

SEALAND, HAVENCO, AND THE RULE OF LAW

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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. There, they 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, 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 opposed to all law. As the fuller history shows, 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, this Article argues that in a very real sense, HavenCo failed not from too much law but from too little. The "law"

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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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I. INTRODUCTION

Sealand is stranger than fiction. A pair of concrete legs supporting a 120-foot by 50-foot platform, 60 feet above the North Sea, this “smallest country on earth” sits 7 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 countercoup: 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*¹), 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

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1. See Simson Garfinkel, *Welcome to Sealand. Now Bugger Off*, WIRED, July 2000, at 230.
 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, at 10; Steve Boggan, *Americans Turn a Tin-Pot State off the Essex Coast into World Capital of Computer Anarchy*, INDEP. (Eng.), June 5, 2000, at 3; David Canton, *Creating a Country to Avoid Jurisdiction*, LONDON FREE PRESS, June 16, 2000, at D3; David Cohen, *Offshore Haven: Cold Water Poured on Sealand Security*, GUARDIAN, June 6, 2000, at 24; Anne Cornelius, *Legal Issues Online Firms Set to Take Refuge in Offshore Fortress*, SCOTSMAN, June 15, 2000, at 26; Peter Ford, *Banned on Land, but Free at Sea?*, CHRISTIAN SCI. MONITOR, June 23, 2000, at 1; Dan Gillmor, *Data Haven May Be a Step in the Right Direction*, SAN JOSE MERCURY NEWS, June 6, 2000, at 1C; Carlos Grande, *Island Fortress's "Data Haven" to Confront E-Trade Regulation*, FIN. TIMES, June 6, 2000, at 2; Ann Harrison, *Data Haven Says It Offers Freedom from Observation*, COMPUTERWORLD, Nov. 13, 2000, at 50; 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; Wade O'Leary, *Pirates Board the Net*, DAILY TELEGRAPH (Austl.), June 7, 2010, at 57; Edward Sherwin, *A Distant Sense of Data Security*, WASH. POST, Sept. 20, 2000, at G8; *Europe Acts on Net Tax Loophole*, ACCT. AGE, June 8, 2000, at 3; *Internet Exiles*, NEW SCIENTIST, June 17, 2000, at 1717; *Internet "Island" Set Up in the North Sea: Data Haven with Gun Guards and Radar*, 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; *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; *Tiny Principality Offers Internet Free of Government Regulation*, FLA. TIMES-UNION, June 25, 2000, at A18; Christine Whitehouse, *The Data Haven*, TIME WORLD, (July 17, 2000), <http://www.time.com/time/world/article/0,8559,2056176,00.html>; 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> [hereinafter McCullagh, *Sealand: Come to Data*]; Theo Mullen, *A Haven for Net Lawbreakers?*, INTERNETWEEK (June 19, 2000), <http://www.internetwk.com/lead/lead061900.htm>; *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 L. ZITTRAIN, INTERNET LAW SERIES: JURISDICTION 40–46 (2005); 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); Kevin Fayle, *Sealand Ho! Music Pirates, Data*

about 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

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 AMS. 433 (2004); Jonathan Zittrain, *Be Careful What You Ask For: Reconciling a Global Internet and Local Law*, in WHO RULES THE NET? INTERNET GOVERNANCE AND JURISDICTION 13 (Adam Thierer & Clyde Wayne Crews, Jr., eds., 2003); Jeffrey D. Kramer, Note, *Seafaring Data Havens: Google’s Patented Pirate Ship*, 2010 U. ILL. J.L. TECH. & POL’Y 359. 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. See 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 via the Internet*, 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); Michael J. Mellis, *Internet Piracy of Live Sports Telecasts*, 18 MARQ. SPORTS L. REV. 259, 266 (2008); Roda Mushkat, *The International Legal Personality of Macau*, 24 HONG KONG L.J. 328, 328 (1994); Bridget A. O’Leary Smith, *NTP, Inc. v. Research in Motion, Ltd.: Losing Control and Finding the Locus of Infringing Use*, 46 JURIMETRICS 437, 452 (2006); Richard L. Reinhold, *Some Things that Multilateral Tax Treaties Might Usefully Do*, 57 TAX LAW. 661, 678 (2004); David E. Sorkin, *Technical and Legal Approaches to Unsolicited Electronic Mail*, 35 U.S.F. L. REV. 325, 381 (2001); Steven R. Swanson, *Google Sets Sail: Ocean-Based Server Farms and International Law*, 43 CONN. L. REV. 709, 712 (2011).

4. Zittrain, *supra* note 3, at 17.

5. ZITTRAIN, *supra* note 3, at 40.

6. GOLDSMITH & WU, *supra* note 3, at 66; see also Frank B. Arenas, *Cyberspace Jurisdiction and the Implications of Sealand*, 88 IOWA L. REV. 1165, 1167 (2003) (“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.”).

This makes HavenCo and Sealand sound like simple pirates, who never 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.⁷ Everyone knows the story above, but there’s 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 fire-fighting 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?⁹ Or that, when 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.

This Article aims to fill both of these 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 unsealed files from the United Kingdom’s National Archives,¹¹ contemporary newspapers, HavenCo’s corporate documents, the HavenCo founders’ postmortem examinations of their experience, and archives of long-lost webpages from Sealand’s friends and foes.

The Article’s second major task is to use this history to map HavenCo’s tortured relationship with law and the rule of law. There are

7. The one notable exception is an article by an English historian, written with access to closed files held by the U.K. Foreign and Commonwealth Office (FCO), and published as this Article was in the editorial process. See Grant Hibberd, *The Last Great Adventure of the Twentieth Century: The Sealand Affair in British Diplomacy*, in 4 *BRITAIN AND THE WORLD* 269 (2011); see also Grant Hibberd, *The Sealand Affair: The Last Great Adventure of the Twentieth Century?*, FOREIGN & COMMONWEALTH OFF. (Nov. 19, 2010) (downloaded using iTunes).

8. See *infra* Part II.D.

9. See *infra* Part III.C.

10. See *infra* Part III.C.

11. Throughout this Article, references to documents held by the U.K. National Archives will be indicated with “UK-NA” followed by the National Archives code for the file containing them. Complete copies of all cited files are on file with the author.

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 this Article argues 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-government*: the ability of a political community to choose collectively the rules it will live under. If HavenCo had truly 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 those terms had been defined under international law.
- *Sealand law*: As a company operating within Sealand and requiring access to computers physically located there, HavenCo was subject to the authority of Sealand's royal family. As such, HavenCo's existence *also* depended on the permissiveness of Sealand law. Here, HavenCo requires a vision of the rule of law as *restraint on government*: protection of individuals against arbitrary governmental action. HavenCo needed promises that Sealand's laws would continue to be tolerant of its activities and that its property wouldn't be expropriated.

Juxtaposing these three theories of the rule of law allows us to see that there is something deeply anomalous in HavenCo's simultaneous rejection of national self-government 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 internation-

al 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's 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 never been self-sufficient. 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,¹² seasteads,¹³ and space colonies.¹⁴ It bears, too, on basic questions about the Internet's interaction with offline law,¹⁵ Internet governance,¹⁶ the nature of law in virtual worlds,¹⁷ and the creation of new

12. See generally JOHN RYAN ET AL., MICRONATIONS: THE LONELY PLANET GUIDE TO HOME-MADE NATIONS 9 (2006); ERWIN S. STRAUSS, HOW TO START YOUR OWN COUNTRY (2d ed. 1984); Adam Clanton, *The Men Who Would Be King: Forgotten Challenges to U.S. Sovereignty*, 26 UCLA PAC. 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).

13. See generally JEROME FITZGERALD, SEA-STEADING: A LIFE OF HOPE AND FREEDOM ON THE LAST VIABLE FRONTIER (2006); PATRI FRIEDMAN WITH WAYNE GRAMLICH, SEASTEADING: A PRACTICAL GUIDE TO HOMESTEADING THE HIGH SEAS (2009), http://seasteading.org/seasteading.org/book_beta/full_book_beta.pdf; Brad Taylor, SEASTEADING INST., *Governing Seasteads: An Outline of the Options* (Nov. 2010), http://www.seasteading.org/files/research/governance/Taylor_2010_GoverningSeasteads.pdf.

14. 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); William J. Brennan, Jr., *Space Colonization and the Law*, 3 HARV. J.L. & TECH., Spring 1990, at 7; Dmitry N. Feofanov, *Luna Law: The Libertarian Vision in Heinlein's The Moon Is a Harsh Mistress*, 63 TENN. L. REV. 71 (1995); 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); Charles Stross, *Space Cadets*, CHARLIE'S DIARY (Aug. 2, 2010, 9:25 AM), <http://www.antipope.org/charlie/blog-static/2010/08/space-cadets.html>.

15. 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 (2003); Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 TEX. L. REV. 553 (1998).

16. See generally LAURA DENARDIS, PROTOCOL POLITICS: THE GLOBALIZATION OF INTERNET GOVERNANCE (2009); MILTON L. MUELLER, NETWORKS AND STATES: THE GLOBAL POLITICS OF

online political communities.¹⁸ 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.¹⁹ The same could be said about offshore banking.²⁰ Thematically, the issues of territory, political community, and legal institutions have obvious connections with constitutional, administrative, international, 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 proceeds in three parts. Parts II and III 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 IV then explores their relationship to law using the tripartite framework of national, international, 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 emphasizes 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.

II. 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 1966–1968. *Sealand* is the name he gave to it,

INTERNET GOVERNANCE (2010); A. Michael Froomkin, *Habermas@Discourse.Net: Toward a Critical Theory of Cyberspace*, 116 HARV. L. REV. 749 (2003).

17. See generally EDWARD CASTRONOVA, *EXODUS TO THE VIRTUAL WORLD: HOW ONLINE FUN IS CHANGING REALITY* (2007); 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 Grimmelmann, *Virtual Worlds As Comparative Law*, 49 N.Y.L. SCH. 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*, 25 BERKELEY TECH. L.J. 1817 (2010).

18. 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 CALIF. L. REV. 395 (2000); Ruth Wedgwood, *Cyber-Nations*, 88 KY. L.J. 957 (1999–2000).

19. See generally 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); Charles R. Irish, *Tax Havens*, 15 VAND. J. TRANSNAT'L L. 449 (1982); 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); Adam H. Rosenzweig, *Why Are There Tax Havens?*, 52 WM. & MARY L. REV. 923 (2010).

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

or, more formally, *The Principality of Sealand*. Since 1978, a group of Germans have claimed to be the rightful government of Sealand; this Article will describe them as the *German Sealand*. Finally, *HavenCo* is the Internet colocation company launched in 2000 by a group of Americans whose principal place of business was Sealand. This Article uses “nation” to refer to any political entity that claims independence, “state” to refer to a nation that is sovereign under international law, 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. 1942: Roughts Tower

Roughts Tower, which would become Sealand, was 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 Roughts Tower.²¹ The four were collectively known as the Maunsell Sea Forts, after their designer, and they were built to provide anti-aircraft defense and radar coverage for the approach to the Thames Estuary.²² Each of the platforms consisted of a 120-foot by 50-foot deck, resting atop a pair of cylindrical concrete towers, each twenty-four feet in diameter and sixty feet high.²³ The towers, in turn, rest on a concrete pontoon, permanently flooded so that it provides a stable base on the seabed.²⁴ The deck originally held a two-story superstructure, taking up about one-third 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.²⁵

Roughts Tower, the furthest out to sea of the four, was built at a wharf in Gravesend. On February 11, 1942,²⁶ it was towed into position

21. Sources sometimes refer to it as “Rough Tower” or “HMF [His Majesty’s Fort] Rough.” *Rough Tower*, OFFSHORE RADIO, <http://www.offshore-radio.de/fleet/sealand.htm> (last visited Jan. 23, 2012). It takes its name from the sandbar on which it stands. See *Public Warning of Internet Hoax: “Principality of Sealand,”* PRINCIPALITY SEALAND, <http://sealandgov-london-uk.0catch.com/i/index.htm> (last visited Jan. 23, 2012).

22. See NIGEL WATSON & FRANK TURNER, MAUNSELL: THE FIRM AND ITS FOUNDER 28–32 (2005) (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.*; *Red Sands Sea Fort and Shivering Sands Fort*, UNDERGROUND KENT, http://www.undergroundkent.co.uk/maunsell_towers.htm (last visited Jan. 23, 2012).

23. See GERRY BISHOP, OFFSHORE RADIO 121 (1975) (pillar dimensions); Scott Simon, *Week-end Edition: Profile—Sovereign Principality of Sealand* (Nat’l Pub. Radio broadcast Aug. 11, 2001) (deck dimensions).

24. See *Sealand Radio—Part 1*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/Sealand-RadioOne/SealandRadio_1.html (last updated Feb. 3, 2011).

25. See *Welcome to Sealand*, BOB LE-ROI, <http://www.bobleroi.co.uk/ScrapBook/SealandOne/ThisIsSealand.html> (last updated Jan. 7, 2010) (providing an original plan of the main deck).

26. *Sealand Radio—Part 1*, *supra* note 24.

at 51° 53' 40.8" latitude north, 1° 28' 56.7" longitude east,²⁷ about seven miles from the nearest coastline, the port of Felixstowe.²⁸ At 4:30 PM, the pontoon was flooded and within fifteen minutes, Rought Tower had settled into place on the seabed.²⁹ During the war, Rought Tower housed approximately 120 men who lived in cramped quarters in the concrete legs.³⁰ The British government abandoned the Maunsell Sea Forts in 1948, and they sat vacant for the next decade.³¹

B. 1966–1967: 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.³²

A World War II veteran and former major,³³ Roy Bates fought in North Africa and Italy,³⁴ and was wounded in action several times.³⁵ On his return, “he made a fortune in factories, a fishing fleet, and other businesses.”³⁶ One of those businesses, though perhaps not the most profit-

27. *See id.*

28. I have marked the location on a custom Google Map. *Sealand*, GOOGLE MAPS, <http://maps.google.com/maps/ms?ie=UTF&mmsa=0&msid=104492463267466314825.00048f88f52542054c0b7> (last visited Jan. 23, 2012). Rought 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 Regina v. Bates*, [1968] (UK-NA: LO 2/1088) (transcript of the shorthand notes of Hibbit and Sanders).

29. *See Sealand Radio—Part 1*, *supra* note 24.

30. *See* Simon Sellars, *Sealand: On the Heap*, SIMONSELLARS.COM (Dec. 10, 2007), <http://www.simonsellars.com/my-trip-to-sealand>.

31. Elwyn Jones & Dingle Foot, *Continental Shelf Rought Tower Fort* (Aug. 21, 1967) (UK-NA: LO 2/1088).

32. DAVID SINCLAIR & BOB LE-ROI, *MAKING WAVES: THE STORY OF RADIO ESSEX ON THE KNOCK JOHN FORT 25* (2005).

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

34. *See id.*

35. *See* Garfinkel, *supra* note 1, at 235. 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 (ENG.), Nov. 27, 2004, at 33.

36. Miller & Boudreaux, *supra* note 34; *see also* Garfinkel, *supra* note 1, at 235 (a “30-boat fishing fleet”); Adela Gooch, *Storm Warning*, GUARDIAN, Mar. 28, 2008, at 38 (“the nation’s largest in-shore fishing fleet”); Jack Gould, *Radio: British Commercial Broadcasters Are at Sea*, N.Y. TIMES, Mar. 25, 1966, at 83 (“Mr. Bates, who once sold British seaweed to florists in New York”).

able, 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 saw itself as having a civilizing mission, it aired far less rock and popular music than the British public generally was interested in hearing, creating an opportunity for musical arbitrage.³⁷ Roy Bates and other entrepreneurs figured that by transmitting from ships outside of 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.³⁸ Between 1964 and 1967, a kind of mild anarchy ruled the airwaves;³⁹ even as parts of Her Majesty's government sought ways to shut down the pirate stations,⁴⁰ businesses and barons purchased advertising on them.⁴¹

In 1965, Roy Bates founded an offshore station, Radio Essex, on the Knock John platform, the closest in of the Maunsell Sea Forts.⁴² 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.⁴³ Unfortunately for Roy Bates, Knock John, while offshore, wasn't quite offshore enough. At one and one-half miles from the coast, it was comfortably inside England's three-mile territorial limit.⁴⁴ The government had at first stood by

37. See ADRIAN JOHNS, *DEATH OF A PIRATE: BRITISH RADIO AND THE MAKING OF THE INFORMATION AGE* 27–30, 79–85 (2011).

38. See BISHOP, *supra* note 23, at 23–43; ROBERT CHAPMAN, *SELLING THE SIXTIES: THE PIRATES AND POP MUSIC RADIO* 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: LIFE ON THE WAVES WITH RADIO CAROLINE* (2009) (giving personal history of Radio Caroline from 1987 to 1991).

39. See generally BISHOP, *supra* note 23; CHAPMAN, *supra* note 38.

40. See CHAPMAN, *supra* note 38, at 32–42 (discussing political reaction to pirate radio).

41. See *T-Shirts and Foreign Crews Are Stations' Weapons*, *TIMES* (ENG.), July 29, 1966, at 1 (“Lord Thomson of Fleet, whose wares are advertised on Radio 390, Radio 270 and Radio Scotland.”); see also BISHOP, *supra* note 23, at 26 (listing pirate radio advertising rate cards); *id.* at 29 (estimating Radio Caroline South revenue at £15,000 per week in 1965); CHAPMAN, *supra* note 38, at 84–90 (discussing advertising on pirate radio stations); *id.* at 110 (estimating Radio London's 1966 advertising gross at over £1,000,000); see also Letter from T. Scott, Private Sec'y to the Postmaster Gen., to P.D. Nairne, Private Sec'y to the Sec'y of State for Def., Mar. 17, 1967 (UK-NA: DEFE 13/658) (complaining that members of the armed services had been thanking the pirate stations for running free advertisements for their units).

42. BISHOP, *supra* note 23, at 56–57. The “shoe-string” Radio Essex took its name because “[g]ood reception was only possible in south-east Essex.” CHAPMAN, *supra* note 38, at 160. Later, Bates changed the name to Britain's Better Music Station, or BBMS. *Id.* at 161.

43. See BISHOP, *supra* note 23, at 56 (“Eventually [Bates] ‘persuaded’ them to leave”); CHAPMAN, *supra* note 38, at 168 (“As the fledgling Radio Essex project also had an interest in this site it turned out to be the cue for several months of aggressive raids and counter-raids on the fort.”); JOHNS, *supra* note 37, at 176–77.

44. 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

as the pirates challenged the BBC's monopoly, but public sentiment shifted in the aftermath of the heavily publicized (indeed, sensationalized⁴⁵) shooting of one pirate radio entrepreneur by another.⁴⁶ Following the shooting, the government stepped up enforcement of the Wireless Telegraphy Act, which forbade unlicensed broadcasts.⁴⁷ Roy Bates was served with a summons for breach of the Act on September 28, 1966.⁴⁸ According to government files, Radio Essex was causing interference as far away as Hungary.⁴⁹ The Magistrate's Court found him in violation of the broadcasting law on November 30 and fined him £100.⁵⁰ Bates appealed, but lost in January of 1967.⁵¹

Bates, however, was already gone. On Christmas Day of 1966, he shut down broadcasts from Knock John⁵² and moved further out, to Roughts Tower.⁵³ He evicted the two Radio Caroline staff currently occupying Roughts Tower and claimed it as his own.⁵⁴ Bates and his son

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 & LE-ROI, *supra* note 32, at 73.

45. See JOHNS, *supra* note 37, at 217–18.

46. 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 Oliver Smedley, the entrepreneur behind Radio Atlanta, boarded and took control of the fort from the Radio City DJs then occupying it. See *id.* 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 Smedley shot Calvert dead. *Id.* at 1–8. Smedley was tried for manslaughter but acquitted. *Id.* at 230–32; see also BISHOP, *supra* note 23, at 45–46.

47. See JOHNS, *supra* note 37, at 227–28, 232.

48. See *British Widen Fight on Pirate Stations*, N.Y. TIMES, Sept. 29, 1966, at 74; *Sealand: The Mystery Solved* (documentary film 2003), available at <http://vimeo.com/13817548>.

49. See *Interference to Broadcast Reception* (Dec. 22, 1966) (UK-NA: HO 255/1243).

50. See *Radio Station in Thames Estuary on Air After Owner Is Fined £100*, TIMES (Eng.), Dec. 1, 1966, at 11.

51. See *Appeal of Paddy Roy Bates, Essex Quarter Sessions* (Jan. 17, 1967) (UK-NA: HO 255/1243) (concluding that “Knock John Tower is within internal waters”). More precisely, Bates linked his appeal to the contention that Knock John was outside the territorial limit. *Id.* The Quarter Sessions disagreed, holding: “[T]he Knock John Tower . . . lies a little over a mile and a half on the up-river side of that measured line.” *Id.*

52. See BISHOP, *supra* note 23, at 57; SINCLAIR & LE-ROI, *supra* note 32, at 73–74.

53. 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.shtml> (last visited Jan. 23, 2012). Tongue Sands collapsed completely in 1996. See *Tongue Sands*, OFFSHORE RADIO, <http://www.offshore-radio.de/fleet/tongue.htm> (last visited Jan. 23, 2012). See also SINCLAIR & LE-ROI, *supra* note 32, at 57–59.

54. See 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”); Lucas, *supra* note 35 (claiming that the Radio Caroline disc jockeys were celebrating Christmas aboard the platform and left without a struggle); *THE SEALAND ADVENTURE* (Bob Le-Roi, 2010) (documenting the Forts radio stations in a sixty minute audio “programme”). But see *Sealand Radio—Part 1*, *supra* note 24 (claiming that the platform was unoccupied at the time).

Michael, only fourteen but a “tough young cookie,” moved the radio equipment aboard Roughts Tower in the cold of a North Sea winter.⁵⁵

This first occupation failed. Bates left four men aboard to guard the Tower, 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.⁵⁶ Radio Caroline moved back to the now-empty platform in early April of 1967, cutting away the control tower to create a helipad.⁵⁷ It appeared that Radio Caroline was setting up a legally safer resupply station for its ships, one that would itself be supplied from Holland.⁵⁸

Bates then retook the platform with either remarkable cunning or good improvisation. Having entered into some kind of joint operating partnership with Radio Caroline,⁵⁹ Bates brought a boat on April 17 out to relieve one of three Caroline men on the Tower, replacing him with Michael Bates and a Bates employee, David Barron.⁶⁰ On April 19, while loading more supplies aboard, one of the two remaining Radio Caroline men received a severe rope burn; he and his partner went ashore, leaving the platform entirely under the control of Bates’s crew.⁶¹ On April 20, Barron refused to let a replacement crew from Radio Caroline aboard again.⁶² Bates was back in control.

