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To cite this article: Stephanie Jones (2015) The absent pirate: exceeding justice in the Indian Ocean, Journal of Eastern African Studies, 9:3, 522-535, DOI: [10.1080/17531055.2015.1087682](https://doi.org/10.1080/17531055.2015.1087682)

To link to this article: <https://doi.org/10.1080/17531055.2015.1087682>



Published online: 28 Sep 2015.



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The absent pirate: exceeding justice in the Indian Ocean

Stephanie Jones*

Faculty of Humanities, University of Southampton, Southampton, UK

(Received 3 February 2015; accepted 19 August 2015)

Legal, literary and visual archives are replete with absent pirates. It is remarkable how often the pirate is only partly delineated or seen from a distance, is ghostly, or plotted off-stage. These figurations variously nerve and unnerve imperial discourses and narratives of justice. This paper addresses some recent, fictional non-representations of ‘the Somali pirate’. I propose that this absenting of the pirate is critical to the texts’ various approaches or reproaches to justice. I further suggest that these fictions are concerned with an ethics of proximity – of physical space and geographical affect – that exceeds the primacy and virtue of ‘justice’.

Keywords: Nuruddin Farah; Paul Greengrass; Indian Ocean; justice; Tobias Lindholm; piracy; Somalia

Within the past five years, a genre of fiction about piracy off the coast of Somalia has emerged in the global Anglophone market.¹ In line with the high-octane pace, conventions and compulsions of the pulp fiction thriller, the moral positioning of characters in these narratives is often slick or brittle. Either way, this fictive profiling of ‘the Somali pirate’ tends to work in continuity with a long tradition of juridical definition, which figures the pirate as *hostis humani generis*.² He is the enemy of all. And he is so, not just in the narrow universal jurisdictional sense of being the enemy of all states.³ As the enemy of all, he appears as a kind of anti-human, anti-humanist, anti-humanitarian, even non-human force.⁴ Of course, when it comes to these fictions, the presentation of this not-quite-human enemy can be adduced to either a failure of characterisation, and/or to a concentrated prioritising of a different mode of narrative complexity and sophistication. But we might also say that in the purity of his violent presence, the Somali pirate appears as a kind of absence. He is not rights bearing, not familial; not a citizen or subject. He is more like a malignant weather pattern than a man. As, indeed, pirates are equivalent to a force of nature under the law, particularly within marine insurance law.⁵

Masefield and Amlin was arguably the most discussed marine insurance case to emerge from the high period of piratical activity off the coast of Somalia.⁶ The case turned on whether, upon seizure by pirates, a cargo should be deemed a total loss. The elaborate discussion of the obvious and finer legal distinctions between ‘actual’ and ‘constructive’ loss involves much that might engage a scholar of fiction. But for

*Email: s.j.jones@soton.ac.uk

the moment, I am interested in the moves through which Justice Steel, in the initial 2010 decision, addressed the proposal that ransom payments to pirates, while not illegal, should be deemed against public policy. This is what Steel J. says:

I am wholly unpersuaded that it would be right to categorise the payment of ransom as contrary to public policy. ... There is no clear and urgent reason for categorising the activity [ransom] as contrary to public policy. ... This conclusion is fortified by the wider implications of any contrary conclusion. Kidnap and ransom cover is a long standing and important feature of the [marine] insurance market. Are such policies (acceptable to the industry) to be rendered unenforceable?⁷

The question ends the paragraph, and is entirely rhetorical. This flourishing sense is enhanced by the language in which he surrounds the quoted statement. He goes on to say that 'The [negotiated] payment was in fact reasonable given the contrast between the sum required [by the pirates] and the value of the property ...'.⁸ And earlier in the judgement, he had also noted that 'the ransom sought, whilst large, was on a par with sums paid by other owners and represented only a tiny proportion of the overall value [of the cargo]'.⁹ In the appeal decision, the three judges concur with Steel.¹⁰ A highest British court endorses this smooth language of proportionality and reasonableness.¹¹ This language is not only respecting the market. What we get here is not just or even the idea that piracy and ransom are part of a natural law in its Grotian formation as the natural law of trade.¹² We are given ransom as a symbol of proportionality itself. Following the work of Wai Chee Dimock and others, we might observe that the proposed balance of the transaction between cargo and ransom makes it appear as a very symbol – as an icon – of justice itself.

In her book on *Residues of Justice*, Dimock worries about the instinctual fundamentality of ideas of justice across cultures, and in languages from the legal philosophical to the colloquial. She worries about its weighty position as – to turn to John Rawls's much quoted phrase – 'the first virtue'.¹³ Dimock summarises her key concern: 'we tend to see justice as a virtue at once transcendent and intrinsic, foundational and all-encompassing, a virtue ... expressively answering to the scope of human reason'.¹⁴ Against this, she contends that this ubiquitous 'dream of justice' is descriptively thin and 'palpably impoverishing of the world' because it involves the 'reification of commensurability itself'.¹⁵ She writes about yearning for punishments equal to the crime, redress equal to the injury, benefit equal to dessert, and of how this yearning troubles her as it has troubled so many intellectuals, from at least John Stuart Mill onwards. And so she seeks ways of acknowledging what she terms the 'residual' and the 'noncorresponding': that which cannot be fully accounted in the measurements of justice, but which yet might have ethical weight.

