The Virtual Construction of Legality: 'Griefing' and Normative Order in Second Life

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Abstract

This article examines the construction of legality in a virtual world, seeking to understand how informal social order emerges as residents construct meaning around interpersonal conflicts and interact on the basis of such meaning. 'Griefing', a form of disruptive behavior common to virtual worlds, provides a lens through which to investigate emergent social norms and boundaries in the virtual world of Second Life. Identifying and distinguishing rhetorical frames in Second Life residents' understandings of and responses to griefing, the study aims to elucidate the social meaning of griefing and its place in the construction and maintenance of social order.

Neque porro quisquam est qui dolorem ipsum quia dolor sit amet, consectetur, adipisci velit...[1]

Introduction

Second Life® ('SL') is an on-line virtual world[2] or multi-user virtual environment ('MUVE'),[3] in which participants (acting through animated representations called avatars) engage in routine (and sometimes not-so-routine) activity, interacting with others in virtual space and real time.[4] Linden Lab, the company that developed and operates Second Life, describes it as follows:

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1 Cicero, *De Finibus Bonorum et Malorum*. ('There is no one who loves grief itself, who seeks after it and wants to have it, simply because it is grief ...').

2 See Greg Lastowka, *Virtual Justice: The New Laws of Online Worlds* (Yale University Press, 2010) 9; Jack M Balkin and Beth Simone Noveck, 'Introduction' in Jack M Balkin and Beth Simone Noveck (eds), *State of Play: Law, Games, and Virtual Worlds* (New York University Press, 2006) 3.

3 Burcu Bakioglu, 'Spectacular Interventions in Second Life: Goon Culture, Griefing, and Disruption in Virtual Spaces' (2009) 1(3) *Journal of Virtual Worlds Research* 5.

4 For a broad and rich depiction of 'everyday Second Life,' based on ethnographic fieldwork, see Tom Boellstorff, *Coming of Age in Second Life: An Anthropologist Explores the Virtually Human* (Princeton University Pres, 2008) 8-16.

- Second Life® is a 3-D virtual world created by its Residents. Since opening to the public in 2003, it has grown explosively and today is inhabited by millions of Residents from around the globe.

- From the moment you enter the World you'll discover a vast digital continent, teeming with people, entertainment, experiences and opportunity. Once you've explored a bit, perhaps you'll find a perfect parcel of land to build your house or business.

- You'll also be surrounded by the Creations of your fellow Residents. Because Residents retain intellectual property rights in their digital creations, they can buy, sell and trade with other Residents.

- The Marketplace currently supports millions of US dollars in monthly transactions. This commerce is handled with the in-world unit of trade, the Linden™ dollar, which can be converted to US dollars at several thriving online Linden dollar exchanges.[5]

While Second Life in some ways resembles multi-player computer games, it differs in that the activity is open-ended rather than driven by some specified set of goals and roles.[6] Also, unlike most computer games, Second Life has an in-world economy in which 'real money trade' is expressly permitted, indeed encouraged, by the provider (Linden Lab).[7]

It is possible to encounter nearly every imaginable aspect of the 'real' world — licit and illicit — within Second Life's virtual space. Yet one significant real-world feature is conspicuously absent: Second Life has no formal legal system, and no established mechanism for resolving disputes between residents.[8]

The lack of a formal legal system does not mean that 'law' is absent from Second Life. Interactions and disputes among residents may entail or raise issues pertaining to real, personal, and intellectual property; contracts and commercial transactions; defamation and privacy; civil rights and liberties; crime and punishment; and various other legal domains. When such disputes arise, however, Second Life residents have no practical recourse to any formal adjudicative mechanism. In at least some instances, a Second Life resident

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5   Second Life, *What is Second Life?* (2008) <http://secondlife.com/whatis/>.

6   Bakioglu, above n 3.

7   Linden Lab maintains a currency exchange through which Second Life participants may buy and sell virtual currency, 'Linden Dollars' ('L$'). Second Life, *Currency* <http://secondlife.com/currency/>. The going exchange rate (as of 11 April 2011) is about L$250/US$1. Second Life, *Exchange* <http://secondlife.com/statistics/economy-market.php>.