Radio Caroline didn’t go down without a fight. It sent a boarding party by boat on April 27; David Barron and Michael Bates repulsed them with an air rifle and flaming bottles of paraffin.⁶³ Defiant, Bates painted his name on the side of the platform in large white letters.⁶⁴ Radio Caroline tried again, more dramatically, on June 27. Bates and company again fought off the attackers with petrol bombs. When they withdrew, one man was left dangling from a ladder for three hours until the Walton-on-the-Naze lifeboat rescued him.⁶⁵ There may have been other such battles, but details are sketchy and clouded by Bates’s exaggera-

55. See *Sealand Radio—Part 1*, *supra* note 24. One source claims that the platform was briefly abandoned. Michael Bates would never return to school. *THE SEALAND ADVENTURE*, *supra* note 54.

56. SINCLAIR & LE-ROI, *supra* note 32, at 74.

57. See *Heliport on Roughts Tower May Supply “Pop” Pirates*, E. ANGLIAN DAILY TIMES, Apr. 12, 1967 (UK-NA: HO 255/1037).

58. See *id.*

59. See *100GNS Health Trips to Sea Fort*, TIMES (Eng.), June 29, 1967 (UK-NA: LO 2/1088). Ronan 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.* (quoting Tom Lodge on “Ronan’s concept” to “create a nation on that tower”); SINCLAIR & LE-ROI, *supra* note 32, 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 Roughts fort.”).

60. Statement by Mr. Simser (May 1, 1967) (UK-NA: HO 255/1037).

61. *Id.*

62. *Id.*

63. *Id.*

64. See *Words in White Paint Start New Takeover Rumors*, EVENING STAR (May 19, 1967) (UK-NA: HO 255/1037).

65. See Andrew McEwen, *Pop Fort Gets Switched on to Repel Boarders*, DAILY MAIL (Eng.), June 29, 1967 (UK-NA: HO 255/1037).

tions.⁶⁶ 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.⁶⁷

By the fall of 1967, Bates was in sole possession of Roughts Tower.⁶⁸ He brought aboard his family: his wife Joan (a former fashion model)⁶⁹ and their children Michael and Penny.⁷⁰ He was now ready to tangle with a more formidable opponent: the United Kingdom.

C. 1967: Roy Bates vs. *The United Kingdom*

The British government had been watching Roy Bates and the other pirate broadcasters carefully, as the 1966 prosecutions showed. While Bates was moving out to Roughts Tower, other pirates were laying plans to broadcast from ships outside the three-mile limit. The government's principal response was the Marine Broadcasting Offenses Act (MBOA), which was enacted in July 1967 and entered into force on August 14.⁷¹ It forbade British citizens from participating in broadcasts from the high seas,⁷² prevented anyone present in the United Kingdom from assisting in such broadcasts,⁷³ and prohibited advertising by means of such broadcasts.⁷⁴ The MBOA did not eliminate the pirates entirely—Radio Caro-

66. See Lucas, *supra* note 35; *Sea Fort Repels Boarders*, TIMES (Eng.), 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”).

67. See JOHNS, *supra* note 37, at 233–36; see also SINCLAIR & LE-ROI, *supra* note 32, 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!”). A year later, in March of 1968, two of Bates's men tried to set up their own state on Shivering Sands but found themselves marooned without sufficient food and in need of rescue. See *Two Rescued from Estuary Fort*, TIMES (Eng.), Mar. 21, 1968, at 3.

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

69. See *Sealand Radio—Part 2*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/SealandRadioTwo/SealandRadio_2.html (last visited Jan. 23, 2012) (including a photograph of Joan modeling furs).

70. See *Sealand Radio—Part 1*, *supra* note 24; see also *Britain's Better Music Station*, BOB LE-ROI, <http://www.bobleroi.co.uk/ScrapBook/Bbms/BritainsBetter.html> (last updated Nov. 8, 2011); *Sealand Fort*, YOUTUBE.COM, <http://www.youtube.com/watch?v=Ei2JM8xLb3c> (last visited Jan. 23, 2012).

71. Marine, &c., Broadcasting (Offenses) Act (MBOA), (1967) c. 41 (Eng.). For a discussion of the politics leading up to the passage of the MBOA, see CHAPMAN, *supra* note 38, at 176–96; JOHNS, *supra* note 37, at 232–29, 236–37. Ironically, the struggles between Bates and Radio Caroline for control of Roughts Tower may have contributed to the parliamentary sense of the pirate radio operators as dangerous buccaneers, thereby speeding the passage of the Act. See *id.* at 250.

72. MBOA § 3.

73. MBOA § 4.

74. MBOA § 5(3)(e).

line would broadcast from ships outside the three-mile limit for another two decades—but it did manage to drive most of them off the air.⁷⁵

The three-mile limit, however, was a potential fly in the ointment. The news that a boarding party had taken over Rought Tower in December 1966 did not escape Whitehall's notice.⁷⁶ Attention became alarm in April 1967, as Radio Caroline's activities strongly hinted at unlicensed broadcasting.⁷⁷ Broadcasts carried out by non-British citizens, supported and supplied entirely from abroad, would fall outside the MBOA's ambit, and the uneven pace of ratifications of a European broadcasting treaty meant that it would be difficult to act against them.⁷⁸ The Postmaster General, whose office had authority over the airwaves, demanded the immediate destruction of Rought Tower.⁷⁹

Bureaucracy ensued. The Prime Minister assented to the plan, as long as all of the affected departments concurred.⁸⁰ The Home Secretary quickly agreed,⁸¹ but the Foreign Office began to raise practical concerns.⁸² The Ministry of Defense suggested putting the matter to the Official Emergencies Committee, but the Cabinet Office concluded that an "ad hoc meeting of the Departments concerned" would be a more appropriate venue.⁸³ That meeting took place on May 10, 1967, with the roster having expanded to include also the Treasury, Customs and Excise, the Board of Trade, and the Treasury Solicitor.⁸⁴ The Ministry of Defense agreed to "make the fort uninhabitable . . . without at the same time making it into a danger to navigation," but only if the "'civil power' will first remove from the fort anyone who may be occupying it."⁸⁵ Unfortunately, given the jurisdictional issues, this last question was thorny, and after some further discussion, the matter was referred to the Law Officers.⁸⁶ They concluded that a detailed opinion would be needed "in

75. See JOHNS, *supra* note 37, at 232–33 (discussing difficult financial straits of Radio Essex following the MBOA ban on advertising); SINCLAIR & LE-ROI, *supra* note 32, at 69–70 (discussing Radio Essex's inability to make payroll in the fall of 1966); *Sealand Radio—Part I*, *supra* note 24. On the later history of pirate radio in the United Kingdom, see generally JOHN HIND & STEPHEN MOSCO, *REBEL RADIO: THE FULL STORY OF BRITISH PIRATE RADIO* (1986). 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* (New Line Cinema 1990).

76. See, e.g., Memorandum from R.W. Story (Jan. 27, 1967) (UK-NA: HO 255/1037).

77. See Minute from Postmaster Gen. Edward Short to the Prime Minister (Apr. 14, 1967) (UK-NA: HO 255/1037).

78. *Id.*

79. *Id.*

80. See Letter to T. Scott, Esq. (Apr. 17, 1967) (UK-NA: HO 255/1037).

81. See Letter from Home Sec'y to Postmaster Gen. (Apr. 19, 1967) (UK-NA: HO 255/1037).

82. See Minute from Mr. Mulley to the Postmaster Gen. (Apr. 24, 1967) (UK-NA: HO 255/1037) ("If, of course, anyone is on the fort there will presumably be no question of destroying it.").

83. See Minute from C.E. Lovell (Apr. 25, 1967) (UK-NA: HO 255/1037).

84. See Notes of Meeting Held at Post Office Headquarters at 10:30 AM on May 10, 1967, to Discuss Action to Be Taken As a Result of the Ministerial Decision to Destroy Rought Tower (May 17, 1967) (UK-NA: HO 255/1037).

85. Minute from C.E. Lovell to Postmaster Gen. (May 11, 1967) (UK-NA: HO 255/1037).

86. *Id.*

view of the difficult legal questions which appear to arise.”⁸⁷ A formal case was submitted for their opinion in late July.⁸⁸

By this point, however, Bates was hurling petrol bombs at Radio Caroline raiders, and members of Parliament were asking questions about it in the House of Commons.⁸⁹ The matter was considered urgent enough to be discussed at a meeting in the Cabinet Office.⁹⁰ The attendees were concerned how to “dislodge” Bates’s men, and agreed that since the various Ministers had “not had before them a fully concerned memorandum prepared by officials of all the Departments concerned,” another meeting would be held “in order to arrange for the preparation of such a memorandum.”⁹¹ The Ministry of Defense took the lead, drawing up a plan called “Occupation Callow,”⁹² and the Prime Minister signed off on it.⁹³

The idea was simple: officials would call on Roy Bates, tell him that the fort belonged to the Ministry of Defense, and demand that he leave.⁹⁴ If necessary, they would assist him in removing his property and provide an “exgratia payment” of a few thousand pounds. A party of Royal Marines would occupy the fort as soon as Bates and his men departed, so that no one else could move in before the Ministry of Defense destroyed it.⁹⁵

Things did not go as intended. Roy Bates, offered five thousand pounds, demanded ninety thousand instead.⁹⁶ When approached by boat, “the occupants of the tower made clear—firmly, though politely—that they were unwilling . . . to consider the possibility of giving up possession.”⁹⁷ The press, meanwhile, discovered that the Royal Marines were on standby and quickly ran stories about the plan to storm the fort,⁹⁸ despite the government’s best efforts to downplay the matter.⁹⁹

For the rest of August, the government cast about for legal options to oust Bates. One official suggested an action against Bates for keeping the fourteen-year-old Michael out of school.¹⁰⁰ Customs thought it might be possible to force Bates to forfeit his boat “for non-compliance with

87. Letter from W.L. Dale to B.B. Hall, Esq. (June 27, 1967) (UK-NA: HO 255/1037).

88. The Treasury Solicitor, The Roughs Tower, Case for the Opinion of the Law Officers of the Crown and Treasury Counsel (July 21, 1967) (UK-NA: HO 255/1037).

89. See 749 Parl. Deb., H.C. (5th ser.) (1967) 191W (U.K.); *id.* at 268W.

90. See Note of a Meeting Held in Sir Burke Trend’s Room, Cabinet Office, Whitehall, S.W.1, on Monday (July 31, 1967) (UK-NA: HO 255/1037).

91. *Id.*

92. See Occupaton of Roughs Tower, Operation “Callow,” Operational Instructions (UK-NA: DEFE 13/1658).

93. See Letter from P.D. Nairne to A.N. Halls, Esq. (Aug. 4, 1967) (UK-NA: HO 255/1037).

94. See Brief for Mr. W.A. Sweby, Sunk Head Fort (Aug. 9, 1967) (UK-NA: DEFE 13/658).

95. See Letter from P.D. Nairne to A.N. Halls, Esq. (Aug. 4, 1967) (UK-NA HO 255/1037).

96. See Report on Operation Callow by W.A. Sweby (undated) (UK-NA: LO 2/1088).

97. See Letter from P.D. Nairne to A.N. Halls, Esq. (Aug. 7, 1967) (UK-NA: HO 255/1037).

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

99. See Memorandum from C.P.R. to FUS (Army) (Aug. 7, 1967) (UK-NA: HO 255/1037).

100. Letter from Phillip Rogers to C.E. Lovell, Esq. (Aug. 14, 1967) (UK-NA HO 255/1037).

our requirements.”¹⁰¹ At the end of the month, the Law Officers returned an opinion arguing that while criminal jurisdiction over offenses committed by British citizens would extend to Roughs Tower, a civil action for possession of it “would be likely to fail for lack of jurisdiction.”¹⁰² Meanwhile, the Post Office was doggedly trying to collect its costs from Bates’s unsuccessful appeal of his prosecution for broadcasting from Knock John.¹⁰³ It was at this point of bureaucratic irresolution that Roy Bates struck again.

D. 1967–1968: *The Principality of Sealand*

On September 2, 1967, Roy Bates declared an independent Principality of Sealand on Roughs Tower, with himself as Prince.¹⁰⁴ The idea came from Joan Bates and several friends, over drinks at a pub.¹⁰⁵ 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.”¹⁰⁶ Behind the scenes, the search for a way to oust Bates intensified.

Customs tried first. Bates’s boat sprang a serious leak while in Harwich harbor on February 14, 1967.¹⁰⁷ Customs then refused to clear him for departure from the harbor, as the boat lacked a “load line” certificate of seaworthiness.¹⁰⁸ Roy and Joan Bates promptly went to the press, claiming that their children had been “marooned” on Sealand.¹⁰⁹ Official statements that “[a]ll Mr. Bates has to do is hire another boat if his own does not conform to the regulations[]” did not stem the tide of

101. Letter from Dorothy Johnstone to R.J. Harding, Esq. (Aug. 18, 1967) (UK-NA: HO 255/1037). *But see* Letter from C. Bamfield to H.F. Ellis-Rees, Esq. (Feb. 23, 1968) (UK-NA: 255-1037) (“[T]he offenses of which Bates might be found guilty are of such a technical nature that any penalty imposed . . . would be derisory.”).

102. Jones & Foot, *supra* note 31. *Cf.* Letter from Basil Hall to Sir William Dale (Aug. 8, 1967) (UK-NA: LO 2/1088) (arguing that action for possession would lead only to a writ of possession to the county sheriff, which would be useless since the property in question did not lie within any county of England).

103. *See* Letter from J. Hodge to H.M. Postmaster-Gen. (Sept. 4, 1967) (UK-NA: HO 255/1243).

104. *The Principality of Sealand* (Jan. 12, 1971) (UK-NA: FCO 33/1300); *Sealand—Ex-“Pirate” Radio Chief Claims Fort Is New State*, SOUTHEND STANDARD, Sept. 7, 1967 (UK-NA: HO 255/1243); *see also Secret Government Sealand Revelations*, IPSWICH STAR (Dec. 31, 2008), http://www.ipswichstar.co.uk:80/news/secret_government_sealand_revelations_1_169303. The reason for establishing it as a “principality” rather than a “kingdom” is unclear. *See* Simon, *supra* note 23 (suggesting that the choice of a “principality” was at the advice of lawyers).

105. *See* Garfinkel, *supra* note 1, at 236; Miller & Boudreaux, *supra* note 33; Simon, *supra* note 23. *But see* SINCLAIR & LE-ROI, *supra* note 32, at 77 (claiming that the idea came from Radio Essex employee Dick Palmer).

106. *Independent Isle “Ludicrous,”* TIMES (Eng.), Sept. 3, 1967, at 3.

107. *See* Letter from N.H. Parsons to Mr. Hay (Apr. 4, 1967) (UK-NA: HO 255/1037).

108. *See* Letter to Paul Channon, Esq. (Apr. 1968) (UK-NA: HO 255/1037); Letter from C. Bamfield to H.F. Ellis-Rees, Esq., *supra* note 101.

109. *Radio Man’s Children “Marooned,”* TIMES (Eng.), Mar. 7, 1968, at 3 (UK-NA: HO 255/1037).

press coverage,¹¹⁰ and Customs quietly relented.¹¹¹ Roy and Joan Bates also alleged that Customs harassed them by opening their tins of food whenever they came ashore to resupply.¹¹²

In a more bizarre turn of events, the same David Barron, alias David Belasco, who had been one of Roy Bates's first men aboard the Tower, approached the Ministry of Defense, offering "to obtain possession of the Fort 'in a non-violent manner[]'" and turn it over to the Ministry.¹¹³ The Ministry considered this "implausible" and told Belasco that it would not encourage any action on his part, but was "prepared to take the Fort over[]" if Belasco did obtain possession.¹¹⁴ Belasco, however, swore out an affidavit claiming the Ministry had asked him to take over the platform by force,¹¹⁵ which became the subject of accusations by Bates, a story by the *Daily Telegraph*,¹¹⁶ and a question in Parliament.¹¹⁷ All the while, the Post Office was still trying to get Bates to pay his appeal costs, without substantial success.¹¹⁸

The next line of attack was the Law Officers' opinion that English criminal jurisdiction against British citizens extended to Roughs Tower. In December 1967, someone on the Tower fired shots at a survey minesweeper, but due to a lack of damage and good evidence, the Director of Public Prosecutions decided it would make a poor test case and the incident was ignored.¹¹⁹ On May 6, 1968, the Trinity House¹²⁰ ship *Egeria* was working on a buoy northwest of Roughs Tower when Michael Bates opened fire across its bow with a .22 pistol.¹²¹ At the direction of the Director of Public Prosecutions, Bates was summoned to court the next time he went ashore.¹²² He and Michael were 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.¹²³

110. *Children "Not Marooned,"* TIMES (Eng.), Mar. 8, 1968, at 3 (UK-NA: HO 255/1037).

111. See Letter from C. Bamfield to H.F. Ellis-Rees, Esq. (Oct. 25, 1968) (UK-NA: LO 2/1088).

112. Miller & Boudreaux, *supra* note 33.

113. Letter from H.F. Ellis-Rees to H.L. Lawrence-Wilson, Esq. (Oct. 8, 1968) (UK-NA: LO 2/1088).

114. *Id.*

115. See Affidavit of David Joseph Belasco (n.d.) (UK-NA: LO 2/1088).

116. See Kenneth Clarke & James Allan, *Ministry Planned to Seize Sea Fort*, DAILY TEL. (Eng.), May 30, 1968 (UK-NA: LO 2/1088); see also Peter Deeley, *The Prince and His Prisoner*, OBSERVER, Sept. 10, 1978, at 3.

117. See 775 PARL. DEB., H.C. (5th ser.) (1968) 377W (U.K.).

118. See Letter from C.E. Lovell to E.H. Rose (Nov. 20, 1967) (UK-NA: HO 255/1037).

119. See Confidential Report by R.L. Waddingham (May 30, 1968) (UK-NA: DEFE 13/658).

120. Trinity House is the lighthouse authority for England. See R.H. Coase, *The Lighthouse in Economics*, 17 J.L. & ECON. 357, 360-72 (1974) (describing the history, economics, and policies of Trinity House).

121. *Regina v. Bates* [1968] (transcript of the shorthand notes of Hibbit and Sanders) (UK-NA: LO 2/1088); see also Statement by Lt. Cmdr. C.E.K. Robinson (UK-NA: LO 2/1088) (stating that Bates did not aim at crew members).

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

123. *Bates*, [1968]. 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 (Eng.), Oct. 22, 1968, at 3.

“It was decided not to take advantage of Mr. Bates’ attendance in Court to try and occupy the Fort, as this smacked of sharp practice.”¹²⁴

To the government’s disappointment, however, the court rejected its theory of jurisdiction in October 1968,¹²⁵ holding that that Parliament had never extended admiralty jurisdiction far enough to cover the Bateses.¹²⁶ The matter was promptly escalated back up to the Cabinet Office. A November 5 meeting came to a pragmatic conclusion:

Mr. Bates’ continued occupation of the Tower was undesirable, because of the shooting incident and the possibility of 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 were no pressing reasons for evicting Mr. Bates, certainly none that would justify the use of force or the passage of special legislation.¹²⁷

Thus, although the Law Officers held to their prior position about criminal jurisdiction, “it was not proposed to apply to the courts for a declaration that Roughs Tower belonged to the Crown.”¹²⁸ The Law Officers drew up proposed legislation that would have explicitly given the Crown criminal and civil means to retake possession of offshore structures it had constructed, but in keeping with the decision to ignore Bates unless he caused trouble, it was never enacted.¹²⁹ For the next two years, Trinity House vessels passing near Roughs Tower were given armed guards in case of incident, but otherwise Bates was left alone.¹³⁰ Similarly, while the Ministry of Defense prepared contingency plans for occupying Roughs Tower if necessary, none were ever put into action.¹³¹

In keeping with this reasoning, the United Kingdom cautiously avoided forcing the question of Sealand’s status for the next two decades. Official policy reflected a pair of negatives. On the one hand, Sealand was not part of the United Kingdom, but on the other, the government did not regard it as a state.¹³² What it *was* has never been entirely clear.

124. Letter from H.F. Ellis-Rees to E.M. Rose, Esq. (July 25, 1968) (UK-NA: LO 2/1088).

125. See Harold Jackson, *Complex Legal Affair of State*, GUARDIAN, Oct. 22, 1968, at 3.

126. *Bates*, [1968]. The case is discussed in more detail *infra* Part III.B.1.

127. Minutes of Meeting Re: Roughs Tower (Nov. 5, 1968) (UK-NA: CAB 130/355).

128. *Id.* at 2.

129. See Forts–Draft Provisions for Legislation (Mar. 22, 1968) (UK-NA LO 2/1088).

130. See Ministry of State for Head of Naval Home Division, Roughs Tower: Proposed Use As a Survey Reference Point (Feb. 25, 1972) (UK-NA: DEFE 69/234) (discussing “Operation Proclaim Alpha”). Survey ships kept their distance, as well. See Letter from Head of Naval Home Div. to Flag Officer Medway (Mar. 15, 1972) (UK-NA: DEFE 69/234) (“[N]o ship of the Squadron should enter an area of Radius ½ mile around the Tower.”).

131. See Occupation of Roughs Tower by Force, Operation Order 1/68 (May 28, 1968) (UK-NA: DEFE 13/658) (detailing plans either to bring a frigate alongside the tower or to land a boarding party from two helicopters). The Ministry continued to plan for possible military reoccupation as late as 1983. See Hibberd, *supra* note 7.

132. See, e.g., Letter from Pat Ransford to Herr Hans Fuhr (July 8, 1981), http://www.principality-of-sealand.eu/pdf/roughs_tower.pdf. Cf. Letter from Illegible to M.R. Bates (Oct. 1, 1984) (on file

Grant Hibberd describes the FCO's policy as "keep[ing] things as vague as possible."¹³³

E. 1968–1978: Grand Schemes

Almost immediately after declaring independence, Prince Roy began trying to develop Sealand economically. In January 1968, he told a Post Office Solicitor that he planned to use the "large profits" from selling Sealand stamps to pay off his debt from the Radio Essex case.¹³⁴ The first actual stamp set—famous explorers—was issued in 1969, and subsequent stamps have included ships, fish, and a portrait of Joan.¹³⁵ Although Bates planned to apply to the Universal Postal Union,¹³⁶ Sealand is not a member, so its stamps are not legal postage in other countries.¹³⁷ Sealand has issued coins since 1972, in various denominations;¹³⁸ the Sealand dollar is nominally pegged to the U.S. dollar at a rate of SX \$1 to US \$1.¹³⁹

Sealand also began seeking foreign partners and potential investors. In 1969, it linked up with a group of Belgians and Frenchmen. They approached the Belgian government in the hopes of establishing diplomatic and commercial ties, and pressed the British government to confirm Sealand's sovereign status.¹⁴⁰ This particular diplomatic offensive seems to have continued into 1971;¹⁴¹ British officials assured their Belgian counterparts that the Chelmsford firearms decision from 1968 was not an act of recognition, but ignored the direct inquiries from Sealand's representatives.¹⁴² Sealand's growing earnestness is also evident in a promotional brochure that starts appearing in the files at about this date.¹⁴³ The

with author) (stating that Michael Bates was not required to pay contributions to Britain's social security system for the times during which he was resident on Sealand).

