Sealand, HavenCo, and the Rule of Law

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Abstract:

In 2000, a group of American entrepreneurs moved to a former World War II anti-aircraft platform in the North Sea, seven miles off the British coast, and launched HavenCo, one of the strangest start-ups in Internet history. A former pirate radio broadcaster, Roy Bates, had occupied the platform in the 1960s, moved his family aboard, and declared it to be the sovereign Principality of Sealand. HavenCo’s founders were opposed to governmental censorship and control of the Internet; by putting computer servers on Sealand, they planned to create a “data haven” for unpopular speech, safely beyond the reach of any other country. This article tells the full story of Sealand and HavenCo—and examines what they have to tell us about the nature of the rule of law in the age of the Internet.

The story itself is fascinating enough: it includes pirate radio, shotguns and .50-caliber machine guns, rampant copyright infringement, a Red Bull skateboarding special, perpetual motion machines, and the Montevideo Convention on the Rights and Duties of State. But its implications for the rule of law are even more remarkable. Previous scholars have seen HavenCo as a straightforward challenge to the rule of law: by threatening to undermine national authority, HavenCo was implacably opposed to all law. As the fuller history shows, however, this story is too simplistic. HavenCo also depended on international law to recognize and protect Sealand, and on Sealand law to protect it from Sealand itself. Where others have seen HavenCo’s failure as the triumph of traditional regulatory authorities over HavenCo, the article argues that in a very real sense, HavenCo failed not from too much law but from too little. The “law” that was supposed to keep HavenCo safe was law only in a thin, formalistic sense, disconnected from the human institutions that make and enforce law. But without those institutions, law does not work, as HavenCo discovered.

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INTRODUCTION

Sealand is stranger than fiction. A pair of concrete legs supporting a 120’ by 50’ platform, sixty feet above the North Sea, this “smallest country on earth” sits seven miles off the British coast. Built during World War II for anti-aircraft defense, it was occupied in the 1960s by Roy Bates, a former pirate radio operator who declared himself ruler of the new Principality of Sealand. Boosting his claim, a British court acquitted him in 1968 on firearms charges because Sealand stood outside of British territorial waters. He made Sealand into his family’s home: promulgating a constitution; issuing stamps, coins, and passports; and generally adopting the trappings of nationhood. Sealand has even had a coup and counter-coup: in 1978 a German lawyer seized control of the platform, only to be taken prisoner by Bates in a daring helicopter landing a few days later.

Sealand’s moment of greatest fame came in 2000, when it offered the
ultimate in literally offshore data hosting. The internet startup HavenCo built out Sealand as a data center, moving in computer servers and connecting them to the Internet. The idea was that HavenCo would be a data haven, which would store content that was illegal in other countries. Online casinos, subpoena-proof corporate records, good old-fashioned pornography—HavenCo would host it all, safely beyond the reach of any other country’s courts. The company launched to massive press coverage (including a cover story in Wired3), promising unfettered free speech to the masses while extending a raised middle finger to censors and control-freaks around the world.2

This much is familiar to scholars.3 Talk to any Internet-law scholar about

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this “cyberlaw textbook author’s dream”⁴ and the odds are good that he or she will be able to tell you something like the story above. What’s more, scholars also have a story to tell about why Sealand and HavenCo matter: they perfectly symbolize a spirit of apocalyptic conflict between the Internet and national authority. Like John Perry Barlow or Napster, HavenCo stands for a “government-free vision of the Internet.”⁵ As Jack Goldsmith and Tim Wu put it, “HavenCo was the apotheosis of the late 1990s belief in the futility of territorial government in the Internet era.”⁶

This makes HavenCo and Sealand sound like simple pirates, who never

⁴ Zittrain, supra note 3.
⁵ ZITTRAIN, supra note 3, at 40.
⁶ GOLDSMITH & WU, supra note 3, at 66. See also Arenas, supra note 3, at 1167 (“Sealand demonstrates in practical terms what the Internet has long been doing: making notions of geographic jurisdiction a meaningless tool for dealing with a digital environment.”).
met a law they liked. The truth, however, is more complicated. To see why, consider a simple question: Why Sealand? Why did HavenCo set up shop there, rather than, say, trying to hide within an existing country? What did Sealand bring to the table? The answer is obvious, so obvious that its implications are easy to overlook. Sealand claimed to be a sovereign state, or at least close enough to play one on TV. Sealand offered HavenCo the protection of its laws.

Thus, the conventional wisdom is wrong—or at least incomplete—to see Sealand and HavenCo only in terms of their opposition to national law. HavenCo also relied on Sealand’s willingness to enact permissive Internet laws, and both HavenCo and Sealand relied on international law’s willingness to recognize Sealand as a sovereign state. They weren’t anti-legal, just selectively legal.

The conventional wisdom is also wrong—or at least incomplete—in another, subtler way: it relies on an impoverished view of Sealand’s history. Everyone knows the story above, but that story is all they know. But there is more, much more than this potted version of events. Did you know, for example, that when Sealand caught fire in 2006, a British rescue helicopter and firefighting tug came to the rescue? Or that the dot-com crash did more to cut off Sealand’s network links than any national government did? Or that, as HavenCo’s business faltered, Sealand allegedly nationalized the company? There is something more interesting here than just a tiny nation with a data haven.

These two issues are related. The conventional wisdom flattens HavenCo’s relationship to law because it is unaware of the full story of Sealand. Simplistic stories about an existential conflict between HavenCo and existing nations falter when they encounter the complexities of its actual history. One recent article, for example, confidently asserts that the United Kingdom’s move in 2000 to permit government monitoring of Internet traffic, “undermined HavenCo’s entire raison d’etre “ because “all of Sealand’s data connections ran through mainland England.” While HavenCo had plenty of problems, this wasn’t one of them: it had a satellite Internet connection in addition to its line-of-sight wireless link to the British mainland.

Instead, the history and the law are interwoven—and both of them are only thinly covered in the scholarly literature. Knowing what German and British courts have said about Sealand’s sovereignty forces us to reconsider HavenCo’s

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1 One reason, ironically enough, may be that the Wired article, by veteran computer journalist Simon Garfinkel, was so chock-full of memorable details and so powerfully written that it has rarely occurred to readers that there might be even more to the story.

2 See infra Part I.D.

9 See infra Part II.C.

10 See id.

11 Regulation of Investigatory Powers Act, 2000, c. 23 (Eng.).

12 Kramer, supra note 3, at 368.

13 Indeed, the satellite connection would prove more reliable. See infra Part II.C.
reliance on international law.\textsuperscript{14} Knowing how advisors to Sealand’s royal family used their access to control HavenCo’s business operations forces us to reconsider the nature of Sealand’s own legal system.\textsuperscript{15}

This article aims to fill both of those gaps. Its first major task is to give a more complete account of Sealand and HavenCo’s history, from Sealand’s construction during World War II to the Red Bull skateboarding special filmed there in 2008. It draws upon a wide range of previously unexamined sources, including newspapers from the 1960s and 1970s, HavenCo’s original corporate documents, HavenCo’s founders’ post-mortal examinations of their experience, and archives of long-lost webpages from Sealand’s friends and foes. Along the way, it clears up a number of confusions that have crept into the conventional wisdom, such as whether the English courts have held that Sealand is a sovereign state (no),\textsuperscript{16} Sealand’s population (far smaller than sometimes claimed),\textsuperscript{17} and the true source of the term “data haven” (not the science-fiction novelist William Gibson).\textsuperscript{18}

The article’s second major task is to map HavenCo’s tortured relationship with law and the rule of law. There are at least three different bodies of law at work: the national law that HavenCo helped its clients evade, the international law under which Sealand claimed statehood, and the permissive Sealand laws that guaranteed HavenCo’s freedom of action. HavenCo stood in strikingly different relationships to them, and the article will argue that those relationships reflect different theories of the rule of law:

- **National law:** HavenCo’s entire purpose was to help individuals circumvent national laws restricting freedom of speech on the Internet. As such, HavenCo’s existence depended on denying both the legitimacy and enforceability of such laws. This put HavenCo on a collision course with a vision of the rule of law as self-governance: the ability of a political community to choose collectively the rules it will live under. If HavenCo had had its way, no nation would have been able to choose for itself to have restrictive intellectual property, privacy, or gambling laws.

- **International law:** If Sealand had been subjected to the jurisdiction of the United Kingdom, HavenCo would have had to comply with British law. As such, HavenCo’s existence also depended on Sealand’s status as a sovereign state under international law. Here, HavenCo represents a vision of the rule of law as formal legality: evenhanded application of general, prospective rules. In court, Sealand allies argued that it was inviolate because it had a “territory,” a “population,” and a “government,” as

\textsuperscript{14} See infra Part III.B.
\textsuperscript{15} See infra Part III.C.
\textsuperscript{16} See infra Part III.B.1.
\textsuperscript{17} See infra Part I.D.
\textsuperscript{18} See infra Part II.A.
those terms had been defined under international law.

- **Sealand law**: As a company operating within Sealand and requiring access to computers physically located there, HavenCo was subject to the authority of Sealand’s royal family. As such, HavenCo’s existence also depended on the permissiveness of Sealand law. Here, HavenCo requires a vision of the rule of law as restraint on government: protection of individuals against arbitrary governmental action. HavenCo needed promises that Sealand’s laws would continue to be tolerant of its activities and that its property wouldn’t be expropriated.

Juxtaposing these three theories of the rule of law allows us to see that there is something deeply anomalous in HavenCo’s simultaneous rejection of national self-governance and embrace of formal legality and restraint on government. Having started from the premise that the political systems of existing nations could never be trusted to protect free speech, HavenCo needed a place outside of them to stand while it beamed its bits their way and undermined their national Internet laws. That place needed to be able to stand up to annoyed nations, which led HavenCo to seek Sealand, with its colorable claims to sovereignty. And once HavenCo had chosen a protector with power, it also needed to be protected from the abuse of that power. HavenCo expected international law to protect it from the rest of the world, and expected Sealand law to protect it from Sealand itself.

As the fuller history shows, however, it is unclear that either international law or Sealand law could bear the weight HavenCo needed to place on them. Externally, Sealand’s history doesn’t exactly paint a picture of a self-reliant and independent polity: very few people have ever lived aboard, and they have always depended on shore-based sources of support and services. Nor have its attempts to obtain legal recognition in the community of nations borne any significant fruit. Internally, Sealand, with its violent and checkered history and its minuscule population, lacked political and social institutions. Sealand “law” was never much more than a formality or a tacit agreement, and when things on Sealand deteriorated, HavenCo found itself boxed into a corner, precisely because it had rejected national and international authority over what happened on Sealand. In the end, HavenCo failed not from too much law, but too little.

This article focuses on legal history and the jurisprudence of the rule of law, but these are hardly the only places where Sealand and HavenCo’s story may prove instructive. Certainly, their experience holds valuable lessons for others who dream of escaping the existing order of things by setting up their own jurisdictions, including micronations,\(^\text{19}\) seasteads,\(^\text{20}\) and space colonies.\(^\text{21}\) It bears,

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\(^{19}\) See generally ERWIN STRAUSS, HOW TO START YOUR OWN COUNTRY (2d ed. 1984); JOHN RYAN ET AL., MICRONATIONS: THE LONELY PLANET GUIDE TO HOME-MADE NATIONS 9 (2006); Adam Clanton, *The Men Who Would Be King: Forgotten Challenges to U.S. Sovereignty*, 26 UCLA PAC.
too, on basic questions about the Internet’s interaction with offline law, Internet governance, the nature of law in virtual worlds, and the creation of new online political communities. Sealand’s experiment with turning itself into a data haven sheds light on some nations’ experiments with turning themselves into tax havens—and on other nations’ attempts to fight back. The same could equally


be said about offshore banking. Thematically, the issues of territory, political community, and legal institutions have obvious connections with constitutional law, administrative law, international law, and immigration law. In the interests of getting the history and the jurisprudence right, this article can do little more than gesture at these other important issues, and content itself with laying a useful foundation upon which others may build.

The article will proceed in three parts. Parts I and II will tell the full history of Sealand and HavenCo, respectively, from Sealand’s construction in 1942 through HavenCo’s rise and fall six decades later. Part III will then explore their relationship to law using the tripartite framework of national law, international law, and Sealand law. By bringing out HavenCo’s implicit theory of law, it will shed new light on the causes and implications of HavenCo’s failure. Finally, the Conclusion will emphasize the basic lesson of Sealand and HavenCo: law is made by people, for human purposes. Even in an Internet age, law cannot be decoupled from the all-too-human institutions behind it.

I. SEALAND

Before we begin with the history, a note on terminology. Roughs Tower is the original name of the anti-aircraft platform that Roy Bates and his family occupied in 1966–68. Sealand is the name he gave to it, or, more formally, The Principality of Sealand. I will describe Bates by his chosen title, Prince Roy, when referring to acts taken in his official capacity, and similarly for his son, currently Prince Regent Michael. Since 1978, a group of Germans have claimed to be the rightful government of Sealand; I will describe them as the German Sealand. And finally, HavenCo is the Internet colocation company launched in 2000 by a group of Americans, whose principal place of business was Sealand. I use “nation” to refer to any political entity that claims independence, “state” to refer to a nation that actually is sovereign, and “country” to refer to one that fits the layperson’s mental model of a nation-state with substantial territory, significant population, stable government, and shared national identity.

A. Roughs Tower

Sealand is built on—Sealand is—one of four platforms built by Britain in the Second World War at the seaward end of the Thames Estuary, where it opens out into the North Sea: Sunk Head, Knock John, Tongue Sands, and Roughs Tower. The four were collectively known as the Maunsell Sea Forts, after their

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designer, and they were built to provide anti-aircraft defense and radar coverage for the approach to the Thames Estuary. Each of the platforms consisted of a 120’ x 50’ deck, resting atop a pair of cylindrical concrete towers, each 24’ in diameter and 60’ high. The towers, in turn, rest on a concrete pontoon, permanently flooded so that it provides a stable base on the seabed. The deck originally held a two-story superstructure, taking up about a third the length of the platform. The upper story housed a small control tower; the lower story had a long hallway with a galley and officers’ quarters on one side and bathrooms on the other.

Roughs Tower, the furthest out to sea of the four, was built at a wharf in Gravesend, then towed into position at 51° 53’ 40.8” latitude north, 1° 28’ 56.7” longitude east, about seven miles from the nearest coastline, the port of Felixstowe. At 4:30 PM on February 11, 1942, the pontoon was flooded and within fifteen minutes, Roughs Tower had settled into place on the seabed. At its peak, the fort held approximately 120 men each, who lived in cramped quarters in the concrete legs. Roughs Tower and the other Maunsell forts saw action on several occasions during the war, firing at German planes, and may have shot

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29 See Nigel Watson & Frank Turner, Maunsell: The Firm and Its Founder 28–32 (describing construction of forts). Britain also built several larger complexes, the Maunsell Army Forts, each of which consisted of seven separate towers, standing on legs above the sea, and connected by walkways. See id.; Maunsell Army Sea Forts, Underground Kent, http://www.undergroundkent.co.uk/maunsell_towers.htm.


32 See Welcome to Sealand, Bob Le-Roi (Jan. 7, 2010), http://www.bobleroi.co.uk/ScrapBook/SealandOne/ThisIsSealand.html (providing original plan of main deck).


34 I have marked the location on a custom Google Map at http://maps.google.com/maps/ms?ie=UTF&msa=0&msid=104492463267466314825.000488852542054.e0b7. Roughs Tower is technically slightly closer to English territory than that distance might suggest, because it stands opposite the channel into Felixstowe, where the Orwell and Stour rivers emerge from their estuaries into a wide channel. The tower is between five and six miles seaward of the datum line marking the mouth of that channel. See R. v. Bates, [1968] (transcript of the shorthand notes of Hibbet and Sanders reporting the opinion of Mr. Justice Chapman), available at http://www.seanhastings.com/havenco/sealand/judgement.html [hereinafter R. v. Bates].

35 See Sealand Radio—Part 1, supra note 31. According to one site, the flooding was uneven and it went down side-first, causing the platform to list some 30 degrees before leveling out. See The Rough Towers, http://harwich-society.co.uk/old/info_rough_towers.htm. There were 100 men aboard at the time. Id. There is some uncertainty about the depth of the water in which Roughs Tower stands. Compare Sealand Radio—Part 1, supra note 31; (claiming 37 feet) with Garfinkel, supra note 2 (claiming 24 feet).

several down.\textsuperscript{37} The British government abandoned the forts in the late 1950s, and they sat vacant for the next decade.\textsuperscript{38}

\textbf{B. Roy Bates}

Enter Paddy Roy Bates. In the words of one of his employees,

Roy was a throwback. He should have been born in the time of the first Queen Elizabeth and sailed with Drake. If ever there was a true buccaneer, it was Roy. A tall, burly man, with a ruddy face and the kind of high, hectoring voice which afflicted so many of his generation who had been to private schools. He had been at one time, the youngest Major in the British Army, and he ran his household and his business along more or less, army lines. In addition, as I was to find out later, he was the kind of man who had creditors everywhere, but it never seemed to bother him.\textsuperscript{39}

A World War II veteran and former major,\textsuperscript{40} he fought in North Africa and Italy,\textsuperscript{41} and was wounded in action several times.\textsuperscript{42} On his return, he “made a fortune in factories, a fishing fleet, and other businesses. “\textsuperscript{43} One of those businesses, though perhaps not the most profitable, was pirate radio. In the mid-1960s, the British Broadcasting Corporation (BBC) held a legal monopoly on radio broadcasting; anyone else transmitting radio signals to the public faced prosecution. Since the BBC (which saw itself as having an explicitly civilizing mission) aired far less rock and popular music than the British public generally was interested in hearing, there was an opportunity for musical arbitrage.\textsuperscript{44} Bates


\textsuperscript{38} See DAVID SINCLAIR, MAKING WAVES 86 (2005).

\textsuperscript{39} SINCLAIR, supra note 38 at 25.

\textsuperscript{40} See, e.g., James Cusick, Shots Fired in Sealand’s Defense of a Small Freedom, THE INDEPENDENT (LONDON), Feb. 24, 1990, at 6; SINCLAIR, supra note 38, at 25.


\textsuperscript{42} See Garfinkel, supra note 2. In 2004 Bates told a reporter for the Independent that he had been captured by the Italians during the war and tried to escape so often that he was sentenced to death, winning a reprieve only at the last possible instant, as the firing squad raised its rifles. See Mark Lucas, Sealand Forever! The Bizarre Story of Europe’s Smallest Self-Proclaimed State, INDEPENDENT (LONDON), Nov. 27, 2004.


\textsuperscript{44} See ADRIAN JOHNS, DEATH OF A PIRATE: BRITISH RADIO AND THE MAKING OF THE
and other entrepreneurs figured that by transmitting from ships from outside Britain’s three-mile territorial waters, they could avoid the reach of the radio laws. The best-known of the pirate stations was Radio Caroline, on whose story the recent movie Pirate Radio is based, albeit rather loosely. Between 1964 and 1967, a kind of mild anarchy ruled the airwaves; even as parts of Her Majesty’s government sought ways to shut down the pirate stations, businesses and barons purchased advertising on them.

In 1965, Roy Bates founded an offshore station, Radio Essex, on the Knock John platform, the closest in of the Maunsell sea forts. He wasn’t the first to have the idea; he set up shop on Knock John only by driving off the staff of the competing Radio City. Unfortunately for Bates, Knock John, while offshore, wasn’t quite offshore enough. At one and a half miles from the coast, it was comfortably inside England’s three-mile territorial limit. The government had at first stood by as the pirates challenged the BBC’s monopoly, but public sentiment shifted in the aftermath of the heavily publicized (indeed, sensationalized)
shooting of one pirate radio entrepreneur by another. Following the shooting, the government stepped up enforcement of the Wireless Telegraphy Act, which forbade unlicensed broadcasts. Bates was served with a summons for breach of the Act on September 28, 1966. The Rochford Magistrate’s Court found Bates in violation of the broadcasting law on November 30 and fined him £100, and he lost an appeal to the Chelmsford Quarter Sessions in January of 1967.

Bates, however, was already gone. On Christmas Day of 1966, he shut down broadcasts from Knock John and moved further out, to Roughs Tower. It had already been occupied since 1965 by Radio Caroline, who were planning to use it as a resupply base for their radio ships, and who had cut away its control tower to create a helipad. Bates evicted the two Radio Caroline staff aboard and claimed Roughs Tower as his own. Along with four Radio Essex employees, Bates and his son Michael, only 14 but a “tough young cookie,” moved the radio

53 The killing grew out of the June 1966 struggle for control of Shivering Sands, one of the Maunsell Army Forts. In a 3:00 AM raid on the 20th, a team of seamen sent by Major Oliver Smedley, the entrepreneur behind Radio Atlanta, boarded and took control of the fort from the Radio City DJs currently occupying it. See JOHNS, supra note 44, at 189–97. The ostensible reason for the occupation was a dispute over the ownership of a transmitter Smedley had supplied to Radio City, but it was more immediately rooted in the breakdown of negotiations for a Smedley-led group to purchase Radio City. When Reg Calvert, the owner of Radio City, planned to sell instead to a rival group, Smedley swung into action and seized the fort. Id. at 178–89. The next day, Calvert, having threatened to remove the Smedley party with means up to and including nerve gas, went to Smedley’s home in Essex. Id. at 198–212. Calvert became involved in an altercation with Smedley’s housekeeper, and the major shot Calvert dead. Id. at 1–8. Smedley was tried for manslaughter but acquitted. Id. at 230–32. See also BISHOP, supra note 30, at 45–46.

