



# Jurisdiction, Sovereignties and Akwesasne: Shiprider and the Re-Crafting of Canada-US Cross-Border Maritime Law Enforcement

Anna C. Pratt and Jessica Templeman\*

## Abstract

Against the historical backdrop of the sinking of the Canadian rum-running schooner the *I'm Alone* by the US Coast Guard in 1929, this paper examines the re-crafting of maritime jurisdictional practices in the 2000s through the Canada-US Cross-Border Maritime Law Enforcement Program known as Shiprider. Thinking jurisdictionally and taking seriously the materiality of the water, we explore the significance of Shiprider's patrols in the local context of Kaniatarowano'we (St. Lawrence River) which flows through Akwesasne Mohawk Territory, an indigenous border nation cleaved by the Canada-US international border where local communities contend with and continue to refuse imposed colonial settler boundaries.

**Keywords:** Jurisdiction, maritime law enforcement, sovereignties, smuggling, colonialism

## Résumé

Dans le contexte historique du naufrage de la goélette de contrebande d'alcool canadienne *I'm Alone*, par la Garde côtière américaine en 1929, cet article examine la réorganisation des pratiques de compétence maritime dans les années 2000 par le biais des opérations transfrontalières maritimes d'application de la loi, aussi connues sous le nom d'Opérations Shiprider. Réfléchissant aux juridictions et en prenant en compte la matérialité de l'eau, nous explorons l'importance des patrouilles de Shiprider dans le contexte local de Kaniatarowano'we (Fleuve Saint-Laurent) qui traverse le territoire mohawk d'Akwesasne, une nation autochtone frontalière traversée par la frontière internationale canado-américaine dans laquelle les collectivités locales luttent et continuent de refuser les limites coloniales imposées aux colons.

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**Mots clés :** Jurisdiction, application de la Loi maritime, souverainetés, contrebande, colonialisme

“It is through jurisdiction that a life before the law is instituted, a place is subjected to rule and occupation, and an event is articulated as juridical” (Dorsett and McVeigh 2007, 5).

“The only reason they wanted the Shiprider program was to figure out how they could get the native people” (Akwasasne Community Member Interview 2016).

## 1. Introduction

In the mid-2000s, the Canada-US Cross-Border Maritime Law Enforcement Program, known commonly as “Shiprider,” was introduced in the shared coastal waters and internal waterways along the Canada-US border to target all forms of cross-border smuggling. Shiprider vessels are jointly crewed by both Royal Canadian Mounted Police (RCMP) officers and United States Coast Guard (USCG) officers who are all empowered to enforce the laws of both Canada and the US on either side of the international border (Government of Canada/Government of the US 2009; see also: *Integrated Cross-Border Law Enforcement Operations Act* 2012). Shiprider’s reconfiguration of jurisdictional practices effectively “remove(s) the international maritime boundary as a barrier to law enforcement” (Government of Canada 2014). Shiprider vessels are now able to pursue suspect boats with, as the authorities often repeat, “seamless continuity.” As explained by a senior member of the RCMP, “Criminals are not bound by the line in the water that we call the border. They can run the border at will. They can use the border to hide behind; whereas, we, as law enforcement agencies for each country, are required to stop at the border. Without the Shiprider program ... once someone crosses the border, we cease our activity. With the Shiprider program, we can follow it to its conclusion” (Royal Canadian Mounted Police 2010).

In this study, we begin to “think jurisdictionally” (Dorsett and McVeigh 2007) about the significance and effects of Shiprider. In what follows, we first situate Shiprider in socio-historical context before taking a closer look at its operations in the local terrain (Elden 2017) of the Kaniatarowanōn:we (St. Lawrence River), where the waterways flow through, around, and near Akwasasne Mohawk Territory.<sup>1</sup> In this border-nation (Simpson 2014, 129; Starks, McCormack, and Cornell 2014), bi-national border enforcement strategies transect indigenous land and marinescapes where local community members contend with and continue to refuse imposed colonial boundaries that relegate their sovereignty to the historical past (Moffette and Pratt submitted; see also Simpson 2014; Pertusati 1997;

<sup>1</sup> Kaniatarowanōn:we means the “big waterway,” or “big river” in Kanien’kéha, the language of the Mohawk people who self-identify as Kanien’kehá:ka (also spelled as Kanye’kehaka), which means “People of the Flint.” Akwasasne, the widely used traditional missionary spelling for Ahkwasahsne, translates to “Land Where the Partridge Drums.” The people of Akwasasne are usually referred to as Akwasasronon, the anglicized version of Akwasahsnero:non.

Luna-Firebaugh 2002, 2005; Singleton 2009; Feghali 2013). We investigate the novel, contested, and incomplete ways that Shiprider's mobile maritime deployments of jurisdictional practices enact and prioritize both Canadian and American versions of settler sovereignty over and against indigenous versions in Akwesasne.<sup>2</sup> In this effort to think jurisdictionally about Shiprider and cross-border maritime law enforcement in Akwesasne, we are also concerned with taking the nature and effects of the water itself seriously; both as a distinct physical space of "fluidity, volume, emergence, depth, and liquidity" (Steinberg and Peters 2015, 260, in Jones 2016, 342) and as an historically rich and culturally meaningful "social materiality" (Dale 2005).

This article's investigation of Shiprider and the exercise of maritime jurisdiction in Akwesasne territory unfolds in five parts. In Part II, we offer a brief elaboration of our approach to Shiprider, drawing from recent scholarship on jurisdiction and settler sovereignty in a way that also endeavours to take the materiality of the water seriously. In Part III, we situate Shiprider and its jurisdictional significance in socio-historical context by tracing its connections to the 1929 case of the sinking of the Canadian-registered, rum-running schooner, the *I'm Alone* by the USCG. We propose that the story of the *I'm Alone* and the arbitration that followed resonates with Richard Ford's depiction of the jurisdictional tango (1999), an artful and powerful performance of different configurations of jurisdictional practices that stitch together the colonial connections between sovereignty, territory and authority that converge on the water. Against this historical backdrop, the uniqueness of Shiprider's jurisdictional innovations, described in detail in Part IV, comes into view. In Part V, we focus on the operations and effects of Shiprider in the local waterways that flow through and around Akwesasne Mohawk Territory, itself crosshatched by multiple, overlapping, conflicting, and contested settler and indigenous jurisdictional divides and governing authorities. Shiprider is but one partner in the ongoing jurisdictional dance that is continuously performed in this unruly, thoroughly differentiated zone. In our conclusion, we emphasize that in the land and marinescapes of Akwesasne, colonialism is incomplete, jurisdictional contests are many, indigenous refusals are varied and vigorous, and the threads of settler sovereignty run bare (Benton 2010; Simpson 2014; Pasternak 2014).

