

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 *Wired!*), 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

¹ See Simson Garfinkel, *Welcome to Sealand. Now Bugger Off*, WIRED, July 2000.

² See, e.g., *Around the Globe*, 27 COMPUTER L. & TAX REP. 16, 16 (2000); Mara D. Bellaby, *An Internet 'Mouse That Roars' Pops up off Britain*, HOUS. CHRON., June 25, 2000; Steve Boggan, *Americans Turn a Tin-Pot State off the Essex Coast into World Capital of Computer Anarchy*, INDEP. (London), June 5, 2000, at 3; David Canton, *Creating a Country to Avoid Jurisdiction*, LONDON FREE PRESS (Ontario), June 16, 2000, at D3; Anne Cornelius, *Legal Issues On-Line Firms Set to Take Refuge in Offshore Fortress*, SCOTSMAN (Scot.), June 15, 2000, at 26; *Europe Acts on Net Tax Loophole*, ACCT. AGE, June 8, 2000, at 3; Peter Ford, *Banned on Land, but Free at Sea?*, CHRISTIAN SCI. MONITOR, June 23, 2000, (World), at 1; Dan Gillmor, *Data Haven May Be a Step in the Right Direction*, SAN JOSE MERCURY NEWS, June 6, 2000; Carlos Grande, *Island Fortress's 'Data Haven' to Confront E-Trade Regulation*, FIN. TIMES, June 6, 2000; Ann Harrison, *Data Haven Says It Offers Freedom from Observation*, COMPUTERWORLD, Nov. 13, 2000, at 50; *Internet Exiles*, NEW SCIENTIST, June 17, 2000, at 1717; *Internet 'Island' Set Up in the North Sea*, BIRMINGHAM EVENING MAIL (U.K.), June 6, 2000, at 17; *Internet Secrets Safe at Sea*, COVENTRY EVENING TELEGRAPH (U.K.), June 6, 2000, at 17; Bob Low, *Techlife: Tiptoeing Through the Web*, DAILY REC. (Scot.), July 1, 2000, at 42; John Markoff, *Rebel Outpost on the Fringes of Cyberspace*, N.Y. TIMES, June 4, 2000, at 14; Declan McCullagh, *A Data Sanctuary Is Born*, WIRED, June 4, 2000, <http://www.wired.com/techbiz/media/news/2000/06/36749>; Declan McCullagh, *Sealand: Come to Data*, WIRED, June 5, 2000, <http://www.wired.com/politics/law/news/2000/06/36756>; Wade O'Leary, *Pirates Board the Net*, DAILY TELEGRAPH (Austl.), June 7, 2010, (Finance), at 57; *Rebel Sea Fortress Dreams of Being 'Data Haven'*, WALL ST. J., June 26, 2000, at C21A; *Safe Platform to Dock Your Data*, AUSTRALIAN, June 13, 2000, at C2; Edward Sherwin, *A Distant Sense of Data Security*, WASH. POST, Sept. 20, 2000, at G8; *Tiny Principality Offers Internet free of Government Regulation*, FLA. TIMES-UNION, June 25, 2000, at A-18; Christine Whitehouse, *The Data Haven*, TIME EUR., July 17, 2000; David Cohen, *Offshore Haven*, GUARDIAN (London), June 6, 2000; Theo Mullen, *A Haven for Net Lawbreakers?*, INTERNETWEEK, June 19, 2000; *CNN Worldview: Sealand Evolves from Offshore Platform to High-Tech Haven* (CNN television broadcast June 12, 2000); *World News Tonight: Man Starts Own Country off Coast of Britain* (ABC television broadcast June 6, 2000).

³ See JACK GOLDSMITH & TIM WU, WHO CONTROLS THE INTERNET? ILLUSIONS OF A BORDERLESS WORLD 65–67, 84–85 (2006); JONATHAN ZITTRAIN, INTERNET LAW SERIES: JURISDICTION 40–46 (2005); Jonathan Zittrain, *Be Careful What You Ask For: Reconciling a Global Internet and Local Law*, in WHO GOVERNS THE NET? (Adam Theiner & Wayne Crews eds., 2003); Jeffrey D. Kramer, *Note: Seafaring Data Havens: Google's Patented Pirate Ship*, 2010 U. ILL. J.L. TECH. & POL'Y 359; Kevin Fayle, *Sealand Ho! Music Pirates, Data Havens, and the Future of International Copyright Law*, 28 HASTINGS INT'L & COMP. L. REV. 247, 262–63 (2005); Jeremy N. Geltzer, *The New Pirates of the Caribbean: How Data Havens Can Provide Safe Harbors on the Internet Beyond Governmental Reach*, 10 SW. J.L. & TRADE AM. 433 (2004); Frank B. Arenas, *Cyberspace Jurisdiction and the Implications of Sealand*, 88 IOWA L. REV. 1165, 1181 (2003); *Sealand—The Next New Haven?*, 27 SUFFOLK

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

TRANSNAT’L L. REV. 127, 146 (2003); Ronald J. Deibert, *The Internet and the ‘Borderless’ World*, 3 ISUMA CAN. J. POL’Y RES. 113 (2002); Trevor A. Dennis, *The Principality of Sealand: Nation Building by Individuals*, 10 TULSA J. COMP. & INT’L L. 261, 296 (2002). Sealand and HavenCo also have brief walk-on parts in many articles whose chief concerns lie elsewhere. Almost all of these articles take HavenCo’s claims at face value and see only its challenge to traditional notions of law and jurisdiction. As this Article demonstrates, such a perspective is overly simplistic. See Aaron M. Bailey, *A Nation of Felons: Napster, the NET Act, and the Criminal Prosecution of File-Sharing*, 50 AM. U. L. REV. 473, 531 (2000); Susan W. Brenner, *The Privacy Privilege: Law Enforcement, Technology, and the Constitution*, 7 U. FLA. J. TECH. L. POL’Y, 123, 179 (2002); Paul D. Callister, *The Internet, Regulation, and the Market for Loyalties: An Economic Analysis of Transborder Information Flow*, 2002 U. ILL. J.L. TECH. & POL’Y 59, 78; Anupam Chander, *Trade 2.0*, 34 YALE J. INT’L L. 281, 308 (2009); Lance Clouse, *Virtual Border Customs: Prevention of International Online Music Piracy within the Ever-Evolving Technological Landscape*, 38 VAL. U. L. REV. 109, 119 (2003); Arthur J. Cockfield, *Transforming the Internet into a Taxable Forum: A Case Study in E-Commerce Taxation*, 85 MINN. L. REV. 1171, 1195–96 (2001); Debbie Collier, *Freedom of Expression in Cyberspace: Real Limits in a Virtual Domain*, 16 STELLENBOSCH L. REV. 21, 31 (2005); Erin Suzanne Davis, *A World Wide Problem on the World Wide Web: International Responses to Transnational Identity Theft*, 12 WASH. U. J.L. & POL’Y 201, 224 (2003); Graeme B. Dinwoodie, *The Development and Incorporation of International Norms in the Formation of Copyright Law*, 62 OHIO ST. L.J. 733, 745 (2001); Jonathan A. Franklin & Roberta J. Morris, *International Jurisdiction and Enforcement of Judgments in the Era of Global Networks: Irrelevance of, Goals for, and Comments on the Current Proposals*, 77 CHI.-KENT L. REV. 1213, 1233 (2002); Bernhard Grossfeld, *CyberCorporation Law: Comparative Legal Semiotics/ Comparative Legal Logistics*, 35 INT’L LAW. 1405, 1416 (2001); Debora Halbert, *Two Faces of Disintermediation: Corporate Control or Accidental Anarchy*, 2006 MICH. ST. L. REV. 83, 87; Michael J. Listner, *The Ownership and Exploitation of Outer Space: A Look at Foundational Law and Future Legal Challenges to Current Claims*, 1 REGENT J. INT’L L. 75, 93 (2003); Julien Mailland, *Freedom of Speech, the Internet, and the Costs of Control: The French Example*, 33 N.Y.U. J. INT’L L. & POL. 1179, 1202 (2001); Abbey L. Mansfield, *Cyber-Libelling the Glitterati: Protecting the First Amendment for Internet Speech*, 9 VAND. J. ENT. & TECH. L. 897, 913 (2007); Viktor Mayer-Schönberger & John Crowley, *Napster’s Second Life: The Regulatory Challenges of Virtual Worlds*, 100 NW. U. L. REV. 1775, 1776 (2006); Roda Mushkat, *The International Legal Personality of Macau*, 24 HONG KONG L.J. 328, 328 (1994); Michael J. Mellis, *Internet Piracy of Live Sports Telecasts*, 18 MARQ. SPORTS L. REV. 259, 266 (2008); Richard L. Reinhold, *Some Things that Multilateral Tax Treaties Might Usefully Do*, 57 TAX LAW. 661, 678 (2004); Bridget A. O’Leary Smith, *NTP, Inc. v. Research in Motion, Ltd.: Losing Control and Finding the Locus of Infringing Use*, 46 JURIMETRICS 436, 452 (2006); David E. Sorkin, *Technical and Legal Approaches to Unsolicited Electronic Mail*, 35 U.S.F. L. REV. 325, 381 (2001).

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.⁷ 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?⁸ Or that the dot-com crash did more to cut off Sealand’s network links than any national government did?⁹ Or that, as HavenCo’s business faltered, Sealand allegedly nationalized the company?¹⁰ 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,¹¹ “undermined HavenCo’s entire *raison d’être* “ because “all of Sealand’s data connections ran through mainland England. “¹² 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.¹³

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

⁷ 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.

⁸ 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.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.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-mortem 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),¹⁶ Sealand's population (far smaller than sometimes claimed),¹⁷ and the true source of the term "data haven" (not the science-fiction novelist William Gibson).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

¹⁴ See *infra* Part III.B.

¹⁵ See *infra* Part III.C.

¹⁶ See *infra* Part III.B.1.

¹⁷ See *infra* Part I.D.

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 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,¹⁹ seasteads,²⁰ and space colonies.²¹ It bears,

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,²² Internet governance,²³ the nature of law in virtual worlds,²⁴ and the creation of new online political communities.²⁵ 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.²⁶ The same could equally

BASIN L.J. 1 (2008); Lawrence M. Frankel, *International Law of Secession: New Rules for a New Era*, 14 HOUS. J. INT'L L. 521 (1992).

²⁰ See generally PATRI FRIEDMAN, SEASTEADING: A PRACTICAL GUIDE TO HOMESTEADING THE HIGH SEAS (beta version 2009), http://seasteading.org/seastead.org/book_beta/full_book_beta.pdf; JEROME FITZGERALD, SEA-STEADING: A LIFE OF HOPE AND FREEDOM ON THE LAST VIABLE FRONTIER (2006); WAYNE C. GRAMLICH ET AL., SEASTEADING: A PRACTICAL GUIDE TO HOMESTEADING THE HIGH SEAS (unpublished book draft 2002), <http://seasteading.org/seastead.org/commented/paper/index.html>; Brad Taylor, *Governing Seasteads: An Outline of the Options* (2010), http://www.seasteading.org/files/research/governance/Taylor_2010_Governing_Seasteads.pdf.

²¹ See generally Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410; MYRES S. MCDUGAL ET AL, LAW AND PUBLIC ORDER IN SPACE (1963); GEORGE S. ROBINSON & HAROLD M. WHITE, JR., ENVOYS OF MANKIND: A DECLARATION OF FIRST PRINCIPLES FOR THE GOVERNANCE OF SPACE SOCIETIES (1986); Barton Beebe, Note, *Law's Empire and the Final Frontier: Legalizing the Future in the Early Corpus Juris Spatialis*, 108 YALE L.J. 1737 (1999); William J. Brennan, Jr. *Space Colonization and the Law*, 3 HARV. J.L. & TECH. 7 (1990); Dmitry N. Feofanov, *Luna Law: The Libertarian Vision in Heinlein's The Moon is a Harsh Mistress*, 63 TENN. L. REV. 71 (1995); Charles Stross, *Space Cadets*, CHARLIE'S DIARY (Aug. 2, 2010), <http://www.antipope.org/charlie/blog-static/2010/08/space-cadets.html>.

²² See generally LAWRENCE LESSIG, CODE: AND OTHER LAWS OF CYBERSPACE (1999); DANIEL J. SOLOVE, THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET (2007); Orin S. Kerr, *The Problem of Perspective in Internet Law*, 91 GEO. L.J. 357 (2002); Joel Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 TEX. L. REV. 553 (1998).

