engage with the characterization of the Chagossians as "Men Fridays." He moves onto longer statements by figures more significant and powerful than Greenhill, that more directly evidence intent to disenfranchise the islanders. The judge rather seems compelled to address the invocation of Friday because it is somehow emphatic of a certain kind of "language," and because the act of rejecting that language produces an affect of justice.<sup>30</sup> But why is the characterization of the Chagossians as "Men Fridays" or "Man Fridays" so intuitively offensive? Why are Richards and Laws LJs anxious to distance and deplore the invocation of this figure? What judgments are carried out by these rhetorical moves, and what forms of judgment are circumscribed? Asking these questions reveals more than one irony, and joins the appearance of Friday in these legal stories to the long tradition of reading Defoe's novel paradoxically.

"Few writers enjoyed paradox as much as [Daniel] Defoe."<sup>31</sup> So it is easy to imagine him relishing a long tradition of finding paradox within and via his most famous work, *The Life and Strange Surprising Adventures of Robinson Crusoe* (1719). For Karl Marx, the paradox is Crusoe, famously obsessed with exchange, a cipher for capitalism in the intellectual history of political economy, "a true-born Briton": and yet staunchly on his Caribbean island, "appreciating all the essential determinants of value," radically un-alienated from the products of his labor.<sup>32</sup> For Ian Watt, *Robinson Crusoe* is the first novel in revealing – but paradoxically not answering – a readership yearning for consolation, sociality and romance; a yearning that later novels, fully formed, rose to fulfill.<sup>33</sup> And for Edward Said, *Robinson Crusoe* is a first novel in constituting England offshore, but paradoxically through the representation of imperial space and the native Friday as subject and other.<sup>34</sup> In Virginia Woolf's reading, Crusoe's narrative gives us "no sunsets and no sunrise; there is no solitude and no soul," but Defoe's novel, "by reiterating that nothing but a plain earthenware pot stands in the foreground, persuades us to see [...] the solitudes of the human soul."<sup>35</sup> And in similar vein, for Jacques Derrida, Crusoe on his island is paradigmatic of the indivisibility of the sovereign. Yet in epitomizing aloneness, he paradoxically becomes akin to an-other of the sovereign, the beast.<sup>36</sup> The FCO and judicial references to Friday are not exactly intertextual gestures. That is, they are not quoting the original Friday of Defoe's *Robinson Crusoe*. Nor are they quoting any one of the many and diverse re-castings of Friday within the long and continuing tradition of re-writing Defoe's novel.<sup>37</sup> They are drawing on a distilled but vague idea of Friday that circulates in the global imagination with a strangely fervid insistence. This Friday is a historically and geographically de-contextualized "native": an abstraction, under imperialist rubrics of savagery, amenable to slavery. In this sense, the judgments work

with a crude idea of an aboriginal Friday. Most immediately, this is put before the judges by the court proceedings. The claimant's barrister continually positions the cable reference to "Man Fridays" as a litmus test of Roberts and his colleague's memory of the general tone of the meeting. So their exchanges focus "Man Fridays" as a "totemic phrase [...] a phrase that offends," and prompt more ponderous discussion of the extent to which the reference to Friday in the 1966 memo was in the public domain, such that it might have been falsely attributed to the commissioner by the American author of the cable.<sup>38</sup> It is ironic, then, that the original Friday is not so simply "totemic," but queries what it means to be indigenous. And this sense of irony is further heightened if we recognize that in Defoe's novel, Friday's position on his island is analogous to the historical situation of the Chagossians in ways that might increase, not deplete, a felt understanding of the particularity of their situation.

Like Friday, the island at the centre of Defoe's novel has become disembodied from the text, if not so fully from textuality itself. Although unlike Friday, this island circulates in the global imagination more variously, not necessarily contradictorily as a signifier of empty/replete/open/enclosed/imperial/colonial/existential/providential space.<sup>39</sup> Returning to Defoe's narrative with less expansive and more material intent, we find the island is positioned by a curious mix of vague and specific coordinates. It is somewhere off the Atlantic, within the Caribbean. It is one of a number of islands taking character from their relative position to a mainland coastline that is defined by mention of the mouth of the Orinoco, and the effect of that sweep of water in isolating and connecting shores.<sup>40</sup> It is, in other words, a site that comes to be defined by its place within a region. Notably, this regional sensibility is given to Crusoe (and thence to the reader) by Friday. But this moment comes long after the fuller articulation of the island in other terms.

Shipwrecked on the island, Crusoe quickly determines it is uninhabited in being unpeopled.<sup>41</sup> He conceives himself as a first inhabitant of a *terra nullius* in ways that are, apparently inevitably, productive of masculine resourcefulness and English law: he builds, he clears, he plants, he crops, he makes and reinvents, even if he does not invent.<sup>42</sup> The narrative famously moves – as much as it does move over those first 24 years of puritan isolation – between Crusoe's expressions of desperate loneliness, and of triumphant sovereignty as he settles the island. But a major shift in plot and tone occurs when he discovers that the island is not unpeopled in the sense that it is not unused or unvisited by "others." His discovery that groups of local people come to the other side of the island to fight, kill, cook and eat each other leads to the further consolidation of his sovereignty through the building of fortifications. But of course this twist in the register of his anxiety – from anxiety about being

alone to anxiety about not being alone – takes a further turn when he rescues a native from a cannibal skirmish, names him Friday, and takes on the white man’s burden of teaching him to speak English, to know a Christian God, and to accept Crusoe as his sovereign. But the island as a site for the fulfillment of Crusoe’s yearning for companionship through a master/slave dialectic is not all that the narrative yields.

In one of the longer dialogues in the narrative, Friday is not only articulated as a cannibal in need of redemption. While this is what the conversation eventually proves, it does so via an exchange in which Crusoe is eager to discover – and Friday is portrayed as concentrated on conveying – a story of “my Nation in the Place where me was [...] in the yonder Place,” but that includes a timeless culture of various “Nations” going to “other Place where they think,” and that includes coming “hither,” to this island. This conversation produces Crusoe’s summary description of Friday’s more detailed knowledge of distances, “Current and Wind,” and his admirable navigational skills that locate the island within a region.<sup>43</sup> That is, being indigenous emerges as a regional term that exceeds the shoreline of a hard-to-reach and hard-to-leave island. This might, of course, reveal Crusoe/Defoe’s racist refusal to apprehend important distinctions between local people: while not quite Columbus’s “Indians,” Crusoe can only manage to understand from Friday that they are all “Caribs.”<sup>44</sup> On the other hand, this might also be read pre-emptively against later imperialist strategies to classify and categorize. Tentatively, Friday becomes aboriginal to the extent that he is *not* of the island that is the central scene of the narrative. His aboriginality is told as the story of his relationship to a place offshore his autochthonous territory. And in this, of course, he is just like Crusoe. For as Crusoe tells us in the first paragraph of his story, he is born Robinson Kreutznaer to a Bremen father: and as the story unfolds, he becomes English, not through dwelling in England, but through his location within a territory far-offshore Britain.<sup>45</sup> Eventually, of course, this parallel between the (dis)locations of Friday and Crusoe must be absorbed by the master/slave dialectic that operates so irresistibly within and beyond the novel. But even if Friday is finally a slave and a native in the sense that he is available for subjection and in need of enlightenment, he is nonetheless also recognizable as indigenous through Crusoe’s narrative appreciation of his understanding of spaces and proximities. Friday was not born on the island and he was not born to anyone of the island: and so he might continue to complicate what is required to be indigenous in certain situations. That problems of being indigenous – of being of a place, soil, territory, and recognized as such by the relevant community – is one frontier that delimits and defines the province of executive power. The very problem of justice posed by executive action (as appropriation, expulsion,

the calculability of national security) comes up against the claims to justice of peoples that are “properly” of a place. It is thus a central technique of archaic sovereign authority to purport to regulate who is a “proper” native.

