

EDITORIAL

INTERNATIONAL LEGAL THEORY: SYMPOSIUM ON LAND-GRABBING

Seasteads, land-grabs and international law

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1. Seasteads

In 2008, Patri Friedman, the Google-based grandson of Milton Friedman, came together with Peter Thiel, the Silicon Valley venture capitalist who founded PayPal, the data analytics company Palantir Technologies, and made early investments in Facebook and several other start-ups, to found 'The Seasteading Institute' (TSI).¹ As Joe Quirk, the current president of TSI and author of *Seasteading*, TSI's manifesto, tells it:

Peter is a US-rated chess master; Patri has competed in the World Series of Poker. The two strategic thinkers hit it off. After years of contemplating the laws for governance while writing code as an employee at Google, Patri was able to describe to Peter why law is code and why government is in principle an information technology – which means that governance can progress to serve humanity with unimaginable Silicon Valley speed if only subjected to fluid market competition among anyone empowered to innovate. Peter was sold.²

The idea that brought together Friedman, Thiel, Quirk, and others involved colonizing the seas by building modular floating structures – houses, office buildings, factory floors, sporting arenas, and so on – that could be arranged into atolls and archipelagos. 'Seasteads', as they are called by derivation from 'homesteads',³ are intended to have a dynamic character. TSI suggests that individual units might be detached from one formation and towed to another; and that such formations will, in time, come to occupy many parts of the ocean, including areas just off state coasts – thus within zones of national jurisdiction – as well as the high seas.

It is the high seas settlements that hold particular fascination for TSI's founders. In their view, such settlements will lie beyond the tedium of established forms of law and government.⁴ Freed from the histories, ideologies, and settled traditions that dominate existing, land-based orders, they might serve as so many clean slates for experimenting with novel forms of social organization. Radical innovations in both governance and technology are forecast:

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¹www.seasteading.org/.

²J. Quirk, *Seasteading: How Floating Nations Will Restore the Environment, Enrich the Poor, Cure the Sick, and Liberate Humanity from Politicians* (2017), at 29.

³The term was coined by another TSI co-founder, Wayne Gramlich: W. Gramlich, *SeaStead—Homesteading the High Seas* (1998).

⁴There is a disjunct between this perception of a 'free sea' and the reality of its almost total legal incorporation but it is a disjunct revealing of the political economy of law of the sea. I discuss this further in S. Ranganathan, 'Sea Change', in A. Brett, M. Donaldson and M. Koskenniemi (eds.), *History, Politics and Law: Thinking through the International* (forthcoming).

Seasteaders bring a startup sensibility to the problem of government monopolies that don't innovate sufficiently. Obsolete political systems conceived in previous centuries are ill-equipped to unleash the enormous opportunities in twenty-first century innovation. Seasteaders envision a vibrant startup sector for governance, with many small groups testing out innovative ideas as they compete to better serve their residents' needs . . . The world needs a place where those who wish to experiment with building new societies can go to test out their ideas. All land on Earth is already claimed, making the oceans humanity's next frontier.⁵

TSI does not discount its ability to establish seasteads closer to the shore either, where judiciously worded contracts with coastal states might achieve a similar degree of autonomy within zones of national jurisdiction, alongside the benefits of mooring in shallower, sheltered waters. Indeed, the first project that TSI has announced is a floating complex to be built in the territorial waters of French Polynesia, an overseas collectivity of France. This seastead will accommodate a few residences and offices and operate under a special governing framework that permits 'considerable autonomy' from Polynesian laws.⁶ TSI has established an independent company, Blue Frontiers, to prepare the governing framework, and report on the environmental and economic impacts of the project on French Polynesia.⁷

Why should French Polynesia (and its parent republic) sign on? TSI claims that the state will receive many benefits from the project. In a Memorandum of Understanding (MoU) concluded in January 2017, these benefits are identified as the flow of 'new technologies, new research horizons and new economic activities' to French Polynesia. In particular, the special governing framework will attract investors to the seastead, which will 'have to have a favorable and significant impact on the local economy'.⁸ The MoU adds that French Polynesians, worried about rising sea levels, will also benefit in a more general sense from the development of technology that enables living spaces to be created on the seas. Moreover, benefits apart, there will be few costs to the state: the project 'will not be interested' in any French Polynesian land or ocean mineral resource and will respect the environmental standards defined by the state. The project will also 'welcome the development of innovative technologies for the protection of the environment'.⁹

2. Rhetoric and reality

The plans for the 'Floating Island', as this project is named, are high on rhetoric. As well as the MoU, the webpages of TSI and Blue Frontiers depict a win-win-win situation: for the seasteaders, the opportunity to found a new business-friendly community; for the French Polynesians, jobs; and for the whole world, a prototypical experiment in making land and eking out an autonomous yet sustainable and high-standard living on the sea, with negligible impact on the environment and perhaps even 'an improvement of the ecosystem under certain conditions'.¹⁰ A promotional video that headlines TSI's website invokes the Polynesians' 'rich tradition of seafaring and founding new island societies', suggesting that seasteading is a twenty-first century continuation of the same.¹¹

⁵'Why does the world need seasteading', available at www.seasteading.org/about/.