²³ See generally LAURA DENARDIS, PROTOCOL POLITICS: THE GLOBALIZATION OF INTERNET GOVERNANCE (2009); MILTON MUELLER, NETWORKS AND STATES: THE GLOBAL POLITICS OF INTERNET GOVERNANCE (2010); Michael A. Froomkin, *Habermas@Discourse.Net: Toward a Critical Theory of Cyberspace*, 116 HARV. L. REV. 749 (2002).

²⁴ See generally EDWARD CASTRONOVA, EXODUS TO THE VIRTUAL WORLD (2008); GREG LASTOWKA, VIRTUAL JUSTICE: THE NEW LAWS OF ONLINE WORLDS (2010); Jack M. Balkin, *Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds*, 90 VA. L. REV. 2043 (2004); James Grimmelman, *Virtual Worlds as Comparative Law*, 49 N.Y.L.S. L. REV. 147 (2004); Michael Risch, *Virtual Rule of Law*, 112 W. VA. L. REV. 1 (2009); Nicolas Suzor, *The Role of the Rule of Law in Virtual Communities*, 26 BERKELEY TECH. L.J. (forthcoming 2011).

²⁵ See generally DAVID J. POST, IN SEARCH OF JEFFERSON'S MOOSE: NOTES ON THE STATE OF CYBERSPACE (2009); Neil Weinstock Netanel, *Cyberspace Self-Governance: A Skeptical View from Liberal Democratic Theory*, 88 CAL. L. REV. 395 (2000); Ruth Wedgwood, *Cyber-Nations*, 88 KY. L.J. 957 (1999–2000).

²⁶ See generally Adam H. Rosenzweig, *Why Are There Tax Havens?*, 52 WM. & MARY L. REV. 923 (2010); Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573 (2000); Allison Christians, *Sovereignty, Taxation, and Social Contract*, 18 MINN. J. INT'L L. 99 (2009); Diane M. Ring, *What's at Stake in the Sovereignty Debate?: International Tax and the Nation-State*, 49 VA. J. INT'L L. 155 (2008); Charles R. Irish, *Tax Havens*, 15 VAND. J. TRANSNAT'L L. 449 (1982).

be said about offshore banking.²⁷ 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.²⁸ The four were collectively known as the Maunsell Sea Forts, after their

²⁷ See generally Stewart E. Sterk, *Asset Protection Trusts: Trust Law's Race to the Bottom?*, 85 CORNELL L. REV. 1035 (2000); Elana Marty-Nelson, *Offshore Asset Protection Trusts: Having Your Cake and Eating It Too*, 47 RUTGERS L. REV. 11 (1994); C. Todd Jones, *Compulsion over Comity: The United States' Assault on Foreign Bank Secrecy*, 12 NW. J. INT'L L. & BUS. 454 (1992); Bernhard F. Meyer, *Swiss Banking Secrecy and Its Legal Implications in the United States*, 14 NEW ENG. L. REV. 18 (1978).

²⁸ Sources sometimes refer to it as “Rough Tower “ or “HMF [Her Majesty's Fort] Rough. “ See *Rough Tower*, THE OFFSHORE RADIO GUIDE, <http://www.offshore-radio.de/fleet/sealand.htm>

designer, and they were built to provide anti-aircraft defense and radar coverage for the approach to the Thames Estuary.²⁹ 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.³⁰ The towers, in turn, rest on a concrete pontoon, permanently flooded so that it provides a stable base on the seabed.³¹ 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.³²

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,³³ about seven miles from the nearest coastline, the port of Felixstowe.³⁴ 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.³⁵ At its peak, the fort held approximately 120 men each, who lived in cramped quarters in the concrete legs.³⁶ Roughs Tower and the other Maunsell forts saw action on several occasions during the war, firing at German planes, and may have shot

[hereinafter *Rough Tower*, OFFSHORE RADIO GUIDE]. It takes its name from the sandbar on which it stands. See *Public Warning of Internet Hoax: "Principality of Sealand"*, "http://sealandgov-london-uk.0catch.com/iindex.htm ("sand bar of Rough Sands").

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.

³⁰ See Scott Simon, *Weekend Edition* (National Public Radio broadcast Aug. 11, 2001) [hereinafter Simon] (deck dimensions); GERRY BISHOP, OFFSHORE RADIO 121 (1975) (pillar dimensions).

³¹ See *Sealand Radio—Part 1*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/SealandRadioOne/SealandRadio_1.html [hereinafter *Sealand Radio—Part 1*].

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).

³³ See *Sealand Radio—Part 1*, *supra* note 31.

³⁴ I have marked the location on a custom Google Map at <http://maps.google.com/maps/ms?ie=UTF&msa=0&msid=104492463267466314825.00048f88f52542054c0b7>. 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).

³⁶ See Simon Sellars, *Sealand: On the Heap*, THE AUSTRALIAN, Nov. 10, 2007, *available at* <http://www.simonsellars.com/my-trip-to-sealand>.

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

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.³⁹

A World War II veteran and former major,⁴⁰ he fought in North Africa and Italy,⁴¹ and was wounded in action several times.⁴² On his return, he “made a fortune in factories, a fishing fleet, and other businesses.”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.⁴⁴ Bates

³⁷ In a 2002 presentation, HavenCo’s Ryan Lackey referred to “hundreds of fighters and bombers “ shot down by the Maunsell Sea Forts. See Ryan Lackey & Avi Freedman, *The Ultimate Co-Location Site*, Presentation to H2K2 Hackers on Planet Earth Conference (2002), audio *available at* <http://www.h2k2.net/media/colocation.mp3> [hereinafter Lackey & Freedman, H2K2 Presentation].

³⁸ See DAVID SINCLAIR, *MAKING WAVES* 86 (2005),

³⁹ SINCLAIR, *supra* note 38 at 25.

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.

⁴¹ See Marjorie Miller & Richard Boudreaux, *A Nation for Friend and Faux*, L.A. TIMES, June 7, 2000, at A1.

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.

⁴³ Miller & Boudreaux, *supra* note 41. See also Adela Gooch, *Storm Warning*, THE GUARDIAN, Mar. 28, 2008, <http://www.guardian.co.uk/theguardian/2000/mar/28/features11.g2> (“the nation’s largest inshore fishing fleet “); Garfinkel, *supra* note 2 (a “30-boat fishing fleet “); Jack Gould, *Radio: British Commercial Broadcasters Are at Sea*, N.Y. TIMES, Mar. 25, 1966 (“Mr. Bates, who once sold British seaweed to florists in New York “).

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.⁴⁵ Between 1964 and 1967, a kind of mild anarchy ruled the airwaves;⁴⁶ even as parts of Her Majesty's government sought ways to shut down the pirate stations,⁴⁷ businesses and barons purchased advertising on them.⁴⁸

In 1965, Roy Bates founded an offshore station, Radio Essex, on the Knock John platform, the closest in of the Maunsell sea forts.⁴⁹ 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.⁵⁰ 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.⁵¹ 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, sensationalized⁵²)

INFORMATION AGE 27–30, 79–85 (2011).

⁴⁵ See BISHOP, *supra* note 30, at 23–43; ROBERT CHAPMAN, *SELLING THE SIXTIES* 60 (1992) (“Anyone who can remember anything at all about pirate radio in the 1960s can usually remember two names: Radio Caroline and Radio London are synonymous with the offshore era.”) See also STEVE CONWAY, *SHIPROCKED* (2009) (giving personal history of Radio Caroline from 1987 to 1991).

⁴⁶ See generally BISHOP, *supra* note 30; CHAPMAN, *supra* note 45.

⁴⁷ See CHAPMAN, *supra* note 45, at 32–42 (discussing political reaction to pirate radio)

⁴⁸ See *T-Shirts and Foreign Crews Are Stations' Weapons*, *TIMES* (LONDON), July 29, 1966, at 1 (“Lord Thomson of Fleet, whose wares are advertised on Radio 390, Radio 270, and Radio Scotland”). See also CHAPMAN, *supra* note 45, at 84–90 (discussing advertising on pirate radio stations), 110 (estimating Radio London's 1966 advertising gross at over £1,000,000); BISHOP, *supra* note 30 at, e.g., 26 (listing pirate radio advertising rate cards), 29 (estimating Radio Caroline South revenue at £15,000 per week in 1965).

⁴⁹ Miller & Boudreaux, *supra* note 41. The “shoe-string “ Radio Essex took its name because “[g]ood reception was only possible in south-east Essex.” CHAPMAN, *supra* note 45, at 160. Later, Bates changed the name to Britain's Better MUSIC Station, or BBMS. *Id.* at 161.

⁵⁰ See BISHOP, *supra* note 30, at 56 (“Eventually [Bates] ‘persuaded’ them to leave”); CHAPMAN, *supra* note 45, at 168 (“several months of aggressive raids and counter-raids”); JOHNS, *supra* note 44, at 176–77.

⁵¹ The case against some of the offshore broadcasters depended on how far they were from land, which in turn depended on whether the relevant baselines were to be drawn at high tide or could include sandbars exposed only at low tide. See *R. v. Kent Justices ex parte Lye*, [1966] 2 W.L.R. 765 (Q.B.) (holding 2-1 that the Red Sands fort was within the three-mile territorial limit as measured from the “low-tide elevation “ as defined by a 1964 Order in Council). One Radio Essex DJ would later write:

Naval ‘experts’ were produced to demonstrate that on a full moon, if you killed a chicken while facing east, the moon's influence on the tides would cause mid-sand to dry and therefore extend the mainland, and that the square of the hypotenuse, multiplied by Harold Wilson's affairs with his secretary, produced the effect of drawing the fort nearer to shore.

SINCLAIR, *supra* note 38, at 73.

⁵² See JOHNS, *supra* note 44, at 217–18.

shooting of one pirate radio entrepreneur by another.⁵³ Following the shooting, the government stepped up enforcement of the Wireless Telegraphy Act, which forbade unlicensed broadcasts.⁵⁴ Bates was served with a summons for breach of the Act on September 28, 1966.⁵⁵ The Rochford Magistrate's Court found Bates in violation of the broadcasting law on November 30 and fined him £100,⁵⁶ and he lost an appeal to the Chelmsford Quarter Sessions in January of 1967.⁵⁷

Bates, however, was already gone. On Christmas Day of 1966, he shut down broadcasts from Knock John⁵⁸ and moved further out, to Roughs Tower.⁵⁹ 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.⁶⁰ Bates evicted the two Radio Caroline staff aboard and claimed Roughs Tower as his own.⁶¹ 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.

⁵⁵ See *British Widen Fight on Pirate Stations*, N.Y. TIMES, Sept. 29, 1966; *Sealand: The Mystery Solved* (documentary film 2003), available at <http://vimeo.com/13817548>.

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 appears 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.

⁵⁹ Bates had previously also made an attempt to broadcast from Tongue Sands, but abandoned it after the structure "threatened to disintegrate during a storm." See *Sixties Radio: Offshore Pirate Radio*, SIXTIES CITY, <http://www.sixtiescity.com/Radio/PirateRadio4.shtm>. Tongue Sands collapsed completely in 1996. See *Tongue Sands*, THE OFFSHORE RADIO GUIDE, <http://www.offshore-radio.de/fleet/tongue.htm>. See also SINCLAIR, *supra* note 38, at 57–59.

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.⁶²

Radio Caroline didn't go down without a fight.⁶³ 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.⁶⁴ 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.⁶⁵ Police investigated, but took no action against anyone involved.⁶⁶ There were apparently other such battles, some involving firearms, but details are sketchy.⁶⁷ (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.⁶⁸)

By September 1967, Bates was in sole possession of Roughs Tower⁶⁹ and had brought his family aboard: his wife Joan (a former fashion model)⁷⁰ and their children Michael and Penny.⁷¹ Unfortunately for him, the Marine Broadcasting

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 JOHNS, *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 at weekends and stealing equipment from other stations, especially those on the forts who even had their lights taken! ").

⁶⁹ See Genie Baskir, *The Bates Family Is Trespassing: Here is the Legal and Factual Proof!*, ROUGH SANDS GAZETTE (Dec. 2, 2000), <http://freebornjohn.com/RSG-LAW-1.htm>, available at <http://web.archive.org/web/20020205103752/freebornjohn.com/RSG-LAW-1.htm>.

⁷⁰ See *Sealand Radio—Part 2*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/SealandRadioTwo/SealandRadio_2.html (including photograph of Joan modeling furs) [hereinafter *Sealand Radio—Part 2*]; Gooch, *supra* note 43.

⁷¹ See *Sealand Radio—Part 1*, *supra* note 31;. See also Pathe newsreel (undated), available at

Offenses Act (MBOA) had become law in August 1967.⁷² The MBOA specifically forbade U.K. citizens from participating in broadcasts from the high seas,⁷³ prevented anyone present in the U.K. from assisting in such broadcasts,⁷⁴ and, crucially, prohibited advertising by means of such broadcasts.⁷⁵ Bates was also out of money, and could read the handwriting on the wall: any loopholes permitting pirate radio would rapidly be closed.⁷⁶ Instead, he turned to another idea: his own nation.