How long it takes to become indigenous is a fraught and context-specific question. There may be many and diverse reasons for avoiding it, or for broaching it indirectly or partially. This is exemplified in the *WikiLeaks* case. As well as arguing an improper motive, the applicants proposed that the Foreign Secretary’s declaration of BIOT as a “no-take” (the meaning is literal: nothing can be taken from or to such a zone) MPA was “flawed” because the proposal had failed to disclose that, “in so far as it prohibited all fishing, [it] would adversely affect the traditional and/or historical rights of Chagossians to fish in the waters of their homeland, as both Mauritian citizens and as the native population of the Chagos Islands.”<sup>46</sup> The irony of so many native title claims is played out in the judgment. Richards LJ spends much text considering the argument based on Mauritian claims, rights and licenses. But he needs only one swift paragraph to conclude that any possible native title to fishing would have been extinguished when the islanders were exiled in the 1960s and 1970s.<sup>47</sup> Both the slightness of the proposal of a native title, and the swiftness with which it is put aside is consonant with the earlier line of cases on the Chagossians’ exile from the archipelago. Within this history, the islanders have fully (dis)appeared as “subjects” of the British Crown.<sup>48</sup> There have been clear and strong strategic reasons for this. But it has led to an oddly shifty submersion of the character of the islanders as indigenous. Like (but of course not like) the Friday of Crusoe’s narrative, the ancestors of the Chagossians came to live on the islands within the colonial period: the islands were uninhabited before the French established a plantation economy and initiated a regional history of forced labor, which was then ceded to the British at the end of the Napoleonic wars.<sup>49</sup> That this history might be too short and too modern to found an indigenous right seems – albeit inadvertently – to emerge from the legal narrative. And so the staunchness with which Richards and Laws LJ’s deplore the Chagossians as native in the guise of “Man Fridays” or “Men Fridays” takes on another aspect. It becomes a distraction: a deflection of the potential recognition of the Chagossians as native in their own guise. But in thinking about the instantiations and ramifications of this, we might find ourselves again drawn back to Friday in different guise(s).

In her work on the centrality of “collective narrative and standardized history” in the Chagos Islanders’ self-representation, Laura Jeffery considers the power and problems of a plural semantics.<sup>50</sup> She points out that where the Chagossians’ articulation of a collective memory had moral force in political and media encounters, it appeared as unreliable and

inconsistent in the context of the law's narrower preference for individual eye-witness accounts, and for response over recitation.<sup>51</sup> Jeffery's work points towards more general trouble around forms of representation, authoritative voices, the mediation of speech, and structures of silence in the line of judgments relating to the Chagossians' right not to have been exiled. And we might begin to bring this trouble into further relief by turning again to the appearance of Friday/s in the narrative. What is jarring about the FCO memo and the American Embassy cable is not just the invocation of an archaic and abstract native in the figure of Friday. It is also the strangeness of the plural: the "Men Fridays" and "Man Fridays." This is surely not the form that we expect the reference to take. Friday, while not individuated, is a singular native. But in his singularity, he is generic. He is "my man Friday" in Crusoe's own, much repeated phrase: always a potential plural in being a genre of possession. And he is most fully and famously possessed, of course, by the form of the work of literature. He is contained within Crusoe's journal. Within the strictures of our suspension of disbelief, we do not hear Friday: rather, we read the transcript of Friday's speech as recorded by Crusoe. This is to state the final effect of the narrative: it ensures the silence of Friday. But it is also to state the beginning of any interpretation of Defoe's novel, which must acknowledge his structural demand that we read in-between and past Crusoe's silencing lines. Defoe's novel constructs a sophisticated reader who is arguably meant to be frustrated by finding themselves marooned in Crusoe's self-regarding journal. Understanding this allows us to see something else in the court's references to Friday. Most specifically, the complex structuring of Defoe's book brings into relief the layering of fiction that characterizes the *WikiLeaks* judgment, but that deliberately precludes the sophisticated reader.

In support of their argument that the government intended to institute BIOT as an MPA in order to prevent their right of return, the Chagossians gathered evidence of executive and administrative actions, meetings, conversations and rhetorical moments that did not rely on the veracity of the cable, but were consolidated by its potential truth. In dismissing the narrative constructed from these bits and pieces, Richards LJ sweepingly concludes that it "would provide an unconvincing plot for a novel."<sup>52</sup> This statement works in forceful combination with the earlier point in the judgment, in which he allows himself enough (but no more than just enough) room to clarify that the content of the cable was a fiction, at least to the extent that it misattributed the reference to "Men Fridays." Dwelling on their characterization as figures from a novel; and then characterizing them as bad novelists, the judgment forecloses the possibility of seeing and hearing the Chagossians. Like Crusoe's journal, the judgment is over-determined. Like Friday in Defoe's novel, the Chagossians

become silent, blurred, within a narrative that deflects the reader onto the structures of fiction itself. But unlike Defoe's novel, the judgment is not a fiction. Its foreclosures cannot be read, like Defoe's, as a partial, sly or ambivalent invitation to see and hear a different Friday. Acknowledging how this invitation has nevertheless been taken up by postcolonial writers, brings into relief a further and final paradox in the turn to Defoe's work within the Royal Courts.

Any expectation that re-workings of colonial era stories must strive to retrieve ghostly figures from between the lines, from the heart of darkness, from the stasis of Orientalism, and "write back" by lending them more replete life – body, blood, movement, voice – will be baffled by one of the most eminent and studied literary reincarnations of Friday. J. M. Coetzee's *Foe* (1986) forcefully demonstrates how his eternal returns mark the impossibility of witnessing and fathoming the figures that lie behind the cipher that is Friday.

*Foe* has become canonical – as predicted, with some discomfort, by Derek Attridge – as a work of measured refusal, or as K. L. Worthington puts it, as a "masterful portrayal of tactical authorial withdrawal" from the figure of Friday.<sup>53</sup> Both wary and admiring of "that style forever on its guard against itself," Attridge understands that the power of Coetzee's novel lies in the (elite) pain of not coming to terms with the "absolute otherness," the "absolute absence" in the narrative's (non-) representation of Friday.<sup>54</sup> Gayatri Spivak teaches the novel as a "halting" before Friday, who becomes "the wholly other," not mostly through a dialectic with Cruso/Crusoe/Defoe/Foe, but through the more intensive and erotically charged non-dialogue with an incarnation drawn from Defoe's lesser-known novel *Roxana*, who appears as the castaway narrator, Susan Barton.<sup>55</sup>

Most of Coetzee's novel is in quotation marks, between which Susan tells of her shipwreck and years as a castaway on an island – the island – with "Cruso" and Friday. Structured around her memoir and the letters she writes to "Mr Foe," the novel's quotation marks ask the reader to question the conditions under which stories are produced. And so the quotation marks also focus the intertextualities of the novel. Alongside Defoe's stories, Shakespeare, Wordsworth and Melville mark the narrative.<sup>56</sup> As Attridge recognizes, writing in relation to a canon "governs the act of writing quite as much as the need for self-expression or the wish to communicate": a reading of the novel that highlights the ways intertextuality also "drives our self-representations and representations," for "unless we are read, we are nothing." We need to be intelligible signs.<sup>57</sup>

