

GREG LASTOWKA

# VIRTUAL JUSTICE

The New Laws  
of Online Worlds



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**the new laws of online worlds**



**greg lastowka**

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Portions of this work are adapted, with substantial revisions, from my prior writings on virtual worlds, including "The Laws of the Virtual Worlds" (with Dan Hunter), 92 *California Law Review* 1 (2004); "Virtual Crimes" (with Dan Hunter), 49 *New York Law School Law Review* 293 (2004); "Amateur-to-Amateur" (with Dan Hunter), 46 *William & Mary Law Review* 951 (2004); "Against Cyberproperty" (with Michael Carrier), 22 *Berkeley Technology Law Journal* 1485 (2007); "Decoding Cyberproperty", 40 *Indiana Law Review* 23 (2007); "User-Generated Content & Virtual Worlds," 10 *Vanderbilt J. Entertainment & Technology Law* 893 (2008); "Planes of Power: EverQuest as Text, Game and Community," 9 *Game Studies* 1 (2009); and "Rules of Play," 4 *Games & Culture* 379 (2009).

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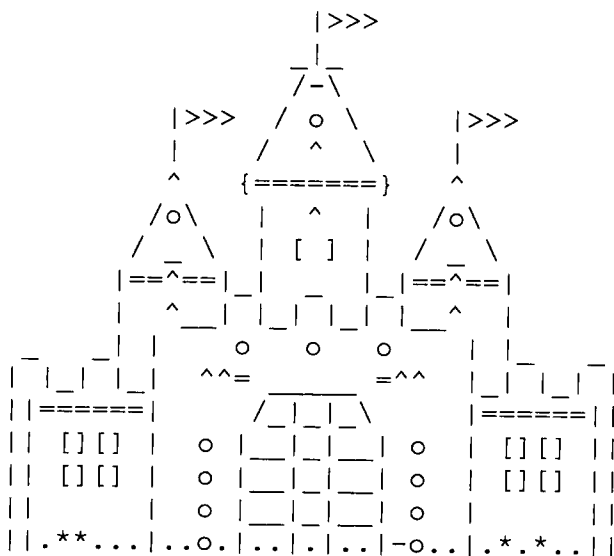
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If you have built castles in the air, your work need not  
 be lost; that is where they should be. Now put the  
 foundations under them.

—Henry David Thoreau



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Finally, my parents deserve considerable credit for this book. In particular, thirty years ago, with my best interests at heart, they took my *Dungeons and Dragons* books away from me. Then, a couple weeks later, they gave them back. Things turned out okay, I think.

As a former English professor told me, one's formal writing is no place for a *mea culpa*. However, I feel obliged to note that this is a book about law that strays fairly far afield from my professional comfort zone. I make extended forays into medieval history, airplanes, and professional

sports simply because I could find no better way to say certain things about virtual worlds. I am not a licensed guide to much of this terrain, and perhaps I should have studied the maps more closely.

I will steal some words from Johan Huizinga, since they so aptly describe the dilemma: "I had to write now or not at all. And I wanted to write."

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## INTRODUCTION

The house of everyone is to him as his castle and fortress.

—Sir Edward Coke

I want to begin not with law or virtual worlds exactly, but with a study of three castles. One castle is real, one is sort of real, and one is arguably unreal, insofar as it exists primarily in a virtual world. All three share the common name of “castle,” however. And all three can serve to introduce some basic observations about power, technology, artifice, and law.

### CARDIFF CASTLE

Cardiff Castle, with its Norman Keep portion pictured below, sits at the center of the Welsh city from which it derives its name. During their heyday, stone castles like Cardiff Castle were abundant in Europe and served multiple purposes. They were military strongholds, governmental centers, and sites of cultural prominence.<sup>1</sup> Their outward appearance, however, is evidence of their military function. High and heavy stone walls, towers, parapets, gates, and moats are all features that insulate those inside the castle from attacks by outsiders. Though castles are rightly understood as defensive structures, they often served offensive purposes as well, providing a visible base for the occupation and military domination of the local community.