Dimock's language enables a neat summary of the anxious affect of the *Amlin* decisions. For of course, the commensurable idea of natural justice pursued in these judgments can only be yielded by a discourse that nervously elides the pirate and the act of piracy itself: that 'noncorresponding' – that 'residual' – moment of predation and violence that would disrupt the industry's (and so the court's) 'dream of adequation'. The *Amlin* decisions were greeted with relief by a shipping industry that did not want their ability to pay ransom slowed-down by any need to account for the ethics of that figure and that violent moment. To do so would constrain the movement (fiscal and physical) of trade. As if it needed bringing into relief, the *Amlin* decisions draw-out capitalism's primary and oceanic need to keep things moving. The

'commensurabilities' in which it finds moral grounding for this privileging of movement cannot abide the pirate and the act of piracy: and not only because that brings the ethics of ransom payments into question. It would too easily enable the perception of continuities between legitimate and illegitimate forms of violence. The preclusion of an interrogation of capitalism's violence is not, however, always or necessarily the effect of a discursive absenting of the pirate. Indeed, my introductory turn to Steel J.'s rhetoric is not only designed to bring into relief the tight, brute reasoning of capitalism; or even the ways in which the law is over-determined by that reasoning. It is rather to contrast the different relationships between the absenting of the pirate and ideas of justice that are enacted in three recent fictional renditions of piracy off the coast of Somalia. Or more precisely, it is to help to bring into relief what might be at stake in my argument that the non-representation of the pirate is crucial to the approaches/reproaches to 'justice' pursued in Nuruddin Farah's 2011 novel, *Crossbones*; Tobias Lindholm's 2012 art house film, *A Hijacking* and Paul Greengrass's 2013 blockbuster, *Captain Philips*.

***Crossbones* (2011)**

Inter-disciplinary studies of law and literature have often been framed by the idea that greater attention to the sensibilities and forms of fiction can enable more ethically acute practices within legal cultures. The idea is of the literary as a mechanism for the finer calibration of the scales of justice. It is not necessary to be dedicated to either an economic analysis of the law or a poststructuralist approach to the world to be suspicious of the righteous conception of fiction and poetry that this might entail. So it is with an uncomfortable awareness of my schematic positioning of *Amlin* as apparently symbolic of the law's ethical obtuseness that I move towards a reading of Farah's supple literary non-representation of the Somali pirate. However, one of the important aspects of Farah's novel is, precisely, its complex relationship to a discourse of righteous correction. I aim to suggest that what is gripping, curious and concerning in all three fictional narratives is their various resistances to readings in search of correction or calibration.

Crossbones is the final work of a trilogy. As is common in Farah's *oeuvre*, key characters whose narratives are unresolved in the earlier texts – *Links* (2004) and *Knots* (2007) – are given conclusions as more minor characters in *Crossbones*: and more minor characters from earlier books inhabit the foreground of this final instalment. The story is set in 2006, and works on the friable atmosphere created by the invasion of Somalia by Ethiopian troops. But it is also, staunchly, a realist account of the daily domestic and public lives of a wide cast of women and men: it refuses to bind their lives entirely to the drama and destruction of the invasion. However, when Farah spoke about *Crossbones* at the Southbank Centre in July 2012, he more forcefully promoted it as a response to the way in which piracy in the region has been reported.¹⁶ He valued his novel as a correction to the distortions of what he termed the Western media and Western governments. He described visiting the town of Eyl – infamous as a pirate 'stronghold' – and witnessing poverty that refuted stories of vast pirate wealth being accrued in the country. He positioned the novel as an accurate representation of a global pirate economy that ensured the disenfranchisement of young Somali men. But the author's summary presentation of his novel is not entirely consonant with his narrative's more complex relationship to the facts. (The way in which Farah spoke is perhaps more interesting as a measure of the audience's desire for a certain

kind of political moment than a measure of the novel's literary quality.) Within the narrative, the details of piracy and the pirate economy are notably given in the voice of a sleazy and untrustworthy character.¹⁷ Fidno is a liar, a significantly unreliable witness, and is complicit in the violent *denouement* of the story. Given as part of his self-serving narration of Somali piracy, the veracity of these 'facts' are compromised. The novel, in other words, seems more concerned with some other mode of truth. One way in which this might be understood is through Farah's deliberate failure directly to represent a Somali pirate.