Everyday experiences can be represented in order to construct an identity. But this is not possible without telling a story. And the possibility of sharing the references that occur

between narratives is what establishes intelligibility. Coetzee's novel works as a refusal to hear, a refusal to listen, because it involves a pre-determined categorization of who and what one is. As Attridge draws out, there is a fine line between deciding the terms and content of a story, what will and will not be told of one's self, and the conventions and references that bind and silence another.<sup>58</sup> Susan's story may be read as a repeated refusal to divulge all of her biography, particularly the events that precede her becoming a castaway with Crusoe and Friday. She will not give an account of her daughter's disappearance:

I choose not to tell it because to no one, not even to you, do I owe proof that I am a substantial being with a substantial history in the world. I choose rather to tell of the island, of myself and Crusoe and Friday and what we three did there: for I am a free woman who asserts her freedom by telling her story according to her own desire.<sup>59</sup>

But even as an articulation of her refusal to tell everything, Susan recognizes that her chosen acts of silence compound other silences: the silence of others. As she puts it:

Then there is the matter of Friday's tongue. On the island I accepted that I should never learn how Friday lost his tongue, as I accepted that I should never learn how the apes crossed the sea. But what we can accept in life we cannot accept in history. To tell my story and be silent on Friday's tongue is no better than offering a book for sale with pages in it quietly left empty. Yet the only tongue that can tell Friday's secret is the tongue he has lost.<sup>60</sup>

Even here, we are being told of the possibility of a further misapprehension. Coetzee is careful never to confirm or deny that Friday has in fact lost his tongue. It may be that he cannot speak, and it may be that he chooses not to.<sup>61</sup> All we know is that this is what Crusoe tells Susan, and that when Susan looks, she does not see. So Susan may not be hearing all the tones of Friday's silence. In this way, Coetzee's novel questions the possibility of ever knowing another in their own terms, as "a substantial body" – even as the novel values, above all else, the attempt to do so.

The slipping and ventriloquizing voices of Susan's narrative and Coetzee's novel find a strange addendum in the author's 2003 Nobel Prize speech, "He and His Man." Here, Crusoe becomes the author and Defoe becomes "my man," a Friday. Coetzee himself "halts," not before a voiceless native, but an idea of a Crusoe/Friday and a Friday/Defoe passing each

other as they labor on ships moving in opposite directions.<sup>62</sup> It can be hard to decipher what such literary multiplications and mergings of Friday, Crusoe and Defoe – and of Susan and her daughter, of Susan and Friday, and of Friday and Susan’s daughter – are attempting to stall: what sentiment or form of thought Coetzee is diverting in his constant refusals of allegory, his rejection of an aesthetics of reversal and retrieval, and in the privileging of various tones of silence over story.

One answer might be found through a reading of the startling appearance of Crusoe in the 2008 House of Lords opinion on executive action that maintained the exclusion of the Chagossians from the Archipelago. In this judgment, we find an even more masterful – but less well measured – withdrawal from the figure of Friday: one that might be read as an awful parody of the ethical abstinences of Coetzee’s novel. In light of his opinion in favor of the government (part of the majority), Lord Hoffmann considers the earlier Court of Appeal’s judgment that the practicalities of resettling the Chagossians and the realities of funding are beside the point. In Sedley LJ’s quoted view, “the point is” that the government’s actions “negate one of the most fundamental liberties known to human beings, the freedom to return to one’s own homeland, however poor and barren the conditions of life.”<sup>63</sup> Hoffman disagrees. He writes:

I respectfully think that this misses the point. Funding is the subtext of what this case is about. The Chagossians have, not unreasonably, shown no inclination to return to live Crusoe-like in poor and barren conditions of life. The action is, like *Bancoult (1)*, a step in a campaign to achieve a funded resettlement. [...] The Secretary of State is surely entitled to take into account that once a vanguard of Chagossians establishes itself on the islands in poor and barren conditions of life, there may be a claim that the United Kingdom is subject to a sacred trust under article 73 of the United Nations Charter to “ensure [...] the] economic, social and educational advancement” of the residents and to send reports to the Secretary-General.<sup>64</sup>

In a persuasive reading of this judgment, T. T. Arvind contends that while Lord Hoffmann uses a regretful rhetoric of formalism, “the actual legal reasoning is so without basis as to be unsustainable on any formalist or legalist account.” In Arvind’s reading, the rhetoric of formalism “cloaks” an exercise in a “particular sort of judicial pragmatism, of a type to which [...] the English legal process is particularly susceptible,” and which is geared around the House of Lord’s disinclination to set “boundaries on the power of the executive.”<sup>65</sup> Lord

Hoffmann's dismissive reference to the Chagossians themselves as pragmatic rather than principled in their pursuit of the law becomes ironic, while the reference to Crusoe – that most famous of practical, outcomes-oriented men – gains weight. It can be read, like the rhetoric of formalism, as a strategy for deflecting attention from Hoffman L.'s own Crusoe-like pragmatism. (If they are pragmatists, then he – so manifestly not them – is not.) However, the reference to Crusoe is perhaps even more intriguing as a form of not invoking Friday, or rather of evoking him under erasure, as a shadow, a ghost, or an insubstantial body. In describing the Chagossians as potentially "Crusoe-like," Lord Hoffmann is not displacing or reversing the FCO's infamous reference to "Man Fridays." As Coetzee's novel so powerfully insists, that dialectic is too tight. The one figure continually – painfully, exuberantly, knowingly, helplessly – calls out, calls forth, the other. Can Crusoe "be alone being alone" without invoking Friday?<sup>66</sup> No such solitude is possible. So if the reference to Crusoe is a calling-up of his shadow, then we might perceive a ghostly Friday stalking Hoffman's judgment, demanding to be recognized as a/as the/as plural "native," still requiring justice.

Commenting on the House of Lord's final refusal to review (to "second guess") executive action in the *Bancoult* case, T. R. S. Allan suggests that "many will wonder whether such wholesale judicial abstinence is truly defensible."<sup>67</sup> He describes Lord Hoffmann's "exaggerated deference" as leading to a "dismal conclusion [...], plainly contrary to the rule of law."<sup>68</sup> What Allan really apprehends is that Hofmann's withdrawal is not abstinence. To abstain is to pursue a refined ethic: to painfully and carefully not indulge. Lord Hoffmann's judgment is nothing but an indulgence: an excessive act, beyond the law. It is a refusal of close ethical measurement. Understanding this, we can return to Coetzee's novelistic withdrawals and, seeing them as a truer form of abstinence, read them less disconsolately. However, in seeking out consonances between Lord Hoffmann's and other texts of (non-) judgment, unhappier connections become more evident. His apparent pragmatism is echoed in another line of cases that excise another Indian Ocean space from judicial review, and create an offshore through a failure to recognize bodies as signs of themselves.

## <A>PART II: DISEMBODYING THE INDIAN OCEAN

Migration and maritime law in Australia has been reconfigured through a decade of amendments to the Migration Act 1958, and the institution of the Maritime Powers Act 2013.<sup>69</sup> One effect of these changes has been the consolidation of executive power over offshore territory in the Indian Ocean. The visibility and comprehension of persons who have

presented themselves to the authorities claiming asylum has been mediated by multiple legislative and executive categorizations. This signification of bodies is rendered through their positioning and treatment offshore.

Parallels between the UK's exercise of executive action over BIOT, and Australia's treatment of refugees offshore, are awkward to establish and sustain. Such comparisons risk schematizing and straining histories, geographies, and cultures. Nonetheless, there are thought-provoking continuities between the rhetorical strategies of UK and Australian judicial responses to recent deployments of executive power to exile peoples and persons within the Indian Ocean. Like the Lords in *Bancoult* the High Court of Australia in three recent cases notably insists on a language of self-limitation that uses the tones of a pained and reasoned abstinence, but involves a critical withdrawal of sensibility that is in fact neither historically nor legislatively beyond the court's capacity and remit, nor beyond the striving of legal discourse.

