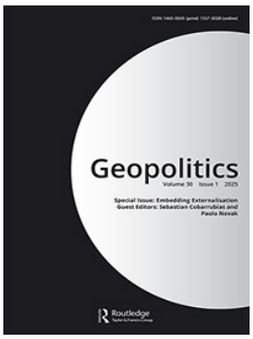

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'It Is Not Down on Any Map': Sovereignty, Territory, and Jurisdiction on an Arctic Ice Island

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ABSTRACT

Islands have a complicated and, at times, paradoxical relationship with the sovereign state. Some islands have been lauded as prototypical models for the idealised hard-bordered spaces of state sovereignty; others have been written off as barbarian spaces beyond the limits of state civilisation; still others have been embraced as spaces of partial incorporation, where the state lacks the full package of rights and responsibilities that normally accrue in a sovereign territory. These complexities of the relationship between states and islands multiply when the status of the island as an 'island' is itself called into question, including when an island does not meet the standard definition of a body of land surrounded by water. In this article, each of these dimensions of the island-state relationship are attended to through an investigation of statehood and sovereignty on the 'lawless island' of T-3, a slab of glacial ice that, from 1952 through 1978, served as a United States Navy research station as it drifted across the Arctic Ocean. Further, this article explores how the principle of Special Maritime and Territorial Jurisdiction has been mobilised to transform T-3, and other 'lawless islands' around the world, into 'islands of law'.

Mapping the Island, from Rokovoko to T-3

'It is not down on any map; true places never are', states Herman Melville's narrator, Ishmael, when referring to Rokovoko, the Polynesian island home of the harpoonist Queequeg in *Moby-Dick* (Melville [1851] 1922, Chapter 12 (Biographical)). Although Ishmael and Queequeg are soon to ship out together on the *Pequod*, at this point in the novel they are just getting to know each other as bedmates at the Spouter Inn, taking the first steps towards an unlikely friendship that will persevere through their ill-fated voyage.

Melville's characters explain that Rokovoko is a land beyond civilisation, a nest of savage idolators. However, like the *Pequod*, Rokovoko promises a humanity unattainable in the 'civilised' world of states and borders: 'We cannibals must help these Christians', Queequeg proclaims (Melville [1851]

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1922, Chapter 13 (Wheelbarrow)), with an irony likely to provoke discomfort among the novel's 19th century Christian readership. Significantly, Rokovoko, this place that offers a humanity that can transcend the divisions of Christian civilisation, is an *island*: a spatial form that can never exist as it is imagined (i.e. as an idealised isolate), but that nonetheless has taken on a special role in the (Western) continental world as a spur to the political imagination (Gillis 2004). Rokovoko is 'true'; in fact Rokovoko is arguably more-than-true, offering up an image of what *could* exist: cannibals who display a Christian love that Christians have forgotten, a space of order and natural law. However, it cannot be 'mapped' to a specific point, either in space or in the existing universe of political structures. Rokovoko, like the *Pequod*, is both an exemplar of the civilised *polis* and its antithesis.

In this article, I turn to another island that is both 'true' and 'unmappable', real and imagined, singular yet ephemeral: T-3, a slab of unmoored glacial ice that, from the 1930s through the 1980s, drifted about the Arctic Ocean. On the one hand, T-3 is very different from Rokovoko; it existed in space and time and, for several decades, was the object of geopolitical intrigue and scientific exploration as a United States military research installation. Arguably, T-3 was even more 'true' than Rokovoko. However, like Rokovoko, it could not be 'mapped'. Partly this was because of its spatial mobility and temporal impermanence, as it drifted through the ocean and slowly melted away. However, it also was 'unmappable' because of its geophysical liminality, as it simultaneously had properties of land, ocean, sea ice, and glacial ice. Because of its indeterminate geophysical status, it was also impossible to 'map' that materiality onto a category of geopolitical space; T-3 was at different times characterised as an island, a vessel, a constituent component of the ocean, or as a geographical formation that was so bereft of static material presence that it was immune to geolegal classification. This left it in a paradoxical position with reference to sovereignty's presumptions of determinate borders, static materialities, and permanent locations, as well as the idealised opposition of land to water that makes the concept of the 'island' possible. Like Rokovoko, T-3 could not be put 'down on any map'. And that raises questions not just about how we map mobilities in/of icy waters but also, more broadly, how we negotiate and work with the island form as we map space to politics and politics to space.

Islands, Sovereignty, and Law

Historically, there has been a complex relationship between islands and the linked ideas of nation, territory, sovereignty, and statehood. On the one hand, from Plato's aspirational writings on the ideal island republic through More's ([1516] 2009) *Utopia* through the cartographic depictions of islands on maps during the centuries leading up to the codification of sovereignty in

international law, the island has frequently been posited as the exemplar of the state form. In the island-*polis*, the naturalisation of territorial boundaries, which is frequently evoked to signal the timelessness of the state (Fall 2010), is overlain with the fundamental physical division of space that characterises the political geography of modernity: the division between land (which can be divided into sovereign territories) and ocean (which cannot) (Schmitt [1950] 2006). Because islands are often seen as having incontestable, determinate borders (Royle 2001), they are frequently understood as exemplifying the binary division between the 'domestic' (processes and politics occurring within those borders) and the 'international' (processes that cross borders) that lies at the heart of territorial sovereignty's spatial imaginary (Agnew 1994). Thus, the imagined congruency of nation, state, territory, and sovereignty that underpins the ideology of the modern nation-state has been exemplified in the ideal type of the isolated, self-sufficient, and self-governing island (Steinberg 2005).