We are well over halfway through the narrative before Malik, the Somali-American investigative journalist at the centre of the text, almost meets a pirate. The man he meets was once a pirate, but is now a carpet salesman. Marduuf enters late in the narrative, and he is told through his attitudes to other characters. Set against Fidno, and in protective relationship to his brother and sister, he is positioned as a good and truthful man. The interview between Malik and Marduuf concentrates on setting this up: and only very briefly touches on piracy. Marduuf is never asked to or offers to justify piracy, to talk about protection of fishing grounds in the absence of a functioning government, or to speak against toxic dumping, or to describe the pirate economy. That obvious scene – the scene that seemed to be promised by Farah's own description of the novel – is missing. In its place, we are given the two men in a small room in Mogadishu, discussing the fate of Marduuf's younger brother.¹⁸

This younger brother, known as Small Thing, was recruited by 'Shabaab' through the local mosque, and has been killed by his handlers for messing-up his mission to set up a safe house. The pathetic and darkly humorous story of Small Thing opens the novel, and the boy's mistaken route through the suburbs sets-up the narrative as a significant engagement with Mogadishu as a geography of injustice: or with justice as, to use Edward Soja's term, 'a consequential geography'.¹⁹ In this and other novels, Farah's concentrated representation of Mogadishu's public, private and public/private spaces might be read as dramatising – as making felt – the ideas of 'spatial justice' offered by urban theorists like Soja and David Harvey.²⁰ But these theories do not quite capture all the resonances of Farah's Mogadishu as it is presented in *Crossbones*. There is something more intimate at stake, particularly stark in the story of Small Thing which appears, somehow, instead of a narrative about a pirate.

Small Thing gets lost trying to find the house he is meant to 'consecrate'. He asks the way, but the locals all know what he is, and deliberately send him in the wrong direction. He arrives at a house: an old man is at home. When his handlers arrive at this wrong address, the boy knows he is going to be killed for his mistake, and that he has also brought about the old man's death. In bare summary, this contingent-but-inevitable scene appears to allow or demand that we feel an awful sense of injustice. But while there is no doubt that the novel involves a sustained judgement of *Al Shabaab* – (the fictive version of the organisation is characterised through physically and emotionally abhorrent men) – the scene strikingly puts aside a language of justice when one of the Shabaab operatives proposes that 'Islam is justice'. The statement is empty, but not just because in this moment, in this particular house in Mogadishu, 'Islam' most palpably is not justice. It is because the way the scene is told through the free-indirect movement between the boy's panicked and the old man's fatalistic thoughts demonstrates the irrelevance of any discourse of commensurability. It is the old man's sense of duty to help the boy who has brought about his death that is the most forceful and moving idea within the scene. This sensibility is irreducible to a

language of rights and exchange, or of punishment, contract or compensation. The man owes the boy nothing: but he feels that he does. This feeling arises beyond a rhetoric of measurement: it simply (if not simplistically) arises from their proximity as man and boy. It is a duty that is somehow measured by space, but is a spatial ethic that defies measurement. Further, returning to the discussion between Marduuf the ex-pirate and Malik the journalist, we know that Marduuf is likely to seek justice against Shabaab for the death of his brother. He knows this as an obligation: as a precise requirement, debt, and compulsion structured by relationships, events and expectations. But what defines him and what he more continually returns to is his own longer failure of duty – his failure to fulfill his own internal, ever-arising sense of responsibility – to Small Thing.²¹

Despite the novel's title, contrary to the expectations set up by Farah in promoting the book, and although searching for pirates is a major driver of plot, we are not given any pirates. Instead, the book asks us to understand 'the Somali pirate' as the grieving brother of a dead boy in a city setting. Farah brings the pirate onshore, and gives him a place – tenuous and troubled – within the proximate spaces of an urban duty that is more intimate and contingent than the regulating language of justice allows. There is no long view, no oceanic idea. In fact, this pirate novel is as remarkable for its non-representation of the ocean as it is for its elision of the pirate. Instead, its tight city spaces and human proximities concentrate this 'noncorresponding' sense of duty.

A Hijacking (2012)

Like Farah's novel, there is remarkably little ocean in Tobias Lindholm's film. Based on the 2007 hijacking of the *M. V. Rozen*, much of it was shot aboard the actual ship, in the Indian Ocean, chronologically from day one of a reconstruction. In interview, Lindholm makes much of the fact that the crew and the actors were vulnerable to pirate attack during filming; that their sweat is real, that the cracklings and delays of phone calls and faxes between the hijacked ship and the office in Copenhagen – these form the central aesthetic and tension of the film – are real. Further, the pirate negotiator whom Lindholm at first brought in as an advisor on the film ends-up playing himself. The director impresses that he did not script this character, but asked him to act as he would in a real situation. The director states: 'for me, reality rules'.²² Lindholm's real is obdurately not part of traditions of social and historical realism. And it is disingenuous, for of course the film is full of narratological and aesthetic choices. Most notably, the initial act of piracy is not shown.

