#### **REVIEW ARTICLE**



# Across Islands and Oceans: Re-imagining Colonial Violence in the Past and the Present

Renisa Mawani. 2018. Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire. Durham: Duke University Press Elizabeth McMahon. 2016. Islands, Identity and the Literary Imagination. London and New York: Anthem Press Stewart Motha. 2018. Archiving Sovereignty: Law, History, Violence. Ann Arbor: University of Michigan Press

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## Abstract

The three texts addressed in this review essay challenge us to question and creatively re-imagine the representation of material spaces at the centre of the colonial project: oceans, islands, ships and archives. Elizabeth McMahon deconstructs the island and its metaphorics, charting the relationship of geography, politics and literature through the changing status of islands, as imagined by colonists, beginning in the Caribbean and ending in Australia. Renisa Mawani destabilises colonial geography by re-animating the ocean and presents, amongst others, the ship and the ocean, as both method and juridical form. Writing against the 'free sea', Mawani addresses the imperial reliance on control of the ocean and the intensive juridification of the sea. Stewart Motha re-imagines law's aggressive acts of adjudication, and challenges its originary fictions by exploring the logic, aesthetics and violence of legal processes that preserve and disavow the past at the same time. Each monograph considers the imaginaries, fictions and material geographies of colonialism, alongside how these imaginaries have been used as sites of counter-claim and resistance by those subjected to their technologies.

**Keywords** *Komagata Maru* · Legal violence · Island imaginary · Renisa Mawani · Elizabeth McMahon · Stewart Motha · Oceans as method · Sovereignty

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# Introduction

In this review, we consider three recent books of great critical significance that, individually, but especially when read together, challenge us to examine and creatively re-imagine the representation of the material spaces at the centre of the colonial project. In turn, the practices at the heart of these texts challenge us to consider how historical technologies shape the law and politics of the present, and how both the imaginaries and the material geographies of colonialism have been used as sites of counter-claim and resistance. The common starting point for these texts is that they refuse to take the relationship between representation and materiality for granted. Colonisation required an imaginary of islands and oceans, before the ships took sail to 'explore', map and dominate—an imaginary steeped in Christianity and legend. Similarly, the materiality of oceans and islands pushed back against what was possible, and determined the realities, technologies and techniques of colonisation. These texts explore, then, with different emphases, and from different directions, the legal and political strategies that arose through these imaginaries and materialities.

We begin, first, with an exposition of what is at stake with each of these important projects, and why each author takes issue with *the island, the ocean*, with the materialities and imaginaries of *geography* and with *sovereignty* and *archive* in turn, and how these figures and concepts have been adjudicated by the west—as well as how the people most impacted by these imaginaries have fought back. McMahon deconstructs the island and its metaphorics, revealing its materiality in a Butlerian way. Mawani destabilises colonial geography by re-animating the ocean through foregrounding amongst others, the ship and the ocean, as both method and juridical form. Motha re-imagines law's aggressive acts of adjudication by challenging its originary fictions.

In *Islands, Identity and the Literary Imaginary*, Elizabeth McMahon provides a genealogy of the island within the western imaginary, arguing that understanding this genealogy is central to understanding Anglo-European legal modernity. McMahon's book investigates the evolving meaning of the island, especially the role of this figure in the development and operation of colonial power: 'The island is a figure of another world, the site on which possibilities are created, rehearsed and tested.' McMahon argues that the stakes of this investigation into the historical imaginary lie not only in comprehending the nature of historical legal power, but also in the political present. The role of the island in shaping colonial dispossession and violence can be seen from the early Age of Discovery to the contemporary Australian government's exclusion of asylum seekers: 'entwined in this history of British imperialism [is] the acquisition of islands as readymade colonies and as sites of racial genocide and slavery' (McMahon 2016, p. 28).

McMahon charts the relationship of geography, politics and representation through the changing status of islands, imagined by colonists, as beginning in the Caribbean and ending in Australia (McMahon 2016, p. 48). The scope of this imaginary includes the fact that every aspect of the Australian colonies had a 'fundamental' connection to the Caribbean experience—from the judiciary, to aspects of

professional and military life (McMahon 2016, pp. 87–132). McMahon explains that the significance of literary studies and the investigation of the Western imaginary's 'enthralment' with the island is that it 'connects identity, space and desire ... which has fuelled colonial acquisition' to politics and law, via the specificity of 'a perfect object of control, where the onlooker imagines he [sic] can be king' (McMahon 2016, p. 5). Donne's maxim 'No Man is an Island' is symptomatic, an assertion of universality that in fact figures a gendered and imperial subject (McMahon 2016, pp. 24–32).

The effects of this racialized and imperial imaginary have been both epistemic and material, from Darwin's theory of natural selection based on features of the Galapagos Islands to the nuclear tests on the Bikini Atoll during the Cold War and the contemporary detention of asylum seekers on islands just outside the Australian mainland (McMahon 2016, pp. 13-14). McMahon suggests this 'power is most often revealed as being unethical, solipsistic, even theomaniacal, and is sustained by the triumvirate of history, materiality and representation' (McMahon 2016, p. 5). McMahon also introduces the metaphorical parallels between modern cartography and literature, suggesting that, here, neither the metaphoric, nor the real, become ultimately dominant, but are in perpetual contest (McMahon 2016, p. 7). Part of McMahon's project, then, is to re-write the Western island imaginary, by turning to writers and theorists who work to 'dismantle tropes deep in the rhetorical unconscious of modernity that suture the island to a possessive desire that degrades islanders as objects ...' (McMahon 2016, p. 12). With particular attention given to the literary and historical relationship between Australia and the West Indies, the book investigates the relationship between Australia's geography and its literary imaginary to identify both specific effects of regional and global interconnection (McMahon 2016, p. 4).