54 See JOHNS, supra note 44, at 227–28, 232.
56 See Radio Station in Thames Estuary on Air After Owner is Fined £100, TIMES (LONDON), Dec. 1, 1966, at 11.
57 See BISHOP, supra note 30, at 57. More precisely, Bates argued that Knock John was outside the territorial limit, (and took his appeal on this issue) but “pleaded guilty “ otherwise. Id. The Quarter Sessions disagreed, holding, “It apearas to us that Knock John Tower is about one and a half miles inside inland waters. “ Id.
58 See BISHOP, supra note 30, at 57; MILLER & BOUDREAUX, supra note 41.; SINCLAIR, supra note 38, at 73–74.
60 See Sealand Radio—Part 1, supra note 31; BISHOP, supra note 30, at 121–22.
61 See Lucas, supra note 42 (claiming that the Radio Caroline disc jockeys were celebrating Christmas aboard the platform, and left without a struggle); FELIX KESSLER, The Rusty Principality of Sealand Relishes Hard-Earned Freedom, WALL ST. J., Sept. 15, 1969, at 1 (claiming that Bates “persuaded them they wanted to leave “); THE SEALAND ADVENTURE (2010 audio CD). But see Sealand Radio—Part 1, supra note 31; (claiming that the platform was unoccupied at the time).
equipment aboard Roughs Tower in the cold of a North Sea winter.  

Radio Caroline didn’t go down without a fight. In June of 1967, it sent a team of seven aboard one of its boats to reclaim the tower; Bates and company fought them off with petrol bombs. When the Radio Caroline team withdrew, one man was left dangling from a ladder for two hours; after negotiations, a lifeboat from nearby Walton-on-Naze was allowed to rescue him. Police investigated, but took no action against anyone involved. There were apparently other such battles, some involving firearms, but details are sketchy. (Bates was also linked, somewhat ambiguously, to a plan to seize the Shivering Sands Maunsell Army Fort in the winter of 1967, which may or may not have been a hoax.)

By September 1967, Bates was in sole possession of Roughs Tower and had brought his family aboard: his wife Joan (a former fashion model) and their children Michael and Penny. Unfortunately for him, the Marine Broadcasting

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62 See Sealand Radio—Part 1, supra note 31.; One source claims that the platform was briefly abandoned. Bates had left four men aboard to guard it, but only three days worth of food for them. After seventeen days, they were rescued by a British lifeboat from nearby Walton-on-the-Naze, to Bates’s anger. SINCLAIR, supra note 38, at 74. Michael Bates would never return to school. THE SEALAND ADVENTURE, supra note 61.
63 See SINCLAIR, supra note 38, at 77–78. For a while, Bates and Ronan O’Rahilly of Radio Caroline discussed operating the platform as a kind of partnership. See 100GNS Health Trips to Sea Fort, TIMES (LONDON), June 29, 1967, O’Rahilly’s actual plans for the tower are obscure. He claimed that it would be used as a “health resort.” Id. A few sources also claim that O’Rahilly had been working on his own nation-formation plans. See id. at 189–90 (quoting Tom Lodge on “Ronan’s concept” to “create a nation on that tower”); SINCLAIR, supra note 38, at 77 (“He’d brought in people like Mick Jagger and John Lennon, only to find Roy Bates had jumped in and stolen both the idea and the intended country Roughs fort.”).
64 See id; BISHOP, supra note 30, at 122. See also RYAN, supra note 19, at 9 (2006).
65 See 100GNS Health Trips, supra note 63.
66 See BISHOP, supra note 30, at 122.
67 See Sea Fort Repels Boarders, TIMES (LONDON), June 30, 1967, at 2 (quoting Roy Bates as claiming one raid involved thirty attackers “in foreign-looking boats, rather like Dutchmen, armed with knives and guns, “ and that “[s]ome tried to swim with snorkels but they were spotted and given short shrift with a flame thrower.”); Lucas, supra note 42.
68 See JOHN, supra note 44, at 233–36. One participant said, “He is firmly convinced of his right to take over just what he fancies in the estuary. . . . Bates is the type of man who would take over the fort and then defy anyone do do anything about it.” Id. at 234 (quoting Detective Inspector J.A. Barker of New Scotland Yard). See also SINCLAIR, supra note 38, at 73 (“The Bates team had earned a fearsome reputation for skulduggery, as ‘the hard bastards of the North Sea,’ mainly due to their recently developed quaint habit of going out on weekends and stealing equipment from other stations, especially those on the forts who even had their lights taken!”).
71 See Sealand Radio—Part 1, supra note 31.; See also Pathe newsreel [undated], available at
Offenses Act (MBOA) had become law in August 1967.\textsuperscript{72} The MBOA specifically forbade U.K. citizens from participating in broadcasts from the high seas,\textsuperscript{73} prevented anyone present in the U.K. from assisting in such broadcasts,\textsuperscript{74} and, crucially, prohibited advertising by means of such broadcasts.\textsuperscript{75} Bates was also out of money, and could read the handwriting on the wall: any loopholes permitting pirate radio would rapidly be closed.\textsuperscript{76} Instead, he turned to another idea: his own nation.

C. Founding

Roy Bates declared the Principality of Sealand independent on September 2, 1967.\textsuperscript{77} The idea came from Joan Bates, over drinks at a pub.\textsuperscript{78} Tension with British authorities—who had already been discussing buying back Roughs Tower from Bates\textsuperscript{79} and considering having commandos storm it\textsuperscript{80}—followed. The Ministry of Defense denounced the declaration, stating, “This is ludicrous. Mr. Bates is trespassing and it now looks as if he is being very foolish.”\textsuperscript{81} According to

\begin{itemize}
\item [\textsuperscript{72}] Marine &c., Broadcasting (Offenses) Act (MBOA), July 14, 1967 ch. 41. For a discussion of the politics leading up to the passage of the MBOA, see CHAPMAN, supra note 45 at 176–96; JOHNS, supra note 44, at 232–29, 236–37. Ironically, the struggles between Bates and Radio Caroline for control of Roughs Tower may have contributed to the Parliamentary sense of the pirate radio operators as dangerous buccaneers, thereby speeding the passage of the Act. See JOHNS, supra note 44, at 250.
\item [\textsuperscript{73}] MBOA § 3.
\item [\textsuperscript{74}] MBOA § 4.
\item [\textsuperscript{75}] MBOA § 5(3)(e).
\item [\textsuperscript{76}] See Sealand Radio—Part 1, supra note 31; JOHNS, supra note 44, at 232–33 (discussing difficult financial straits of Radio Essex following MBOA ban on advertising); SINCLAIR, supra note 38, at 69–70 (discussing Radio Essex’s inability to make payroll in the fall of 1966). On the later history of pirate radio in the U.K., see generally JOHN HIND & STEPHEN MOSCO, REBEL RADIO: THE FULL STORY OF BRITISH PIRATE RADIO (1985). For the U.S. version, see generally JESSE WALKER, REBELS ON THE AIR: AN ALTERNATIVE HISTORY OF RADIO IN AMERICA (2001). The definitive pop-culture treatment is the 1990 Christian Slater movie PUMP UP THE VOLUME.
\item [\textsuperscript{77}] See also Secret Government Sealand Revelations, EVENING STAR (IPSWICH), Dec. 31, 2008, available at http://www.eveningstar.co.uk:80/news/secret_government_sealand_revelations_1_169303 [hereinafter Secret Government Sealand Revelations]. The Independent dates the declaration of the Principality to 1969. See Lucas, supra note 42. One anti-Sealand website claims 1973, but that may be based on a confusion with the date of the constitution of 1975. See Baskir, supra note 69. The reason for establishing it as a “principality” rather than a “kingdom” is unclear. See Simon, supra note 30 (suggesting that the choice of a “principality” was at the advice of lawyers); Baskir, supra note 69, makes a distinction between “principality” and “independent state.”
\item [\textsuperscript{78}] See Simon, supra note 30; Miller & Boudreaux, supra note 41; Garfinkel, supra note 2. But see SINCLAIR, supra note 38, at 77 (claiming idea came from Radio Essex employee Dick Palmer).
\item [\textsuperscript{79}] See Ministry Says Talks Over Fort Broke Down, TIMES (LONDON), Aug. 9, 1967, at 2.
\item [\textsuperscript{80}] See Commandos Set to Seize Fort, TIMES (LONDON), Aug. 8, 1967, at 1.
\item [\textsuperscript{81}] Independent Isle ‘Ludicrous’, TIMES (LONDON), Sept. 4, 1967, at 3.
\end{itemize}
Roy and Joan, customs harassed them by opening their tins of food whenever they came ashore to resupply, and the Ministry of Defense tried to trick them into leaving the platform unoccupied. On another occasion, the Bateses alleged that Customs had “marooned” their children aboard Sealand by refusing to allow Roy and Joan to return.

The crisis came in late 1968. A Trinity House ship was working on a buoy northwest of Roughs Tower when Michael Bates opened fire on it with a .22 pistol belonging to his father, possibly after the servicemen on the ship made “lascivious comments about his sister.” Roy and Michael were arrested the next time they went ashore, and indicted for violations of the Firearms Act, including possession of a firearm without the proper certificate and possession of a firearm with the intent to endanger life. Their defense was that since the acts in question took place on Sealand, they were outside the jurisdiction of the English courts.

In a decision handed down in October 1968, Mr. Justice Chapman agreed. The decision apparently made waves in the government. The issue came up at a November 5, 1968 meeting attended by representatives from multiple important ministries. The conclusion they reached was pragmatic, not legal:

Mr. Bates’ continued occupation of the Tower was undesirable, because of the shooting incident and the possibility of

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82 Miller & Boudreaux, supra note 41.
84 See Radio Man’s Children ‘Marooned’, TIMES (LONDON), Mar. 7, 1968, at 3 (“We were told by the customs officials at Harwich that we could not go out to the fort unless we have a boat with a load line certificate,’ [Roy Bates] said. ‘This is just some obscure bit of marine law they have dug up to try to harass me in this business venture.’”). But see Children ‘Not Marooned’, TIMES (LONDON), Mar. 8, 1968, at 3 (“The official said: ‘All Mr. Bates has to do is hire another boat if his own does not conform to the regulations.’”).
86 R. v. Bates, supra note 34.
87 Lucas, supra note 42.
89 R. v. Bates, supra note 34. A fourth charge, “the only case alleged to have been committed on dry land,” was dropped by the prosecution. Sea Tower Outside Court Limit, TIMES (LONDON), Oct. 22, 1968, at 3.
90 Id.
91 Id. See also Harold Jackson, Complex Legal Affair of State, GUARDIAN (MANCHESTER), Oct. 22, 1968, at 3.
92 See Baskir, supra note 69 (reporting on minutes archived as Misc 163/68) 1st Meeting.) I am attempting to confirm the authenticity of the transcript. At the meeting were representatives of Treasury, Home Office, Law Officers’ Department, Ministry of Defense, Post Office, Customs and Excise, and Trinity House. According to those minutes, in June of 1967 they had previously met to consider Bates’s occupation of Roughs Tower, but decided not to report the matter to the Prime Minister in light of the pending criminal prosecution. See Baskir, supra note 69. The dates don’t make sense. Bates’ previous conviction had been upheld on appeal by January of 1967, so there would have been no prosecution pending in June.
further violence, and also because of the small but continuing threat that the Tower could be used for some illegal activity not at present foreseen. Nevertheless, he was doing no actual harm, so far as was known, and the Ministry of Defense had no need of the Fort themselves. There was no pressing reasons for evicting Mr. Bates, certainly none that would justify the use of force or the passage of special legislation.\(^{93}\)

In keeping with this reasoning, the U.K. cautiously avoided the question of Sealand's status for the next two decades.\(^{94}\) Instead, the government embraced a pair of negatives. On the one hand, Sealand was “not part of the United Kingdom,” but on the other, the Home Office wrote that it was “not aware of any grounds on which the [Roughs Tower] Fort could be regarded as a State; the Government does not so regard it . . . .”\(^{95}\) In 1984, Michael Bates obtained a ruling from the British Department of Health and Social Security that he was not liable to pay contributions to Britain’s social security system for the times during which he was resident on Sealand.\(^{96}\)

On October 1, 1987, however, the United Kingdom extended its territorial waters from three to twelve miles, thus bringing Sealand within the zone the United Kingdom claimed.\(^{97}\) Although it has never forced a confrontation, the United Kingdom has acted since 1987 as though Sealand were part of it.\(^{98}\) For its part, Sealand claims the extension had no effect on it, as it was already a sovereign nation.\(^{99}\)

There have been other incidents over the years. In 1990, the Royal Maritime Auxiliary vessel Golden Eye was passing close to Sealand when

\(^{93}\) Quoted in Baskir, supra note 69.

\(^{94}\) Cf. Kessler, supra note 61 (“‘We can’t do anything about it at all,’ says an Admiralty spokesman. ‘He can stay as long as he doesn’t become a menace to shipping.’”).

\(^{95}\) Letter from P. Ransford, Home Office to Hans Fuhr, July 8, 1981.


\(^{97}\) Territorial Sea Act of 1987 § 1(a). One website claims that in late 2000, a judge at the Magistrate’s Court in Southend held that Roughs Tower was within its jurisdiction. See Baskir, supra note 69. This is plausible in light of the intervening extension of U.K. territorial waters, but I have found no independent confirmation.


\(^{99}\) See Lucas, supra note 42.
Sealanders fired rifle shots to warn it away. According to Roy Bates, the shots were a warning that the *Golden Eye*, which had not responded to radio calls, was passing too close. The *Golden Eye*’s crew, thinking they might be under attack, called the Thames Coastguard. A police investigation and perhaps a court case in Felixstowe followed, but there is no clear report of the outcome. In another, undated clash, HMS *Egeria* was taking soundings near Sealand when Prince Michael “cut loose with a full magazine of 9mm across her bow.” In another, a military helicopter allegedly tried to land marines on the platform, but Michael opened fire on them. “Then when I came back to Southend, they put me in prison, the buggers.” Michael Bates has also claimed that Britain at one point offered to buy him out.

D. Culture

Reviews of life on Sealand are mixed. Years of work have given the platform sparse but livable accommodations in the legs, and a few fairly comfortable rooms with couches on the main deck. The living quarters now have double-glazed glass and electric stoves, and the views are, unsurprisingly, “awesome.” Less cheerfully, one caretaker explained, “I like being here on my own, but one couple spent a few weeks out here and went mad, leaving suicide notes all over the place.” A journalist called it a “scrap heap,” a “rusting heap of junk,” and a “decrepid hulk.” Although Sealand sports a helipad, the main way on is by winch from the waves below. Reporters’ accounts of the experience are typically hair-raising.

Politically, Roy Bates promulgated a constitution in 1975, with himself as constitutional monarch: Prince Roy of Sealand. His nation has a flag, a coat

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100 See Cusick, *supra* note 40.
101 *Id.* Whether that was “too close “ for its own navigational safety or the comfort of the Sealanders is not specified.
102 *Id.*
103 *Id.*
104 See *Secret Government Sealand Revelations*, *supra* note 77.
105 The most I have found is Garfinkel, *supra* note 2, who says only that “the matter was quickly dropped. “
106 See *Sealand Radio—Part 2*, *supra* note 50.
107 Lucas, *supra* note 42.
108 *Id.* (quoting Michael Bates).
110 Miller & Boudreaux, *supra* note 41.
115 Sealand requires visitors to sign liability waivers. See Sellars, *supra* note 36.
of arms,\textsuperscript{118} a passport stamp,\textsuperscript{119} and a national anthem.\textsuperscript{120} It also has a Facebook page,\textsuperscript{121} a Twitter account,\textsuperscript{122} and a YouTube channel.\textsuperscript{123} Sealand has issued coins since 1972, in various denominations;\textsuperscript{124} the Sealand dollar is nominally pegged to the United States dollar at a rate of SX$1 to US$ 1.\textsuperscript{125} Sealand also issued a set of stamps in 1969 bearing the portraits of famous explorers, and subsequent stamps that included ships, fish, and a portrait of Joan.\textsuperscript{126} The government gives its address as SEALAND 1001, but then invariably adds, “c/o Sealand Post Bag, IP11 9SZ, UK.”\textsuperscript{127} For years, Sealander would present their Sealand passports when traveling,\textsuperscript{128} and accumulated stamps from a fair number of nations.\textsuperscript{129} Sealand has conferred honorary titles on various celebrities for their

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{118} See, e.g., Principality Notice PN035/07, Restricted Visitation Arrangements, SEALAND (Apr. 22, 2007), http://www.sealandgov.org/notices/pn03507.html.
\item\textsuperscript{119} Lucas, supra note 42.
\item\textsuperscript{120} HavenCo co-founder Sean Hastings’s website has images of stamps and visas from countries
\end{itemize}
\end{footnotesize}
support, such as TV presenter Ben Fogle, who devoted a chapter in a book to Sealand, and automotive TV journalist Jeremy Clarkson, a “proper bloke’s bloke” whom Prince Regent Michael would like to see be Prime Minister of Sealand.130

Sealand has a sporadic but active official cultural life. A wedding was held on Sealand in 1979:131 Gordon “Willy” Wilkinson, who had worked for Roy Bates for 16 years and become his “best mate,” was the groom.132 The Bateses sold their film story to a Hollywood screenwriter for perhaps $20,000.133 The energy drink Red Bull sponsored a skating video filmed on Sealand in 2008.134 Pete Wentz from the band Fall Out Boy at one point announced his interest in playing a Sealand gig.135 Sealand sometimes lends its name to athletes. Martial artist Michael Martelle represented Sealand at the Festival Culturel Chinois de Québec;136 its National Football Team is a Danish club in Vestbjergl.137 Slader Oviatt carried a Sealand flag to the top of Muztag Ata, a 7546m peak in China.138

Roy and Joan Bates have moved off of Sealand.139 By 2000, they had a “pied-a-terre” in Essex.140 They looked for a place to live in Florida,141 but

including Togo, Gabon, Senegal, Mongolia, and West Germany. Interestingly, some of these images are from visas granted to Johannes Seiger, Prime Minister of the German sealand. See generally Sean Hastings, Confidential Report: The Principality of Sealand, http://www.seanhastings.com/havenco/sealand/index2.html.


131 See Secret Government Sealand Revelations, supra note 77.

132 See Sealand Radio—Part 2, supra note 50 (including photograph of Roby Dawson in suit with vest for the wedding, posed on Sealand’s deck with Alsatian guard dog, and holding a shotgun).


134 Red Bull Access All Access Meets Sealand (video), available at http://www.youtube.com/watch?v=7pHwkbDx_34. The highlight of the clip is an accident in which a skateboard goes over the side. See also http://www.youtube.com/watch?v=jhCVoKZYYNU (longer version, with interviews).


138 Id.

139 See Simon, supra note 30.

140 Miller & Boudreaux, supra note 41.
eventually retired to Spain. The Bateses have “dual nationality” and no longer use their Sealand passports when they travel. Michael, for his part, has a “Hollywood-style bungalow” in Essex, where he runs a business, “Fruits of the Sea,” that harvests sea fern and cockles. A new Constitution was put into force in the late 1990s, and in 1999, Prince Roy’s fading health led him to appoint Michael as Prince Regent and Sovereign pro tempore.

A serious fire broke out on Sealand on Friday, June 23, 2006. The only person on Sealand at the time, a security guard, tried and failed to put out the fire. Suffering from smoke inhalation, he had to be airlifted out to Ipswitch Hospital on the mainland by a Royal Air Force helicopter. More than twenty firefighters responded, from a mix of private and governmental groups. A tug sprayed Sealand with water as smoke billowed hundreds of feet into the air. Michael Bates, who had been visiting his parents in Spain, moved quickly to reoccupy the platform, boarding it with his sons James and Liam on Sunday, June 25. The damage, however, was extensive: Michael estimated it at half a

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142 See Simon, supra note 30.
143 See Lucas, supra note 42.
144 Gooch, supra note 43 (United Kingdom and Sealand).
145 See Simon, supra note 30.
146 Lucas, supra note 42.
147 See Garfinkel, supra note 2; Gooch, supra note 43; FRUITS OF THE SEA, http://www.fruitsofthesea.demon.co.uk/.
152 See Sealand on Fire, supra note 149.
157 Id. Numerous dramatic photographs of the blaze and its aftermath are available at Sealand on Fire, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/Sealand_Fire/Sealand_Fire.html et seq.
million pounds.\textsuperscript{158} (The total does not include the costs of putting out the fire, for which the rescue services decided not to charge Sealand.\textsuperscript{159}) Charred debris and rusted metal were everywhere, and large quantities of water from the firefighting operation had pooled in the bottom of one of the legs.\textsuperscript{160} Over much of the next year, crews from Church and East Ltd. cleaned out the mess, repaired the living quarters, and made Sealand habitable again.\textsuperscript{161}

Sealand has never supported much of a population. In 2002, Sealand reported to the Summit of Micronations that it had a population of 27.\textsuperscript{162} The number is almost certainly exaggerated. For months in the late 1960s, Michael and another man, Walter Mierisch, were the only ones aboard.\textsuperscript{163} For much of the 1990s, Roy occupied it by himself.\textsuperscript{164} After HavenCo’s launch, the Sealanders came aboard only for press visits; otherwise, it was occupied by one or two HavenCo employees.\textsuperscript{165} When one reporter visited in 2000, the “crew” consisted of two men.\textsuperscript{166} When another reporter visited in 2004, “the crew” aboard Sealand consisted of two men, Mike and John, supported by a shore-based

bobleroi.co.uk/ScrapBook/SealandFire_3/SealandFire_3b.html.