On the other hand, the realities of island life challenge this ideal. Islands have always existed in interaction, developing (uneven) relations with other islands and mainlands as well as with the ocean itself, and these exchanges and interdependencies across island boundaries undermine ideals (and myths) of island insularity and self-sufficiency (McCall 1994). Practically, this has led to islands adopting a range of political structures. In addition to the idealised, 'naturally occurring' sovereign island nation-state, these include, to name just a few examples, archipelagic states, islands with various levels of formal connections with adjacent (or distant) mainlands (and with various relationships between the island's identity and that of the continental nation-state of which it is a constituent part), and islands that are divided into multiple states (Baldacchino 2013; Baldacchino and Milne 2006). Islanders, drawing on histories and present-day realities that exist outside of and in articulation with the modern state ideal, have proposed a number of inversions of the modern mindset wherein territory occurs on land and the ocean is seen as external space that occurs *beyond* territory. Instead, the islanders' territory is understood as a 'sea of islands', with borders that are indeterminate and that transcend a binary land-sea divide (Hau'ofa 2008; see also DeLoughrey 2007; Glissant [1990] 1997).

Building on the complexity of relations between islands and islands, islands and mainlands, and islands and ocean (as well as acknowledging the complex ways in which multiple temporalities are embedded in these relations), scholars have proposed a relational, archipelagic approach, where the fluidity, opacity, and temporality of the sea (and the islands within) destabilises the continentalist-nationalist idealisation of land as static, bounded, and singular (see, for instance, Stratford et al. (2011)). The relative marginality of islands (relative to the idealised geophysical-geopolitical congruence of the state-ideal) and their integration into the

rhythms of surrounding seas has been lauded as presenting opportunities for islanders to develop innovations in areas ranging from governance systems (Baldacchino and Milne 2006) to energy generation (Watts 2019), as well as forming a touchstone for postcolonial and materialist perspectives in cultural and political theory (Hessler 2018). However, this marginality has a dark side as well. The marginal position of many islands – under the control of a continental state but not identified as part of that state's essential territory – can facilitate an island's role as colonial beachhead, military outpost, migrant detention centre, prison, or offshore money-laundering haven, and these are all institutional innovations that exempt islanders from many of the legal protections normally granted to a state's citizens (Mountz 2020). Thus, for instance, Oldenziel (2011) has argued that the archipelagic nature of the United States' overseas sphere of influence is uniquely aligned with a specifically American form of networked power that reworks conventional divisions between territorial and extra-territorial reach, fusing the ideal of the island fortress as the apotheosis of state power with the reification of the island (and its inhabitants) as beyond the civilisational pale. Conversely, though, the archipelagic extension of US power, by pushing against the norms of the continental state, can also have the effect of facilitating and reflecting other, island-based, notions of place, polity, and connection (Roberts and Stephens 2017).

In short, the relationship between the island and the territorial state is fraught with paradox. Although an island (as a body of land surrounded by water) is defined by its essential opposition to the ocean, the societies that persist there do so, in fact, because they are, to varying degrees, a part of the oceanic essence. Insularity (literally, the state of islandness) is thus also a condition of connectivity. This paradox in the sovereignty of islands is paired with a paradox in their assigned civilisational attributes. Long romanticised as the ideal spaces for constructing pacifist utopias, islands are just as frequently denigrated as savage dystopias that require external force to construct order, or their 'otherness' is seized upon to suggest postcolonial, networked alternatives to the modern nation. All this suggests that the island form should be thought of as neither the paradigmatic space where territorial state power is imagined nor the space where it is transcended, but rather as a margin where experimentation occurs to make the power of the state more nuanced; less a *utopia* or *dystopia* than a *heterotopia* – a space of *difference* (Mountz 2015).

In practice, these paradoxes are combined and operationalised through political designs that alternately turn to islands as paradigmatic spaces of sovereignty, spaces for experimentation at the limits of sovereignty's reach, and spaces that transcend and challenge the very notion of sovereign statehood. These political designs are typically worked through gradually, through the everyday processes of state making and international relations that occur on and across islands, and they transpire across the range of geopolitical

registers studied by scholars of geopolitics, from formal diplomacy to popular geopolitics to military interventions.