Mawani's Across Oceans of Law takes the ocean as its focus, and begins with the axiom that oceans have been considered resistant to law and governance in the European imaginary. Sparked by a Dutch attack on a Portuguese vessel carrying treasure, Dutch jurist Hugo Grotius was asked to consider whether oceans could be subject to national and sovereign proprietary claims, and his answer in *Mare Liberum* (1609) was clear: 'the sea was free from occupation and possession' (Mawani 2018, p. 42). Grotius's argument was largely based on the idea that the physical properties of the ocean, as well as its essential unknowability or incomprehensibility, rendered it different from land. Mawani suggests that for Grotius, while 'land was solid and easily divisible, owned, and conquered, the sea was liquid, ephemeral, and expansive' and also 'incomprehensible'. Like the air, the sea is 'one and continuous', and could not be divided, limited or possessed, justifying a basic and juridical distinction between land and sea, a distinction that remains foundational to international and maritime law (Mawani 2018, p. 5). But, as Mawani argues, this purported distinction upon which Grotius relies actually disguises an underlying imperial reliance on control of the ocean, with European Empire in fact being built via 'a juridification of the sea'. so that by the early 20th century, freedom of trade and travel was available only to Europeans (Mawani 2018, p. 5).

Mawani not only brings out what is latent in colonial history, making visible those logics and aesthetics that have been previously been hidden, but goes further, taking 'the ocean' seriously as both materiality and metaphor. Mawani considers oceans as a means of reorienting histories of both Indian radicalism and immigration restriction. In particular, Mawani considers how these familiar narratives, 'take on different contours when the ship and the sea are foregrounded and analysed as key juridical forms' (Mawani 2018, p. 6). Mawani proposes reading this history 'oceanically'—using 'oceans as method' (Mawani 2018, p. 8). When read oceanically, Mawani takes the *Komagata Maru*'s voyage of the title and demonstrates the way this method challenges the nationalist and territorial focus of Indian migration histories, while subverting existing spatial-temporal accounts of colonial, imperial, and racial power (Mawani 2018, p. 10). "[O]ceans as method", in reading the potentiality of the ocean as anti-colonial figure, draws deliberately on the dynamic materiality and rich metaphoricity of the sea'-as both a conceptual frame and a way of writing legal history (Mawani 2018, p. 234). The point is that the sea de-centres, through its nature as 'polycentric, polyphonous, and variegated space marked by continual movements, circulating legalities, and by competing jurisdictional claims' (Mawani 2018, p. 236).

Stewart Motha's *Archiving Sovereignty: Law, History, Violence* examines the animating power of the tropes of 'sovereignty', and 'archive' within regimes of liberal law, and the violence they preserve, and unleash, within veneers of abstract, 'neutral' legal technique ... as Motha describes it, 'the catalog of a journey that has traversed islands, oceans, and several continents' (Motha 2018, p. xi). At the same time he explores these abstract processes, Motha insists on the historical particularity of these terms. This book, then, concerns the relation between the undecidability between law's fictions (the 'as if' of law) and the concrete, material manifestations of sovereignty (the political fact 'as such'). It explores the violence and also the logic and aesthetics of legal processes that 'preserve[s] and disavow[s] the past at the same time' (Motha 2018, p. 1).

Part of the work of Motha's project is to articulate how the hinge of 'archive' connects law and sovereignty, or 'how law as archive sustains a phenomenon as variable as sovereignty' (Motha 2018, p. 3). Motha proposes that liberal law has a more complex relation than that of 'repression' to radical forms of collective action that flash up at historical moments of sovereign 'crisis', where oppressive (colonial, imperial) regimes are challenged. Rather than these moments demonstrating a clear break of present from past, Motha's work demonstrates that the act of *constitution* gives rise to an 'inchoate' order 'haunted by the eternal return of the unsettled origin' (Motha 2018, p. 3). Rather than existing as a discrete event, 'crisis' persists beyond the moment of constitution and extends into the liberal legal present, making this present a 'problem of unresolved [and continuing] violence' (Motha 2018, p. 3). Liberal law's archive, then, maintains this unwieldy violence within fictions of order. Motha's book asks: how does liberal law do this—how does it succeed in maintaining ongoing and continuous sovereign violence? What are the consequences of these techniques? And most of all, what is the potential for anti-colonial, anti-racist, anti-sexist intervention into these techniques? How can this understanding be used in radical acts of resistance and as sites of contestation? For example, how might Indigenous groups use 'nation' or 'sovereignty' against the grain to frame claims?

## Methods Across Islands and Oceans

McMahon explains her approach in *Islands* as 'informed by the spatial turn in the humanities, now sometimes termed the geohumanities, by which real and imaginary geographies become a vital category of analysis' (McMahon 2016, pp. 21–22). Like Mawani's re-reading of the so-called 'free ocean', for geohumanities scholars, geographies are 'as contested and synthetic as the fields of history and society are now widely understood, rather than background setting or context'. McMahon describes her own study as 'motivated by the new interdisciplinary field of Island Studies, which analyses the materiality, experience and representation of small islands, including their changing status in the history of European imperialism and in the newly globalized economies and geographies of the present' (McMahon 2016, p. 22). In ascribing a double vision to the Western colonial imaginary, McMahon traces how islands are often seen as contained spaces that can be drawn within boundaries that fit on one page and where 'man' can be king (McMahon 2016, p. 5).

Challenging conceptions of the ocean as a limitless and immaterial backdrop is at the heart of Mawani's intervention, and of her proposals for adopting the ocean as method. As McMahon shows, the Western fantasy of the contained, sovereign island is both implicitly and explicitly situated in and on the uncontained and limitless sea. As outlined above, one of the driving aims of Mawani's text is to reveal how casting the ocean as limitless, incomprehensible and free from possession obscures the necessity of Imperial governance of the sea. For Mawani, foregrounding the ocean and movement and change does not entail the absence of colonial power, exclusions or control but instead invites us to see the ongoing juridification of the ocean and challenge existing assumptions about the territorial boundedness and organization of imperial jurisdictions.

Central to Mawani's argument are her reading methods, including her reading of the journey of the Komagata Maru itself, the man who chartered it, and the navigational path it took, which Mawani argues all transcend the clearly demarcated lines of time, space, race, and law. Mawani argues that other critical and historical works in these areas have relied heavily on reading practices based on hierarchical distinctions and demarcations (whether east/west, colony/metropole, subject/citizen) as opposed to convergences. Additionally, previous ways of thinking about colonialism are ill-suited to her purposes: Tony Ballantyne's metaphor of 'webs of empire', for example, is not only static, but problematic because 'webs continue to imply a center' (Mawani 2018, pp. 13-14, emphasis added). 'Beginning with land and territory, what transnational approaches cannot fully grasp is the ubiquity of movement, especially the dynamics of motion against motion. Imperial circulations took place on surfaces that were fluid, mobile, and constantly in flux' (Mawani 2018, p. 13). Moving away from 'fixed and bounded territories to expansive and undulating oceans exceeds the borders of nation and imperial polities, providing an alternative view which foregrounds the interconnections of land and sea' (Mawani 2018, p. 15).