## 2. Conceptual Resources

### 2.1 Settler Sovereignty and Thinking Jurisdictionally

At the level of the nation-state, the "default scalar setting" (Valverde 2009) of much criminological and socio-legal research, the resonance of this bi-national, cross-border law enforcement program with the expansive processes and tensions of globalization and securitization is striking. Shiprider seems to provide a rather

<sup>2</sup> In this article, and consistent with the title of the legislation that governs the Shiprider program, we use the term "maritime" to refer to sea-related artifacts, authorities, practices (ships, sailors, patrols, industries). We use the term marine to refer to the water itself (fluidity, depth, environment). However, this is an ongoing and unsettled discussion. See for example, Hildebrand and Schröder-Hinrichs, "Maritime or Marine: Synonyms, Solitudes or Schizophrenia" (2014).

straightforward example of emergent and interconnected transnational security arrangements that are beginning to escape “from their earlier frame within distinctive national regimes” (Walters 2009, 2; see also Sheptycky 2000; Sassen 2008; Walker 2008). Canadian critics have therefore warned that Shiprider extends and connects the crime and security mandates of Canada and the US, representing a significant threat to Canadian national sovereignty and raising troubling questions about accountability, privacy, and information sharing, due process and civil rights (Gilbert 2007, 2018; Kitchen and Rygiel 2015).<sup>3</sup> These are certainly important concerns. However much would be missed if the analysis were to end here.

This study scales down its focus to bring into view the significance of Shiprider in relation to the multiple and contested sovereignties in the local terrain of Akwesasne. This approach leads us to think carefully about jurisdiction.<sup>4</sup> As carefully argued by Audra Simpson, smuggling has long provided the opportunity for the assertion, defence, and contestation of different versions of sovereignty through the deployment of jurisdiction (Simpson 2008).

As exclaimed by one USCG officer, “I think... pretty cool, like to me... how we legally do that is pretty amazing to me. Like, wow, you’re letting a foreign—they’re really not a foreign law enforcement officer at that point right, they’re a [Canadian] peace officer—but I mean you’re foreign law enforcement...arresting someone in a foreign country... holy cow, that’s kinda crazy... but we—both countries have agreed that’s okay” (Shiprider Officer Interview 2017a).

This question of “how we legally do that?” is at heart a question of jurisdiction. As a legal technicality, jurisdiction brackets, sorts, and organizes legal authorities by placing limits on the scope of each authority’s power (Valverde 2015, 83). But jurisdiction is not strictly a technical legal matter, nor is it simply an abstract or descriptive concept. Instead, jurisdiction “actively works to produce something” (Dorsett and McVeigh 2007, 7). Jurisdiction is a performative and productive technology that asserts, as expressed by Shaunnagh Dorsett and Shaun McVeigh, “the power and authority to speak in the name of the law” (2007, 5). The use of the word “craft” in the title of this paper invokes the productive effects of technologies of jurisdiction. As clarified further by Shiri Pasternak, the view of jurisdiction as a “technology” not only speaks to technique, but also signifies the Greek *têchné* or “craft” (Pasternak 2014). It is in this much fuller sense that Shiprider *re-crafts*

<sup>3</sup> While controversial and one-sided, Shiprider Agreements between the US and Caribbean and Latin American nations have proliferated since the early 1990s in the context of the US war on drugs (Brown 1997; Ferguson 2003; Robinson 2009; Watson 2003). USCG and RCMP authorities are quick to reassure that the Canada-United States Shiprider agreement is unique because it is fully reciprocal and leaves the sovereignty of both nations intact through a variety of privacy and accountability provisions in the Framework (Shiprider Officer Interviews 2014a, 2014b, 2014c, 2015b).

<sup>4</sup> For recent studies that explore the significance and effects of jurisdiction in theory and as practice, see also Dorsett and McVeigh 2012; R. Ford 1999; L. Ford 2011; McVeigh 2007; Pasternak 2014; Simpson 2008; Valverde 2009, 2015. For key works that examine jurisdiction in the maritime context see Jones 2016; Steinberg 2001, 2013. For recent scholarship that explores the materiality of oceans/bays, jurisdiction and settler colonialism see Renisa Mawani’s thoughtful re-telling of the movement of the *Komagata Maru* (2018). See also Debjani Bhattacharyya’s fascinating book about the Bengal Delta (2018) and Penny Edmonds’s study of “counter-travel” in the southern oceans (2018). We are very grateful to one of the anonymous reviewers for directing us to these recent works.

jurisdiction, by re-configuring the practices that produce what Lisa Ford would describe as the legal trinity of the settler nation statehood: jurisdiction, sovereignty, and territory (L. Ford 2011).

As noted by Henry Jones (2016), and following Stuart Elden (2013), jurisdictional practices are practices of territory, and the sea is where international law pioneered its practices of territorialisation (Jones 2016, 342; see also Benton 2010, Mawani 2018). As “moving ship[s],” Shiprider vessels are certainly engaged in the juridification (Grotius 1609, in Mawani 2018, 32) of the Kaniatarowano’o:n:we (St. Lawrence River), and Shiprider’s deployments of jurisdictional practices in the marinescapes of Akwesasne work to materialize the territories of not just one, but two settler colonial nation states. Interestingly, Shiprider continues this pioneering work of empire in internal and coastal waters, where the usual binaries that pit the open and free space of the sea against land as the fixed and regulated space of territorial sovereignty are muddled.