However, because offshore islands typically have ambiguous relationships with the mainland states that exert control (including, in some instances, formal sovereignty) over them, this contestation frequently occurs, most profoundly, in the legal arena, where questions of *status* are addressed directly through a combination of legislation and case law (for a discussion of this in the US context, see Leibowitz 1989). Thus, paralleling Potts' (2024) work on the way that jurisdictional questions in international contract law have contributed to reconfiguring the meaning of territory (and hence the practice of geopolitics) in the late 20th/early 21st century US-dominated economic system, I argue here that questions of criminal jurisdiction that emerged in the 1970s on the ice island T-3 are indicative of a broader trend, within island geopolitics but ultimately within the broader context of state territorial practice, of turning 'lawless islands' into 'islands of law' and constructing new juridical territories.

T-3: A Paradoxical Island

T-3 was likely formed in the 1930s when a massive slab of glacial ice calved off the west coast of Ellesmere Island (Mirnguiqsirvik), the northernmost island of Canada's Arctic archipelago. A decade or so later, in 1947, the newly formed United States Air Force initiated a search for potential sites in international waters for an ice-based research station, to complement several that had already been established by the Soviet Union. The third potential site that was spotted, Target 3 or 'T-3', was ultimately selected, and in 1952 Lieutenant Colonel James Fletcher became the first person to land an aircraft there (leading to its alternate name: 'Fletcher's Ice Island'). T-3 remained in more-or-less continual operation as a remote station of the Alaska-based Navy Arctic Research Laboratory (NARL) until 1978, hosting research on a number of topics including cold weather meteorology, cryology, and oceanography (Arctic outpost 1952; Bost 2014; Bruun and Steinberg 2018; Duncombe 2019; Fletcher 1997; Holmquist 1972; Rodahl 1954; Silk 1952).[1]

Crucially, T-3 was an ice *island* – a 45 square kilometre, 40-metre-thick slab consisting primarily of freshwater glacial ice – not an ice *floe* (i.e. frozen sea water). This was important from an engineering perspective: glacial ice is much more stable than sea ice, so T-3 would present a relatively static, 'land-like' surface for engineers seeking to manipulate its structure to construct semi-permanent facilities like runways. But the distinction was important for other reasons as well: T-3 being an ice *island* meant that it was easier to imagine (and categorise) as something distinct and permanent, like a land island. The extension of the term 'island' here is notable. For, if every *land island* occupies a paradoxical position – existing both in opposition to the

ocean and as part of the ocean, isolated but also in a series with other islands, distinct from but also akin to the mainland – then much the same could be said of an *ice island*. From its origins on land to the somewhat land-like plasticity of its surface to the relative permanence of its existence (in contrast with that of a rapidly dissipating ice floe), an ice island has many of the same characteristics as a land island. And yet the ice island still occupies a more 'oceanic' place than a land island on the land-ocean spectrum. Unlike a land island, an ice island moves in space as a part of the ocean, as it drifts with the ocean's currents. Also, although an ice island is more stable than an ice floe made of sea ice, glacial ice islands *do* eventually melt, especially when they drift into warmer waters. Indeed, T-3 was abandoned by NARL in 1978 when it became apparent that currents would be taking it over the northern tip of Greenland (Kalaallit Nunaat) and into the Fram Strait, which would channel it into the North Atlantic and its ultimate demise.

The case of T-3 and, more generally, the questions that emerge when ice islands in international waters are repurposed as military spaces, have attracted attention from scholars of sovereignty (Pharand 1969) and territory (Bruun and Steinberg 2018). This article draws heavily on these works, as well as a burst of scholarship from the early 1970s on jurisdictional issues surrounding T-3's legal status (Auburn 1973; Cruickshank 1971; Pharand 1971; Wilkes 1972, 1973) and a broader body of literature on the legal status of ice formations in the Arctic and Southern Oceans (Boyd 1984; Byers 2013; Dufresne 2007; Franckx 1993; ICE LAW Project n.d.; Joyner 1991; Pharand 2009; Rothwell 1996; G W Smith 1966; Steinberg et al. 2022). However, in line with the theme of this special issue, this article specifically turns to what it means to think of T-3 as an *island* and, conversely, how the case of T-3 can inform our broader understanding of the relationship between, on the one hand, the notion of islandness and, on the other hand, the territorial state as the fundamental political-juridical unit of the modern state system. To delve further into these questions, this chapter focuses in particular on responses to the events of July 16, 1970, when an electronics technician on T-3, Mario Escamilla, accidentally shot and killed the station chief, meteorologist Bennie Lightsy.

What was T-3?