The film opens with the crew looking forward to going home, and introduces the Danish cook, Mikkel, as the key character with whom the audience is to empathise. The camera switches to Copenhagen: a Danish CEO, Peter, skilfully negotiates with some Chinese ship brokers. This scene tells us that this is just another high-pressured day in the office. When we return to the ship, it has been taken. So within the moment-by-moment linearity of the film, we are given a scene of taut corporate suited negotiation in place of the hijacking itself. That happens off stage. This is just one of the ways in which the film concentrates on emptying the pirates of political valence. The *M. V. Rosen* was in fact carrying UN chartered food aid, but Lindholm does not include this in his film: which might be read as avoiding the temptation to make an easy political point about the ironies or wider injustices wrought by piracy, but also undercuts the director's own insistence on a ruling 'reality'. Further, the pirates are not individuated, and there are no subtitles to allow a global audience to

understand their conversation. This means that the pirates again seem to appear in – or disappear into – the terms given them by marine insurance contract: they are like an act of nature. Without the initial scene of violence, the hijacking is not figured as strategic: it just is.

As in Farah's novel, questions around the motivations and moralities of the pirates are elided. This deflection is furthered by Lindholm's choice to focus on the figure of the pirate's negotiator. Omar is a powerful character within the film because he can speak to everyone. A lot of the film's tension is held in the knowledge that everything depends on Omar's mood. Most particularly, he becomes furious if he is called a pirate: he insists that he is a business man. And actually, within the pared down visuals and geographies of the film, he is represented just as he claims to be. He is equivalent to the man on the other end of the phone. This allows us either to read the maritime corporate world as piratical, or the piratical world as just part of marine business. But Lindholm does not reach strenuously for either of these conclusions: the film seems deeply and curiously disinterested in making either judgement.

The aesthetics of this film are boring, but significantly boring. There are very few long shots, and hardly any scenes looking out from the boat or from the office windows. Mostly, there are lengthy close-ups of faces and mid-shots of men's bodies crammed into small and airless rooms. We are confined. The comparisons and intimacies that this indicates are not subtle: Peter the CEO is shown sweating in his office as Mikkel the cook sweats in the confines of the ship. And because repeated emphasis is placed on the parallels between the trapped situations of the boss and his employee, we are directed away from any real criticism of Peter, and so of corporate behaviour. (Peter is not figured as exceptional within his corporate world: he is, if anything, symbolic of it.)

With what, then, are we left? The close focus on these two men in confined spaces allows the film to avoid a judgement on global capitalism, its agents and beneficiaries; as the film also avoids judgement of the pirates. We are given men, in some kind of raw state, and a plot that repeatedly asks us to consider the nature and feeling of duty, and its difference from the external structures of obligation: that is, the size and shape of the 'residual' ethical elements in the relationship of one man to another. So the nine phone calls build to a final scene which is – as in Farah's story of *Small Thing* – both contingent and inevitable. A ransom has been agreed, the crew are about to be released: but an altercation between Mikkel and a pirate leads to the accidental killing of the ship's captain. The parallels between Mikkel and Peter resolve, finally, into a shared and intensive but obscure sense of failed duty to this man. But if, like Farah's novel, the film strives to delineate intimate forms of duty that precede and exceed more expansive narratives of justice and responsibility, how might the sparse representation of the pirates be read?

I began with the much cited definition of the pirate as *hostis humani generis*. With odd persistency, this is mis-attributed to Cicero. His original formulation reads:

Nam pirata non est ex perduellium numero definitus, sed communis hostis omnium; hoc nec fides debet nec ius iurandum esse commune ... For a pirate is not counted as an enemy proper, but is the common foe of all. There ought to be no faith with him, nor the sharing of any sworn oaths.²³

Placing this formulation back into the context of *De Officiis*, it is actually the second sentence which carries most weight. The pirate is only evoked by Cicero as a negative

category: as the other of the legitimate combatant under the laws of war, to whom obligations are owed and duties felt. So even in this urtext, he is shadowy, an almost-absence; present only to allow the delineation of the legitimate combatant. He most fully – and so most figuratively – appears as he to whom no duty or obligation can or should be owed. Lindholm's film is true to this emphasis. The film brings the Somali pirate into a kind of negative focus: unnamed, untranslated, a body that moves in and out of scenes, but is rarely the subject of the narrowing attention of the camera. The film also achieves this absenting, not just through its tight attention to Peter and Mikkell, and their locations within the boat and the office, but by avoiding anything but a glimpse of the ocean. The film carefully avoids the vaster implications – or the relief – that might be entailed by visions of the ocean. In contrast, Paul Greengrass's *Captain Phillips* perhaps too easily allows the vast aesthetics of the ocean to gather meaning.

***Captain Phillips* (2013)**

Captain Phillips is closely based on the pirating of the US *Maersk Alabama* by four young men in April 2009, at the height of pirate activity off the coast of Somalia. The plot of history is almost as it is played out in the film. But this 'almost' is significant. The elements of the film which deviate from agreed facts, and which gloss a disputed reality, have attracted a lot of negative attention. In response, Greengrass has insisted that his film is a work of drama, not journalism, and bears no responsibility to the historical record.²⁴ And of course it seems easy to support the director's prerogative to create a fiction that yields certain kinds of truth, feeling or thought that are not reached by a non-fictional accounting. Nonetheless, to defend the film against accusations of bad faith by deferring to its fictive status is to ignore the ethical foreclosures enacted through Greengrass's exploitation of the fine line between fact and fiction. These foreclosures begin with his commitment to a legalistic definition of the pirate, and are consolidated through his staunch representation of a 'high seas'.