C. Founding

Roy Bates declared the Principality of Sealand independent on September 2, 1967.⁷⁷ The idea came from Joan Bates, over drinks at a pub.⁷⁸ Tension with British authorities—who had already been discussing buying back Roughs Tower from Bates⁷⁹ and considering having commandos storm it⁸⁰—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.”⁸¹ According to

<http://www.youtube.com/watch?v=Ei2JM8xLb3c>; *Britain’s Better Music Station*, BOB LE-ROI (Jan. 22, 2010), <http://www.bobleroi.co.uk/ScrapBook/Bbms/BritainsBetter.html>.

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.

⁷³ MBOA § 3.

⁷⁴ MBOA § 4.

⁷⁵ MBOA § 5(3)(e).

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*.

⁷⁷ RYAN, *supra* note 19, at 9. 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 1975, 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. “

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).

⁷⁹ See *Ministry Says Talks Over Fort Broke Down*, TIMES (LONDON), Aug. 9, 1967, at 2.

⁸⁰ See *Commandos Set to Seize Fort*, TIMES (LONDON), Aug. 8, 1967, at 1.

⁸¹ *Independent Isle ‘Ludicrous’*, TIMES (LONDON), Sept. 4, 1967, at 3.

Roy and Joan, customs harassed them by opening their tins of food whenever they came ashore to resupply,⁸² and the Ministry of Defense tried to trick them into leaving the platform unoccupied.⁸³ On another occasion, the Bateses alleged that Customs had “marooned “ their children aboard Sealand by refusing to allow Roy and Joan to return.⁸⁴

The crisis came in late 1968. A Trinity House ship⁸⁵ was working on a buoy northwest of Roughs Tower⁸⁶ 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. “⁸⁷ Roy and Michael were arrested the next time they went ashore,⁸⁸ 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.⁸⁹ Their defense was that since the acts in question took place on Sealand, they were outside the jurisdiction of the English courts.⁹⁰ In a decision handed down in October 1968, Mr. Justice Chapman agreed.⁹¹

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.⁹² 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

⁸² Miller & Boudreaux, *supra* note 41.

⁸³ See Peter Deeley, *The Prince and His Prisoner*, OBSERVER, Sept. 10, 1978.

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.’”).

⁸⁵ Trinity House is the lighthouse authority for England. See R.H. Coase, *The Lighthouse in Economics*, 17 J.L. & ECON. 357, 360–72 (describing history, economics, and policies of Trinity House).

⁸⁶ *R. v. Bates*, *supra* note 34.

⁸⁷ Lucas, *supra* note 42.

⁸⁸ See *Radio Essex Man Summoned*, TIMES (LONDON), June 29, 1968, at 4.

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.

⁹⁶ Letter from Illegible to Mr. M.R. Bates, October 1, 1984, available at <http://www.seanhastings.com/havenco/sealand/taxletter.gif>.

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.

⁹⁸ See, e.g., Michelle Perry, *Sealand Steps Up Tax Fight*, ACCOUNTANCY AGE, June 15, 2000, available at <http://web.archive.org/web/20031123165240/http://www.accountancyage.com/News/1103281> (quoting Inland Revenue spokesman as saying, "Sealand is under UK jurisdiction for tax purposes. " in 2000); Erlandsen, *supra* note 40 ("The British government . . . insists that it is still crown property. "); Neil Watson, *A TV Pirate's Platform for Debate*, TIMES (LONDON), Aug. 19, 1987 (quoting Department of Trade and Industry spokesman in mid-1987 as saying that Sealand's planned television station would be breaking the law in light of Britain's impending extension of territorial waters).

⁹⁹ See Lucas, *supra* note 42.

Sealanders fired rifle shots to warn it away.¹⁰⁰ According to Roy Bates, the shots were a warning that the *Golden Eye*, which had not responded to radio calls, was passing too close.¹⁰¹ The *Golden Eye*'s crew, thinking they might be under attack, called the Thames Coastguard.¹⁰² A police investigation¹⁰³ and perhaps a court case in Felixstowe¹⁰⁴ followed, but there is no clear report of the outcome.¹⁰⁵ 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."¹⁰⁶ In another, a military helicopter allegedly tried to land marines on the platform, but Michael opened fire on them.¹⁰⁷ "Then when I came back to Southend, they put me in prison, the buggers."¹⁰⁸ Michael Bates has also claimed that Britain at one point offered to buy him out.¹⁰⁹

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,¹¹⁰ and the views are, unsurprisingly, "awesome."¹¹¹ 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."¹¹² A journalist called it a "scrap heap," a "rusting heap of junk," and a "decrepit hulk."¹¹³ Although Sealand sports a helipad, the main way on is by winch from the waves below.¹¹⁴ Reporters' accounts of the experience are typically hair-raising.¹¹⁵

Politically, Roy Bates promulgated a constitution in 1975, with himself as constitutional monarch: Prince Roy of Sealand.¹¹⁶ His nation has a flag,¹¹⁷ a coat

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).

¹⁰⁹ See Sue Baker, *Seized Gun Platform Puzzles Britain*, UPI, Dec. 23, 1982.

¹¹⁰ Miller & Boudreaux, *supra* note 41.

¹¹¹ Sellars, *Sealand: On the Heap*, *supra* note 36.

¹¹² See Sellars, *supra* note 36.

¹¹³ *Id.* See also Lucas, *supra* note 42 ("claustrophobic"); Kim Gilmour, *Wish You Were Here?*, INTERNET MAGAZINE (Dec. 2002), available at http://www.kimgilmour.com/articles/archive/the_offshore_data_haven.html (comparing Sealand to an industrial Amsterdam squat).

¹¹⁴ See Simon, *supra* note 30.

¹¹⁵ Sealand requires visitors to sign liability waivers. See Sellars, *supra* note 36.

¹¹⁶ CONSTITUTION OF 1975 (Sealand), available at <http://principality-of-sealand.eu/pdf/>

of arms,¹¹⁸ a passport stamp,¹¹⁹ and a national anthem.¹²⁰ It also has a Facebook page,¹²¹ a Twitter account,¹²² and a YouTube channel.¹²³ Sealand has issued coins since 1972, in various denominations;¹²⁴ the Sealand dollar is nominally pegged to the United States dollar at a rate of SX\$1 to US\$ 1.¹²⁵ 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.¹²⁶ The government gives its address as SEALAND 1001, but then invariably adds, “c/o Sealand Post Bag, IP11 9SZ, UK.”¹²⁷ For years, Sealanders would present their Sealand passports when traveling,¹²⁸ and accumulated stamps from a fair number of nations.¹²⁹ Sealand has conferred honorary titles on various celebrities for their

constitutions.pdf.

¹¹⁷ A picture is available at http://en.wikipedia.org/wiki/File:Flag_of_Sealand.svg. See also CONSTITUTION OF 1975 § 14 (“The national flag is rectangular, red in the upper diagonal half and black in the lower diagonal half, save that a white diagonal bar forms part of such lower diagonal part of the flag.”). See also Deeley, *supra* note 83 (“Red for Roy, white for purity and black for our pirate radio days.”).

¹¹⁸ The coat of arms consists of a shield emblazoned with the Sealand flag, flanked by a pair of merlions, surmounted by a crowned helmet and a mailed fist holding stylized lightning bolts, above the motto *e mare libertas* (“from the sea, freedom”). A merlion is creature with the head of a lion and the body of a fish, best known as a national symbol of Singapore. The Latin is irregular. *Mare, maris* is a third-declension i-stem noun, whose ablative form therefore would be expected to end in –i rather than –e.

¹¹⁹ See Simon, *supra* note 30; Lucas, *supra* note 42.

¹²⁰ The anthem, by Basil Simonenko, see *Sealand, Principality of*, NATIONALANTHEMS, <http://www.nationalanthems.info/sea.htm>, can be heard in full (if synthetic) arrangement at <http://www.youtube.com/watch?v=tePgys9euF8>.

¹²¹ *Principality of Sealand*, FACEBOOK, <http://www.facebook.com/PrincipalityOfSealand>

¹²² *SealandGov*, TWITTER, <http://twitter.com/SealandGov>.

¹²³ *Sealand Video*, YOUTUBE, <http://www.youtube.com/user/SealandVideo>.

¹²⁴ Early issues featured Princess Joan on the obverse and the Sealand coat of arms on the reverse. A more recent “Treasures of the Sea” collection features the Sealand coat of arms on the obverse and an orca on the reverse. See 1994 Sealand Silver Dollar (coin, on file with author). The German Sealand, see *infra* Part I.G, has also issued its own coins, a SX\$100 bearing the head of Prime Minister Sieger on the obverse and the Sealand Arms on the reverse. *Sealand*, IMPERIAL COLLECTION, <http://www.imperial-collection.net/sealand03.html>.

¹²⁵ *Fact File*, PRINCIPALITY OF SEALAND (HISTORICAL SITE), <http://www.fruitsofthesea.demon.co.uk/sealand/factfile.html>.

¹²⁶ *Principality of Sealand*, REHAM.DE, http://www.reham.de/principality_of_sealand.htm. Sealand is not a member of the Universal Postal Union, See *Member Countries*, UNIVERSAL POSTAL UNION, <http://www.upu.int/>, so its stamps are not legal postage in other countries (although some have occasionally been successfully used to mail items). It’s not for want of trying. See Kessler, *supra* note 61 (claiming that Bates planned, as of 1969, to apply to the UPU for membership, and discussing his creation of a “post office” to comply with “international postal regulations”). See also *Sealand Shopping Mall*, SEALAND, <http://www.sealandgov.org/Stamps.html> (offering historical stamp sets for sale).

¹²⁷ See, e.g., Principality Notice PN035/07, *Restricted Visitation Arrangements*, SEALAND (Apr. 22, 2007), <http://www.sealandgov.org/notices/pn03507.html>.

¹²⁸ Lucas, *supra* note 42.

¹²⁹ HavenCo co-founder Sean Hastings’s website has images of stamps and visas from countries

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 Vestbjerg.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>.

¹³⁰ *See* *Jeremy Clarkson for PM*, *Says Sealand “Prince” Michael Bates*, THURROCK GAZETTE, Nov. 23, 2009, http://www.thurrockgazette.co.uk/features/4750539.Jeremy_Clarkson_for_PM_of_Sealand/. The “Sealand Shopping Mall” also sells the opportunity to purchase a title of Sealand nobility, complete with a “Deed of Individual Noble Title Ownership.” The price is £29.99 plus £ 4.99 postage. *Become a Lord, Lady, Baron or Baroness!*, SEALAND, <http://www.sealandgov.org/titles.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),

¹³³ Lucas, *supra* note 42. The project was picked up by Warner Brothers in 2003, *See* *Cathy Dunkley, ‘Sealand’ Pitch Comes Ashore at WB*, VARIETY (Oct. 12, 2003), <http://www.variety.com/article/VR1117893847.html?categoryid=1238&cs=1>; *see generally* <http://www.imdb.com/title/tt1223973/>. A series of unsourced posts at the *Sealand News* website in 2007 linked director Mike Newell and actress Emma Watson to it. <http://www.sealandnews.com/category/sealand-the-movie/>. *See also* *Popular Films*, COVERAGE, INK, <http://www.coverageink.com/popular.html> (claiming that Mike Newell is attached to Sealand project in development).

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).

¹³⁵ James Montgomery, *Fall Out Boy Are Taking a Break ... Unless Sealand Calls*, MTV NEWS (Aug. 13, 2009), http://www.mtv.com/news/articles/1618675/20090813/fall_out_boy.jhtml.

¹³⁶ <http://www.lechinois.ca/agenda/programme%20souvenir2007.pdf>

¹³⁷ *See* *Principality Notice 025/04, International Sporting Activities Update*, SEALAND (Nov. 1, 2004), <http://www.sealandgov.org/notices/pn02504.html>.

¹³⁸ *Id.*

¹³⁹ *See* *Simon*, *supra* note 30.