133. Hibberd, *supra* note 7.

134. See Memorandum by Basil Corcos (Jan. 22, 1968) (UK-NA: HO 255/1037).

135. *The Principality of Sealand*, REHAM.DE, http://www.reham.de/principality_of_sealand.htm (last visited Jan. 23, 2012); *Sealand Shopping Mall*, PRINCIPALITY SEALAND, <http://www.sealandgov.org/stamps-and-coins> (last visited Jan. 23, 2012) (offering historical stamp sets for sale).

136. See Kessler, *supra* note 54.

137. See *Member Countries*, UNIVERSAL POSTAL UNION, <http://www.upu.int/en/menuquickaccess/member-countries.html> (last visited Jan. 23, 2012).

138. 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-PRINCIPALITY SEALAND, <http://www.imperial-collection.net/sealand03.html> (last visited Jan. 23, 2012).

139. *Fact File*, PRINCIPALITY SEALAND, <http://www.fruitsofthesea.demon.co.uk/sealand/factfile.html> (last visited Jan. 23, 2012).

140. See generally *The Principality of Sealand*, *supra* note 104.

141. See Restricted Memorandum, Principality of Sealand (Mar. 18, 1974) (UK-NA: FCO 33/2705).

142. *Id.*

143. See *The Principality of Sealand*, *supra* note 104.

Tourism section declares, blandly, “It is planned to build an [sic] Hotel.”¹⁴⁴

Sealand then seems to have gradually shifted to dealing with a group of Germans, who started making another push for Sealand’s status in 1973.¹⁴⁵ In addition to pressing their case with the British Embassy in Bonn, they began approaching numerous other countries. They sent letters seeking recognition in 1974 to Scotland, Morocco, and the Federal Republic of Germany.¹⁴⁶ In 1976, they asked the Australian Embassy for visas in their Sealand passports,¹⁴⁷ went to the Sri Lankan Embassy with a briefcase containing 100,000 DM to request a visa to set up a five-million-dollar gem exhibition,¹⁴⁸ and approached the Indonesian, Senegalese, Irish, and Nigerian embassies with similar requests.¹⁴⁹ At the end of 1976, they also wrote to the International Frequency Registration Board, apparently seeking to reserve some radio frequencies for Sealand’s use.¹⁵⁰ To bolster their case, they obtained a legal opinion from a Dr. Walter Leisner in 1975, claiming that Sealand was a state under international law, and a second opinion from Professor Bela Vitanyi in 1978.¹⁵¹

They also cast about for banking services for the Principality.¹⁵² Sealand’s increasing commercial ambitions from this period are evident in a much extended version of the promotional brochure—now primarily in German—containing diagrams showing plans for a massive expansion of Sealand to include a port, office towers, park with golf course, and airport.¹⁵³ A refinery and tanker port would be connected to the British mainland by a pipeline, and Sealand itself would be joined by a bridge to the coast.¹⁵⁴ These plans, typically with a price tag of thirty-six million pounds or more, make regular appearances in the press coverage of Sealand over the subsequent decades: Sealand is always about to start development later in the year.¹⁵⁵

144. *Id.*

145. See Letter from D.J. Kammerer to British Embassy (Mar. 6, 1975) (UK-NA: FCO 33/2705) (referring to previous correspondence in the summer of 1973).

146. See Restricted Memorandum, Principality of Sealand, *supra* note 141.

147. Letter from D.M. Edwards to I.A. Roberts (Dec. 29, 1975) (UK-NA: FCO 33/2705).

148. See Letter from J.R.S. Guinness to M. Williams, Marine & Transp. Dep’t (Aug. 6, 1976) (UK-NA: DEFE 57/55).

149. See Letter from A.C.D.S. MacRae to F.W. Willis, Esq. (Feb. 27, 1976) (UK-NA: DEFE 57/55); Letter from D.J. Moss to F. Willis, Esq. (Mar. 4, 1976) (UK-NA: DEFE 57/55).

150. See Letter from F.G. Perrin to G.E. Pütz (Feb. 4, 1977) (UK-NA: FCO 33/3355).

151. See *infra* note 550 and accompanying text.

152. See Letter from J. Ulv Baron v. Magnus to C.P. Carter (Apr. 11, 1975) (UK-NA: FCO 33/2705) (describing the request of bankers to serve as consuls). It is striking how many of the recipients of these approaches immediately referred the matter back to the British government for advice on how to proceed.

153. See SEALAND BROCHURE II (n.d.) (UK-NA: FCO 33/2705).

154. *Id.*

155. See, e.g., Guy Hatwin, “Prince” Plans to Float a New Business Empire, *FIN. TIMES*, Aug. 12, 1978 (UK-NA: FCO 33/3355); *Sealand Expansion Planned*, *E. ANGLIAN DAILY TIMES*, Feb. 28, 1981 (UK-NA: HO 255/1244); *How Fort-Unate*, *SUNDAY MIRROR*, July 4, 1999, at 23.

In 1977, the Germans explored the idea of using Sealand as a tax haven. Even without recognition and a tax treaty with Germany, they hoped to take advantage of the tax treaty between the United Kingdom and Germany.¹⁵⁶ If Germany regarded Sealand as part of the United Kingdom for treaty purposes, but the United Kingdom didn't actually levy taxes for activities taking place there, then German citizens would be able to avoid paying taxes on Sealand income.¹⁵⁷ Inland Revenue was actually concerned about the issue,¹⁵⁸ but the Germans neatly resolved the matter by insisting that the location of Roughs Tower outside of British territorial waters meant that German taxes applied.¹⁵⁹

During these years, a new name starts cropping up in the reports. Professor Alexander Achenbach was a German living in Luxembourg and a "former diamond dealer,"¹⁶⁰ but everything else about him is obscure. He was involved in 1975 in what one British diplomat referred to as "the Anglican Free Church affair,"¹⁶¹ which appears to have been an illegal diploma mill.¹⁶² This may explain why Achenbach was living in Luxembourg; it may also call into question his academic title. In any event, he was the drafter of Sealand's 1975 constitution, which drew heavily on the West German one.¹⁶³

In 1976, Achenbach was arrested in Luxembourg for fraud in connection with his Sealand activities.¹⁶⁴ He attempted to raise Sealand's sovereignty as a defense. When this proved unavailing, Sealand (acting through Achenbach, now the Minister of Foreign Affairs) acknowledged the jurisdiction of the International Court of Justice,¹⁶⁵ then attempted

156. See, e.g., Letter from Dr. Runge to G. Pütz & G. Paetsch (Mar. 9, 1977) (UK-NA: FCO 30/3086).

157. This argument was not completely frivolous under the treaty in force at the time, which defined the "United Kingdom" to include "any area outside the territorial sea of the United Kingdom" as to which it exercised its continental-shelf rights. Roughs Tower was perhaps such a place; the catch was that the United Kingdom's Continental Shelf Act applied only to activities involving exploitation of mineral resources. See Double Taxation Convention (1967), art. II(1)(a); Continental Shelf Act of 1964, ch 29.

158. See Letter from Carolyn B. Hubbard to F.W. Willis, Esq. (Apr. 5, 1977) (UK-NA: FCO 33/3086).

159. See Letter from Runge to Gernot Ersnt Pütz (June 14, 1977) (UK-NA: FCO 33/3086).

160. Minute from S.J. Charlton on Roughs Tower (Apr. 28, 1978) (UK-NA: DEFE 57/55).

161. See Letter from H.N.P. Harrison to C.C. Bright, Esq. (Aug. 21, 1978) (UK-NA: FCO 33/3355).

162. See *Wo Sind Sie Geblieben, Die Vielen Zeugen . . . ? [Where Are They, the Many Witnesses . . . ?]*, HAMBURGER ABENDBLATT [HAMBURG EVENING PAPER], Sept. 14, 1976 (Ger.); *Dr. Heilpr [Dr. Healer]*, DER SPIEGEL, Mar. 6, 1978 (Ger.).

163. *Chronology*, PRINCIPALITY SEALAND, <http://principality-of-sealand.eu/chronologie/chronologie.html> (last visited Jan. 23, 2012); CONSTITUTION OF 1975 (Sealand), <http://principality-of-sealand.eu/pdf/constitutions.pdf> (last visited Jan. 23, 2012).

164. See Letter from John M. Crosby to Frank W. Willis, Esq. (May 20, 1976) (UK-NA: DEFE 57/55).

165. See Minister of Foreign Affairs, Declaration Recognizing As Compulsory the Jurisdiction of the Court (Jan. 26, 1977) (UK-NA: FCO 33/3355).

(unsuccessfully) to file a complaint against Luxembourg.¹⁶⁶ Ultimately, the charges were reduced to much lesser ones of selling (Sealand) stamps and coins without a license,¹⁶⁷ and on July 7, 1978, Achenbach and his two codefendants were found guilty and fined roughly five hundred pounds each.¹⁶⁸

At roughly the same time, Achenbach decided to push the question of Sealand's sovereignty in another forum.¹⁶⁹ He petitioned the city of Aachen to terminate his German citizenship on the grounds that he was now a citizen of Sealand.¹⁷⁰ The city denied his request, so Achenbach appealed the decision. On May 3, 1978, the Administrative Court of Cologne rejected Achenbach's claim, holding that Sealand was not a state.¹⁷¹ Within months of these legal setbacks, he would try his hand at self-help: a coup d'état.¹⁷²

F. 1978: Civil War

In early August 1978, Professor Achenbach told Prince Roy he could connect him with a group of investors¹⁷³ and invited Roy and Joan Bates to Austria for a meeting, leaving Michael alone on Sealand.¹⁷⁴ On August 10, a group of men led by Gernot Pütz, Achenbach's lawyer from the citizenship lawsuit, arrived at Sealand on a helicopter.¹⁷⁵ They had a forged telegram from Roy Bates¹⁷⁶ and claimed a deal had been struck to transfer Sealand.¹⁷⁷ It was a trick, just as luring Michael's parents to Austria had been. Michael let them land, but when he went inside to get a whiskey for one of them who claimed to be ill, Pütz slammed the door on him and locked him inside.¹⁷⁸ Pütz held Michael for a few days, then put him on a fishing boat headed to the Netherlands.¹⁷⁹ Pütz stayed on the

166. See Letter from Dr. A.L.C.M. Oomen to the President of the Int'l Court of Justice (Jan. 25, 1978) (UK-NA: FCO 33/3355); Letter from A. Achenbach, Minister of Foreign Affairs to the Gov't of U.K. & N. Ir. (May 19, 1978) (UK-NA: FCO 33/3355).

167. See Letter from David Herbert to David Broad, Esq. (June 14, 1978) (UK-NA: FCO 33/3355).

168. See Letter from David Herbert to David Broad, Esq. (July 10, 1978) (UK-NA: FCO 33/3355).

169. See Letter to Gernot Pütz (Sept. 23, 1976) (Ger.) (UK-NA: FCO 33/3355).

170. *Raum für Roy [Room for Roy]*, DER SPIEGEL (July 10, 1978), <http://www.spiegel.de/spiegel/print/d-40606484.html>.

171. *In re Duchy of Sealand*, 80 I.L.R. 683 (Admin. Ct. Cologne 1978) (Ger.). The decision is discussed in more detail *infra* Part IV.B.1.

172. See Letter from H.N.P. Harrison to C.C. Bright, Esq., *supra* note 161.

173. McCullagh, *A Data Sanctuary Is Born*, *supra* note 2.

174. See Garfinkel, *supra* note 1, at 236.

175. See Alexander Achenbach, *Declaration of August 10, 1978* (UK-NA: FCO 33/3355); *Sealand Prepares to Repel Boarders*, LEADER, Sept. 7, 1979, at 16 (UK-NA: HO 255/1244).

176. See *My Four Days in Captivity at the Hands of Foreign Invaders*, COLCHESTER EVENING GAZETTE, Aug. 30, 1978 (UK-NA: HO 255/1244) [hereinafter *My Four Days in Captivity*].

177. See Simon, *supra* note 23.

178. See *My Four Days in Captivity*, *supra* note 176.

179. *Id.*

platform, along with two men variously described as Dutch businessmen¹⁸⁰ and Dutch mercenaries.¹⁸¹

Undeterred, Roy and Michael Bates met up again in Southend.¹⁸² Roy called in favors and launched his own helicopter assault on Sealand with a team of five.¹⁸³ Roy's friend John Crewdson, "who had flown helicopter stunts in James Bond films,"¹⁸⁴ was the pilot.¹⁸⁵ Attacking at dawn on August 15, 1978, they took Pütz's party by surprise.¹⁸⁶ When Michael accidentally fired his sawn-off shotgun, the junta surrendered,¹⁸⁷ and it was Pütz's turn to be locked up on Sealand.¹⁸⁸

Roy put the prisoners on trial, appointing one of his men to represent the defendants while he presided.¹⁸⁹ The two Dutchmen admitted they had "done wrong" and were released.¹⁹⁰ Pütz, however, held a Sealand passport, leading Roy to consider executing him for treason.¹⁹¹ In the end, he was fined 75,000 DM and held prisoner until it was paid,¹⁹² and in the interim, made to "wash the loos and make coffee."¹⁹³

It took several weeks for news to trickle out, but once it did, the British government had another unwelcome Sealand-related crisis on its hands. Prompted by Achenbach, the Dutch government inquired on August 24 about Hans Lavoo, one of the two Dutchmen. The Dutch minister asked whether it was "feasible to think of a Dutch patrol vessel 'passing by' the Fort and somehow happening to take appropriate action," to which his British counterpart replied it would be "unlikely to reduce the embarrassment caused to the British Government by the present situation."¹⁹⁴ Lavoo, however, had already been released, resolving that dilemma.¹⁹⁵

180. See, e.g., *Emerging Nations: Prince Valiant*, NEWSWEEK, Aug. 28, 1978, at 40 (UK-NA: FCO 33/3355).

181. See Lucas, *supra* note 35.

182. See *My Four Days in Captivity*, *supra* note 176.

183. See *Sealand Radio—Part 2*, *supra* note 69 (photograph of group, with names).

184. See Simon, *supra* note 23.

185. See *Sealand Radio—Part 2*, *supra* note 69.

186. See *My Four Days in Captivity*, *supra* note 176.

187. Lucas, *supra* note 35.

188. See *My Four Days in Captivity*, *supra* note 176.

189. Simon, *supra* note 23.

190. *Id.*

191. *Id.* (quoting Roy Bates as saying, "I've killed a lot of Germans in my time. Another one wouldn't have made much difference, but I didn't want to kill anything else, really."). *But see* CONSTITUTION OF 1975 § 19.4 (Sealand), <http://principality-of-sealand.en/pdf/constitutions.pdf> (last visited Jan. 23, 2012) ("There is no death sentence.").

192. See Minutes of Trial of Gernot Pütz, Special Court Convened in Sealand on August 30, 1978 (UK-NA: FCO 33/3355). The discrepancy in the dates—the official document is dated eleven days later than what Michael told the press in September—is just one of the many irregularities in the historical record around the coup.

193. Miller & Boudreaux, *supra* note 33 (quoting Joan Bates).

194. Letter from A.E. Furness to Clarke (Aug. 24, 1978) (UK-NA: FCO 33/3355).

195. *Id.*

In the face of Pütz's imprisonment, the German government was more insistent. The Embassy investigated,¹⁹⁶ sending the head of its legal department to Sealand by helicopter, where he confirmed that Pütz was "well and happy."¹⁹⁷ By telephone and by letter, the German Embassy protested the detention of one of its nationals.¹⁹⁸ The British government, however, argued that the imprisonment was taking place "outside British jurisdiction."¹⁹⁹ To this, the Germans shot back in a formal note that it was "in a way an act of piracy, committed on the high sea but still in front of British territory by British citizens."²⁰⁰ Despite this "somewhat petulant Note," the British government took no further action.²⁰¹ The situation was resolved when Pütz was released on September 28, six weeks after the attempted coup.²⁰²

The matter also came back to the floor of Parliament. In December 1978, Lord Kennet asked the Minister of State for the FCO, "My Lords, is it not the case that what this time may be a harmless and colourful escapade could next time, in law, be a moderately dangerous act by an unfriendly foreign Power?"²⁰³ Lord Segal's suggestion of towing the platform inside territorial waters was dismissed as impractical.²⁰⁴

Even at the time, it was unclear how much of the affair was a put-up. The German Embassy eventually concluded that the incident was a publicity stunt,²⁰⁵ but a journalist who knew Bates well confidentially told the Consulate-General it wasn't a stunt: Bates was "a reasonably honest fool . . . [who] had 'fallen among thieves.'"²⁰⁶ The most perplexing issue is Pütz's status. One bureaucrat wrote, "[H]is 'imprisonment' is not necessarily entirely involuntary,"²⁰⁷ and another reported that Pütz's fine was "the precise value of some precious stones that are known to be in [Pütz's wife's] possession."²⁰⁸ Pütz told reporters that he was "lonely and frightened" in early September,²⁰⁹ but at his release three weeks later, "it

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

197. Martin Wainwright, *Sealand Keeps Its Prisoner*, GUARDIAN, Sept. 6, 1978, at 3.

198. See Letter to R.A. Hibbert, Esq. (Sept. 6, 1978) (UK-NA: FCO 33/3355).

199. See Letter from R.A. Hibbert to Hans-Heinrich Noebel (Sept. 12, 1978) (UK-NA: FCO 33/3355).

200. See Note from Embassy of the Fed. Republic of Ger. to the Foreign & Commonwealth Office (Sept. 12, 1978) (UK-NA: FCO 33/3355).

201. See Letter from David Broad to C.C. Bright, Esq. (Sept. 15, 1978) (UK-NA: FCO 33/3355).

202. See *Lawyer Freed from Sea Fort*, GUARDIAN, Sept. 29, 1978, at 4.

203. See 397 PARL. DEB., H.L. (5th ser.) (1978) cc. 4-7.

204. See *id.*

205. See Wainwright, *supra* note 197.

206. Letter from H.N.P. Harrison to C.C. Bright, Esq., *supra* note 161 (quoting Guy Hawtin (quoting Roy Bates)).

207. Letter from David Broad to Mr. Berman (Sept. 18, 1978) (UK-NA: FCO 33/3355).

208. Letter from R.I. Clarke to Mr. Furness & Mr. Goodall (Sept. 1, 1978) (UK-NA: FCO 33/3355).

209. See Barry Gardner, *Lonely Life of the Prisoner of Sealand*, EVENING NEWS (London), Sept. 7, 1978, at 8 (UK-NA: FCO 33/3355).

was all smiles as . . . Putz shook hands with his ‘gaolers.’”²¹⁰ When Joan and Michael Bates went in January 1979 to the Netherlands to make out charges against one of the Dutchmen, their lawyer was . . . Gernot Pütz.²¹¹

G. 1978–1990: Pirate Broadcasting Redux

In the years following the restoration of the monarchy, Sealand flirted with pirate broadcasting again. In early September of 1978, while the hostage drama was ongoing, the Post Office’s radio enforcement group began logging transmissions to and from Sealand.²¹² These weren’t pirate broadcasts; they were point-to-point conversations, discussing such matters as the condition of the prisoners, press coverage, the weather out at sea, engine repairs, and grocery lists.²¹³ The Post Office staff quickly identified Roy Bates’s voice and traced the landward half of the transmissions to his flat and office in Southend.²¹⁴ They obtained a search warrant, raided the flat, and confiscated his homebuilt equipment.²¹⁵ Although Joan Bates protested to the press that Sealand’s radio equipment was “instrumental in rescuing at least ten fishermen or yachtsmen each year,”²¹⁶ Roy Bates ultimately pleaded guilty to unlicensed broadcasting in June 1979 and paid a £250 fine.²¹⁷

In an ironic twist, Bates applied for a wireless license while the prosecution was pending.²¹⁸ The Post Office was ready to supply him with a very high frequency (VHF) telephone link, but the Foreign and Commonwealth Office (FCO) objected out of fear that it might be taken as a form of recognition of some of Sealand’s claims.²¹⁹ The matter was ultimately resolved in July 1980, when the FCO dropped its objections,

210. See *Lawyer Freed from Sea Fort*, *supra* note 202. The *Times* 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* (Eng.), Sept. 29, 1978, at 4.

211. See *Jail Fear for Prince Roy’s Boy*, *EVENING ECHO*, Jan. 22, 1979 (UK-NA: HO 255/1244).

212. Log Extracts (Sept. 1–Oct. 3, 1978) (UK-NA: HO 255/1244).

213. *Id.*

214. See Report from R.E. Playle to R.S. Game on Illicit Radio Transmission (Sept. 1–Oct. 3, 1978) (UK-NA: HO 255/1244); Report from M.P. Hawkins to B. Ottaway on Illicit Transmitters Southend on Sea Area (Sept. 11, 1978) (UK-NA: HO 255/1244); Affidavit of Michael Peter Hawkins & Raymond Frank Cassell (Oct. 3, 1978) (UK-NA: HO 255/1244).

215. See Investigation into Illicit Radio Transmitters Using Marine Frequencies, and Located in the Borough of Southend (Oct. 3, 1978) (UK-NA: HO 255/1244); Investigation into Suspected Illicit Radio Transmitter at No. 14 Wickford Road Southend on Sea Essex by Michael Peter Hawkins & Raymond Frank Cassell (Apr. 30, 1979) (UK-NA: HO 255/1245); see also John Ezard, *Police Raid “King” of Sealand’s Home*, *GUARDIAN*, Oct. 4, 1978, at 2.

216. See *Police Raid Sealand Man’s Factory*, *SOUTHEND EVENING ECHO*, Mar. 28, 1979 (UK-NA: HO 255/1245).

217. See J.P. Wyllie, *Roy Bates Unlicensed Use of Marine Radio* (June 11, 1979) (UK-NA: HO 255/1244); see also *“Sealand” Ruler Fined £250*, *GUARDIAN*, Jun. 12, 1979, at 2.