When the first full-fledged stone castles started to appear in the ninth century, European governments recognized them as potential threats to central control. Charles the Bald, who claimed dominion over much of the territory of modern France, even issued an order that required the destruction of unauthorized castles.<sup>2</sup> However, his Edict of Pistres failed to stop castle proliferation. Instead, the Carolingian Empire that Charles ruled was swept away by Viking raiders. Castles grew in importance as a result. They provided local protection against invaders and soon occupied a central position in the post-Carolingian system.<sup>3</sup> Their lords were recognized as local governors, levying taxes and dispensing their own style of justice from castle courts.<sup>4</sup> Some scholars of the medieval era have even



**Cardiff Castle** Photo credit: John Oyston

suggested that during the eleventh century the castle became the “fundamental element in judicial organization.”<sup>5</sup>

The central authorities’ struggle against the power of castles continued, however. For instance, during the fourteenth century and afterward, the English Crown issued “licenses to crenellate.” These were, essentially, official permissions to erect castles.<sup>6</sup> Yet many castles were erected in the absence of these licenses. What ended the challenge to central government posed by the castle was another technological shift: gunpowder. By the beginning of the sixteenth century, the cannon had rendered stone castles out of tune with military needs. The castle lost its centrality to legal authority.

Yet echoes of the castle-centered society have persisted in law. Like all technologies of power, the castle allowed the interests of its owners to become intertwined with the workings of law. As Max Weber explained, governments are social institutions that possess a monopoly on the legitimate use of violent force. It should be no surprise that those who control the modalities through which force is exerted shape the law with their ideologies.<sup>7</sup>

The age of the castle court was an era of rule by soldiers. Military leaders were, essentially, political authorities. During the era of “feudalism,” as some historians have termed it, this military culture was made part of the law of the land, quite literally.<sup>8</sup> Land was commonly owned subject to an ongoing military and personal relationship between the possessor of the land and a lord. The lord’s vassal could possess and profit from the land, but this legal right was contingent on the performance of military (and later, economic) obligations for the benefit of the lord.<sup>9</sup> The failure to serve the lord in battle would result in the forfeiture of the land.<sup>10</sup>

Feudal law did not suddenly cease to exist but rather was gradually trimmed and rewritten by various statutes and judicial decisions into something more fitting to modern sensibilities. Traces of feudalism, however, linger today in the law of property in the West, including the law of the United States, where there are no native castles.<sup>11</sup> The United States owes its property law primarily to England, and England owes its feudal logic to the Norman framework imposed upon it by William the Conqueror. So the law in the United States today reflects a feudal heritage. Lawyers use terms such as “landlords,” “tenants,” and “estates in fee,” none of which would have seemed very strange to the ear of the medieval lawyer. Supreme Court Justice Oliver Wendell Holmes Jr. once remarked in an essay, “It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV.”<sup>12</sup> Yet this seems a fair characterization of much of property law.

Feudal law is hard to divorce from the culture that created it, and that culture is hard to disaggregate, causally, from the medieval technology of the castle. Castles were new sorts of places that gave rise to new sorts of social and legal ordering. They were a new and important technology that left a lasting imprint on law and society.

Today, we might look around at the technologies shaping our lives and ask what sorts of new social places, analogous to the castle, are being created. One particular place I’d like to examine is another castle, located in a Magic Kingdom in the southeastern United States.

### **CINDERELLA CASTLE**

Cinderella Castle is a central feature of Disney World, the largest and most popular theme park in the world, owned by one of the largest media and entertainment companies in the world.<sup>13</sup> Most people would put Cinderella Castle at the heart of Disney World, since it is reportedly the most heavily photographed feature there (and in Florida more generally).<sup>14</sup>



**Cinderella Castle in Disney World** Photo credit: Jason Pratt

Disney's web site says that Cinderella Castle is "the iconic fairy-tale fortress that serves as the gateway to Fantasyland in Magic Kingdom theme park. It is not only one of the central icons of Walt Disney World Resort, but its romantic beauty has also come to represent all of the Walt Disney Company."<sup>15</sup>

Cinderella Castle looks like Cardiff Castle in many ways. It has high, heavy stone walls, towers, parapets, gates, and a defensive moat. Its appearance is clearly intended to say “castle” to the viewer. Perhaps, to the eyes of some modern American viewers, Cinderella Castle looks even *more* castle-like than Cardiff Castle. Yet arguably, it is not a real castle at all.