Further, these practices of territory are incomplete because of the ongoing contestations over sovereignty in internal waters. Akwesasne represents what Pasternak might describe as an unruly “lump” in the tangled and uneven patchwork of imperial territorial control (Pasternak 2014, 148). In the waterways that flow through Akwesasne, the politics at play have proven irrepressible, the refusals of the Mohawk people (Kanien’kehá:ka) have been strenuous, and, to the dismay of the Shiprider officers with whom we spoke, Shiprider patrols in Akwesasne have, at least for the time being, been interrupted. Colonialism continues to exist, but is also incomplete (Simpson 2014, 7). From this perspective, Shiprider’s patrols in Akwesasne have, to some degree, fuelled and fortified ongoing Mohawk (Kanien’kehá:ka) refusals and assertions of sovereignty, “within multiple sovereignties” (Simpson 2014, 187).<sup>5</sup>

## 2.2 Taking the Water Seriously

In addition to signalling the productive effects of jurisdictional practices, the use of the word “craft” in the title of this paper also directs specific attention to the water and the distinctiveness of the marine environment. To think jurisdictionally about Shiprider and maritime law enforcement, it is necessary to take the materiality of the water seriously because, as explained by Philip Steinberg, “...it is a space that is *constituted* by and *constitutive* of movement” (Steinberg 2013, 165). Both the story of the *I’m Alone*, to which we turn next, and the emergence of Shiprider display the challenges of how to draw jurisdictional lines in the water, where, as put by Jones, “the certainty of the law’s enunciation conflicts with the uncertainty of the world that it seeks to regulate” (Jones 2016, 320; see also Dickinson 1926, Steinberg and Peters 2015, Elden 2017). Shiprider’s novel reconfiguration and deployment of jurisdictional practices are shaped by the fluidity and mobility of the water in ways that disconnect authority from territory and transform sovereign authority while on the move.

<sup>5</sup> For a nuanced and authoritative account of the politics of refusal and the “nested sovereignty” of the Mohawks of Kahnawà:ke, see Simpson (2014).

The encouragement to “get wet” (Jones 2016) in the study of maritime jurisdictional practices also directs attention to what Stuart Elden (2017) might call “the terrain” of maritime enforcement, where the geopolitical and the geophysical meet. To take the water seriously, we need to recognize that its materiality is not only physical but also social; it is imbued with “culture, language, imagination, memory” (Dale 2005, 652). In the terrain of Akwesasne, “the river is the history and heart of the Mohawk people” (Hambleton 2016); its materiality is deeply connected to the lives and histories of the Mohawk (Kanien’kehá:ka) and Haudenosaunee people.<sup>6</sup>

### 3. The Sinking of the *I’m Alone* (1929)

Prohibition created mass illegality. The ending of prohibition in Quebec and Ontario in 1928, five years before it ended in the United States, provided excellent rum-running opportunities. The *I’m Alone* was a British made, Canadian-registered, very fast, two-masted rum-running schooner. It was 125 feet long, with a carrying capacity of 250 tons—or 2,800 cases of liquor. It was one of many that would anchor at the rum row just outside the territorial waters off the east coast of the United States to sell whiskey “over the rail” and evade enforcement (Ricci 2011, 8). Its hardboiled Canadian skipper, Captain “Jack” Randell, managed to elude the USCG for over four years during the 1920s before the *I’m Alone* was sunk in 1929 by the USCG with a belly full of liquor from Belize in the high seas of the Gulf of Mexico. On March 20, 1929, the USCG cutter Wolcott first spotted the *I’m Alone* off the coast of Louisiana and ordered it to heave to. Captain Randell refused. Brandishing jurisdiction as a protective shield, he brazenly invited the Captain of the cutter to fire if he wished, declaring “Captain, you have no jurisdiction over me. I am on the high seas outside of treaty waters. I cannot and will not heave to” (quoted in Skoglund 1968). The Wolcott continued to trail the *I’m Alone* for the next two days until the USCG cutter Dexter arrived to help. When Randell again refused to heave to, the Dexter commenced to fire shell after shell until it had sunk the *I’m Alone*, taking the life of crew member Leon Mainguy, a French foreign national from Saint Pierre and Miquelon (Ricci 2011, 21).

The sinking of the *I’m Alone* developed quickly into a widely publicized international incident involving the United States, Canada, Great Britain, France, and Belize. Vincent Massey, the Canadian Ambassador to the United States, seeking to assert Canadian sovereignty and its budding independence from Britain but also from the United States, asked the US government for a full report and subsequently issued a note of protest to Henry Stimson, the US Secretary of State. When the exceedingly polite diplomatic correspondence between Canada and the

<sup>6</sup> For a fascinating ethnographic and historical study of the meaning of place and the complex relationship between Akwesasronon and the Kaniatarowano’on:we (St. Lawrence River) prior to the development of the St. Lawrence Seaway and Power Project in the mid-1950s see Martin (2010). Martin carefully recounts the ways that the river was experienced as a landscape of contestation, but yet also is infused with memories of island and river life to form a “cultural epistemology of the Mohawks as ‘river people’” (Martin 2010).

United States failed to resolve the jurisdictional dispute,<sup>7</sup> international arbitration commenced as required under the 1924 *Convention between the United States and Great Britain for the Prevention of Smuggling of Intoxicating Liquors* (1924 Convention).

Captain Randell quickly became something of a Canadian hero, joining the ranks of other plucky Canadian smugglers who dared to thumb their noses not only at American authorities but also at Canadian ones who were perceived to be in need of a little more backbone vis-à-vis the Americans on this and other matters. There was even a celebratory Canadian folksong about the sinking of the *I'm Alone* that likened the pursuit of rum-runners by the US Coastguard to a dance: "We kept the coastguard busy, they never had a chance; To catch us with our cargo, we showed them how to dance" (Hemsworth, "The *I'm Alone*," Canadian folksong). And dance they did.