218. See Letter from J.L. Baker to D. Seymour (May 17, 1979) (UK-NA: HO 255/1246).

219. The extensive correspondence can be found in the National Archives. See UK-NA: HO 255/1246.

reasoning that it was better to have Bates broadcasting under a license than running “an ungoverned radio station.”²²⁰

A group of radio hams transmitted from Sealand on its fifteenth anniversary in 1982,²²¹ and in 1986, Sealand announced that it would be taking bids for three independent radio stations to broadcast from the platform.²²² A pirate station, Radio Galaxy, was interested, but the project never seems to have gotten off the ground.²²³ Instead, Sealand announced plans in 1987 for its own TV station, with a lineup of movies and music videos.²²⁴ The venture was serious enough to print up a brochure that promised programming from a studio in Ireland relayed through an improbable one-thousand-foot mast on Sealand,²²⁵ and quoted advertising rates of ten thousand pounds for a thirty-second commercial.²²⁶ Sealand’s partner in the plans, an American named Wallace Kemper, was wanted for extradition to the United States on fraud charges and was arrested in the United Kingdom in connection with a three-million-pound fraud: the Sealand TV plan seems to have fallen apart.²²⁷ Also in 1987, Michael Bates and a group of partners bought radio gear 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.²²⁸

Sealand was also implicated in a pirate radio venture on the other side of the Atlantic. Allan Weiner, an American radio engineer who had been in trouble with the Federal Communications Commission (FCC) for unlicensed broadcasts as far back as 1971,²²⁹ set up a Honduran-flagged fishing ship named the *Sarah* four and one-half miles off the

220. Letter from J.L. Baker to G.N. Simpson (July 1980) (UK-NA: HO 255/1246).

221. See Hibberd, *supra* note 7.

222. See *Sealand Boss Reveals Plans for Radio Stations*, EVENING GAZETTE, July 31, 1986 (UK-NA: HO 255/1245); Lisa O’Kelly, *Diary: No Porn, but Sealand’s in the Family Way*, CAMPAIGN, Aug. 7, 1987.

223. See Letter from P.A.C. Baldwin to M. Coolican, Esq. (Sept. 3, 1986) (UK-NA: HO 244/1246).

224. See, e.g., Victor Davis, *Pirate Invaders Hit British TV*, MAIL ON SUNDAY, June 7, 1987, at 14 (UK-NA: HO 255/1245).

225. *Id.*

226. See SEALAND TELEVISION, LTD CHANNEL 5 (n.d.) (UK-NA: HO 255/1246).

227. See Memorandum from James Murphy on Sealand Television Ltd. (n.d.) (UK-NA: HO 255/1246).

228. See *Sealand Radio—Part 2*, *supra* note 69; *Rough Tower*, *supra* note 21 (mentioning also an aborted plan to relay MTV under the name “Star Channel”).

229. See *In re* Application of Weiner Broad. Co. for a Constr. Permit for New Int’l Broad. Station at Monticello, Maine, MM Docket No. 90-243, 6 FCC Rcd 4337, 4338 (1991) [hereinafter Application of Weiner I], *aff’d* 7 FCC Rcd. 832 (1992) [hereinafter Application of Weiner II]. Although Weiner’s application was denied, Application of Weiner II, *supra*, at 834, and even though he was apparently involved in another pirate broadcasting operation near Charleston, see *Pirate Radio Station Aboard the Motor Vessel “Fury” Shut Down in Charleston, South Carolina*, 1994 FCC LEXIS 303 (Jan. 21, 1994), he was eventually licensed in 1997, see FCC Broadcast Actions Report No. 44147, 1997 FCC LEXIS 7192 (Dec. 30, 1997), and is now the owner of WBCQ in Monticello, Maine. See *Contact*, WBCQ PLANET, http://www.wbcq.com/?page_id=2 (last visited Jan. 23, 2012).

coast of Long Island.²³⁰ He broadcast as “Radio New York International” for five days in 1987 before the Coast Guard and FCC arrested him.²³¹ Enter Sealand. In September 1988, Weiner had the *Sarah* towed back to its station off Long Beach—but this time, he registered it under a Sealand flag.²³² (Sealand, for its part, received free advertising time.²³³) The ploy failed. Although Weiner physically stayed off the *Sarah* and used a shell company to operate it, the U.S. government obtained and served a restraining order within three days after broadcasts began in October 1998.²³⁴ After some further machinations, the *Sarah* was ultimately sold to MGM, which blew it up for a scene in the action movie *Blown Away*.²³⁵ Some of Weiner’s other business partners blamed Sealand for their losses in dealing with him,²³⁶ seeking revenge on Sealand in the British courts,²³⁷ and taking their anger to the web.²³⁸

230. See generally Steven P. Phipps, *Unlicensed Broadcasting in the US: The Official Policy of the FCC*, 34 J. BROAD. & ELEC. MEDIA 137, 143–47 (1990); 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 the history of *Sarah* in the context of international radio regulation).

231. Application of Weiner I, *supra* note 229, 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.

232. Berger, *supra* note 321; Ryan Lackey, Defcon 11 Presentation (Aug. 3, 2003), video at 30:15.

233. Lackey, *supra* note 232. It’s 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 U.S. vessel. *United States v. Weiner*, 701 F. Supp. 14, 15 (D. Mass. 1988). To be more precise, Weiner acquired a four-dollar 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*, 5 J. MEDIA CULTURE, Winter 2003, available at http://www.icce.rug.nl/~soundscapes/VOLUME05/ill-fated_WRLI.shtml.

234. See *Weiner*, 701 F. Supp. at 17 (entering a permanent injunction based on a 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, *supra* note 232.

235. See England, *supra* note 233.

236. In brief, a consortium of offshore radio entrepreneurs called MPLX was drawn into the mess when Weiner took their money in a sham sale of the *Sarah*. Tracing back through the sordid story, the MPLX investors unearthed Sealand’s role and tried to hold Sealand accountable for their losses to Weiner. See *id.*; see also *The Wonderful Radio London Story*, WONDERFUL RADIO LONDON COPYRIGHTS, <http://radlon.bravehost.com> (last visited Jan. 23, 2012).

237. See Paul John Lilburne-Byford, *Occupation: Wonderful Radio London*, S.J. MEDIA CULTURE, Winter 2003, available at http://www.icce.rug.nl/~soundscapes/VOLUME05/Occupation_WLR.shtml; Paul John Lilburne-Byford, *Random Notes for Information Against Roy Bates*, ROUGH SANDS GAZETTE (Oct. 6, 2000), <http://web.archive.org/web/20030209195934/http://freebornjohn.com/RSG-1C.htm>.

238. The MPLX veterans’ main outlet was an anti-Sealand website called *Rough Sands Gazette*. See Baskir, *supra* note 68. 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

Over the years, other self-styled information pirates have cast a longing eye towards Sealand. In 2007, the Pirate Bay, a Swedish website with a devil-may-care attitude about copyright law,²³⁹ announced plans to buy Sealand.²⁴⁰ It raised over twenty thousand dollars in donations through a website at BuySealand.com, well short of the ten-figure price tag named by the royal family,²⁴¹ and negotiations ultimately broke down.²⁴² Perhaps unknowingly, the Pirate Bay was echoing the 2001 experience of Matthew Goyer, who contemplated setting up an OpenNap²⁴³ server on Sealand.²⁴⁴ Nothing lasting came of it, or of an “amateur radio day,”²⁴⁵ or of hints in 2007 that Sealand was in negotiations with Russian venture capitalists to launch a communications satellite.²⁴⁶

In addition to the regular drumbeat of stories about impending construction, Sealand has had its share of other development plans, including a 2004 Royal Bank of Sealand²⁴⁷ and a 2007 online casino.²⁴⁸ In 2007, Sealand listed itself for sale through the Spanish firm InmoNaranja.²⁴⁹

is time for Michael to come out of his dream: his dream which is in reality a nightmare involving violence and illegal guns.

Id. 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/Archive 1*, WIKIPEDIA: FREE ENCYCLOPEDIA, <http://en.wikipedia.org/wiki/Talk%3ASealand/Archive2> (last updated June 22, 2010) (archiving discussions from 2004 to present).

239. 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>.

240. See Steve Inskeep, *An Island Escape for Internet File Swappers*, NAT'L PUB. RADIO (Jan. 15, 2007), <http://www.npr.org/templates/story/story.php?storyId=6858237>.

241. See *id.*; *BuySealand.com*, PIRATE BAY BLOG (Jan. 12, 2007), <http://thepiratebay.org/blog/49> (“The price for Sealand is probably about \$2,000,000,000.”).

242. See *Woah, Overwhelming*, BUY SEALAND (Jan. 24, 2007), <http://web.archive.org/web/20070510143243/http://buysealand.com/>?. 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 came of it. See Jonas Tjersland, *Pentagon-Papirer Sikret I Atom-Bunker* [*Pentagon Papers Protected in Nuclear Bunker*], VG NETT (Aug. 27, 2010), <http://www.vg.no/nyheter/utenriks/artikkel.php?artid=10018210>.

243. OpenNap was a Napster clone, created after Napster experienced some minor legal difficulties.

244. 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.

245. Ryan Lackey, HavenCo: What Really Happened, Presentation to Defcon 11 Conference, at slide 32 (Aug. 1–3, 2003), available at <http://www.defcon.org/images/defcon-11/dc-11-presentations/dc-11-lackey/dc11-havenco.pdf>.

246. See Burke Hansen, *Sealand Seeks Satellite and Movie Deals*, REGISTER (Sept. 27, 2007), http://www.theregister.co.uk/2007/09/23/sealand_satellite_movie/ (calling Sealand “reality-challenged”).

247. See RYAN ET AL., *supra* note 12, at 11.

248. *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.”).

249. “*Smallest State*” *Seeks New Owners*, BBCNEWS (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*, PRINCIPALITY SEALAND (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/> (last visited Jan. 23, 2012). That didn’t stop

The price tag was a modest €750,000,000.²⁵⁰ 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, Roy has told the story about drug smugglers,²⁵¹ mercenaries,²⁵² Argentina,²⁵³ Libya,²⁵⁴ and the CIA.²⁵⁵

H. 1987–2011: Recent Developments

On October 1, 1987, the United Kingdom extended its territorial waters from three to twelve miles, thus bringing Sealand within the zone the United Kingdom claimed.²⁵⁶ Although it has never forced a confrontation, the United Kingdom has consistently maintained since 1987 that Sealand is within its jurisdiction.²⁵⁷ This is not to say that the government has been entirely clear on who has administrative or property rights over the place, only that it is regarded as subject to English jurisdiction.²⁵⁸ For its part, Sealand claims the extension had no effect on it, as it was already a sovereign nation.²⁵⁹

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* [*Second Life Knocks at the Door of the Real Estate Sector*], EL MUNDO (Madrid) (July 6, 2007), <http://www.elmundo.es/suplementos/suvienda/2007/499/1183672804.html>.

250. “Smallest State” Seeks New Owners, *supra* note 249.

251. See Deeley, *supra* note 116 (“American and Continental business consortia . . . proposals for a drugs smuggling centre.”).

252. See *id.* (“[A] base for the recruitment of mercenaries.”).

253. See Garfinkel, *supra* note 1, at 236.

254. See Sue Baker, *Sealand “Island” Home to a Couple*, SARASOTA HERALD-TRIBUTE, Dec. 26, 1982, at 6C.

255. See Deeley, *supra* note 116 (quoting Bates as saying “An American Church from the Bible Belt . . . asked if they could install a radio transmitter on Sealand to beam religious broadcasts to Russia. I was quite interested—they were offering a lot of money—until someone told me the Church was a front for the CIA.”).

256. 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 68. This is plausible in light of the intervening extension of British territorial waters, but I have found no independent confirmation.

257. See, e.g., Neil Watson, *Media and Marketing: A TV Pirate’s Platform for Debate—Essex Coast May Be Sailing into Deep Water*, TIMES (Eng.), 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); Michelle Perry, *Sealand Steps Up Tax Fight*, ACCOUNTANCYAGE.COM (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).

258. See Hibberd, *supra* note 7. Hibberd argues that the position of the United Kingdom was driven by a game of bureaucratic hot potato. Each ministry tried to describe Roughs Tower in a way that made it someone else’s problem. Thus, the Ministry of Defense considered it to be within the Crown Estate’s ambit, and vice versa, with the Home Office also disclaiming responsibility on the basis of statutory limits on police powers. *Id.* at 29–30. The Treasury took the position in 1997 that the Tower was “a portable chattel which happens to be resting on the seabed.” *Id.* at 30.

259. See Lucas, *supra* note 35.

In 1990, the Royal Maritime Auxiliary vessel *Golden Eye* was passing close to Sealand when Sealanders fired rifle shots to warn it away.²⁶⁰ According to Roy Bates, the shots were a warning that the *Golden Eye*, which had not responded to radio calls, was passing too close.²⁶¹ The *Golden Eye*'s crew, thinking they might be under attack, called the Thames Coastguard.²⁶² A police investigation²⁶³ and perhaps a court case in Felixstowe²⁶⁴ followed, but there is no clear report of the outcome.²⁶⁵

Other alleged threats against Sealand over the years are harder to substantiate. These include Belgian mercenaries,²⁶⁶ a Dutch plane,²⁶⁷ being stalked by German and Dutch vessels,²⁶⁸ and a U.S. helicopter "covered in rockets and heavy machine guns."²⁶⁹ Roy Bates claims to have "argued a company of royal marines out of staging a helicopter invasion."²⁷⁰ Michael Bates has said that a military helicopter tried to land marines on the platform, until he opened fire on them.²⁷¹ "Then when I came back to Southend,' [Bates] finished indignantly, 'they put me in prison, the buggers.'"²⁷²

In 1999, Prince Roy's fading health led him to appoint Michael as Prince Regent and Sovereign pro tempore.²⁷³ Roy and Joan Bates have moved off of Sealand.²⁷⁴ By 2000, they had a "pied-à-terre" in Essex.²⁷⁵ They looked for a place to live in Florida,²⁷⁶ but eventually retired to Spain.²⁷⁷ The Bateses have dual nationality but no longer use their Sealand passports when they travel.²⁷⁸ Michael Bates, for his part, has a "Hollywood-style bungalow" in Essex,²⁷⁹ where he runs a business, "Fruits of the Sea," that harvests sea fern and cockles.²⁸⁰

260. See James Cusick, *Shots Fired in Sealand's Defence of a Small Freedom*, INDEPENDENT, Feb. 24, 1990, at 6.

261. *Id.* Whether that was "too close" for its own navigational safety or the comfort of the Sealanders is not specified.

262. *Id.*

263. *Id.*

264. See *Secret Government Sealand Revelations*, *supra* note 104.

265. The most I have found is in *Welcome to Sealand*, *supra* note 2, which says only that "the matter was quickly dropped." Garfinkel, *supra* note 1.

266. See Deeley, *supra* note 116 (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").

267. *Id.*

268. See Lucas, *supra* note 35.

269. *Id.*

270. See Kessler, *supra* note 54.

271. See Lucas, *supra* note 35.

272. *Id.* (quoting Michael Bates).

273. See *History of Sealand*, PRINCIPALITY SEALAND, <http://www.sealandgov.org/history> (last visited Jan. 23, 2012).

274. See Simon, *supra* note 23.

275. See Miller & Boudreaux, *supra* note 33.

276. See Simon, *supra* note 23.

277. Lucas, *supra* note 35.

278. See Simon, *supra* note 23.

279. Lucas, *supra* note 35.

280. FRUITS OF SEA, <http://www.fruitsofthesea.demon.co.uk/> (last visited Jan. 23, 2012).

A serious fire broke out on Sealand on Friday, June 23, 2006.²⁸¹ The only person on Sealand at the time, a security guard,²⁸² tried and failed to put out the fire.²⁸³ Suffering from smoke inhalation, he had to be airlifted out to Ipswich Hospital on the mainland by a Royal Air Force helicopter.²⁸⁴ More than twenty firefighters responded,²⁸⁵ from a mix of private and governmental groups.²⁸⁶ A tug sprayed Sealand with water as smoke billowed hundreds of feet into the air.²⁸⁷

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 25.²⁸⁸ The damage, however, was extensive, estimated at half a million pounds.²⁸⁹ That total doesn't include the costs of putting out the fire, for which the rescue services decided not to charge Sealand.²⁹⁰ 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.²⁹¹ Over much of the next year, work crews cleaned out the mess, repaired the living quarters, and made Sealand

281. See *Sealand on Fire*, EVENING STAR (Ipswich) (June 23, 2006), http://www.eveningstar.co.uk:80/news/sealand_on_fire_1_108767.

282. See *Sealand in Ruins After Blaze*, E. ANGLIAN DAILY TIMES (June 24, 2006), http://www.eadt.co.uk/news/sealand_in_ruins_after_blaze_1_75958.

283. See *Sealand on Fire*, *supra* note 281.

284. See Rebecca Barry, *The RAF Sea King: 2000 and Counting*, BBCNEWS, http://www.bbc.co.uk/suffolk/content/articles/2006/06/27/sea_king_barry_feature.shtml (last updated July 16, 2008).

285. See *Sealand on Fire*, *supra* note 281 (listing groups the Royal National Lifeboat Institution, the Thames and Felixstowe Coastguards, and the national Maritime Incident Response Group).

286. See *Sealand in Ruins After Blaze*, *supra* note 282.

287. *Id.* Dramatic photographs of the blaze and its aftermath are available at *Sealand on Fire—Part 1*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/Sealand_Fire/Sealand_Fire.html (last updated Dec. 20, 2010).

288. *Sealand on Fire—Part 1*, *supra* note 287. Extensive photographic documentation of the reoccupation is available at *Sealand After the Fire—Part 3*, BOB LE-ROI, http://www.bobleroi.co.uk/ScrapBook/SealandFire_3/SealandFire_3a.html (last updated June 25, 2006).

289. *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.

290. *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 23, at 29 (describing incident on July 27, 1964); *id.* at 34 (February 13, 1966); *id.* at 43 (March 3, 1974); *id.* at 63 (January 27, 1968); *id.* at 66 (June 2, 1970); *id.* at 71 (Feb. 24, 1965, Apr. 23, 1965, Aug. 20, 1965, and Jan. 11, 1966); *id.* at 76 (July 18, 1958); *id.* at 77 (Feb. 12, 1962); *id.* at 86–87 (Apr. 10, 1971); *id.* at 88 (Nov. 22, 1971); *id.* at 91 (Dec. 25, 1960); *id.* at 98 (June 7, 1964); *id.* at 99 (Jan. 9, 1963); *id.* at 100 (June 19, 1966); *id.* at 102 (Oct. 28, 1965, Nov. 28 1965, Nov. 9, 1966, and noting that “Walton lifeboat were prepared to take the men off, but stated that they were not a ferry service”); *id.* at 106 (Apr. 3, 1973); *id.* at 122 (Sept. 1, 1974, and including “considerable inconvenience” for the coast guard); see also CONWAY, *supra* note 38, 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 23, at 32 (grounding of *Mi Amigo* in 1966); *id.* at 63 (grounding of *Tiri* in 1966); *id.* at 76 (grounding of *Cheeta* in 1958); *id.* at 106 (grounding of *Nordeney* in 173). The *Mi Amigo* sank in heavy weather in 1980.

291. *Inside Out: Sealand Fort Offshore* (BBC television broadcast), available at <http://www.youtube.com/watch?v=im5G5xYmK0I>.

habitable again.²⁹² A post-fire website, now offline, referred to an “exclusive building contract,” and sought investors for the rebuilding for “business ventures that are legal both in the UK and Sealand.”²⁹³

I. *Life on Sealand*

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.²⁹⁴ The living quarters now have double-glazed glass and electric stoves,²⁹⁵ and the views are, unsurprisingly, “awesome.”²⁹⁶ Less cheerfully, one caretaker explained, “I like being on my own . . . but one couple spent a few weeks out here and went mad, leaving suicide notes all over the place.”²⁹⁷ A journalist called it a “scrap heap,” a “rusting heap of junk,” and a “decrepit hulk.”²⁹⁸ Although Sealand sports a helipad, the main way on is by winch from the waves below.²⁹⁹ Reporters’ accounts of the experience are typically hair raising.³⁰⁰

The nation has never supported much of a population. In 2002, Sealand reported to the Summit of Micronations that it had a population of twenty-seven.³⁰¹ The number is almost certainly exaggerated. For months in the late 1960s, Michael Bates and another man, Walter Mierisch, were the only ones aboard.³⁰² For much of the 1990s, Roy Bates occupied it by himself.³⁰³ After HavenCo’s launch, the Sealanders came aboard only for press visits; otherwise, it was occupied by one or two HavenCo employees.³⁰⁴ When one reporter visited in 2000, the “crew” consisted of two men.³⁰⁵ When another reporter visited in 2004, “the crew” aboard Sealand consisted of two men, Mike and John, supported by a shore-based “Sealand Guard” of three more: Jez, Wayne, and Sean.³⁰⁶

292. *Id.*

293. *Thoughts from the Sealanders*, CHURCH E., LTD., <http://web.archive.org/web/20080105062408/http://www.churchandeast.co.uk/sealand.htm> (last visited Jan. 23, 2012).

294. *Sealand Radio—Part 1*, *supra* note 24.

295. Miller & Boudreaux, *supra* note 33.

296. Sellars, *supra* note 30.

297. *See id.*

298. *Id.* *See also* Lucas, *supra* note 35 (“claustrophobic”); Kim Gilmour, *Wish You Were Here?*, PAST ARTICLES BY KIM GILMOUR (Apr. 26, 2004), http://www.kimgilmour.com/articles/archive/the_offshore_data_haven.html (comparing Sealand to an industrial Amsterdam squat).

299. *See* Garfinkel, *supra* note 1, at 235.

300. Sealand requires visitors to sign liability waivers. *See* Sellars, *supra* note 30.

301. *Sealand*, SUMMIT MICRONATIONS, http://www.mu.fi/amorph03/downloads/pdfs/principality_of_sealand.pdf (last visited Jan. 23, 2012).

302. Lucas, *supra* note 35.

303. *See* Garfinkel, *supra* note 1, at 236.

304. Lackey, *supra* note 245.

305. Garfinkel, *supra* note 1 (“Our boat, the *Paula Maree*, pulls away from the coast toting enough canned food and drinking water to feed Sealand’s current two-man crew for another week.”).

306. Lucas, *supra* note 35. *Cf.* Lackey, *supra* note 232, audio at 27:57 (“If you look at the photos, you’ll see the same people all the time, and you can easily deduce how many people are there.”).

Sealand has a flag,³⁰⁷ a passport stamp,³⁰⁸ a national anthem,³⁰⁹ a coat of arms,³¹⁰ and a motto: *e mare libertas* (“from the sea, freedom”).³¹¹ It also has a Facebook page,³¹² a Twitter account,³¹³ and a YouTube channel.³¹⁴ The 1975 constitution drafted by Professor Achenbach has been replaced with a newer one, again a constitutional monarchy.³¹⁵ The government gives its address as SEALAND 1001, but then invariably adds, “c/o Sealand Post Bag, IP11 9SZ, UK.”³¹⁶ For years, Sealanders would present their Sealand passports when traveling,³¹⁷ and accumulated stamps from a fair number of nations.³¹⁸

Sealand has conferred honorary titles on various celebrities for their support, such as TV presenter Ben Fogle,³¹⁹ 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.³²⁰ The “Sealand Shopping Mall” sells the opportunity to purchase a title of Sealand nobility, complete with a

307. The flag is rectangular, with proportions of 5:3. The upper-left triangle is red; the lower-right triangle consists of a white diagonal stripe above a black triangle. *File: Flag of Sealand.svg*, WIKIPEDIA: FREE ENCYCLOPEDIA, http://en.wikipedia.org/wiki/File:Flag_of_Sealand.svg (last visited Jan. 23, 2012). *See also* Deeley, *supra* note 116 (“Red for Roy, white for purity and black for our pirate radio days.”).