The subject of Motha's book is the 'history work' of the law (Motha 2018, p. 1), and his method involves making explicit the work the law does between the abstract and the particular—specifically, the archive of sovereign violence across the Indian

Ocean. This work is essential to key juridical and political moments, such as constitutional recognition or transitional justice processes (Motha 2018, p. 4). Motha examines legal histories through 'fictions' that have memorial functions—either sustaining destructive socio-legal practices, or inspiring change in ethical or political forms (Motha 2018, p. 1). These fictions, which include histories of sovereign violence, and exclusions from legal jurisdiction, constitute law's archive (Motha 2018, p. 2). Legal origins are suspect: we should sense that they are really assertions of power, and accompanied by violence. Law's 'archival function' is '[s]ustaining the irresolution of sovereign violence' (Motha 2018, p. 3). It is 'the *as if* or the consciously false' that is central to this function, and 'serves as both authority and alibi for sovereign power' (Motha 2018, p. 5).

The modern connection of violence and law is at the heart of the interrogation of logics and aesthetics in each of these texts, as is the historicization of liberal law. We need to recall the genealogy of legal modernism that has led us here. For Benjamin and Derrida, law's thematization of origins has a very dark side. In his essay 'Critique of Violence', Walter Benjamin argues that it is in fact the search for origins (or at least, the narrative of this search) that animates legal violence. In this essay, Benjamin provides an exposition of the logics of natural and positivist law, which are organized by 'means' and 'ends', and produce violence that is sanctioned and unsanctioned by the law (Benjamin 1986, p. 279). Benjamin argues that the law represents itself as mediating and adjudicating violence, and this is power-making (Benjamin 1986, p. 293). Jacques Derrida continues Benjamin's argument by arguing that the adjudication of violence in the law becomes instrumental in supporting the law's claim to authority: its adjudication is 'said to found the law or state' (Derrida 1992, p. 31). Derrida considers 'law', 'justice' and 'morality' within the schema of violence: violence is an operating idea that organizes these concepts, and naturalizes a particular worldview. The paradox is that although law claims it is adjudicating violence, violence becomes the occasion for law to justify its own infliction of power/violence. The key, for Derrida, is that the concept of 'origins' is abstract, not historical-the moment of origins 'always takes place and never takes place' (Derrida 1992, p. 31). These are not Rousseauian origins but rather a continuing, animating concept: for Derrida, origins are about moments of 'emergence', 'foundation', 'iterability' (Derrida 1992, p. 43). While these moments are neither inherently 'just nor unjust', they are represented as just through a 'discourse of self-legitimation' (Derrida 1992, p. 36). Such moments are 'said to found law' (our emphasis) (Derrida 1992, p. 35). It is the control over the means of representation that is crucial, both to the 'emergence of justice' (Derrida 1992, p. 35) and the violence that is inherent in this representation.

#### Interpreting the Voyage

McMahon's and Mawani's texts share major themes, preoccupations and geographies. Read alongside one another, the conversation between the two texts is easy to imagine and stage. Reading *Across Oceans* with *Islands* invites us to read the ocean into and throughout McMahon's theorizing of the island. Equally, McMahon brings the imaginary of the island/s into the foreground of Mawani's text. McMahon's attention to the island as 'a supplement to the continental dominant' both realizes and resonates with Mawani's argument that we must see convergences and continuities—or trouble the assumed discontinuities—between sea and territory (and imperial control of them). As well, and especially productively, Mawani's text helps us see and re-examine the ocean as a frequently latent and unformed background in what McMahon describes as the Western imagination's 'enthralment of the island' (McMahon 2016, p. 5).

McMahon analyses the sub-genre of shipwreck fiction (in prose and poetry) in Chapter Four of her book, 'Accidents of Empire: Shipwrecks and Castaways', as 'a series of broken contracts between author, subject and reader' (McMahon 2016, p. 134), and reads such fantasies as projections of the impending catastrophe of colonialism. The chapter also 'links ships and islands in their shared metaphorics of the state and, in seeming contradiction, as the fantasy antidotes or escapes from its [the states's] confines' (McMahon 2016, p. 134). McMahon reads islands and ships into the state's imaginary of power over territory, arguing that the shipwreck narrative 'dislodges the centre of meaning', destabilizing the normative perspective of control from land to sea (McMahon 2016, p. 146). The effect is to replace normal narrative expectation with a 'paralysis of horrific apprehension and interminable suspension' (McMahon 2016, p. 146). In tracing these narratives, McMahon explores the Western imaginary's emphasis on the causal or narrative relationship of ship to island in castaway stories, whereby 'the ship leads to and from the island, and its voyage is a conventional device of narrative temporality, momentum and teleology' (McMahon 2016, p. 134). If the moment of the 'wreck' is presented as the outcome of broken contracts between author, subject and reader (McMahon 2016, p. 134), then it is a shift back onto terra firma, to the castaway on the island, that restores some 'putative cohesion' in the narrative wreckage. The voyage and the sea are incidental to the move from ship to island (and castaway).

Mawani's proposal, of the ocean as method, subverts the linearity and territorial fixations of the shipwreck/castaway sub-genre. In her reading of Singh's sea travel, more a story of sea voyage rather than shipwreck, she interprets Singh's diaries (and political project) as cutting across genre and form and as deliberately cast outside of narrative time and linear progress. A fugitive rather than castaway, in Mawani's analysis Singh's refusal of chronology and linearity both in the coordinates of his actual voyages and in his writing, engender new form of imaginary *and* anticolonial critique. She writes that:

Singh's *Voyage* had no identifiable beginning or end. His narrative did not start with an event, nor did it follow a smooth or linear chronology. Rather, fugitivity and itineracy were structuring elements, organizing the inconsistencies of form and content. (Mawani 2018, p. 219)

Singh's fugitivity 'engendered and nurtured creative imaginaries ... [and] spawned disjointed temporalities of anticolonial critique and alternative visions of freedom from British rule' (Mawani 2018, p. 217). Critically, Mawani argues that in (and from) Singh's view 'Britain extended its imperial reach across land and sea by way of distinct but entangled forms of racial, colonial, and legal

violence' and that Singh's own claims were that 'Transatlantic slavery, Indian indenture, and immigration prohibitions... overlapped and intersected in ways that were not easily divisible' (Mawani 2018, p. 221). It is perhaps because both Singh and Mawani read Singh's journey 'oceanically' that its disjointed temporarities and non-linearity is clear. It is not a journey from territory to territory (or from even territory to territory and back again after the *Komagata Maru's* expulsion from Vancouver harbour) but rather involves and charts 'a legal and political claim to the sea' (Mawani 2018, p. 5).