⁶www.seasteading.org/floating-city-project/.

⁷www.blue-frontiers.com/en/.

⁸Memorandum of Understanding between French Polynesia and the Seasteading Institute, 13 January 2017, at para. 2.2, available at 20xut21weba50ivlniw6geb-wpengine.netdna-ssl.com/wp-content/uploads/2017/01/Memorandum-of-Understanding-MOU-French-Polynesia-The-Seasteading-Institute-Jan-13-2017.pdf (emphasis added).

⁹*Ibid.*

¹⁰FAQs: Will the environment be protected', available at www.blue-frontiers.com/en/frenchpolynesia.

¹¹'What is the floating island project in French Polynesia', available at www.seasteading.org/floating-islands-project-in-french-polynesia/. The Polynesian tradition of seafaring finds description in recent popular maritime histories as 'the oldest, most sustained, and perhaps most enigmatic exploration of marine exploration and migration in the history of the world': L. Paine, *The Sea and Civilization: A Maritime History of the World* (2013), 13; P. Moore, *Endeavour: The Ship and the Attitude that Changed the World* (2018), at 195.

Yet, despite the promotional videos, flyers, and other publicity materials, the details remain elusive and contradictory. As far as benefits to humanity in general, especially groups threatened by climate change, are concerned, it is not clear why or on what basis these seasteads are supposed to offer an alternative living space for those who stand to lose their homes to rising sea levels. The costs of building the seasteads will be high, the numbers accommodated on them limited, and the promise to investors one of great luxury. No actual prospects for building affordable housing on the seas are discussed. The only explanations on offer are, one, of a possible future in which the cost of building seasteads falls so much (and their scale expands so much) that it becomes affordable for a greater number of people;¹² and two, the breezy suggestion that people seeking to escape their ‘dysfunctional governments’ might move to a seastead ‘the way a lot of people move to cruise ships in search of better jobs or a better life’.¹³ Actual jobs and working conditions on offer, and the financial probability of a move to seasteads in any but a menial capacity by those without capital, are smoothly glided over.¹⁴ Meanwhile, difficult moral, political, and social questions arising from the suggestion to rehouse climate refugees on permanent artificial platforms on the seas are not discussed at all. Instead, another video cherry-picks statistics from Singapore, Hong Kong, and Mauritius to suggest a dubious necessary logic of ‘island prosperity’ that promises accelerated economic development for those who move to seasteads.¹⁵

The benefits that would flow to the Polynesians from having seasteads in their neighbourhood are also stated vaguely. Beyond some speculative discussion, little information is available as to which corporations might be persuaded to shift operations to the seasteads, or the number and types of jobs that might be guaranteed to the local population. Nor is clarity provided on where the state fits into TSI’s plans for creating living infrastructure such as schools, hospitals, dining, and entertainment for the seasteads. The materials suggest that the coastal areas will see a temporary influx of consumers – investors are assured access to ‘restaurants, shops, businesses, museums, art galleries, concert halls, hospitals, etc.’ in the host nation initially, but with these becoming available on the seasteads themselves as they grow in population.¹⁶ Left unstated are the implications for the local economy of both the initial demand for amenities and the subsequent gating of the seasteads. The legal status of the coastal areas that will initially supply amenities to the seasteads is also not clear. The MoU speaks of a ‘land base’ on French Polynesian soil which will be governed under the special framework, but the scale or extent of this is not specified.

The publicity materials further slide over the impact the seasteads will have upon French Polynesia’s natural resources: while in the MoU TSI disclaims interest in French Polynesian land or ocean mineral resources, no equivalent provision is included with respect to Polynesian fisheries. It is also suggested that French Polynesia might be the source of supply of electricity (and, of course, high speed internet) to the seasteads, at least until they find a way to become fully

¹²FAQs: Who will be living on seasteads’, available at www.seasteading.org/frequently-asked-questions/.

¹³Seven minute video with Joe Quirk answers many basic questions about seasteading’, available at www.seasteading.org/frequently-asked-questions/.