Greengrass does not quibble with the definition of piracy under international law. In *Captain Phillips*, the director constitutes action at sea that is entirely consonant with Article 101 of the UN Convention on the Law of the Sea:

Piracy consists of any of the following acts:

- (1) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft and
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (2) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft and
- (3) any act of inciting or of intentionally facilitating an act described in subparagraph (1) or (2).

In some ways – as discussed in a moment – this clarity enables a certain subtlety. But by the end of the film, Greengrass's directorial commitment to a rigid categorisation of the pirate has become more perturbing. Right at the end of the film, preceding

the credits, but crucially following the re-suspension of our belief, we are given a screen shot of text that tells us that 'Abduwali Muse was convicted of piracy and is currently serving 33 years at the federal correctional complex, Terre Haute, Indiana.' As the captain of the pirate skiff at the centre of events, a fictionalised Muse is the central antagonist within Greengrass's drama. In fact, while Muse was initially charged with piracy, he pled guilty to hijacking and kidnapping charges in exchange for the charge of piracy (which has a mandatory life sentence in the USA) being dropped.²⁵ So he was not 'convicted of piracy', as the film states. The inaccuracy of the film's summary text interests and bothers me. It is both indicative of the narrative's inexorable pursuit of a categorical idea of 'the pirate', and an alert that Greengrass's moves across fact and fiction is sometimes miscalculated, exceeding imaginative as well as legal sense, and shutting-down certain modes of engagement. These two points come together if we give attention to the film's tight representation of maritime geographies as legally bound spaces.

Only the first eight minutes of *Captain Phillips* are set on land, and the approximately four minutes given to scenes on the Somali coast are geared towards establishing 'private ends'. A jagged scene on a beach portrays young men who are desperate to commit piracy simply because they need money to live. This is and is not deeply political: nothing in this scene allows us to understand these men under a rubric other than 'private ends', everything allows us to see them at the blunt end of the global economy.²⁶ Following these opening eight minutes, the film goes to sea and does not return. Its geographies are, from this point onwards, boats and ocean. Further, while the pirates' skiffs are briefly portrayed battling offshore breakers, from minute 11, the action takes place on – as American characters insist at several points – 'international waters'. This definition is endorsed by the camera on the occasions it leaves the action to sweep across or hover above a vastness of anonymously rippling blue water, always from an angle or height that minimises the swell. This is a classic 'high seas', remarkable for being so apparently unmarked, and beyond any mere measure of distance from a shore that might compromise the construction of a 'universal jurisdiction', legalising US action. But these images of open water, while significant to the legal aesthetic of the film, are brief interludes. The 50 minutes following the opening 11 are primarily set aboard the pirate skiffs and the container ship under attack, the *Maersk Alabama*.

The second half of the film moves between claustrophobic scenes aboard the enclosed lifeboat into which the pirates have kidnapped Phillips; scenes aboard the destroyer, the *USS Bainbridge*, and the frigate, the *USS Halyburton*, sent to rescue Phillips; and the negotiations and tensions between the lifeboat and the two naval vessels. And these negotiations are between the boats as much as they are between the men on the boats. Or rather, the men are portrayed as so entirely bound – physically and contractually – by their position aboard these vessels, and the vessels are so intensively focused through the bodies of their men, that the film achieves a kind of dual metonymic affect, a distillation of the idea of the man through his boat, and of the boat through her men.²⁷ This further refines and accentuates the legal resonances of the film's geographies: a concentration that might be expected to narrow its potential political entailments. But the effect of this geo-legal purity is dual. It helps the film to make an apparently astute point about the enclosing nature of globalisation. But it is also complicit with the film's queasy relationship to ideas of justice.

Within the first minutes of the film, Phillips and his wife are seen driving to the airport. The couple discuss their children, and Phillips worries that 'these days'

there are 'fifty guys for every job'. We then cut to the town of Eyl. The geographical shift is shocking: from the calm and order of a US highway and airport, to a scene of four wheel drives careening across sand, screeching with threat into a community that is clearly as materially poor as the Phillips family are affluent. But while the geophysical juxtapositions are stark, an equally striking narrative continuity emerges. We are quickly given a scene of '50 guys' vying for each job, as the captains of the pirate skiffs choose their crews from a clamouring crowd of young men. So while the affect of the shift in scene is disjunctive, the narrative juncture is equally clear. The vivid idea is that Phillips and these young Somalis, while apparently vastly separated by the forces of capitalism, are similarly over-determined by its structures. These men are in some essential way like Phillips's sons. That, the film suggests, is one definition of globalisation. In this way it may be read as nudging ideas of globalisation and hegemony. Michael Hardt and Antonio Negri's *Empire* (2000) might come to mind, along with other scholarship on the no outside, and the end of history. This politic is reiterated through various scenes across the film that show – and equate – labouring bodies on the various boats. But it is finally undermined by the closing scenes.