For instance, the walls are not made of stone or brick, but of decorated plaster bolted onto a steel frame. The upper spires are beautiful and tall (stretching skyward over 180 feet), but they also decrease in scale as they rise; they are built to appear taller than they actually are. The moat around the castle serves no military purpose. It does not frustrate armed attackers; it just looks pretty. So Cinderella Castle’s form is not explained by its castle function. Instead, its function is to stir the mind of the viewer with a visible depiction of what a fairy-tale castle should look like.

To be precise, the visual depiction of Cinderella Castle presents a structure based on a film that was borrowed from a folk story. The folk tale of Cinderella has written origins in the seventeenth century, though the story likely dates back earlier. The Cinderella story offers a wondrous inversion of feudal social hierarchy. A cinder-maid vaults from the lowest rung of menial servitude to a royal life.

This Cinderella story, while well known and captivating, is a fairy tale, a constructed illusion just like Cinderella Castle. There may be a person acting the role of Cinderella in Disney World at any given moment, but most people older than six understand that she is not a real princess, and her face probably changes from day to day. Disney’s Cinderella does not threaten the authority of the Florida government. Rather, the Florida government recognizes that a greater power, Disney, employs the actress, and that Disney is a profitable business that operates in compliance with the laws of Florida and benefits the state by providing employment opportunities and significant tax revenues.

What many people don’t know is that Disney’s powers within its Magic Kingdom go a bit beyond those enjoyed by other businesses and theme parks in their jurisdictions. Special Florida legislation, passed at the request of Disney, actually makes Disney World a true local government, with municipal powers over the regulation of the land on which its park is situated.<sup>16</sup> So, for instance, Disney has the legal authority to set and enforce its own building codes and zoning laws.<sup>17</sup> According to Richard Fogle-song, Disney achieved this power through negotiations with lawmakers and a promise that Disney World would actually *be* a political community,

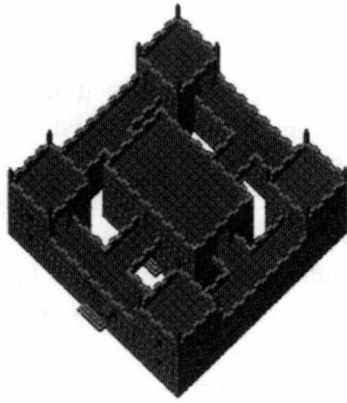
populated by twenty thousand full-time residents.<sup>18</sup> However, it failed to deliver on that promise, instead providing the theme park of Epcot, something “more like a permanent world’s fair.”<sup>19</sup>

In addition to its municipal powers, Disney also enjoys the standard powers of any private theme park. For instance, if you flaunt the dress or speech code, you risk being ejected from the park. Its ownership of the land entitles it to set certain rules restricting public admission, and these are rules that the law will recognize and enforce.

None of these powers, however, give it the sort of control that we would associate with a medieval lord or a sovereign state. The Magic Kingdom is a private domain, but it must comply with the rules of state and federal government. As just one example, Disney is required by federal law to provide reasonable accommodations for those who are disabled, such as ramps for those who use wheelchairs. As another example, if Disney were to injure, confine, or defraud those who visit its parks, it would risk civil lawsuits and criminal prosecutions. Its ownership of land does not entitle it to violate criminal and tort laws. And as one more example, if you buy something in a Disney gift shop, the laws of property and contract would dictate that Disney cannot simply reclaim legal ownership of your T-shirt or coffee mug while keeping your payment. So while Disney’s private ownership of its land gives it the power to make some rules, the law places significant limits on the extent of that rule-making authority.