¹⁴For one account of the exhausting working conditions and below minimum wage pay on a cruise ship see P. Myles, ‘Cruise ships are a floating microcosm of our global economic hierarchy’, *The Guardian*, 1 October 2012, available at www.theguardian.com/commentisfree/2012/oct/01/cruise-ships-microcosm-global-hierarchy. Myles points out in particular the illusion of choice and lack of bargaining power of workers on a cruise ship: the costs (agency, visa, medical, uniform and flight) incurred merely in starting employment might lead workers to find themselves ‘trapped in a situation of modern indentured labour in which they spend much of their first contract simply paying off the debts incurred joining the ship’. Worse accounts of slavery and abuse on the seas emerge from the fishing industry, see, e.g., I. Urbina, ‘“Sea Slaves”: The human misery that feeds pets and livestock’, *New York Times*, 27 July 2015, available at www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html?module=inline.

¹⁵The Eight Great Moral Imperatives: Enrich the Poor’, available at www.seasteading.org/videos/the-eight-great-moral-imperatives/.

¹⁶FAQs: Will there be medical services and what services will be available with relatively short travel’, available at www.seasteading.org/frequently-asked-questions/.

self-sustaining;¹⁷ again, the stresses that the requirement for increased electricity generation might place upon the state are not discussed.

The environmental promises are also of a dubious order. To begin with, the precise commitments of TSI are spelt out in a rather limited way. The MoU commits TSI to carry out 'all studies which it deems appropriate and useful' to the realization of the project, including studies pertaining to the search for appropriate maritime spaces, the technical feasibility of the project in compliance with the (undefined) 'principles relating to sustainable development', and legal and fiscal feasibility.¹⁸ The environment does not receive specific mention. Moreover, TSI itself is to decide on the content of these studies. No mention is made of French Polynesia being given any say; the provision only commits TSI to communicate the studies to the government.¹⁹ In contrast, the very next provision commits French Polynesia to co-operate with TSI and the Floating Islands project in various ways, including to 'facilitate and support . . . in all necessary steps with the French State'.²⁰ Elsewhere, the MoU does note that the project will respect the environmental standards defined by French Polynesia; but here again the only recognition of French Polynesian stipulations is as 'standards' – this is not an acceptance of Polynesian (or French or international) environmental law or jurisdiction.

But equally vague and contradictory are the terms on which businesses and investors are invited to participate. Mainly, TSI outlines advantages stemming from a specific set of arrangements: a special governance framework within the territorial waters of a state of strong institutional stability, modern rule of law, infrastructure, and local market for goods and services, pool of qualified service professionals, direct air and sea links to major population centres, and internet connectivity.²¹ These are effectively justifications that might accompany the promotion of any special economic zone or business hub; they do not speak to any special virtues of the *physical* offshore that would justify decisions to invest tens, if not hundreds of millions of dollars into the construction of seasteads.

TSI does not offer any compelling vision of the economic life that might take place aboard the Floating Island, or indeed any other seastead; especially one that such a venue alone might enable. An older working paper – that is, previous to the Floating Island project – exploring business options for seasteading offers rather tepid suggestions, many of which rely on a large and proximate consumer base.²² Thus one might build, say, a medical treatment centre off Florida, offering slightly cheaper services to its aging residents than on the mainland, or a casino off North Carolina, which would be prohibited onshore. Seasteads might provide a means for more efficient exploitation of oil, fish, and deep-sea minerals – suggestions that invoke existing structures such as platforms and drill ships. They might provide sites for carrying out research, say on pharmaceuticals or bio-technology, which is highly regulated or controversial on land – suggestions essentially aimed at unlocking additional options for jurisdictional arbitrage, but not explaining how investors seeking to commercialize such research might overcome the conditions imposed by the states in which the products will be marketed. And, finally, people might wish to visit seasteads for their vacations. The prospects of seasteading thus appear to boil down to the replication, offshore, of grey markets in drugs and medical treatments, more efficient (though this claim is unproven) infrastructures for exploiting ocean resources, and novelty tourism.²³

¹⁷FAQs: How will seasteads get water, power, Internet, food', available at www.seasteading.org/frequently-asked-questions/.

¹⁸MoU between French Polynesia and the TSI, *supra* note 8, at para. 3.1.

¹⁹*Ibid.*, at para. 3.2.

²⁰*Ibid.*, at para 4.

²¹FAQs: Why is French Polynesia a favourable option', available at www.blue-frontiers.com/en/frenchpolynesia.

²²M. Marty and M. Borders, 'Seasteading Business: Context, Opportunity and Challenge', August 2011, available at seasteading.org/wp-content/uploads/2015/12/Seasteading_Business_Context_Opportunity_Challenge_Aug_2011.pdf.