### 3.1 The Jurisdictional Tango

In the extensive diplomatic and legal wrangling that followed the sinking of the *I'm Alone*, defining jurisdiction and addressing the related issues of the lawfulness of the USCG "hot pursuit" and its use of force involved a bundle of intersecting and conflicting domestic, multi-lateral, and international law and policy regimes, as well as a varied assortment of spatial and temporal practices, technologies, calculations, and specifications (Ricci 2011; Skoglund 1968). Several domestic and international laws, policies, and multi-national treaties came into play in the effort to draw the lines of jurisdiction in the water. First, the *U.S. National Prohibition Act* of 1919—known also as the *Volstead Act*—prohibited the manufacture, sale, exportation, or importation of alcohol into the United States or its territorial waters. Second, the *U.S. Tariff Act* of 1922 extended US jurisdiction beyond its territorial waters allowing the search of vessels within four leagues (twelve nautical miles) of the shore to enforce import-export laws. In 1923, this extension of territorial jurisdiction was written into the USCG's *Instructions, Customs, Navigation and Motor Boat Laws and Duties of Boarding Officers*, which gave its officers the right to board, inspect, and examine any foreign vessel within twelve nautical miles of the coast and to "use all necessary force to compel compliance..." (Ricci 2011, 7). These regulations stipulated that there is no such authority beyond twelve nautical miles from the coast "except in cases covered by special treaties" (ibid). Third, and most controversial, were the terms of the 1924 Convention signed by the United States and Great Britain and agreed to by Canada. This Convention permitted the United States to halt and search British vessels within the distance from shore that the suspected vessel could "traverse" in one hour—hence its informal name—the "one hour's distance" treaty (Skoglund 1968). This indefinite spatio-temporal measure depended of course on how fast and how far a

<sup>7</sup> The correspondence between the Governments of Canada and the United States concerning the "I'm Alone Incident" can be found at: [http://www.newfoundlandshipwrecks.com/Im%20Alone/documents/im\\_alone\\_incident.htm](http://www.newfoundlandshipwrecks.com/Im%20Alone/documents/im_alone_incident.htm).

fleeing vessel could sail, calculations which occasioned protracted discussions about space, time, distance, speed, technology, wind, water, and topography.<sup>8</sup>

The jurisdictional moves effected through the *US Tariff Act* of 1922 and the 1924 Convention were shaped by the binary that contrasts land and sea as inside and outside, as territorial and extra-territorial, as controlled and free. Applying “the principle of extraterritorial jurisdiction to insure territorial security” (Dickinson 1926, 27), these legal reforms effectively extended American sovereign authority over its territorial sea beyond the three-mile limit set at the time by the customary international doctrine of *Freedom of the Seas* (*Mare Liberum*) developed by Hugo Grotius in 1609. This three-mile limit had its own interesting though not uncomplicated genesis: the “cannon shot rule” provided that the coastal state claimed jurisdiction over the distance of coastal waters that it could control by firing a metaphorical cannon (Kent 1954).

In the early twentieth century, certain maritime legal scholars argued for a more flexible, principled approach to maritime jurisdiction rather than a “mechanical” effort to create “a complicated system of special jurisdictional zones” (Dickinson 1926, 28). As explained by Edwin Dickinson, the physical materiality of the water requires a different approach to jurisdiction than that which applies on land: “It is futile to strive for simplicity or certainty, or uniformity with respect to a subject whose essential nature is such that it cannot be so confined” (Dickinson 1926, 27). However, the striation approach to maritime jurisdiction would remain dominant, and it later shaped the more complicated scheme of different maritime jurisdictional zones for different purposes that was inscribed in the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS), that persists today. UNCLOS settled the limit of coastal territorial waters at twelve nautical miles (twenty-two kilometres; fourteen miles) (Art. 3), while preserving the right of innocent passage to all ships through territorial waters (Art. 17). This zone, which is now accepted by most countries, effectively territorializes water by making it into a bounded space under the control of a people (see Jones 2016, 333). UNCLOS created a range of zones beyond the territorial zone, including twelve nautical miles of the contiguous zone, 200 nautical miles of the Exclusive Economic Zone, and the Continental shelf. Beyond these zones, which represent for Steinberg the “creeping enclosure movement” of the ocean

<sup>8</sup> This is wonderfully illustrated by this remarkable exchange, recounted by Randell, between himself and Captain Paul of the Coast Guard Cutter *Wolcott* that took place on the *I'm Alone*, *mid-chase*, the day before the sinking:

“I fail to see how you can possibly know [your position],” I told him, “with a two-knot current running, and the soundings practically the same for thirty miles to the west, and you drifting all night by your own admission. Have you seen the land? Have you determined your position by star-sights since you left the light buoy last night?”

“No,” he said. “I haven’t any instruments to take star-sights.”

“Look here,” I told him. I showed him my sextant with its star-sight equipment. It cost me one hundred and fifty pounds sterling in London.

“It’s a beauty,” he said. “I never saw one like that before.” ...

“You know your ship can make fourteen knots” was his reply.

“My ship can no more make fourteen knots any more than you can make forty. Even with a gale of wind and fairly smooth water and engines in good shape opened out full, our best speed is not more than nine and a half knots. The *I'm Alone* never averaged more than nine knots for twelve consecutive hours. (Randell 1930: 258–59)



(Steinberg 2001 in Jones 2016, 316), the view of the sea as a smooth and open space of freedom still mostly prevails. According to the concept of “freedom on the high seas,” no nation may lay claim to any portion of the high seas (Art. 89): “The high seas are open to all States, whether coastal or land-locked” (Art. 87).

### 3.2 *Hot Pursuit and Ocean Water Jurisdiction*

Even this principle of the freedom of the high seas is limited by certain jurisdictional moves. One of the more complicated steps in the maritime jurisdictional tango of the *Im Alone* was the “right of hot pursuit.” At the time of the sinking of the *Im Alone* in 1929, this widely accepted custom of international relations was soon to be written into US guidelines, *Law Enforcement at Sea Relative to Smuggling* (1929), later codified in the 1958 *United Nations Convention on the High Seas* and eventually incorporated into the UNCLOS. On the high seas, where there is no territorial sovereign, a vessel is essentially deemed to be a detached, free-floating piece of the territory of the country whose flag it flies; it is the flag state—the state in which the vessel is registered—that has exclusive jurisdiction over the vessel (Art. 92). The right of hot pursuit provides an exception to this rule. Basically, this right provides that a coastal state that is not the flag state can give immediate, uninterrupted, and continuous chase through time and space from a point within its territorial waters to a point outside (Art. 111). Whether the USCG had the authority to pursue the *Im Alone* in the first place and, if so, whether its pursuit into the high seas met the requirements of a hot pursuit under international doctrine, were the key issues in the arbitration, alongside the slightly separate issue of the lawfulness of the extreme use of force. While it was undisputed that the chase of the *Im Alone* had not started within the three mile territorial waters of the United States, the USCG claimed (though this was adamantly rejected by Captain Randell) that the chase had indeed begun within the extended territorial jurisdiction provided by the “one hour’s distance” rule in the 1924 Convention. The American position was that this Convention effectively extended the territorial jurisdiction of the United States for all purposes and that therefore the right of hot pursuit applied. The Canadians disagreed, asserting that the provisions of the 1924 Convention were explicit and unique exceptions that did not “extend the territorial limits of the United States nor confer any general jurisdiction” (Newfoundland Shipwrecks n.d.). Further, there was still some question as to whether the USCG chase was indeed a continuous and uninterrupted hot pursuit as required under international law, as it had been started by the Wolcott and completed 200 miles later in the Gulf of Mexico by the Dexter.