This reading of the voyage recalls Suvendrini Perera and her work in theorising the watery and territorial border zones and movement within them. Perera is also less captive of the linear 'trajectories of hopeful [departure and] arrival that shape the narrative of exodus' and instead draws the reader's attention to 'ateleological movements of dispersal' in diasporic migrations 'where no overarching historical or providential design, but a random and banal violence, sanctioned by the state, directs the wanderings of the dispersed' (Perera 2016, p. 2). Her description of a random and banal state violence shaping the wanderings of the dispersed is an equally fitting description of the ships chartered by unauthorised or 'unlawful' captains like Gurdit Singh and their unauthorised passengers, as well as their encounters with sovereign states, territorial islands and overlapping regimes of colonial violence.

McMahon suggests the proliferation of maritime, shipwreck, and castaway island stories 'follows the related processes of national expansion and global trade from the early modern period' (McMahon 2016, p. 139), citing Margarette Lincoln, and a recent volume edited by Carl Thompson which maps shipwrecks in art and literature against antiquity and the present (2013). As McMahon explains it,

Colonial settlements and the transportation of slaves, convicts, indentured labourers and colonizers across the globe meant that more women, children and whole families sailed long distances. Maritime history across this period celebrates the increased capacities, strength and safety of ships, which, nevertheless, continued to be wrecked by storms, reefs, icebergs and unforeseen calamities. These often occurred on or around islands. (McMahon 2016, p. 140)

Adopting Mawani's view would extend McMahon's frame: sites of calamity would include those that took place on the 'free sea' and see the ships' voyage itself as a juridical form (Mawani 2018, p. 16). Mawani invites us to continually see the so-called free sea as a 'domain of Western and European control' just as much as the occupied island territories and their corresponding imaginaries that McMahon focusses on in the Indian and Pacific Oceans (Mawani 2018, p. 238).

Mawani opens Across Oceans of Law with the story of the 1914 voyage of the Komagata Maru (2018, pp. 10–12). The Komagata Maru was chartered by Gurdit Singh, a 55-year-old Punjabi man who hoped to build a shipping company, but the Komagata Maru made only a single journey under Singh's command. Upon arrival in Vancouver, the ship was held up by a system of laws and regulations that had been instituted across Canada, India and elsewhere, to restrict the mobility of Indians (2018, p. 180): when the Komagata Maru arrived at Vancouver Harbour in May

1914, only twenty of the 376 passengers were allowed onshore, while the remainder (including Singh) were kept on board (2018, p. 215). Written without explicit reference to race or nationality, the laws required all prospective immigrants to make a direct journey from their place of birth or naturalization to their port of entry (2018, p. 1003). For Mawani, these laws effectively 'extended Canadian jurisdiction outward, from land and littoral into the Pacific and Indian Oceans' (2018, p. 993).

Gurdit Singh resisted: 'As a British subject, Gurdit Singh... insisted on a legal right to travel throughout the British Empire. By chartering a ship and commanding its transpacific passage, however, he asserted an unparalleled legal and political claim to the sea' (2018, p. 217). Singh initiated a number of legal and political challenges against the Canadian, British and Indian governments. Ultimately, the consequences of Singh's legal and political resistance carried high costs—when Singh reached Calcutta, he spent 7 years there as a fugitive and a further 5 years in prison (2018, p. 218). But the voyage of the *Komagata Maru* 'inspired new forms and intensities of Indian radicalism', and the ship 'came to symbolize the disruptive and subversive force of Indian anticolonialism' (2018, p. 217, 260). For Mawani, the '*Komagata Maru*'s landing in Vancouver produced a set of urgent questions on the legal standing of the sea, the racial, territorial, and temporal bounds of imperial jurisdictions, and the rights of British subjects to move through aqueous and terrestrial regions' (2018, p. 301).

Mawani's compelling proposal, that we should read the Komagata Maru's voyage as challenging 'nationalist and territorial focus of Indian migration histories' is not focused on the variegations and hierarchies of territory or imagined territory. In Mawani's argument in favour of an oceanward shift of gaze, the text confirms McMahon's claim that from the 19th century onwards, islands, especially smaller islands, lost their status and visibility in our mapping of the free and territorial sea. Reading Mawani alongside McMahon draws attention to what McMahon describes as the primacy of the continent or continental landmass, and reveals that island territories, by comparison, receded in the collective imaginary. McMahon suggests islands have become increasingly invisible since the 19th century-having lost their status for marine access, trade, and ease of control (McMahon 2016, pp. 4–5), particularly as the technologies of seafaring were honed and improved. Islands were and have been obscured by the focus on the continent in modernity (McMahon 2016, p. 5), and more recently globalization (McMahon 2016, p. 5). So while Mawani's work forcefully draws us away from 'fixed and bounded territories' as the primary sites of empire, McMahon's work reminds us that not all fixed and bounded territories are imagined as equal, or even as fixed or bounded: by contrast, studies by non-European islanders 'show a range of vastly different perceptions concerning space and inhabitation' and highlight 'the very particular, circumscribed spatiality of the island in the Western imaginary' (McMahon 2016, p. 22). It is at this point that both texts work to challenge the imagined distinctions and categories of landmass, coasts and sea and, following Epeli Hau'ofa, at times even disappear the boundaries between land and sea altogether (McMahon 2016, pp. 11–12).

Part of McMahon's project is to critically re-read the Western island imaginary that 'suture[s] the island to a possessive desire that degrades islanders as objects' (McMahon 2016, p. 12), by turning to writers and theorists who work to dismantle

tropes that lie deep in the unconscious of western modernity. McMahon's Chapter 5 complicates her earlier theory of apocalyptic colonialism by exploring the relationship between utopian and dystopian fantasies of the island. Here, McMahon unites the book's central idea of the destabilizing effects of the island and the role of the island in re-imagining political and social life. McMahon argues that a number of exemplary texts—enduring Torres Strait Islander myths as well as recent monographs including Ralph de Bossiere's 1952 novel *Crown Jewel*, Maori author Patricia Grace's *Mutuwhenua* (1978), Chloe Hooper's *The Tall Man* (2008), Alexis Wright's *Carpentaria* (2006), and Terry Janke's novel *Butterfly Song* (2005)—subvert the imperialist worldview.