On July 16, 1970, when T-3 was located around 200 nautical miles northwest of Ellesmere Island/Mirnguiqsirvik and 300 nautical miles from the North Pole, Escamilla, one of nineteen civilian employees then stationed on the ice island, discovered that a 15-gallon jug of home-made raisin wine was missing from his living space. Escamilla suspected that the culprit was Donald 'Porky' Leavitt, a maintenance worker on T-3 who had a reputation for stealing others' alcohol. Just a few weeks earlier, in an alcohol-fuelled altercation, Leavitt had

threatened Escamilla with a meat cleaver, so Escamilla identified Leavitt not just as a suspect but as a particularly dangerous one. After a quick search of the camp, Escamilla found Leavitt, together with Station Chief Lightsy, drinking the wine. Escamilla returned to his home, but shortly thereafter he heard footsteps approaching through the snow. Assuming that it was Leavitt, and mindful of the meat cleaver incident from a few weeks past, Escamilla grabbed a loaded rifle (issued to all staff for polar bear protection) before answering the door. However, the visitor turned out not to be Leavitt but an inebriated Bennie Lightsy. Escamilla and Lightsy continued their earlier argument and, with no resolution in sight, Escamilla waived his rifle at Lightsy, ordering him out. At this point, the rifle (which later was proven to have a defective trigger mechanism) accidentally discharged, leaving Lightsy dead on the floor. As it was summer, when T-3 was normally inaccessible due to unstable ice conditions, it took some time to develop a method for US government aircraft to reach the ice island. Eventually, however, Escamilla, Lightsy's body, and the rifle were airlifted to the US' Thule Air Base (now, Pituffik Space Base) in northern Greenland/Kalaallit Nunaat and, from there, to Dulles Airport in Virginia.

While the facts of the case were clear, the question of jurisdiction was not. As a (temporarily) inhabited ice island in international waters, the T-3 incident was, to quote the title of a contemporary article in *Time* magazine, a 'Murder in legal limbo' (1970). Legally, T-3 was a part of the ocean. The 1958 Convention on the Territorial Sea and the Contiguous Zone (part of the international law of the sea that prevailed at the time) defined an island as 'a naturally-formed *area of land*, surrounded by water, which is above water at high-tide' (United Nations 1964, art. 10, emphasis added). Clearly, from a strict legal perspective T-3 was not an island, since it was not an 'area of land'.[2] The fact that T-3 was frozen glacial water was irrelevant: Neither the Convention on the Territorial Sea and the Contiguous Zone nor any of the other three conventions agreed to at the 1958 First United Nations Conference on the Law of the Sea contained any special provisions for frozen ocean, or for water of non-oceanic origin.[3] In international law, the ocean was, and remains, conceived as a featureless space, and its hydrographic features – waves, currents, water molecules, ice formations (whether glacial or sea ice) – have no legal existence (Steinberg et al. 2022). The ocean is simply the entirety of space that lies seaward of coastal baselines. Although specific land features (islands, rocks, low-tide elevations) and artificial features (vessels, oil platforms) that punctuate this space are granted special legal status, no such privilege is granted to any feature made of water.

Thus, T-3 was not just *in the ocean*, it *was ocean* (notwithstanding that it consisted of glacial ice that had originated on land). And this particular part of the ocean was High Seas since, when the shooting occurred, T-3 was located around 200 nautical miles from the nearest territory (Canada), well beyond the

12 nautical mile limit that Canada had claimed for its territorial sea. Thus, legally, the crime occurred on the High Seas. However, that failed to address the jurisdictional question since, by definition, the High Seas are a space in which no state party has jurisdictional privilege based on geography, and, as has been noted, in this particular instance there was no other relevant feature (e.g. a vessel or landform) that might override the High Seas status of the space in which the shooting had occurred.

As Bruun and Steinberg (2018), drawing in particular on Auburn (1973) and Pharand (2009), note, there were four potential routes towards resolution that might have gotten around the fact that there was no basis for calling T-3 an 'island' in international law. Since the early 20th century, Canada has made occasional reference to the 'sector theory', whereby it is argued that, due to the exceptional nature of ice-covered water (and, in particular, the breakdown of the binary relationship between land and water that prevails in temperate regions), some degree of Canadian sovereignty should be extended to the waters of the Arctic Ocean north of Canada (the 'Canadian sector'), all the way to the North Pole. Because the sector theory is built on a recognition of the unique nature of icy marine environments, it suggests a potential route for accommodating the multiple meanings ascribed to various forms of ice by those who encounter it on a regular basis (Cruikshank 2005; Dodds 2018; Dodds and Sörlin 2022; Ruiz, Schönach, and Shields 2024; J R Smith forthcoming), even as it also extends Canadian state power to new, northern frontiers. Indeed, contemporary statements by Canadian officials seeking greater Canadian influence in Arctic waters have regularly referenced Inuit perspectives on and uses of frozen water (Steinberg, Tasch, and Gerhardt 2014). As T-3 was directly north of the Canadian archipelago at the time of the shooting it was in what would have been defined as the Canadian sector. Therefore, if Canada had chosen to use this moment to advance the sector theory, it could have asserted criminal jurisdiction over all activities in its sector, in liquid or frozen water.

However, the shooting occurred at a tense time in Canada-US relations in the Arctic: the US icebreaker *Manhattan* had just made a controversial transit of the Northwest Passage, Canada had just passed the Arctic Waters Pollution Prevention Act which extended its powers in Arctic waters as well as extending the limits of its territorial sea from three to twelve nautical miles, and preparatory negotiations for the Third United Nations Conference on the Law of the Sea had recently gotten underway in New York. Given this context, Canada had no interest in further complicating its position in Arctic waters and raising new tensions with the United States. As such, Ottawa sent a diplomatic note to Washington informing the US that it made no claim to T-3 and had no jurisdiction over Escamilla.