\textsuperscript{158} \textit{Sealand Will Take Three Months to Repair}, EVENING STAR (IPSWICH), Nov. 12, 2006, http://www.eveningstar.co.uk:80/news/sealand_will_take_three_months_to_repair_1_111229.

\textsuperscript{159} Geates, EVENING STAR (IPSWICH), Nov. 9, 2006. Reliance on national rescue and medical services is a long-running theme in the story of pirate radio. \textit{See, e.g.} BISHOP, supra note 30, at 29 (describing incident on July 27, 1964), 34 (February 13, 1966), 43 (March 3, 1974), 63 (January 27, 1968), 66 (June 2, 1970), 71 (February 24, 1965, April 23, 1965, August 20, 1965, and January 11, 1966), 76 (July 18, 1958), 77 (February 12, 1962), 86–87 (April 10, 1971), 88 (November 22, 1971), 91 (December 25, 1960), 98 (June 7, 1964), 99 (January 9, 1963), 100 (June 19, 1966), 102 (October 28, 1963, November 28 1965, noting that “Walton lifeboat were prepared to take the men off, but stated that they were not a ferry service, “ and November 9, 1966), 106 (April 3, 1973), 122 (September 1, 1974, including “considerable inconvenience “ for the coast guard). \textit{See also CONWAY, supra note 45}, at 203 (“It took more than forty-eight hours, two huge salvage tugs, and four Harbour Board crews to pull the battered radio ship, which refused to sink, off the Goodwin Sands. “). Pirate radio ships sank with disconcerting frequency. \textit{See, e.g. id.} at 187–204 (sinking of \textit{Ross Revenge} in 1991); BISHOP, supra note 30, at 32 (grounding of \textit{Mi Amigo} in 1966), 63 (grounding of \textit{Tiri} in 1966), 76 (grounding of \textit{Cheeta} in 1958), 106 (grounding of \textit{Nordney} in 173). The \textit{Mi Amigo} sank in heavy weather in 1980.

\textsuperscript{160} \textit{Inside Out} (undated BBC news program), available at http://www.youtube.com/watch?v=im5G5xYmK0I.

\textit{Id.}


\textsuperscript{162} Lucas, supra note 42.

\textsuperscript{163} \textit{See Garfinkel, supra note 2.}


\textsuperscript{166} \textit{See Garfinkel, supra note 2.}
“Sealand Guard “ of three more: Jez, Wayne, and Sean.\(^{167}\)

E. Business

Offshore broadcasting—which HavenCo would take to an entirely different level—never completely dropped off the Sealand radar. In the aftermath of the 1978 coup, Essex police raided Roy Bates’s flat in Westcliff and his office in Southend looking for pirate radio equipment.\(^{168}\) Bates pleaded guilty to charges of operating an illegal radio station and paid a £250 fine.\(^{169}\) There was discussion of a television service to be broadcast from Sealand in the 1980s but nothing came of it.\(^{170}\) In 1987, Michael and a group of partners bought radio gear (including some that had been seized from another offshore radio operation by Dutch authorities) with the intention of starting up Sealand broadcasts by retransmitting other stations, but shelved the project in light of Britain’s extension of territorial waters.\(^{171}\) An “amateur radio day “ also came to naught,\(^{172}\) as did hints that Sealand was in negotiations with Russian venture capitalists to launch a communications satellite.\(^{173}\)

The closest Sealand has come to real pirate radio took place in the late 1980s. Allan Weiner, an American radio engineer who had been in trouble with the Federal Communications Commission (FCC) for unlicensed broadcasts as far back as 1971,\(^{174}\) set up a Honduran-flagged fishing ship named the Sarah four-and-a-half miles off the coast of Long Island.\(^{175}\) He broadcast as “Radio New

\(^{167}\) Lucas, supra note 42. Cf. Lackey, Defcon 11 Presentation, supra note 165, video at 28:00 ( “If you look at the photos, you’ll see the same people all the time, and you can easily deduce how many people there are there. “).


\(^{170}\) See Sealand Radio—Part 2, supra note 50 (mentioning “Local South East television relay “); Rough Tower, THE OFFSHORE RADIO GUIDE, supra note 28 (mentioning “Sealand Channel 5 “ television service). In 1987, Roy Bates was telling a reporter of a plan to launch “Sealand Television “ with three channels, a plan far enough along to have a Page Three girl lined up as a presenter and a rate card to quote to advertisers. See Lisa O’Kelly, Diary: No Porn, but Sealand’s in the Family Way, CAMPAIGN, Aug. 7, 1987. See also Watson, supra note 98 (claiming £ 3 million start-up investment and planning to show “films bought from Hollywood “).

\(^{171}\) See Sealand Radio—Part 2, supra note 50; Rough Tower, THE OFFSHORE RADIO GUIDE, supra note 28 (mentioning also an aborted plan to relay MTV under the name “Star Channel “).

\(^{172}\) Lackey, Defcon 11 Presentation, supra note 165, slides at 32.

\(^{173}\) See Burke Hansen, Sealand Seeks Satellite and Movie Deals, THE REGISTER, Sept. 27, 2007 (calling Sealand “reality-challenged “).


York International “for five days in 1987 before the Coast Guard and FCC arrested him. The incident would come back to haunt Sealand. Weiner later applied for a construction permit for a new radio station. As part of its case against Weiner, the FCC introduced a sworn statement from a representative of the U.K.’s Department of Trade and Industry that neither the U.K. nor the U.S. recognized Sealand’s right to register ships. The incident may also have created some determined enemies for Sealand. Some of Weiner’s other business partners blamed Sealand for their losses in dealing with him, seeking revenge on Sealand in the British courts and taking their anger to the web.

176 Application of Weiner at 4342. The signals were picked up as far away as Michigan. See Joseph Berger, Off L.I., A Pirate Radio Station Defies F.C.C., N.Y. TIMES, July 27, 1987, at A1. Long Beach is on Long Island, a few miles to the east of New York City.

177 Id.; Lackey, Defcon 11 Presentation, supra note 165, video at 30:15.

178 Id. It is unclear why Weiner thought this scheme would work, since Honduran registration hadn’t saved him from the FCC’s wrath the first time around. He also botched the deal; in order to get the Sarah out of Boston harbor, he had registered it in Maine, an act sufficient for a District Court to conclude that it was a United States vessel. United States v. Weiner, 701 F. Supp. 14, 15 (D. Mass. 1988). To be more precise, Weiner acquired a $4 Maine fishing license, possibly for a different ship, and left Boston harbor claiming the boat would be used for inland fishing in Maine. See John England, The Ill-Fated Story of WRLI and WWCR, J. ON MEDIA CULTURE (Winter 2003), http://www.icce.rug.nl/~soundscapes/VOLUME05/Ill-fated_WRLI.shtml.


181 Application of Weiner at 4342. Murphy’s name and affiliation are attested in Baskir, supra note 69.

182 In brief, a consortium of offshore radio entrepreneurs called MPLX, see The Wonderful Radio London Story, http://radlon.bravehost.com/, was drawn into the mess when Weiner took their money in a sham sale of the vessel to them. See John England, The Ill-Fated Story of WRLI and WWCR, J. ON MEDIA CULTURE (Winter 2003), http://www.icce.rug.nl/~soundscapes/VOLUME05/Ill-fated_WRLI.shtml. Tracing back through the sordid story, the MPLX investors unearthed Sealand’s role, and tried to hold Sealand accountable for their losses to Weiner. Id.

Over the years, other self-styled information pirates have cast a longing eye on Sealand. Of course there is HavenCo, but it has hardly been alone. In 2007, the Pirate Bay, a Swedish website devoted to indexing BitTorrent downloads with a devil-may-care attitude about copyright law,\textsuperscript{185} announced plans to buy Sealand.\textsuperscript{186} It raised over $20,000 in donations through a website at BuySealand.com, well short of the ten-figure price tag named by the royal family,\textsuperscript{187} and negotiations ultimately broke down.\textsuperscript{188} Perhaps unknowingly, the Pirate Bay was echoing the 2001 experience of Matthew Goyer, who contemplated setting up an OpenNap\textsuperscript{189} server on Sealand.\textsuperscript{190}

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\begin{footnote}{184 The MPLX veterans’ main outlet was an anti-Sealand website called the *Rough Sands Gazette.* See Baskir, *supra* note 69. It was at freebornjohn.com; pages are still available through the Internet Archive. The following excerpt gives a sense of the Gazette’s tone:}

This sludge is being dredged from the natural land of this planet Earth, and it is this natural land to which the legal expression “the laws of the land” refers, and the kind of natural land that Michael Bates seems to lack—in addition to logic and a grasp of reality. Because he asked the Evening Star, in a hypothetical manner, about the extension of UK territorial waters from three miles to 12 miles, when he asked: “If Britain imposed itself on us in that way ..., as if to say that the UK had not actually performed this undertaking. But of course the UK did extend its territorial waters long ago in 1987, and the actions of Harwich Havens Authority are proof that the UK is maintaining its own territorial waters. The hypothetical world of Michael Bates is what every ordinary person would term reality. It is time for Michael to come out of his dream: his dream which is in reality a nightmare involving violence and illegal guns.

It is also interesting that the Wikipedia pages relating to Sealand were the subject of a fierce edit war in late 2004, in which the anti-Sealand side was argued by a user with the name MPLX/MH. See *Talk:Principality of Sealand/Archive1 et seq.*, http://en.wikipedia.org/wiki/Talk:Principality_of_Seland/Archive_1 (June 10, 2010) (archiving discussions from 2004–present).\textsuperscript{185}

\begin{footnote}{186 See generally Flora Graham, *How The Pirate Bay Sailed into Infamy,* BBC NEWS (Feb. 16, 2009), http://news.bbc.co.uk/2/hi/technology/7893223.stm.}\
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\begin{footnote}{187 See id. ($1,000,000,000); *BuySealand.com, THE PIRATE BAY BLOG* [Jan. 12, 2007], http://thepiratebay.org/blog/49 ($2,000,000).}\
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\begin{footnote}{189 OpenNap was a Napster clone, created after Napster experienced some minor legal troubles.}\
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Sealanders have also dreamed of bigger things for their small nation. At one point, Roy Bates considered trying to “extend Sealand into a three-mile-long, man-made island with banks and its own airport.” He also contemplated a “giant hypermarket selling duty-free cigarettes and alcohol” and a “tanker port.” A post-fire website refers to an “exclusive building contract,” and seeks investors for the rebuilding for “business ventures that are legal both in the UK and Sealand.” Creating a tax haven was mooted early in Sealand’s history; again, not much seems to have happened on that front. The same could be said of the 2004 Royal Bank of Sealand. In 2007, Sealand really did build a casino, but only online. Also in 2007, Sealand listed itself for sale through the Spanish firm InmoNaranja. The price tag was a modest € 750,000,000.

Roy Bates also sometimes tells reporters about an incident in which he was approached by an innocent-sounding group seeking to do a business deal with Sealand, only to send them packing when he realized they were a front for more sinister doings. So far, he’s told the story about drug smugglers, mercenaries, etc.

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197 *Sealand Launches Casino*, EVENING STAR [IPSWICH], Aug. 1, 2007, http://www.eveningstar.co.uk:80/news/sealand_launches_casino_1_115333 (quoting spokesman as saying, “The Royal family of Sealand’s high regard for the loyalty of its subjects is extended towards all Sealand Casino users, with players gaining loyalty points each time they place a bet.”). It is not recorded whether the casino was actually hosted from Sealand, although it seems unlikely. See. Lackey, Defcon 11 Presentation, *supra* note 165 (describing parlous state of Sealand computer infrastructure).


200 See Deeley, *supra* note 83 (“American and Continental business consortia . . . proposals for a drugs smuggling centre “).

201 See Deeley, *supra* note 83 (“a base for the recruitment of mercenaries. “).
Argentina (during the Falklands War), Libya, and the CIA. Along similar lines, he and his family have also described various governmental and private threats against Sealand, including Belgian mercenaries, a Dutch plane, being “stalked” by German and Dutch vessels, and a United States helicopter “covered in rockets and heavy machine guns.” Bates also claims to have “argued a company of royal marines out of staging a helicopter invasion.

F. Civil War

At some point in the mid-1970s, Sealand connected with a German professor, Alexander Achenbach. He drafted the nation’s 1975 constitution, and was named Prime Minister and Chairman of the Privy Council. He decided to push the question of Sealand’s sovereignty. He petitioned the city of Aachen to terminate his German citizenship on the grounds that he was now a citizen of Sealand. The city denied his request, so Achenbach and his lawyer, Gernot Putz, appealed the decision. On May 3, 1978, the Administrative Court of Cologne rejected Achenbach’s claim on the grounds that Sealand was not a state.

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202 See Garfinkel, supra note 2.
203 See Baker, supra note 109.
204 See Deeley, supra note 83 (quoting Bates as saying “An American Church from the Bible Belt... asked if they could install a radio transmitter to beam religious broadcasts into Russia. I was quite interested—they were offering a lot of money—until someone told me the Church was a front for the CIA.”).
205 See Deeley, supra note 83 (quoting Joan Bates as saying, “We’ve heard that a Belgian is going around offering £2,500 a head to mercenaries who will join in an attack to seize Sealand back off us.”).
206 Id.
207 Id.
208 Id.
209 Id.
210 See Kessler, supra note 61.
212 Id.
213 The correct spelling of Putz’s name is a matter of some dispute in the sources. Although “Gernot Putz” seems to be the preferred spelling, see id, it is variously also given as Gernot Puetz, see Attempt to Free Captive from Private Island Fails, TIMES (LONDON), Sept. 5, 1978, at 3, Gernot Plotz, see Ezard, supra note 148, Gerald Putz, see Martin Wainwright, Major Defends His Minor Power, GUARDIAN (MANCHESTER), Sept. 5, at 1, and Gertold Putz, see Deeley, supra note 83.
214 Raum für Roy, supra note 211.
215 In re Duchy of Sealand, Verwaltungsgericht [VG][Administrative Court of Cologne], May 3, 1978, 80 I.L.R 683. The question of Sealand’s status is discussed in Part III.B infra. For a more detailed academic discussion of the issues, see Arenas, supra note 3; Dennis, supra note 3. Sealand has commissioned four legal opinions over the years, all of which conclude that Sealand is a state. The four opinions were rendered by Walter Leisner in 1975, http://www.seanhastings
By August, Sealand was at war with itself.216 Achenbach connected Bates to a group of investors interested in erecting a “$70 million hotel and gambling complex.”217 The investors invited Roy and Joan Bates to Austria for a meeting, leaving Michael alone on Sealand.218 Gernot Putz, the lawyer, arrived on a helicopter, claiming that a deal had been struck to transfer Sealand.219 Michael let the helicopter land, but it was a trick, just as luring his parents to Austria had been.220 Also on the helicopter were an armed group of what have been alternately described as Dutch businessmen and Dutch mercenaries.221 The invaders locked Michael up,222 and then, after three days, put him on a fishing boat headed to the Netherlands.223

Undeterred, Roy called in favors and launched his own helicopter assault on Sealand with a team of five.225 Roy’s friend John Crewdson, “who had flown helicopter stunts in James Bond films,”226 was the pilot.227 Attacking at dawn, they came close to an exchange of gunfire, but when Michael accidentally fired his sawed-off shotgun, the German junta surrendered.228

International diplomatic furor followed. West Germany and the Netherlands complained to England that their nationals were being detained.229 West Germany called it “in a way an act of piracy, committed on the high sea but still in front of British territory by British citizens.”230 A discomfited Britain

216 The nature of the connection between these two events, if indeed there is one, remains unclear. My suspicion is that they have too much in common not to be related.

217 McCullagh, supra note 191.

218 See Garfinkel, supra note 2.

219 See Simon, supra note 30. See also Garfinkel, supra note 2 (stating that a second man was also lowered from the helicopter, claiming to be ill and asking for whiskey).

220 See Simon, supra note 30.


223 See Simon, supra note 30.

224 See id.

225 See Sealand Radio—Part 2, supra note 50 (photograph of group, with names).

226 See Simon, supra note 30.


228 Lucas, supra note 42.

229 See Secret Government Sealand Revelations, supra note 77; RYAN ET AL., supra note 19, at 11.

230 Secret Government Sealand Revelations, supra note 77.
weighed its options. Lord Kennet asked his peers, “My Lords, is it not the case that what this time may be a harmless and colorful escapade could next time, in law, be a moderately dangerous act by an unfriendly foreign power?”

Towing the platform inside territorial waters was dismissed as impractical, but the government considered demolishing the platform if the Bateses ever left it unoccupied.

Within a few days, the group was released, except for Putz, who held a Sealand passport, leading Prince Roy to consider executing him for treason. Prince Roy put them on trial, appointing one of his men to represent the prisoners while he presided. Putz pleaded guilty and was fined £18,000 and held prisoner until it was paid, and in the interim, made to “wash the loos and make coffee.”

After three weeks, at the request of Putz’s wife, the West German embassy investigated. Dr. Christoph Niemoller, head of the embassy’s legal department, visited Sealand by helicopter and confirmed that Putz was “well and happy.”

Putz was released on September 28, six weeks after the attempted coup. Within a few days, the group was released, except for Putz, who held a Sealand passport, leading Prince Roy to consider executing him for treason.

The German embassy concluded that the incident was a publicity stunt. The British government considered demolishing the platform if the Bateses ever left it unoccupied.

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G. The German Sealand

Following his failed coup attempt, Achenbach established a government-in-exile in Germany. According to its chronology of Sealand history, the 1978 incident consisted of an “[i]nsurrection by the government under Mr. Achenbach against Roy of Sealand, “ followed by a successful retaking of the territory by Roy.246 At that point, the “still constitutional government of Sealand under Mr. Achenbach “ went into exile, transferring Roy’s powers to a syndic via constitutional amendment.247 Achenbach appointed a Dr. A.L.C.M. Oomen as syndic in the fall of 1978,248 and in 1988 and 1989, Achenbach and Oomen established Johannes W.F. Sieger as Prime Minister and Chairman of the Privy Council.249

A Constitution Council drafted a new constitution “in exile, as the then government, yet independent of it, “ which was promulgated in 1989.250 The constitution is similar to the 1975 constitution, except that it moves from a monarchy in which the Sovereign issues all legislation to a constitutional model in which the Sovereign issues legislation “based on recommendations by the Government and in accordance with the Privy Council “ and that it adds German as a national language.251 Sieger proceeded to refashion “Sealand “ as more of a business venture than a nation:

The Principality of Sealand is a state with the qualities of a business group, which means the Principality of Sealand knows neither civil servants nor functionaries, it exclusively knows active collaborators!

The Principality of Sealand is represented only by those who contribute to the achievement of its targets and thus to the development of the Principality of Sealand.252

Some of these activities are strange indeed. One involved a so-called

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246 Chronology, supra note 210.
247 Id. The German Sealand’s underlying theory of legitimacy is far from clear. It clearly accepts that it is “in exile “ and that Bates has actual possession of Sealand. It also hopes “to reinstall Roy of Sealand at an opportune time as its sovereign. “ CONSTITUTION OF 1989 pmbl. Nonetheless, acting on behalf of “people of the Principality of Sealand, “ it claims authority to make law for the country. Id.
248 Chronology, supra note 210.
250 CONSTITUTION OF 1989.
251 Id.
“VRIL implosion technology “ that would “create symmetrical gravitational waves of any desired frequency “ and could therefore “ bring energy into atomic or molecular structures of appropriate materials and to store it there. “253 The material on the German Sealand’s website is voluminous, and the English translations are not always intelligible, but it adds up to a heady brew of supernatural pseudoscience, lost-treasure conspiracy theory, and repeated conflicts with the German authorities.254 Sealand itself denounces these “fraudulent representations, “ disclaims any connection with the German Sealand, and warns the world that some of the German site’s operators are “subject to arrest and prosecution for these and other offences against Principality law. “255

A shadowy Spanish group has engaged in even shadier dealings using the Sealand name. In the late 1990s, a flamenco nightclub and filling station owner under investigation for selling diluted gasoline identified himself as Sealand’s “consul “ and claimed diplomatic immunity.256 The police ultimately found three “Sealand “ offices and filed charges against some 80 people.257 Their actual crimes were a mixture of two-bit and brazen: everything from skipping town with unpaid hotel bills to gunrunning.258 They appeared to be led by a Spaniard named Francisco Trujillo,259 who fancied himself Sealand’s “regent “ and a colonel in its armed forces (for which he had uniforms designed) and ran a supposed Sealand

254 See, e.g., Aus der Arbeit der Regierungskommission «VRILLA», PRINCIPALITY OF SEALAND, http://principality-of-sealand.eu/vril/vril_docs_d.html (in German) (discussing flying saucers). Here is a sample of one of its statements, to give the flavor:

The various offices of the Principality of Sealand and its diplomatic and trade missions in Germany have in recent years been searched by police in violation of its diplomatic immunity and in contravention to the Vienna Treaty, trying to find incriminating material. All these measures had to be cancelled as no indications to illegal activities were ever found.