¹⁴⁰ *Miller & Boudreaux*, *supra* note 41.

eventually retired to Spain.¹⁴² The Bateses have “dual nationality”¹⁴³ and no longer use their Sealand passports when they travel.¹⁴⁴ Michael, for his part, has a “Hollywood-style bungalow” in Essex,¹⁴⁵ where he runs a business, “Fruits of the Sea,” that harvests sea fern and cockles.¹⁴⁶ A new Constitution was put into force in the late 1990s,¹⁴⁷ and in 1999, Prince Roy’s fading health led him to appoint Michael as Prince Regent and Sovereign pro tempore.¹⁴⁸

A serious fire broke out on Sealand on Friday, June 23, 2006.¹⁴⁹ The only person on Sealand at the time,¹⁵⁰ a security guard, tried and failed to put out the fire.¹⁵¹ Suffering from smoke inhalation, he had to be airlifted out to Ipswich Hospital on the mainland¹⁵² by a Royal Air Force helicopter.¹⁵³ More than twenty firefighters responded,¹⁵⁴ from a mix of private and governmental groups.¹⁵⁵ A tug sprayed Sealand with water as smoke billowed hundreds of feet into the air.¹⁵⁶

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 25.¹⁵⁷ The damage, however, was extensive: Michael estimated it at half a

¹⁴¹ See Simon, *supra* note 30.

¹⁴² See Lucas, *supra* note 42.

¹⁴³ Gooch, *supra* note 43 (United Kingdom and Sealand).

¹⁴⁴ See Simon, *supra* note 30.

¹⁴⁵ Lucas, *supra* note 42.

¹⁴⁶ See Garfinkel, *supra* note 2; Gooch, *supra* note 43; FRUITS OF THE SEA, <http://www.fruitsofthesea.demon.co.uk/>.

¹⁴⁷ *Fact File*, PRINCIPALITY OF SEALAND (HISTORICAL SITE), <http://www.fruitsofthesea.demon.co.uk/sealand/factfile.html>; see also CONSTITUTION OF THE PRINCIPALITY OF SEALAND, available in SUMMIT OF MICRONATIONS, *supra* note 162 (dated an implausible 1966).

¹⁴⁸ See *History*, SEALAND, <http://www.sealandgov.org/history.html>.

¹⁴⁹ See *Sealand on Fire*, EVENING STAR (IPSWITCH), June 23, 2006, http://www.eveningstar.co.uk:80/news/sealand_on_fire_1_108767 [hereinafter *Sealand on Fire*].

¹⁵⁰ See *Sealand in Ruins After Blaze*, EAST ANGLIA DAILY TIMES, June 24, 2006, http://www.eadt.co.uk/news/sealand_in_ruins_after_blaze_1_75958.

¹⁵¹ See *Sealand on Fire*, *supra* note 149.

¹⁵² See *Airlifted Guard out of Hospital*, BBC, June 24, 2006, http://news.bbc.co.uk/2/hi/uk_news/england/5113044.stm

¹⁵³ See Rebecca Barry, *The RAF Sea King: 2000 and Counting*, BBC, June 27, 2006, http://www.bbc.co.uk/suffolk/content/articles/2006/06/27/sea_king_barry_feature.shtml.

¹⁵⁴ See *Sealand on Fire*, EVENING STAR, June 23, 2006, http://www.eveningstar.co.uk:80/news/sealand_on_fire_1_108767 (listing groups the Royal National Lifeboat Institution, the Thames and Felixstowe Coastguards, and the national Maritime Incident Response Group).

¹⁵⁵ See *Sealand in Ruins After Blaze*, EAST ANGLIA DAILY TIMES, June 24, 2006, http://www.eadt.co.uk/news/sealand_in_ruins_after_blaze_1_75958.

¹⁵⁶ *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.

¹⁵⁷ *Sealand on Fire*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/Sealand_Fire/Sealand_Fire.html. Extensive photographic documentation of the reoccupation is available at http://www.bobleroi.co.uk/ScrapBook/SealandFire_3/SealandFire_3a.html and http://www.bobleroi.co.uk/ScrapBook/SealandFire_3/SealandFire_3b.html.

million pounds.¹⁵⁸ (The total does not include the costs of putting out the fire, for which the rescue services decided not to charge Sealand.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.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.¹⁶¹

Sealand has never supported much of a population. In 2002, Sealand reported to the Summit of Micronations that it had a population of 27.¹⁶² The number is almost certainly exaggerated. For months in the late 1960s, Michael and another man, Walter Mierisch, were the only ones aboard.¹⁶³ For much of the 1990s, Roy occupied it by himself.¹⁶⁴ After HavenCo's launch, the Sealanders came aboard only for press visits; otherwise, it was occupied by one or two HavenCo employees.¹⁶⁵ When one reporter visited in 2000, the "crew" consisted of two men.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.

¹⁵⁸ *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.

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. *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, 1965, 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). *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. *See, e.g., id.* at 187–204 (sinking of *Ross Revenge* in 1991); BISHOP, *supra* note 30, at 32 (grounding of *Mi Amigo* in 1966), 63 (grounding of *Tiri* in 1966), 76 (grounding of *Cheeta* in 1958), 106 (grounding of *Nordeney* in 173). The *Mi Amigo* sank in heavy weather in 1980.

¹⁶⁰ *Inside Out* (undated BBC news program), available at <http://www.youtube.com/watch?v=im5G5xYmK0I>.

¹⁶¹ *Id.*

¹⁶² *Sealand*, SUMMIT OF MICRONATIONS, http://www.muu.fi/amorph03/downloads/pdfs/principality_of_sealand.pdf [hereinafter SUMMIT OF MICRONATIONS].

¹⁶³ Lucas, *supra* note 42.

¹⁶⁴ *See* Garfinkel, *supra* note 2.

¹⁶⁵ Ryan Lackey, Presentation to Defcon 11 conference (Aug. 1–3, 2003), slides available at <http://www.defcon.org/images/defcon-11/dc-11-presentations/dc-11-Lackey/dc11-havenco.pdf>, video available at <https://media.defcon.org/dc-11/video/2003%20Defcon%20V65%20-%20Lackey%20-%20HavenCo.m4v>, files available at <http://www.defcon.org/images/defcon-11/dc-11-presentations/dc-11-Lackey/dc-11-Lackey.zip> [hereinafter, Lackey, Defcon 11 Presentation].

¹⁶⁶ *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.”).

¹⁶⁸ See John Ezard, *Police Raid ‘King’ of Sealand’s Home*, GUARDIAN (MANCHESTER), Oct. 4, 1978, at 2.

¹⁶⁹ See *‘Sealand’ Ruler Fined £ 250*, GUARDIAN (MANCHESTER), Jun. 12, 1978, at 2.

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 “).

¹⁷⁴ See In Re Application of Weiner Broadcasting Company for a Construction Permit for a New International Broadcast Station at Monticello, Main, MM Docket No. 90-243, 6 FCC Rcd 4337, 4338 (1991) [hereinafter Application of Weiner], *aff’d* 7 FCC Rcd. 832 (1992).

¹⁷⁵ See generally Howard A. Bender, *Note: The Case of the Sarah: A Testing Ground for the Regulation of Radio Piracy in the United States*, 12 FORDHAM INT’L L.J. 67 (1988) (describing history of *Sarah* in the context of international radio regulation); Steven P. Phipps, *Unlicensed Broadcasting in the US: The Official Policy of the FCC*, 34 J. BROAD. & ELEC. MEDIA 137, 143–47 (1990).

York International “ for five days in 1987 before the Coast Guard and FCC arrested him.¹⁷⁶ Enter Sealand. In September 1988, Weiner had the *Sarah* towed back to its station off of Long Beach—but this time, he registered it under a Sealand flag.¹⁷⁷ (Sealand, for its part, received free advertising time.¹⁷⁸) The ploy failed. Although Weiner physically stayed off the *Sarah* and used a shell company to operate it, the government obtained and served a restraining order within three days after broadcasts began in October 1998.¹⁷⁹ After some further machinations, the *Sarah* was ultimately sold to MGM, which blew it up for a scene in the Jeff Bridges/Tommy Lee Jones action movie *Blown Away*.¹⁸⁰

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.¹⁸¹ 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,¹⁸² seeking revenge on Sealand in the British courts¹⁸³ and taking their anger to the web.¹⁸⁴

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.

¹⁷⁹ See *United States v. Weiner*, 701 F. Supp. 14 (D. Mass. 1988) (entering permanent injunction based on temporary restraining order), *aff’d* 887 F.2d 259 (1st Cir. 1989). HavenCo’s Ryan Lackey would later claim that the Sealand registration had been “retracted,” leading to the ship’s seizure. Lackey, Defcon 11 Presentation, *supra* note 165.

¹⁸⁰ See John England, *The Ill-Fated Story of WRLI and WWCR*, J. 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.*

¹⁸³ One went before the English courts to argue that they had jurisdiction over Sealand and the Bates family for various offenses. See Paul John Lilburne-Byford, *Random Notes for Information Against Roy Bates*, ROUGH SANDS GAZETTE (Oct. 6, 2000), <http://freebornjohn.com/RSG-1C.htm>, available at <http://web.archive.org/web/20030209195934/http://freebornjohn.com/RSG->

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,¹⁸⁵ announced plans to buy Sealand.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,¹⁸⁷ and negotiations ultimately broke down.¹⁸⁸ Perhaps unknowingly, the Pirate Bay was echoing the 2001 experience of Matthew Goyer, who contemplated setting up an OpenNap¹⁸⁹ server on Sealand.¹⁹⁰

IC.htm. See also Paul John Lilburne-Byford, *Occupation: Wonderful Radio London*, J. ON MEDIA CULTURE (Winter 2003), http://www.icce.rul.nl/~soundscapes/VOLUME05/Occupation_WLR.shtml (discussing Lilburne-Byford's attempts to act against Sealand in English courts and jurisdictional obstacles thereto).

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 Haven 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_Sealand/Archive_1 (June 10, 2010) (archiving discussions from 2004–present).

¹⁸⁵ 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>.

¹⁸⁶ See Steve Inskeep, *An Island Escape for Internet File Swappers* (National Public Radio broadcast Jan. 15, 2007).

¹⁸⁷ See *id.* (\$1,000,000,000); *BuySealand.com*, THE PIRATE BAY BLOG (Jan. 12, 2007), <http://thepiratebay.org/blog/49> (\$2,000,000).

¹⁸⁸ See *Woah, Overwhelming*, BUY SEALAND, Jan. 24, 2007, <http://buysealand.com/?p=7>, available at <http://web.archive.org/web/20070611201828/buysealand.com/?p=7>. The move is reminiscent of the claims that WikiLeaks was moving its hosting to a former Cold War nuclear bunker—perfect publicity, whether or not anything comes of it. See Jonas Tjersland, *Pentagon-Papirer Sikret i Atom-Bunker*, VG NETT (Aug. 27, 2010), <http://www.vg.no/nyheter/utenriks/artikkel.php?artid=10018210>.

¹⁸⁹ OpenNap was a Napster clone, created after Napster experienced some minor legal troubles.

¹⁹⁰ See Gwendolyn Mariano, *File-Swapping Services Seek Refuge Overseas*, CNET NEWS, Mar. 5, 2001, http://news.cnet.com/File-swapping-services-seek-refuge-overseas/2100-1023_3-253530.html.

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.”¹⁹¹ He also contemplated a “giant hypermarket selling duty-free cigarettes and alcohol”¹⁹² and a “tanker port.”¹⁹³ 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.”¹⁹⁴ Creating a tax haven was mooted early in Sealand’s history; again, not much seems to have happened on that front.¹⁹⁵ The same could be said of the 2004 Royal Bank of Sealand.¹⁹⁶ In 2007, Sealand really did build a casino, but only online.¹⁹⁷ Also in 2007, Sealand listed itself for sale through the Spanish firm InmoNaranja.¹⁹⁸ The price tag was a modest € 750,00,000.¹⁹⁹

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,²⁰⁰ mercenaries,²⁰¹

Sebastian Mallaby, *Taming the Wild Web*, L.A. TIMES, Mar. 12, 2001, at A17, gives a compressed and garbled account of the same facts.

¹⁹¹ Declan McCullagh, *Has ‘Haven’ for Questionable Sites Sunk?*, CNET NEWS (Aug. 4, 2003), http://news.cnet.com/2100-1028_3-5059676.html.

¹⁹² *How Fort-Unate*, SUNDAY MIRROR, July 4, 1999, at 23.

¹⁹³ *Emerging Nations: Prince Valiant*, NEWSWEEK, Aug. 28, 1970, at 40. *See also* Erlandsen, *supra* note ____.

¹⁹⁴ *Thoughts from the Sealanders*, CHURCH AND EAST, <http://www.churchandeast.co.uk/sealand.htm>, available at <http://web.archive.org/web/20080105062408/http://www.churchandeast.co.uk/sealand.htm>.

¹⁹⁵ *See* Kessler, *supra* note 61.

¹⁹⁶ *See* RYAN ET AL., *supra* note 19, at 11.

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).