²³Reports issued by the seasteading market are upfront about focusing on grey market activities as the key business propositions for seasteads but also as enhancing the need for circumspection: 'Therefore, much of the commercial seasteading activities could be considered as various shades of grey . . . The key will be to ensure that mainland jurisdictions are prevented

That these activities might take place in the unorthodox setting of a seastead is not, of course, reason to forestall the questions that would be asked if they were intended for any other type of special economic zone: what will be the viability in context (rather than in the abstract) of such activities, and what will be their impact on the host nation's economy? TSI, perhaps aware of the difficulties in answering such questions, has not offered these specific suggestions for business ventures in relation to the Floating Island project. But the critiques have come anyway. On the one hand, the project's promoters have not been able to publicize any major investor buy-in (it is noteworthy that Thiel himself has dissociated from seasteading²⁴); on the other hand, French Polynesians have actively protested the project, describing it as 'tech colonialism', and a threat to their waters and fisheries.²⁵ News reports suggest that the government has now cancelled the project. The seasteaders are vague on this as well. Blue Frontiers offers the brief admission that 'one local community has recently expressed opposition', immediately followed by the assertion that 'another which is concerned by sea level rise has also reached out to embrace our project, and many more options are also being considered'.²⁶ The website currently features a competition to find new host countries.²⁷

Perhaps the greatest disjunct between the rhetoric and reality of seasteading is that Floating Island as an actual project downplays the very elements upon which the idea of seasteading is promoted: dynamic geography, and unimpaird freedom for residents to innovate legal and political arrangements on board. Current plans for the project do not include modular components that can be unhooked and sailed away. Indeed, it is not clear that many future residents find the notion of a dynamic geography particularly reassuring; a survey conducted by TSI revealed a preference for stable community over time, controlled access, and minimal uncertainty.²⁸ Meanwhile, as to legal and political arrangements: while a special governing framework is indeed pursued, as with all special economic zones this will represent certain concessions agreed with the host state. TSI acknowledges that it cannot constitute an escape from international law or the laws of the seasteaders' home states. Moreover, relying upon existing frameworks of property, contract, and commercial law, and seeking to guarantee an orderly and safe environment to residents, the project would, in fact, replicate much of the template of governance that it seeks to break from in theory. The TSI survey also suggests that respondents preferred familiar frameworks, seeking credible assurances from the outset of stable rules and 'wise use of police power'.²⁹

It might be noted that such disjuncts were predictable, for they represent the basic contradiction at the heart of seasteading: an emphasis on endless freedom within a context that relies upon a variety of constraints – detailed planning, micro-level administration of people and infrastructure, guarantees of stability and certainty for investors, heavy use of resources, and seamless integration

from creating de facto or de jure restrictions on trade with seasteaders due to the degree of market "greyness." Some grey markets will be tolerable, others will not. Thus, when it comes to jurisdictional arbitrage, we suggest entrepreneurs pursue market activity toward the "lighter" end of the spectrum. Even activity that is not proscribed on the seastead may invite the ire of territorial jurisdictions and move them to invest in measures that curb any darker grey-market activity.' *Ibid.*, at 26. See also D. Mutabdziza and M. Borders, 'Building the Platform: Challenges, Solutions and Decisions in Seasteading Law', August 2011, at 14–16, available at seasteadingorg.wpengine.com/wp-content/uploads/2015/12/legal_paper_seasteading_building_the_platform_august_2011.pdf.

²⁴L. Chapman, 'Floating Island Project pushes on, without Peter Thiel's support', *Bloomberg*, 30 July 2018, available at www.bloomberg.com/news/articles/2018-07-30/floating-island-project-pushes-on-without-peter-thiel-s-support.

²⁵'Hundreds march in Tahiti against building of floating islands', *Radio New Zealand*, 9 April 2018, available at www.radionz.co.nz/international/pacific-news/354491/hundreds-march-in-tahiti-against-building-of-floating-islands.

²⁶www.blue-frontiers.com/en/frenchpolynesia. See also Blue Frontiers, 'Seasteading in French Polynesia and Beyond', *Medium*, 9 July 2018, available at medium.com/@bluefrontiers/seasteading-in-french-polynesia-and-beyond-316ae07060c5.

²⁷\$100,000 competition: Bring Sustainable Floating Cities to Your Country', available at www.blue-frontiers.global/#Rules.

²⁸The Seasteading Institute, 'The Floating City Project: research conducted between March 2013 and March 2014', available at www.slideshare.net/tswittrig/floating-cityprojectreport4-252014-seasteading-institute-white-paper.