308. *See* Simon, *supra* note 23; Lucas, *supra* note 35.

309. The anthem, by Basil Simonenko, *Sealand, Principality of*, NATIONALANTHEMS.INFO, <http://www.nationalanthems.info/sea.htm> (last visited Jan. 23, 2012), can be heard in full (if synthetic) arrangement. *Anthem of Principality of Sealand*, YOUTUBE, <http://www.youtube.com/watch?v=tePgys9euF8> (last updated Feb. 24, 2008).

310. 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. A merlion is creature with the head of a lion and the body of a fish, best known as a national symbol of Singapore.

311. 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*.

312. *Principality of Sealand*, FACEBOOK, <http://www.facebook.com/PrincipalityOfSealand> (last visited Jan. 23, 2012).

313. *SealandGov*, TWITTER, <http://twitter.com/SealandGov> (last visited Jan. 23, 2012).

314. *Sealand Video*, YOUTUBE, <http://www.youtube.com/user/SealandVideo> (last visited Jan. 23, 2012).

315. *Fact File*, *supra* note 139; *see also* SUMMIT MICRONATIONS, *supra* note 301 (dated an implausible 1966).

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

317. Lucas, *supra* note 35.

318. HavenCo cofounder Sean Hastings’s website has images of stamps and visas from countries 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* (Apr. 20, 2009) (on file with author).

319. To watch Fogle’s conferral ceremony, *see Sealand on the One Show 2011*, YOUTUBE, at 4:10, http://www.youtube.com/watch?v=P_LnPYRSLic (last updated Feb. 21, 2011).

320. *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/.

“Deed of Individual Noble Title Ownership.” The price is £29.99 plus £4.99 postage.³²¹

Sealand has a sporadic but active cultural life. A wedding was held on Sealand in 1979.³²² The Bateses sold their film story to a Hollywood screenwriter for perhaps twenty thousand dollars.³²³ The energy drink Red Bull sponsored a skating video filmed on Sealand in 2008.³²⁴ Pete Wentz from the band Fall Out Boy at one point announced his interest in playing a Sealand gig.³²⁵ Sealand also sometimes lends its name to athletes. Martial artist Michael Martelle represented Sealand at the Festival Culturel Chinois de Québec;³²⁶ its National Football Team is a Danish club in Vestbjerg.³²⁷ Slader Oviatt carried a Sealand flag to the top of Muztag Ata, a 7546 meter peak in China.³²⁸

J. Other Sealand

Sealand has a doppelganger: following his failed coup attempt, Professor Achenbach established a government-in-exile in Germany. According to its theory of matters, Roy Bates “was declared dethroned on account of his anti-constitutional behaviour and his intentions to sell state-rights to a consortium, thereby robbing the citizens of Sealand of their own chances.”³²⁹ In response, Sealand citizens engaged in an “*unarmed*” occupation of their state’s territory,” but Bates “repossessed the island in an act of ‘piracy’ which violated all existing laws.”³³⁰ At that point, the “still constitutional government of Sealand under Mr. Achenbach” went into exile.³³¹ The German Sealand accepts that it is in

321. *Become a Lord, Lady, Baron or Baroness!*, PRINCIPALITY SEALAND, <http://www.sealandgov.org/title-pack/lordladybaronbaroness>.

322. See *Church Agree to Sealand Wedding*, EVENING GAZETTE, Apr. 9, 1979, at 8 (UK-NA: HO 255/1245); *Sealand Radio—Part 2*, *supra* note 69 (photographs).

323. Lucas, *supra* note 35. 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>; see also *Sealand*, IMDB, <http://www.imdb.com/title/tt1223973/> (last visited Jan. 23, 2012). A series of unsourced posts at the *Sealand News* website in 2007 linked director Mike Newell and actress Emma Watson to it. See *Popular Films*, COVERAGE, INK, <http://web.archive.org/web/20081222170656/http://www.sealandnews.com/category/sealand-the-movie/> (last visited Jan. 23, 2012) (claiming that Mike Newell is attached to Sealand project in development).

324. *Skateboarding the World’s Smallest Country: Red Bull All Access*, YOUTUBE, http://www.youtube.com/watch?v=7pHwkbDx_34 (last updated Nov. 12, 2008). The highlight of the clip is an accident in which a skateboard goes over the side. See *Red Bull Access All Areas Meets Sealand*, YOUTUBE, <http://www.youtube.com/watch?v=jhCVoKZYYNU> (last updated Dec. 23, 2008) (longer version, with interviews).

325. 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.

326. FESTIVAL CULTUREL CHINOIS DE QUÉBEC [CULTURAL CHINESE FESTIVAL OF QUÉBEC] (July 7–8, 2007) (Fr.).

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

328. *Id.*

329. See Achenbach, *supra* note 175, at 4.

330. *Id.* at 4.

331. *Chronology*, *supra* note 163.

exile and that Bates has actual possession of Sealand. It also hopes “to reinstall Roy of Sealand at an opportune time as its sovereign.”³³² Nonetheless, acting on behalf of “people of the Principality of Sealand,” it claims authority to make law for the country.³³³

Achenbach transferred Roy’s powers to a syndic via constitutional amendment,³³⁴ appointing his lawyer, Dr. A.L.C.M. Oomen, as syndic in the fall of 1978.³³⁵ A Constitution Council promulgated a new constitution in 1989.³³⁶ The 1989 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 adds German as a national language.³³⁷

In 1988 and 1989, Achenbach and Oomen established Johannes W.F. Sieger as Prime Minister and Chairman of the Privy Council.³³⁸ 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.³³⁹

Some of these activities are strange indeed. One involves a so-called “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.”³⁴⁰ 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,³⁴¹ lost-treasure

332. CONSTITUTION OF 1989 pmb. (Sealand), <http://principality-of-sealand.eu/pdf/constitutions.pdf> (last visited Jan. 23, 2012).

333. *Id.*

334. *See Chronology, supra* note 163.

335. *Id.*

336. CONSTITUTION OF 1989 pmb. (Sealand), <http://principality-of-sealand.eu/pdf/constitutions.pdf> (last visited Jan. 23, 2012).

337. *Id.*

338. Declaration of Dr. A.L. Chr. M. Oomen (June 12, 1989), http://principality-of-sealand.eu/pdf/oomen_1989_06_12.pdf; *History of Sealand, supra* note 273. For more on Seiger, see Christian Litz, *Der Herr Premierminister, fern der Heimat [Mr. Prime Minister, Far from Home]*, BRAND EINS, May 2001, at 148 (Ger.).

339. *About*, PRINCIPALITY SEALAND, http://www.principality-of-sealand.eu/about/about_d.html (last visited Jan. 23, 2012).

340. Government Decision 05-01-2004, Principality of Sealand (May 1, 2004), http://principality-of-sealand.eu/pdf/e_government_decision05012004.pdf.

341. *See, e.g., Aus der Arbeit der Regierungskommission [From the Work of the Government Commission] «VRILIA»*, PRINCIPALITY SEALAND, http://principality-of-sealand.eu/vril/vril_docs_d.

conspiracy theory,³⁴² regular conspiracy theory³⁴³ and repeated conflicts with the German authorities.³⁴⁴ 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.”³⁴⁵

A Spanish group has engaged in even shadier dealings using the Sealand name. In the late 1990s, a nightclub and filling station owner under investigation for selling diluted gasoline identified himself as Sealand’s “consul” and claimed diplomatic immunity.³⁴⁶ The police ultimately found three “Sealand” offices and filed charges against some eighty people.³⁴⁷ Their actual crimes were a mixture of two-bit and brazen: everything from skipping town with unpaid hotel bills to gunrunning.³⁴⁸ They appeared to be led by a Spaniard named Francisco Trujillo, who fancied himself Sealand’s “regent” and a colonel in its armed forces (for which he had uniforms designed) and ran a supposed Sealand Embassy in Madrid.³⁴⁹ The group had created a website³⁵⁰ that promoted

html (Ger.) (last visited Jan. 23, 2012) (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, Diplomatic Mission of the Principality of Sealand in the German Empire (Apr. 20, 2000) [hereinafter Press Release of April 20, 2000], http://principality-of-sealand.eu/pressecorner/e_pm1_span_010420.html.

342. See, e.g., *Amber Room, Reichspostschatz (Treasure of the Reichspost) and Other Missing Cultural Goods*, PRINCIPALITY SEALAND, http://principality-of-sealand.eu/hotstuff/kulturgueter_e.html (last visited Jan. 23, 2012) (discussing search for “Amber Room” looted by Nazi government from Russia during World War II and presumed lost).

343. See, e.g., *New Community of Philosophers*, PRINCIPALITY SEALAND (Feb. 2004), http://www.principality-of-sealand.eu/pdf/e_new_community_of_philosophers_us.pdf (“The clandestine background power that completely dominates the U.S. is Zionism in all its facets together with international Freemasonry controlled by it!”).

344. See, e.g., *Law Suits*, PRINCIPALITY SEALAND, http://principality-of-sealand.eu/chronologie/rechtstreit_e.html (last visited Jan. 23, 2012) (“Who put the political leadership in Brandenburg under Matthias Platzeck and its criminal judiciary in their place?”).

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

346. Miller & Boudreaux, *supra* note 33.

347. *Id.*

348. *Id.*

349. *Id.*

350. See PRINCIPALITY SEALAND, <http://web.archive.org/web/20001205065000/http://www.principality-sealand.net/> (last visited Jan. 23, 2012).

Sealand to potential investors.³⁵¹ 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 Sudan.³⁵² There may have been a connection between the Spanish group and the German Sealand; if so, however, its exact nature remains obscure.³⁵³ Sealand itself has unconditionally denounced the Spaniards.³⁵⁴

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.³⁵⁵ Others were sold to would-be illegal immigrants to Europe³⁵⁶ and to fearful residents of Hong Kong in the run-up to the Chinese resumption of sovereignty in 1997.³⁵⁷ After Andrew Cunanan murdered the fashion designer Gianni Versace, he holed up on a houseboat before killing himself.³⁵⁸ 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.³⁵⁹ The investigation led a State Depart-

351. The site claimed Sealand had a population of 160,000. See Gooch, *supra* note 36. It asked for foreign investment in a range of projects that put Sealand’s own ambitions to shame: “A luxury hotel and casino, business center, sports complex, medical center, tuition-free University of Sealand, and Roman Catholic cathedral.” Miller & Boudreaux, *supra* note 33. 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 36. *Id.* 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 [Sealand, a False Principality at Sea]*, EL PAÍS (Madrid) (last visited Jan. 23, 2012), available at <http://paginaspersonales.deusto.es/abaitua/kanpetzu/primate/sealand.htm>.

352. See *Sealand y el Tráfico de Armas [Sealand and Arms Trafficking]*, EL MERCURIO (Santiago), June 17, 2000, available at <http://diario.elmercurio.cl/detalle/index.asp?id={5e1cb892-1c4e-42d1-9be2-46584a8df133}>.

353. 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 33. Presumably, the company was Isopol GMBH, named in *Sealand y el Tráfico de Armas*, *supra* note 352. 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 33. 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*, *supra* note 352. “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, 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 341. At this, the German Sealand says it 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.*

354. See Miller & Boudreaux, *supra* note 33.

355. Gooch, *supra* note 36.

356. See *Viel Geld für eine Affenfahrt [Lots of Money for a Monkey Ride]*, DER SPIEGEL, May 22, 1989, <http://www.spiegel.de/spiegel/print/d-13495310.html> (“Monkey Ride” is the apparently racist term used by Saarland taxi drivers smuggling immigrants across the border.).

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

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

359. 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 36. Reineck, who also used the name T. Matthias “Doc” Ruehl in business ventures, had an outstanding

ment representative to state, “I can tell you, in no uncertain terms, that the United States does not recognize the Principality of Sealand.”³⁶⁰

Still other claims have been made to Sealand over the years. In 2009, one “King Marduk I” asked the United Nations to recognize him as the ruler of Sealand.³⁶¹ Even though almost nothing was known about him, and he had never been to Sealand, King Marduk had big plans, saying, “We have a strategy to create a new Sealandcity, wind farms, and an enterprise platform which will be a centre for modern communication technologies and a paradise for enterprise strategies.”³⁶² Nothing more has been heard from him since. Another short-lived claim was made online by the “Republic of Sealand” in early 2011.³⁶³

K. 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 in 2006. The contrast between the big dreams—the three-mile floating island, the casino, the tanker port—and the reality has always been striking. Commercially, Sealand hasn’t been much of a success either: Bates claims to have poured large sums of money into it.³⁶⁴ It has always been surrounded by a swarm of schemers, scammers, and mystery men: Ronan O’Rahilly, Alexander Achenbach, Wallace Kemper, King Marduk.

Still, there’s a reason why even Red Bull and Fall Out Boy have been drawn to this “craziest kind of story ever.”³⁶⁵ Sealand is a powerful symbol: a place outside of the national system, literally offshore.³⁶⁶ As a

warrant for fraud in Europe and was under investigation in Germany for tax evasion. See DuBocq, *supra* note 358.

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

361. Andrea Collitt, *Essex: Sealand Rejects Ownership Claim*, ECHO (Jan. 22, 2009), [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 *modus operandi* 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.* United Nations membership 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.” See Baker, *supra* note 254.

362. *Geates*, *supra* note 290.

363. The Republic’s website (now defunct) was at <http://www.republicofsealand.com>. The Principality issued a statement via its Facebook page declaring the Republic “fraudulent.” Principality of Sealand, *Fraudulent Sealand Site*, FACEBOOK (Mar. 26, 2011, 4:21 PM), http://www.facebook.com/note.php?note_id=10150129578259706.

364. See STRAUSS, *supra* note 12, at 137 (over a million pounds); Kessler, *supra* note 54 (“\$300,000 so far”). But see SINCLAIR & LE-ROI, *supra* note 32, 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.”).

365. Montgomery, *supra* note 325.

366. 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).

symbol, it has resonated with other dreamers.³⁶⁷ Roy Bates had plenty of big dreams, and so did his German and Spanish rivals. Sealand passports were a lucrative business, one suspects, 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 and the Pirate Bay.³⁶⁸

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.³⁶⁹ Bates occupied first Knock John and then Roughs Tower by evicting the previous inhabitants. Roy and Michael Bates 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 the Bates family 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. Roy plays reporters like violins,³⁷⁰ and the archival files make clear that he was running circles around befuddled bureaucrats during the crucial first years of 1967 and 1968. Behind the roguish eccentricity, there's also a remarkable force of will. Almost everyone who has visited Sealand is eager to leave after a short while, but the Bateses have stuck it out for over forty years. And Roy Bates personally led the helicopter assault on Sealand during the 1978 counter-coup; he has the outsize personality of other colonial liberators: a Bolivar or a Nkrumah.³⁷¹ To quote the

367. The Dutch studio Metahaven, fascinated by Sealand's rich symbolic and metaphoric content, produced an extensive multiyear art project, the Sealand Identity Project, to explore its implications. *Sealand Identity Project 2003–2004*, META HAVEN, <http://sealand.janvaneyck.nl/> (last visited Jan. 23, 2012); The Network Ruin: Three Letters to Prince Michael, in DANIEL VAN DER VELDEN & VINCA KRUK, *UNCORPORATE IDENTITY METAHAVEN* (2010).

368. See JOHNS, *supra* note 37, at 251–54.

369. See *id.* at 233–36. In 1969, the Associated Press reported that Bates “said that he would shoot at anyone who tried to violate his sovereignty.” *Owner of Fort Off Britain Issues His Own Passports*, N.Y. TIMES, Mar. 30, 1969, at 8.

370. As 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 & LE-ROI, *supra* note 32, 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).

371. Hibberd describes Britain's indecisive Sealand policy as “a small but typical example of Britain's post-imperial malaise.” Hibberd, *supra* note 7, at 2. For a good example of Sealand's intriguing status as a post-colonial nation, consider an editorial cartoon of a man in a rowboat next to a Sealand-esque platform. *British Keep out Independent*, SUN (Eng.), Oct. 28, 1968. The caption reads, “Says his name is Smith—wants to know how we got away with it.” *Id.* At the time, Ian Smith was the Prime Minister of Rhodesia, which had declared independence from Britain in an attempt to preserve white minority rule.

man himself, “We may die rich, we may die poor. But we certainly shall not die of boredom.”³⁷²

III. 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.³⁷³ Lackey was an independent-minded MIT dropout.³⁷⁴ 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.³⁷⁵ To put their libertarian beliefs and technical skills into action, they were both looking to create a *data haven*.

A. “Data Haven”

As Michael Froomkin explains, a data haven is “the information equivalent to a tax haven—a single nation that offer[s] to warehouse data offshore.”³⁷⁶ An ideal data haven would combine substantial computer infrastructure with highly permissive laws on what can be done with those computers. A combination of fast servers and loose laws means 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,”³⁷⁷ it has a surprising, and revealing, prehistory. 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.³⁷⁸ Companies started to respond by physically shipping computers and storage media to countries with relatively

372. See Deeley, *supra* note 116.

373. SEAN HASTINGS, DATAHAVEN ch.1 (2008).

374. *Id.*

375. Ryan Lackey, *Answers from Sealand*, SLASHDOT (July 3, 2000), <http://news.slashdot.org/story/00/07/02/160253/answers-from-sealand-cto-ryan-lackey-responds>.

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

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

378. See generally Paul M. Schwartz, *European Data Protection Law and Restrictions on International Data Flows*, 80 IOWA L. REV. 471, 473–77 (1995) (describing national laws imposing territorial restrictions).

looser laws.³⁷⁹ Government commissions studying the problem began to be concerned about the possibility of “data haven” jurisdictions deliberately offering lower privacy standards.³⁸⁰

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.³⁸¹ Norman predicted that small countries would be “willing to provide data havens analogous to tax havens.”³⁸² Alerted to the issue, 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.³⁸³ The idea of regulatory evasion through offshoring data, however, had escaped into wider consciousness.³⁸⁴

Science fiction writers knew a compelling concept when they heard one.³⁸⁵ Parts of William Gibson’s “Sprawl trilogy”³⁸⁶ take place on the Freeside space station, which floats in high-earth orbit.³⁸⁷ One of its more

379. See, e.g., G. Russell Pipe, *At Sea Over Pirate Data Banks*, 73 NEW SCI., 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”).

380. See, e.g., HOME OFFICE, REPORT OF THE COMMITTEE ON DATA PROTECTION (Oct. 1978). The first use of the term that I have been able to track down is in 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). See generally Barry M. Goldwater, Jr., *Data Havens: International Privacy Threat*, 9 COMP. DECISIONS, June 1977, at 22, 23–24 (discussing governmental studies of data haven problem).

381. Adrian Norman, *Project Goldfish*, 1 IPC SCI. & TECH., Sept. 1978, at 8, 9 (1978); see also ADRIAN R.D. NORMAN, COMPUTER INSECURITY 308 (1983).

382. Norman, *supra* note 381, at 10.

383. See, e.g., Council Directive 95/46 art. 26, 1995 O.J. (L 281) 31, 46 (EC) (requiring European Union Member States to restrict “transfers of personal data to a third country which does not ensure an adequate level of protection”).

384. The term appears to have entered the U.S. law review literature in 1980. See Frits W. Hondius, *Data Law in Europe*, 16 STAN. J. INT’L L. 87, 103 (1980); Eric J. Novotny, *Transborder Data Flows and International Law: A Framework for Policy-Oriented Inquiry*, 16 STAN. J. INT’L L. 141, 150 (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 376, at 491; Robert M. Gellman, *Can Privacy Be Regulated Effectively on a National Level? Thoughts on the Possible Need for International Privacy Rules*, 41 VILL. L. REV. 129, 158 (1996); Douglas Yarn, Note, *The Development of Canadian Law on Transborder 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 PACE L. REV. 1, 20 (1998).

385. 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* (2000) (“Like, this place is a data haven?”); THOMAS F. MONTELEONE, *EYES OF THE VIRGIN 100* (2002) (“Kate glowed as she began to tell him about data havens. ‘Basically, they’re like safe deposit boxes for digital information—but much bigger.’”).

386. WILLIAM GIBSON, *COUNT ZERO* (1986); WILLIAM GIBSON, *MONA LISA OVERDRIVE* (1988) [hereinafter GIBSON, *MONA LISA OVERDRIVE*]; WILLIAM GIBSON, *NEUROMANCER* (1984) [hereinafter GIBSON, *NEUROMANCER*].

387. GIBSON, *NEUROMANCER*, *supra* note 386, at 75.

profitable lines of business, Gibson mentions in almost offhand fashion, is serving as a data haven.³⁸⁸ 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 super sharp ceramic machetes to mutagenic suntan lotion that changes its user's race.³⁸⁹ 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.³⁹⁰ More recently, Neal Stephenson's *Cryptonomicon* describes the best-known fictional data haven.³⁹¹ 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.³⁹²

The other group to take the data haven idea seriously was the cypherpunks.³⁹³ 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.³⁹⁴ For the cypherpunks, security through encryption was a moral imperative, because it would make all forms of government restrictions on speech unenforceable.³⁹⁵ The Thought Police can't arrest you if they don't know you are a dog. Many of the cypherpunks were programmers; they sought to create the neces-

388. GIBSON, MONA LISA OVERDRIVE, *supra* note 386, at 128.

389. BRUCE STERLING, ISLANDS IN THE NET 104–05 (1988) (suntan lotion); *id.* at 106–07 (machete).

390. *Id.* at 19.

391. *See generally* NEAL STEPHENSON, CRYPTONOMICON (1999).

392. *See id.* at 310–20.

393. The two groups are related. The cypherpunks were frequently inspired by sci-fi visions, and *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 160,000-word FAQ and compendium of cypherpunk information. *See* Timothy C. May, *The Cyphernomicon*, CYPHERPUNKS (Sept. 10, 1994), <http://www.cypherpunks.to/faq/cyphernomicon/cyphernomicon.txt>. Neal Stephenson, *Cryptonomicon CypherFAQ* § 3 (1999), http://web.mac.com/nealstephenson/Neal_Stephensons_Site/cypherFAQ.html (discussing similarity of titles). A critical link was Vernor Vinge's highly influential story, *True Names*, in *Binary Star No. 5*, 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).