The main reason for these searches was the attempt to get at documents from the Nazi times in possession of Sealand, also at information about the actual storage places of the Amber Room, the Treasure of the Reichspost, of flying disks, huge gold and silver caches and a multitude of cultural treasures of immeasurable value. Of further interest are advanced technologies like the development of alternative free energy systems as well as highly sensitive documents from Stasi files.

256 Miller & Boudreaux, supra note 41.
257 Id.
258 Id.
embassy in Madrid.\textsuperscript{260} The group had created a website\textsuperscript{261} that promoted Sealand to potential investors.\textsuperscript{262} Two of the group—the Minister of Justice and the Minister of Transport and Trade—tried to purchase tanks, fighter aircraft, and artillery from the Russian mafia, possibly for shipment to the Sudan.\textsuperscript{263} There may have been a connection between the Spanish group and the German Sealand although, if so, its exact nature remains obscure.\textsuperscript{264} Sealand itself has unconditionally denounced the Spaniards.\textsuperscript{265}

The “fake“ Sealand passports have turned up in strange places. Some wound up in Eastern Europe, in the hands of pyramid schemers who had used them to travel to Libya, Iraq, and Iran.\textsuperscript{266} Others were sold to would-be illegal immigrants to Europe,\textsuperscript{267} and to fearful residents of Hong Kong in the run-up to

\textsuperscript{260} Miller & Boudreaux, supra note 41.
\textsuperscript{261} At http://principality-sealand.net, no longer online but available through the Internet Archive, e.g. at http://web.archive.org/web/20001205065000/http://www.principality-sealand.net/.
\textsuperscript{262} The site claimed Sealand had a population of 160,000, see Gooch, supra note 43, and asked for foreign investment in a range of projects including “a luxury hotel and casino, business center, sports complex, medical center, tuition-free University of Sealand, and Roman Catholic cathedral.” Miller & Boudreaux, supra note 41. But see SUMMIT OF MICRONATIONS, supra note 162 (listing Church of England as the only religion listed by name under Sealand’s demographic statistics). The site also asked visitors to indicate whether they were interested in citizenship, ID cards, passports, or drivers’ licenses, and sold these credentials for between £5,500 and £35,000. Gooch, supra note 43. Miller & Boudreaux, supra note 41. Another source claims it was a promotional book, either instead of or in addition to the website. See José María Irujo, Sealand, un Falso Principado en el Mar, EL PAIS (MARDID) (in Spanish), available at http://paginaspersonales.deusto.es/abaitua/kanpetzu/primate/sealand.htm.

\textsuperscript{263} See Sealand y el Tráfico de Armas, EL MERCURIO (SANTIAGO), June 17, 200, available at http://diario.elmercurio.cl/detalle/index.asp?id=\{5e1cb892-1c4e-42d1-9be2-46584a8df133\} (in Spanish).

\textsuperscript{264} A Dusseldorf businessman named Friedbert Ley—who had employed Trujillo at a roof insulation company—was the one who created the Spanish group’s website, which listed Ley as “prime minister “ in a hierarchy under Trujillo. Miller & Boudreaux, supra note 41. Presumably, the company was Isopol GMBH, named in Sealand y el Tráfico de Armas, EL MERCURIO (SANTIAGO), June 17, 200, available at http://diario.elmercurio.cl/detalle/index.asp?id=\{5e1cb892-1c4e-42d1-9be2-46584a8df133\} (in Spanish). Ley later denied any connection to the German Sealand, and, calling the site a “big joke, “ also denied any criminal connection. Miller & Boudreaux, supra note 41. Spanish authorities disagreed, saying that the “verdaderos cerebros [true brains] “ of the group were in Germany, naming Ley and one Johnanes Weiger. See Sealand y el Tráfico de Armas, EL MERCURIO (SANTIAGO), June 17, 200, available at http://diario.elmercurio.cl/detalle/index.asp?id=\{5e1cb892-1c4e-42d1-9be2-46584a8df133\} (in Spanish). “Weiger “ might refer to Johannes W.F. Seiger, of the German Sealand. The German Sealand for its part, claims that it was approached by the Spanish group, referred by Ley and another, but that the Spaniards attempted first to defraud them and then offered to split the proceeds of highly sketchy transactions with them. See Press Release of April 20, 2000, supra note 254. At this, the German Sealand sent them packing, but since the international authorities were slow to take action, was unable to stop the resulting fraud by the Spanish group. Id.

\textsuperscript{265} See Miller & Boudreaux, supra note 41.
\textsuperscript{266} Gooch, supra note 43.
\textsuperscript{267} See Viel Geld für eine Affenfahrt, DER SPIEGEL, May 22, 1989 (in German).
the Chinese resumption of sovereignty in 1997. After Andrew Cunanan murdered the fashion designer Gianni Versace, he holed up on a houseboat before killing himself. The houseboat belonged to Torstein Reineck, a businessman who held what purported to be a diplomatic Sealand passport and drove a Mercedes with diplomatic license plates. The investigation led a State Department representative to state, “I can tell you, in no uncertain terms, that the United States does not recognize the Principality of Sealand.”

Other claims have been made to Sealand over the years. In 2009, for example, one “King Marduk I” asked the United Nations to recognize him as the ruler of Sealand. (That would have been a stretch, given that in 1982 a United Nations spokesman said, “The United Nations is an organization of governments, not gun platforms. The secretary-general has a nut file for such applications.”) Even though almost nothing was known about him, and he had never been to Sealand, King Marduk had big plans for it, saying “We have a strategy to create a new Sealandcity, wind farms, and an enterprise platform which will be a centre for modern communications technologies and a paradise for enterprise strategies.” Nothing more has been heard from him since.

H. Themes

A few themes appear over and over again in Sealand’s history. Most obviously, its physical existence has always been a little precarious, from the near disaster of its unbalanced sinking in 1942 to the fire of 2006. Indeed, Bates tried to occupy one of its sister platforms, Sunk Head, but found it uninhabitably dangerous, and the platform was later demolished by British authorities for precisely this reason. Commercially, it hasn’t been much of a success either:

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270 See id. I have found no contemporaneous documentation for the claim, made in some later articles, that Cunanan was also in possession of a Sealand passport. See, e.g. Gooch, *supra* note 43. Reineck, who has also used the name T. Matthias “Doc” Ruehl in business ventures, had an outstanding warrant for fraud in Europe and was under investigation in Germany for tax evasion. See DuBocq, *supra* note 269.
272 See Andrea Collitt, *Essex: Sealand Rejects Ownership Claim*, ECHO, http://www.echo-news.co.uk/archive/2009/01/22/Gazette+News+(ev_gazette_news)/4065979.Essex__Sealand_rejects_ownership_claim/. Marduk's m/o was otherwise to claim ownership of pieces of land around Lake Constance, at the intersection of Switzerland, Germany, and Austria, alleging that they were unmentioned in post-World War II treaties, and thus unowned. Id.
Bates claims to have poured large sums of money into it.\textsuperscript{276}

Sealand also has a remarkably consistent hold on the imagination. There’s a reason why even Red Bull and Fall Out Boy have been drawn to this “craziest kind of story ever.”\textsuperscript{277} Sealand is a powerful symbol: a place literally outside of the national system, literally offshore.\textsuperscript{278} And as a symbol, it has resonated with other dreamers.\textsuperscript{279} Roy Bates had plenty of big dreams, and so did his German and Spanish rivals. Sealand passports were a lucrative business, I suspect, not just because their bearers expected them to function as get-out-of-jail-free cards, but also because of the romance associated with this most unusual nation. There is a natural line connecting Roy Bates the offshore radio pirate with his modern-day counterparts: HavenCo, the Pirate Bay and OpenNap.\textsuperscript{280}

For such a small place, Sealand’s history is surprisingly and consistently violent. Even among other pirate radio operators, Roy Bates had a reputation for being the sort of man who was willing to seize first and ask questions later.\textsuperscript{281} He occupied first Knock John and then Roughs Tower by evicting the previous inhabitants. He and Michael then defended Roughs Tower from Radio Caroline with petrol bombs and from the government with gunshots. The 1978 assault is the high point, of course, but Michael Bates has regularly threatened potential intruders and fired shots across the bow of bewildered mariners.

Roy Bates’s outsize personality also casts a long shadow over Sealand. He plays reporters like violins,\textsuperscript{282} but behind the roguish eccentricity, there is also a remarkable force of will. Almost everyone who has visited Sealand is eager to

\textsuperscript{276} See STRAUSS, supra note 19, at 137 (2d ed. 1984) (over a million pounds); Erlandsen, supra note \_ \_ (“millions”); Kessler, supra note 61 (“$300,000 so far “). But see SINCLAIR, supra note 38, at 67 (“The only laugh came from us, when we heard him saying that he had spent a million pounds on the place. A thousand pounds maximum we thought.”)

\textsuperscript{277} Montgomery, supra note 135.

\textsuperscript{278} See Daniel van der Velden et al., The Discovery of the Fifth World: Stealth Countries and Logo Nations, SARAI READER 2005: BARE ACTS 96, 98–103 (discussing Sealand as imagined utopia).


\textsuperscript{280} See JOHNS, supra note 44, at 251–54.

\textsuperscript{281} See JOHNS, supra, note 44 at 233–36. In 1969, the Associated Press reported that Bates “said he would shoot anyone who tried to violate his sovereignty. “ Owner of Fort Off Britain Issues His Own Passports, N.Y. TIMES, Mar. 30, 1969.

\textsuperscript{282} For yet another example, Radio Essex convinced a reporter from the Orpington & Kentish Times that it served its staff “exquisitely prepared meals by a master chef purloined from a famous London Hotel. “ SINCLAIR, supra note 38, at 22. Typical fare aboard Knock John, however, tended more to “slightly ‘off’ corned beef, brittle bread with little holes where the fascinating green bits had been carefully chopped out, and mugs of hot, weak tea. “ Id. at 10. See also id. at 66–67 (describing how Bates provided Radio Essex staff with a “magnificent feast “ to show off to a television crew).
leave after a short while, but the Bateses have stuck it out for over forty years. This is also a man who led a helicopter assault on Sealand during the 1978 counter-coup; he has the outsize personality of other colonial liberators: a Bolivar or a Nkrumah.\footnote{To quote the man himself, “We may die rich, we may die poor. But we certainly shall not die of boredom.”} 284

II. HAVENCO

HavenCo started on the island of Anguilla, at the 1998 Financial Cryptography conference, when Sean Hastings met Ryan Lackey. Hastings was a programmer who had moved to Anguilla to work on online gambling projects.\footnote{Lackey was an independent-minded MIT dropout.} 286 They were worried about preserving personal freedom and concerned about expansive government power; they believed that the free flow of information on the Internet could solve both of those problems by enabling individuals to speak without fear of governmental oppression. To put their libertarian beliefs and technical skills into action, they were both looking to create a data haven.

A. “Data Haven”

As Michael Froomkin explains, a data haven is “the information equivalent to a tax haven—a single nation that offer[s] to warehouse data offshore.” 287 A data haven combines substantial computer infrastructure with highly permissive laws on what can be done with those computers. A combination of fast servers and loose laws mean that any data too sensitive to be stored and distributed from home will migrate to the haven.

Although William Gibson is sometimes credited with coining the term “data haven,” it has a surprising, and revealing, pre-history. In the 1970s, as countries grappled with the privacy issues raised by large databases of personal information, they tended to conceptualize the problem in territorial terms, enacting laws that imposed privacy standards on databases within their borders.

\footnote{In a sense, Sealand is a post-colonial nation. The parallel is sometimes made explicit. For example, the Sun ran an editorial cartoon on October 28, 1968 of a man in a rowboat next to a Sealand-esque platform labelled “British Keep Out Independent. “ The caption reads, “Says his name is Smith — wants to know how we got away with it. “ At the time, Ian Smith was the Prime Minister of Rhodesia, which had declared independence from Britain in an attempt to preserve white majority rule.}

\footnote{See Deeley, \textit{supra} note 83.}


\footnote{Id.}


Companies started to respond by physically shipping computers and storage media to countries with relatively looser laws. A 1978 Committee on Data Protection in the U.K. studied these issues of what are now termed “transborder data flows” and expressed concern that Britain might become a “data haven” for companies operating in countries with stricter privacy regulations.

A British management consultant, Adrian Norman, took the idea and ran with it, writing a spoof of a feasibility study for “Project Goldfish,” a “thoroughly private and secure system” along the lines of Swiss banking, offering data storage to clients worldwide. Norman predicted that small countries would be “willing to provide data havens analogous to tax havens.” Alerted to the issues, many countries eventually placed restrictions not just on the collection and storage of personal data, but also on transferring it to other jurisdictions with weaker privacy laws. The idea of regulatory evasion through offshoring data, however, had escaped into wider consciousness.

Science-fiction writers knew a compelling concept when they heard one.

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289 See, e.g., G. Russell Pipe, At Sea Over Pirate Data Banks, NEW SCIENTIST, Jan. 13, 1977, at 86 (discussing outsourcing of data entry and a “German association of detective agencies [that] decided to relocate its data base in Luxembourg”).

290 HOME OFFICE, REPORT OF THE COMMITTEE ON DATA PROTECTION, CM 7341 (1978). The report is sometimes referred to as the “Lindop report,” after the committee’s chair. Cf. DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY, NATIONAL INFORMATION POLICY 51–52 (1976) (discussing “data haven” problem of agencies subject to FOIA maintaining records with exempt agencies or with private-sector partners).


292 Id. at 10.

293 See, e.g., Council Directive 95/46/EC art. 26 (requiring EU Member States to restrict “transfers of personal data to a third country which does not ensure an adequate level of protection”).


295 An earlier book, JOHN BRUNNER, THE SHOCKWAVE RIDER (1975), envisions a programmer who successfully hacks the authoritarian government’s communications network from a secret undisclosed location, rather than a legal jurisdiction. More recently, the term has fallen into the hands of the authors of potboiler thrillers, who tend to use it to refer to any secure colocation facility, preferably in an exotic locale. See, e.g. KEN MACLEOD, COSMONAULT KEEP 67 (2002) (“Like; this place is a data haven?”); THOMAS F. MONTELEONE, EYES OF THE VIRGIN 107 (2003) (“Kate glowed as she began to tell him about data havens. ‘Basically, they’re like safe deposit
Parts of William Gibson’s “Sprawl trilogy” (consisting of *Neuromancer*, *Count Zero*, and *Mona Lisa Overdrive*) take place on the Freeside space station, which floats in high earth orbit. One of its more profitable lines of business, Gibson mentions in almost offhand fashion, is serving as a data haven. Bruce Sterling’s *Islands in the Net* imagines a future in which Grenada, Singapore, and Cyprus quietly tolerate all sorts of unsafe experimental technology that the larger nations keep heavily regulated, from ceramic machetes that can cut through anything to mutagenic suntan lotion that changes its user’s race. They run a sideline in data haven services along the lines of Project Goldfish, storing the personal data that companies want to have but aren’t allowed to keep. More recently, Neal Stephenson’s *Cryptonomicon* provides what is probably the best-known fictional data haven. The Sultan of Kinakuta, a small oil-rich island in the Sulu Sea, invites the novel’s protagonists to build the infrastructure to make the island into a communications hub; for his part, he will supply an absence of copyright and other regulation.

The other group to take the data haven idea seriously was the cypherpunks. This loosely associated group of techno-libertarians coalesced in the early 1990s around a sense that individual freedom was under threat from a rising surveillance state, and that the solution lay in the widespread individual use of cryptography, to keep both messages and identities secure from prying eyes.

The two groups are related. The cypherpunks were frequently inspired by science-fiction visions; *Cryptonomicon* is essentially a novel about a group of cypherpunk entrepreneurs. Even the names illustrate the crossover. “Cypherpunk” is a portmanteau of “cipher” and “cyberpunk,” the usual name for the subgenre of sci-fi in which Sterling and Gibson wrote; *Cryptonomicon* is coincidentally close to the title of Tim May’s *Cyphernomicon*, a 150,000-word FAQ and compendium of cypherpunk information. See Timothy C. May, *Cyphernomicon* (1994), available at [http://www.cypherpunks.to/faq/cyphernomicon/cyphernomicon.txt][1], Neal Stephenson, *Cryptonomicon cypher-FAQ* § 3 (1999) (discussing similarity of titles), [http://web.mac.com/NealStephenson NealStephensons_Site/cypherFAQ.html][2]. A critical link was Vernor Vinge’s highly influential story, *True Names*, in *Binary Star* No. 5 (James R. Frenkel, ed. 1981), which imagined a networked future in which hackers and dissidents were safe from the government, or “Great Enemy, “ only as long as their True Names were unknown—i.e., their offline and online identities couldn’t be linked. See generally *True Names: And the Opening of the Cyberspace Frontier* (James Frenkel ed. 2001) (reprinting *True Names* together with essays on policy issues raised by the story).

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299 *Gibson, Neuromancer*, supra note 296, at 73.
300 *Gibson, Mona Lisa Overdrive*, supra note 298, at 124.
302 Id. at 19.
303 See *Neal Stephenson, Cryptonomicon* (1999).
304 See id. at 310–20.
305 The two groups are related. The cypherpunks were frequently inspired by science-fiction visions; *Cryptonomicon* is essentially a novel about a group of cypherpunk entrepreneurs. Even the names illustrate the crossover. “Cypherpunk” is a portmanteau of “cipher” and “cyberpunk,” the usual name for the subgenre of sci-fi in which Sterling and Gibson wrote; *Cryptonomicon* is coincidentally close to the title of Tim May’s *Cyphernomicon*, a 150,000-word FAQ and compendium of cypherpunk information. See Timothy C. May, *Cyphernomicon* (1994), available at [http://www.cypherpunks.to/faq/cyphernomicon/cyphernomicon.txt][1], Neal Stephenson, *Cryptonomicon cypher-FAQ* § 3 (1999) (discussing similarity of titles), [http://web.mac.com/NealStephenson NealStephensons_Site/cypherFAQ.html][2]. A critical link was Vernor Vinge’s highly influential story, *True Names*, in *Binary Star* No. 5 (James R. Frenkel, ed. 1981), which imagined a networked future in which hackers and dissidents were safe from the government, or “Great Enemy, “ only as long as their True Names were unknown—i.e., their offline and online identities couldn’t be linked. See generally *True Names: And the Opening of the Cyberspace Frontier* (James Frenkel ed. 2001) (reprinting *True Names* together with essays on policy issues raised by the story).
306 See generally, e.g., Steven Levy, *Crypto Rebels*, *Wired*, May/June 1993; Stephen Levy, *Crypto:
For the cypherpunks, security through encryption was a moral imperative, because it would make all forms of government restrictions on speech unenforceable. The Thought Police can’t arrest you if they don’t know you’re a dog. Many of the cypherpunks were programmers; they sought to create the necessary technological tools for the crypto revolution as well as fighting for the legal right to use them.

The cypherpunks used “data haven “ in the standard sense of a permissive jurisdiction, but also imagined that a data haven could be “offshore in cyberspace.” In 1993, Timothy May released BlackNet, a proof-of-concept system that used encryption to enable fully a fully anonymous “information market” in anything governments would like to prohibit, including “medical, religious, [and] chemical “ information, and “credit databases, deadbeat renter files, organ bank markets, etc. Critics reacted strongly against the idea—Dorothy Denning complained that it would lead to “tax evasion, money laundering, espionage (with digital dead drops), contract killings and implementation of data havens for storing and marketing illegal or controversial material—but to cypherpunks, these consequences were either desirable in themselves or outweighed by the overall increase in freedom.

This is where HavenCo’s founders enter the picture. American programmer Vince Cate had moved to Anguilla in 1994, renounced his American citizenship, and started a “data haven “ Internet company named Offshore...
Information Services.\footnote{OFFSHORE INFORMATION SERVICES, http://www.offshore.com.ai/; Steve G. Steinberg, Offshore Data Haven, WIRED, May 1996, at 40. See generally Charles Platt, Plotting Away in Margaritaville, WIRED, July 1997 (discussing Cate and the Financial Cryptography conference series he hosted and at which Hastings and Lackey would meet). OIS and IsleByte no longer offer hosting and anonymizing services, but other Caribbean companies do. See About Guardster, GUARDSTER, http://guardster.com/?Home-About_Guardster (describing encryption service based in Nevis).} Sean Hastings followed with his own Anguillan data haven company, IsleByte,\footnote{See About Us, ISLEBYTE, http://islebyte.com/about.html, available at http://replay.waybackmachine.org/20040605084719/http://islebyte.com/about.html (“the world’s first public data haven company”). Cate was probably first. Hastings moved to Anguilla in 1997, but Cate founded OIS in 1994.} and worked with Cate on an electronic currency called SAXAS.\footnote{See Davahaven ch 1, supra note 285.} Lackey had his own cypherpunk bona fides: he would set up an anonymous remailer on Sealand itself (albeit without telling the royal family about it), and after leaving, he worked on a project named Metacolo that was designed to distribute hosting to dozens of locations worldwide, with clear advantages for avoiding censorship.\footnote{See LAURA LAMBERT ET AL., THE INTERNET: A HISTORICAL ENCYCLOPEDIA 56 (2005); Lackey, Defcon 11 Presentation, supra note 165, video at 55:35.} Both Hastings and Lackey were thoroughly committed to the cypherpunk vision, and their creation of HavenCo should be seen in that light.