²⁹*Ibid.*, at 33–4.

with the networks of global capitalism.³⁰ Seasteads may be built but not on the win-win-win logic of autonomy propounded by TSI; what do they represent, then, beyond another vanity construction project? To quote Steinberg et al., the challenge is that ‘faced by every utopian project: how does one establish the utopia as a viable, ongoing society without simultaneously threatening the “magic” (or difference) that gives the dream its meaning?’³¹

3. Thinking with seasteads

So far, I have been discussing seasteads but have not explained why. One might, of course, see that, as with other techno-utopian projects, the subject matter carries its own fascination. There is a seductive appeal to the idea that, when sea levels rise and land is lost or made unusable, humanity will simply move to the sea; TSI likes to speak of the dawn of an ‘Aquatic Age’.³² Writing this piece on a visit to my hometown, New Delhi – an often smoggy, inland metropolis – there is an even simpler appeal to studying the imaginative architectural designs hosted on the webpages of TSI and Blue Frontiers: all airy, sun-dappled glass and metal structures, fringed with green, surrounded by blue, offering a controlled intimacy with nature’s most inscrutable element. Watching one video that shows a building gently gliding towards a floating complex,³³ one might dream about the possibilities of a mobile geography – the South Seas one day, the Bay of Bengal the next – as one’s normal environment. But none of that explains why I should take seasteads as my subject for this editorial. The previous section, filleting the fantasy of one seasteading project, might seem in some respects without point; it focuses too specifically on something characterized most of all by fuzzy and shifting information. The Floating Island project has changed names, terms, and blueprints several times, sometimes taking on a more concrete aspect, sometimes retreating further from realizability. Despite reports of its cancellation, it will doubtless linger, perhaps changing form again, perhaps not; perhaps changing host states, perhaps not; perhaps offering stronger technological and ecological underpinnings, perhaps not. Why fixate on its details, when nothing is clear, and all is in flux?

Steinberg et al. offer good reasons for taking notice of the seasteading movement more generally (the Floating Island project is subsequent to their paper). Seasteading ‘warrants our attention and analysis, not as a model for the future but as a reflection on the present’.³⁴ Its purpose may be less to build actual seasteads, and more to ‘spur thinking about current limits that the state system places on “freedom” so that others will dream up and implement more practical alternatives’.³⁵ In their words, seasteading is important:

not as a potential reality, but as an articulation of a set of ideas. These ideas, which join a romanticization of marine/island utopias, a libertarian glorification of individual entrepreneurship, the paradoxical belief that planning can be used to engineer communities that foster personal freedoms, and a suspicion of the state’s capacity to guarantee these freedoms, all emerge from the specific conditions and ideologies of early twenty-first century US (and, especially, Californian) capitalism.³⁶

A distillation of these ways of thinking, the seasteading movement is to be understood ‘not so much as a harbinger of late-capitalist post-modernity but as its symptom’.³⁷ Seasteading, then,

³⁰For a detailed discussion of the contradictions of the idea of seasteading see P. Steinberg, E. Nyman and M.J. Caraccioli, ‘Atlas Swam: Freedom, Capital and Floating Sovereignities in the Seasteading Vision’, (2012) 44 *Antipodes* at 1532.

³¹*Ibid.*, at 1539.

³²Quirk, *supra* note 2, at 8–9.

³³*Ibid.*

³⁴Steinberg et al., *supra* note 30, at 1545.

³⁵*Ibid.*, at 1534.

³⁶*Ibid.*

³⁷*Ibid.*

is a brilliant ploy within an ongoing campaign to reframe the dissatisfactions of modernity as the problem of state regulation of enterprise, and to persuade home governments both by carrot (visions of the humanity-serving innovations that might be fostered by setting entrepreneurs free) and stick (threat of capital flight) of the wisdom of offering even greater concessions to corporate ventures. Hettie O'Brien gets to its politics in a succinct way:

Seasteading may be more about changing onshore policy than building offshore platforms ... [TSI] sounds more like an aquatic tax lobby, one who's true intent is pressuring existing governments to slash taxes in a race to retain the highest bidders.³⁸

But actual plans for building matter; for it is by demonstration of their possibility, as 'potentially attainable feat[s] of human engineering', that seasteads acquire vigour as 'actants' exerting influence over states.³⁹ The Floating Island project and its equivalents are the necessary next step for the seasteading movement, the proofs of concept that make both choice and threat appear real; without them, we might be tempted to write off the movement altogether. Such projects pre-empt suggestions that the sheer improbability of the seasteading vision is proof that, beyond fantasy, late capitalists now have few further manoeuvres left; that they must – like the rest of us – learn to work within the limits of an Earth in crisis and the demand that it calls forth for more, not less, state regulation of corporations to curb extraction and redistribute wealth.⁴⁰