394. *See generally* STEVEN LEVY, CRYPTO: HOW THE CODE REBELS BEAT THE GOVERNMENT—SAVING PRIVACY IN THE DIGITAL AGE 187–225 (2002) (describing the history of the cypherpunk movement); HIGH NOON ON THE ELECTRONIC FRONTIER pt. III (Peter Ludlow ed., 1996) (same); CRYPTO ANARCHY, CYBERSTATES, AND PIRATE UTOPIAS pt. II (Peter Ludlow ed., 2001) (collecting major writings of cypherpunk theory); Steven Levy, *Crypto Rebels*, WIRED, May–June 1993.

395. *See, e.g.*, Eric Hughes, *A Cypherpunk's Manifesto*, in CRYPTO ANARCHY, *supra* note 394, at 81, 81 (“Privacy is necessary for an open society in the electronic age. . . . We seek not to restrict any speech at all.”); Timothy C. May, *The Crypto Anarchist Manifesto*, in CRYPTO ANARCHY, *supra* note 394, at 61, 61 (“A specter is haunting the modern world, the specter of crypto anarchy.”).

sary technological tools for the crypto revolution³⁹⁶ as well as fight for the legal right to use them.³⁹⁷

The cypherpunks used “data haven” in the standard sense of a permissive jurisdiction, but also imagined that a data haven could be “off-shore in cyberspace.”³⁹⁸ In 1993, Timothy May released BlackNet, a proof-of-concept system that used encryption to enable a fully anonymous information market³⁹⁹ in anything governments would like to prohibit, potentially including “medical, religious, [and] chemical” information, and “credit databases, deadbeat renter files, organ bank markets, etc.”⁴⁰⁰ 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[]”⁴⁰¹—but to cypherpunks, these consequences were either desirable in themselves or outweighed by the overall increase in freedom.⁴⁰²

This is where HavenCo’s founders enter the picture. American programmer Vince Cate had moved to Anguilla in 1994, renounced his U.S. citizenship,⁴⁰³ and started a “data haven” Internet company named Offshore Information Services.⁴⁰⁴ Sean Hastings followed with his own

396. See, e.g., Hughes, *supra* note 395, at 82 (“Cypherpunks write code.”).

397. 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).

398. May, *supra* note 393, §§ 15.8.3, 16.22.1.

399. See Timothy C. May, *Introduction to BlackNet*, in HIGH NOON, *supra* note 394, at 241; Timothy C. May, *BlackNet Worries*, in HIGH NOON, *supra* note 394, at 245. For a more modern version of the same dream, consider Silk Road, a “digital black market” that is only accessible via the anonymizing TOR network and “makes buying and selling illegal drugs as easy as buying used electronics—and seemingly as safe.” Adrian Chen, *The Underground Website Where You Can Buy Any Drug Imaginable*, GAWKER (June 1, 2011), <http://gawker.com/5805928/the-underground-website-where-you-can-buy-any-drug-imaginable>.

400. Timothy C. May, *Crypto Anarchy and Virtual Communities*, in CRYPTO ANARCHY, *supra* note 394, at 65, 72.

401. Dorothy E. Denning, *The Future of Cryptography*, in CRYPTO ANARCHY, *supra* note 394, at 85, 87–88.

402. See, e.g., Duncan Frissell, *Re: Denning’s Crypto Anarchy*, in CRYPTO ANARCHY, *supra* note 394, at 105.

403. Peter Wayner, *Encryption Expert Says U.S. Laws Led to Renouncing of Citizenship*, CYBERTIMES (Sept. 6, 1998), <http://www.theater.nytimes.com/library/tech/98/09/cyber/articles/06/encrypt.html> (“Before renouncing his U.S. citizenship, Cate became a citizen of Mozambique for a fee of about \$5,000.”).

404. Steve G. Steinberg, *Offshore Data Haven*, WIRED, May 1996, at 40; OFFSHORE INFORMATION SERVICES, <http://www.offshore.com.ai/> (last visited Jan. 23, 2012). See also Charles Platt, *Plotting Away in Margaritaville*, WIRED, July 1997, at 140 (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 (last visited Jan. 23, 2012) (describing encryption service based in Nevis).

Anguillan data haven company, IsleByte,⁴⁰⁵ and worked with Cate on an electronic currency called SAXAS.⁴⁰⁶ Ryan 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.⁴⁰⁷ Both Hastings and Lackey were thoroughly committed to the cypherpunk vision, and their creation of HavenCo should be seen in that light.

There's 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.⁴⁰⁸ 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.⁴⁰⁹ More generally, governmental control sounds like a better or worse idea depending on your views about the government in question.⁴¹⁰

B. Rise

Hastings and Lackey 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.⁴¹¹ Pornography and gambling were both illegal, and a company could be shut down by court order.⁴¹² Instead, inspired by Erwin

405. See *About Us*, ISLEBYTE, <http://replay.waybackmachine.org/20040605084719/http://islebyte.com/about.html> (last visited Jan. 23, 2012). Cate was probably first. Hastings moved to Anguilla in 1997, but Cate founded OIS in 1994.

406. See Hastings, *supra* note 373.

407. See 1 LAURA LAMBERT, *THE INTERNET: A HISTORICAL ENCYCLOPEDIA* 56 (Hilary W. Poole ed., 2005); Lackey, *supra* note 232, video at 35:35.

408. 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 licenses, voter registrations, vehicle registrations—to anyone who is willing to pay for it."). *But see About, PUBLICDATA.COM*, (Feb. 3, 2001), <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").

409. Cf. An Metet, *Gmail As Blacknet* (Apr. 8, 2004), <http://www.mail-archive.com/cypherpunks-moderated@minder.net/msg08753.html> ("Cypherpunks see privacy as a means to an end. That end is freedom.").

410. Compare Norman, *supra* note 381, at 10–11 (expressing concern about data haven-abetted businesses), with Tim May, Panel on Computers, Freedom, and Privacy, Untraceable Digital Cash, Information Markets, and BlackNet (1997), <http://osaka.law.miami.edu/~froomkin/articles/tcmay.htm> (expressing enthusiasm for same).

411. Hastings, *supra* note 373. Ironically in light of HavenCo's future, Anguilla is a British Overseas Territory. *Anguilla*, in CENT. INTELLIGENCE AGENCY, *THE CIA WORLD FACTBOOK 2010*, at 20, 22 (2009). 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.

412. See Garfinkel, *supra* note 1, at 235. Not every Caribbean nation was so reticent. See Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Bet-*

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.⁴¹³

The most promising prospect was Sealand, which features prominently in Strauss's book.⁴¹⁴ Hastings pulled together a web site with a dossier of information on Sealand and its claims to independence.⁴¹⁵ The two of them sought investors and found a group including Avi Freedman and Joichi Ito, successful Internet entrepreneurs.⁴¹⁶ Hastings and his wife Jo made contact with the Bates family and flew to England to check Sealand out.⁴¹⁷ 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.⁴¹⁸

Hastings and Lackey moved forward, opening negotiations with the royal family. The Bateses were immediately interested: "[t]his [was] the first [proposal] that seemed to be really suited to what we are," Roy would later say.⁴¹⁹ They drew up a business plan,⁴²⁰ articles of incorporation,⁴²¹ and bylaws⁴²² for a Sealand corporation to be named HavenCo. Its initial board of directors comprised Sean and Jo Hastings, Lackey, Freedman, and Ito.⁴²³ Sameer Parekh, a well-known computer security entrepreneur, became chairman of the board.⁴²⁴ They predicted that their revenue could potentially reach sixty-five million dollars by the end of the third year of operation,⁴²⁵ with a total headcount of nineteen em-

ting Services, WT/DS285/AB/R (Apr. 7, 2005) (upholding World Trade Organization complaint by Antigua and Barbuda against the United States for discriminating against Antiguan online gambling services).

413. Hastings, *supra* note 373.

414. See STRAUSS, *supra* note 12.

415. See Hastings, *supra* note 318.

416. Hastings, *supra* note 373.

417. *Id.* at ch.2.

418. *Id.* (rephrasing Archimedes' famous remark, "Give me a place to stand, and I will move the Earth").

419. See Markoff, *supra* note 2.

420. *HavenCo Business Plan* (n.d.) (on file with author). The most detailed sections of the plan are the ones dealing with the technical requirements: power, costs of storage, and network connections.

421. *Articles of Incorporation of HavenCo, Ltd.* (n.d.) (on file with author). 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.

422. *Bylaws of HavenCo, Ltd.* (Aug. 19, 2007), <http://web.archive.org/web/20070819012137/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 (Diana Fitzpatrick ed., 14th ed. 2011).

423. *Articles of Incorporation of HavenCo, Ltd.*, *supra* note 421.

424. See Garfinkel, *supra* note 1, at 234.

425. See *HavenCo Three-Year Projection* (Mar. 25, 2005), <http://web.archive.org/web/20070819012343/http://www.seanhastings.com/havenco/bplan/ThreeYear.html>. A more modest Executive

ployees by the end of the first.⁴²⁶ The capitalization plan gave the founders a two-thirds stake, with the remaining one-third of the equity to be split between corporate advisors and the royal family.⁴²⁷ Those stakes would be diluted with two rounds of venture capital and an IPO that would ideally value the company at five hundred million dollars and leave Sean, Jo, and Ryan each sitting on almost fifty million dollars in HavenCo stock.⁴²⁸

Sealand would offer its customers a combination of first-world infrastructure and third-world regulation.⁴²⁹ Its website promised adherence to the “Philosophy of Contract Autonomy, as opposed to the Philosophy of Regulation.”⁴³⁰ Echoing famous cyberlibertarian manifestoes, HavenCo declared, “Free communication [sic] 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[.]”⁴³¹

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.⁴³² On the technical level, it planned to offer customers redundant hardware and cryptographic security.⁴³³ Ultimately, it hoped to offer a “secure execution environment,” in which customers’ data was encrypted at all times, even when being operated on, so that not even HavenCo could tell what they were doing.⁴³⁴

Physical security was 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.⁴³⁵ Four guards were to be on duty at all times, and those guards would be *pack-*

Summary predicted only \$25 million profit in the third year. *HavenCo, Ltd. Business Plan, Executive Summary* (Feb. 2, 2009), <http://web.archive.org/web/20090202121414/http://www.seanhastings.com/havenco/bplan/ExecSummary.html>

426. *HavenCo One-Year Projections* (n.d.) (on file with author) (listing job positions including “Marketing Droids” #1, #2, and #3).

427. *HavenCo Capitalization Projections* (Mar. 16, 2005), <http://web.archive.org/web/20070819012247/http://www.seanhastings.com/havenco/bplan/Capitalization.html>.

428. *Id.*

429. See *Why HavenCo?*, HAVENCO (Oct. 18, 2000), http://web.archive.org/web/20001018230840/www.havenco.com/products_and_services/why.html. See also *Frequently Asked Questions*, HAVENCO (Aug. 16, 2000), http://web.archive.org/web/20000816001345/www.havenco.com/about_havenco/faq.html (no reporting requirements).

430. *Frequently Asked Questions*, *supra* note 429.

431. *Id.*

432. *HavenCo Business Plan*, *supra* note 420; see, e.g., Garfinkel, *supra* note 1, at 239.

433. *HavenCo Business Plan*, *supra* note 420, §§ 4.1.1–4.1.3 (redundancy); *id.* § 2.2 (cryptography).

434. E-mail from Ryan Lackey (Feb. 18, 2011) (on file with author).

435. See Garfinkel, *supra* note 1, at 232.

ing:⁴³⁶ .50 caliber machine guns are not for the dilettante.⁴³⁷ 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."⁴³⁸

On the policy side, Sealand wouldn't be a zone of complete lawlessness. An "anonymous and untraceable payment system" or an "old-fashioned, adults-only pornography" would be one thing,⁴³⁹ "but if you want to run a spamming operation, launder drug money, or send kiddie porn anywhere—forget it."⁴⁴⁰ The typical customer, HavenCo expected, would be a company looking for subpoena-proof data storage.⁴⁴¹

Since network links could be cut, particularly by Britain, HavenCo planned redundant links to multiple countries⁴⁴² and expected satellite communications to be a workable backup.⁴⁴³ A physical blockade would be "difficult to maintain" and "solvable through negotiation."⁴⁴⁴ And even invasion wouldn't be the end of the world: "legal actions" and "diplomatic arrangements" would be possible.⁴⁴⁵ The company expected Sealand to "negotiate as an equal"⁴⁴⁶ with other countries and to press any adverse rulings in the courts of the countries making them.⁴⁴⁷

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."⁴⁴⁸ Given the high prices companies had been willing to pay for colocation 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.⁴⁴⁹ It also appeared that it might be a necessary fallback: representatives

436. See *id.* at 239.

437. Bruce Porter, *The Big, Bad, Fun Gun*, N.Y. TIMES, Nov. 26, 2000, at SM106 ("[E]ffective range of . . . more than four miles . . . bullet clear through the one-inch rolled steel used on most armored military vehicles.").

438. See *id.*; see also *Frequently Asked Questions*, *supra* note 429 (describing customers' options in case of contract termination, including destruction and shipment of hardware).

439. See Garfinkel, *supra* note 1, at 232.

440. 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 "Material 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 (Oct. 18, 2000), <http://web.archive.org/web/20001018202320/www.havenco.com/legal/aup.html>.

441. See Garfinkel, *supra* note 1, at 232.

442. See *id.* at 239.

443. *HavenCo Business Plan*, *supra* note 420, § 3.4.2.3.1.

444. *Id.* § 3.4.2.3.2.

445. *Id.* § 3.4.2.3.3.

446. *Id.* § 3.4.2.4.3.

447. *Id.* § 3.4.2.4.4 ("If this fails, the world court will be petitioned.").

448. *Id.* § 3.4.2. 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.

449. See *id.* § 3.3.1 (discussing competition for providing secure colocation facilities, with prices).

from both the United Kingdom and United States stated to a reporter that their governments did not recognize Sealand.⁴⁵⁰ The company itself was incorporated in Anguilla, then later reincorporated in Cyprus,⁴⁵¹ but was also registered to do business in England in 2000.⁴⁵²

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 will have taken occupation of his island, we will control Sealand.”⁴⁵³ 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.⁴⁵⁴

HavenCo launched in 2000 with a *Wired* cover story and a great deal of optimism.⁴⁵⁵ The combination triggered a media explosion notable for its lack of serious further reporting.⁴⁵⁶ But following the initial outpouring of interest, HavenCo dropped quickly off the radar screen. Ryan Lackey appeared at the Defcon conference in 2001⁴⁵⁷ and the Hackers on Planet Earth conference in 2002⁴⁵⁸ to give status updates: things were going modestly but well, and the future 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.⁴⁵⁹ 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 left the company “for personal reasons” by the end of the summer of 2000.⁴⁶⁰ The company operated in a

450. See Garfinkel, *supra* note 1, at 239 (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.”).

451. Lackey, *supra* note 232, video at 20:35.

452. Simon, *supra* note 23.

453. *HavenCo Business Plan*, *supra* note 420, § 3.4.2.2.1.

454. *Id.* § 3.4.2.4.2.

455. See Garfinkel, *supra* note 1, at 239 (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!”).

456. Lackey, *supra* note 232 (criticizing media).

457. Ryan Lackey, HavenCo: One Year Later, Presentation at Defcon 9 (n.d.), <https://media.defcon.org/dc-9/audio/dc-09-ryan-lackey-audio.m4b> (audio).

458. Ryan Lackey & Avi Freedman, Presentation to H2K2 Hackers on Planet Earth Conference, The Ultimate Co-Location Site (2002), <http://www.h2k2.net/media/collocation.mp3>.

459. Lackey, *supra* note 232, audio at 28:10.

460. See *id.*

kind of corporate informality, never issuing stock to its investors and employees, even as the years rolled on.⁴⁶¹

Its facilities never came close to the image it created among the public. The south tower was never full of servers,⁴⁶² and the nitrogen was a myth, too, as HavenCo had admitted in 2002.⁴⁶³ The real reason visitors weren't allowed down the south tower wasn't 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[]"⁴⁶⁴ 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.⁴⁶⁵ The satellite link HavenCo relied on in its place had only 128Kbps of bandwidth—roughly the speed of a good personal home Internet connection at the time.⁴⁶⁶ When the company was hit with denial-of-service attacks, the outages sometimes lasted for days.⁴⁶⁷

HavenCo had about ten customers;⁴⁶⁸ most were online gambling sites.⁴⁶⁹ In 2002, HavenCo told a reporter that it had been profitable since 2001.⁴⁷⁰ 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.⁴⁷¹ 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.⁴⁷² A "gentleman's agreement" with Prince Regent Michael held

461. *Id.* audio at 20:10.

462. *See id.* audio 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).

463. *See* Gilmour, *supra* note 298; Lackey, *supra* note 232, audio at 10:10.

464. *See* *Products and Services*, HAVENCO (Oct. 18, 2000), http://web.archive.org/web/20001018203445/www.havenco.com/products_and_services/index.html.

465. Lackey, *supra* note 245, slides at 20.

466. *Id.* slides at 9, 20.

467. *Id.* slides at 19.

468. *Id.* slides at 13. *But see* Lackey, *supra* note 232, audio at 14:30 (claiming ten new customers in one particular week in 2001).

469. *See* Gilmour, *supra* note 298 (fifty-percent gambling); Lackey, *supra* note 232, audio at 43:05 ("There is an organ option site that has transacted exactly zero organs, there is a casino, an online stock market that only trades that casino . . ."); *Stranger Than Paradise: Transcript*, ON MEDIA (May 20, 2005), <http://www.onthedia.org/2005/may/20/stranger-than-paradise/transcript/> ("all" gambling). The one nongambling business I have been able to specifically identify was a company selling unauthorized "Fast400" accelerators for IBM minicomputers. One of its owners explained that they had been "happy customers" of HavenCo. E-mail from Leif Svalgaard (Feb. 23, 2011) (on file with author).

470. *See* Gilmour, *supra* note 298.

471. Lackey, *supra* note 245, slides at 13.

472. *Id.* slides at 14.

through the fall of 2001,⁴⁷³ but then an advisor to the royal family entered the picture.⁴⁷⁴ According to Lackey, the advisor interfered with technical decisions, such as recommending expensive and unreliable changes to its network connectivity.⁴⁷⁵ The advisor also demanded that customer inquiries be handled by his girlfriend in the United Kingdom: Lackey objected for security reasons, but the royal family backed the advisor.⁴⁷⁶ Worse, the advisor was concerned that HavenCo was bad for Sealand's image and quest for sovereignty.⁴⁷⁷ Lackey took to adding new services, such as an anonymizing remailer, on the sly.⁴⁷⁸

Things came to a head in May 2002, when Malaysian entrepreneur Alex Tan approached Sealand with a plan to serve streaming video.⁴⁷⁹ Tan's previous site, film88.com, had offered users video on demand, utterly without permission, and was quickly shut down by the movie industry.⁴⁸⁰ 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.⁴⁸¹ A Sealand advisor told the royal family that it risked bad publicity, and they balked at the deal.⁴⁸² The fear was that the United States would pressure Britain to put pressure on Sealand if it turned into a streaming-movie source,⁴⁸³ and the Bateses were determined to protect Sealand's standing as a responsible member of the world community.⁴⁸⁴

The decision was the straw that broke the camel's back for Lackey,⁴⁸⁵ who decided to make a gradual exit from the "stagnating" compa-

473. Lackey, *supra* note 232, audio 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.'").

474. Lackey, *supra* note 245, slides at 14-15.

475. *Id.* slides at 15.

476. *Id.* slides at 24 (discussing advisor's attempt to win Sealand recognition from the International Telecommunications Union, which would have led to a top-level domain).

477. *Id.* slides at 15.

478. *Id.* slides at 17; *see also* Lackey, *supra* note 232, audio at 17:35 (discussing Lackey's addition of new clients while concealing their nature from the royal family); *id.* audio at 23:35 (discussing Sealand's concern that launching a gold-backed electronic currency could be perceived as money laundering).

479. Declan McCullagh, *Has "Haven" for Questionable Sites Sunk?*, CNET NEWS (Aug. 4, 2003), http://news.cnet.com/2100-1028_3-5059676.html; Lackey, *supra* note 232, audio at 22:00.

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

481. McCullagh, *supra* note 479. 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, *supra* note 232, audio at 22:20 ("That might have been legal under Sealand law, because we could have written it.").

482. McCulloch, *supra* note 479; *see also* Lackey, *supra* note 232, audio at 18:00 ("We had more restrictions placed on us than a U.S. ISP.").

483. *Stranger than Paradise*, *supra* note 469. A U.S. 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); *see also* Warner Bros. Entm't Inc. v. WTV Sys., Inc., 99 U.S.P.Q. (BNA) 1663 (C.D. Cal. Aug. 1, 2011) (granting an injunction against service streaming movies from legally purchased DVDs).

484. *See* E-mail from Michael Bates to Nate Anderson (Oct. 13, 2011) (on file with author).

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

ny.⁴⁸⁶ Meanwhile, Prince Michael, worried by Lackey's increasingly secretive ways, had lost trust in him.⁴⁸⁷ 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.⁴⁸⁸ Lackey would continue as a reseller of HavenCo services.⁴⁸⁹ He turned over administrative access to the servers.⁴⁹⁰

According to the account Lackey gave at Defcon, Prince Regent Michael and his advisors broke the agreement within days,⁴⁹¹ freezing Lackey out completely and seizing personal computers left behind.⁴⁹² 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.⁴⁹³ Since Sealand now had both physical and virtual control of the servers, HavenCo had been "effectively 'nationalized.'"⁴⁹⁴ 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."⁴⁹⁵ Lackey went, of all places, to Iraq, where he founded an ISP, Blue Iraq, providing Internet connectivity for the military and contractors.⁴⁹⁶

The new HavenCo also took a rather different attitude toward offshore hosting. A spokesman said that its acceptable use policy "forbids any act . . . which is against international law . . . or contrary to international custom and practice."⁴⁹⁷ Sean Hastings of HavenCo suggested that Sealand's turn away from an anything-goes attitude was sparked by the

486. Lackey, *supra* note 245, slides at 1, 22.

487. See E-mail from Michael Bates to Nate Anderson, *supra* note 484.

488. Lackey, *supra* note 245, slides at 25.

489. *Id.*

490. *Id.* slides at 26.

491. Lackey, *supra* note 232, audio 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.").

492. *Id.* audio at 25:56; see also Lackey, *supra* note 245, slides at 25.

493. Lackey, *supra* note 232, audio at 25:26; see also *id.* audio at 15:15 ("[M]aking capital improvements to a place we didn't really own."); *id.* audio at 26:09 ("They also owe me \$220,000."). Michael Bates, however, disputes this account, arguing that he also put large amounts of time and effort into HavenCo and received almost nothing for it. See E-mail from Michael Bates to Nate Anderson, *supra* note 484.

494. Lackey, *supra* note 245, slides at 31.

495. McCullagh, *supra* note 479 (quoting Sealand representative).

496. See Jon Evans, *Wiring the War Zone*, WIRED (Sept. 2005), <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. Jon Evans, *Blood, Bullets, Bombs, and Bandwidth*, REZENDI.COM, <http://www.rezendi.com/travels/bbbb.html> (last visited Jan. 23, 2012).