Mirroring Mawani's insistence that ocean as method is both metaphorical and material, in *Islands* McMahon introduces the metaphorical parallels between modern cartography and literature (McMahon 2016, p. 7) and suggests, that 'neither the real nor the metaphoric domain has primacy, the two are in constant and perplexing contest' (McMahon 2016, p. 7). This contest between the material and metaphorical island recurs in McMahon's treatment of the island throughout, foregrounding and repeating the tension between the 'island ideogram', the material history of island geographies and modern cartography (McMahon 2016, p. 5). McMahon proposes that a unique aspect of the island's doubleness is its capacity 'to confound the separation of history and literature and their connected materialities' (McMahon 2016, p. 6). The island reveals the interconnection of history and literature, as well as revealing the dynamism of their mutual constitution. The island's doubleness is a central focus of McMahon's book. McMahon describes the island's doubleness through the reader who knows:

when a text presents an initial depiction of an island's perfection this ideality is an illusion and that the island's beauty and the sense of autonomy it accords to visitors will soon be matched by an equal measure of ugliness, evil and subjugation. (McMahon 2016, p. 6)

In continuing to trace this 'endemic contradiction', McMahon writes that on the one hand, the island is often a 'fetishized object', a static trinket or jewel—but this fantasy is also undone at other times of the imaginary, 'revealing an energetic volatility that belies the surface veneer of its allure' (McMahon 2016, p. 7). In McMahon's attention to the island and its unstable place/s in British Imperial history, there are echoes of Mawani's claim that reading history oceanically challenges the vision of a stable, Imperial centre, which also reveals colonialism's 'ubiquity of movement'. Mawani traces the way in which 'Imperial circulations took place on surfaces that were fluid, mobile, and constantly in flux' (Mawani 2018, p. 13). McMahon sees a similar fluidity and flux in Western conceptions of and fantasies about the island and of colonial and imperial territories.

## Power and History Within the Colonial Imaginary

Motha's book claims the Indian Ocean as its scope, exploring the realm as a space of freedom, as a securitized zone (the Chagos Islands) and, most recently, as an extra-judicial zone purportedly beyond the jurisdiction of the Australian courts (Motha 2018, p. 18). Authority demands a story, Motha claims, and the fictions used in these processes endure (Motha 2018, p. 20). These fictions also disguise the ways law recognises (and yet disavows) sovereign violence, while preserving the sovereignty founded on that violence (Motha 2018, p. 20). Here, law is called on as an 'alibi' to sovereign authority, and law also serves an ongoing role as an accomplice (Motha 2018, p. 24). For Motha, it is important to recognise that both the establishment and ongoing continuation of sovereignty '*rely on* juridical mediation' (Motha 2018, p. 32, emphasis ours). In other words, 'the *as if*, legal fictions, hold together this edifice of sovereignty' (Motha 2018, p. 37, emphasis Motha's).

The stakes of Motha's argument concerning law's complicity are articulated across particular political-legal urgencies and we cannot do justice to the nuances of all these case studies here, but we will begin by drawing out Chapter 3, which focuses on the juridical use of sovereignty in Stolen Generations and Native Title cases in Australia. Motha asks:

What is the meaning of acts of violence perpetrated by a state, its officials, or other individuals ... where the acts in question involve the foundation and perpetuation of the legal system, the nature of the sovereign 'event' goes to the heart of law as an archive of violence? (Motha 2018, p. 52)

Over and again, in the context of both Stolen Generations and Native Title cases, the courts have denied the *fact* of colonial genocide and also denied *the legal application* of the concept of genocide. Motha claims that sovereignty and genocide appear together in these cases, and appear inseparable. In these circumstances, sovereignty 'may be a genocidal formation':

When the law established by this sovereign formation (of Australia) says that genocide is 'not cognizable' in that jurisdiction, the archive of that sovereign formation is destroyed. The fact of genocide is expunged ... the meaning of that violence, the meaning or 'sense' of the fact, is denied. There is sovereignty, but no genocide, the courts claim. What is the meaning of this denial? (Motha 2018, p. 52)

The answer to this quandary is that the law proceeds '*as if* its origin is legitimate and beyond question' (Motha 2018, p. 52, emphasis Motha). These strategies are instantiated in Gummow J.'s curious formulation of law's conceptualisation of native title in the *Wik* judgment, as relying upon past assumptions of historical fact, now shown then to have been false (Motha 2018, p. 54). In the process, a contested colonial sovereign assertion—an origin of law that never took place as a singular event—is divided, and altered. Understanding the history of colonial violence needs to go beyond an exercise of knowledge production—beyond a pragmatic assemblage of what can be usefully known or admitted ... in part because the common law decides the ambit of knowledge that will be reviewed at any one time, its process forming part of its 'act of literature', part of its 'as if' (Motha 2018, p. 54). Each moment of constitution involves an 'impetus to forget', which in turn leads to hauntings and remnants that lie unresolved (Motha 2018, p. 54).

The nature of this legal-sovereign power has been excessive rather than repressive-and this has been exemplified by the colonisation of islands, following what Motha describes evocatively as a 'waterborne law' that has moved 'from the United Kingdom to the Indian Ocean' (Motha 2018, p. 38). Motha explores these concepts in some detail through the Chagos Archipelago-Bancoult (No. 1) and Bancoult (No. 2) cases, where the court considered the legal effects of redefinitions of territory as well as the 'emptying' of the archipelago of its population. The Chagos Archipelago was retained as British territory under the 1965 British Indian Ocean Territory (BIOT) Order, in the interests of US and UK security and defence and was 'emptied of its population' so that a military base could be established (Motha 2018, p. 25). By expelling the population, Britain circumvented the UN Charter, which would have otherwise protected the rights of the islanders had they remained. In 2010, Britain made the Chagos Archipelago part of a Marine Protected Area, essentially to end the question of whether the Chagossian population should be resettled by arguing that resettlement would constitute a threat to the now-protected environment (Motha 2018, p. 26). In the case of the Chagos Archipelago, an amphibious interpretation of the law allowed British officials to both include and exclude elements of the Colonial Laws Validity Act of 1865 to suit their needs: they 'had it both ways-finding it [the law] was located here and there' (Motha 2018, p. 44). Motha finds this to be 'the image of a distortion' by which 'a sovereign who purportedly creates a law by his own means for his own ends. Amphibious law is an expression of such sovereign solitude' (Motha 2018, p. 45).