In the note, Canada suggested a second option: classifying T-3 as a US-flagged vessel (there already was a United States flag flying over the base).

Then, the US could claim jurisdiction via the normal rules of extraterritoriality that apply when a crime occurs on a flagged vessel on the High Seas. The problem here, however, is that under maritime law a flag state is required to ensure that its vessels do not cause a hindrance to navigation by other vessels. Since T-3 might potentially drift into a shipping lane, and since the US lacked the ability to steer T-3 out of harm's way if it were to become a navigational hazard, classifying it as a vessel would bring unwanted liability challenges to the US.

The third option was to classify T-3 as an island, notwithstanding the fact that it failed to meet the accepted definition of an island in international law. One year prior to the shooting, Canadian jurist Donat Pharand (1969), noting that ice islands were increasingly hosting semi-permanent settlements with social relations, proposed that ice islands, although not technically islands, might require a legal identity more distinct than mere subsumption within the (presumptively liquid) ocean. In fact, United States law already had a potential route for claiming a sort of quasi-possession over islands via the 1856 Guano Islands Act (48 U.S.C. §§1411–1419).[4] This law, which incentivised US-based entrepreneurs to establish guano-mining operations on uninhabited and unclaimed Caribbean and Pacific reefs and islands by authorising US military power to protect private interests there, had been liberally used by the United States since the early 20th century to extend its footprint to distant seas (Immerwahr 2020; Oldenziel 2011). Crucially for the *Escamilla* case, the Guano Islands Act specifically grants the United States jurisdiction over any criminal activities that take place on a guano island (48 U.S.C. §1417).

However, extending the Guano Islands Act to an island that not only did not produce any guano but that was not even, in the legal sense, an island, would have been highly problematic for the US. For well over a century, the key principle driving United States ocean policy had been maintaining freedom of navigation, and the United States had consistently opposed claims to ocean-space that might have interfered with military and navigational freedoms (Steinberg 2001). The 1945 Truman Proclamations that lay the foundation for the modern regime of exclusive economic zones and extended continental shelves were largely driven by the desire to facilitate extraction of ocean resources while avoiding erecting any barriers to navigation. Today, even as the United States remains outside the United Nations Convention on the Law of the Sea, it files frequent objections when other states make what it believes to be excessive maritime claims (United States Department of State n.d.).

In Arctic waters as well, the United States has been loath to countenance any policy or claim that might set a precedent that could challenge the underlying principle of freedom of navigation. Thus, in 1909, when the American Robert Peary attempted to claim the North Pole for the United States, President Taft rejected the offer. In short, the United States was strongly supportive of the

formal position, codified in international law, that non-land features in the ocean were ocean, and hence unclaimable (if they were beyond the limits of the territorial sea), regardless of whether the feature, like an ice island, had some superficial land-like properties. If the United States were to claim T-3 as an island (even a provisional one, following the Guano Islands Act), there would be little to stop other states from claiming and, potentially, fortifying other patches of frozen water, and eventually this could challenge the entire regime guaranteeing freedom of navigation.

Rejecting each of these three options – asserting that special rules applied in the Arctic because it defied the normative geolegal binary of land (territory) and ocean (non-territory), classifying T-3 as a pseudo-vessel, or classifying T-3 as a pseudo-island – the United States pursued a fourth route: claiming *personal jurisdiction* over Mario Escamilla.[5] Although jurisdiction over criminal activity is typically determined by the territory within which the activity occurs, both US and international law acknowledge other, non-territorial bases for claiming jurisdiction. These include instances where the crime is so heinous that jurisdictional claims are open to all (e.g. piracy); where the crime, even though it occurs elsewhere, may have an impact on the prosecuting state's territory (e.g. through commercial activities associated with the crime); where the state's interest is threatened by the crime (e.g. when a crime is committed against an overseas government employee or against the security of the state); or where the crime occurs in a place where there is no territorial jurisdiction (e.g. the High Seas) (Doyle 2010). Although the nationalities of the suspect or the victim are rarely sufficient on their own to trump territorial jurisdiction, they may be decisive when some of the other factors are also present.[6]

In this instance, both the defendant (Escamilla) and victim (Lightsy) were US citizens and the location of the crime was indisputably outside any state's territory, so an extraterritorial application of personal jurisdiction seemed to be a sound legal strategy. Implementing this in US law required an appeal to the doctrine of Special and Maritime Territorial Jurisdiction (SMTJ), 18 U.S. C. §7. Although originating in a statute from the First Congress that defined areas where the Federal Government (as opposed to any of the individual states of the United States) was empowered to prosecute major crimes (United States Congress 1790), by 1970 SMTJ had grown to encompass five extraterritorial spaces where the Federal court system could exercise its criminal jurisdiction: US-flagged vessels on the High Seas; US-flagged vessels on the Great Lakes or Saint Lawrence River; lands located in another country that had been purchased for the use of the US Government (e.g. overseas military installations); guano islands; and US-flagged aircraft in international airspace (18 U.S.C. §7(1–5)).