497. McCullagh, *supra* note 479 (quoting HavenCo representative). Sealand, as a nonparty to any international copyright agreements, would presumably not be bound by them.

terrorist attacks of September 11, 2001.⁴⁹⁸ But the attitude was clear even in an August 2001 interview Roy Bates gave to NPR's Scott Simon. In Bates's words, "We wouldn't do anything which was anti-British or unethical or whatever, you know."⁴⁹⁹ Bates explained that he had passed up many business opportunities because they were "a little bit on the wrong side, you know."⁵⁰⁰ Simon called Bates "a loyal British subject who sees Sealand as a British invention."⁵⁰¹

The new HavenCo claimed to have numerous customers and a growing installation.⁵⁰² In 2004, the locals were still denying reporters permission to see most of the south leg of the tower.⁵⁰³ 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."⁵⁰⁴ 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 offence."⁵⁰⁵ 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.⁵⁰⁶ Today, even the HavenCo website is gone.

IV. 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

498. See Sean Hastings, Presentation to the Seasteading Institute Conference, Experiences with HavenCo and Sealand (Sept. 30, 2009), available at <http://vimeo.com/7907103> at 14:20.

499. See Simon, *supra* note 23.

500. *Id.*; see also Miller & Boudreaux, *supra* note 33 ("There was always something that didn't smell right.").

501. See Simon, *supra* note 23.

502. But see Lackey, *supra* note 245, slides at 27; Lackey, *supra* note 232, audio at 27:00 (refuting the new HavenCo's claims with a technical analysis of its network).

503. See Lucas, *supra* note 35, at 4. 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, *supra* note 232, audio at 28:40.

504. HAVENCO (June 11, 2007), <http://web.archive.org/web/20070611102734/www.havenco.com>.

505. See *Sealand Internet Law*, HAVENCO (June 11, 2007), <http://web.archive.org/web/20070611102806/www.havenco.com/law.html>.

506. See *HavenCo "Data Center" Offline?*, SECURITY & NET (Nov. 18, 2008), <http://securityandthe.net/2008/11/18/havenco-data-center-offline/>.

operations. Intertwined with this question will be another: why did HavenCo fail?

This Part argues 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.⁵⁰⁷ HavenCo's relationships 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-government 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-government, 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?*⁵⁰⁸ 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, their emphasis on national law understates their case, since it tends to make law look like government fiat. As we will 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 an essay, *Be Careful What You Ask For: Reconciling a Global Internet and Local Law*, and concludes: "[T]he existence of Sealand doesn't much change the nature of the jurisdiction and governance debates."⁵⁰⁹ Like Goldsmith and Wu, Zittrain 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 sev-

507. See BRIAN Z. TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* 3 (2004). Cf. Suzor, *supra* note 17, at 1820–42 (discussing multiple conceptions of the rule of law as applied to virtual worlds).

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

509. Zittrain, *supra* note 3, at 18.

en-page section to HavenCo and Sealand in a casebook, although only one of those pages is original.⁵¹⁰ 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.⁵¹¹ 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.⁵¹² 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, although they discuss 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.⁵¹³ They don’t connect their analysis to HavenCo’s struggles with national governments, or to Sealand’s own legal system. Let us do so.

A. National Law

HavenCo’s *raison d’être* was to allow its customers to avoid national laws.⁵¹⁴ 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.

510. ZITTRAIN, *supra* note 3, at 40–46. The remaining pages consist of excerpts from Simson Garfinkel’s and Zittrain’s articles. See generally Garfinkel, *supra* note 1; Zittrain, *supra* note 3. A photograph of Sealand also graces the cover of the book.

511. ZITTRAIN, *supra* note 3, at 46.

512. See Arenas, *supra* note 6, at 1173, 1181; Dennis, *supra* note 3, at 296; Note, *Sealand—The Next New Haven?*, 27 SUFFOLK TRASNAT’L L. REV. 127, 146 (2003). 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, at 434, or on ships, see Kramer, *supra* note 3, 366–68. 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.

513. 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, 106–11 (1994); Petros Siousiouras & Isidoros Tsouros, *Island Regime in the Context of the Montego Bay Convention on the Law of the Sea*, 60 RHDI 359, 364–65 (2007).

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

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.⁵¹⁵ Had HavenCo succeeded, though, these rules 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.⁵¹⁶ 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 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.⁵¹⁷

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

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

516. 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.

517. Garfinkel, *supra* note 1, at 32.

has control over the data, MacroMaxx can be ordered to produce it.⁵¹⁸ Generations of scammers and tax evaders have learned that the security of offshore banking lasts only as long as they're willing to endure a civil contempt order—in prison.⁵¹⁹ In order to protect itself from the unpleasant application of local law, a business has to avoid touching ground in a jurisdiction altogether.⁵²⁰ 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.⁵²¹

Some businesses are willing to stay purely virtual, but most aren't, for a natural reason: they want to *do business*.⁵²² 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.⁵²³ 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.⁵²⁴ HavenCo repeatedly dealt with companies (especially gambling sites) that wanted to create complete businesses. In order to take payments in a country, the companies would need to incorporate there—and once they had, they typically purchased colocation locally, as well.⁵²⁵ In Ryan Lackey's words, "Sovereignty alone has little value without commercial support from banks, etc."⁵²⁶

518. See Zittrain, *supra* note 3, at 18.

519. See, e.g., *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1238–44 (9th Cir. 1999) (finding that Ponzi-scheme operators retained control over 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 it, and affirming the contempt finding against them).

520. One HavenCo customer was indeed brought to heel by a civil lawsuit, albeit years after the HavenCo/Sealand deal had fallen apart. See Timothy Prickett Morgan, *The Fast400 Saga Ends: IBM and Stracka Settle Lawsuit*, 14 IT JUNGLE (Nov. 21, 2005), <http://www.itjungle.com/tfh/tfh112105-story01.html>.

521. 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 REPORT OF THE COMMITTEE ON DATA PROTECTION, *supra* note 380. Even the European Union Data Protection Directive, a product of the mid-1990s, arguably 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 art. 26, 1995 (L 181) 31, 46 (EC).

522. See GOLDSMITH & WU, *supra* note 3, at 57.

523. *Id.* at 8.

524. 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, *supra* note 245, slides at 18; see generally OPENNET INITIATIVE, <http://opennet.net/> (last visited Jan. 23, 2012) (providing an in-depth analysis of national Internet filtering regimes).

525. Lackey, *supra* note 232, audio at 11:15.

526. Lackey, *supra* note 245, slides at 34.

If companies realized that the costs of noncompliance 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. HavenCo’s one publicly confirmed client, the Tibetan government in exile,⁵²⁷ is now hosted by an Internet company in Arkansas.⁵²⁸ U.S. 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,⁵²⁹ has arguably had the opposite effect. The United States hasn’t adopted European restrictions on hate speech; most European countries haven’t adopted U.S. restrictions on online gambling. The hate speech pours forth from U.S. 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.⁵³⁰

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 card number and go buy a server at a company with thousands of servers.”⁵³¹ Today, now that vertically integrated criminal organizations 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 casual lawbreakers are mostly content to use highly insecure but free and convenient services,

527. Garfinkel, *supra* note 1, at 234.

528. This fact can be confirmed by querying the whois servers of Network Solutions Inc., which reveal that the technical contact for tibet.com is Carl Shivers, of Aristotle Inc. in Little Rock, Arkansas. NETWORK SOLUTIONS, <http://www.networksolutions.com/whois-search/tibet.com> (last visited Jan. 23, 2012).

529. See ZITTRAIN, *supra* note 3, at 6–8 (describing the “‘slowest ship in the convoy’ problem”).

530. See Lackey, *supra* note 232, audio at 13:25 (estimating the cost of HavenCo colocation at ten times the cost of comparable land-based colocation); *HavenCo., Services Rate Sheet*, HAVENCO (Oct. 10, 2001), http://replay.waybackmachine.org/20020406103213/http://www.havenco.com/products_and_services/rates.html (quoting the least expensive hosting plan of \$750 per month). The collapse of the dot-com bubble also put paid to HavenCo’s expectation 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.” Lackey, *supra* note 232, audio at 14:00.

531. Gilmour, *supra* note 298.

rather than pay even a little for actual anonymity.⁵³² Seven years of copyright lawsuits have done little to stem the file-sharing tide; it would appear that most users don't know or don't care that the Recording Industry Association of America's (RIAA) 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 needs HavenCo?

2. *The Rule of Law As Self-Government*

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 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."⁵³³

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. Under modern political theory, the only legitimate source of legal authority is the mutual consent of the governed.⁵³⁴ What Rousseau called the "general will" binds the people, to be sure, but it also derives from and reflects their own wishes, thereby ensuring that "it neither has nor could have an interest contrary to theirs."⁵³⁵

These democratic theories amount to a vision of the rule of law as *self-government*: laws are legitimate if and only if they derive from the consent of the governed.⁵³⁶ 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.⁵³⁷ HavenCo's business model depended on its ability to thwart the general will of any country that crossed its path.

532. Cf. BRUCE STERLING, *TOMORROW NOW: ENVISIONING THE NEXT FIFTY YEARS* 242 (2002) ("Then all I have to do is place it offshore in some ninja-haunted concrete data haven and defy the police to come get me!").

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

534. See JÜRGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 449 (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.").

535. *On the Social Contract, or Principles of Political Right*, in *BASIC POLITICAL WRITINGS OF JEAN-JACQUES ROUSSEAU* 139, 150 (Donald A. Cress trans., 1987).

536. See TAMANAHA, *supra* note 507, at 99–101 (discussing democratic theories of the rule of law).

537. Reidenberg, *supra* note 533, at 1951 (emphasis added).

HavenCo and other Internet libertarians attacked this self-government vision of the rule of law in two ways. First, they questioned whether national governance was truly *self-government* 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.⁵³⁸ 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."⁵³⁹ 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-government 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.⁵⁴⁰ The American ideal of free speech as an inalienable right—with its strong overtones of Mill's harm principle⁵⁴¹—resonated strongly in the age of the Internet.⁵⁴² But it is also a profoundly *American* ideal; other democracies balance free speech against other goals in very different ways.⁵⁴³ 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-government 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 legitimately reflected in national and local laws."⁵⁴⁴

538. See, e.g., David R. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1375–76 (1996).

539. John Perry Barlow, *A Declaration of the Independence of Cyberspace*, in CRYPTO ANARCHY, *supra* note 394, at 27, 27.

540. 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 507, at 102–13. This argument resonates with HavenCo's experience in that it recognizes the antidemocratic 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.

541. See JOHN STUART MILL, ON LIBERTY 22 (1869).

542. See, e.g., Barlow, *supra* note 539 ("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.").

543. See, e.g., Joel R. Reidenberg, *Yahoo and Democracy on the Internet*, 42 JURIMETRICS 261, 263 (2002) (stating that France "has chosen rules for free expression . . . that do not mirror the U.S. constitutional protections found in the First Amendment").

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

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."⁵⁴⁵ As we have seen, this Internet-abetted form of regulatory arbitrage renders national law meaningless.⁵⁴⁶ At the same time, however, 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 wasn't an exercise in pure lawlessness. 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.⁵⁴⁷

It is therefore time to consider the question of Sealand's statehood under international law.⁵⁴⁸ It would take a full article to do justice to the arguments for and against.⁵⁴⁹ 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 its jurisdiction, all other questions are moot. The United Kingdom believes that it is, which in a sense is the end of the matter. No other state, or at least none with a seagoing navy, has questioned that claim. As in the 1960s and in 1978, Roy Bates and his family will be allowed to remain, so long as their presence does not seriously threaten any important interests of the United Kingdom. But if they do, the Royal Navy will take appropriate action. As in the past, Sealand is protected mainly by the Ministry of Defense's unwillingness to use violence against its defenders. This is a public relations question, not a legal one.

545. Gilmour, *supra* note 298.

546. See A. Michael Froomkin, *The Internet As a Source of Regulatory Arbitrage*, in BORDERS IN CYBERSPACE: INFORMATION POLICY AND THE GLOBAL INFORMATION INFRASTRUCTURE 129, 142 (Brian Kahin & Charles Nesson eds., 1997).

547. 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.

548. As part of its campaign for recognition, Sealand formally recognized the obligations of the United Nations charter and the jurisdiction of the International Court of Justice. Bela Vitanyi, *Legal Opinion About the International Status of the Principality of Sealand*, 1978 (UK-NA: FCO 33/3335).

549. For significant academic contributions to the analysis, see Arenas, *supra* note 6; Dennis, *supra* note 3; Walter Leisner, *Legal Expert Opinion on the Jus Gentium Situation of the Principality of Sealand*, Feb. 5, 1975 (UK-NA: LO 33/2705); Vitanyi, *supra* note 548.

Still, we might ask whether the legal materials back up the claims made by the United Kingdom or by Sealand. One source of ambiguity over the years has been the overlapping legal questions at stake. There are at least four: (1) whether Sealand is a sovereign state, (2) whether the United Kingdom has the jurisdiction to prescribe the legal consequences of actions taken there, (3) which court or courts would have jurisdiction to hear the case, and (4) who owns Roughs Tower as a matter of English property law. The bureaucratic dithering of 1966–1968 was primarily concerned with (3) and (4): that is, not with the interesting question of what Sealand was, but with the more prosaic one of how to obtain legal leverage over Roy Bates within the accreted mess of a legal system still bearing the traces of Henry VIII, and worse, of Henry II.⁵⁵⁰

The place to start is the 1968 prosecution of Roy and Michael Bates on charges of violating the Firearms Act, *Regina v. Bates*.⁵⁵¹ No one contended that Roughs Tower was British territory in itself. Instead, the parties joined issue on the question of whether the court's 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 “the old jurisdiction of the Admiral.”⁵⁵² Nineteenth century courts limited their admiralty jurisdiction to ships flying the British flag.⁵⁵³ 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.⁵⁵⁴ 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.⁵⁵⁵

The other possible basis of jurisdiction was Parliament's “power to legislate over British Subjects anywhere.”⁵⁵⁶ In some cases, Parliament clearly had: murder, bigamy, and treason were offenses wherever committed.⁵⁵⁷ 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.”⁵⁵⁸ Summarizing his holding,

550. On the jurisdictional complexity of (3), see generally MICHAEL HIRST, JURISDICTION AND THE AMBIT OF THE CRIMINAL LAW (2003) (discussing the limits of English criminal jurisdiction).

551. Transcript of Record, *R. v. Bates*, [1968] K.B. at 2 (Eng.) (UK-NA: LO 2/1088).

552. *Id.*

553. See, e.g., *R. v. Keyn*, [1876] 2 Exch. Div. 63, at 86 (Eng.).

554. Territorial Waters Jurisdiction Act, 1878, c. 73 (Eng.).

555. *Regina v. Bates*, [1968], §§ 2, 7 (UK-NA: LO 2/1088) (transcript of the shorthand notes of Hibbit and Sanders). But see Jones & Foot, *supra* note 31, at 7 (arguing that admiralty jurisdiction would have been available in the case of an “offense, otherwise within the jurisdiction of the Admiral, . . . committed by a British subject on a Fort in the open sea”).

556. *Bates*, at 8.

557. *Id.* at 3, 8.

558. *Id.* at 8–9.

Mr. Justice Chapman explained, “Parliament has no doubt 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.”⁵⁵⁹

Thus, although the decision in *Bates* is sometimes treated by Sealand’s advocates as holding that Sealand is independent,⁵⁶⁰ its true scope is much narrower. The case does not say that Parliament *could not* legislate for Sealand; only 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: it is a case about (3), not about (2), and certainly not about (1). 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.⁵⁶¹

Any ambiguity created by the decision should have been cleared up by the United Kingdom’s 1987 extension of territorial waters to twelve miles, an act that seems 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.”⁵⁶² 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.⁵⁶³ Sealand has indeed made such a claim.⁵⁶⁴ But here, too, international law has taken the United Kingdom’s side.⁵⁶⁵ 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,”⁵⁶⁶ and UNCLOS made the rule even more explicit.⁵⁶⁷ Courts in

559. *Id.* at 8.

560. *See, e.g.,* Vitányi, *supra* note 548 (“[T]he judgment of Mr. Justice Chapman of the fact that Sealand is situated outside the limits of Great Britain’s sovereignty.”).

561. *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 402 cmt. d., at 239 (1987) (“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 . . .”).

562. United Nations Convention on the Law of the Sea, art. 3, Dec. 10, 1982, 1833 U.N.T.S. 397, 400 [hereinafter UNCLOS III]. The United Kingdom did not accede to UNCLOS III until 1997. Thus, to be more precise, the United Kingdom’s claims are unproblematic under customary international law, which UNCLOS III is generally recognized as reflecting and embodying.

563. *See* Convention on the Territorial Sea and the Contiguous Zone, art. 12, Apr. 29, 1958, 516 U.N.T.S. 205, 212–14.

564. *See* Lucas, *supra* note 35 (noting that Sealand has extended its own claimed territorial limit to twelve miles in order to preserve its sea access).

565. *See* Arenas, *supra* note 6, at 1176–78.

566. Convention on the Continental Shelf, art. 2(2) 29, Apr. 1958, 499 U.N.T.S. 311, 312. *But see* Vitányi, *supra* note 548 (“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.”).

567. *See* UNCLOS III, *supra* note 562, art. 60(2), at 419–20 (giving “coastal State” “exclusive jurisdiction” over artificial islands and other similar structures within its exclusive economic zone (EEZ)); *id.*, art. 80, at 430 (extending EEZ rights under article 60 to apply also to “artificial islands,

cases involving artificial islands near the Floridian and Italian coasts have upheld coastal states' rights to prohibit upstart artificial islands.⁵⁶⁸

Let us assume, counterfactually, that the United Kingdom was willing to allow Sealand to be a state. Would it be one? Unfortunately, "international legal sources provide no satisfactory definition of 'state.'"⁵⁶⁹ The "best known formulation of the basic criteria" is probably the 1933 Montevideo Convention,⁵⁷⁰ which sets out four conditions: "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States."⁵⁷¹ The *Restatement (Third) of Foreign Relations* uses a similar four-element test.⁵⁷² These lists are controversial and have been criticized as being both over- and underinclusive, but there is no commonly accepted alternative codification.⁵⁷³ Modern practice may be converging on requiring additional elements as preconditions to international recognition, such as democratic self-government and protection of minority rights—but these may or may not be conditions of statehood itself.⁵⁷⁴ I will use the Montevideo criteria to structure the following discussion, with particular reference to the 1978 decision by the Administrative Court of Cologne, *In re Duchy of Sealand*, holding that Sealand was not a state.⁵⁷⁵

installations and structures on the continental shelf"). As of this writing, the Convention has been ratified by 161 states.

568. *United States v. Ray*, 281 F. Supp. 876, 878–79 (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); *Cherici & Rosa v. Ministry of the Merch. Navy & Harbour Office of Rimini*, 71 I.L.R. 258, 258–59 (It. Cous. Stat. 1969) (upholding order against the Republic of Rose Island, a 400m² platform seven miles of the Italian coast); Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(a)(1) (2006) (permitting the U. S. 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 513, at 111 ("[T]he period represents a 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 activity would become a coastal state hegemony.").

569. Thomas D. Grant, *Defining Statehood: The Montevideo Convention and Its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403, 408 (1999).

570. *Id.*

571. Convention on the Rights and Duties of States, art. 1, Dec. 26, 1933, 165 L.N.T.S. 19, 25 (emphasis omitted).

572. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (1987) ("[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.").

573. See generally Grant, *supra* note 569, at 409–14.

574. 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 nonproliferation agreements, among other commitments. See European Community: Declaration on Yugoslavia and on the Guidelines on the Recognition of New States, 31 I.L.M. 1485, 1487 (1992).

575. Even if Sealand is in fact a state under international law, there is also the subsidiary question of whether its method of formation was legal. The International Court of Justice has recently held that "general international law contains no applicable prohibition of declarations of independence." Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ¶ 84 (July 22, 2010), <http://www.icj-cij.org/docket/files/141/15987.pdf>.

The first Montevideo criterion is territory. Traditionally, “territory” in international law refers to “an enclosed part of the surface of the earth.”⁵⁷⁶ 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.”⁵⁷⁷ As a matter of language and precedent, this reasoning is defensible: “territory” comes from the Latin *terra*, or “earth,” and historically, state territory has referred only to land.⁵⁷⁸ But functionally, it’s 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 it matter whether the “territory” is made out of soil or concrete standing on the seabed?⁵⁷⁹ This point is visible in the *Duchy of Sealand* court’s strained attempt to distinguish the cases of “territory which was once connected to land and then submerged by the sea,”⁵⁸⁰ and “[t]he formation of land by the erection of dykes or dams and similar structures on the sea-shore or in coastal waters.”⁵⁸¹ 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.⁵⁸² 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.”⁵⁸³ Sealand’s citizens, on the other hand, “have not

576. *In re Duchy of Sealand*, 80 I.L.R. 683, 685 (Admin. Ct. Cologne 1978) (Ger.) (citing scholarly sources); see also *Island of Palmas Case* (U.S. v. Neth.), 2 R.I.A.A. 829, 838 (Perm. Ct. Arb. 1928) (“[S]overeignty 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)).

577. *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 generally Menefee, *supra* note 513; Sioussiouras & Tsouros, *supra* note 513.; Arenas, *supra* note 6; Dennis, *supra* note 3. RYAN ET AL., *supra* note 12, has a discussion of a number of attempts to create both anchored and floating artificial nations.

578. *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. See *id.*

579. See Leisner, *supra* note 549, ¶ 2.

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

581. *Id.*

582. See generally Thomas W. Merrill, *Accession and Original Ownership*, 1 J. LEGAL ANALYSIS 459, 460 (2009).

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

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.’”⁵⁸⁴ In its words, “the life of a community is lacking”⁵⁸⁵ 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.”⁵⁸⁶ This is a thick vision of the role of government; it expresses a strong commitment to an affirmative welfare state.⁵⁸⁷ It’s also a communitarian vision of society: it wouldn’t 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.⁵⁸⁸

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.”⁵⁸⁹ How many is “very marginal,” one might ask. The *Duchy of Sealand* court accepts that there are 106 Sealand citizens and that there are “30 to 40 persons permanently living on the platform.”⁵⁹⁰ 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. His 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 Montevideo’s third 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 of people 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-

584. *Id.* at 687–88.

585. *Id.* at 687.

586. *Id.* (citations omitted).

587. See TAMANAHA, *supra* note 507, at 112–13 (“Wonderful as these aspirations are, incorporating them into the notion of the rule of law throws up severe difficulties.”).

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

589. Leisner, *supra* note 549, ¶ 3; accord Colin Warbrick, *States and Recognition in International Law*, in INTERNATIONAL LAW 206, 222 (Malcolm D. Evans ed. 2003).