¹⁹⁸ *‘Smallest State’ Seeks New Owners*, BBC NEWS, Jan. 8, 2007, http://news.bbc.co.uk/2/hi/uk_news/england/6239967.stm; *see also* Principality Notice PN 033/07, *Call for Inward Investment in the Principality* (Jan 5, 2007), available at <http://www.sealandgov.org/notices/pn03307.html>. It is unclear whether InmoNaranja, which claims to specialize in selling private islands, has ever had any other real estate listings—although one can still buy Sealand stamps through them. *See* INMONARANJA, <http://www.motril.org/inmonaranja/> That didn’t stop the company from opening an office in the swank Second Life neighborhood of Tropical Audy. *See* Carmelo J. Pérez, *Second Life Llama a la Puerta del Sector Inmobiliario*, EL MUNDO (MADRID) (July 6, 2007), <http://www.elmundo.es/suplementos/suvienda/2007/499/1183672804.html>.

¹⁹⁹ *Smallest State’ Seeks New Owners*, BBC NEWS, Jan. 8, 2007, http://news.bbc.co.uk/2/hi/uk_news/england/6239967.stm.

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),²⁰² Libya,²⁰³ and the CIA.²⁰⁴ Along similar lines, he and his family have also described various governmental and private threats against Sealand, including Belgian mercenaries,²⁰⁵ a Dutch plane,²⁰⁶ being “stalked “ by German and Dutch vessels,²⁰⁷ and a United States helicopter “covered in rockets and heavy machine guns. “²⁰⁸ Bates also claims to have “argued a company of royal marines out of staging a helicopter invasion. “²⁰⁹

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.²¹⁰ He decided to push the question of Sealand’s sovereignty.²¹¹ He petitioned the city of Aachen to terminate his German citizenship on the grounds that he was now a citizen of Sealand.²¹² The city denied his request, so Achenbach and his lawyer, Gernot Putz,²¹³ appealed the decision. On May 3, 1978, the Administrative Court of Cologne²¹⁴ rejected Achenbach’s claim on the grounds that Sealand was not a state.²¹⁵

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 See Baker, *supra* note 109.

²⁰⁸ *Id.*

²⁰⁹ See Kessler, *supra* note 61.

²¹⁰ *Chronology*, PRINCIPALITY OF SEALAND http://principality-of-sealand.eu/chronologie/chrono_e.html [hereinafter *Chronology*]; CONSTITUTION OF 1989, *available at* <http://principality-of-sealand.eu/pdf/constitutions.pdf> (Sealand Government-in-Exile);

²¹¹ *Raum für Roy*, DER SPIEGEL, July 10, 1978, <http://www.spiegel.de/spiegel/print/d-40606484.html>.

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 businessmen²²¹ and Dutch mercenaries.²²² The invaders locked Michael up,²²³ and then, after three days, put him on a fishing boat headed to the Netherlands.²²⁴

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

.com/havenco/sealand/opinion02.html, Béla Vitányi in May 1978 (several weeks after the *Duchy of Sealand* ruling), <http://www.seanhastings.com/havenco/sealand/opinion01.html>, Briger and Associates at an unknown date, <http://www.seanhastings.com/havenco/sealand/opinion03.html>, and L.W Conway in 1981, <http://www.seanhastings.com/havenco/sealand/opinion04.html>. The Vitanyi opinion is substantial and learned and the Leisner opinion is also scholarly. The Briger and Conway opinions are brief and rely heavily on the facts as presented to them by Sealand.

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.

²²¹ See, e.g. *Emerging Nations: Prince Valiant*, NEWSWEEK, Aug. 28, 1978, at 40 (“mostly lawyers, accountants, and the like”).

²²² See Lucas, *supra* note 42. Even their number is now debated. Compare Baker, *supra* note 109 (two) with Wainwright, *supra* note 213 (four). Contemporaneous BBC footage shows three men. See BBC1 NEWS (television program 1978), available at <http://www.youtube.com/watch?v=JgvxgYy10S4>. Cf. Dan Bell, *Darkest Hour for ‘Smallest State’*, BBC NEWS, Dec. 30, 2008, http://news.bbc.co.uk/2/hi/uk_news/7795676.stm (“two Germans and a Dutchman”).

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.

²²⁷ See *Sealand Radio—Part 2*, *supra* note 50.

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.²³¹ 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?”²³² Towing the platform inside territorial waters was dismissed as impractical,²³³ but the government considered demolishing the platform if the Bateses ever left it unoccupied.²³⁴

Within a few days, the group was released, except for Putz,²³⁵ who held a Sealand passport, leading Prince Roy to consider executing him for treason.²³⁶ Prince Roy put them on trial, appointing one of his men to represent the prisoners while he presided.²³⁷ Putz pleaded guilty and was fined £18,000 and held prisoner until it was paid,²³⁸ and in the interim, made to “wash the loos and make coffee.”²³⁹ After three weeks, at the request of Putz’s wife, the West German embassy investigated.²⁴⁰ Dr. Christoph Niemoller, head of the embassy’s legal department, visited Sealand by helicopter²⁴¹ and confirmed that Putz was “well and happy.”²⁴² Putz was released on September 28, six weeks after the attempted coup.²⁴³ As one newspaper described the event, “It was all smiles as [Putz] shook hands with his ‘gaolers’”²⁴⁴ The German embassy concluded that the incident was a publicity stunt.²⁴⁵

²³¹ See Deeley, *supra* note 83 (“Britain is either unwilling or unable to intercede.”).

²³² See Baker, *supra* note 109.

²³³ See *id.*

²³⁴ See *Secret Government Sealand Revelations*, *supra* note 77. See also Bell, *supra* note 222 (quoting one classified internal letter as saying “Is there any chance of a British patrol vessel ‘passing by’ the Fort and somehow knocking it into the sea?”). Just such a chance would come 18 years later, in the immediate aftermath of the fire, but the British government didn’t take it.

²³⁵ One source claims that the detained German was Achenbach, but this is likely a mistake in light of the contemporaneous press coverage confirming that it was Putz. See RYAN ET AL., *supra* note 19, at 11.

²³⁶ RYAN, *supra* note 19; see also Simon, *supra* note 30 (quoting Roy Bates as saying, “I’ve killed a lot of Germans in my time. Another one wouldn’t have made much difference, I suppose, but I didn’t want to kill anything else, really.”) But see CONSTITUTION OF 1975 § 19.4 (“There is no death sentence.”).

²³⁷ See Bell, *supra* note 222; Simon, *supra* note 30; BBC1 NEWS, *supra* note 222.

²³⁸ See Peter Deeley, *supra* note 83. But see Wainwright, *supra* note 213 (quoting Joan Bates as saying, “[The fine] will, however, be returned, if he is a good boy.”).

²³⁹ Miller & Boudreaux, *supra* note 41 (quoting Joan Bates).

²⁴⁰ See *Tiny Nation’s Capture of German Investigated!*, L.A. TIMES, Sept. 5, 1978, at 1.

²⁴¹ See Martin Wainwright, *Major Defends His Minor Power*, GUARDIAN (MANCHESTER), Sept. 5, at 1. See also *Attempt to Free Captive from Private ‘Island’ Fails*, *supra* note 213.

²⁴² Martin Wainwright, *Sealand Keeps Its Prisoner*, GUARDIAN (MANCHESTER), Sept. 6, at 3.

²⁴³ See *Lawyer Freed from Sea Fort*, GUARDIAN (MANCHESTER), Sept. 29, 1978, at 4. One source claims that Michael Bates has since consulted him for legal advice. See Simon, *supra* note 30.

²⁴⁴ See *Lawyer Freed from Sea Fort*, *supra* note 243. The *Times of London* reported that Bates “appointed Mr. Putz to be Sealand’s new ‘foreign minister’ and had asked him to strengthen the island’s links on the Continent.” *German Is Freed from Sealand in North Sea*, TIMES (LONDON), Sept. 29, 1978, at 4.

²⁴⁵ See Wainwright, *supra* note 213. The embassy spokesman added that “even a pirate radio

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

station would be bound to flop as the market was already glutted. “ *Id.*

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.

²⁴⁹ *Id.*; Declaration of Dr. A.L. Chr. M. Oomen, June 12, 1989, *available at* http://principality-of-sealand.eu/pdf/oomen_1989_06_12.pdf; *History*, PRINCIPALITY OF SEALAND, http://principality-of-sealand.eu/about/geschichte_e.html. For more on Seiger, see Christian Litz, *Der Herr Premierminister, fern der Heimat*, BRAND EINS, May 2001, at 148 (profile in German).

²⁵⁰ CONSTITUTION OF 1989.

²⁵¹ *Id.*

²⁵² *About*, PRINCIPALITY OF SEALAND, http://www.principality-of-sealand.eu/about/geschichte_e.html

“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

²⁵³ *Government Decision* 05-01-2004, PRINCIPALITY OF SEALAND, http://principality-of-sealand.eu/pdf/e_government_decision05012004.pdf.

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.

Press Release of April 20, 2000, PRINCIPALITY OF SEALAND, http://principality-of-sealand.eu/pressecorner/e_pm1_span_010420.html [hereinafter *Press Release of April 20, 2000*].

²⁵⁵ See Principality Notice PN 019/04, *Fraudulent Representation of Principality*, SEALAND (Feb. 15, 2004), <http://www.sealandgov.org/notices/pn01904.html>.

²⁵⁶ Miller & Boudreaux, *supra* note 41.

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ Or perhaps Francisco Trujillo Ruiz. See *Press Release of April 20, 2000*, PRINCIPALITY OF SEALAND, http://principality-of-sealand.eu/pressecorner/e_pm1_span_010420.html.

embassy in Madrid.²⁶⁰ The group had created a website²⁶¹ that promoted Sealand to potential investors.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.²⁶³ There may have been a connection between the Spanish group and the German Sealand although, if so, its exact nature remains obscure.²⁶⁴ Sealand itself has unconditionally denounced the Spaniards.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.²⁶⁶ Others were sold to would-be illegal immigrants to Europe,²⁶⁷ and to fearful residents of Hong Kong in the run-up to

²⁶⁰ Miller & Boudreaux, *supra* note 41.

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/>.

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>.

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).

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 Johannes 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.*

²⁶⁵ *See* Miller & Boudreaux, *supra* note 41.

²⁶⁶ Gooch, *supra* note 43.

²⁶⁷ *See Viel Geld für eine Affenfahrt*, DER SPIEGEL, May 22, 1989 (in German).

the Chinese resumption of sovereignty in 1997.²⁶⁸ After Andrew Cunanan murdered the fashion designer Gianni Versace, he holed up on a houseboat before killing himself.²⁶⁹ 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.²⁷⁰ 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.”²⁷¹

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.²⁷² (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.”²⁷³) 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.”²⁷⁴ 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.²⁷⁵ Commercially, it hasn’t been much of a success either:

²⁶⁸ See Steve Boggan, *Money Laundering*, INDEPENDENT (LONDON), Sept. 23, 1997, at 10.

²⁶⁹ See Tom DuBocq, *Boat Owner Suspected of Forgery*, SAN JOSE MERCURY NEWS, July 28, 1997, at 4A.

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.

²⁷¹ See Joe Schoenmann, *FBI Keeping Quiet About Details of Reineck Interview*, LAS VEGAS REVIEW-JOURNAL, July 26, 1997, at 1A (quoting Walter Deering from the Bureau of Diplomatic Security of the State Department).

²⁷² 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/](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.*

²⁷³ See Baker, *supra* note 109.

²⁷⁴ Geates, EVENING STAR (IPSWICH), Feb. 6, 2009.

²⁷⁵ See *Sunk Head Tower*, OFFSHORE-RADIO.DE, <http://www.offshore-radio.de/fleet/sunk.htm>

Bates claims to have poured large sums of money into it.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."²⁷⁷ Sealand is a powerful symbol: a place literally outside of the national system, literally offshore.²⁷⁸ And as a symbol, it has resonated with other dreamers.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.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.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,²⁸² but behind the roguish eccentricity, there is also a remarkable force of will. Almost everyone who has visited Sealand is eager to

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.")

²⁷⁷ Montgomery, *supra* note 135.

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).

²⁷⁹ The Dutch studio Metahaven, fascinated by Sealand's rich symbolic and metaphoric content, produced an extensive multi-year art project, the Sealand Identity Project, to explore its implications. See *id.*; *Meta Haven: Sealand Identity Project 2003–4*, <http://sealand.janvaneyck.nl/>; METAHAVEN, <http://www.metahaven.net/>, *The Network Ruin: Three Letters to Prince Michael of Sealand*, 1 D.T. (2005), <http://www.metahaven.net/mhSRC/CONTENT.php?id=32&pid=21>.

²⁸⁰ See JOHNS, *supra* note 44, at 251–54.

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.