The Australian cases of 2010, 2011 and 2014 concern plaintiffs who arrived on Christmas Island in Australia by boat. This manner and location of arrival prompted their categorization as variously/simultaneously "unlawful non-citizens," "offshore entry persons" and "unauthorised maritime arrivals" in an "excised offshore place."<sup>70</sup> That is, the manner and location of their arrival in Australia reduced the plaintiffs to a set of extraordinary legislative definitions, bound them to arcane procedures, and subjected them to a bafflement of their slight hopes, and starker probabilities of *refoulement* or forced removal to a third state.

The decisive issue in the 2010 case became the fairness and legality of review procedures applied by a company contracted by the Department of Immigration and Citizenship. The decisive issue in the 2011 case (which involved a child) was the lawfulness of a declaration allowing the forced removal of the plaintiffs to Malaysia. And the decisive issue in the 2014 case became the granting of a style of temporary visa that detained the Plaintiff in a circumstance that prevented access to other forms of processing. The judgments were all for the plaintiffs, but in narrow terms. What concerns us here is how the High Court of Australia marginally broached and more fully retracted from considering the possibility of the judicial review of the granting and exercise of executive power. The rhetorical strategies and tones of the 2010 judgment are exemplary of the broader movements across the three judgments.

In the 2010 case, one of the plaintiffs argued that the court had a duty to consider the in/validity and/or declare the limits of a power granted under s 46A (2), (3) and (7) of the Migration Act. This section gives the Minister an exclusive and personal power to allow a

declared “unlawful non-citizen” to apply for a visa not otherwise accessible by this class of person. (The Plaintiff was seeking a declaration that the Minister had failed in a duty to consider them for such an exercise of power: or, alternatively, that the whole s 46 approach to the “unlawful non-citizen” was invalid.) In other words, the demand was for both a statement of the right to conduct judicial review, and for such a review. The argument referred to the judgment in *Kirk v Industrial Court* (NSW), which states that to deprive a court of its role in declaring and enforcing the limits on executive power “would be to create islands of power immune from supervision and restraint.” In a curiously resonant and ironic choice, French CJ constructs his response to the argument around this very phrase – “islands of power.”<sup>71</sup>

In an effort to be succinct, but barely avoiding tautology in his double-negative, French CJ “does no more than deny that the particular grant of power entails a duty to consider its exercise.” While acknowledging that an exercise of such power would entail the possibility of judicial review, he gives himself room summarily and emphatically to state that “No “island of power” is created.”<sup>72</sup> The existence of a sovereign power is almost (but not quite) conjured as a material geography. And of course this is, precisely, the excised territory of Christmas Island. Just as the unacknowledged materiality of Friday haunts Lord Hoffmann’s key reference to Crusoe, the materiality of *this* individual geography haunts the abstract rhetoric of islandness. Placed together, these ghosts (these haunted matters) allow us to see something absolute and material about the operation of power across the Indian Ocean. And even further – as the third part of this paper proposes – we can see the judicial retreat from executive action exercised by UK and Australian courts as expressive of the first and final form of sovereignty.

### <A>PART III: THE VISIBILITY OF BODIES

In a series of seminars towards the end of his life Jacques Derrida returned to a persistent concern about the distinction between humans and animal – what he termed the difference between “who” (human or sovereign), and “what” beings (animals). The fact that in French “sovereign” and “animal” are respectively denoted through masculine and feminine terms – *le souverain* and *la bête* – also suggested a further marginalization or difference that required attention.<sup>73</sup> In these seminars the difference between human/animal, masculine/feminine, and sovereign/beast are explored through Crusoe and Friday, as well as between Louis XIV and an elephant, respectively. The visive power of sovereignty involved in the who/what, human/animal distinction – the power to see, to name, to gather knowledge, to possess and comprehend is put into question.<sup>74</sup> Knowledge, theory, and ontology are arranged through

these types. Derrida sets out to problematize the separations of what/who, beast/sovereign, feminine/masculine. The disruption has to begin at the level of knowledge, of what it means to know, see, cast one's gaze, have access to an object known, seen, and graspable: "knowledge is sovereign."<sup>75</sup> One scene of this deconstructive encounter is Crusoe's island: or rather, the act of departure from Crusoe's island.

In order to think about the "irreducible multiplicity" of those other "living beings" (the non-human; the beast; the other), Derrida writes that "The limit from which [...] we need to set out looks like the shores, the contour, of an island in which a Robinsonian man relates to the animal only for himself, with a view to himself, from his point of view, in his being-for-self." This departure occurs within a long meditation on Crusoe on his island as emblematic of the sovereign, and his definitive reduction of this multiplicity.<sup>76</sup> This figure allows Derrida to think through the "autobiography" of the sovereign as variously bored, distanced, melancholy, longing, and obsessively terrified of certain kinds of death.<sup>77</sup> All these characteristics are approached and re-approached as aspects of the sovereign as definitively alone.

Derrida asks us to consider the difference between the statements "I am alone" and "I am alone with you," and to feel the greater "abyss" – the greater sense of solitude – that inheres in the second statement.<sup>78</sup> This idea recurs and inhabits the sovereign as an "I" who "organizes the economy of his solitude in the company of those, the others, who, as close as can be to him, with him, or even in him [...] do not accompany him."<sup>79</sup> In broaching the sovereign's relationship to "the other," Derrida turns to two types of scene/figure in Defoe's narrative: haunting/specters (particularly in the opening of *The Farther Adventures*) and cannibals/cannibalism ("more other" than the beast).<sup>80</sup> This allows him to understand the shape of the sovereign as a body; and sovereignty as a fearful, and thus lonely, concentration on the owned body in both its materiality, and its potential ghostliness. The beast, says Derrida, is likewise "Robinsonian" in its aloneness. It also is deprived of the company of "the other, of that alterity in general."<sup>81</sup> So what we get from Derrida's engagement with Crusoe on his island is an idea of the sovereign as, like the beast, "poor in world" (that is the island as emblematic of sovereignty), and unaccompanied by the others that accompany and define his sovereignty.

Another scene for the deconstructive encounter with the sovereign, for Derrida, is that of the autopsy or anatomical dissection of an elephant conducted in front of Louis XIV in 1681.<sup>82</sup> The dismemberment of the elephant in front of Louis XIV, and the "precision with which its parts were examined," manifests the macabre conceit of absolute knowledge. It is

an event that follows a combat – what Derrida calls an unconsciously amorous and narcissistic seduction, hunt, and capture.<sup>83</sup> It is a phenomenological event in that the elephant appears as an object under the “Sun King’s” gaze.<sup>84</sup> The king owns and knows, possesses and has knowledge of the beast for pleasure. This knowledge is mediated by institutions – the anatomy lesson unfolds under the authority of the French Academy of Sciences created by the monarch. This “knowing-power, power-to-know, knowing-how-to-see, and sovereign being-able-to-see is not, fundamentally, revolutionized by the French Revolution.”<sup>85</sup> The sovereignty of nation or people in the modern international system is a new form of the same structure. At the heart of the matter is its sovereign mastery over the beast.