In these contestations of sovereignty, jurisdictional practices aimed to draw lines on the sea to establish, mark, and measure inside and outside. It is therefore totally unsurprising that not one of these more mechanical and legal jurisdictional issues was resolved either through the flurry of diplomatic correspondence between the American and Canadian Secretaries of State at the time, or through the lengthy arbitration that followed. The only clear finding of the final report, issued in 1933 (the very year that prohibition had itself been ended), was that all else aside, the blasting of the *Im Alone* to smithereens and the killing of a foreign crewmember in the

process was indeed “an unlawful act.” The commission ordered compensation be paid to Captain Randell, his crew, and the family of Leon Mainguy. The United States apologized to his Majesty’s Canadian Government and paid a \$25,000 settlement to Canada for the insult to Canadian sovereignty and property loss.<sup>9</sup>

### 3.3 Rethinking Jurisdiction: The Art of Jurisdictional Separation

While arguably an epic legal flop in its failure to resolve any of the contentious jurisdictional details in dispute, the entire process—the rum running, pursuit, sinking, capture, media coverage, diplomacy, arbitration, even the folk songs—can be read as a series of steps in a long but very effective jurisdictional tango.

Several distinct versions of this jurisdictional tango can be gleaned from the story of the *I’m Alone*: the conventional, the mobile, and the exceptional. From the three-mile cannon shot rule of international doctrine to the extension of sovereign territorial jurisdiction to twelve nautical miles as effected through the 1922 *US Tariff Act* and eventually codified in the 1982 UNCLOS, conventional enactments of maritime jurisdiction tightly interweave territory, sovereignty, and authority. Jurisdictional practices map the territorial border in the water as a contiguous line that envelops and reproduces the sovereignty of the nation-state. The mobile version can be seen to apply on the high seas. Sometimes referred to as the last remaining true commons, the high seas admits no territorial sovereigns. Here, jurisdictional practices effectively make vessels into mobile, floating fragments of flag-state territory, thereby reconfiguring but ultimately leaving undisturbed the close connections between territory, sovereignty, and authority and enabling sovereign claims to jurisdiction in ocean waters that exist “beyond the claims of imperial sovereigns” (Mawani 2018, 23). In the exceptional version of the jurisdictional tango enacted through the right of hot pursuit, jurisdictional practices allow, on a purely exceptional basis, sovereignty and authority to travel with the coastal state vessel from a location within its territorial sea to a location on the high seas in one, continuous, uninterrupted journey through time and space. In a sense, jurisdiction is performed as an extended, elasticized, exceptional exercise of territorial sovereign authority over the water.

## 4. Shiprider, Mobility and the Reconfiguration of Jurisdictional Practices

With the emergence of the Shiprider program in the mid 2000s in the shared internal and coastal waterways along the Canada-United States border, a new step was added to this jurisdictional repertoire.<sup>10</sup> Briefly, under the Canadian *Royal Canadian Mounted Police Act* (1985), certain USCG officers are now designated as supernumerary special constables in Canada who enjoy the same enforcement powers as RCMP officers (see also: *Integrated Cross-Border Law-Enforcement Operations Act* 2012). In turn, though not equivalently, Canadian officers are designated

<sup>9</sup> For the full text of reports and agreements, see United Nations 2006.

<sup>10</sup> For a review of the legislative background of the Shiprider Program, see Pratt 2016.

as US Customs officers working with the USCG, under the enforcement authority of Title 19 of the *United States Code* (19 U.S.C. § 1401(2015)).

Following these legislative changes, the precise geographic location of the mapped international border still matters, but not in the usual way. Instead of containing a nation's sovereign enforcement operations within its territory, the geographic borderline operates more like a switch that determines which sovereign nation is the "host," and therefore which nation's legal regimes will be enforced. Whereas previously, maritime law enforcement authorities had to stop and, if possible, "hand-off" a pursuit at the international border, a Shiprider vessel can now pursue and interdict vessels with "seamless continuity" across the border: "The Shiprider program removes the international maritime boundary as a barrier to law enforcement by enabling seamless and continuous enforcement and security operations across the Canada-US border" (Government of Canada 2014).

Shiprider introduces a fourth, extraordinarily novel step to the jurisdictional tango of maritime border control that more thoroughly reconfigures the jurisdictional practices that connect territory, sovereignty, and authority. Unlike the conventional, mobile and exceptional versions of jurisdiction on the water, Shiprider continues the colonial work of territorialisation by disconnecting authority from sovereign territory and repackaging it into a portable and mobile resource that travels through space and time with the individual Shiprider officers, within, across, and beyond the territorial border. Moreover, when American Shipriders cross over the international border into Canadian sovereign territory, they effectively become Canadian RCMP officers who are empowered to enforce Canadian federal legislation. Conversely, when Canadian Shipriders cross over the international border into US territory, they effectively become American Customs officers who are empowered to enforce American Customs legislation. With Shiprider, not only is authority a portable and mobile resource but, simultaneously, sovereignty assumes a kind of mobile and convertible quality, like a cloak to be cast on and off by Shipriders while on the move. This fourth, "fluid" version of the jurisdictional tango re-crafts Shiprider's maritime jurisdictional practices in a way that responds with mobility to the lack of fit between the stability of line drawing and the dynamic materiality of the water.