'Sovereign solitude' can only be established through a fiction:

As with previous imperial instantiations, an uninhabited space ripe for sovereign solitude needed to be created. A fiction was at the heart of creating this nothingness. A key strategy of the British government was to proceed as if there was no permanent population in the Chagos Archipelago. (Motha 2018, p. 40)

Motha provides evidence that British Officials deliberately 'concoct[ed] the sense that the islands had no [I]ndigenous population' and even referred to this as 'main-taining the fiction' (Motha 2018, p. 40). A 2009 cable contained the phrase 'no human footprints' to describe the desired/pretended state of the area (Motha 2018, p. 47). Further, Motha examines leaked cables and other documents in which British officials referred to the Chagossians as 'Men Fridays', arguing that 'Crusoe stands for the character of sovereign solitude, the quality of being sovereign, which the Chagossians cannot (must not) even dream of' (Motha 2018, p. 38). Motha suggests that the persistence of allusions to *Robinson Crusoe* in these documents points to the significance of the role of fiction in assembling sovereignty. In particular,

the figures of Crusoe and 'Man Friday' 'continue to mark the limits of the political' (Motha 2018, p. 38). Although the Chagossians were initially described in the Foreign Office memos as 'Men Fridays' in ways which suggested that they were 'expendable savages', when the question of resettlement came up much later, British officials considered them now no longer able to live 'Crusoe-like' on the island, and essentially incapable of the 'ingenuity and independence' represented by Crusoe. Crucially, for Motha, the 'move from Friday to Crusoe in the bureaucratic and judicial lexicon signifies the condition for ascending to the level of political life worthy of recognition' (Motha 2018, p. 46). In conclusion, Motha writes that in the series of Chagos cases we have observed that 'Tarzans' and 'Men Fridays'-that is, an irremediable savagery-is indispensable to the production of a Crusoean sovereign phantasy. The island-solitude that the sovereign craves demands 'no human footprints'. This vacuity, absence, and emptiness points to a recurrent theme in law's archive of sovereign violence. The assertion of sovereign solitude and the extent to which courts sustain it through a recurrent Robinsonade point to the role of fictions in archiving sovereign violence. (Motha 2018, p. 48).

## **History in the Present**

It is their capacity to read the history in the present that is especially compelling in these texts, and each author takes seriously the tasks of both turning to projects that have resisted colonization in the past, as well as projects that push against the consequences of this violence in the present. In addition to its critical project, McMahon's book does the work of *re-imagining* the Western figuration of the island—turning to resistant texts and reading them against the grain of the dominant imaginary. McMahon provides a number of counter readings but here we will focus on the contemporary Australian texts she reads. Alexis Wright's dystopian novel Carpentaria (2006) moves from the edge of the continent to the surrounding ocean and islands. Carpen*taria* ends with an apocalypse, and its main character surviving on a floating island comprised of the literal rubbish of global capitalism. McMahon writes that the novel is structured 'around binaries as alternatives, which are accorded ethical value and assume negative or positive valency according to shifting criteria' (McMahon 2016, p. 154). The novel authorises the voice, law and point of view of the Aboriginal people, not that of the coloniser—and it is the indigenous vantage point that morally vanquishes both the human corruption of the colonial border town of Desperance, the evil multinational mining company and the nation-wide damage caused by the hundreds of years of colonisation (McMahon 2016, pp. 155–157). McMahon says:

The novel neutralizes all alternatives premised on colonialism, as all are flawed by definition. It does not suggest that the history can be undone but that the process of speculating on the present and future needs new ground/water to begin. (McMahon 2016, 158)

Writing of one of the novel's final images, the floating island of rubbish, McMahon says: 'Will's floating island defetishizes the island and as the nation state, and the

island's mobility and abjection prohibit its fetishization as an achievable possession or jewel' (McMahon 2016, p. 158).

McMahon then shifts her focus to the Torres Strait, to Thursday Island, where the absence of a clear boundary between land and sea means the island is never materially contained as a reality, 'does not seem graspable as an object' (McMahon 2016, p. 159). Here, 'The island is not its own boundary but is located within a broader geography and cosmology' (McMahon 2016, p. 158). This geography is explored through 'Wamin Ngurbum' (Wami's Banana Tree), told by Elder Wees Lawia on Moa Island in 1967 (McMahon 2016, p. 158), and Terri Janke's novel Butterfly Song (2005). Butterfly Song is a novel of mobility, along the eastern seaboard of continental Australia, into the Torres Strait and beyond. Butterfly Song builds what Peter Sloterdijk terms a 'global foam' (2004)—a 'mobile, interdependent, island shelter that contains its own cultural surplus for the present and future' (McMahon 2016, p. 158). In McMahon's reading of Chloe Hooper's The Tall Man (2008), McMahon argues that Hooper reverses the usual dominant gaze that subjugates the island, by invoking Palm Island as sublime, and according it a monstrous agency (McMahon 2016, pp. 160–162). This reading provides an original way to understand the abject failure of Australian state law to hold police officer Christopher Hurley responsible for the murder of Cameron Doomadgee while in his custody.

Mawani presents an argument for the contemporary relevance of her argument in the last chapter and the epilogue of the book. The epilogue brings her methods and argument into the present through a focus on the regulation of the Mediterranean Sea, and the (raced, abjected) bodies seeking to enter Europe via its waters. It is, however, impossible not to appreciate the urgent contemporary relevance and resonance of the 'ocean as method' from the outset of Mawani's text. Indeed, each of the texts presented here offers a methodology or methodologies for reading present-day colonial and imperial exercises of power and violence. The present-day boats and bodies that travel across oceans in defiance of colonial logics, like the Komagata Maru, are met with violence and organized systems of racial exclusion and punishment; passengers are expelled to colonized and remote island territories, and their expulsion and incarcerations rely on the precise legal fictions that Motha identifies holding together the 'edifice(s) of sovereignty'. Though unlike the *Komagata Maru*, rarely do these boats manage to successfully reach the territory or territorial waters of the states where they are seeking safe harbour. Instead, they are held, interdicted or boarded on the high seas. As territorial borders are shut down, and 'Europe's consciousness seems to end at its physical borders' (Leurs and Ponzanesi 2018, p. 7), the 'action' and violence of exclusion takes place elsewhere, and frequently at sea. Leurs and Ponzanesi highlight that while European Union politicians celebrated a six billion euro agreement with Turkey to shut its borders and land passage as a solution to the crisis in 2015, publicly available data demonstrated 'that the proportional death rates and massive loss of life in the Mediterranean Sea' progressively rose each year following that so-called solution (Leurs and Ponzanesi 2018, p. 7).