The film draws to an end as the camera cuts continuously – (in Greengrass's trade mock-documentary mode) – between images of Phillips being escorted from the lifeboat onto the rescuing destroyer by uniformed figures, and Muse being put in shackles by similarly uniformed figures. Here, the narrative effect is disjunctive. One man is gaining freedom, while the other is being bound. But there is a striking continuity of visual affect. This is not just in the parallel images of the two disarrayed men, arrayed by naval personnel. Phillips walks with short steps, awkwardly shuffling from impact injuries, almost looking as though he is wearing shackles. So again, the captain and the pirate are opposing subjects of wealth and freedom: and yet they share a *gait* within the larger structures to which they are subject. This is, however, the end of the narrative, not the beginning. And that is significant. It means this iteration of equivalence between the two men feels like a kind of acceptance. Bringing these two men into odd visual solidarity prevents the idea of other solidarities – ones that are possibly enraged, possibly larger and possible of real political mobilisation – under the 'empire' of late capitalism. So while the scenes might be elaborated in relation to scholarship on the end of history/the end of an outside/the end of resistance, other possibilities are precluded. Hardt and Negri's *Multitude* (2005) does not come to mind. The narrative has an inexorable quality that is not just to do with knowing the outcome – because we know the 'real' story – of the hijacking of the *Maersk Alabama*, and the kidnapping and rescue of Phillips.

The climax of the film is the moment in which the US Navy SEALs execute the three pirates holding Phillips on the lifeboat. Muse, their captain, has been tricked onto the *USS Halyburton* with promises of a negotiation over ransom. The shooters are then arrayed on the forecourt of the *USS Bainbridge*. We are shown a pirate threatening Phillips with a gun, and we are treated to a remarkably long close-up of Phillips's face, contorted with the belief that he is going to die. (This is not a movie to watch if you do not like Tom Hanks.) The lifeboat jolts, and this contingency brings the three pirates into a clear line that does not endanger Phillips. Three shots are fired, and the pirates are dead. Everything has always been leading to this moment. (The music, if nothing else, tell us this.²⁸). However, this sense of ineluctability does not only emerge from the pressures of the thriller, and its generic demand for adrenal moments of threat leading to a violent *denouement*. This imperative emerges from the categorical portraits established at the start of the film, and sustained

through its pared geo-legal aesthetics. This is without question an act of piracy: these men are without question pirates. That is, they are not legitimate combatants or enemies proper. They are not, in the final account, *any kind of political category*: they have become unqualified and absolute ‘peril’, like the weather, even to themselves. And as such they allow – they require, they invite – an utter response. Those clear shots are fired. Then we are given, in almost imperceptible slow-motion, a view of the perfectly muscled, anonymous, uniformed backs of the shooters walking away from their posts, their labour complete.

The film does not abide any questioning of these men or their commanders. But even more, this is rendered legitimate violence by the physical lineaments and qualities of distance and ocean: bullets fly from perfect proximity (not too close, not too distant) across clear legal space. We may be invited to bemoan the injustices wrought by the anonymous global structures that have allowed this situation to occur. But we are not invited to interrogate the political, juridical or physical details of this particular scene of violence. Greengrass works hard to prevent the viewer from engaging with this as a moment that speaks to the incommensurable, the noncorresponding, on any terms. It is not designed to make you angry, just sad. That the director of course had other choices is brought into relief by a controversy that has been sustained by his plotting of those three, optimally distanced shots.

The charges brought against *Muse* in the USA prompted the dissemination of expert testimony, including reports on the lifeboat and the bodies of the dead men. These indicate that not 3 but 19 rounds were shot, some at close range, some within the lifeboat.²⁹ Without disrespecting Greengrass’s creative prerogative, this other, messier, more bodily and bloodier version of the final scene troubles the film. Greengrass could have explored the scene as a possible contravention of the Geneva Conventions. He could have enabled a post-Weberian exploration of the marginal legitimacy of state violence. Or he could, more specifically, have allowed us to consider and question the invocation of universal jurisdiction as a cover for the extension of US sovereignty. He could have invited us to think about longer histories of imperialism that have sustained and been sustained by this legal anomaly. And this may even have made room for criticism of the fashionable, but often legally and historically vague explication of ‘states of exception’.³⁰ Instead the pirate appears so absolutely and adamantly as his legally defined self: he so fulsomely appears as he to whom no obligation is owed or duty felt, that he disappears. But with him disappears the invocation of proximate and contingent considerations, and questions on the limits of sovereignty. In its broad lineaments, Greengrass’s film is pained by the inevitability of the global economy. But the more forceful and more intimate affect of the film is sanguine. It affirms a regularising narrative of justice. The ocean is smooth.³¹ In this movie, the limits of both obligation and duty are clearly marked by a space just – only just – short of the pirate.