In the realm of fantasy, however, the Magic Kingdom has much greater autonomy. Sometimes Cinderella shares her fantastic court at her castle with other Disney princesses, and no one questions Disney’s power to change its fiction in this way, even though some visitors might prefer their version of Cinderella to be independent of, say, mermaids and talking fish. The exact nature of the illusions that Disney provides is very important to its visitors—tens of millions come to Disney World each year to partake in them—yet there are few limits on how Disney shapes its fictions.<sup>20</sup> At the level of the Magic Kingdom fantasy, entering Disney World is like entering a zone of fairly absolute private control.<sup>21</sup>

I offer Disney World as an intermediate step toward the final castle I want to discuss, the one that plays a central role in the rest of this book. In this third castle, the structure, the land, and even the bodies of the actors are all part of an elaborate fantasy much like Disney’s fantasy of Cinderella and her castle. That fantasy is built, like Disney World, on a form of private property. However, given its peculiar characteristics, it is subject to the authority of a ruler that is even more fantastic, and much more magically potent.



**Dagger Isle Castle** *Copyright Electronic Arts*

### THE DAGGER ISLE CASTLE

The castle shown here is not a tangible structure at all but a representation of a castle that exists, to the extent it exists at all, in the fictional location of Dagger Isle. Dagger Isle is a snow- and ice-crustured landmass located in the northern oceans of a world called Britannia. Britannia is the imaginary world of a multi-player “game” called *Ultima Online*.<sup>22</sup> Despite its frigid and bleak climate, Dagger Isle is a fairly busy place. Among its many inhabitants are polar bears, snow leopards, orcs, and frost trolls, all of which are hazards for wandering travelers. But the Frozen Mountains at the center of the island are its main attraction. By exploring them, one can find the entrance to the Dungeon of Deceit, a tomb filled with all manner of undead creatures such as ghouls, mummies, wraiths, and zombies. Many people who visit Britannia seek out this place—they are eager to find and destroy the undead (and other beasts and monsters as well).

The name Britannia and the appearance of the castle are, much like Cinderella Castle, intended to evoke pleasing fantasies of medieval times. Like Disney’s Cinderella, Britannia combines a romantic repackaging of medieval Europe with a strong dose of magic and mythology borrowed from folklore.<sup>23</sup> But because Britannia is not a tangible structure in the physical world, it is a much more flexible stage than Disney World. The magic in Britannia is made of exactly the same stuff as the castles. Bricks, zombies, and fire-breathing dragons are all simply lines of computer code.

While the Dagger Isle castle is not “real” in the sense that it is not tangible, it is quite real in another sense. I originally encountered the castle,



displayed as the picture above, on eBay. On October 28, 2003, the seller was offering it for \$999.88. This castle was hardly the only virtual property from Britannia that was being sold on eBay at the time. Various other listings were posted, including Britannian real estate, currency, and sundry other items (including some people).

You might be asking at this point, “Why would anyone pay a thousand dollars (minus twelve cents) for a virtual castle?”

At one point, I wondered the same thing. On further consideration, however, it does not seem so strange. The best way to understand it, I think, is to ask the same question about someone paying a thousand dollars for a week of strolling among the dreams and illusions provided by Disney World. There is nothing tangible about that purchase. If you are in the market for an intangible experience, for about the same price, you could rule over your own castle in Britannia for a much longer time. And when you own the Dagger Isle castle, you get to *be* a ruler, not just take a picture of Cinderella from a distance. You can become the lord of a castle, using your power as you please, in a dreamlike society where your social status actually means something to those around you.

This is where property law comes into play. The actress who plays Cinderella in Disney World has no legal title to her namesake castle. She might enjoy her job, but she must hang up her tiara at closing time. She gets paid to rule the castle in fiction, but she has no legal rights in fact. So, we might ask, is the same true of the Dagger Isle castle in Britannia? Say you were to buy the Dagger Isle castle (or something like it) on eBay. Would you really own it? At what point does the fantasy of your castle in Britannia become a legal reality?