There is a historical irony here. An idea that began its life as a negative had flipped into a positive. A “data haven” was no longer part of a debate over how to protect individual (privacy) rights by restricting the flow of information; instead, it was a central idea in a debate over how to protect individual (speech) rights by encouraging the flow of information.\footnote{Cf. Deibert, supra note 3, at 115 (“For example, Publicdata.com.ai Ltd is a ‘personal information’ company based in Anguilla. Its business, illegal in the United States, is to sell personal information—everything from criminal records, sex offender information, drivers licences, voter registrations, vehicle registrations—to anyone who is willing to pay for it.”). But see About PublicData.com, (Feb. 3, 2001), http://www.publicdata.com.ai/about.html, available at http://web.archive.org/web/20010203204400/http://publicdata.com.ai/about.html (claiming that PublicData.com is intended only to provide access to “public records”).} This irony serves as a reminder that the data haven vision can be pro- or anti-privacy depending on your theory of why privacy matters.\footnote{Cf. An Metet, G-mail as Blacknet, Post to cypherpunks-moderated list, Apr. 8, 2004, available at http://www.mail-archive.com/cypherpunks-moderated@minder.net/msg08753.html (“Cypherpunks see privacy as a means to an end. That end is freedom.”).} More generally, governmental control sounds like a better or worse idea depending on your views on the government in question.\footnote{Compare Norman, supra note 291 (expressing concern about data haven-abetted businesses) with Tim May, Untraceable Digital Cash, Information Markets, and BlackNet (Presentation at 1997 Computers, Freedom, and Privacy Conference), available at http://osaka.law.miami.edu/~froomkin/articles/tcmay.htm (expressing enthusiasm for same).}
B. Rise

Lackey and Hastings agreed that Anguilla wasn’t going to work as a data haven. Hastings had grown dispirited with Anguillan corruption, concluding that the island was “hardly the libertarian mecca” he had expected. Pornography and gambling were both illegal, and a company could be shut down by court order. Instead, inspired by Erwin Strauss’s book *How to Start Your Own Country*, they started thinking about heading for even smaller waters: Pacific islands, or potentially even building their own land on the Cortez Bank, an underwater range about a hundred miles from San Diego.

The most promising prospect was Sealand, which features prominently in Strauss’s book. Hastings pulled together a website with a dossier of information on Sealand and its claims to independence. The two of them sought investors, and found a group including Avi Freedman and Joichi Ito, successful Internet entrepreneurs. Hastings and his wife Jo made contact with the Bates family, and flew to England to check Sealand out. Jo Hastings was unenthused by the prospect of living on Sealand, but not Sean, who wrote:

An electronic currency system was the lever.

Here was a place to stand.

I could move the world.

They moved forward, opening negotiations with the royal family. The Bateses were immediately interested: “This [was] the first [proposal] that seemed to be really suited to what we are, “ Roy would later say. They drew up a business plan, articles of incorporation, and bylaws for a Sealand

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323 *Datahaven* ch.1, supra note 285. Ironically in light of HavenCo’s future, Anguilla is a British Overseas Territory. *Anguilla, in CIA, WORLD FACTBOOK* 20–22 (2010). Thus, although it has its own government and laws, and is not formally part of the United Kingdom, it is nevertheless subject to the United Kingdom’s jurisdiction, perhaps not unlike Sealand.


325 *Datahaven* ch.1, supra note 285.

326 See STRAUSS, supra note 19.

327 See Confidential Report: The Principality of Sealand, supra note 129.

328 *Datahaven* ch.1, supra note 285.


330 Id. (rephrasing Archimedes’ famous remark, “Give me a place to stand, and I will move the Earth.”).

331 See Markoff, supra note 2.

332 HavenCo Business Plan, http://www.seanhastings.com/havenco/bplan/BPlan.html. The most detailed sections of the plan are the ones dealing with the technical requirements: power, costs of storage, and network connections.

333 HavenCo Articles of Incorporation, http://www.seanhastings.com/havenco/bplan/
corporation to be named HavenCo. Its initial board of directors comprised Sean and Jo Hastings, Lackey, Avi, and Ito.\textsuperscript{335} Sameer Parekh, a well-known computer security entrepreneur, became chairman of the board.\textsuperscript{336} They predicted that their revenue could potentially reach $65 million by the end of the third year of operation,\textsuperscript{337} with a total headcount of 19 employees by the end of the first.\textsuperscript{338} The capitalization plan gave the founders a 2/3 stake, with the remaining third of the equity to be split between corporate advisors and the royal family.\textsuperscript{339} Those stakes would be diluted with two rounds of venture capital and an IPO that would ideally value the company at $500 million and leave Sean, Jo, and Ryan each sitting on almost $50 million in HavenCo stock.\textsuperscript{340}

Sealand would offer its customers a combination of “first-world infrastructure“ and “third-world regulation.” Its website promised adherence to the “Philosophy of Contract, as opposed to the Philosophy of Regulation.”\textsuperscript{341} Echoing famous cyberlibertarian manifestoes, HavenCo declared, “Free communication can never be a crime, and by itself can never hurt anyone. Criminal acts should be pursued at the point where the act takes place, not on the common carriers that enable all individuals to do business freely, such as telephone and Internet infrastructure providers.”\textsuperscript{342}

On everyone’s minds—both at HavenCo and among reporters—was the issue of whether HavenCo could actually offer its customers meaningful security, given that much of its content was likely to be controversial. Physical security was

\begin{thebibliography}{99}
\bibitem{ARTICLES.html} A company with the name of Havenco Limited and a company number of 04056934 was registered in August 2000 with Companies House, and dissolved in 2005.
\bibitem{HavenCo Bylaws} http://www.sean hastings.com/havenco/bplan/BYLAWS.html. The bylaws bear a striking similarity to the sample given in \textit{Anthony Mancuso, How to Form Your Own California Corporation} (Nolo Press).
\bibitem{HavenCo Articles of Incorporation} supra note 333.
\bibitem{Garfinkel} supra note 2.
\bibitem{HavenCo One-Year Projections} http://www.sean hastings.com/havenco/bplan/OneYear.html (listing job positions including “Marketing Droids” #1, #2, and #3).
\bibitem{HavenCo Capitalization Projections} http://www.sean hastings.com/havenco/bplan/ Capitalization.html.
\bibitem{Id.} supra note 333.
\bibitem{Frequently Asked Questions} supra note 341.
\bibitem{Id.} supra note 341.
\end{thebibliography}
at a premium. To keep out unwanted guests, the machine rooms themselves, in
one of the tower’s legs, would be flooded with nitrogen and would require scuba
gear to enter.344 Four guards were to be on duty at all times, and those guards
would be packing:345 50-caliber machine guns are not for the dilettante.346
Notwithstanding Sealand’s arsenal, in case of attack, the endgame was to “power
off the machine, optionally destroy it, possibly turn over the smoking wreck to the
attacker, and securely and anonymously refund payment to the owner of the
server. “347

On the policy side, Sealand wouldn’t be a complete zone of lawlessness.
An “anonymous and untraceable payment system“ or an “old-fashioned, adults-
only pornography“ would be one thing.348 But “if you want to run a spamming
operation, launder drug money, or send kiddie porn anywhere – forget it. “349
The typical customer, HavenCo expected, would be a company looking for
subpoena-proof data storage.350

Since network links could be cut, particularly by Britain, HavenCo
planned redundant links to multiple countries,351 and expected satellite
communications to be a workable backup.352 A physical blockade would be
“difficult to maintain“ and “solvable through negotiation.“353 And even invasion
wouldn’t be the end of the world: “legal actions“ and “diplomatic arrangements
“ would be possible.354 The company expected Sealand to “negotiate as an equal
with other countries and to press any adverse rulings in the courts of the
countries making them.355

344 See Garfinkel, supra note 2.
345 See id.
346 See Bruce Porter, The Big, Bad, Fun Gun, N.Y. TIMES MAG., Nov. 26, 2000 (“effective range of...
more than four miles ... bullet clear through the one-inch rolled steel used on most armored
military vehicles “).
347 See id. See also Frequently Asked Questions, supra note 341 (describing customers’ options in case of
contract termination, including destruction and shipment of hardware).
348 See Garfinkel, supra note 2.
349 See id. How one could allow genuinely anonymous and untraceable payments without also
enabling money laundering remains a mystery. HavenCo’s Acceptable Use Policy forbade spam,
hacking attempts, and “[m]aterial that is ruled unlawful in the jurisdiction of the originating
server (Such as child pornography in the case of our flagship Sealand datacenter). Acceptable Use
350 See Garfinkel, supra note 2.
351 See id.
352 HavenCo Business Plan, supra note 332, § 3.4.2.3.1, http://www.seanhastings.com/havenco/
Bplan/BPlan.html
353 Id. § 3.4.2.3.2.
354 Id. § 3.4.2.3.3, http://www.seanhastings.com/havenco/bplan/BPlan.html
355 Id. § 3.4.2.4.3 http://www.seanhastings.com/havenco/bplan/BPlan.html
356 Id. § 3.4.2.4.4 http://www.seanhastings.com/havenco/bplan/BPlan.html (“If this fails, the
world court will be petitioned.“).
From the beginning, HavenCo’s founders were clear with their investors that the worst-case fallback plan was to accept British jurisdiction and laws and “operate as a British co-location facility.” Given the high prices companies had been willing to pay for co-location during the dot-com boom, this may not have been any more unreasonable an assumption than many other Internet entrepreneurs were making at the time. It also appeared that it might be a necessary fallback: representatives from both the UK and United States stated to a reporter that their governments did not recognize Sealand. The company itself was incorporated Anguilla, then later reincorporated in Cyprus, but was also registered to do business in England in 2000.

Looking towards Sealand, the business plan concluded that the “only risk from Sealand and its royal family was breach of contract, which was “unlikely, as once we have taken occupation of the island, we will control Sealand.” And in the long run the goal was to be independent of any one location; the company hoped to replicate the model in other small countries.

HavenCo launched in 2000 with a Wired cover story and a great deal of optimism. The combination triggered a media explosion notable for its lack of serious further reporting. But following the initial outpouring of interest, HavenCo dropped quickly off the radar screen. Ryan Lackey appeared at the Defcon conference in 2001 and the Hackers on Planet Earth conference in 2002 to give status updates: things were going modestly but well, and the future

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357 Id. § 3.4.2, http://www.seanhastings.com/havenco/bplan/BPlan.html. Perhaps somewhat optimistically, the business plan also predicted that Sealand could negotiate colony status with England, giving it more legal leeway than would be permitted in England proper. Id. § 3.4.2.4.5.
358 See id. § 3.3.1, http://www.seanhastings.com/havenco/bplan/BPlan.html (discussing competition for providing secure co-location facilities, with prices).
359 See Garfinkel, supra note 2 (British consulate in New York: “Although Mr. Bates styles the platform as the Principality of Sealand, the UK government does not regard Sealand as a state. “, U.S. State Department: “There are no independent principalities in the North Sea. As far as we are concerned, they are just Crown dependencies of Britain.”).
360 Id.; Lackey, Defcon 11 Presentation, supra note 165, video at 20:35.
361 Simon, supra note 30.
362 HavenCo Business Plan, supra note 332, § 3.4.2.2.1.
363 Id. § 3.4.2.4.2.
364 See Garfinkel, supra note 2 (quoting Ryan Lackey as saying, “In 10 years, we’ll be investing profits in turning Sealand into a larger island. It’s unclear right now whether it will be a hotel/casino space or purely a larger secure colocation facility. We hope to be in operation everywhere by then ... By then I hope any free country in the world will have a HavenCo secure facility in major cities of commerce. No doubt we’ll also have servers on ships, on the moon, and on orbiting satellites. Assuming computers continue to get smaller, a single box on the moon could serve a huge bunch of customers!”).
365 See supra note 1; Lackey, Defcon 11 Presentation, supra note 165 (criticizing media).
367 Lackey & Freedman, H2K2 Presentation, supra note 37.
was bright.

C. Fall

Then in 2003, Lackey, no longer with HavenCo, appeared at Defcon again and dropped a bombshell: HavenCo was all but defunct. Some of the problems were purely operational: disorganization and the time spent dealing with press caused the company to lose track of client inquiries. Meanwhile, Sean and Jo Hastings had left the company “for personal reasons” by the end of the summer of 2000. The company also operated in a kind of corporate informality, never issuing stock to its investors and employees, even as the years rolled on.

Its facilities never came close to the image it created among the public. The south tower was never full of servers, and the nitrogen was a myth, too, as HavenCo had admitted in 2002. The real reason visitors weren’t allowed down the south tower was not because they might see or damage something they shouldn’t but rather because there was nothing to see. The “ultra-high bandwidth IP communications directly into the Internet backbone” also turned out to be have been oversold. The fiber-optic cable to England wasn’t ready on time, and later, the company providing service through it went bankrupt in the dot-com crash, leading to a two-month outage. The satellite link HavenCo relied on in its place had only 128kpbs of bandwidth—roughly the speed of a good personal home Internet connection at the time. When the company was hit with denial-of-service attacks, the outages sometimes lasted for days.

HavenCo had about ten customers; many, perhaps all, were online gambling sites. In 2002, HavenCo told a reporter that it had been profitable

368 Lackey, Defcon 11 Presentation, supra note 165.
369 Id.
370 Id.
371 Lackey, Defcon 11 Presentation, supra note 165, video at 9:30 (describing press credulity, even in the face of what should have been blatant giveaways, such as the lack of substantial cabling running to the supposed belowdecks server rooms).
372 See Gilmour, supra note 113; Lackey, Defcon 11 Presentation, supra note 165, video at 10:30.
374 Lackey, Defcon 11 Presentation, supra note 165, slides at 20.
375 Id.
376 Id. slides at 19.
377 Id., slides at 13; but see id., video at 14:30 (claiming ten new customers in one particular week in 2001).
378 See Stranger than Paradise, ON THE MEDIA (National Public Radio broadcast May 20, 2005) (“all “gambling”); Gilmour, supra note 113 (50% gambling); Lackey, Defcon 11 Presentation, supra note 165, video at 43:10 (“An organ transfer site that has transacted exactly zero organs, there’s a casino, an online stock market that only trades that casino . . . .”).
since 2001. In reality, though, as Lackey revealed in 2003, it was breaking even on its “cash costs”—so it was profitable only if one neglected liabilities that would come due down the road. One of those liabilities would prove its undoing.

Part of the original agreement, premised as it was on large profits within just a few years, was a schedule of large cash sums to be paid to Sealand. A “gentleman’s agreement “ with Prince Regent Michael held through the fall of 2001, but then an advisor to the royal family entered the picture. According to Lackey, the advisor interfered with technical decisions, such as recommending expensive and unreliable changes to its network connectivity. The advisor also demanded that customer inquiries be handled by his girlfriend in the UK: Lackey objected for security reasons, but the royal family backed the advisor. Worse, the advisor was concerned that HavenCo was bad for Sealand’s image and quest for sovereignty. Lackey took to adding new services, such as an anonymizing remailer, on the sly.

Things came to a head in May 2002 when, a Malaysian entrepreneur, Alex Tan, approached Sealand with a plan to serve streaming video. Tan’s previous site, film88.com, had offered users video on demand, utterly without permission, and was quickly shut down by the movie industry. Tan’s new idea was to stream videos from legally purchased DVDs, restricting the viewing of any given movie to one customer at a time. A Sealand advisor told the royal

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379 See Gilmour, supra note 113.
380 Lackey, Defcon 11 Presentation, supra note 165.
381 Id.
382 Id., video at 15:00 (“There was no real rush to renegotiate, because they were sort of running the company officially, because the son of the prince was CEO, and they said, ‘Oh, just give us money later, and it’s all good.’ ”).
383 Id.
384 Id. slides at 15, video at 17:00.
385 Id., slides at 15, video at 15:45 (discussing advisor’s attempt to win Sealand recognition from the International Telecommunications Union, which would have led to a top-level domain).
386 Id.
387 Id., slides at 17. See also id., video at 17:45 (discussing Lackey’s addition of new clients while concealing their nature from the royal family); video at 23:55 (discussing Sealand’s concern that launching a gold-backed electronic currency could be perceived as money laundering).
388 McCullagh, supra note 191; Lackey, Defcon 11 Presentation, supra note 165, at 22:00.
390 McCullagh, supra note 191; Of course, if Sealand were really sticking to its jurisdictional guns, the legality or illegality of the downloading anywhere else shouldn’t have mattered. See Lackey, Defcon 11 Presentation, supra note 165, video at 21:55 (“That might have been legal under Sealand law, because we could have written it.”).
family that it risked bad publicity, and they balked at the deal. The fear was that United States would put pressure on England to put pressure on Sealand if it turned into a streaming-movie source.

The decision was the straw that broke the camel’s back for Lackey, who decided to make a gradual exit from the “stagnating” company. In November of 2002, Sealand offered to take over HavenCo, and worked out a “mutually beneficial agreement” to restructure (and start paying) HavenCo’s debts, issue shares, and continue its operations. Lackey would continue as a reseller of HavenCo services. He turned over administrative access to the servers.

According to the account Lackey gave at Defcon, Prince Regent Michael and his advisors broke the agreement within days, freezing Lackey out completely and seizing personal computers left behind. The corporate aspects of the deal—issuing shares, repaying debts to people like Lackey, who had poured much of his own money and $40,000 of credit into the company, and so on—were ignored. Since Sealand now had both physical and virtual control of the servers, HavenCo had been “effectively nationalized.” In response, HavenCo, now for all practical purposes an arm of the Sealand government, made it clear that he was no longer welcome: “Mr Lackey is no longer an employee of HavenCo...He does not at this time have a valid visa for return.”

The new HavenCo also took a rather different attitude toward offshore

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392 Id; see also Lackey, Defcon 11 Presentation, supra note 165, video at 18:10 (“We had more restrictions placed on us than a U.S. ISP.”).
395 Lackey, Defcon 11 Presentation, supra note 165.
396 Id, slides at 25.
397 Id.
398 Id.
399 Id, video at 25:45 (“Within five days, they violated this agreement. . . . They tried to enforce a non-compete agreement with me, which, interestingly enough, never existed, because they never had one.”)
400 Id., video at 26:00, slides at 26.
401 Id. See also id., video at 15:15 (“making capital improvements to a place we didn’t really own.”), video at 26:05 (“They also owe me $220,000.”).
402 Id.
403 McCullagh, supra note 191 (quoting Sealand representative).
hosting. A spokesman said that its acceptable use policy “forbids any act...which is against international law, or contrary to international custom and practice.”

Sean Hastings of HavenCo suggested that Sealand’s turn away from an anything-goes attitude was sparked by the terrorist attacks of September 11, 2001. But the attitude was clear even in an August 2001 interview Roy Bates gave to NPR’s Scott Simon. In Bates’s words, “[W]e wouldn’t do anything which was anti-British or unethical or whatever, you know.” Bates explained that he had passed up many business opportunities because they were “a little bit on the wrong side, you know.” Simon called Bates “a loyal British subject who sees Sealand as a British invention.

The new HavenCo claimed to have far more than the six customers Lackey alleged and to have a growing installation. In 2004, the locals were still denying reporters permission to see most of the south leg of the tower. In early 2007, the HavenCo website was redesigned to remove most of the detailed technical promises; they were replaced with a simple statement about HavenCo and Sealand and a pointer to “authorized resellers.” The new terms of service were much more restrictive: no “pornography that would be considered illegal within the EU,” no “infringement of copyright,” and no “material that is obscene, threatening, abusive, libelous, or encourages conduct that would constitute a criminal offense.” This is a fairly permissive policy by the standards of many modern online service providers, but quite conservative compared with the original promise of HavenCo. The final indignity came in 2008, when the HavenCo website went offline and the domain was redirected to point at a server outside of the network actually hosted from Sealand.

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405 McCullagh, supra note 191 (quoting HavenCo representative). Copyright, which is enforced internationally via treaties, probably does not have the status of customary international law; Sealand, as a non-party to any international copyright agreements, would presumably not be bound by them.


407 See Simon, supra note 30.

408 See Simon, supra note 30. See also Miller & Boudreaux, supra note 41 (“There was always something that didn’t smell right.”)

409 See Simon, supra note 30.

410 Id. But see Lackey, Defcon 11 Presentation, supra note 165, slides at 27, video at 27:00, ancillary files at /network (refuting the new HavenCo’s claims with a technical analysis of its network).

411 Lucas, supra note 42. The alert reader will recall Lackey’s statement that there never were rooms filled with servers in the south leg. According to Lackey, the company registration lapsed by 2003. See Lackey, Defcon 11 Presentation, supra note 165, video at 28:40.


domain is gone, its registration expired.