Concluding remarks

The attenuation of the ocean within various intellectual and public discourses is the subject of Philip Steinberg’s recent article, ‘Of Other Seas: Metaphors and Materialities in Maritime Regions’. Steinberg succinctly bemoans two things: the under-theorisation of oceans in regional ocean studies, and the over-theorisation of oceans in post-structurally inflected scholarship. He is more concentrated on this second problem, pointing out that when venturing into certain kinds of maritime space – Paul

Gilroy's *Black Atlantic* is exemplary – 'one never gets wet'.³² Steinberg calls for a greater will to think with theory, on the one hand, and a greater attention to what he writes of as the non-human, the more than human and the less than human – from the microbial to the non-metaphoric vastness of the ocean – on the other hand. The article is a piece of carefully high rhetoric from an agenda-setting ocean scholar, urging – without prescribing – an 'epistemological revolution'.³³ In considering what this could look like, Steinberg turns to theories of fluid dynamics, and the idea of understanding geography as movement: not as a something that moves, or over which other things move, but as itself a form of vast and intimate movement, only existing in molecular and massive shifting. Of course, Steinberg is not expecting everyone to become a physicist or a marine biologist, nor for scientists to become historians or philosophers; or allegorists or poets. But he indicates that much might be gained from striving harder to more completely and complexly apprehend the marine world's ever-shifting intimacies, volumes and varieties.

Steinberg's article is a forceful invitation more than it is a strict endorsement of a particular new method in ocean studies. So one way of pursuing this call for a new attentiveness might be through recognising forms of duty that exceed given measurements of 'justice', and which might be glossed as both a (metaphorically) oceanic ethic: and as arising in specific and ever-shifting formations from intimate situations on the (material) ocean. Steinberg writes that: '... the partial nature of our encounter with the ocean necessarily creates gaps, as the unrepresentable becomes the unacknowledged, and the unacknowledged becomes the unthinkable'.³⁴ This paper has rather aimed to understand how three recent fictional accounts of piracy are attentive in ways that work both within and beyond the ambition Steinberg outlines for new approaches to the ocean. For these fictions help us to understand how the unrepresented can become a form of acknowledgement that becomes the thinkable.

Disclosure statement

No potential conflict of interest was reported by the author.

Funding

This work was generously supported by the AHRC Landscape and Environment Programme funded project on 'The Indian Ocean: narratives in literature and law' [AH/E510442/1].

Notes

1. I have in mind books like *The Bahrain Conspiracy* (2010) by Bentley Gates, *Fair Game* (2011) by Stephen Leather, *The Pirate Hunters* (2010) by Mack Maloney, *The Pirates of Aden* by Daniel Rasic (2011), *The Delta Solution* (2012) by Patrick Robinson, as well as titles by more well-known authors: Elmore Leonard's *Djibouti* (2010), Stella Rimington's *Rip Tide* (2012) and Wilbur Smith's *Those in Peril* (2012).
2. This formulation appears across case law traditions, and shadows current international law and national legislative definitions. Generally see Alfred P. Rubin's *The Law of Piracy* (1998).
3. Classically, universal jurisdiction allows any state to claim jurisdiction over an accused, regardless of their nationality or the territory in which the alleged crime occurred. It was, arguably, brought into being by piracy, although it now – again, arguably – arises in other situations. See Luc Reydam's *Universal Jurisdiction: International and Municipal Legal Perspectives* (2004). Whether the UN Convention on the Law of the Sea (1982) simply allows or actively requires a state to exercise universal jurisdiction over pirates is