## 5. Akwesasne and the Changing Jurisdictional Choreography of Maritime Enforcement on Kaniatarowano'on:we (St. Lawrence River)

To protect the settler sovereignty interests of Canada and the United States, Shiprider's patrols are limited by law to "...*undisputed* areas of the sea or internal waters along the international boundary between Canada and the United States" (*Integrated Cross-Border Law Enforcement Operations Act* 2012, emphasis added). This restriction keeps Shiprider away from protracted sovereignty disputes between these two countries, including those over the North-West Passage, the Beaufort Sea, or the tiny Machias Seal Island in the Bay of Fundy. However, it is not only national parameters that are at play. Effectively erasing Canada's entrenched history of colonialism, dispossession, and displacement, there is not even the slightest glimmer of an acknowledgement in Shiprider's Framework Agreement or Legislation that Shiprider patrols navigate waterways that flow through First Nations territories, through land and waterways that have long been fiercely and profoundly "disputed."

Indeed, it was in the irregular waterways and small channels of the Kaniatarowano'on:we (St. Lawrence River) that run through and around the islands and inlets of Akwesasne Mohawk territory, divided by the awkward zigzag of the imposed international border, that the Shiprider pilot program was launched in 2007 without much prior consultation with either traditional or elected leaders of the Akwesasne community or with community members and without the participation of the Akwesasne Mohawk Police (AMPS).

Shiprider's reconfiguration of maritime jurisdictional practices was justified at the level of national policy by the stated need to target all kinds of cross-border criminal smuggling activities including the "illicit drug trade, migrant smuggling, trafficking of firearms, the smuggling of counterfeit goods and money, and terrorism" (Government of Canada/Government of the United States 2009). By targeting these forms of criminal activity, Shiprider promised to reduce the threats posed by organized crime and terrorists and contribute to "...a safer more secure society and economy" (Royal Canadian Mounted Police 2006, 6). These enforcement aims blend easily with the historical and ongoing criminalization of indigenous people in Canada in general, and with the criminalization of the territory and peoples of Akwesasne in particular, a view which received a further boost after the 2001 terrorist attacks led to charges that Akwesasne is a gaping "black hole" in border security (Kershaw 2006; Spencer 2011).<sup>11</sup> Akwesasne is today commonly represented in policy, scholarship, and the media as the "contraband capital of Canada," a "high risk" cross-border crime zone, and a "jurisdictional nightmare" for law enforcement, especially in relation to connections to organized crime and to the cross border maritime smuggling of tobacco, guns, drugs, and people (Blackwell 2010; Kershaw 2006; Jamieson 1998; Daudelin, Soiffer, and Willows 2013; MacLeod 2014). In this terrain, Simpson's argument is persuasive; smuggling provides the occasion for longstanding and ongoing contestations between settler and indigenous versions of sovereignty through the deployment of jurisdiction (Simpson 2008).

As a mobile maritime jurisdictional technology, Shiprider's efforts to produce what Tully might refer to as an "empire of uniformity" (Tully 1995, in Pasternak 2014, 149) are especially complicated in and by Akwesasne. Akwesasne is deeply differentiated, characterized by multiple settler and indigenous systems of governance and conflicting and deeply contested jurisdictional complexities. It is what Benton would surely describe as an uneven space of empire: "...politically fragmented; legally differentiated; and encased in irregular, porous and sometimes undefined borders" (Benton 2010, 2). As observed carefully by a US Customs and

<sup>11</sup> All forms of licit and illicit cross-border trade in the land and marinescapes of the Kaniatarowano'on:we (St. Lawrence River) were bolstered by the intrusion of the cash economy around the 1880s, and especially by the environmental, social, and economic devastation and displacement since the 1950s caused by the construction of the St. Lawrence Seaway and the building of the Moses-Saunders power dam (LaDuke 1999; Simpson 2014; Prier 2017). Rapid industrialization resulted in the pollution and severe contamination by hazardous chemicals of the Kaniatarowano'on:we (St. Lawrence River), leading ultimately to the destruction of traditional fishing- and farming-based subsistence economies in Akwesasne (see also Sloan and Jock 1990; Fitzgerald *et al.* 1998, 1999; Rae and Witherspoon 2001; Quimby, Casey, and Arquette 2005).

Border Protection (CBP) officer in 2017: “Akwesasne—it’s just a very—it’s a unique area. It has its own challenges in terms of jurisdiction and depending on what understanding you have of who, you know, who controls the particular waters or what laws are to be enforced in those areas—from whether it be a provincial, state or federal—um, so I would say conversations continue with the First Nations” (US CBP Officer Interview 2017).

In stark contrast to the language of seamless continuity, here 140 kilometres of waterway flow around about 432 islands, peninsulas, and wetlands through Canada and the United States—the provinces of Ontario and Quebec, the state of New York, multiple municipalities, as well as eighty square kilometres of unceded territory of the Akwesasne Mohawk Nation. Akwesasne, which is crossed by the settler-imposed international border, extends across Kaniatarowanōn:we (the St. Lawrence River) and includes the St. Regis Mohawk reservation in New York State. More than 23,000 Akwesasronon live in Akwesasne. Here, as elsewhere, indigenous understandings of jurisdiction and land predate the western legal ones that were forcibly imposed along with reserves and the Band system (McNeil 2007). As explained by Pasternak, “the language of modern territorial sovereignty erases the multiplicity of Indigenous legal orders exercised daily across the land” (2014, 149). It is also the case that there are many competing claims to governance over Akwesasne, as is the case for almost any indigenous territory. These include the claims of the Mohawk Council of Akwesasne (MCA) and the St. Regis Tribe Council (the imposed colonial systems of Band Councils on the Canadian and American sides of the border), the Warrior Society and its longhouse, the Mohawk Nation Council of Chiefs (MNCC), the traditional governing body of the Haudenosaunee Confederacy and the Clan mothers. However, and importantly, as observed by Nathan Prier, “in everyday practice, these claims can both reinforce and undermine each other; still, the fundamental contradictions lie in the relationship of the Akwesasronon, and the Mohawk (Kanien’kehá:ka) and Haudenosaunee more generally, to their colonizers” (Prier 2017, 16).<sup>12</sup>

Existing in deep tension with these multiple systems of indigenous governance are the complex arrangements issuing from the two settler nations, two provinces, one state, and multiple municipalities that crosshatch Akwesasne territory (ibid). So, while often represented in policy and in mass media as a kind of “lawless black hole” (Gunter 2009; Kershaw 2006), actually, this region is thoroughly intersected by a “dizzying array” (Allen 2006) of legal and administrative regimes, multiple socio-spatial boundaries, and varying systems of governance and jurisdictional practices.<sup>13</sup> Here, diverse national, sub-national, and transnational

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<sup>12</sup> For varied accounts of the complex histories and struggles of Haudenosaunee, see Simpson 2014; LaDuke 1999; George-Kanentiio 2006; Alfred-Taiaiake 1995; Bonaparte 1990, 2002; Jennings 1984; Snow 1996.