In effect, the US Government's claim to jurisdiction and its appeal to SMTJ was based on the designation of T-3 as a lawless island, or really a lawless non-island, a space that, for legal purposes, did not exist. Like

Rokovoko, it was 'true' (a real act of manslaughter had happened there), but it could not be mapped, at least not without disrupting the essential geopolitical-juridical 'mapping' of the planet as consisting of determinately-bounded landforms that are stable in space and time (i.e. potential territory), set against the backdrop of an antithetical ocean that was immune to territorialisation.

Constructing a Lawless Island

At his trial in Virginia, Escamilla was found guilty of involuntary manslaughter. That is, the jury determined that Escamilla could not have known that the rifle was faulty but, nonetheless, he was negligent in failing to use proper restraint when confronting Lightsy. The judge presiding over the case, Oren R. Lewis, recognised that the jurisdiction issues were so novel that Escamilla's attorneys were sure to appeal on those grounds if Escamilla were found guilty of any charge, and so he refrained from opining on jurisdiction except to (provisionally) accept the US Government's claim.

Escamilla did indeed claim on appeal that the US lacked jurisdiction. The relevant paragraph of US Code – 18 U.S.C. §7(1) – extends jurisdiction to a 'vessel' on the High Seas. Escamilla's attorneys protested that since, in this instance, there was no vessel, there was no basis for the US claiming jurisdiction.[7] The appellate panel ended up splitting 3–3 on the jurisdictional question, which was insufficient, on its own, to overturn Escamilla's conviction but also insufficient to definitively determine that T-3 was a space where US law could legitimately be applied.

Escamilla also appealed on several procedural matters, including, most significantly, Judge Lewis' jury instructions, and it was here that Escamilla's team met success. At the trial, Judge Lewis had instructed the jury to ignore the specificities of T-3:

> The law of the United States is applicable to this case in identically the same manner as it would be applicable to the crime if it were committed right here in Northern Virginia. So you can just forget the [T-3] part other than for background. (as quoted in *United States v.Escamilla* 1972, 347)

In its August 1972 decision, the appellate panel, agreeing with Escamilla, took issue with these instructions:

> This [instruction], we think, was in error . . . .It would seem plain that what is negligent or grossly negligent conduct in the Eastern District of Virginia may not be negligent or grossly negligent on T-3 when it is remembered that T-3 has no governing authority, no police force, is relatively inaccessible from the rest of the world, lacks medical facilities and the dwellings thereon lack locks – in short, that absent self-restraint on the part of those stationed on T-3 and effectiveness of the group leader, T-3 is a place where no

> recognized means of law enforcement exist and each man must look to himself for the immediate enforcement of his rights. Certainly, all these factors are ones which should be considered by a jury given the problem of determining whether the defendant was grossly negligent. (*United States v.Escamilla* 1972, 347)[8]

In other words, Escamilla's conviction was reversed because T-3 was deemed not fully civilised: less an island of law amidst the anarchic ocean (the territorial ideal posed by the insular model of state sovereignty) than a lawless island in a universe otherwise characterised by order and jurisprudence (a remote, barbarian outpost on society's frontier). In such a place, beyond the limits of state maps and social mores, where brutish men challenged each other in a state of nature, it was not unreasonable for an individual to grab a loaded rifle before engaging in what he had good reason to believe was going to be a confrontation with a drunken antagonist who had previously threatened him with a meat cleaver.[9]

Following the reversal of the Court's decision, the US Government retried the case. On November 2, 1972, a little over two years after the shooting, a second jury found Escamilla not guilty of all charges.

Constructing Islands of Law

It appears, then, that, following the resolution of *United States v. Escamilla*, T-3 was less an island of law than a lawless island, less the prototypical *polis* of Platonic political philosophy and Renaissance cartographers (Steinberg 2005) than a frontier where power could be exercised without the reciprocal relations of responsibility that occur under conventional norms of state territorialisation (Oldenziel 2011). However, the story of Special Maritime and Territorial Jurisdiction – and the 'islanding' of state power – did not end with the resolution of the second trial. A series of changes to SMTJ that transpired after Escamilla's acquittal, like the *T*-3 case itself, went on to reflect ongoing questions about the relationship between islands and sovereignty and, more broadly, the facile nature of the land-ocean binary that underpins modern definitions of territory *and* modern definitions of the island.[10]

In 1984, a paragraph buried deep within a 363-page omnibus appropriations bill (United States Congress 1984, 98 Stat. 2164) added a seventh paragraph to 18 U.S.C. §7, holding that SMTJ may apply to '[a]ny place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States'. With this new paragraph, no vessel (whether in the ocean, air, or outer space) or geographic island (whether a physical island like a guano island or an 'islanded' site of US power like a fort) is required to construct an island of (US) law. Thanks to 18 U.S.C. §7(7), Americans are now their own islands, and they carry US sovereignty with them when travelling in places where no sovereign rules supreme. With this revision of the code, it is clarified that personal jurisdiction requires nothing other than the person. To misquote

John Dunne, every man (or at least every American) can be a (legal) island. If T-3 was always a paradoxical space of sovereignty – a space for sovereign power to be reproduced, challenged, transformed, or ignored, through the arguments surrounding the *Escamilla* case but also through the science that was being practiced there (Bruun and Steinberg 2018) – it now also was becoming paradoxical as an island, a space that, because it could not be fully assimilated into the category of 'island', was suggestive of a further expansion of the 'island' concept.