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.²⁸³ 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.²⁸⁵ 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 Fromkin 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,”²⁸⁸ 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.

²⁸³ 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.

²⁸⁴ See Deeley, *supra* note 83.

²⁸⁵ Sean Hastings, *Datahaven* ch.1, http://www.seanhastings.com/havenco/datahaven/datahaven_chapter_1.html [hereinafter *Datahaven ch 1*.]

²⁸⁶ *Id.*

²⁸⁷ See A. Michael Fromkin, *Flood Control on the Information Ocean: Living with Anonymity, Digital Cash, and Distributed Databases*, 15 J. L. & COM. 395, 491 (1996).

²⁸⁸ See, e.g., *Data Haven*, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=Data_haven&oldid=387755906 (Sept. 29, 2010). But see *Data Haven*, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=Data_haven&oldid=399630553 (Nov. 29, 2010) (incorporating my edits to fix the mistaken attribution to Gibson).

Companies started to respond by physically shipping computers and storage media to countries with relatively looser laws.²⁸⁹ 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.²⁹⁰

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.²⁹¹ Norman predicted that small countries would be “willing to provide data havens analogous to tax havens.”²⁹² 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.²⁹³ The idea of regulatory evasion through offshoring data, however, had escaped into wider consciousness.²⁹⁴

Science-fiction writers knew a compelling concept when they heard one.²⁹⁵

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).

²⁹¹ Adrian Norman, *Project Goldfish*, 1 IPC SCI. & TECH. 8, 9 (1978). See also ADRIAN NORMAN, COMPUTER INSECURITY (1983).

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”).

²⁹⁴ The term appears to have entered the U.S. law review literature in 1980. See Eric J. Novotny, *Transborder Data Flows ad International Law: A Framework for Policy-Oriented Inquiry*, 16 STAN. J. INT’L L. 141, 150 (1996) (citing Norman); Frits W. Hondius, *Data Law in Europe*, 16 STAN. J. INT’L L. 87, 103 (1980). Prior to HavenCo, it seems to have been used primarily in this specific sense: as a term of art referring to differing levels of regulation on the storage of personal data. See, e.g., Froomkin, *supra* note 287; Robert Gellman, *Can Privacy Be Regulated Effectively on a National Level? Thoughts on the Possible Need for International Privacy Rules*, 41 VILLANOVA L. REV. 129, 158 (1996); Douglas Yarn, *Development of Canadian Law on Trans-Border Data Flow*, 13 GA. J. INT’L & COMP. L. 825, 837 (1983). Occasional authors, perhaps reasoning by analogy, also used the term to refer to states with permissive intellectual property laws. See, e.g., Steven Betensky, *Jurisdiction and the Internet*, 19 PAGE L. REV. 1, 20 (1998).

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, COSMONAUT 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*,²⁹⁶ *Count Zero*,²⁹⁷ and *Mona Lisa Overdrive*²⁹⁸) take place on the Freeside space station, which floats in high earth orbit.²⁹⁹ One of its more profitable lines of business, Gibson mentions in almost offhand fashion, is serving as a data haven.³⁰⁰ 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.³⁰¹ 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.³⁰² More recently, Neal Stephenson’s *Cryptonomicon* provides what is probably the best-known fictional data haven.³⁰³ 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.³⁰⁴

The other group to take the data haven idea seriously was the cypherpunks.³⁰⁵ 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.³⁰⁶

boxes for digital information—but much bigger.’ “)

²⁹⁶ WILLIAM GIBSON, *NEUROMANCER* (1984).

²⁹⁷ WILLIAM GIBSON, *COUNT ZERO* 19 (1987).

²⁹⁸ WILLIAM GIBSON, *MONA LISA OVERDRIVE* 128 (1989).

²⁹⁹ GIBSON, *NEUROMANCER*, *supra* note 296, at 73.

³⁰⁰ GIBSON, *MONA LISA OVERDRIVE*, *supra* note 298, at 124.

³⁰¹ BRUCE STERLING, *ISLANDS IN THE NET* 105 (suntan lotion), 106–07 (machete) (1989).

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>; Neal Stephenson, *Cryptonomicon cypher-FAQ* § 3 (1999) (discussing similarity of titles), http://web.mac.com/nealstephenson/Neal_Stephensons_Site/cypherFAQ.html. 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.³⁰⁷ 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 revolution³⁰⁸ as well as fighting for the legal right to use them.³⁰⁹

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. “³¹⁰ In 1993, Timothy May released BlackNet, a proof-of-concept system that used encryption to enable fully a fully anonymous “information market “³¹¹ in anything governments would like to prohibit, including “medical, religious, [and] chemical “ information, and “credit databases, deadbeat renter files, organ bank markets, etc. “³¹² 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 “³¹³—but to cypherpunks, these consequences were either desirable in themselves or outweighed by the overall increase in freedom.³¹⁴

This is where HavenCo's founders enter the picture. American programmer Vince Cate had moved to Anguilla in 1994, renounced his American citizenship,³¹⁵ and started a “data haven “ Internet company named Offshore

HOW THE CODE REBELS BEAT THE GOVERNMENT 187–225 (2002); CRYPTO ANARCHY, CYBERSTATES, AND PIRATE UTOPIAS 59–142 (Peter Ludlow ed. 2001) (collecting major writings of cypherpunk theory); HIGH NOON ON THE ELECTRONIC FRONTIER (Peter Ludlow ed. 1996) 173–250 (same).

³⁰⁷ See, e.g. Timothy C. May, *The Crypto Anarchist Manifesto*, available in CRYPTO ANARCHY, *supra* note 306, at 61, 61 (“A specter is haunting the modern world, the specter of crypto anarchy. “); Eric Hughes, *A Cypherpunk's Manifesto*, available in CRYPTO ANARCHY, *supra* note 306, at 81, 81 (“Privacy is necessary for an open society in the electronic age. . . . We seek not to restrict any speech at all. “)

³⁰⁸ See, e.g. Hughes, *supra* note 306, at 82 (“Cypherpunks write code. “);

³⁰⁹ See, e.g., *Karn v. U.S. Dep't of State*, 925 F. Supp. 1 (D.D.C. 1996) (rejecting Administrative Procedures Act and First and Fifth Amendment challenges to cryptographic export restrictions). Later lawsuits against the regulations were more successful. See *Junger v. Daley*, 209 F.3d 481 (6th Cir. 2000) (allowing First Amendment challenge); *Bernstein v. U.S. Dep't of Justice*, 176 F.3d 1132 (9th Cir. 1999) (striking down regulations on First Amendment grounds);

³¹⁰ May, *Cyphermomicon*, *supra* note 305, at § 15.8.3, § 16.22.1.

³¹¹ See Timothy C. May, *Introduction to BlackNet*, available in HIGH NOON, *supra* note 306, at 241; Timothy C. May, *BlackNet Worries*, available in HIGH NOON, *supra* note 306, at 245.

³¹² Timothy C. May, *Crypto Anarchy and Virtual Communities*, available in CRYPTO ANARCHY, *supra* note 306, at 65, 72.

³¹³ Dorothy E. Denning, *The Future of Cryptography*, available in CRYPTO ANARCHY, *supra* note 306, at 85, 87–88.

³¹⁴ See, e.g., Duncan Frissell, *Re: Denning's Crypto Anarchy*, available in CRYPTO ANARCHY, *supra* note 306, at 105 (responding to Denning).

³¹⁵ Peter Wayner, *Encryption Expert Says U.S. Laws Led to Renouncing of Citizenship*, N.Y. TIMES, Sept.

Information Services.³¹⁶ Sean Hastings followed with his own Anguillan data haven company, IsleByte,³¹⁷ and worked with Cate on an electronic currency called SAXAS.³¹⁸ 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.³¹⁹ 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.³²⁰ 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.³²¹ More generally, governmental control sounds like a better or worse idea depending on your views on the government in question.³²²

6, 1998 (“Before renouncing his U.S. citizenship, Cate became a citizen of Mozambique for a fee of about \$5,000. “).

³¹⁶ 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).

³¹⁷ *See About Us*, ISLEBYTE, <http://islebyte.com/about.html>, available at <http://replay.waybackmachine.org/20040605084719/http://islebyte.com/about.html> (“the worlds first public data haven company “). Cate was probably first. Hastings moved to Anguilla in 1997, but Cate founded OIS in 1994.

³¹⁸ *See Davahaven ch 1*, *supra* note 285.

³¹⁹ *See* LAURA LAMBERT ET AL., *THE INTERNET: A HISTORICAL ENCYCLOPEDIA* 56 (2005); Lackey, *Defcon 11 Presentation*, *supra* note 165, video at 35:35.

³²⁰ *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 “).

³²¹ *Cf.* An Metet, *Gmail 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. “).

³²² *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.³²³ Pornography and gambling were both illegal, and a company could be shut down by court order.³²⁴ 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.³²⁵

The most promising prospect was Sealand, which features prominently in Strauss's book.³²⁶ Hastings pulled together a web site with a dossier of information on Sealand and its claims to independence.³²⁷ The two of them sought investors, and found a group including Avi Freedman and Joichi Ito, successful Internet entrepreneurs.³²⁸ Hastings and his wife Jo made contact with the Bates family, and flew to England to check Sealand out.³²⁹ 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.³³⁰

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.³³¹ They drew up a business plan,³³² articles of incorporation,³³³ and bylaws³³⁴ for a Sealand

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.

³²⁴ See Garfinkel, *supra* note 2. Not every Caribbean nation was so reticent. See Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R (Apr. 7, 2005) (upholding WTO complaint by Antigua and Barbuda against the United States for discriminating against Antiguan online gambling services).

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.

³²⁹ Sean Hastings, *Datahaven* ch.2, http://www.seanhastings.com/havenco/datahaven/datahaven_chapter_2.html.

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.³³⁵ Sameer Parekh, a well-known computer security entrepreneur, became chairman of the board.³³⁶ They predicted that their revenue could potentially reach \$65 million by the end of the third year of operation,³³⁷ with a total headcount of 19 employees by the end of the first.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.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.³⁴⁰

Sealand would offer its customers a combination of “first-world infrastructure “ and “third-world regulation.”³⁴¹ Its website promised adherence to the “Philosophy of Contract, as opposed to the Philosophy of Regulation.”³⁴² 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”³⁴³

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

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.

³³⁴ HavenCo Bylaws, <http://www.seanhastings.com/havenco/bplan/BYLAWS.html>. The bylaws bear a striking similarity to the sample given in ANTHONY MANCUSO, *HOW TO FORM YOUR OWN CALIFORNIA CORPORATION* (Nolo Press).

³³⁵ HavenCo Articles of Incorporation, *supra* note 333.

³³⁶ *See* Garfinkel, *supra* note 2.

³³⁷ HavenCo Three-Year Projection, <http://www.seanhastings.com/havenco/bplan/ThreeYear.html>. A more modest Executive Summary predicts only \$25 million profit in the third year. HavenCo, Ltd. Business Plan Executive Summary, <http://www.seanhastings.com/havenco/bplan/ExecSummary.html>.

³³⁸ HavenCo One-Year Projections, <http://www.seanhastings.com/havenco/bplan/OneYear.html> (listing job positions including “Marketing Droids “ #1, #2, and #3).

³³⁹ HavenCo Capitalization Projections, <http://www.seanhastings.com/havenco/bplan/Capitalization.html>.

³⁴⁰ *Id.*

³⁴¹ *See* *Why HavenCo?*, HAVENCO (2000), http://www.havenco.com/products_and_services/why.html, available at http://web.archive.org/web/20001018230840/www.havenco.com/products_and_services/why.html. *See also* *Frequently Asked Questions*, HAVENCO (2000), http://www.havenco.com/about_havenco/faq.html, available at http://web.archive.org/web/20000816001345/www.havenco.com/about_havenco/faq.html (no reporting requirements) [hereinafter *Frequently Asked Questions*].

³⁴² *Frequently Asked Questions*, *supra* note 341.

³⁴³ *Id.*

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"³⁵⁵ with other countries and to press any adverse rulings in the courts of the countries making them.³⁵⁶

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 Policy*, HAVENCO (2000), <http://www.havenco.com/legal/aup.html> available at <http://web.archive.org/web/20001018202320/www.havenco.com/legal/aup.html>.

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."³⁵⁷ 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.³⁵⁸ 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.³⁵⁹ The company itself was incorporated Anguilla, then later reincorporated in Cyprus,³⁶⁰ but was also registered to do business in England in 2000.³⁶¹

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."³⁶² 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.³⁶³

HavenCo launched in 2000 with a *Wired* cover story and a great deal of optimism.³⁶⁴ The combination triggered a media explosion notable for its lack of serious further reporting.³⁶⁵ But following the initial outpouring of interest, HavenCo dropped quickly off the radar screen. Ryan Lackey appeared at the Defcon conference in 2001³⁶⁶ and the Hackers on Planet Earth conference in 2002³⁶⁷ to give status updates: things were going modestly but well, and the future

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).