<sup>13</sup> This representation of Akwesasne as a lawless space neatly coincides with the representational history of Indian “lawlessness.” It is important to note, following Simpson, that this representational history “...does not have its beginning with cigarette smuggling in the 1990s. Its genealogy extends back to the earliest moments of recorded encounter, when Indians appeared to have no law, to be without order, and thus, to be, in the colonizers’ most generous articulation of differentiation, in need of the trappings of civilization” (Simpson 2014, 1440).

settler authorities, as well as varied forms of indigenous governance systems, operate at different, overlapping, and conflicting scales. Akwesasne has been described as a “jurisdictional Frankenstein” (Jackson 2015), a description that can’t help but evoke the stitches that Benton describes as piecing together the fabric of empire, “a fabric full of holes, stitched together out of pieces, a tangle of strings” (Benton 2010, 2).

### 5.1 *And the Dance Goes On*

According to the MNCC, the deployment of Shiprider in Akwesasne territory without prior consultation was yet another assault on the sovereignty of the Mohawk Nation (MNCC 2011). However, because Akwesasne is not a fixed and regulated space of territorial sovereignty but is defined by ongoing contestations of multiple sovereignties and jurisdictional complexities, the Mohawk (Kanien’keha:ka) and Haudenosaunee people pushed back against this intrusion, successfully interrupting the rolling out of a full-time Shiprider unit in Akwesasne by forceful assertions of their own sovereign claims to authority over the land and waters of Akwesasne. The RCMP had to concede, in the wake of criticism, vandalism, and even gunfire (Shiprider Officer Interview 2014a), that Shiprider “did not get off to a good start in Akwesasne” (Royal Canadian Mounted Police 2008, 24). Recognizing that they had “made a mistake” (Shiprider Officer Interview 2015a), “since the pilot ... we haven’t done anything in that area yet. A lot of outreach and things need to be done before we can go into that area” (Shiprider Officer Interview 2014a).

By early 2015, outreach was underway. The dance of jurisdiction is not a solo performance, and recognizing the potential to leverage at least some measure of control as well as much needed resources, certain members of the elected Mohawk Council of Akwesasne endeavoured to take the lead as the dance played out:

We actually had a meeting on Shiprider with the policing organizations of both the United States and Canada ... I said, “Going forward, we’re going to patrol our waters. We’re going to make up what is the marine patrol Shiprider. We’ll determine the kind of partnerships we’re going to need.” And they were agreeing with everything... We’re promised to have a major involvement, play a major part manpower wise, equipment wise and the concern for the community. I said, “there’s going to have to be a large effort in consulting the community members [to let them know] that this program is there for their protection as well. If it’s just the interest of the US and Canada, there’s going to be resistance. You have to clarify that we’re really protecting [Akwesasne’s] borders first. (Band Council Member Interview 2015)

Other members of the local Akwesasne community are unequivocal about their preference to sit this one out. For them, no amount of negotiation, or of resources gained as a result, no assurances of control or outreach by settler authorities in community halls and local hotels can change the fundamental reality that Shiprider is yet another instrument of colonial state violence and territorializing control that criminalizes Indigenous peoples and threatens the ongoing efforts of the Mohawk (Kanien’keha:ka) and Haudenosaunee peoples to defend and maintain their territory (Simpson 2014). As summed up bluntly by one member of the Akwesasne community with whom we spoke in 2016, “the only reason they wanted the Shiprider

program was to figure out how they could get the native people” (Akwesasne Community Member Interview 2016).

After some delay, in the summer of 2015, the USCG and RCMP rolled out the long anticipated full-time Shiprider unit on Kaniatarowano’*on:we* (the St. Lawrence River). However, rather than operating out of Cornwall, Ontario/Messina, New York, directly in and around Kawehno:ke (Cornwall Island) where the mishandled and unwelcome pilot was launched, this Shiprider unit is located at a distance from Akwesasne, up river in Kingston, Ontario/Alexandria Bay, New York. In a move clearly suggestive of the continuing and changing jurisdictional choreography on the river, not only was the location of this Shiprider unit moved up the river, but its patrols have been directed to stay away from Akwesasne: on the Canadian side, they stop at the Moses-Saunders Power Dam about eight kilometers south of Kawehno:ke (Cornwall Island), while in the United States, they do not go past the Eisenhower and Snell Locks on the Wiley-Dondero Canal that provide access to the Kaniatarowano’*on:we* (the St. Lawrence River). Interestingly, while nothing has been written down, Akwesasne is a “no-go” zone for Shiprider: “No Shiprider operations are occurring on the Akwesasne reservations. Anything west of, or east of, Eisenhower and Snell Lock, no Shiprider activity out there. RCMP has an office up there, the Cornwall RCMP, they do boat operations around reservation territory but... they don’t patrol on the reservation” (Shiprider Officer Interview 2017a).

To the considerable frustration of at least some of its officers, who are deeply committed to the crime-fighting mandate of their job, the St. Lawrence Shiprider patrols are presently confined to that part of the river that flows mostly through cottage country; where recreational water safety—not cross-border smuggling—is the main preoccupation. This, as explained by one Shiprider officer, is bad for law enforcement but good for smugglers: “The smugglers are just taking advantage of the fact that we can’t cross the border or ... that something like Shiprider isn’t out there.... I can’t go out and do anything if the, you know, the administration doesn’t support it. So, you know what I mean, we all work for some political entity. So it’s not hard to figure out, it’s political. But Shiprider, out of any, if we could just drop something in there to make it work, Shiprider would be the tool, 100%” (Shiprider Officer Interview 2017a).