The absolute knowledge of the sovereign also extends to history – the sense that everything is known in advance.<sup>86</sup> Derrida draws on Louis Marin’s book *The Portrait of the King* to express the *as if*, the simulacrum effect or fiction of the sovereign spectacle. “Absolute knowledge” means that everything happens “as though it were known in advance,” and thus like a “marionette,” programmed and “providentially prescribed.”<sup>87</sup> This historiography of the sovereign creates in the reader–spectator “the simulacrum, the illusion, that he is the one who is pulling the strings of the marionette of history.”<sup>88</sup> This is the “as if” central to sovereignty:

Sovereignty is this narrative fiction or this effect of representation. Sovereignty draws all its power, all its potency, i.e. its all powerful nature, from this simulacrum effect, this fiction – or representation – effect that is inherent and congenital to it, as it were co-originary.<sup>89</sup>

The archaic sovereign ambition, in relation to the issues discussed in this paper, is to treat space and subjects such as Chagossians and boat migrants as marionettes. In the increase of executive authority, and the looming attempts to destroy the remnants of judicial oversight, it is the absolutist power of the puppeteer that is anxiously asserted. Sovereignty as the “pulling of strings” is a distribution of simulacra effects. Notions such as “transfer, translation, transition, tradition, inheritance, economic distribution etc.” are the site of the division, transaction, and negotiation of sovereignty.<sup>90</sup> These are the productive sites for dividing the archaic absolute sovereignty we encounter in the case of the Chagossians and the boat migrants.

## <A>CONCLUSIONS

Sovereignty does not exist as such. The fictions of the Chagossians as undecidably Crusoe/Friday, and the excising of Christmas Island from Australian jurisdiction, are exemplars of the simulacrum effect on which the sovereign conceit is founded and exercised. Space and beings become the effects of fictional representation. In the name of an anxious sovereignty (marked as global security or border protection), an absolute all-seeing, all-knowing sovereign knowledge is claimed. People arriving in boats are already deemed “economic migrants” rather than people fleeing persecution. They are subject to a logic of “fairness” that casts them as gaining an “advantage” they do not deserve. (The Australian government’s policy is driven by the notion of “no advantage” to those who arrive by boats as distinct from those “processed” in UNHCR camps outside Australia.) But what would it mean for bodies in and from these excised zones (Christmas Island) or emptied spaces (Chagos archipelago) offshore to be differently discernible? What signs and markers of intelligibility might structure the difference between boat migrants and Chagossians as “who” or “what” beings?

There has been a recent turn inward by scholars of empire and across postcolonial studies. This entails a move away from the intimate as an analogue of larger structures of empire, and a turn to understanding intimacy as the structure of imperialism. One resource for understanding empire as a “domain of the intimate” is the legal archive.<sup>91</sup> Trial records and judgments, family court and constitutional rulings, boxes of evidence and collations of reportage: all these archives allow a re-imagining of intimate spaces and relations that might otherwise be untraceable. The legal archive is the site in which traces of “intimate realms” can be expected and found.<sup>92</sup> The appearance of Friday and Crusoe in a court today is troubling precisely because it calls up this arcane formulation of intimacy. Crusoe and Friday are not just or even an analogue of imperialism’s public ambition. *Robinson Crusoe* is rather a story of the intimacies forged and refused under colonialism. The island does not – as it has been so often and over-determinedly read – primarily prefigure the vast empire to come. It is more fully told as a site divided into and by the settler’s private spaces, and it more completely expresses and dwells upon Crusoe’s imagined desire to articulate both the particular and the generic nature of his relations with Friday. Thought about this way, it is possible to re-read the references to Friday and Crusoe in the *Bancoult* cases. They appear less as a rhetorical means by which an ethical resolution is expressed, and more as an inadvertent but powerful summoning of an archaic formulation of intimacy. What haunts the judgments is not so much an old and intimately familiar demand for justice. What haunts the judgment is *that it is* an old and familiar demand for justice: one that should long ago have

been satisfied, or should at least have shifted terms.<sup>93</sup> And so the figuration of Friday and Crusoe in the judgments becomes uncanny. All too familiar, they appear out of place: they disrupt, and come to signify anxiety more than certainty. Apparently part of a discourse of ethical assurance, the references to Friday and Crusoe discomfort more than they console. And in this they are consonant with Defoe's writing, in which the ghost is both a disturbance and a consolation.

Gathering evidence from his various writings, Homer O. Brown demonstrates Defoe's fascination with ghosts. Concentrating particularly on the places in which the ghostly other appears, or the other appears as ghostly, he concludes that Defoe was "always suspicious of the unified and identifiable subject."<sup>94</sup> But if we turn to the second of Defoe's novels about Crusoe, *The Farther Adventures of Robinson Crusoe* (1719), then we might argue that he is less interested in ghostliness as a form of disintegrating subjectivity, and more interested in the ghost as a form of longing.

*The Farther Adventures* tells the story of Crusoe after he returns to England. He marries, has children, becomes wealthy through investment, and becomes morally discomfited by his ease. He moves out of London, buys a farm in Bedfordshire, and tries to recreate the life of satisfying labor he left behind in the Caribbean. But this life is only ever a faint version of his past life on his island. (His life in Bedfordshire is a ghostly other of the more vivid memory of his Caribbean island.) So when his wife dies, he determines to return in order to check on his "colony," his "kingdom" (as in the first volume, the descriptions of his sovereign holding are constant and various).<sup>95</sup> His decades of life up to this re-departure are summarily told in about ten pages. Nonetheless, this part of the narrative is full of enough detail that we are startled by the sudden re-appearance of Friday: or rather, the realization that Friday never actually disappeared. For it is only when Crusoe is about to step onto a ship to return to sea that he bothers to mention he is accompanied by "my Man Friday."<sup>96</sup> We can only presume that Friday has been present during the decades of marriage and children, investment and farming. If he was rendered ghostly by the mediation of Crusoe's journal in the first volume, he is an even more spectral presence in the opening passages of *The Farther Adventures*. Although early in the narrative, the reader is explicitly directed to be alert to this very "matter" of ghostly presences, as Crusoe meditates:

I have often heard Persons of good Judgment say, That all the Stir People make in the World about Ghosts and Apparitions, is owing to the strength of Imagination, and the powerful Operation of Fancy in their Minds; that there is no such Thing as a Spirit

appearing, or a Ghost walking, and the like: That Peoples poring affectionately upon the past Conversation of their deceas'd Friends, so realizes it to them, that they are capable of fancying upon some extraordinary Circumstances, that they see them; talk to them, and are answered by them, when in Truth, there is nothing but Shadow and Vapour in the Thing; and they really know nothing of the Matter.<sup>97</sup>

This extraordinary passage is never, of course, realized as Crusoe's longing for his dead "good wife": as Crusoe sanguinely states, "It is not my business here to write an Elegy upon my Wife."<sup>98</sup> Far more sustained is his longing for a lost conversation with his island, which is so intense and irrefutable that it haunts his dreams, waking and sleeping.<sup>99</sup> But as the narrative progresses, we must understand this passage as ultimately directing us to Crusoe's relationship to the most substantial ghost in his world. And indeed, one way of recognizing Coetzee's rewriting of Defoe is as an even farther and more emphatic embodying of Friday as – or rather, beyond – Crusoe's ghostly longing within *The Farther Adventures*.

Coetzee's deployment of gothic conventions, tropes and spaces in *Foe* invites us to read the novel as a ghost story. And placing an out-and-out ghost story by Defoe at the centre makes this invitation difficult to refuse. (Arguably "A True Relation of the Apparition by One Mrs Veal" displaces *Crusoe* and *Roxana*, as well as works by Shakespeare, Wordsworth, Melville, as the most important intertextual reference.) But interest in Coetzee's version of Defoe's ghosts has not fully captured the relationship of his specters to *The Farther Adventures*. While we can see this later narrative traversing Coetzee's novel from the beginning, it is in the short final chapter that it arguably becomes the crucial intertextual sign. This is because it is this chapter that witnesses Friday in death. And it is in *The Farther Adventures* that we are told of Friday's death.