III. The Rule of Law

We are now in a position to ask what Sealand and HavenCo can tell us about law in an Internet age. There are three ways of approaching the issue, corresponding to the three bodies of law with which HavenCo concerned itself: the national laws of other countries, the international law of Sealand’s sovereignty, and Sealand’s internal laws regulating HavenCo’s operations. Intertwined with this question will be another: why did HavenCo fail?

This Part will argue that the two questions have a common answer: the rule of law. The rule of law is a complex, contested concept; even people who agree that the rule of law a good thing can disagree quite forcefully on just what it is. HavenCo’s relationship to different bodies of law resonate with different flavors of the rule of law. When it came to national Internet law, HavenCo rejected national claims to self-governance through law. When it came to international law, HavenCo relied on the formal rules of state sovereignty. And when it came to Sealand law, HavenCo put its trust in law as a protection against arbitrary governmental action. We will see that these different conceptions of the rule of law are incompatible. Without national self-governance, HavenCo had no plausible theory of where the other laws it relied on would come from.

Before we begin, it will help to survey briefly the previous scholarship on Sealand and HavenCo. Jack Goldsmith and Tim Wu give HavenCo four pages in their book Who Controls the Internet? It appears twice, bookending their chapter on governmental power. At the start, HavenCo is defiant, challenging all governmental authority. At the end it has been humbled, brought low by national power over intermediaries, especially banks. This story isn’t wrong, just incomplete. “Law “ here is just something imposed by governments on people: national law, in our framework. Although Goldsmith and Wu perceptively note both Sealand’s desire to be recognized as an “actual country “ and HavenCo’s ultimate “nationalization, “ they never follow up on the international-law and Sealand-law angles these crucial facts suggest. Ironically, this emphasis on national law weakens their case, since it tends to make law look like government fiat. As we shall see, widening our view to include HavenCo’s other legal challenges will help us appreciate more fully the rule-of-law factors that can make national law legitimate.

Jonathan Zittrain gives Sealand a page in a book chapter, “Be Careful What You Ask For: Reconciling a Global Internet and Local Law, “ concluding, “[T]he existence of Sealand doesn’t much change the nature of the jurisdiction

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and governance debates. Like Goldsmith and Wu, he observes that national
governments had indirect power over HavenCo through the intermediaries it
relied on, although his intermediary of choice is the Internet service provider. He
also adds that HavenCo’s clients are still subject to jurisdiction where they reside.
Again, this is a discussion only of national law. Sealand’s sovereignty and legal
system are never even considered. Zittrain also devotes a seven-page section to
HavenCo and Sealand in a casebook, although only one of those pages is
original. Four out of five of the “Notes and Questions” deal exclusively with
national law and enforcement authority, and even the one that begins, “It is
important to stress that Sealand maintains its own laws with respect to use of the
Internet, “ ultimately has to do with indirect governmental control via
intermediaries. Like Goldsmith and Wu, Zittrain doesn’t follow up on the
implications of his trenchant but brief observations.

A trio of student articles have asked whether Sealand is truly independent
under international law. Despite some good factual research, however, they are
mostly interested in the abstract question of whether Sealand is formally sovereign
and the practical question of whether national governments can enforce their
laws against HavenCo. That is, despite discussing international-law questions, they
don’t do so in a way that sheds light on the national-law ones. They ask only what
the law is, not what it means.

This survey exhausts the scholarship on HavenCo. A few more authors
have written about Sealand, but only with respect to the international-law issues
its claims to independence raise. They do not connect their analysis to
HavenCo’s struggles with national governments, or to Sealand’s own legal system.
Let us do so.

417 Zittrain, supra note 3, at 18.
418 ZITTRAIN, supra note 3, at 40–46. The remaining pages consist of excerpts from Simson
Garfinkel’s 2000 Wired article and Zittrain’s “Be Careful What You Ask For.” A photograph of
Sealand also graces the cover of the book.
419 See Arenas, supra note 3, at 1181; Sealand—The Next New Haven?, supra note 3, at 146; Dennis,
supra note 3, at 296. A fourth student article, which is mostly about peer-to-peer networking and
copyright reform, is deeply confused. For example, at one point it argues that Sealand renders
copyright law unenforceable for a surprising reason: “Because Sealand is not a sovereign nation, it
cannot join the international copyright regime . . . .” Fayle, supra note 3, at 262. Two others
discuss Sealand and HavenCo in the context of other possible data havens: either on island
nations, see Geltzer, supra note 3, or on ships, see Kramer, supra note 3. Like the rest of the previous
scholarship on the subject, they confine themselves to the question of what other nations could do
to shut down a data haven.
420 See Samuel Pyeatt Menefee, “Republics of the Reefs: “Nation-Building on the Continental Shelf and in the
World’s Oceans, 25 CAM. W. INT’L L.J. 81 (1994); Petros Siousiouras & Isidoros Tsouros, Island
A. National Law

HavenCo’s raison d’être was to allow its customers to avoid national laws.\textsuperscript{421} Move your data to HavenCo, went the theory, and it would be beyond the reach of governmental censors, snoops, and prudes. Online, freedom and liberty would flourish. The Internet had touched off a regulatory race to the bottom, and HavenCo intended to win.

To be sure, HavenCo had its limits—no spam, no hacking, no child pornography, no drug-money laundering—which reflected a mix of pragmatic self-defense and policy preferences.\textsuperscript{422} Had HavenCo succeeded, though, these rules, too, would have been rendered equally irrelevant, as other, more permissive data havens sprang up to evade Sealand’s policies. Indeed, had the cyphyerpunk agenda of strong cryptography, anonymous transactions, and untraceable distribution embraced by Ryan Lackey come to fruition, it wouldn’t even have taken competitors to undermine HavenCo’s policies: its customers could have exchanged child pornography to their depraved hearts’ content, and HavenCo would have been powerless even to know that it was going on.

Thus, the conventional wisdom is quite correct when it claims that the idea of a data haven stands in direct opposition to essentially all national law touching on speech or the Internet.\textsuperscript{423} And, as the Internet has expanded its reach into all aspects of life, the opposition has likewise expanded to touch on almost every area of law. HavenCo was selling the end of law. “Third-world regulation” was a euphemism for minimal regulation—or none at all. In its search for the lowest common denominator, HavenCo was willing to divide by zero.

1. HavenCo and National Law

In that light, it’s worth asking why the expected demand for legal evasion never materialized. In hindsight, HavenCo was caught in a market segment that was hard to monetize. There weren’t, it turned out, very many customers willing to pay for the kind of regulatory arbitrage HavenCo offered. Most were better off either complying with the law or ignoring it altogether. In neither case would buying HavenCo’s services make much sense.

As an example of a customer better off falling into line with law, consider a typical HavenCo customer circa 2005, “as explained by journalist Simson Garfinkel: MacroMaxx, a company that wants to avoid subpoena risk:

MacroMaxx execs could say, “Gee, we don’t have that here. “ The official would be stymied, because the email simply

\begin{footnotesize}
\textsuperscript{421} To be more precise, to avoid foreign laws. HavenCo had no objections, at least initially, to the national law of Sealand.
\textsuperscript{422} The child-pornography rule came from Sealand law. The spam rule is especially striking, given that in 2000, spam was generally legal.
\textsuperscript{423} HavenCo would do what Sealand ordered, of course, but the point of choosing Sealand was that Sealand wouldn’t order it to do very much.
\end{footnotesize}
wouldn’t be on the premises, and it’s up to MacroMaxx whether it keeps any backups around. The primary data would be housed only at Sealand.\footnote{Garfinkel, supra note 2.}  

It’s a clever trick on paper, but it doesn’t work in the real world. The bits may be on Sealand and beyond a court’s power, but MacroMaxx \textit{itself} is subject to jurisdiction everywhere it does business. As long as it has control over the data, MacroMaxx can be ordered to produce it.\footnote{See Zittrain, supra note 3.} Generations of scammers and tax evaders have learned that the security of offshore banking lasts only as long as they are willing to endure a civil contempt order—in prison.\footnote{See, e.g., FTC v. Affordable Media, LLC, 179 F.3d 1228, 1238–44 (9th Cir. 1999) (affirming contempt finding against Ponzi scheme operators who had established an offshore trust account with an “event of duress” clause that purported to remove them as trustees if they were ordered to repatriate funds from the trust, based on a finding that they retained control over it).} In order to protect itself from the unpleasant application of local law, a business has to avoid touching ground in a jurisdiction altogether. Offshoring just the data isn’t sufficient; the company has to offshore \textit{itself}. Sealand was never big enough to play physical host, as well as virtual.\footnote{In HavenCo’s defense, the assumption that the location of the data was the critical legal factor in determining jurisdiction over it was hardly unique. It was a commonplace in discussions of data havens, going right back to the original data-protection reports. See COMMITTEE ON DATA PROTECTION, supra note 290. Even the EU Data Protection Directive, a product of the mid-1990s, makes the hidden assumption that regulation is required at the moment when data is transferred to a different jurisdiction because after that, the first country will lose jurisdiction over it. See Council Directive 95/46/EC art. 26.}  

Some businesses are willing to stay purely virtual, but most aren’t, for a natural reason: they want to do business.\footnote{See GOLDSMITH & WU, supra note 3.} That’s what Yahoo! realized when it faced a French court judgment to drop user auctions of Nazi memorabilia: it made substantial money selling ads targeted at French users, it had French offices, and France was a pleasant place for its corporate officers to visit.\footnote{Id. at 8.} It’s one thing to ignore a small and puritanical jurisdiction you don’t need to set foot in and aren’t trying to reach anyway; it’s quite another to sell into a large market without getting snared up in institutions its legal system can reach.\footnote{The increasingly widespread use of Internet filtering also makes national governments less concerned with the abstract availability of content online somewhere. If local access can be blocked, it doesn’t matter that there’s a copy out there on Sealand. Indeed, since Sealand, by its nature, could support only a few discrete Internet connections, it makes a particularly easy target for IP address-based filtering. See Lackey, Defcon 11 Presentation, supra note 165. See generally OPENNET INITIATIVE, http://opennet.net/ (providing in-depth analysis of national Internet filtering regimes).} HavenCo repeatedly dealt with companies (especially gambling sites) that wanted to create complete businesses. In order to take payments in a country, the companies would need to
incorporate there—and once they had, they typically purchased colocation locally, as well.\textsuperscript{431} In Ryan Lackey’s words, “Sovereignty alone has little value without commercial support from banks, etc.\textsuperscript{432}

If companies realized that the costs of non-compliance with local law could sometimes be surprisingly high, they also realized that the costs of compliance could sometimes be surprisingly low. There are and have been exceptions—China’s thoroughgoing surveillance and Arab states’ extensive indecency controls come to mind—but many developed nations have settled into an equilibrium in which a few specific restrictions on Internet speech coexist with a general freedom for most purposes. Sealand’s one confirmed client, the Tibetan government-in-exile,\textsuperscript{433} is now hosted by an Internet company in Arkansas.\textsuperscript{434} United States free-speech law proved perfectly adequate, no need of Sealand.

As this example illustrates, the diversity of local values, which at one time seemed likely to reduce Internet speech to only the inoffensive mush that would pass muster in every country,\textsuperscript{435} has arguably had the opposite effect. The United States has not adopted European restrictions on hate speech; most European countries have not adopted American restrictions on online gambling. The hate speech pours forth from American servers; the gambling from European ones. For most purposes, cheap commodity hosting on one side of the Atlantic or the other could easily outcompete Sealand’s more expensive boutique product in the middle of the North Sea.\textsuperscript{436}

HavenCo also had trouble competing with free—especially when free met illegal. Its founders understood that professional criminals had little reason to bother with a data haven. “And if you’re going to run a secret server where you don’t need to get the benefit of jurisdiction, you might as well take a stolen credit

\textsuperscript{431} Lackey, Defcon 11 Presentation, supra note 165, video at 11:30.
\textsuperscript{432} Id., slides at 34.
\textsuperscript{433} Garfinkel, supra note 2.
\textsuperscript{434} This fact can be confirmed by querying the whois servers of Network Solutions Inc., which reveal that the administrative contact for tibet.com is Carl Shivers, of Aristotle Inc. in Little Rock, Arkansas.
\textsuperscript{435} See JONATHAN ZITTRAIN, JURISDICTION 6–8 (2005) (describing “slowest ship in the convoy” problem”).
\textsuperscript{436} See Lackey, Defcon 11 Presentation, supra note 165, video at 13:25 (estimating cost of HavenCo colocation at ten times the cost of comparable land-based colocation); HavenCo Services Rate Sheet, HAVENCO (Oct. 10, 2001), http://www.havenco.com/products_and_services/rates.html, available at http://replay.waybackmachine.org/20020406103213/http://www.havenco.com/products_and_services/rates.html (quoting least expensive hosting plan of $750/month). The collapse of the dot-com bubble also put paid to HavenCo’s expectations that even plain vanilla colocation would be profitable. Even for secure colocation, an undisclosed mainland location offers a better value proposition than an offshore fort that must bring all its equipment in by inflatable boat. In Lackey’s words, “We were doing a little bit better than people like WorldCom and Enron, for a while. “ Id. at 14:00.
card number and go buy a server at a company with thousands of servers. \[437\] Today, now that vertically integrated organized criminals control massive botnets of hijacked personal computers, even the stolen credit card and hosting company are superfluous. Why pay for something you can steal more cheaply for yourself?

Similarly, the last decade has shown that even casual lawbreakers are mostly content to use highly insecure but free and convenient services, rather than pay even a little for actual anonymity.\[438\] Seven years of copyright lawsuits have done little to stem the file-sharing tide; most users don’t know or don’t care that the RIAA’s private police might be watching their downloads. Indeed, the rise of peer-to-peer (P2P) technology—Napster launched the year before HavenCo—helped moot the idea of a data haven for most practical purposes. P2P turned the infrastructure users already had into all they needed to become their own content hosts, and it unleashed them on the world in such great numbers as to make it almost trivially easy to irreversibly spread a file worldwide. In an age of YouTube, BitTorrent, and the darknet, who needed HavenCo?

2. The Rule of Law as Self-Governance

The cypherpunk theory of free speech, sovereignty, and freedom is profoundly antinomian. It asserts, in essence, a natural right to ignore the positive law: the Internet’s free-speech grace releases all humanity from all obligation to conform its online conduct to the wishes of government. HavenCo fit squarely into what Joel Reidenberg calls a “struggle against the very right of sovereign states to establish rules for online activity.”\[439\]

This move should be at least slightly unsettling. Government and law are generally also thought of as tools for advancing a people’s shared values. The reason is that, under modern political theory, the only legitimate source of legal authority is the mutual consent of the governed.\[440\] What Rousseau called the “general will “ binds the people, to be sure, but it also derives and reflects their own wishes, thereby ensuring that “it neither has nor could have an interest contrary to theirs.”\[441\]

These democratic theories amount to a vision of the rule of law as self-governance: laws are legitimate if and only if they derive from the consent of the

\[437\] Gilmour, supra note 113.
\[438\] Cf. BRUCE STERLING, TOMORROW NOW (2008) ( “Then all I have to do is place it offshore in some concrete ninja-haunted data haven and defy the police to come get me!”).
\[440\] See JURGEN HABERMAS, BEYOND FACTS AND NORMS 446 (William Rehg trans. 1996) (“[T]he modern legal order can draw its legitimacy only from the idea of self-determination: citizens should always be able to understand themselves also as authors of the law to which they are subject as addressees.”).
\[441\] JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT, OR PRINCIPLES OF POLITICAL RIGHT (1762), in THE BASIC POLITICAL WRITINGS 150 (Donald A. Cress trans., Hackett 1987).
governed.\textsuperscript{442} This is why Reidenberg could say that states were engaged in a “struggle to establish the rule of law” against the threats of the Internet.\textsuperscript{443} HavenCo’s business model depended on its ability to thwart the general will of any country that crossed its path.

HavenCo and other Internet libertarians attacked this self-governance vision of the rule of law in two ways. First, they questioned whether national governance was truly self-governance where the Internet was concerned. The Internet’s global nature raised sharp questions about any one state’s right to set rules for the whole of the Internet.\textsuperscript{444} The extreme of this position was John Perry Barlow’s claim that the citizens of Cyberspace were no longer part of the political communities of “distant, uninformed powers” and would form their “own Social Contract.”\textsuperscript{445} More prosaically, they saw national governments as so captured by special interests that actual policy no longer reflected the collective will of their own citizenry. Any of these claims, if true, implied that Internet users were being regulated without their democratic consent—that is, illegitimately.

In addition to these procedural objections to self-governance rule-of-law, there was also a substantive one. Even if national Internet laws really reflected national consensus, such laws were inherently unjust, to the point that it was legitimate to make them unenforceable.\textsuperscript{446} The American ideal of free speech as an inalienable right—with its strong overtones of Mill’s harm principle\textsuperscript{447}—resonated strongly in the age of the Internet.\textsuperscript{448} But it is also a profoundly American ideal; other democracies balance free speech against other goals in very different ways.\textsuperscript{449} Had HavenCo succeeded, it would have compelled the nations of the world to converge on its preferred model of absolute free speech in preference to all other laws and values. The normative self-governance rule-of-law debate over HavenCo thus hinges on whether one believes in a single universal value of unfettered free speech or in “differences in culture, history, and tastes that are

\begin{itemize}
\item \textsuperscript{442} See TAMANAH, supra note 415, at 99–101 (discussing democratic theories of the rule of law).
\item \textsuperscript{443} Reidenberg, Internet Jurisdiction, supra note 439, at 1951 [emphasis added].
\item \textsuperscript{444} See, e.g., David R. Johnson & David G. Post, Law and Borders: The Rise of Law in Cyberspace, 48 STAN. L. REV. 1367 (1996).
\item \textsuperscript{445} John Perry Barlow, A Declaration of the Independence of Cyberspace (1996), https://projects.eff.org/~barlow/Declaration-Final.html.
\item \textsuperscript{446} One might argue that HavenCo had a competing rule-of-law vision here, one that emphasized specific individual rights the rule of law must protect. See TAMANAH, supra note 415, at 102–13 (2004). This argument resonates with HavenCo’s experience in that it recognizes the anti-democratic character of individual rights. \textit{Id.} at 104–05. If so, then HavenCo embraced an exceedingly thin version of what Tamanaha calls “substantive” theories of the rule of law, in comparison with thinkers who include democratic self-governance and affirmative welfare rights in their substantive bundles, both of which HavenCo rejected.
\item \textsuperscript{447} See JOHN STUART MILL, ON LIBERTY (1869).
\item \textsuperscript{448} See, e.g., Barlow, supra note 445 ( “We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.”).
\item \textsuperscript{449} See Joel Reidenberg, Yahoo and Democracy on the Internet, 42 JURIMETRICS J. 261 (2002).
\end{itemize}
legitimately reflected in national and local laws.  

B. International Law

In 2002, Ryan Lackey succinctly captured a profound irony in HavenCo’s relationship with law when he explained, “Our customers don’t want to break the law; they want a different set of laws they can comply with.” As we have seen, this Internet-abetted form of regulatory arbitrage renders national law meaningless. At the same time, however, note that Lackey spoke in terms of “complying” with law, rather than “evading” or “breaking” it. HavenCo offered formal legal compliance without any corresponding substance.

Thus, HavenCo was not an exercise in pure lawlessness. Indeed, the viability of its offer—and indeed, its very existence—depended on law, specifically the international law of states. HavenCo’s product differentiator was Sealand law. But if Sealand is just Roughs Tower and not a political entity with the rights of a state, then it and its law exist wholly at the sufferance of the United Kingdom—making HavenCo an expensive, impractical alternative to its competitors in London.

It is therefore time to consider the question of Sealand’s statehood under international law. It would take a full article to do justice to the arguments for and against. Instead, the next few pages will discuss the principal precedents on point, and offer a few rule-of-law observations about the nature of the claims made by Sealand’s proponents.

1. Sealand and International Law

If Sealand is part of the territory of the United Kingdom, or subject to the United Kingdom’s jurisdiction, all other questions are moot. The place to start our analysis of this question is with the 1968 prosecution of Roy and Michael Bates on charges of violating the Firearms Act, Regina v. Bates. No one contended that Roughs Tower was British territory in itself. Instead, they joined issue on the question of whether British jurisdiction extended to the platform, seven miles off the coast. The court considered two possible theories: admiralty jurisdiction and jurisdiction over British subjects.

The first possible basis of jurisdiction was what the court called “the old
jurisdiction of the Admiral. 19th-century courts had limited their admiralty jurisdiction to ships flying the British flag. When Parliament responded to these decisions by extending the common-law courts’ jurisdiction to ships of any flag, it explicitly confined the law’s reach to territorial waters: those within three miles of the shore. Since the prosecution in Bates conceded that Roughs Tower was not a ship (much less one flying the British flag) and that it was not within the three-mile limit, the Bateses could not be prosecuted under admiralty jurisdiction.