Of course, the projects also come at cost to their promoters in forcing a downsizing of the utopias that were sketched in the abstract, giving lie to the most radical claims. Whether that leaves enough promise or threat to pressure states is one of the things we might learn from their details. There are also three other things we might learn. Firstly, and obviously, capitalism's accumulative drive does not dissipate in the face of impending planetary disaster. Instead, it co-opts this disaster, extracting wealth from new commons – the common concerns of climate change, sea-level rise, and biodiversity loss. The promoters of seasteading recognize well the advice offered by one of literature's famous anti-heroes: 'there is just as much money to be made out of the wreckage of a civilization as from the upbuilding of one'.⁴¹ Seasteading is a play both for offshore and onshore resources on the pain of calamity.

Second, seasteads are a reminder, if one was needed, of the ability of the wealthiest to insulate themselves from global crises. They are an extension of the logic of panic rooms, gated communities, and nuclear bunkers – supposedly universal technologies but actually available only to a privileged few, providing them with the means to secure themselves from the structural problems they are unwilling to resolve. Offering the possibility of a safe retreat, they enable what an article in *The Guardian* perceptively calls 'apocalyptic techno-capitalism', the assurance of personal escape that permits the elite to 'carry on creating wealth in the end times'.⁴² Seasteads are not, of course, the only, the most realistic, or even the most ambitious prospect for such escape: the *Guardian* story was based on Thiel's purchase of a large property on New Zealand's South Island; where he apparently intends to retreat 'in the eventuality of some kind of systemic collapse scenario—synthetic virus breakout, rampaging AI, resource war between nuclear-armed states, so forth'.⁴³ Elon Musk, meanwhile, has set his sights on Mars. But they do not have to be. Seasteads function,

³⁸H. O'Brien, 'The Floating City, Long a Libertarian Dream, Faces Rough Seas', *CityLab*, 27 April 2018, available at www.citylab.com/design/2018/04/the-unsinkable-dream-of-the-floating-city/559058/.

³⁹Steinberg et al., *supra* note 30, at 1535.

⁴⁰In this vein see N. Klein, *This Changes Everything: Capitalism vs. the Climate* (2014).

⁴¹Rhett Butler to Scarlet O'Hara in M. Mitchell, *Gone with the Wind* (1936), Ch. 9, at 106.

⁴²M. O'Connell, 'Why Silicon Valley billionaires are prepping for the apocalypse in New Zealand', *Guardian*, 15 February 2018, available at www.theguardian.com/news/2018/feb/15/why-silicon-valley-billionaires-are-prepping-for-the-apocalypse-in-new-zealand.

⁴³*Ibid.*, The passage continues with mordant humour: 'The plan from this point, you'd have to assume, was to sit out the collapse of civilisation before re-emerging to provide seed-funding for, say, the insect-based protein sludge market.'

rather, as an appropriate symbol of the high mobility not just of capital but also its human owners, for whom land, water, and citizenship – Thiel qualified for New Zealand’s despite having spent less than 12 days there⁴⁴ – are all fungible, for anywhere can be transformed (and terraformed!) into the effective simulacrum of home. Seasteads are thus the very antithesis of refugee boats.

Third, the seasteading movement reveals the sophisticated sophistry of bids for appropriation of public and common resources. The seasteading movement’s deft play for on- and offshore areas, concessions, and benefits includes three moves:

One, perpetually shifting spatial and temporal scales for assessment of the common good that will be achieved by seasteads. Attention is sometimes directed to the immediate local benefits of jobs for the host state; sometimes to the intermediate benefits of innovation and reinvestment for the home state; and sometimes to the long-term goal of escape from disaster for humanity as a whole. Some, or all, of these can be emphasized or played down before different audiences; crucially, they also operate as lines of defence vis-à-vis each other, making the shortcomings of the whole harder to pinpoint.

Two, in an efficient exercise of perception management, seasteading diverts us from its takings by focusing us upon what it does not seek, as well as what it might give. Thus, it presents the occupation of a state’s coastal waters as non-intrusion upon its land, in fact an effort to ‘make land’;⁴⁵ a play for public subsidies as an effort to increase autonomy; the intention to take fish as the avowal not to seek minerals; the consumption of resources as the production of technology, and so on, reframing extraction as investment, expulsion as incorporation.