590. *Duchy of Sealand*, 80 I.L.R. at 687; see also Arenas, *supra* note 6, at 1173–74 (conflating figure of 106 citizens with the number of permanent residents).

called “Duchy of Sealand” fails to satisfy any of these requirements.⁵⁹¹

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.”⁵⁹² While it may seem that Roy Bates had effective control over Sealand—particularly given his expulsion of the invaders in 1978⁵⁹³—the related idea that the purpose of a control test is the maintenance of public order is problematic for HavenCo.⁵⁹⁴

Once again, Sealand’s competing theory could best be described as minimalist.⁵⁹⁵ Sealand’s government 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 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.⁵⁹⁶ This is a Model U.N. vision of government: everyone who shows up gets to hold an important office.⁵⁹⁷

The fourth Montevideo criterion—“[c]apacity to enter into relations with other States”—is the most vexed of the four. One scholar calls it “not a criterion, but rather a consequence, of statehood,”⁵⁹⁸ and other commentators agree.⁵⁹⁹ The *Duchy of Sealand* opinion doesn’t even mention it.

A more helpful framing may be to focus instead on the other side of “relations with other states”—whether the putative state’s government is recognized by its peers.⁶⁰⁰ Scholars have fiercely debated whether recognition is constitutive of statehood, or merely an acknowledgement of it.⁶⁰¹ 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 recognised by other nations recog-

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

592. Warbrick, *supra* note 589, at 223; accord IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 71 (6th ed. 2003).

593. See Arenas, *supra* note 6, at 1169.

594. See Warbrick, *supra* note 589, 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.”).

595. See, e.g., Leisner, *supra* note 549, at results 4 (“[J]us gentium does not provide for a certain form of government.”).

596. *Duchy of Sealand*, 80 I.L.R. at 684.

597. Cf. Lackey, *supra* note 232, audio at 19:50 (“They were very good at trying to simulate a real country there because they acted like politicians.”).

598. JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 46–48 (2d ed. 2006).

599. See, e.g., Grant, *supra* note 569, at 434–35 (collecting criticisms).

600. One might distinguish recognition of a state from recognition of a particular government. In Sealand’s case, the difference is probably not significant, as no one besides the German Sealand seems interested in recognizing it in preference to Prince Roy and Prince Regent Michael.

601. See generally THOMAS D. GRANT, THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION (1999) (providing an overview of the subject).

nise [sic] it. Got it?”⁶⁰² There’s 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 do not. So has the United Nations. “Recognition itself need not be express,”⁶⁰³ 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.⁶⁰⁴ Germany is said to have recognized Sealand by sending a diplomat to negotiate for Pütz’s release after the 1978 invasion.⁶⁰⁵ And Sealand’s citizens have managed to travel into various countries by presenting Sealand passports.⁶⁰⁶

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.⁶⁰⁷ Take, for example, the idea that a diplomat’s visit to Sealand to lobby for a German citizen’s release in 1978 constituted irrevocable diplomatic

602. RYAN ET AL., *supra* note 12, at 6.

603. MALCOLM N. SHAW, *INTERNATIONAL LAW* 384–85 (5th ed. 2003).

604. See Vitányi, *supra* note 548, at 15–23; see also Briger & Associates Attorneys at Law, Legal Opinion, Nov. 21, 2007, <http://web.archive.org/web/20071121133032/http://www.seanhastings.com/havenco/sealand/opinion03.html> (“[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.”).

605. See L.W. Conway, Legal Opinion & Testimonial, <http://web.archive.org/web/20071121133038/http://www.seanhastings.com/havenco/sealand/opinion04.html> (last visited Jan. 23, 2012) (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 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.

606. See Hastings, *supra* note 318. 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, *supra* note 549. 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.*

607. See SHAW, *supra* note 603, at 387 (“State practice has restricted the possible scope of operation this concept of implied recognition to a few instances only . . .”). Ian Brownlie writes, “Recognition is a matter of intention.” BROWNLIE, *supra* note 592, at 93, and it is unlikely that other governments have intended to recognize Sealand.

recognition.⁶⁰⁸ This isn't an argument that Germany tends to treat Sealand as a state in practice; it's an argument that Germany is estopped from denying that Sealand is one.⁶⁰⁹

The passport arguments have a similar quality. Countries certainly do treat their passport policy as an extension of their diplomatic positions. Thus, some countries will stamp visas for travelers from the Republic of China (i.e., Taiwan) but not the passports themselves, and both the Republic and the People's Republic of China (i.e., the mainland) do not consider travel between them to be "international" and therefore do not stamp each other's passports. But what Sealand's advocates describe is not so much a systematic government practice as the occasional lapse from it.

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.⁶¹⁰ 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 previously declared as those to be followed by the citizen and as being determinative of his rights and duties."⁶¹¹ This condition, which Rawls called "justice as regularity,"⁶¹² ensures equality before the law⁶¹³ and protects law's subjects from the arbitrary exercise of power.⁶¹⁴

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 Sealand.⁶¹⁵ The point resonates—but we should also be clear on its limits and implications.

608. See RYAN ET AL., *supra* note 12, at 11 ("Prince Roy saw the bright side: by sending an official mission, the German government had recognised Sealand as an independent nation (the Germans, of course, have other views).")

609. Leisner, *supra* note 549, at 4; cf. STRAUSS, *supra* note 12, at 65 (describing the theory of "recognition" by bureaucratic reflex" held by Leicester Hemingway of New Atlantis, in which receiving a pro forma thank-you note from Lyndon Johnson constituted official recognition).

610. See LON L. FULLER, *THE MORALITY OF LAW* 46–49 (rev. ed. 1969); TAMANAHA, *supra* note 507, at 93–99; Joseph Raz, *The Rule of Law and Its Virtue*, 93 L.Q. REV. 195, 196 (1977).

611. FULLER, *supra* note 610, at 209–10; see also Risch, *supra* note 17, at 8–23 (applying formal legality framework based on Fuller to virtual worlds).

612. 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.'").

613. A.V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* 189–90 (7th ed., 1908).

614. Antonin Scalia, *The Rule of Law As a Law of Rules*, 56 U. CHI. L. REV. 1175, 1179 (1989).

615. See FULLER, *supra* note 610, at 51–62 (discussing retroactive laws).

Speaking to the HOPE conference in 2002, Ryan Lackey proudly explained that Sealand satisfied “all the technical requirements”⁶¹⁶ for statehood, as though other nations were holding it back for unfair reasons not actually in the books.⁶¹⁷ Perhaps, but if so, then Sealand satisfies almost nothing *but* the technical requirements. Sealand’s arguments illustrate the “emptiness”⁶¹⁸ 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-rule⁶¹⁹—and we are most of the way to Robert Nozick’s ideal of a purely consensual state.⁶²⁰ 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.⁶²¹

HavenCo’s implicit appeal to international law looks even stranger when juxtaposed with its disdain for national law. If the rule of law is a matter of formal legality, then any properly general and prospective national regulation of the Internet ought to pass muster.⁶²² Conversely, if the rule of law also makes substantive demands, it’s unclear what makes the international law guaranteeing Sealand’s sovereignty legitimate. It’s 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.”⁶²³ The unifying thread in its attitudes towards national and international law 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 en-

616. Lackey & Freedman, *supra* note 458, audio at 7:38.

617. Cf. Garfinkel, *supra* note 1, at 239 (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)).

618. TAMANAHA, *supra* note 507, at 93–94.

619. See RYAN ET AL., *supra* note 12, at 4–6, 8–14, 71, 75 (discussing dozens of “micronations,” with populations as small as one, and territory as small as a single apartment); see generally Ruth Wedgwood, *Cyber-Nations*, 88 KY. L.J. 957 (1999–2000) (discussing a turn from “micronations” with minimal territory to “Cyber-nations” with none).

620. See NOZICK, *supra* note 588, at 299, 311.

621. See, e.g., SHAW, *supra* note 603, at 1 (“[T]he principal subjects of international law are nation-states, not individual citizens.”).

622. See TAMANAHA, *supra* note 507, at 99–101 (treating democratic theories of the rule of law as also requiring formal legality).

623. Gilmour, *supra* note 298.

titled 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.⁶²⁴ 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.⁶²⁵

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.⁶²⁶ It seems unlikely that international community would have responded to protect Sealand from the United Kingdom or another state acting with the United Kingdom’s acquiescence.⁶²⁷ 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.⁶²⁸ Even for less controversial material, dropping the servers into the sea was always HavenCo’s fallback plan.⁶²⁹ Even

624. 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.J. 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 art. 10(1)(a), Apr. 18, 1961, 600 U.N.T.S. 95 [hereinafter Vienna Convention]. *See generally* Diplomatic Relations Act of 1978, Pub. L. No. 95-393, 92 Stat. 808 (codified at 22 U.S.C. § 254a *et seq.*) (implementing Vienna Convention); 22 C.F.R. § 41.26 (2011) (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 “practice for personal profit any professional or commercial activity,” *id.* art. 42.

625. *Cf.* MICHAEL NEUMANN, *THE RULE OF LAW: POLITICIZING ETHICS* 28–35 (2002) (distinguishing “law” aspect of the rule of law from “rule” aspect).

626. In an interview, Michael Bates explained that Sealand had learned from the old pirate radio 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 54.

627. 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.

628. Lackey & Freedman, *supra* note 458, audio at 35:22. *Cf.* Lackey, *supra* note 304, audio at 19:10 (describing Lackey’s annoyance at Sealand officials for saying they would hypothetically turn over to British authorities any data belonging to al-Qaeda).

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

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."⁶³⁰ 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."⁶³¹

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.'"⁶³² 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 its 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.⁶³³ According to Lackey, Sealand even stole personal computers he left behind.⁶³⁴

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 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.⁶³⁵ It's visible in Thomas Paine's "in America the law is king," in Theodore Roosevelt's "[n]o man is above the law," and in John Adams's "government of laws, and not of men."⁶³⁶ It protects individuals against tyranny, against the

630. Simon, *supra* note 23, at 4.

631. *Id.*

632. Lackey, *supra* note 245, slides at 31.

633. Lackey, *supra* note 232, audio at 26:08 (describing HavenCo's ad hoc responses to customers during its frequent service outages).

634. *Id.* audio at 25:55

635. See TAMANAHA, *supra* note 507, at 114-19 (discussing theme of "[g]overnment limited by law").

636. John Adams, Letters of Novanglus, No. 7 (1775), in THE YALE BOOK OF QUOTATIONS 4 (Fred R. Shapiro ed., 2006); Thomas Paine, *Common Sense* 5 (1776), reprinted in COMMON SENSE, RIGHTS OF MAN, AND OTHER ESSENTIAL WRITINGS OF THOMAS PAINE 38 (Signet Classic ed. 2003); Theodore Roosevelt, *Third Annual Message to Congress* (Dec. 7, 1903), in THE YALE BOOK OF QUOTATIONS, *supra*, at 348.

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.⁶³⁷ It is thus to some extent a substantive theory of the rule of law.⁶³⁸

The ideal of government limited by law is frequently linked to citizens' ability to plan for the future.⁶³⁹ 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.⁶⁴⁰ We have seen this argument already in HavenCo's clients' commercial need to fit themselves into the framework of law.⁶⁴¹ It also applies to HavenCo itself. It had computers to buy, bandwidth bills to pay, and employees to feed. It needed paying clients—and legal stability for its operations. Colocation is a commodity business; ordinarily, it's supposed to be safe, reliable, and boring.

2. *HavenCo and Sealand Law*

It's possible to see HavenCo's relationship to Sealand, then, as a failure of the rule of law.⁶⁴² Think, for a moment, about HavenCo's options following the "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,⁶⁴³ and in any event, it seems unlikely that the rest of Sealand's political community—Michael

637. Many theories of the rule of law in fact link the two. *See, e.g.,* Raz, *supra* note 610, 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.”).

638. *See* TAMANAHA, *supra* note 507, at 102–13 (discussing substantive theories of the rule of law).

639. *See, e.g.,* FREDRICH A. HAYEK, *THE ROAD TO SERFDOM* 72 (1944) (“[G]overnment in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge.”); Raz, *supra* note 610, at 203.

640. *See, e.g.,* HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 71 (2000).

641. *See generally* DEBORA L. SPAR, *RULING THE WAVES: CYCLES OF DISCOVERY, CHAOS, AND WEALTH FROM THE COMPASS TO THE INTERNET* 13–14 (2001) (arguing that “pirates” on new technological frontiers eventually go legitimate as their businesses expand and become more dependent on a stable business environment).

642. *See* RYAN ET AL., *supra* note 12, at 12 (describing “the too-close relationship between the operators of HavenCo and Prince Michael” as “the 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* GOLDSMITH & WU, *supra* note 3, at 85.

643. *THE PRINCIPALITY OF SEALAND: CONSTITUTION OF 1966* art. 3, http://www.muufi.amorph03/downloads/pdfs/principality_of_sealand.pdf (“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.”).

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.⁶⁴⁴ 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.⁶⁴⁵ 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.⁶⁴⁶ If she goes instead to a thinly regulated online casino, she'll have no one to turn to if it transpires that the random-number generator was rigged.⁶⁴⁷ HavenCo bet on a friendly legal climate, and lost.⁶⁴⁸

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.⁶⁴⁹ Advancement 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.”⁶⁵⁰

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 Pütz even

644. See, e.g., WORLD JUSTICE PROJECT, RULE OF LAW INDEX 18 (2010), <http://worldjusticeproject.org> (giving the Western Europe and North American regions distinctly better rankings on rule-of-law metrics than all other regions).

645. Lackey wrote, “Even a small group of people in power will violate agreements if they are capable of doing so” Lackey, *supra* note 242, slides at 34.

646. See *About the Commission*, STATE OF NEW JERSEY CASINO CONTROL COMM'N, <http://www.state.nj.us/casinos/about/> (last visited Jan. 23, 2012); *About the Division of Gaming Enforcement*, OFF. ATT'Y GEN., <http://www.nj.gov/oag/ge/mission&duties.htm> (last visited Jan. 23, 2012). But see BRUCE SPRINGSTEEN, *Atlantic City, on NEBRASKA* (Columbia Records 1982) (“The D.A. can't get no relief . . . and the gambling commission's hanging on by the skin of its teeth.”).

647. See, e.g., Mike Bruner, *Online Poker Cheating Blamed on Employee*, MSNBC.COM (Oct. 19, 2007 7:21 PM), <http://www.msnbc.msn.com/id/21381022/> (describing the 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 the cheating allegations, relenting only after near-definitive proof was presented. See Gilbert M. Gaul, *Cheating Scandals Raise New Questions About Honesty, Security of Internet Gambling*, WASH. POST (Nov. 30, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/29/AR2008112901679.html>.

648. E-mail from Michael Froomkin (Sept. 13, 2010, 11:28 EDT) (on file with author).

649. CONSTITUTION OF 1989 (Sealand), <http://principality-of-sealand.eu/pdf/constitutions.pdf> (last visited January 23, 2012).

650. See Lackey, *supra* note 222, audio at 24:38 (discussing advisor's ambiguous relationship with HavenCo).

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 British ships on official duty, and the 1978 invasion. This is a country where state violence has never been far from the surface.⁶⁵¹ 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."⁶⁵²

Even more fundamentally, Sealand simply lacks the population to support political institutions like a professionalized judiciary, political parties, and an independent press.⁶⁵³ The number of residents on the platform, after all, is in the single digits, and the number of total citizens isn't much larger.⁶⁵⁴ Multiple office holding is common.⁶⁵⁵ Even when such institutions do exist in theory—like the Senate described in its constitution—it's unclear whether they ever meet, nor is there any indication in the record that their work is anything other than playacted. This isn't a picture of a country in which the rule of law has a thick hold.

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 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.⁶⁵⁶ 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 govern-

651. See Kessler, *supra* note 54 ("Violence, however, is at the root of its existence."); *Sealand on Reporting London* 1983, at 4:25 YOUTUBE, <http://www.youtube.com/watch?v=zDLFyoXSPKw> (last updated Oct. 21, 2010) ("Today, firearms still play a major role in the life of Sealand. Racks of guns are ready to defend the independence of the island.")

652. See Jackson, *supra* note 125, at 3.

653. See Terence C. Halliday, *The Fight for Basic Legal Freedoms: Mobilization by the Legal Complex*, in *GLOBAL PERSPECTIVES ON THE RULE OF LAW* 210, 216–32 (James J. Heckman et al. eds., 2010) (discussing the 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).

654. *Cf.* Lackey, *supra* note 245, slides at 34; Lackey, *supra* note 232, audio 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.")

655. 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.

656. In hindsight, Ryan Lackey explained, "The key lesson from this is that if you're going to put a 'co-lo' facility somewhere, political and contract stability in that jurisdiction is very important." Lackey, *supra* note 232, audio at 31:30.

ment 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.⁶⁵⁷

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.⁶⁵⁸ In order to prevail, HavenCo would have to find a court with 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.⁶⁵⁹ 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.⁶⁶⁰ 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."⁶⁶¹

There's 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 law.⁶⁶² 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-government seriously. Rule-of-law constitu-

657. There's 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 certain compact that will not be violated by your country at any point." *Id.* audio at 50:50. 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.* audio at 50:38.

658. *Id.* audio at 29:45.

659. *Cf. id.* audio at 22:48 ("If they thought they couldn't host this thing, did they really believe that the country had any legal existence from Day 1?").

660. *Id.* audio at 29:47 ("[I]t will probably resolve the Sealand sovereignty issue, and thus will mean that there is no money to be extracted from the thing because it will probably be resolved negatively, so it's sort of like a catch-22.").

661. Lackey, *supra* note 245, at slides at 27. Something similar happened in the summer of 1967 on board the aptly named *Laissez Faire*, the home of Radio 355. It put out a distress call that a fight was raging between English and Dutch factions, and that one man on board was threatening murder. The police, maritime rescue service, and Ministry of Defense did nothing, because "[t]hose on board the *Laissez Faire* had deliberately placed themselves outside the reach of the law." PAUL HARRIS, BROADCASTING FROM THE HIGH SEAS: THE HISTORY OF OFFSHORE RADIO IN EUROPE 1958–1976, at 209–10 (1966) (UK-NA: 255/1246).

662. See TAMANAHA, *supra* note 507, at 47–59 (discussing history of liberal rule-of-law constitutionalism).

tionalism 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 shouldn't be a surprise. HavenCo needed law, but offered no workable theory of where that law would come from.

V. 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?⁶⁶³

That the Internet's latest mutineer would sooner or later be linked with Sealand should come as no surprise.⁶⁶⁴ From pirate radio to the Pirate Bay, Sealand exerts a magnetic pull on all those who would 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."⁶⁶⁵ 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

663. *Principality of Sealand*, *supra* note 312; *SealandGov*, *supra* note 313.

664. 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 9:05 AM), <http://zunguzungu.wordpress.com/2010/11/29/julian-assange-and-the-computer-conspiracy-to-destroy-this-invisible-government/>; Gabriella Coleman, *Hacker Culture: A Response to Bruce Sterling on WikiLeaks*, ATLANTIC (Dec. 23, 2010), <http://www.theatlantic.com/technology/archive/2010/12/hacker-culture-a-response-to-bruce-sterling-on-wikileaks/68506/>; Jaron Lanier, *The Hazards of Nerd Supremacy: The Case of WikiLeaks*, 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/>.

665. 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)).

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.⁶⁶⁶ 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.⁶⁶⁷ 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, the Sultan of Kinakuta has a lot to lose if his country proves a bad business environment.

As Kinakuta and Sealand show, one can't 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."⁶⁶⁸ Iceland is a sovereign nation, but even more importantly, it has a police force, a population that favors the

666. Even comic books get it. In Don Rosa's *His Majesty McDuck*, Uncle Scrooge discovers that his money bin is built on land claimed by Sir Francis Drake and never made part of the United States. After asserting his independence to claim a massive refund on back taxes and naming himself king, he is ousted by a usurper backed by the Beagle Boys. The Duckburg police, of course, have no jurisdiction to intervene. Don Rosa, *His Majesty McDuck*, *UNCLE SCROOGE ADVENTURES* 14 (Gladstone May 4, 1989). This plot device—the secession of a long-forgotten enclave—was also the subject of the 1949 Ealing comedy *PASSPORT TO PIMLICO* (Ealing Studios 1949). The cultural reference wasn't lost on an FCO official musing on the Sealand problem, who scribbled "talk about passport to Pimlico!" on a letter. Letter from C.C. Wilcock to Mr. Drinkall (Feb. 24, 1971) (UK-NA: FCO 33/1300). Cf. Dennis O'Neil et al., *Strategic Diplomacy*, *G.I. JOE: A REAL AMERICAN HERO* #41 (1985) (depicting Cobra Island, a sovereign and therefore untouchable hideout for the comic book series' villains).

667. See STEPHENSON, *supra* note 391, at 191–92, 316–17.

668. Sylvia Hui, *Iceland to Strengthen Its Media Protections*, *BOSTON.COM* (June 18, 2010), http://articles.boston.com/2010-06-18/news/29325715_1_iceland-libel-laws-libel-judgments.

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 U.S. courthouses.⁶⁶⁹ 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.⁶⁷⁰ There are hundreds of such theories.⁶⁷¹ They never work,⁶⁷² but they also never stop coming.⁶⁷³ 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 cease.

I am not concerned with why people are willing to believe what one commentator, perhaps unfairly, calls “Idiot Legal Arguments.”⁶⁷⁴ People believe all sorts of strange things, and occasionally some of them turn out to be true. Instead, it’s 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.⁶⁷⁵ 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 a system of magic words.⁶⁷⁶

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

669. See, e.g., *Schneider v. Schlaefter*, 975 F. Supp. 1160, 1161–62 (E.D. Wis. 1997).

670. *Id.* at 1162.

671. See, e.g., *HILLMAN v. Sec’y of the Treasury*, 2000 TNT 111-13 (“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.’”).

672. See, e.g., *Schneider*, 975 F. Supp. at 1164 (rejecting flag-of-war theory).

673. See generally Bernard J. Sussman, *Idiot Legal Arguments: A Casebook for Dealing with Extremist Legal Arguments*, ANTI-DEFAMATION LEAGUE (Aug. 29, 1999), <http://www.adl.org/mwd/suss1.asp> (detailing hundreds of such arguments and the thousands of cases that have uniformly rejected them).

674. See *id.*

675. See STEPHEN VINCENT BENÉT, *THE DEVIL AND DANIEL WEBSTER* 55 (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. *Id.*

676. 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.”).

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.⁶⁷⁷ 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.”⁶⁷⁸ The same is true of law and the rule of law. It takes *work* to make law work.

677. See Laurence Claus, *The Empty Idea of Authority*, 2009 U. ILL. L. REV. 1301, 1302.

678. URSULA K. LE GUIN, *THE LATHE OF HEAVEN* 158 (1971).