³⁶⁶ Ryan Lackey, HavenCo: One Year Later, Presentation at Defcon 9, audio *available at* <https://media.defcon.org/dc-9/audio/dc-09-ryan-lackey-audio.m4b>.

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.³⁶⁸ 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 2000.³⁶⁹ The company also operated in a kind of corporate informality, never issuing stock to its investors and employees, even as the years rolled on.³⁷⁰

Its facilities never came close to the image it created among the public. The south tower was never full of servers,³⁷¹ and the nitrogen was a myth, too, as HavenCo had admitted in 2002.³⁷² 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 “³⁷³ 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.³⁷⁴ 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.³⁷⁵ When the company was hit with denial-of-service attacks, the outages sometimes lasted for days.³⁷⁶

HavenCo had about ten customers;³⁷⁷ many, perhaps all, were online gambling sites.³⁷⁸ 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.

³⁷³ See *Products and Services*, HAVENCO (2000), http://www.havenco.com/products_and_services/index.html, available at http://web.archive.org/web/20001018203445/www.havenco.com/products_and_services/index.html.

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 2001.³⁷⁹ 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.³⁸⁰ 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.³⁸¹ A “gentleman’s agreement” with Prince Regent Michael held through the fall of 2001,³⁸² but then an advisor to the royal family entered the picture.³⁸³ According to Lackey, the advisor interfered with technical decisions, such as recommending expensive and unreliable changes to its network connectivity.³⁸⁴ 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.³⁸⁵ Worse, the advisor was concerned that HavenCo was bad for Sealand’s image and quest for sovereignty.³⁸⁶ Lackey took to adding new services, such as an anonymizing remailer, on the sly.³⁸⁷

Things came to a head in May 2002 when, a Malaysian entrepreneur, Alex Tan, approached Sealand with a plan to serve streaming video.³⁸⁸ Tan’s previous site, film88.com, had offered users video on demand, utterly without permission, and was quickly shut down by the movie industry.³⁸⁹ 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.³⁹⁰ A Sealand advisor³⁹¹ told the royal

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 23:35 (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.

³⁸⁹ See Stefanie Olsen, *MPA Shuts Down Video Site Film88.com*, NEWS.COM (June 6, 2002), http://news.cnet.com/MPA-shuts-down-video-site-Film88.com/2100-1023_3-933558.html.

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.”).

³⁹¹ See Octal [Ryan Lackey], to Midendian, *Sealand Update*, MIDENDIAN, (June 26, 2006, 12:41 am UTC), <http://midendian.livejournal.com/501583.html?thread=1446223#t144622>.

family that it risked bad publicity, and they balked at the deal.³⁹² The fear was that United States would put pressure on England to put pressure on Sealand if it turned into a streaming-movie source.³⁹³

The decision was the straw that broke the camel's back for Lackey,³⁹⁴ who decided to make a gradual exit from the “stagnating “ company.³⁹⁵ 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.³⁹⁶ Lackey would continue as a reseller of HavenCo services.³⁹⁷ He turned over administrative access to the servers.³⁹⁸

According to the account Lackey gave at Defcon, Prince Regent Michael and his advisors broke the agreement within days,³⁹⁹ freezing Lackey out completely and seizing personal computers left behind.⁴⁰⁰ 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.⁴⁰¹ Since Sealand now had both physical and virtual control of the servers, HavenCo had been “effectively nationalized.”⁴⁰² 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.”⁴⁰³ (Lackey went, of all places, to Iraq, where he founded an ISP, Blue Iraq, providing Internet connectivity for the military and contractors.⁴⁰⁴)

The new HavenCo also took a rather different attitude toward offshore

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.”).

³⁹³ *Stranger than Paradise*, ON THE MEDIA (National Public Radio broadcast May 20, 2005). A United States court had held that a similar business model for music was a “clear “ case of copyright infringement. *UMG Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349, 350 (S.D.N.Y. 2000).

³⁹⁴ See Octal [Ryan Lackey], to Midendian, *Sealand Update*, MIDENDIAN, (June 26, 2006, 12:41 am UTC), <http://midendian.livejournal.com/501583.html?thread=1446223#t144622>.

³⁹⁵ Lackey, Defcon 11 Presentation, *supra* note 165.

³⁹⁶ *Id.*, slides at 25.

³⁹⁷ *Id.*

³⁹⁸ *Id.*, slides at 26.

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).

⁴⁰⁴ See Jon Evans, *Wiring the War Zone*, WIRED, Sept. 2005, available at <http://www.wired.com/wired/archive/13.09/posts.html?pg=2>. A longer version, including a 2007 postscript that follows Blue Iraq to Dubai and suggests that it may be expanding into Afghanistan, is available from the author's website at <http://www.rezendi.com/travels/bbbb.html>.

hosting. A spokesman said that its acceptable use policy “forbids any act..which is against international law, or contrary to international custom and practice.”⁴⁰⁵ Sean Hastings of HavenCo suggested that Sealand’s turn away from an anything-goes attitude was sparked by the terrorist attacks of September 11, 2001.⁴⁰⁶ 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.”⁴⁰⁷ Bates explained that he had passed up many business opportunities because they were “a little bit on the wrong side, you know.”⁴⁰⁸ Simon called Bates “a loyal British subject who sees Sealand as a British invention.”⁴⁰⁹

The new HavenCo claimed to have far more than the six customers Lackey alleged and to have a growing installation.⁴¹⁰ In 2004, the locals were still denying reporters permission to see most of the south leg of the tower.⁴¹¹ 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.”⁴¹² 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.”⁴¹³ 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.⁴¹⁴ Today, even the HavenCo

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.

⁴⁰⁶ See Sean Hastings, *Experiences with HavenCo and SeaLand* (Presentation to the Seasteading Institute Conference, Sept. 30, 2009), video *available at* <http://vimeo.com/7907103>.

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.

⁴¹² HAVENCO, <http://www.havenco.com/>, *available at* <http://web.archive.org/web/20070611102734/www.havenco.com>.

⁴¹³ See *Sealand Internet Law*, HAVENCO, <http://www.havenco.com/law.html>, *available at* <http://web.archive.org/web/20070611102806/www.havenco.com/law.html>.

⁴¹⁴ See *HavenCo ‘Data Center’ Offline?*, SECURITY AND THE NET (Nov. 18, 2008), <http://securityandthe.net/2008/11/18/havenco-data-center-offline/>.

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.⁴¹⁵ 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*.⁴¹⁶ 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

⁴¹⁵ See BRIAN Z. TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* (2004). Cf. Suzor, *supra* note 24 (discussing multiple conceptions of the rule of law as applied to virtual worlds).

⁴¹⁶ GOLDSMITH & WU, *supra* note 3, at 65–66, 84–85.

and governance debates.⁴¹⁷ 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.⁴¹⁸ 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.⁴¹⁹ 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.⁴²⁰ 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 CAL. W. INT'L. L.J. 81 (1994); Petros Sioussiouras & Isidoros Tsouros, *Island Regime in the Context of the Montego Bay Convention on the Law of the Sea*, 60 RHDI 359 (2007).

A. National Law

HavenCo's *raison d'être* was to allow its customers to avoid national laws.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.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 cypherpunk 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.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

⁴²¹ To be more precise, to avoid *foreign* laws. HavenCo had no objections, at least initially, to the national law of Sealand.

⁴²² The child-pornography rule came from Sealand law. The spam rule is especially striking, given that in 2000, spam was generally legal.

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.

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.⁴²⁴

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 *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.⁴²⁵ 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.⁴²⁶ 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 *itself*. Sealand was never big enough to play physical host, as well as virtual.⁴²⁷

Some businesses are willing to stay purely virtual, but most aren't, for a natural reason: they want to *do business*.⁴²⁸ 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.⁴²⁹ 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.⁴³⁰ 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

⁴²⁴ Garfinkel, *supra* note 2.

⁴²⁵ See Zittrain, *supra* note 3.

⁴²⁶ 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).

⁴²⁷ 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.

⁴²⁸ See GOLDSMITH & WU, *supra* note 3.

⁴²⁹ *Id.* at 8.

⁴³⁰ 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).

incorporate there—and once they had, they typically purchased colocation locally, as well.⁴³¹ In Ryan Lackey’s words, “Sovereignty alone has little value without commercial support from banks, etc.”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,⁴³³ is now hosted by an Internet company in Arkansas.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,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.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

⁴³¹ Lackey, Defcon 11 Presentation, *supra* note 165, video at 11:30.

⁴³² *Id.*, slides at 34.

⁴³³ Garfinkel, *supra* note 2.

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.

⁴³⁵ See JONATHAN ZITTRAIN, JURISDICTION 6–8 (2005) (describing “slowest ship in the convoy” problem “”).

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!").

⁴³⁹ Joel Reidenberg, *Technology and Internet Jurisdiction*, 153 U. PENN. L. REV. 1951, 1954 (2005).

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 JEAN 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.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.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.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. “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.⁴⁴⁶ The American ideal of free speech as an inalienable right—with its strong overtones of Mill’s harm principle⁴⁴⁷—resonated strongly in the age of the Internet.⁴⁴⁸ But it is also a profoundly *American* ideal; other democracies balance free speech against other goals in very different ways.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

⁴⁴² See TAMANAHA, *supra* note 415, at 99–101 (discussing democratic theories of the rule of law).

⁴⁴³ Reidenberg, *Internet Jurisdiction*, *supra* note 439, at 1951 (emphasis added).

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).

⁴⁴⁵ John Perry Barlow, *A Declaration of the Independence of Cyberspace* (1996), <https://projects.eff.org/~barlow/Declaration-Final.html>.

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 TAMANAHA, *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. *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.

⁴⁴⁷ See JOHN STUART MILL, ON LIBERTY (1869).

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. “).

⁴⁴⁹ See Joel Reidenberg, *Yahoo and Democracy on the Internet*, 42 JURIMETRICS J. 261 (2002).

legitimately reflected in national and local laws.⁴⁵⁰

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."⁴⁵¹ As we have seen, this Internet-abetted form of regulatory arbitrage renders national law meaningless.⁴⁵² 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.⁴⁵³

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.⁴⁵⁴ 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*.⁴⁵⁵ 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

⁴⁵⁰ GOLDSMITH & WU, *supra* note 3, at 150.

⁴⁵¹ Gilmour, *supra* note 113.

⁴⁵² See A. Michael Froomkin, *The Internet as a Source of Regulatory Arbitrage*, in BORDERS IN CYBERSPACE 129, 142 (Brian Kahin & Charles Nesson eds. 1997).

⁴⁵³ True, operating under British law was a fallback position from the beginning. But it is questionable whether Britain would have been inclined to be more tolerant of Sealand operations than of mainland ones, had HavenCo ever grown big enough to be worth worrying about.

⁴⁵⁴ For significant academic contributions to the analysis, see Arenas, *supra* note 3; Dennis, *supra* note 3; Leisner opinion, *supra* note 215; Vitanyi opinion, *supra* note 215.

⁴⁵⁵ *R. v. Bates*, *supra* note 34.

jurisdiction of the Admiral. ⁴⁵⁶ 19th-century courts had limited their admiralty jurisdiction to ships flying the British flag.⁴⁵⁷ 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.⁴⁵⁸ 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.⁴⁵⁹

The other possible basis of jurisdiction was Parliament's power "to legislate over British Subjects anywhere." ⁴⁶⁰ In some cases, Parliament clearly had: murder, bigamy, and treason were offenses wherever committed.⁴⁶¹ 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." ⁴⁶² 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." ⁴⁶³

Although the decision in *Bates* is sometimes treated by Sealand's advocates as a holding that Sealand is independent,⁴⁶⁴ 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.⁴⁶⁵

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.

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 Chapman 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."⁴⁶⁶ 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.⁴⁶⁷ (Sealand has indeed made such a claim.⁴⁶⁸) But here, too, international law has taken the United Kingdom's side.⁴⁶⁹ 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,"⁴⁷⁰ and UNCLOS made the rule even more explicit.⁴⁷¹ Courts in cases involving artificial islands near the Floridian and Italian coasts have upheld coastal states' rights to prohibit upstart artificial islands.⁴⁷²

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.'"⁴⁷³ The "best known formulation of the basic criteria for statehood" is probably the 1933 Montevideo

⁴⁶⁶ UNCLOS III (1982) art. 3.

⁴⁶⁷ See Convention on the Territorial Sea and the Contiguous Zone art. 12 (1958).

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* Vitanyi 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 off 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(e) (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. ").