The final part of Coetzee's novel is without quotation marks. This invites us into a more intimate relationship with the narrative. We enter a house (the house is gothic, we are like a ghost) that has a plaque bolted to the wall stating it was the home of "*Daniel Defoe, Author*" – which tells us that this is now, the time of the reader. Here we encounter bodies: perhaps Susan or her daughter, perhaps Cruso/Crusoe or Defoe. This is not certain. The only certainty is the body of Friday. But as the "I" of the narrative has somehow become the reader, the house has somehow become a shoreline; then a boat, the surface of an ocean; and finally a descent into a shipwreck. Friday's body only becomes its "own sign" when the reader dives to find him, slowly turning, at the bottom of the ocean: "But this is not a place of

words. Each syllable, as it comes out, is caught and filled with water and diffused. This is a place where bodies are their own signs. It is the home of Friday.”<sup>100</sup>

Rich and provocative as it is, Spivak’s much-quoted valuing of Coetzee’s rendering of the “body as its own sign” is oddly disembodied from the precise physicalities and geographies of this final scene. In Coetzee’s novel, it is crucially only in the place of the most absolute silence – beyond the crowding of voice, story, intertextual reference, historiography, textuality, signs – that the body ensigns itself. It is only at the bottom of the ocean: and the silence here is not the same as the silencing and misapprehensions of Friday that occur within Crusoe’s journal, Susan’s memoirs, or the judgments of the UK courts. This is a silence that precisely allows us to attend to – to feel against our “eyelids,” “the skin of our face,” as the narrative’s final lines insists – Friday as himself. And in insisting on this body as only itself, in the ocean’s deepest silence, the final chapter of *Foe* reads a direct and vigilant corrective to Defoe’s own rendering of Friday’s final scene.

Drawing her reading of *Foe* back to Defoe’s original, Spivak remind us “of the last scene involving Friday in *Robinson Crusoe*.” In her reading, this is the episode in which Friday talks to, dances with, and kills a bear. Speaking in English and using a gun instead of an arrow, Spivak suggests that Friday is “on his way out of the margin” (to England).<sup>101</sup> But this is not the last scene involving Friday written by Defoe. That occurs just over half way through *The Farther Adventures*. Crusoe and Friday have returned to the island: Friday has danced for and with his father, and he has fought with and killed various natives who have threatened Crusoe’s “colony.” But as they are leaving the island to continue on their yet farther adventures, Friday is killed by yet another group of vaguely characterized cannibals. Lamenting the loss of “my poor Friday, whom I so entirely loved and valued, and who, indeed, so well deserved it”: narrating himself as “the most disconsolate creature alive for want of my Man Friday,” Crusoe “buried him with all the decency and solemnity possible, by putting him into a coffin and throwing him into the sea.”<sup>102</sup> But arguably even this is not the last scene involving Friday. As his body lies at the bottom of the Atlantic, and Crusoe proceeds to his farther adventures, he is surely haunted by his “deceas’d Friend.” Not alone (he is on a ship full of men), but most fully alone without “my Man Friday,” Crusoe sails around the cape, into the Indian Ocean, and up the East Coast of Africa. As he heads in the direction of the Chagos Archipelago, surely the silent specter of Friday accompanies him. In Defoe’s narrative, this is the silent ghost of Crusoe’s chattering, imperial longing. But in Coetzee’s rendering, this is the substantial body as, in its deep and oceanic silence, the sign of itself.

Examining the juridicalized body as literary character, this paper began with a troubled apprehension of the disenfranchizing and disembodying capacities of UK law. But as our introduction intimates, such forms of offshoring have excessive meaning. Comparison with Australian forms of legal excision and retreat help to bring these vaster lineaments into relief: the oceanic outline that emerges is of an anxious sovereign, re-orienting a radical title, crossing the Indian Ocean. This re-spatialization points to a new *nomos* that is not fully apprehensible through the paradigms and oppositions currently been driven by work on Schmitt. As our conclusive return to the different anxieties of Coetzee's novel suggests, we should be continuously troubled by any direction away from the body as a "sign of itself."

### <A>ACKNOWLEDGEMENTS

Many thanks to Laura Jeffery for astute and useful comments made on a draft of this paper, to Nicky Marsh and Liam Connell for their directions to the offshore, to Daniel Matthews and Scott Veitch for discussions of visive power, and to the Arts and Humanities Research Council UK Landscape and Environment Programme and the University of Technology Sydney Indian Ocean and South Asia Research Network for supporting research towards this paper.

### <A>NOTES

Figure 1. The Indian Ocean

- 
1. J. M. Coetzee, *Foe* [1986] (London: Penguin, 2010), 6.
  2. Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaem* (New York: Telos, 2006), 67.
  3. *Ibid.*
  4. *Ibid.*, 70.
  5. *Ibid.*
  6. *Ibid.*, 78.
  7. Giorgio Agamben, *Home Sacer: Sovereign Power and Bare Life* (Stanford: University of Stanford Press), 19.
  8. *Ibid.*, 20.

---

9. Ibid.

10. This paper speaks alongside multidisciplinary critical and theoretical work on the offshore as, for example, the tax haven, the Free Trade Zone, the continental shelf, the container boat. Some of this thinking explicitly or implicitly deploys/expands, and some problematizes/refutes Agamben's language of exception. Such work includes Angus Cameron's geopolitics of "xenospaces," Liam Connell's work on art and labor, Bill Maurer's anthropology of state, crime and finance, and Ronen Palan's thesis on the depletion of the nation-state. See generally Angus Cameron, J. Dickinson and N. J. Smith (ed.), *Body/State* (London: Ashgate, 2013); Angus Cameron and R. Palan, *The Imagined Economies of Globalization* (London: Sage, 2004); the collection edited by Anne Clunan and Harold Trinkhaus *Ungoverned Spaces: Alternatives to State Sovereignty in an Era of Softened Sovereignty*, ed. (Stanford: Stanford University Press, 2010); Liam Connell, "Offshore Cosmopolitanism: Reading the Nation in Rana Dasgupta's *Tokyo Cancelled*, Lawrence Chua's *Gold by the Inch* and Aravind Adiga's *the White Tiger*," *Open Arts Journal* 1 (2013): 60–8; Liam Connell, "The Worker as Revenant: Imagining Embodied Labor in Contemporary Visualizations of Migration," *Social Text* 111 (2012): 1–20; Liam Connell, "Melanie Jackson's the Undesirables: Visualizing Labour in the Era of Globalisation," in *Cargo: Excavating the Contemporary Legacy of the Transatlantic Slave Trade in Plymouth and Devon*, ed. Len Pole and Zoë Shearman (Plymouth: University of Plymouth Press, 2011), 46–53; Bill Maurer, "Jurisdiction in Dialect: Sovereignty Games in the British Virgin Islands," in *European Integration and Postcolonial Sovereignty Games*, ed. R. Adler-Nissen and U. P. Gad (London: Routledge, 2013), 130–44; Bill Maurer and Sylvia J. Martin, "Accidents of Equity and the Aesthetics of Chinese Offshore Incorporation," *American Ethnologist* 39, no. 3 (2012): 597–644; [AQ3] Bill Maurer, "From Anti-Money Laundering to ... What? The Aftermath of 'Compliance' for Offshore Financial Services," in Bill Maurer, "From the Revenue Rule to Soft Law and Back Again: The Consequences for 'Society' of the Social Governance of International Tax Competition," in *Rules of Law and Laws of Ruling*, ed. Julia Eckert, Keebet von Benda Beckmann and Franz von Benda Beckmann (London: Ashgate, 2009), 217–35; Bill Maurer, "Re-Regulating Offshore Finance?," *Geography Compass* 2, no. 1 (2008): 155–75; Bill Maurer, "Incalculable Payments: Money, Scale and the South African Offshore Grey Money Amnesty," *African Studies Review* 50, no. 2 (2007): 125–38; Bill Maurer, "Due Diligence and 'Reasonable Man,' Offshore," *Cultural Anthropology* 20, no. 4 (2005): 474–505; Bill Maurer, "Cyberspatial Properties: Taxing Questions about Proprietary