The ability of SMTJ to construct new islands of law was advanced further in two subsequent expansions of 18 U.S.C. §7. First, in a broad-reaching anti-crime bill (United States Congress 1994, 108 Stat. 2021), in response to jurisdictional confusion surrounding the 1985 hijacking of the *Achille Lauro* cruise ship SMTJ was extended to 'any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States'. This paragraph (18 U.S.C. §7(8)) effectively extends US jurisdiction to Americans on any vessel that is either coming to or going from the United States, whether or not the vessel is US-flagged and whether or not it is on the High Seas. The presumption here was that on a vessel the enforcement capacity normally associated with a territorial state is lacking, and so extraordinary measures of personal jurisdiction are required. Just as the T-3 incident led to statutory innovations that rescripted the island – formerly the paradigmatic model for sovereign territory – as a space beyond territorial jurisdiction, the *Achille Lauro* incident led to a similar rescripting of the ship. Previously venerated as a model for sovereign territory (as in the Platonic concept of the 'ship of state'), the vessel, like the island, was now defined as a space that required alternate standards, like the principle of personal jurisdiction, for determining and justifying juridical authority.

This perspective – that, notwithstanding the formal division of inhabited space into equivalent sovereign territories, the world consisted of lawless islands that needed to be converted into islands of law – was articulated as a principle by US foreign policy intellectuals following the September 11, 2001 Al Qaeda attack in the doctrine of 'contingent sovereignty' (Elden 2006). Indeed, it was in the immediate aftermath of September 11, as part of the USA PATRIOT Act (United States Congress 2001, 115 Stat. 377), that 18 U.S.C. §7 saw its most recent revision, with islands of personal jurisdiction now being extended to offences committed by or against a national of the United States in US Government facilities in foreign states, regardless of the property's ownership or diplomatic or military status.

In other words, following *United States v. Escamilla*'s challenge to the presumed physicality of an island (as land surrounded by ocean) and its resolution through reliance on the trope of the lawless island, legislation has

proceeded to rectify this situation. With these post-*Escamilla* extensions of Special Maritime and Territorial Jurisdiction, the proliferation of lawless islands is being replaced by a proliferation of islands of law, where principles of personal jurisdiction (at least for Americans) override the norm of territorial jurisdiction. The island has been reduced to a floating signifier: unmappable, but very much 'true' for those who find themselves prosecuted under 18 U.S.C. §7.[11]

Rethinking Territory, through an Island-Studies Lens

Recent geographic writing on the changing nature of territory, from Elden's (2009) work on appeals to territory in the Global War on Terror to Potts' (2024) work on 'judicial territory' in international contract law, stresses that territory is not something that occurs inside states and is then projected to (or transcended by) spaces and processes beyond borders. Rather, territory is continually made as power is projected onto space, and bordering (of all sorts, at all scales) is part of that process (see also: Elden 2013). For this reason, Potts eschews the words 'jurisdiction' and 'extraterritoriality'. She critiques these terms for the way that they '[portray] the growing flexibility of law in terms of the extension of jurisdiction *beyond* territory' (Potts 2024, 10, emphasis in original). Instead, much as Elden does for the seeming deterritorialisations and reterritorialisations (and extraterritorialisations) practiced both by Al Qaeda and its opponents, Potts understands changing configurations of territory as part of the means by which territory is deployed: to project, but also to construct state power. Territory, then, is a technology – for Elden, a calculated rationality that binds administrative and military power to space; for Potts, a legal strategy that aligns state-sanctioned norms with commercial power – rather than a bounded space of state authority.

Although I do not share Potts' aversion to the words 'jurisdiction' and 'extraterritoriality', my point is similar to hers (and Elden's): Rather than understanding extensions of jurisdiction to spaces like T-3 simply as outward facing projections of imperial power, they can be better conceived as territory-creating processes. The use of SMTJ to construct T-3 as a lawless island and the subsequent projection of that concept to justify an endless spiral of islands of law where conventional notions of territorial jurisdiction are overridden are two sides of the same coin. Indeed, they resonate with a long-standing set of paradoxes in island studies: between islands as idealised places of order and sites of disorder, between islands as sites where the territorial state is imagined and where it is transcended, between islands as isolates that are frozen in time and those where futures are imagined.

Principles of sovereignty and jurisdictional norms require that spaces be assigned to stable, coherent, geophysical-geolegal categories. T-3, by contrast, simultaneously had properties of land, ocean, ice, vessel, glacier, and island. It

was simultaneously a civilian community, a military installation, a scientific research station, and a space beyond civilisation. It was both isolated and connected. It was both territory and a space that could never be territory.