The other possible basis of jurisdiction was Parliament’s power “to legislate over British Subjects anywhere.” In some cases, Parliament clearly had: murder, bigamy, and treason were offenses wherever committed. Based on rules of statutory construction, however, the court concluded that Parliament had intended the Firearms Act to “operate only within the ordinary territorial limits.” Summarizing his holding, Mr. Justice Chapman explained, “Parliament no doubt has the power to make it an offense for a British subject to have a firearm with intent to endanger life in Istanbul or Buenos Aires, or where have you, but I do not think it has done so.”

Although the decision in Bates is sometimes treated by Sealand’s advocates as a holding that Sealand is independent, this discussion shows that its true scope is much narrower. The case contains no holding that Parliament could not legislate for Sealand; only holdings that it had not done so. Put another way, this is a case about the judicial jurisdiction of the British courts as a matter of domestic law, not about the legislative jurisdiction of the United Kingdom as a matter of international law. Indeed, under common principles of international law, the United Kingdom’s right to proscribe activities on Sealand that cause harm within the United Kingdom is well-established.

From the United Kingdom’s perspective, any ambiguity created by the ruling was cleared up by its 1987 extension of territorial waters to twelve miles.

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456 R. v. Bates, supra note 34.
457 See R. v. Keyn, [1876] 2 Exch. Div. 63 (construing Offenses at Sea Acts of 1536 and 1799, which had given the common-law courts power over various crimes committed wherever “the Admiral or Admirals have or pretend to have power, authority, or jurisdiction,” “subjecting them to “the same punishment respectively as if they had been committed upon the shore”).
458 Territorial Waters Jurisdiction Act of 1878.
459 R. v. Bates, supra note 34.
460 Id.
461 Id.
462 Id.
463 Id.
464 See, e.g., Vitanyi Opinion, supra note 215 (“the judgement of Mr. Justice Chapmann of the fact that Sealand is situated outside the limits of Great Britain’s sovereignty”).
465 See RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402 cmt. d. [hereinafter RESTATEMENT] (“Jurisdiction with respect to activity outside the state, but having or intended to have substantial effect within the state’s territory, is an aspect of jurisdiction based on territoriality . . . ”).
Prior to that time, the government’s official line was that while Roughs Tower was not part of England, neither was Sealand an independent state. Afterwards, the government has consistently treated Sealand as governed by British law.

The United Kingdom’s claims seem unproblematic under international law. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) allows each nation to “establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles.”

One could try to argue that Sealand had achieved statehood before 1987, so that it would be entitled to claim its own territorial waters to the median line between England and Sealand. (Sealand has indeed made such a claim.) But here, too, international law has taken the United Kingdom’s side. The 1958 Convention on the Continental Shelf provides that “no one may . . . make a claim to the continental shelf, without the express consent of the coastal State,” and UNCLOS made the rule even more explicit. Courts in cases involving artificial islands near the Floridian and Italian coasts have upheld coastal states’ rights to prohibit upstart artificial islands.

Let us assume, counterfactually, that the United Kingdom were willing to allow Sealand to be a state. Would it be one? Unfortunately, “international legal sources provide no satisfactory definition of ‘state.’” The “best known formulation of the basic criteria for statehood“ is probably the 1933 Montevideo

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466 UNCLOS III (1982) art. 3.
468 See Lucas, supra note 42 (noting that Sealand has extended its own claimed territorial limit to twelve miles in order to preserve its sea access).
469 See Arenas, supra note 3 at 1176–78.
470 Convention on the Continental Shelf, 29 Apr. 1958, 499 U.N.T.S. 311, art. 2(2). But see Vitiy Opinion, supra note 215 (”The tendency to extend the jurisdiction of the coastal States to artificial islands and installations on the high seas which are not used for purposes of exploration or exploitation of the natural resources of the continental shelf is manifestly contrary to the Convention of 1958.”).
471 See UNCLOS III [1982] art. 60 (giving “coastal State “ “exclusive jurisdiction “ over artificial islands and other similar structures within its exclusive economic zone (EEZ)), art. 80 (extending EEZ rights under article 60 to apply also to “artificial islands, installations and structures on the continental shelf.”) As of this writing, the Convention has been ratified by 161 states.
472 Cherici and Rosa v. Ministry of the Merchant Navy and Harbour Office of Rimini, 71 I.L.R. 258 (1969) (upholding order against the Republic of Rose Island, a 400m² platform seven miles of the Italian coast); United States v. Ray, 281 F. Supp. 876 (S.D. Fla. 1965) (entering injunction against Atlantis, Isle of Gold, which was to be built on the Triumph Reef off of the Florida Keys); Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(c) (permitting the United States government to regulate or prohibit “artificial islands, and all installations and other devices permanently or temporarily attached to the seabed “ on the continental shelf). See generally Menefee, supra note 420 (describing “gap between the enactment of the 1958 Geneva Conventions, encouraging the exploitation of the ocean’s resources, and the ensuing court interpretations and state action which indicated the extent to which this action would become a coastal state hegemony.”).
Convention, which sets out four conditions for statehood: “(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.” The Restatement (Third) of Foreign Relations uses a similar four-element test. These lists are controversial, and have been criticized as being both over- and under-inclusive, but there is no commonly-accepted alternative codification. Modern practice may be converging on requiring additional elements as preconditions to international recognition, such as democratic self-governance and protection of minority rights—but these may or may not be conditions of statehood itself. I will use the Montevideo criteria to structure the following discussion, with particular reference to the 1978 Duchy of Sealand decision holding that Sealand was not a state.

The first Montevideo criterion is territory. Traditionally, “territory “ in international law refers to “a part of the surface of the earth.” Taking that requirement literally, the Duchy of Sealand court held that “a man-made artificial platform . . . does not constitute a segment of the earth’s sphere.” As a matter of text and precedent, this reasoning is defensible: “territory “ comes from the Latin terra, or “earth,” and historically, state territory has referred only to land. But functionally, it is at least a little anomalous. From the perspective of actual human affairs, the pro-Sealand case here is commonsensical; Sealand is enough of a stable place to have been inhabitable for the past four decades. If a place can support an otherwise coherent and independent political community, why should

475 See Restatement § 201 (“A state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.”).
476 See generally Grant, supra note 473.
477 See, e.g., id. at 440–47. Following the breakup of the Soviet Union and the former Yugoslavia, for example, the Council of the European Union adopted guidelines for the recognition of new states that require these states to respect the United Nations Charter, ethnic and minority rights, and nuclear non-proliferation agreements, among other commitments. See Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, 31 I.L.M. 1486 (1992).
478 Duchy of Sealand, 80 I.L.R., at 685 (citing scholarly sources); see also Island of Palmas Case (U.S. v. Neth.), 2 R.I.A.A. 829, 846 (Perm. Ct. Arb. 1928) (“sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State”) (emphasis added).
479 Duchy of Sealand, 80 I.L.R., at 685. Others have debated the status of artificial islands at length, and I refer the interested reader to these fuller treatments of the issue. See Menefee, supra note 420; Sioussouras & Tsouros, supra note 420.; Arenas, supra note 3; Dennis, supra note 3. RYAN, supra note 19, has a discussion of a number of attempts to create both anchored and floating artificial nations.
480 Duchy of Sealand, 80 I.L.R. at 685–86. It also fits with the structure of the treaties on the law of the sea: “Off-shore installations and artificial islands shall not be considered as permanent harbour works from which baselines may be measured. UNCLOS III, art 11. Otherwise, a state could erect artificial platforms at the limit of its territorial waters, declare them to be its “territory, “ use them as a basis for drawing new baselines, and repeat the process, extending its territorial waters indefinitely.
it matter whether the “territory“ is made out of soil or concrete standing on the seabed?\(^4\) This point is visible in the Duchy of Sealand court’s strained attempt to distinguish the cases of “territory that was once connected to land and then submerged by the sea,“\(^4\) and “the formation of land by the erection of dikes or dams and similar structures on the sea-shore or in coastal waters.“\(^4\) In both of these cases, accession principles are clearly at work; the land lost or gained can be regarded as part of the larger landmass, and thus as belonging to it.\(^4\) Sealand, however, seems to the court connected with nothing but the sea. If so, the court’s discomfort with calling Sealand “territory“ might actually cut in its favor—as a recognition that the tower stands too far out to sea to be trivially assimilated to the British Isles.

The situation is reversed, however, when it comes to the second Montevideo criterion: population. The Duchy of Sealand court is committed to a substantive vision of a state: it needs a communal identity, a “common destiny.\(^4\) Sealand’s citizens, on the other hand, “have not acquired their ‘nationality’ in order to live with one another and handle all aspects of their lives on a collective basis, but on the contrary, they continue to pursue their individual interests outside the ‘Duchy.’“\(^4\) In its words, “the life of a community is lacking“\(^4\) because a people “must be aimed at the maintenance of an essentially permanent form of communal life in the sense of sharing a common destiny.”\(^4\) This is a thick vision of the role of government; it expresses a strong commitment to an affirmative welfare state.\(^4\) It is also a communitarian vision of society: it would not recognize “live and let live“ as valid principle of social order, not when there is a “common destiny“ to be pursued. A minimal Nozickian state could not legitimately exist under this reasoning.\(^4\)

The contrast with Sealand’s position is striking. Dr. Walter Leisner’s expert opinion takes population to its utter limit: “The Principality of Sealand has people constituting a nation although their number is very marginal; jus gentium does not provide for a minimum number of citizens.“\(^4\) How many is “very marginal, “ one might ask. The Duchy of Sealand court accepts that there are 106

\(^4\) See Leisner Opinion, supra note 215, at ¶ 2.
\(^4\) Duchy of Sealand, 80 I.L.R., at 686.
\(^4\) Duchy of Sealand, 80 I.L.R., at 686.
\(^4\) See generally Thomas W. Merrill, Accession and Original Ownership, 1 J. LEG. ANAL. 459 (2009).
\(^4\) Duchy of Sealand, 80 I.L.R at 687.
\(^4\) Id. at 687–88.
\(^4\) Id.
\(^4\) Id.
\(^4\) See TAMANAH, supra note 415, at 112–13 (“Wonderful as such aspirations are, incorporating them into the rule of law throws up severe difficulties. “).
\(^4\) See ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (1974).
\(^4\) Leisner opinion, supra note 215, ¶ 3; accord Colin Warbrick, States and Recognition in International Law, in INTERNATIONAL LAW 222 (Malcolm D. Evans ed. 2003).
Sealand citizens and that there are “30 to 40 persons permanently living on the platform.” As we have seen, however, Sealand’s actual population has almost always been four or fewer, and at many times only one or two. Leisner’s opinion is not engaged in rhetorical excess—if there is a minimum population threshold at all, Sealand likely falls short of it. One person could constitute a valid “population” under his reasoning, but Sealand needs a one-person, one-state principle if it is to exist at all. This interpretation of international law renders the population prong essentially meaningless: it will be satisfied as long as there is a litigant who cares to assert that she constitutes the relevant population.

The positions are similar when it comes to the third Montevideo criterion: government. The Duchy of Sealand court is committed to a thick view of government, and Sealand to a thin one. The court’s words on government are worth quoting at length:

“The life of the State is not limited to the provision of casinos and places of entertainment. Rather a State community must play a more decisive role in serving the other vital human needs from their birth to their death. These needs include education and professional training, assistance in all the eventualities of life and the provision of subsistence allowances where necessary. The so-called “Duchy of Sealand” fails to satisfy any of these requirements.”

Again, this is a thick, social-welfare view of what it takes to constitute a “government.” Other international-law authorities focus more narrowly on effective control: “the actual exercise of public power over the people and within the territory of the state.” While it may seem that Roy Bates had effective control over Sealand—particularly given his expulsion of the invaders in 1978—the related idea that the purpose of a control test is the maintenance of public order is problematic for HavenCo.

Once again, Sealand’s competing theory could best be described as “minimalist.” Sealand governance in practice has been somewhere between an unincorporated family business and a marionette show in which a multitude of formal offices are manipulated by a few puppeteers. At the time of the invasion

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492 Duchy of Sealand, 80 I.L.R at 687. See also Arenas, supra note 3, at 1173–74 (conflating figure of 106 citizens with the number of permanent residents).
493 Id. at 687.
495 See Arenas, supra note 3, at 1179.
496 See Warbrick, supra note 491, at 223 (“It is often suggested that the control exercised must be sufficient to guarantee . . . prevention of the use of the territory contrary to the interests of other States.”).
497 See, e.g., Leisner Opinion, supra note 215, at ¶ 4 (“[J]us gentium does not provide for a certain form of government.”).
Achenbach was both Prime Minister and Chair of the Privy Council, and Duchy of Sealand described him as Foreign Secretary and Chairman of the Council of State. This is a Model UN vision of government: everyone who shows up gets to hold an important office.

The fourth Montevideo criterion—“capacity to enter into relations with other states”—is the most vexed of the four. One scholar calls it “not a criterion, but a consequence, of statehood,” and other commentators agree. The Duchy of Sealand opinion doesn’t even mention it.

A more helpful framing may be to focus instead on the other side of the “relations with other states”—whether the putative state is recognized by its peers. Scholars have fiercely debated whether recognition is constitutive of statehood, or merely an acknowledgement of it. Either way, however, the practice of other states at least provides valuable evidence. As one wag puts it, “[A] nation is only recognized as a nation if other nations that have been recognized by other nations recognize it. Got it?” There is a certain unavoidable circularity to this approach, but it has the virtue of conforming to general practice.

This would not seem to be a promising line of argument for Sealand to pursue. At present, no other nation officially recognizes Sealand. Indeed, the United States and United Kingdom have repeatedly said that they don’t. So has the United Nations. “Recognition itself need not be express,” however, and Sealand’s advocates have pointed to acts over the years that supposedly constitute de facto recognition or “acquiescence” in Sealand’s claims, such as the 1968 acquittal in Regina v. Bates and the United Kingdom’s failure to reoccupy Roughs Tower after Bates occupied it. Germany is said to have recognized Sealand by sending a diplomat to negotiate for Putz’s release after the 1978 invasion. And

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498 Duchy of Sealand, 80 I.L.R at 684.
499 Cf. Lackey, Defcon 11 Presentation, supra note 165, video at 19:50 (“They were very good at trying to simulate a real country there because they acted like politicians.”).
501 See, e.g., Grant, supra note 473, at 434–35 (collecting criticisms).
503 RYAN, supra note 19 at 6.
504 MALCOLM N. SHAW, INTERNATIONAL LAW 384 (2003).
505 See Vitanyi Opinion, supra note 215. See also Briger Opinion, supra note 215 494 (“[Y]ou have advised that the United Kingdom has acknowledged and accepted Prince Roy’s possession and control of Sealand, including making special customs arrangements for anyone traveling to or from Sealand.”).
506 See Conway Opinion, supra note 215 (discussing German and Dutch negotiations over their nationals). The Conway opinion also contains the following, puzzling paragraph:

Various offers have been made to Prince Roy on behalf of different persons to negotiate on his behalf to have his country recognized by certain of the small minor Governments throughout the world but Prince Roy has not sought official recognition as this venture is entirely a commercial venture and
Sealand’s citizens have managed to travel into various countries by presenting Sealand passports. 507

Ironically, these arguments for de facto recognition are even more formalistic than the arguments for Sealand’s legal statehood. They all share a certain “gotcha” quality: that a country, notwithstanding its official protestations, will be bound by an isolated statement made in a context when sovereignty might not be the first thing on its officials’ minds. 508 Take, for example, the idea that Niemoller’s visit to Sealand to check up on Putz in 1978 constituted irrevocable diplomatic recognition. 509 This is not an argument that Germany tends to treat Sealand as a state in practice; it is an argument that Germany is estopped from denying that Sealand is one. 510

2. The Rule of Law as Formal Legality

Sealand’s claims to statehood reflect a theory of the rule of law as formal legality: the consistent and evenhanded application of general prospective rules. 511 In Lon Fuller’s words, “Surely the very essence of the Rule of Law is that in acting upon the citizen . . . a government will faithfully apply rules declared as those to be followed by the citizen and as being determinative of his rights and duties.” 512 This condition, which Rawls called “justice as regularity,” 513 ensures not a political one and he does not wish to be recognized formally as a State by any particular Government. To do so would create problems as it would necessitate him appointing an Ambassador with additional unnecessary expense and no financial gain at all.

Id. 507 See Sean Hastings, Confidential Report, supra note 129. The examples given online all appear to predate the age of computerization that was ushered in by the standardization on machine-readable passports. Dr. Leisner considers this “doubtful” evidence, as “it was not the Foreign Office authorities of these states” who endorsed the passports. Leisner opinion, supra note 215, §3. He then goes on, however, to argue that since England and France had a policy against endorsing East German passports, the fact that they endorsed Sealand’s constituted recognition. Id.

508 See SHAW, supra note 504, at 387 (“State practice has restricted the possible scope of this concept of implied recognition to a few instances only . . . .”). Ian Brownlie writes, “Recognition is a matter of intention,” BROWNLE, supra note 494, at 93, and it is unlikely that other governments have intended to recognize Sealand.

509 See RYAN, supra note 19, at 11 (“Prince Roy saw the bright side; by sending a official mission, the German government had recognized Sealand as an independent nation (the Germans, of course, have other views).”).

510 Cf. STRAUSS, supra note 19, at 65 (describing theory of “recognition” by government reflex “held by Leicester Hemingway of New Atlantis, in which receiving a pro forma thank-you note from Lyndon Johnson constituted official recognition).


512 FULLER, supra note 511, at 209–10; see also Risch, supra note 24 (applying formal legality framework based on Fuller to virtual worlds).

513 JOHN RAWLS, A THEORY OF JUSTICE 207 (rev. ed. 1999) (“The regular and impartial, and in this sense fair, administration of law we may call ‘justice as regularity.’“).
equality before the law and protects law’s subjects from the arbitrary exercise of power.  

Sealand’s advocates claim that international law has established rules on statehood—territory, population, government, and recognition—and Sealand is entitled to have its status adjudged according to those rules. What is sauce for England is sauce for Sealand. If international law had not prior to 1968 imposed a threshold test for population, for example, it would be a violation of the rule of law to impose such a test after the fact to catch out Sealand. The point resonates—but we should also be clear on its limits and implications.

Speaking to the HOPE conference in 2002, Ryan Lackey proudly explained that Sealand satisfied “all the technical requirements” for statehood, as though other nations were holding it back for unfair reasons not actually in the books. Perhaps, but if so, then Sealand satisfies almost nothing but the technical requirements. Sealand’s arguments illustrate the “emptiness” of formal legality; they obscure any consideration of the underlying purposes of the rules or the justice of the resulting regime.

The normative case that Roy Bates’s family constitutes the sort of historically-connected political community traditionally recognized under international law is weak at best. Or rather, if the Bates family is justified in constituting itself as a nation, the fact that it happened to occupy Roughs Tower is surely the least important of the normative justifications for its self-rule—and we are most of the way to Robert Nozick’s ideal of a purely consensual state. Some may find this vision appealing, but it is a substantial departure from the traditional functions of international law in regulating the rights and duties of states.

HavenCo’s implicit appeal to international law looks even stranger when juxtaposed with its disdain for national law. If the rule of law is a matter of formal legality, then any properly general and prospective national regulation of the
Internet ought to pass muster.\textsuperscript{523} Conversely, if the rule of law also makes substantive demands, it is unclear what makes the international law guaranteeing Sealand’s sovereignty legitimate. It is difficult to find a theory of law that invalidates the laws of every nation on earth and still upholds international law.

And yet legality \textit{was} inarguably important to HavenCo; if not, it would never have bothered with Sealand. Recall Lackey’s quip that “Our customers don’t want to break the law; they want a different set of laws they can comply with.”\textsuperscript{524} The unifying thread in its attitudes towards national and international law, I would argue, was a willingness to disregard the idea that law is an expression of the political will of a community. HavenCo rejected national Internet regulations because it didn’t believe that those regulations reflected the values of any community that was entitled to have its values respected. And it embraced the formal strictures of international law out of a belief that those formal strictures would tie the hands of the nations of the world—again, regardless of what the communities in those nations thought or deserved.

That is, HavenCo’s position makes sense if one envisions international law as an autonomous system of binding rules, beyond the power of the system’s participants (here, the nations of the world) to modify as they went along.\textsuperscript{525} Sealand is a “state “ with inviolate rights because it has “territory, “ a “population, “ and a “government, “ regardless of whether these things bear much relationship to other things with the same names, or whether any political institution is willing to stand behind this interpretation of the law. This is rule \textit{by} law, not rule \textit{through} or \textit{of} law—it is law without politics.\textsuperscript{526}

The world, however, is inescapably political. Any discussion of Sealand’s formal sovereignty is beside the point given that the United Kingdom plausibly asserts jurisdiction over it.\textsuperscript{527} It seems unlikely that international community

\textsuperscript{523} See TAMANAH\textsc{a}, \textit{supra} note 415, at 99–101 (treating democratic theories of the rule of law as also requiring formal legality).

\textsuperscript{524} Gilmour, \textit{supra} note 113.