The magnitude of violence and death on the Mediterranean and the fact that the *Komagata Maru* (in its previous incarnation as the *Sicilia*) made regular stops there, led Mawani to end *Oceans* on that particular sea (Mawani 2018, p. 236). She writes that

Perceived as a maritime border that separates North and South, East and West, the Mediterranean is thought to be in need of protection from the small, precarious, and overcrowded vessels that have long been viewed as the antithesis of Europe. Growing militarization has resulted in tens of thousands of deaths. (Mawani 2018, p. 237)

Mawani suggests that 'these contemporary sea passages might be read as the most recent struggles in a much longer genealogy of the "free sea" (Mawani 2018, p. 237).

Mawani discusses the sinking of a fishing trawler off the coast of Libya after it was hit by the Portuguese commercial ship that was supposedly coming to its rescue. The Tunisian captain and his Syrian crewmate were arrested on charges of multiple manslaughter and aiding illegal immigration. 'The contemporary Mediterranean is filled with vessels, under the supposed command of black and brown captains. Like Singh, many of these men have been characterised as corrupt and despotic criminals, and in more recent idioms, as "human traffickers"' (Mawani 2018, p. 237), or 'the absolute scum of the earth' and 'the most evil trade' as they have been referred to by Australian Prime Ministers (Missbach and Sinanu 2011). Mawani underscores the fact that 'the freedom of the sea engenders a mutability of maritime jurisdictions', arguing that Europe has exploited (and continues to exploit) the elasticity of maritime law and jurisdiction to avoid engaging in rescues and assisting migrants.

Thus, 'the contemporary Mediterranean is a potent reminder that the so-called free sea remains a domain of European and Western control' (Mawani 2018, p. 238). This observation is borne out in the recent, high profile case, in which Carola Rackete, the captain of an NGO rescue boat faced a 2-week standoff on the high seas with the Italian Government. Italy was prohibiting the rescue boat and its forty 'migrant' passengers, as reports referred to those who departed the Libyan coast, from docking in Italy. Defying the Government's threats, Rackete charted the ship into the island of Lampedusa, colliding en route with an Italian border control vessel. Italy's interior minister cast Rackete as a criminal, a pirate, and an enemy engaging in 'an act of war' against Italy (Povoledo 2019)—and she was immediately arrested after disembarking on Italian soil.

Mawani's observation that that scale of racialized control, violence and death on the contemporary Mediterranean echoes 'the forced passages of slaves, indentured laborers, and of other involuntary and "free" migrants', calls up recent work which has challenged the language and politics of a 'migrant crisis' on the Mediterranean through a focus on the history of sea crossings and of the sea itself. Recent scholarship has connected contemporary migrant crossings of the Mediterranean with the history of slave ships and transportations across the Atlantic. Following Gilroy's *Black Atlantic*, this important work has centered around the idea of the 'Black Mediterranean' (Gilroy 1995). As Ida Danewid writes:

The term 'Black Mediterranean' has recently started to surface amongst academics, artists, and activists to describe the history of racial subordination in the Mediterranean region. Inspired by Paul Gilroy's Black Atlantic, the 'Black Mediterranean' invites us to place the contemporary migrant crisis in the context of Europe's constitutive history of empire, colonial conquest, and transatlantic slavery. As [Saucier and Woods] explain, the Mediterranean 'has been an ongoing crisis for black people for the better part of the past and present millenniums [sic]'. (Danewid 2017, p. 1679)

Danewid, and others exploring the idea of the Black Mediterranean, argue that the Mediterranean 'migrant crisis' should not be viewed 'as a moment of exception or as a discrete event in time but, rather, as a late consequence of Europe's violent encounter with the Global South' (Danewid 2017, p. 1679).

Given our (the authors') location within the Indian and Pacific Oceans, and the similar nature and scale of violence exerted over those seas by the Australian state, it strikes us that Mawani's analysis of the 'migrant crisis' on the Mediterranean could equally have been applied to and remained on the waters of the Indian Ocean, albeit on a smaller scale. 'Operation Sovereign Borders' (OSB), the current centrepiece of the Australian state's national and bilateral policing of the Indian Ocean and Pacific Ocean, is one example of such violence and contemporary colonial power over the sea and its island territories. That 'operation' is described by the Australian Government as 'a military-led border security operation aimed at combating maritime people smuggling and protecting Australia's borders' (Department of Home Affairs 2013). Since 2013 the primary focus of this 'militaristic joint agency task force' has been the interception and turning back of asylum-seeker boats 'on the high seas' or in Australia's contiguous zone (authors' emphasis). Most of OSB's work is kept secret on the grounds of national security, though monthly 'operational updates' provide cursory and bare warlike summaries of activity for the relevant 'reporting period' (Australian Border Force n.d.). Under OSB, there is no public right to know about what are called 'on water matters' because they are 'on water matters'. This circular reasoning that what happens on the water is simultaneously a matter of national security but not a matter of national concern has been frequently been deployed to shield the actions of the Australian military on the high seas from scrutiny and public debate.

McMahon writes that in Australia, in an era of global mobility, 'islands are the focus of asylum seeker policy and practice, as Australia uses its (poorer) island neighbours in the bid to keep refugees out of its sovereign territory' (McMahon 2016, p. 14). Indeed, in the context of Australia's 'Pacific Solution' Nauru and Papua New Guinea are persistently referred to as remote, 'uninhabitable' and as sites that are 'offshore' to the (Australian) metropole. Here, these former Australian colonies and island states 'function as key sites of territorial struggle where nation-states use distance, invisibility, and sub-national jurisdictional status [and] operationalize Ong's "graduated zones of sovereignty" (Mountz 2011; Ong 2006). What Oceans brings to the fore is the fact that this operation and the corresponding 'on water' operations of destination states for forced and unauthorised migrants, have very little to do with territorial borders or even territorial waters and is, in fact, best analysed 'oceanically'. As Perera notes, OSB encompasses the space of the open ocean and OSB's particular form of theatre and violence is enacted upon the sea (and those crossing it) (Perera 2016, p. 4). Reading OSB and Australia's policy of 'Offshore' Processing oceanically not only brings the rich history of unfree migration across the Indian Ocean into sharp focus but reveals that the OSB is one of control over seas, rather than a project focused on (imagined) territorial borders. By its own measure the Operation

has failed where the excluded arrivals reach state territory, and so the action must take place before this moment and prior to the (shifting) places of territorial border.