And *three*, there is the remarkable way in which the movement approbates and reprobates law. Thus, on the one hand, the law is presented as part of the problem, representing unwieldy and cumbersome process, and constraint upon social and technological innovation; that which – pardon the pun – seasteads should keep at bay. On the other hand, the law – enforceable contracts, an elaborated special governance framework, etc. – is the precondition for investment in the seasteading enterprise; and a basis for wealth generation via jurisdictional arbitrage. Nor is it simply that the seasteading movement maps itself onto a defined taxonomy, by embracing private law – contract, property, commercial – while challenging public law. The credibility of the host nation’s institutions, and order on board the seastead are both essential considerations for potential seasteaders. TSI, moreover, seeks the imprimatur of international law when it invokes the idea of freedom on the high seas, and makes the argument for new statehood by way of UN recognition of the seasteaders’ right to self-determination.⁴⁶ The seasteading movement, then, is an arrogation of ‘jurisdiction’, a claim of the authority to cherry-pick which law is (good for business and therefore) authoritative and which law is (not, and therefore) just obstructive ‘politics’.⁴⁷ Its rhetoric exploits both the modern attachment to and post-modern misgivings about the rule of law. Seasteading illustrates not just capital’s propensity to escape law but also how its engagements with law drive wealth accumulation.

4. Land-grabs and international law

This brings us to the three articles, by Umut Özsu, Ntina Tzouvala, and Isabel Feichtner, which make up the symposium on ‘International Law and the Technologies of Land Grab’, that is published in this issue and that Umut and I have co-edited. The articles follow a workshop held in Cambridge in the summer of 2017 with the generous support of King’s College. We had invited

⁴⁴*Ibid.*

⁴⁵As the TSI-French Polynesia MoU shows, this is of course not true: the Floating Island project will occupy a land base as well as an area of water.

⁴⁶Seven-minute video with Joe Quirk, *supra* note 13. See also Quirk, *supra* note 2, at 17.

⁴⁷P. Thiel, ‘The Education of a Libertarian’, *Cato Unbound*, 13 April 2009, available at www.cato-unbound.org/2009/04/13/peter-thiel/education-libertarian.

participants in this workshop to explore the international legal dimensions of ‘land-grabbing’. As we noted in our invitation, our attention was caught by the explosion of the large-scale acquisition of land and land resources in developing countries by wealthy states and corporate investors, typically for the purpose of engaging in agribusiness and securing reliable sources of food and biofuel production. While such acquisitions were widely and regularly denounced as a form of neo-colonialism that fostered enhanced exploitation of the global South, they attracted only sporadic attention from scholars of international law, with few examinations of international law’s role in sanctioning this new drive to acquire and use land.⁴⁸ We suggested that participants might address this gap not only by focusing upon the competing but structurally related perspectives of international economic law and international human rights law, but also, and more fundamentally, by attending to long-standing debates about the effects of international investment treaties, opportunistic invocations of the ideas of common heritage and common concern, and the status of the principle of permanent sovereignty over natural resources; and by situating the debate about land-grabbing in legal controversies concerning sovereignty, self-determination, wealth inequality, and facilitated ‘development’.⁴⁹

Building on the workshop discussions, with helpful input from several colleagues who gave generously of their time,⁵⁰ the three articles provide rich and thoughtful analyses that exceed the terms of our invitation in three respects. First, they expand our understanding of the concept, asking us to think about not only acquisitions of land for global agribusiness, but also other, conjoined and overlapping, processes of accumulation by dispossession. These include actual seizures of land and spatial displacement of people, as well as what is described as *in situ* displacement – socio-economic rather than spatial – whereby people are made ‘increasingly precarious due to the loss or diminution of entitlements and resources’.⁵¹ Together, Özsu, Tzouvava and Feichtner force us to see connections between agribusiness and activities far removed from it, such as bids for mining in the deep seabed and outer space, as enabling and reinforcing each other. Not least, the assurance of food supply powers new, public-subsidized,