---

Regimes,” in *Property in Question: Value Transformation in the Global Economy*, ed. C. Humphrey and K. Verdery (Oxford: Berg, 2004): 297–318; Bill Maurer, “Cyberspatial Sovereignties: Offshore Finance, Digital Cash, and the Limits of Liberalism,” *Indiana Journal of Global Legal Studies* 5, no. 2 (1998): 493–519; Bill Maurer, “Complex Subjects: Offshore Finance, Complexity Theory, and the Dispersion of the Modern,” *Socialist Review* 25, nos 3–4 (2001): 114–45; Ronen Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires* (New York: Cornell University Press, 2003); Ronen Palan with Richard Murphy, Christian Chavagneux, *Tax Havens: How Globalization Really Works* (New York: Cornell University Press, 2010).

11. [AQ4] Cornelia Vismann, “Starting from Scratch: Concepts of Order in No Man’s Land,” in *War, Violence, and the Modern Condition*, ed. Bernd-Rüdiger Hüppauf (Berlin: De Gruyter, 1997), 46-64.

12. *Ibid.*, 46–7.

13. *Ibid.*, 47.

14. *Ibid.*

15. *Ibid.*, 49.

16. *The Queen (on the application of Louis Olivier Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* [2013] EWHC 1502 (Admin). Although the documents are electronic, the arcane term “cable” seems oddly apt to these classified accounts of personal meetings.

17. See [http://wikileaks.org/plusd/cables/09LONDON1156\\_a.html](http://wikileaks.org/plusd/cables/09LONDON1156_a.html), para. 10 (accessed on November 19, 2014).

18. See [http://wikileaks.org/plusd/cables/09LONDON1156\\_a.html](http://wikileaks.org/plusd/cables/09LONDON1156_a.html), *WikiLeaks*, para. 1.

19. *Ibid.*, para. 2.1.

20. *Ibid.*, para. 7.

21. *Ibid.*, para. 28.

22. *Ibid.*, para. 36.

23. *Ibid.*, para. 51.

24. *Ibid.*, para. 30.

25. *Ibid.*, para. 59.

26. For a fuller discussion of the politics surrounding and entailed by this judgment, see Laura Jeffery, “Neither Confirm Nor Deny,” *Anthropology Today* 30, no. 1 (2014): 9–13.

- 
27. R (on the application of Louis Olivier Bancoult) v. The Secretary of State for the Foreign and Commonwealth Office [2000] EWHC 413 (Admin). For a fuller discussion of this case, see Steven Allen, *The Chagos Islanders and International Law* (London: Hart, 2014); Mark Elliott and Amanda Perreau-Saussine, “Pyrrhic Public Law: *Bancoult* and the Sources, Status and Content of Common Law Limitations on Prerogative Power,” *Public Law* (October 2009): 697–723; Stephanie Jones, “Colonial to Postcolonial Ethics: Indian Ocean ‘Belongers,’ 1668–2010,” *Interventions: International Journal of Postcolonial Studies* 11, no. 2 (2009): 212–34; Peter Sand, “R (on the Application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL 61, 4 All E. R. 1055 (2008),” *American Journal of International Law* 103, no. 2 (2009): 317–24.
28. Bancoult No. 1, para. 8.
29. *Ibid.*, para. 13. There is not room in this paper to engage fully the invocation of “Tarzans.” But this is arguably more self-defeating than the characterization of the Chagossians as “Fridays.” The FCO memo plays from the supra-textual, global imagining of Tarzan as a figure of barbarity, a man outside civilization. But the Tarzan of the original series of novels by Edgar Rice Burroughs, produced from the 1910s, tells the more complex story of loss and return to civilization: and at times indicates that West Africa is less barbarous than Britain.
30. The exchange between the claimant’s barrister and Roberts critically turns around whether Roberts would have used “any such language” or “that kind of language,” and Roberts’ insistence that he does not “remember the details of the language”; transcript in *WikiLeaks* case, Tuesday, April 16, 2013, 20–2, 24, 31, 34, 40.
31. Maximillian E. Novak, *Defoe and the Nature of Man* (Oxford: Oxford University Press, 1963), 21.
32. Karl Marx, *Capital: A Critique of Political Economy*, trans. Samuel Moore and Edward Aveling, vol. 1 [1867] (New York: Vintage, 1977), 77, 169–70.
33. Ian Watt, *The Rise of the Novel: Studies in Defoe, Richardson and Fielding* (London: Chatto & Windus, 1957).
34. Edward Said, *Culture and Imperialism* (London: Vintage, 1993).
35. Virginia Woolf, “Robinson Crusoe,” in *The Second Common Reader*, New Edn (London: Hogarth, 1935), 54–5.
36. Jacques Derrida, *The Beast and the Sovereign II*, trans. Geoffrey Bennington (Chicago: University of Chicago Press, 2011). See particularly “First Session” and “Seventh Session,” and specifically 281.

- 
37. For a recent survey of the “Robinsonade,” see Ann Marie Fallon, *Global Crusoe: Comparative Literature, Postcolonial Theory and Transnational Aesthetics* (Farnham: Ashgate, 2011).
38. Transcript for Tuesday April 16, 2013: particularly 36, 47, 134. And see also transcript for Thursday April 18, 2013, 69, 72, 81.
39. For an extreme and influential example of the hyper-textualization of Crusoe’s island, see Gilles Deleuze, “Desert Islands,” in *Desert Islands: and Other Texts, 1953–1974* (Cambridge, MA: MIT Press, 2004). For a recent and powerful criticism of this abstracting, water-less turn to maritime geographies, see Philip E. Steinberg, “Of Other Seas: Metaphors and Materialities in Maritime Regions,” *Atlantic Studies* 10, no. 2 (2013): 156–69.
40. Daniel Defoe, *Robinson Crusoe* [1719] (Oxford: Oxford University Press, 1999), 215.
41. Gillian Beer uses Crusoe on his island to reach for the larger point that the description of a place as uninhabited is always political, and always involves a troubling and absolute distinction between the human and non-human; Gillian Beer, “Island Bounds,” in *Islands in History and Representation*, ed. Rod Edmond and Vanessa Smith (London: Routledge, 2003), 32–42.
42. Jean-Jacques Rousseau’s *Emile, Or On Education* (1762) offers the most famous interpretation of Crusoe as a figure of admirable masculine (boyish) resourcefulness. And James Joyce offers a famously excoriating summary of Crusoe’s dogged colonial mindset: “Crusoe is the true prototype of the British colonist. [...] The whole Anglo-Saxon spirit is in Crusoe: the manly independence, the unconscious cruelty, the persistence, the slow yet efficient intelligence, the sexual apathy, the calculating taciturnity”; James Joyce, “Daniel Defoe,” trans. Joseph Prescott, *Buffalo Studies* 1 (1964): 24–5.
43. Defoe, *Robinson Crusoe*, 214–15.
44. *Ibid.*, 216. Although in Defoe’s *The Farther Adventures of Robinson Crusoe* (1719), the term “Indian” is more prevalent.
45. *Ibid.*, 5.
46. *WikiLeaks*, para. 2.4.
47. *WikiLeaks*, paras 137–50, on the Mauritius-based claims; para. 151, on the native title claim.
48. See Jones, “Indian Ocean Belongers” for a fuller discussion of the strategic claim to the status of “subject.”