⁴⁷³ Thomas D. Grant, *Defining Statehood: The Montevideo Convention and Its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403 (1999).

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.”⁴⁷⁴ The *Restatement (Third) of Foreign Relations* uses a similar four-element test.⁴⁷⁵ These lists are controversial, and have been criticized as being both over- and under-inclusive, but there is no commonly-accepted alternative codification.⁴⁷⁶ 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.⁴⁷⁷ 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.”⁴⁷⁸ 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.”⁴⁷⁹ 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.⁴⁸⁰ 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

⁴⁷⁴ Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19.

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; Siousiouras & 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?⁴⁸¹ 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,⁴⁸² and “the formation of land by the erection of dikes or dams and similar structures on the sea-shore or in coastal waters.⁴⁸³ 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.⁴⁸⁴ 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.⁴⁸⁵ 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.’⁴⁸⁶ In its words, “the life of a community is lacking “⁴⁸⁷ 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.⁴⁸⁸ This is a thick vision of the role of government; it expresses a strong commitment to an affirmative welfare state.⁴⁸⁹ 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.⁴⁹⁰

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.⁴⁹¹ How many is “very marginal, “ one might ask. The *Duchy of Sealand* court accepts that there are 106

⁴⁸¹ See Leisner Opinion, *supra* note 215, at ¶ 2.

⁴⁸² *Duchy of Sealand*, 80 I.L.R., at 686.

⁴⁸³ *Duchy of Sealand*, 80 I.L.R., at 686.

⁴⁸⁴ See generally Thomas W. Merrill, *Accession and Original Ownership*, 1 J. LEG. ANAL. 459 (2009).

⁴⁸⁵ *Duchy of Sealand*, 80 I.L.R. at 687.

⁴⁸⁶ *Id.* at 687–88.

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ See TAMANAHA, *supra* note 415, at 112–13 (“Wonderful as such aspirations are, incorporating them into the rule of law throws up severe difficulties.”).

⁴⁹⁰ See ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (1974).

⁴⁹¹ 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.”⁴⁹² 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.⁴⁹³

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.”⁴⁹⁴ While it may seem that Roy Bates had effective control over Sealand—particularly given his expulsion of the invaders in 1978⁴⁹⁵—the related idea that the purpose of a control test is the maintenance of public order is problematic for HavenCo.⁴⁹⁶

Once again, Sealand’s competing theory could best be described as “minimalist.”⁴⁹⁷ 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

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.

⁴⁹⁴ Warbrick, *supra* note 491, at 223. *Accord* IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 71 (6th ed. 2003).

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.⁴⁹⁸ This is a Model UN vision of government: everyone who shows up gets to hold an important office.⁴⁹⁹

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,”⁵⁰⁰ and other commentators agree.⁵⁰¹ 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.⁵⁰² 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?”⁵⁰³ 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,”⁵⁰⁴ 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.⁵⁰⁵ Germany is said to have recognized Sealand by sending a diplomat to negotiate for Putz’s release after the 1978 invasion.⁵⁰⁶ And

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.”).

⁵⁰⁰ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 76 (1979).

⁵⁰¹ See, e.g., Grant, *supra* note 473, at 434–35 (collecting criticisms).

⁵⁰² See generally THOMAS D. GRANT, *THE RECOGNITION OF STATES* (1999).

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 Niemöller'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," BROWNLIE, *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).

⁵¹¹ See TAMANAHA, *supra* note 415, at 93–99; LON L. FULLER, THE MORALITY OF LAW 46–49 (2d ed. 1969); Joseph Raz, *The Rule of Law and Its Virtue*, 93 L.Q. REV. 195 (1977).

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 law⁵¹⁴ and protects law's subjects from the arbitrary exercise of power.⁵¹⁵

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.⁵¹⁶ 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”⁵¹⁷ for statehood, as though other nations were holding it back for unfair reasons not actually in the books.⁵¹⁸ Perhaps, but if so, then Sealand satisfies almost nothing *but* the technical requirements. Sealand's arguments illustrate the “emptiness”⁵¹⁹ 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-rule⁵²⁰—and we are most of the way to Robert Nozick's ideal of a purely consensual state.⁵²¹ 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.⁵²²

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

⁵¹⁴ A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION (1908).

⁵¹⁵ Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989).

⁵¹⁶ See FULLER, *supra* note 511, at 51–62 (discussing retroactive laws).

⁵¹⁷ Lackey & Freedman, H2K2 Presentation, *supra* note 37.

⁵¹⁸ Cf. Garfinkel, *supra* note 2 (quoting Erwin Strauss as saying, “From a *strictly* legal point of view, Roy Bates was there and claimed sovereignty, so that takes precedence.” (emphasis added)).

⁵¹⁹ TAMANAHA, *supra* note 415, at 93–94.

⁵²⁰ See RYAN, *supra* note 19 (discussing dozens of “micronations,” with populations as small as one, and territory as small as a single apartment); Ruth Wedgwood, *Cyber-Nations*, 88 KY. L.J. 957 (1999–2000) (discussing turn from “micronations” with minimal territory to “Cyber-nations” with none).

⁵²¹ See NOZICK, *supra* note 490.

⁵²² See, e.g., SHAW, *supra* note 504, at 1 (“[T]he principal subjects of international law are nation-states, not individual citizens.”).

Internet ought to pass muster.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 *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."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.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 *by* law, not rule *through* or *of* law—it is law without politics.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.⁵²⁷ It seems unlikely that international community

⁵²³ See TAMANAHA, *supra* note 415, at 99–101 (treating democratic theories of the rule of law as also requiring formal legality).

⁵²⁴ Gilmour, *supra* note 113.

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. 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, *id.* art. 9., and they may not "practise for personal profit any professional or commercial activity," *id.* art. 42.

⁵²⁶ Cf. MICHAEL NEUMANN, THE RULE OF LAW: POLITICIZING ETHICS 28–35 (distinguishing "law" aspect of the rule of law from "rule" aspect).

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.⁵²⁸ 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.⁵²⁹ Even for less controversial material, dropping the servers into the sea was always HavenCo's fallback plan.⁵³⁰ 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."⁵³¹ As NPR's Scott Simon put it, "HavenCo does not recognize British law, but it relies on British security to make the platform a safe investment."⁵³²

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.'"⁵³³ 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.⁵³⁴ According to Lackey, Sealand even stole personal computers left behind there.⁵³⁵

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.*

considering so far.

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.⁵³⁶ 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.⁵³⁷ It is thus to some extent a substantive theory of the rule of law.⁵³⁸

The ideal of government limited by law is frequently linked to citizens’ ability to plan for the future.⁵³⁹ 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.⁵⁴⁰ We have seen this argument already in HavenCo’s clients’ commercial need to fit themselves into the framework of law.⁵⁴¹ It also applies to HavenCo itself. It had computers to buy, bandwidth bills to pay, employees to feed. It needed paying clients—and legal stability for its operations. Colocation is a commodity business; it’s ordinarily supposed to be safe, reliable, and boring.

2. HavenCo and Sealand Law

It is possible to see HavenCo’s relationship to Sealand, then, as a failure of the rule of law.⁵⁴² Think, for a moment, about HavenCo’s options following the

⁵³⁶ See TAMANAHA, *supra* note 415, at 114–19 (discussing theme of “Government limited by law “).

⁵³⁷ Many theories of the rule of law in fact link the two. See, e.g., Raz, *supra* note 511, at 202–03 (“Many forms of arbitrary rule are compatible with the rule of law. . . . But certainly many of the more common manifestations of arbitrary power run foul of the rule of law. “).

⁵³⁸ See TAMANAHA, *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.

⁵⁴⁰ See, e.g., HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000).

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

GOLDSMITH & WU, *supra* note 3, at 86

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. “)

⁵⁴⁷ *See, e.g.*, Mike Bruner, *Online Poker Cheating Blamed on Employee*, MSNBC.COM (Oct. 19, 2007), <http://www.msnbc.msn.com/id/21381022/> (describing cheating scandal affecting American players at AbsolutePoker.com, a site operated out of Costa Rica, owned by a company based in Kahnawake Mohawk territory in Quebec, and “licensed and ostensibly regulated by the tribe’s Kahnawake Gaming Commission, though it is not clear what level of scrutiny the commission applies to its licensees “). Site managers initially denied allegations, relenting only after near-definitive proof was presented. *See* Gilbert M. Gaul, *Players Gamble on Honesty, Security of Internet Betting*, WASHINGTON POST (Nov. 30, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/29/AR2008112901679.html>.

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."⁵⁵⁰

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.⁵⁵¹ 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."⁵⁵²

Even more fundamentally, Sealand simply lacks the population to support political institutions like a professionalized judiciary, political parties, and an independent press.⁵⁵³ The number of residents on the platform, after all, is in the single digits, and the number of total citizens is not much larger.⁵⁵⁴ Multiple officeholding is common.⁵⁵⁵ 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

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=zdLFyoXSPKw> ("Today, firearms still play a major role in the life of Sealand. Racks of guns are ready to defend 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.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.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.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.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.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"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

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.

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.*

⁵⁵⁸ See Lackey, Defcon 11 Presentation, *supra* note 165, video at 29:45.

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?").

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. ").

⁵⁶¹ Lackey, Defcon 11 Presentation, *supra* note 165.

law.⁵⁶² 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?⁵⁶³

That the Internet's latest mutineer would sooner or later be linked with Sealand should come as no surprise.⁵⁶⁴ From pirate radio to HavenCo, Napster, and the Pirate Bay, Sealand exerts a kind of magnetic pull on all those who would

⁵⁶² See TAMANAHA, *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>.

⁵⁶⁴ On WikiLeaks and Julian Assange, see generally zunguzungu [Aaron Bady], *Julian Assange and the Computer Conspiracy*; "To destroy this invisible government", ZUNGUZUNGU, Nov. 29, 2010, <http://zunguzungu.wordpress.com/2010/11/29/julian-assange-and-the-computer-conspiracy-%E2%80%9Cto-destroy-this-invisible-government%E2%80%9D/>; Jaron Lanier, *The Hazards of Nerd Supremacy: The Case of WikiLeaks*, THE ATLANTIC, Dec. 20, 2010, <http://www.theatlantic.com/technology/archive/2010/12/the-hazards-of-nerd-supremacy-the-case-of-wikileaks/68217/>; Bruce Sterling, *The Blast Shack*, WEBSTOCK, Dec. 22, 2010, <http://www.webstock.org.nz/blog/2010/the-blast-shack/>; Gabriella Coleman, *Hacker Culture: A Response to Bruce Sterling on WikiLeaks*, THE ATLANTIC, Dec. 23, 2010, <http://www.theatlantic.com/technology/archive/2010/12/hacker-culture-a-response-to-bruce-sterling-on-wikileaks/68506/>.

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."⁵⁶⁵ 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.⁵⁶⁶ 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."⁵⁶⁷ Iceland is a

⁵⁶⁵ Matthew Lasar, *The Education of a Radio Pirate*, RADIO SURVIVOR (Aug. 28, 2009), <http://www.radiosurvivor.com/2009/08/28/the-education-of-sue-carpenter/> (reviewing SUE CARPENTER, *40 WATTS FROM NOWHERE: A JOURNEY INTO PIRATE RADIO* (2004)).

⁵⁶⁶ See STEPHENSON, *supra* note 303, at 191–92, 316–17.

⁵⁶⁷ Sylvia Hui, *Iceland to Strengthen Its Media Protections*, BOSTON GLOBE, June 18, 2010, at 20.

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.⁵⁶⁸ 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.⁵⁶⁹ There are hundreds of such theories.⁵⁷⁰ They never work,⁵⁷¹ but they also never stop.⁵⁷² 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.”⁵⁷³ 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.⁵⁷⁴ 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

⁵⁶⁸ See, e.g., *Schneider v. Schlaefter*, 975 F. Supp. 1160 (E.D. Wis. 1997).

⁵⁶⁹ See generally Francis X. Sullivan, *The “Usurping Octopus of Jurisdictional/Authority: “ The Legal Authorities of the Sovereign Citizen Movement*, 1999 WIS. L. REV. 785.

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.’”).

⁵⁷¹ See, e.g., *Schneider v. Schlaefter*, 975 F. Supp. 1160 (E.D. Wis. 1997) (rejecting flag-of-war theory).

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.

a system of magic words.⁵⁷⁵

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.⁵⁷⁶ 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.”⁵⁷⁷ 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.”)

⁵⁷⁶ See Lawrence Claus, *The Empty Idea of Authority*, 2009 U. ILL. L. REV. 1301.

⁵⁷⁷ URSULA K. LE GUIN, *THE LATHE OF HEAVEN* 153 (1971).