The restriction of Shiprider patrols away from Akwesasne is not indicative of a more general winding down of enforcement activities in the marinescapes of Akwesasne. It does, however, display the ever-changing casting and choreography of this jurisdictional dance. Indeed, in the summers of 2016 and 2017, so-called surge operations on the western shoreline of Kaniatarowano’*on:we* (the St. Lawrence River) across from Akwesasne were carried out involving multiple marine and land enforcement units from two nations, two provinces, one state, three municipalities, two First Nations, as well as the Ontario Ministry of Finance.<sup>14</sup>

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<sup>14</sup> RCMP Valleyfield Detachment, RCMP St. Lawrence Shiprider, “O” Division’s Marine Security Enforcement Team (MSET), Ontario Provincial Police, Canada Border Services Agency, Cornwall Community Police Services, Akwesasne Mohawk Police Service, Ontario Ministry of Finance, Sûreté du Québec, Homeland Security Investigations, New York State Police, St. Regis Mohawk Tribal Police, United States Coast Guard, United States Border Patrol, New York State Air National Guard, New York State Park Police, and Customs and Border Protection Office of Field Operations (RCMP 2016; RCMP 2017).

Notably, despite the use of distinctly militarized language, these surges were largely community outreach exercises designed to both “solidify ... partnerships with various law enforcement agencies, both in Canada and the US” (Seebruch 2017) and establish a “rapport” between Canadian and American enforcement “partners” and local (non-Akwesasne) residents in the interest of enlisting the eyes and ears of members of the community in anti-smuggling and border security policing efforts (RCMP Make Contact 2016).

And, while Akwesasne is out of bounds for Shiprider, the marine unit of the RCMP Cornwall Regional Taskforce patrols the river on the west side of Kawehno:ke (Cornwall Island). The US CBP, the USCG, and local state and tribal enforcement authorities also continue their land and marine patrols on the US side of the international border. While Canadian law enforcement authorities generally stay out of Mohawk Akwesasne territory, US authorities patrol the land and marinescapes of the St. Regis Reservation at will. Although they say they are careful in their interactions with Mohawk (Kanien’keha:ka) community members, the US CBP is firm that this is “their” territory and “their” jurisdiction (CBP Officer Interview 2017).

New dance partners and new resources are also emerging in Akwesasne. For example, in December 2017, it was announced that AMPS will receive provincial funding for the SAVE Unit (the Snowmobile, All-Terrain vehicle and Vessel Enforcement unit). As an anti-smuggling measure, and working in close collaboration with the RCMP and other settler enforcement agencies, SAVE will patrol both land and waterways along that portion of the international border that crosses through Akwesasne Mohawk territory (Hale 2017). In January 2018, the federal government announced an infusion of \$291 million dollars into 450 Indigenous communities to fund their police forces over the next five years. The Grand Chief of Akwesasne reportedly hopes to use the funding to create a fully functioning marine unit (Molina 2018).<sup>15</sup>

In sum, while Shiprider has for the time being moved to the wings of the jurisdictional stage, the jurisdictional performance in the waterways that flow through and around the “high risk zone” of Akwesasne continues. The imperial vision of an empire of uniformity is betrayed by Akwesasne. By “getting wet” and engaging with the social materiality of the water in Akwesasne, we see that this is indeed a deeply “differentiated legal zone” that displays the partiality and unevenness of settler sovereignty.

## 6. Conclusions

The significance of Shiprider extends well beyond crime control and enforcement metrics. And while Shiprider may certainly display globalizing and securitizing qualities, neither of these broad paradigms sheds much specific light on its

<sup>15</sup> These are certainly not “seamless” operations. Funded by the Canadian, Ontario, and Quebec governments, overseen by the Akwesasne Police Commission that is appointed by the Band Council, staffed largely by First Nations officers, and governed by Ontario and Quebec police services legislation, the Akwesasne Mohawk Police (AMPS) occupies a thoroughly fraught position.



operations and effects in local marinescapes where bi-national enforcement strategies transect indigenous territories (Luna-Firebaugh 2002, 2005; Pertusati 1997; Singleton 2009; Feghali 2013).

This study begins to unravel, in a socio-historical and local context, the nature and deployment of Shiprider's practices of jurisdiction and the diagrams of power that these practices display (Pasternak 2014). In contrast to the jurisdictional practices surrounding the chase and sinking of the *I'm Alone*, Shiprider's re-crafting of jurisdiction is shaped by and harnesses the mobility of the water. Thinking jurisdictionally, we can begin to see how Shiprider operates as a mobile maritime technology of jurisdiction that "marks and codifies relationships on the ground" (Pasternak 2014, 152.). Shiprider claims "the power and authority to speak in the name of the law" (Dorsett and McVeigh 2007, 5) and, in the process, continues to stitch together the colonial connections between jurisdiction, sovereignty, and territory, connections which require continual repair and reproduction. It is these relationships, tethered as they are to settler sovereignty and colonial violence, that many Akwesasronon continue to refuse. These processes are incomplete. The territorial patchwork of colonial control is uneven and irregular in Akwesasne.

When we shift the focus and pay close empirical attention to the materiality of the water, when we begin to "get wet" as urged by Jones (2016), what becomes clear is that the water is not simply a blank and neutral canvas on which lines are drawn, nor is it a mere surface to travel over, without depth, without history, meaning, or materiality. Just like Akwesasne's landscapes, its marinescapes are crosshatched by complicated, dynamic, and often conflicting jurisdictional authorities, regimes and practices that clearly invite more specific and detailed study.<sup>16</sup> But even more profoundly, Shiprider's operations as a mobile settler technology of jurisdiction in the Kaniatarowano'on:we (the St. Lawrence River) have been interrupted by the physical and social materiality of the waterways it navigates, a materiality that is especially difficult to navigate because it is so deeply embedded in the lives, histories, and identities of Mohawk (Kanien'keha:ka) and Haudenosaunee people and their practices of refusal in ongoing struggles for land and life (LaDuke 1999).

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<sup>16</sup> The recognition that jurisdiction is not simply an abstract, technical legal construct but rather a collection of productive practices that must be enacted opens up fruitful avenues for future research to examine in empirical and specific detail the varied ways that jurisdiction is claimed in time and space by multiple and diverse actors, including Akwesasronon and those involved in the daily frontline work of cross-border law enforcement in Akwesasne and the Kaniatarowano'on:we (St. Lawrence River), and with what effects. These will be the focus of a separate paper.

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Anna C. Pratt

Criminology and Socio-Legal Studies Programs

York University

Toronto, Ontario

apratt@yorku.ca

Jessica Templeman

Socio-Legal Studies Program

York University

Toronto, Ontario

jtemplem@yorku.ca