- 
49. See Laura Jeffery, *Chagos Islanders in Mauritius and the UK: Forced Displacement and Onward Migration* (Manchester: Manchester University Press, 2011) for the most accurate discussion of this often mythologized history.
50. Laura Jeffery, "Historical Narrative and Legal Evidence: Judging Chagossians' High Court Testimonies," *PoLAR: Political and Legal Anthropology Review* 29, no. 2 (2006): 228–53.
51. *Ibid.*, 237–8.
52. *WikiLeaks*, para. 76.
53. K. L. Worthington, "'A Place Where Bodies are Their Own Signs': Re-Reading J. M. Coetzee's *Foe* via Gubar, Spivak, Parry and Levinas," *Philia and Filia* 2 (2011): 5–40.
54. Derek Attridge, "Oppressive Silence: J. M. Coetzee's *Foe* and the Politics of Canonisation," in *Critical Perspectives on J. M. Coetzee*, ed. Graham Huggan and Stephen Watson (London: Macmillan, 1996): 180–1.
55. Gayatri Spivak, "Theory in the Margin: Coetzee's *Foe* Reading Defoe's 'Crusoe/Roxana,'" *English in Africa* 17, no. 2 (1990): 1–23.
56. The references to Melville's work are less certain, but potentially more suggestive than the more obvious intertextualities. Another paper might see Coetzee's novel as elliptically stretched between the contained "I prefer not to" of "Bartelby the Scrivener," and Ahab's famous, reaching cry to the ocean, "Is Ahab Ahab?," to which Coetzee's novel answers back from the floor of the ocean: "Friday is Friday"; Coetzee, *Foe*, 122.
57. Derek Attridge, *J. M. Coetzee and the Ethics of Reading* (Scottsville: University of KwaZulu-Natal Press, 2005), 75.
58. *Ibid.*, 79.
59. Coetzee, *Foe*, 131.
60. *Ibid.*, 67.
61. This understanding of speech within the text might be criticized as limited. We are told that Friday communicates, although it is uncertain to whom. He throws flowers on the water. He plays one, repeated tune on a flute. And at the centre of the narrative, he dances with a kind of desperate, mesmeric concentration. This dancing (a recasting of the "antic" descriptions of Friday's dancing that occur in *Robinson Crusoe* and *The Farther Adventures*) speaks adamantly of Friday as "a substantial body": it tells us "Friday is Friday."
62. J. M. Coetzee, "He and His Man," *Nobel Lectures* (Melbourne: Melbourne University Press, 2006): 34–45.

- 
63. R (on the application of Bancoult) (Respondent) v Secretary of State for Foreign and Commonwealth Affairs (Appellant) [2008] UKHL 61, para. 54.
64. *Ibid.*, para. 55.
65. T. T. Arvind, “‘Though it Shocks One Very Much’: Formalism and Pragmatism in the *Zong* and *Bancoult*,” *Oxford Journal of Legal Studies* 32 (2012): 113, 140, 145.
66. Jean-Luc Nancy, *The Inoperative Community*, trans. P. Connor (Minneapolis: University of Minnesota Press, 1991), 4.
67. T. R. S. Allan, *The Sovereignty of Law: Freedom, Constitution, and Common Law* (Oxford: Oxford University Press, 2013), 294.
68. *Ibid.*, 290, 291.
69. A recent and pithy summary is offered by the Australian House of Representatives *Explanatory Memorandum*, produced in the lead up to the December 2014 passing of the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) 2014*: legislation granting wide and secret executive powers to the Immigration Minister, and explicitly excluding judicial review of executive action; see [http://www.aph.gov.au/parliamentary\\_business/bills\\_legislation/bills\\_search\\_results/result?bid=r5346](http://www.aph.gov.au/parliamentary_business/bills_legislation/bills_search_results/result?bid=r5346) (accessed on February 20, 2014).
70. Plaintiff M61/2010E v Commonwealth of Australia/Plaintiff M69 of 2010 v Commonwealth of Australia [2010] HCA 41; Plaintiff M70/2011 v Minister for Immigration and Citizenship /Plaintiff M106 of 2011 v Minister for Immigration and Citizenship [2011] HCA 32; Plaintiff S4/2014 v Minister for Immigration and Border Protection [2014] HCA 34.
71. Plaintiffs M61 and M69, 18.
72. *Ibid.*, 19.
73. Jacques Derrida, *The Beast and the Sovereign I* trans. Geoffrey Bennington (Chicago : University of Chicago Press, 2009), 276.
74. See also Peter Goodrich, “Visive Powers: Colours, Trees, and Genres of Jurisdiction,” *Law and Humanities* 2 (2008): 213–31.
75. Derrida, *Beast and the Sovereign I*, 280.
76. [AQ5] [Derrida, \*The Beast and the Sovereign II\*](#), is a posthumous collection of ten seminar sessions in which Derrida considers sovereignty and alterity via the figure of Crusoe, and through the work of Heidegger: and indeed through the very oddness of what he refers to in the seminars as this “odd couple.” The departure from the island occurs in the Seventh Session at p. 280.

---

77. The Second Session works on sovereignty as autobiography, not just the autobiography of sovereignty. The Third Session is on solitude as a feeling of distance (“islandness”). The Fourth is on the sovereign as defined by fear of death by drowning, being buried alive, devoured.

78. *Ibid.*, First Session, 21.

79. *Ibid.*, Seventh Session, 281

80. *Ibid.*, Fifth Session generally, and 208.

81. *Ibid.*, Seventh Session, 281: “But the animal itself [...] is also Robinsonian to the extent that its ‘poverty in world,’ which deprives it of the *as such*, supposedly also deprives the animal of the other as other, of that alterity in general. [...] The animal does not let be *as such* that which, entirely other, as such, is not in his field of programmed interest.”

82. Derrida, *Beast and the Sovereign* I, 277.

83. *Ibid.*, 281.

84. *Ibid.*

85. *Ibid.*, 282.

86. *Ibid.*, 288.

87. *Ibid.*

88. *Ibid.*

89. *Ibid.*, 289.

90. *Ibid.*, 290–1.

91. The phrase is taken from [AQ6] Ann Laura Stoler, “Intimidations of Empire: Predicaments of the Tactile and Unseen,” in *Haunted by Empire: Geographies of Intimacy in North American History*, ed. Ann Laura Stoler (Durham: Duke University Press, 2006): 1-23

92. *Ibid.*

93. See Jones, “Indian Ocean Belongers” for a discussion of the judgment in Bancoult (1), in which Laws LJ worries about the arcane law and reasoning that the situation of the Chagossians’ apparently requires the court to exercise.

94. [AQ7] Homer O. Brown, “The Displaced Self in the Novels of Daniel Defoe,” *English Literary History* 38, no. 4 (1971): 562-90: 565.

95. Daniel Defoe, *The Farther [sic] Adventures of Robinson Crusoe: Being the Second and Last Part of His Life, and of the strange, surprising Account of his Travels Round three Parts of the Globe* (London: W. Taylor, 1719).

96. *Ibid.*, 14.

---

97. Ibid., 6–7. Original italics.

98. Ibid., 10.

99. “But this I know, that my Imagination work’d up to such a Height, and brought me into such Excess of Vapours, or what else I may call it, that I actually suppos’d my self, oftentimes upon the Spot, at my old Castle behind the Trees”: and the passage continues to describe a long premonition/dream of arriving at and living again on his island; *ibid.*, 7.

100. Coetzee, *Foe*, 157.

101. Spivak, “Theory in the Margin,” 14.

102. Defoe, *Farther Adventures*, 152–3.