⁴⁸A notable exception is Dr Olivier De Schutter’s body of work, produced during and after his tenure as United Nations Special Rapporteur on the Right to Food. Thought-provoking analyses are also offered in J. von Bernstorff, ‘The Global Land Grab, Sovereignty and Human Rights’, (2013) 2(9) *ESIL Reflections*, available at esil-sedi.eu/?p=427; K.E. Boon, ‘Land Grabbing and the New Economic Order: Revenge of the CERDS’, *Opinio Juris*, 3 December 2012, available at opiniojuris.org/2012/12/03/land-grabbing-and-the-new-economic-order-revenge-of-the-cerds/; L. Brilmayer and W.J. Moon, ‘Regulating Land Grabs: Third Party States, Social Activism and International Law’, in N. C.S. Lambek et al. (eds.), *Rethinking Food Systems* (2014), 123; L. Cotula, ‘Land, Property and Sovereignty in International Law’, (2017) 25(2) *Cardozo Journal of International and Comparative Law* 219; L. Cotula, ‘Land rights, international law and a shrinking planet’, *IIED Briefing* 2015, available at pubs.iied.org/17304IIED; M.G. Desta, ‘Competition for Natural Resources and International Investment Law: Analysis from the Perspective of Africa’, in Z. Yihdego et al. (eds.), *Ethiopian Yearbook of International Law* 2016, at 117; T. Ferrando, ‘Land Rights at the Time of Global Production: Leveraging Multi-Spatiality and “Legal Chokeholds”’, (2017) 2(2) *Business and Human Rights Journal* 275; F.R. Jacur, A. Bonfanti and F. Seatzu (eds.), *Natural Resources Grabbing: An International Law Perspective* (2016); M.A.M. Lopez, ‘A Study on the Application of Food Sovereignty in International Law’, (2016) 4(2) *Groningen Journal of International Law* 14; M.E. Margulis, N. McKeon and S.M. Borrás Jr. (eds.), *Land Grabbing and Global Governance* (2014); M. Neocleous, ‘International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization’, (2012) 23(4) *European Journal of International Law* 941; A. Orford, ‘Food Security, Free Trade, and the Battle for the State’, (2015) 11(2) *Journal of International Law and International Relations* 1; N. Schrijver, ‘Self-determination of peoples and sovereignty over natural wealth and resources’, in UN (2013), *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, UN, New York, doi.org/10.18356/49006c2a-en. For a comprehensive annotated bibliography see J. Lee, ‘Contemporary Land Grabbing, Research, and Bibliography’, *GlobaLex* 2018, available at www.nyulawglobal.org/globalex/Contemporary_Land_Grabbing1.html.

⁴⁹U. Özsu and S. Ranganathan, ‘International Law and Technologies of Land Grab’, symposium description, 18 July 2017, on file with the author.

⁵⁰We thank in particular Megan Donaldson, Jessie Hohmann, Andreas Kotsakis, Kate Miles, Eva Nanopoulos, Sarah Nouwen, Akbar Rasulov and Margot Salomon.

⁵¹O.U. Ince, ‘Primitive Accumulation, New Enclosures, and Global Land Grabs: A Theoretical Intervention’, (2014) 79(1) *Rural Sociology* 104, 126. See also S. Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (2014).

and potentially destructive economic activities such as extra-territorial mining ventures. In turn, the financial architecture of extra-territorial mining generates capital (and eventually raw-material) for reinvestment into on-land businesses and offers the illusion of escape – for the privileged – into new worlds. Such phenomena are part of the same rapacious logic of viewing land primarily in terms of its (un- or under-developed) commercial potential, seizing it for ‘development’, and relying upon technological innovation to overcome environmental limits to (and costs of) its productivity.

Second, the three contributions help us work through (and look through) the justifications of common benefit that underpin accumulation of wealth. Land-grabs, unsurprisingly, do not advertise themselves as such. As noted above, takings come disguised as givings, expulsions as inclusions, private gains as global solutions. The articles in this symposium direct our attention to the ways in which the current ecological crisis, in no small measure the consequence of older grabs, is the driver (Tzouvala) and pretext (Feichtner) for new ones.

Third, all three articles locate the multiple roles that international law plays in enabling and veiling land-grabs – as process, particular doctrines, and as a framework for assigning responsibility. As process, international law supplies the means – ‘treaties, contracts, concessions, and other agreements’ – ‘for the purchase or lease of large swathes of land’, mechanisms for investment protection and dispute settlement, and the regularly revised checklist of procedures and best practices that ‘socialize’ land grab’s ‘less “humane” features, notably with the assistance of human rights, and reframe it in broadly “developmental” terms’ (Özsu). Particular doctrines such as ‘common heritage of mankind’ juridify not only the domain that can be turned over to extractive activity, but also what it means to act for the common benefit (Feichtner). As a framework for assigning responsibility, international law sharpens our focus upon the state and its formal authority to transfer land and other resources into private and foreign hands, directing our attention away from imperial legacies and sub-state and transnational legal, political, and economic dynamics that might shape its actions and constitute the real conditions of dispossession and accumulation (Tzouvala). The articles not only bring international law into a common frame with domestic public and private laws, they also relate to us the ways in which it is an enactment of politics, and a conduit for the (re-)incorporation into the late capitalist political economy of old places and new – post-colonial states and extra-territorial mines, farmlands and seasteads.