- a moot point, and one that absorbed the Kenyan courts and government in relation to the case of *In Re Mohamud Mohamed Dashi and eight Others* (2009) eKLR.
4. The phrase *hostis humani generis* marks not just the limits of the law, but the boundary between the political and the legal. One of the less exploited ironies in the recent and intensive turn of legal philosophers to the work of Carl Schmitt is to be found in his obscure 1937 essay on submarines and the law of piracy. Here, the lawyer of the Reich argues that the proposed characterisation of the U-boat as piratical by the allied powers involves an unacceptably political expansion and consolidation of the meaning of ‘all humanity’, exceeding given international legal principles. See Heller-Roazen and Schmitt, “The Concept of Piracy”.
 5. Standard marine insurance contracts characterise piracy as a ‘peril of the sea’, equating it with natural forces. See Passman, “Interpreting Sea Piracy Clauses in Marine Insurance Contracts”.
 6. Piracy off the coast of Somalia rose in 2005, peaking in 2009–2011. It is now (dramatically) on the wane. Somali piracy is now being formally reported as a kind of ‘past’ or ‘period’: a subject of history. See <https://www.unitar.org/unosat/piracy>. Accessed January 24, 2015.
 7. Steel, *Masefield*, paragraph 62.
 8. *Ibid.*, 64.
 9. *Ibid.*, 30.
 10. Rix LJ, Moore-Bick LJ and Patten LJ, *Masefield*.
 11. The UK’s Counter-Terrorism and Security Act 2015 explicitly makes it illegal to pay ransom to terrorists, and for insurers to reimburse such payments. It does not make it illegal to pay ransom to pirates or for insurers to reimburse those payments, maintaining the position of the court in the *Amlin* decisions.
 12. Hugo Grotius’s *Mare Liberum* [The Free Seas] (1609) is widely recognised as the foundational document of modern natural law.
 13. Rawls, *A Theory*, 3.
 14. Dimock, *Residues*, 4.
 15. *Ibid.*, 6–7.
 16. I heard Farah speak at the Southbank Centre on 2 July 2012. <http://www.southbankcentre.co.uk/find/literature-spoken-word/tickets/nuruddin-farah-66018>. Accessed January 24, 2015.
 17. Farah, *Crossbones*, 102–6.
 18. *Ibid.*, 300–5.
 19. Soja, *Seeking*, 1.
 20. Harvey, *Justice, Nature*.
 21. Farah, *Crossbones*, 300–5.
 22. Reference online interview with Lindholm, time of the moment he says reality rules.
 23. Cicero, *De Officiis*, 141.
 24. Interviews in which Greengrass discusses *Captain Phillips* in these terms: <http://blogs.indiewire.com/theplaylist/interview-tom-hanks-paul-greengrass-captain-phillips-the-raw-acting-ability-of-barkhad-abdi-20140109>, <http://www.youtube.com/watch?v=y21OSip431U>, <http://castroller.com/podcasts/MarkKermodeAnd/3771928>. Accessed January 24, 2015.
 25. *US v Abduwali Abdukhadir Muse* [United States District Court, Southern District of New York] 19 May 2009. <http://news.findlaw.com/hdocs/docs/piracy/usmuse51909ind.html>. Accessed January 24, 2015.
 26. The film is adamantly not a sequel to Greengrass’s *United 93* (2006). Although while *Captain Phillips* does not compromise his portrait of piracy by playing upon the proximity – both literal and juridical – of terrorism, there are ways of reading the film’s anxieties as ‘post-9/11’; and definitely interesting ways of thinking about it as ‘post-Black Hawk Down’.
 27. There is a growing bibliography of work on or relating to boats as embodied practice, mostly emerging from disciplines of ethnography, anthropology, maritime archaeology, and cultural and historical geography. I have an ambition to bring this work into conversation with literary and legal pirate narratives. The kind of work I have in mind here includes:
 Bennett, *Vibrant Matter*.
 Denning, “Voyaging the Past, Present, and Future”.

- Hasty and Peters, "The Ship in Geography".
 Ingold, *Being Alive*.
 King and Robinson, *At Home on the Waves*.
 King, "Bad Habits and Prosthetic Performances".
 Pålsson, "Enskilment at Sea".
 Salmond, "Their Body is Different, Our Body is Different".
28. In interview, the composer Henry Jackman speaks in discomfoting ways of using East African musical tropes to create a sinister atmosphere: <http://www.fastcocrete.com/3020229/composer-henry-jackman-on-scoring-the-morally-complex-story-of-captain-phillips>. Accessed January 24, 2015.
 29. The internet is full of rumour and speculation. See for example: <<http://bigstory.ap.org/article/30000-went-missing-amid-rescue-capt-phillips><http://www.prweb.com/releases/2013/10/prweb11210047.htm>. Accessed January 24, 2015.
 30. I am thinking here of Chapter 6 of Lauren Benton's *A Search for Sovereignty*. Here she warns against too quickly deploying Giorgio Agamben's thesis on 'states of exception' to characterise situations in past colonial and current postcolonial geographies. She does not just point to Agamben's disinterest in non-European geographies. She suggests that what might at first appear as a state of exception – and so as more evidence of Schmitt's defining thesis that the modern state is defined by its capacity to suspend the rule of law – may rather be a state of multiple or obscure or overlapping jurisdictions. An understanding of the histories and ambiguities of universal jurisdiction would seem to have salutary potential in the terms outlined by Benton.
 31. The film may be read as instantiating Gilles Deleuze and Felix Guattari's famous thesis on 'The Smooth and the Striated' in Chapter 14 of *A Thousand Plateaus* (1980). Here they articulate maritime space as the ultimate smooth space because it is so vulnerable to striation – that is, to being marked, threaded, made bumpy by money, markets, hegemonies and nodes of distance. But it is also the ultimate smooth space because once it has been striated, it is peculiarly vulnerable to being retroactively smoothed: that is, to being re-smoothed in a way that is not a return to a pre-striated, pre-modern, pure, primordial smoothness, but which surreptitiously embeds and pursues the inexorable striations of modernity and capitalism under cover of smoothness.
 32. Steinberg, "Of other," 158.
 33. Ibid., 162.
 34. Ibid., 157.

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