\textsuperscript{525} This same belief in a law as a wholly formal system crops up in the belief (among some of the buyers of credentials from the Spanish “Sealand”) that carrying a Sealand diplomatic passport provides diplomatic immunity, even in countries that have no diplomatic relations with Sealand. \textit{See supra} Part II.G. It doesn’t work. Diplomatic immunity, under domestic and international law, arises from being a diplomat, not from carrying a piece of paper. Under the Vienna Convention, the sending state must notify the receiving state’s government of both “the appointment of members of the mission “ and “their arrival. “ Vienna Convention on Diplomatic Relations (1961) art. 10(1)(a) [hereinafter Vienna Convention]. See generally Diplomatic Relations Act of 1978, codified at 22 U.S.C. § 254a et seq. (implementing Vienna Convention); 22 C.F.R. § 41.26 (implementing diplomatic visas). Nationals of the receiving state enjoy immunity only “in respect of official acts performed in the exercise of [their] function[s] “ Vienna Convention art. 38, diplomats may be declared persona non grata by the receiving state at any time, \textit{id.} art. 9., and they may not “practise for personal profit any professional or commercial activity, “ \textit{id.} art. 42.


\textsuperscript{527} In an interview, Michael Bates explained that Sealand had learned from the old pirate radio
would have responded to protect Sealand from the United Kingdom or another
state acting with the United Kingdom’s acquiescence. Ryan Lackey told a
crowd at the HOPE conference that if Osama bin Laden were on Sealand, he
expected the United States to wipe it out in minutes. Even for less controversial
material, dropping the servers into the sea was always HavenCo’s fallback plan.
Even more tellingly, in 2001, some of Sealand’s staff were treating nearby Great
Britain as a security asset, not a risk. In the words of Alan Beale, Sealand’s Chief
of Security at the time, “The British government wouldn’t allow a foreign power
to [take over Sealand], and they certainly wouldn’t want any terrorists out here.
As NPRs Scott Simon put it, “HavenCo does not recognize British law, but it
relies on British security to make the platform a safe investment.”

C. Sealand Law

To explore HavenCo’s relationship to Sealand law, let us start at the end
of the relationship. In his 2003 Defcon presentation, HavenCo’s Ryan Lackey
described the company as “probably effectively ‘nationalized.” His point was
that what had originally been a hosting company operating out of Sealand had
come under Sealand’s complete operational and managerial control. True,
HavenCo had never been a particularly reliable business partner for its customers,
it defaulted on its contractual obligations to Sealand, and the transfer to Sealand
control was mutually agreed-to. Still, the endgame cut out HavenCo’s investors
and creditors completely: Sealand never issued shares or paid off the $220,000 it
owed Lackey. According to Lackey, Sealand even stole personal computers left
behind there.

Sealand law had nothing to say on the matter, or, at least nothing that
HavenCo could rely on. Intuitively, this comes across as a failure of the rule of
law. But here, it is the “rule of law “ in yet a different sense than we have been

broadcasters. “We have rules and regulations . . . . One of the reasons to my mind that the
government always wanted to close the offshore stations down was that they had no control over
them. And had they gone political, it probably would have frightened them to death. But we
make our own controls now, and we’re sensible.” THE SEALAND ADVENTURE, supra note 61.

528 HavenCo could potentially have stood up to a British exercise of authority if it had a powerful
ally in the international community—but if it did, that other state would presumably have made a
better home for HavenCo.

529 Lackey and Freedman, H2K2 Presentation, supra note 37. Cf. Lackey, Defcon 11 Presentation,
supra note 165, video at 19:20 (describing Lackey’s annoyance at Sealand officials for saying they
would hypothetically turn over to British authorities any data belonging to al Qaeda).

530 Note also the server-overboard endgame would seem to be an ideal outcome for a government
whose goal is merely to have seditious content taken offline.

531 See Simon, supra note 30.

532 See id.

533 Lackey, Defcon 11 Presentation, supra note 165.

534 Id., video at 32:40 (describing HavenCo’s ad hoc responses to customers during its frequent
service outages).

535 Id.
1. The Rule of Law as Restraint on Government

The expropriation of property without justification is a violation of the rule of law as a restraint on government. This vision of the rule of law emphasizes that government itself is subject to law. It is visible in Thomas Paine’s “in America the law is king,” in Theodore Roosevelt’s “No man is above the law,” and in John Adams’s “government of laws, and not of men.” It protects individuals against tyranny, against the arbitrary exercise of power. Where pure formal legality requires only that government act through law, this vision of the rule of law expects that law will put limits on the government’s ability to act at all. It is thus to some extent a substantive theory of the rule of law.

The ideal of government limited by law is frequently linked to citizens’ ability to plan for the future. Reliable property and contract rights play an important role in this story. Businesses care about the stability of their legal environment, thinkers argue: without secure property rights, investment and entrepreneurship are difficult or impossible. We have seen this argument already in HavenCo’s clients’ commercial need to fit themselves into the framework of law.

2. HavenCo and Sealand Law

It is possible to see HavenCo’s relationship to Sealand, then, as a failure of the rule of law. Think, for a moment, about HavenCo’s options following the

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536 See TAMANAH, supra note 415, at 114–19 (discussing theme of “Government limited by law”).
537 See TAMANAH, supra note 415, at 202–03 (many forms of arbitrary rule are compatible with the rule of law).
538 See TAMANAH, supra note 415, at 102–13 (discussing substantive theories of the rule of law).
539 See, e.g., F.A. HAYEK, THE ROAD TO SERFDOM 112 (1944) (U. Chicago 2007) (“[G]overnment in all its actions is bound by rules fixed and announced before-hand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers and to plan one’s individual affairs on the basis of this knowledge.”); Raz, supra note 511, at 203.
541 See generally DEBORAH SPAR, RULING THE WAVES (2001) (arguing that “pirates “ on new technological frontiers eventually go legitimate as their businesses expand and become more dependent on a stable business environment).
542 See also RYAN, supra note 19, at 12 (describing “too close relationship between the operators of HavenCo and Prince Regent Michael “ as “most damaging “ factor in HavenCo’s failure). This is not the only possible interpretation. Another way of describing the breakdown of HavenCo’s relationship with Sealand is that Sealand took its identity as a would-be member of the international community seriously enough that it brought its internal Internet policies into rough congruence with international norms, regardless of whether it was legally obligated to do so. See
“nationalization.” It could have argued that its rights had been violated, and brought an action in whatever tribunal Prince Regent Michael had seen fit to establish. But its decision would have been purely advisory as to the Prince Regent,\(^{543}\) and in any event, it seems unlikely that the rest of Sealand’s political community—Michael Bates’s friends and family—would have put much pressure on him to conform his decisions to the law.

HavenCo chose Sealand for its “third-world regulation,” but most of us, when we think about third-world regulation, don’t immediately think of a good business environment.\(^{544}\) The Bateses may be decent people, and they may often find it in their interest to act honestly, consistently, and predictably. But if they decide to act otherwise—as Lackey alleges they did as HavenCo unraveled—there is essentially nothing to stop them.\(^{545}\) A gambler who visits a casino in Atlantic City has the assurance of the New Jersey Casino Control Commission and Division of Gaming Enforcement that the decks aren’t stacked against her.\(^{546}\) If she goes instead to a thinly regulated online casino, she will have no one to turn to if it transpires that the random-number generator was rigged.\(^{547}\) HavenCo bet on a friendly legal climate, and lost.\(^{548}\)

In hindsight, perhaps, the question is not why Sealand allegedly acted lawlessly towards HavenCo, but why Sealand’s lawlessness came as a surprise. Sealand’s constitution, after all declares it to be a monarchy in which the Sovereign has ultimate legislative, executive, and judicial power.\(^{549}\) Advancement

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\(^{543}\) Constitution of the Principality of Sealand ("The opinion of the tribunal shall be conveyed to the Sovereign who shall issue a Decision as appropriate said Decision to be subject to enforcement as seen appropriate.")

\(^{544}\) See, e.g. World Justice Project, Rule of Law Index 18 2010 (giving Western Europe & North America region distinctly better ranking on rule-of-law metrics than all other regions).

\(^{545}\) Lackey wrote, “Even a small group of people in power will violate agreements if they are capable of doing so . . . “ Lackey, Defcon 11 Presentation, supra note 165, slides at 34.

\(^{546}\) See About the Commission, New Jersey Casino Control Commission, http://www.state.nj.us/casinos/about/; About the Division of Gaming Enforcement, Office of the Attorney General, http://www.nj.gov/oag/ge/mission&duties.htm. But see Bruce Springsteen, Atlantic City ("The D.A. can’t get no relief . . . and the gambling commission’s hanging on by the skin of its teeth. ")


\(^{548}\) Michael Froomkin made this observation to me in email.

\(^{549}\) Constitution of the Principality of Sealand.
in Sealand politics has always depended on family connections or personal favor with the monarch. Ryan Lackey blamed part of HavenCo’s failure on an “advisor” to the royal family; perhaps we should call him a “courtier.”

In practice, Sealand’s judicial system has tended towards drumhead procedure. Recall the fate of the 1978 invasion force, “represented” by one of Prince Roy’s “own men,” and forced to do cleaning chores for the royal family. Recall also that Prince Roy considered executing Putz even though the 1975 constitution explicitly prohibits the death penalty. Sealand’s history is heavily dotted with the irregular use of force: the expulsion of Radio Caroline staff, the defense with Molotov cocktails, the repeated shots at U.K. ships on official duty, and the 1978 invasion. This is a country where state violence has never been far from the surface. As Roy Bates put it, “I can tell them to murder someone if I want to. I am the person responsible for the law in Sealand.”

Even more fundamentally, Sealand simply lacks the population to support political institutions like a professionalized judiciary, political parties, and an independent press. The number of residents on the platform, after all, is in the single digits, and the number of total citizens is not much larger. Multiple officeholding is common. Even when such institutions do exist in theory—like the Senate described in its constitution—it is unclear whether they ever meet, nor is there any indication in the record that their work is anything other than play-acted. This is not a picture of a country in which the rule of law has a thick hold.

We have seen that in both national and international settings, HavenCo tried to drive a wedge between law and politics. The same was true on Sealand. HavenCo was utterly dependent on Sealand law—but perhaps too willing to overlook the numerous red flags in Sealand’s political system.

D. Connections

We have seen that HavenCo simultaneously thumbed its nose at national

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550 See Lackey, Defcon 11 Presentation, supra note 165, video at 24:45 (discussing advisor’s ambiguous relationship with HavenCo).
551 See Kessler, supra note 61 (“Violence, however, is at the root of its existence.”); REPORTING LONDON (television program 1983), available at http://www.youtube.com/watch?v=zdFLyoXSKPw (“Today, firearms still play a major role in the life of Sealand. Racks of guns are ready to depend the independence of the island.”).
552 See Jackson, supra note 91, at 3.
553 See Terrence C. Halliday, The Fight for Basic Legal Freedoms, in GLOBAL PERSPECTIVES ON THE RULE OF LAW 210, 216–32 (James J. Heckman et al. eds. 2010) (discussing role of legal and civil society institutions in the transition to the rule of law). Cf. THE FEDERALIST No. 10 (James Madison) (arguing that a large republic is more capable of “controlling the effects of faction” than a small one).
554 Cf. Lackey, Defcon 11 Presentation, supra note 165, slides at 34, video at 32:57 (“The ultimate lesson here is that if you have a very small number of people involved in a business, it’s very easy to violate agreements.”).
555 Although, to be fair, it’s not clear that the Sealand government has enough duties to make this multiplicity problematic by heaping too much work on any individual.
law and relied on international law to protect Sealand. Both of these choices came back to haunt it when it came to Sealand law. Its opposition to national authority led it straight to Sealand, the world’s minimal possible state—but the minimal possible state is not actually a safe base of operations.\textsuperscript{556} A country whose government is committed to the rule of law and which has extensive political and social traditions holding it to that commitment, can offer the necessary stability. If the government tries to act arbitrarily, its own internal institutions and the country’s larger rule-of-law culture will stand in its way. On a true data haven, government faces no such obstacles.\textsuperscript{557}

Similarly, HavenCo’s dependence on international law boxed it into a corner after the nationalization. HavenCo was in no position to seek protection of its rights anywhere else in the world.\textsuperscript{558} In order to prevail, HavenCo would have had to convince a court that it had jurisdiction over an unwilling Sealand, and then find a way of enforcing its judgment against Sealand. Perhaps it could have. But doing so would have destroyed the premise on which HavenCo had built its entire business: Sealand’s sovereignty as an absolute shield against the rest of the world.\textsuperscript{559} If Sealand could be held accountable for seizing HavenCo property, then Sealand could also be held accountable for doing things other countries didn’t like.\textsuperscript{560} Once again, Ryan Lackey put his finger on the point in hindsight: “While I could sue HavenCo and/or directors for breach of contract, etc., . . . it would presumably lead to a negative resolution of the Sealand sovereignty issue.”\textsuperscript{561}

There is a common thread here, and it has to do with the rule of law—specifically with the connection between the rule of law and political institutions. If HavenCo could be said to have been about anything, it was about the age-old fear of Leviathan—the despotic government that wields absolute, unchecked power. The standard modern response to that danger is to embrace the rule of

\textsuperscript{556} In hindsight, Ryan Lackey explained, “The key lesson on this is if you’re going to put a ‘co-lo’ facility somewhere, political and contract stability in that jurisdiction is very important.” Lackey, Defcon 11 Presentation, supra note 165.

\textsuperscript{557} There is a remarkable moment in the question-and-answer period of Lackey’s Defcon presentation, when he contemplates striking a deal with existing countries to move there and set up businesses, if only they agree to a “certain set of laws and a compact that will not be violated by your country at any point.” Id. In the next breath, he recognizes that in his experience, countries “tend to try to violate stuff anyway,” against which, “there are these things called guns, and I would make sure that there was something stronger than the Second Amendment that made sure that the free trade zone wouldn’t be at risk.” Id.

\textsuperscript{558} See Lackey, Defcon 11 Presentation, supra note 165, video at 29:45.

\textsuperscript{559} Cf. Lackey, Defcon 11 Presentation, supra note 165 video at 22:55 ( “If they thought they couldn’t host this thing, did they really believe the country had any legal existence from Day 1?”).

\textsuperscript{560} Id., video at 29:55 ( “But that will probably resolve the sovereignty thing, and it will probably be resolved negatively, which will mean there’s no money to be extracted from the thing, so it’s sort of like a catch-22.”).

\textsuperscript{561} Lackey, Defcon 11 Presentation, supra note 165.
A constitution is a law to rule over the lawmakers. The Madisonian system deploys multiple branches of government to monitor and moderate each others’ use of power. In the course of their struggles, they hold each other to the law. These institutions, in turn, are embedded within a society whose members take the project of self-governance seriously. Rule-of-law constitutionalism accepts the necessity of government power, but uses law, institutions, and norms to limit that power.

HavenCo, however, started from the premise that rule-of-law constitutionalism had failed. Its founders believed that no traditional nation-state could be trusted to protect essential human rights. Where constitutionalism aims to tame Leviathan; HavenCo hoped to escape from Leviathan entirely. The deep irony of HavenCo’s story is that it sought to use law to do so: international law would hold Leviathan at bay while Sealand law guaranteed the essential freedoms.

As we have seen, Sealand’s history gives reason to question whether either international law or Sealand law could be counted on to do the work HavenCo needed them to. This should not be a surprise. HavenCo needed law’s binding force, but offered no workable theory of where that law would come from.

CONCLUSION

In December 2010, the Sealand government sent its Facebook and Twitter followers a message:

Sealand has been asked to give #Wikileaks founder Julian Assange a passport and safe haven. With recent releases by Wikileaks: Are they a guardian of the public right to information or a hugely irresponsible threat to security of the international community?

That the Internet’s latest mutineer would sooner or later be linked with Sealand should come as no surprise. From pirate radio to HavenCo, Napster, and the Pirate Bay, Sealand exerts a kind of magnetic pull on all those who would

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562 See TAMANHA, supra note 415, at 47–59 (discussing history of liberal rule-of-law constitutionalism).
563 Principality of Sealand, FACEBOOK (Dec. 8, 2010), http://www.facebook.com/PrincipalityOfSealand/posts/180363431974733; @SealandGov, TWITTER (Dec. 8, 2010), http://twitter.com/SealandGov/status/12484459358068736.
remake the world by standing outside of existing legal systems. Little wonder, too, that Sealand’s history has taken us to tax havens and cyberspaces, or that Sealand holds pride of place in books on micronations and seasteading. They are all rebels against the existing order of things.

But, as one review of a book on pirate radio puts it, “Ya gotta have rules, it turns out, even if you’re a rebel.” All of these dissident utopians must face the same three issues of law that HavenCo did: how far will they push against national law, how will they protect their right to exist under international law, and how will they use internal law to govern themselves? These are hard problems on their own, and HavenCo’s experience illustrates that they intertwine in ways that make them even harder.

Remarkably, even the creators of fictional data havens have understood as much. Their authors take the international-relations and internal-governance issues seriously. The data havens in Bruce Sterling’s Islands in the Net are all island states whose sovereignty is guaranteed by a strong worldwide treaty regime with its own armed forces. Even so, they are unstable; Grenada and Singapore collapse during the course of the novel. William Gibson’s Freeside is even simpler: it floats in high Earth orbit, where terrestrial nations can’t get at it, and is controlled absolutely by the Tessier-Ashpool family.

Kinakuta, from Neal Stephenson’s Cryptonomicon, is the most famous and most fully worked-out of the fictional data havens, the one that most seriously tries to imagine what it would take to make a data haven work. Kinakuta is a wealthy nation sitting on top of absurdly rich oil deposits, with a long history of multiethnic tolerance, a substantial population, a thriving business culture, and a bureaucratized administration. Externally, the oil-rich Sultan of Kinakuta has a strong hand to play if other nations take offense. Internally, he explicitly promises to “abdicate all governmental power” over information flows. Unlike Roy Bates, he has a lot to lose if his country proves a bad business environment.

As Kinakuta and Sealand show, one cannot stand up to national authority without law in one form or another—which means one will also need political institutions that grapple seriously with the inevitable questions of power and community will. Or, to put things more optimistically, anyone who successfully manages to answer these questions is likely to have built something that bears more than a passing resemblance to a nation-state. Consider Iceland, which recently made itself into a “safe haven for investigative reporting” with “the world’s strongest protections for free speech and journalism.”


564 See STEPHENSON, supra note 303, at 191–92, 316–17.

sovereign nation, but even more importantly, it has a police force, a population that favors the press-shield law, and a parliament founded in 930. (No, there is not a “1 “ missing from that date.)

One last example may be helpful. Every so often, someone complains about the “maritime “ flags in United States courthouses. The theory is that gold fringe and an eagle on the standard transform the “American flag of peace “ into the “military “ or “maritime “ “flag of war, “ under which civilian courts have no jurisdiction. There are hundreds of such theories. They never work, but they also never stop. No matter how patiently the courts explain that Ohio is a state, or that individuals are not sovereign, or that a filing is valid even if its caption spells your name in capital letters, the arguments never stop coming.

I am not here concerned with why people are willing to believe what one commentator, perhaps unfairly, calls “Idiot Legal Arguments. “ People believe all sorts of strange things, and occasionally some of them turn out to be true. Instead, it is worth asking why people expect these heterodox legal arguments to work. The cases involve tax protesters, militia members, prison inmates—people who have extensive, firsthand experience being at the wrong end of government’s stick. Either their faith in a fearless and independent judiciary is strong indeed, or something else is going on.

We can sharpen the point. In Stephen Vincent Benét’s famous short story The Devil and Daniel Webster, contract law and a jury trial are binding even on the Devil himself. Like the tax protesters and like HavenCo, Benét imagines that there is a great and malevolent power afoot in the world, that law will suffice to hold this power back, and that law will do this of its own accord, simply because it is the law. This vision of law invests it with supernatural force; it collapses law into

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570 See, e.g., Cris Timothy, Hillman v. Secretary of the Treasury, 2000 TNT 111-13, No. 1:99cv136 (W.D. Mich. 2000) ( “More specifically, plaintiff complains that the United States’ filings have been directed to a person named CRIS TIMOTHY HILLMAN, whose name is spelled in bold, capital letters, in contrast with plaintiff’s name, which is spelled in upper and lower case letters, which are, according to him ‘proper English.’ “).
572 See generally Bernard J. Sussman, Idiot Legal Arguments, http://www.adl.org/mwd/suss1.asp (detailing hundreds of such arguments and the thousands of cases that have uniformly rejected them).
573 See id.
574 See Stephen Vincent Benét, The Devil and Daniel Webster (1937). Ironically, the “not guilty “ verdict which the Devil must accept is the product of jury nullification: “Perhaps ‘tis not strictly in accordance with the evidence, “ explains the foreman.
But law is not an external, autonomous system of self-enforcing rules: it is made by people, for people, and of people. No judge sitting in a courtroom containing a flag with gold fringe is going to declare that flags with gold fringe deprive courts of jurisdiction. No matter what a piece of paper labeled “law” says on it, if it has no correspondence with what people do, it is no law at all. Ursula K. Le Guin once wrote, “Love doesn’t just sit there, like a stone; it has to be made, like bread; re-made all the time, made new.” The same is true of law and the rule of law. It takes work to make law work.

575 See McCann v. Greenway, 952 F. Supp. 647, 651 (W.D. Mo. 1997) (“Jurisdiction is a matter of law, statute, and constitution, not a child’s game wherein one’s power is magnified or diminished by the display of some magic talisman.”)