Unlike much legal scholarship, which Mawani observes to have an 'especially pronounced' emphasis on land, territory and nation, Perera theorises the 'border-scape' as constituted by land and sea, and refuses to centre territory in Australia's regulation of the imagined and real border zone which is in her description 'multi-dimensional and mobile', encompassing 'the itineraries of moving bodies' (Rajaram and Grundy-Warr 2007, p. 206). In discussing OSB and its regulation of the seas around Australia, she writes,

This on-water realm is both a material and a floating space.... 'On-water' as a space both within and outside the law is swathed in a very public shroud of secrecy: 'On-water' belongs in the realms of what Khaled Ramadan refers to as the 'chamber of public secrets' the secrets we know yet must not know.... At the same time, on-water is a chamber of horrors that houses the bodies and bones of the drowned and disappeared. The Borderscape moves between land and sea, traversing national borders. (Perera 2016, p. 4)

As with the European Union's border management agency, *Frontex*, and its extensive maritime arm, OSB forms part of a 'long and protracted history' of struggles over the free sea (Mawani 2018, p. 34). The 'unauthorised' passage of asylum seekers from South East Asia to Australia casts the free sea as still a site of colonial, 'anti-colonial and racial contest over the legality of oceans and maritime spaces' (Mawani 2018, p. 34). And yet, the entire 'on water' project—is frequently described and imagined as one of territorial exclusions and control. This is the case even as OSB is known to conduct its interceptions far from Australian waters, often by returning asylum-seeker vessels to the edge of (or indeed unlawfully into) Indonesian territorial waters (Amnesty International 2015). Astoundingly, there is little to no discussion of the 'seas' or maritime spaces in which OSB operates; the extent of its jurisdiction is never explicitly considered, it is simply acknowledged that OSB officers will board and 'turn back' ships 'when safe to do so'. Similarly, recent deaths on the Mediterranean are described 'not as maritime violence, but in terms of landfall, nation, and sovereignty, as Europe's last "migrant crisis"' (Mawani 2018, p. 237).

#### Resistant Readings and Archival Readings

Each of the three texts presented here engage in critical forms and acts of resistance to law and literature's dominant—and violent—modes of representation and imaginaries. Motha, Mawani and McMahon each chart how the material geographies and imaginaries of colonialism have been used as sites of counter-claim and resistance. Throughout *Archiving Sovereignty* Motha insists that our understandings of the history of colonial violence need to go beyond an exercise of knowledge production—beyond 'a pragmatic assemblage of what can be usefully known or admitted' in part, because the common law decides the ambit of knowledge that will be reviewed at

any one time, its processes of production forming part of its 'act of literature', part of law's violent and iterative 'as if'. While each moment of constitution involves an 'impetus to forget', these also in turn lead to remnants, hauntings and fissures that are unresolved and open to re-reading and reinterpretation.

Motha turns to non-legal authority, to exemplary works of art by Anselm Kiefer and T. Shanaathanan, in particular, to point to an archival future beyond state sovereignty and common law. Motha invites the reader to engage with an "'off modern" mode of representing topography and memory, space and time' and with modes of production that work out-of-synch with legal modernism. Motha does not suggest that we that abandon 'formal juridical claims or demands for justice' but 'rather that we seek an "off modern" position when assembling the archive'. He argues (2018, p. 145) that

political form of the postcolony has persistently been taken from a Euro-imperial formation of national sovereignty... [and] the history-work of law... has not managed to depart from imperial sovereign formations and the conception of community through an exclusionary nationalist project.

Further, that although archival 'fragments of law, sovereign violence, and time thwart the sense that there can be an end-time to imperial power', they also reveal the need 'to chart another postcolonial "heading"—and that 'an archival future is ever present and awaits us' (Motha 2018, p. 145). Motha discusses the contemporary rise of right-wing populism, which is 'provoking a return to national sovereignty as the dominant juridical and political horizon', which he considers to be based on the flawed assumption that economic disruptions are caused by global capitalism, which can only be brought to an end by a return to greater national control of sovereign borders. Motha argues that 'this sense of a pure, detached, autonomous, self-sufficient form of sovereign solitude as antidote to "end-times" is ... a phantasm, I have suggested we should eschew both the incessant assertion of "crisis" and the sense of a proliferation of "end-times" (Motha 2018, p. 148).

Mawani's radical re-reading of the *Komagata Maru's* voyage, Gurdit Singh's diaries and the 'disruptive and subversive force of Indian anticolonialism' reassembles and re-presents the legal and historical archive (Mawani 2018, p. 6). Her 'oceans as method' gives rise to 'new spatial-temporal accounts of colonial, imperial, and racial power that coalesce in the ship and its movements along the sea' (Mawani 2018, p. 10). Further, by sketching a wider constellation of racial and colonial violence, and by connecting transatlantic slavery to Indian indenture and so-called free migration, Mawani and Singh both '[disrupt] the temporal linearity that was so central to universal history and to British legality' (Mawani 2018, p. 227).

The contestations over the imperial project's spatial, temporal and racial inscriptions (Mawani 2018, pp. 231–232) are revealed in McMahon's presentation of the unresolvable contests that she navigates between the material and metaphorical island. McMahon presents West Indian literature and anti-colonial writings as profoundly disputing the centrality of 'outworn categories' of 'small' islands as amodern and prehistorical, in comparison with the 'monolithic modernity of continents and their metropoles' (Mawani 2018, p. 108). Just as these counter-imaginaries rewrite the island and 'models an archipelagic consciousness' they also portray the 'impossibilities of island living, laying to rest any residual fantasies of the island paradise' and detailing 'the brutal conditions that force migration', where the conditions and metaphorics of island living are inseparable from the legacies of colonial conquest.

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