Arguably, T-3's multiplicity of geophysical and geolegal identities was more extreme (and more dynamic) than most points on Earth, and therefore the struggle to 'map' T-3 – to define its status, not just as a dependent space under US control but in a deeper ontological sense as well – was particularly fraught. However, as the history of Special Maritime and Territorial Jurisdiction, and the broader history of attempts to slot spaces (including, especially, islands) into bounded geolegal categories, demonstrates, it was not exceptional.

Ultimately, the lesson of the T-3 shooting, the trial, and the subsequent extensions of Special Maritime and Territorial Jurisdiction is not just that a 'true' place can never be mapped. It is also that, in that process of attempting mappings, territory is made, by unevenly applying and resisting power at the frontiers of law. Despite, or perhaps because, these 'islands of law' diverge from normative notions of the sovereign state, they too advance the power(s) of territory in the modern world.

Notes

1. To place this research in the broader context of militarised US Arctic research during the Cold War, see for instance Bocking and Heidt (2019), Doel, Harper, and Heymann (2016), Doel, Wråkberg, and Zeller (2014), and Farish (2013).
2. There were two additional reasons why it would have been difficult to apply this definition of an island to T-3. First, the only one of the four conventions that specifically referred to islands was the Convention on the Territorial Sea and the Contiguous Zone, and, at the time of the shooting, T-3 was not located in any state's territorial sea or contiguous zone. And secondly, although the United States had ratified the Convention by 1970, Canada had not. The United Nations Convention on the Law of the Sea (United Nations 1982), which came into force in 1995 and remains in force today, uses the same definition (art. 121) as appeared at article 10 in the 1958 Convention. Therefore, T-3, if it were in existence today, still would not be an island under international law.
3. The 1982 Convention does contain limited special provisions for ice-covered waters (art. 234), but these would not have impacted jurisdictional questions around T-3, even if the 1982 Convention had been in force at the time.
4. All references to United States Code in this article are to the current version at time of submission (U.S.C. United States Code n.d.).
5. In fact, a potential fifth option could have been for the Kingdom of Denmark to claim jurisdiction because, when Escamilla was first apprehended, he was brought to a US air base located on Danish territory and, because Escamilla was a civilian, the status of forces agreement between the United States military and the Kingdom of Denmark would not have applied. However, the Kingdom of Denmark never pressed this claim, so this option was not pursued.
6. For instance, Doyle (2010) discusses the case of *United States v.Clark* (2006) where an appeals court affirmed the United States' right to prosecute a US citizen who

had paid for sex with minors in Cambodia. The appeals court affirmed the constitutionality of the relevant anti-child sex trafficking statute (18 U.S.C. §2423(c)) due to Article 1, Section 8 of the Constitution, which empowers the Federal Government to regulate foreign commerce, and it held that the Court's extraterritorial jurisdiction was justified by the defendant's US citizenship. However, the Court avoided stating whether the US could have asserted jurisdiction if no payment had been made (i.e. the Court refused to make a determination on whether the defendant's US citizenship could have been the *sole* justification for extraterritorial jurisdiction).

7. Escamilla's attorneys relied on the precedent set by *United States v.Cordova et al.* (1950), where the Court had found that SMTJ could not be applied to an aircraft in international airspace because an aircraft was not a 'vessel'. In response to this case, the United States Congress (1952) passed a bill that extended SMTJ to US-flagged aircraft in international airspace (18 U.S.C. §7(5)), but this extension was of no use to the prosecution in the *Escamilla* case because, just as *T*-3 was not a vessel, neither was it an aircraft.
8. The other procedural reason accepted by the appellate panel for overturning the conviction had to do with Judge Lewis allowing only one character witness to testify on Escamilla's behalf. The remoteness of T-3 was key to this point as well since, as Escamilla's attorneys argued (and as the appellate panel affirmed), additional character witnesses (from California) should have been permitted to testify because it was logistically impossible for Escamilla to recruit witnesses from T-3.
9. As Bruun and Steinberg (2018) note, this representation of T-3 as a space beyond civilisational order was abetted by media representations that gratuitously racialised the protagonists (Lightsy was African-American, Escamilla Chicano, and Leavitt Inuit) as well as presenting a hyper-masculinised picture of the all-male community of researchers.
10. To date, there have been four paragraphs added to 18 U.S.C. §7 beyond the five paragraphs that were in force when *United States v. Escamilla* was heard. 18 U.S.C. §7(6) extended SMTJ to spacecraft, reflecting a statute introduced in the 1982 NASA Authorization Act (United States Congress 1981). Because it is less directly germane to my argument, I am skipping over 18 U.S.C. §7(6) here and focusing instead on 18 U.S.C. §7(7–9).
11. For further commentaries and critiques on the extension of Special Maritime and Territorial Jurisdiction, see O'Brien (2011) and Paust (1999, 2016).

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