8   Disputes between residents and Linden Lab are a different matter. Such disputes are governed by the contractual 'Terms of Service' to which each Second Life participant must agree as a condition of participation. Second Life, *Terms of Service* <http://secondlife.com/corporate/tos.php>; See James Grimmelmann, 'Virtual World Feudalism' (2009) 118 *The Yale Law Journal Pocket Part* 126.

might be able to state a legal claim based on an in-world dispute. However, the monetary value of such claims will, in most instances, be extremely small, so that it would be highly impractical to sue in real court.[9]

Virtual worlds have captured the attention of legal scholars and practitioners, who have considered the relationship between virtual worlds and 'real world' law in a variety of contexts.[10] Much of that work focuses on the extent to which existing real-world law may or should apply to virtual world activity, and the related questions of virtual world governance and dispute resolution.[11]

However, from a socio-legal perspective, many interesting questions about law and virtual worlds remain largely unaddressed. These questions focus, not on the permeability between real-world law and virtual world activity, but rather on the construction and performance of legality, and the maintenance of social order, internal to virtual worlds themselves.[12] The aim of this paper is to explore that problem through an analysis of one aspect of Second Life in which issues of legality and social order are particularly evident: so-called 'griefing'–intentionally disruptive behavior contrary to the express rules and implicit norms of the virtual world.[13]

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[9]   For example, consider a Second Life resident who paid for virtual goods that were not delivered. The resident might be able to state a claim (breach of contract, fraud, etc.) in a real-world court. However, the cost of most items for sale in Second Life is relatively modest in real-world terms, eg about $5-10, for a men's or women's outfit, about $50 for a 'luxury yacht' and about $100 for a large house (without land). See Second Life, *Marketplace* <https://www.xstreetsl.com>. Consequently, the damages would, in most instances, be insufficient to justify the expense and trouble of a lawsuit, even in small claims court. But see Eric Reuters, *SL Business Sues for Copyright Infringement* (2007) Reuters/Second Life News Center <http://secondlife.reuters.com/stories/2007/07/03/sl-business-sues-for-copyright-infringement/>; Benjamin Duranske, *Eros Reaches Settlement With Robert Leatherwood a/k/a Second Life's 'Volkov Catteneo'* (2008) Virtually Blind <http://virtuallyblind.com/2008/03/14/leatherwood-settlement/>.

[10] See especially, Lastowka, above n 2; Jack M Balkin and Beth Simone Noveck (eds), *State of Play: Law, Games, and Virtual Worlds* (New York University Press, 2006); Benjamin Duranske, *Virtual Law: Navigating the Legal Landscape of Virtual Worlds* (American Bar Association, 2008); F Gregory Lastowka and Dan Hunter, 'The Laws of Virtual Worlds' (2004) 92 *California Law Review* 1.

[11] See below Part 2.2.

[12] One of the earliest pieces to consider the relationship between law and virtual worlds did apply a socio-legal/legal-anthropological perspective to the construction of legality within a virtual world. See Jennifer L Mnookin, 'Virtual(ly) Law: The Emergence of Law in LambdaMOO' (1996) 2 *Journal of Computer-Mediated Communication*. See below Part 1.2.

[13] See, Bakioglu above n 3.

1   Law, Legality and Virtual Worlds

1.1 Law and Virtual Worlds: Outside Looking in, Inside Looking Out

A substantial body of literature has emerged in recent years examining legal issues pertaining to virtual worlds. This literature largely focuses on the interface between virtual worlds and 'real world' law, approaching the problem from either (or both) of two perspectives.

The first perspective examines the relationship of law and virtual worlds 'from the outside looking in'. That is, this work starts with existing 'real world' law and asks how it might, and whether it ought to, apply to virtual world activity.[14] For example, prior work has considered the applicability of 'real world' criminal law,[15] property law,[16] intellectual property law,[17] corpo-

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14   Caroline Bradley and A Michael Froomkin, 'Virtual Worlds, Real Rules' (2004) 1 *New York Law School Law Review* 103.

15   See, eg, Orin S Kerr, 'Criminal Law in Virtual Worlds' (forthcoming) *University of Chicago Legal Forum*; James Elliott, 'Help—Somebody Robbed my Second Life Avatar!' (2009) 1(1) *Journal of Virtual Worlds Research*; David S Wall and Matthew L Williams, 'Policing Diversity in the Digital Age: Maintaining Order in Virtual Communities' (2007) 7 *Criminology and Criminal Justice* 391; Andrea Vanina Arias, 'Life, Liberty and the Pursuit of Swords and Armor: Regulating the Theft of Virtual Goods' (2008) 57 *Emory Law Journal* 1301 <http://ssrn.com/abstract=1012886>.

16   See, eg, John William Nelson, 'The Virtual Property Problem: What Property Rights in Virtual Resources Might Look Like, How They Might Work, and Why They Are a Bad Idea' (2010) 41 *McGeorge Law Review* 281 <http://ssrn.com/abstract=1469299>; Joseph Blocher, 'Reputation as Property in Virtual Economies' (2009) 118 *The Yale Law Journal Pocket Part* 120; Kevin Edward Deenihan, *Leave Those Orcs Alone: Property Rights in Virtual Worlds* (2008) <http://ssrn.com/abstract=1113402>; Steven J Horowitz, 'Competing Lockean Claims to Virtual Property' (2007) 20 *Harvard Journal of Law & Technology* 443; Kurt Hunt, 'Note: This Land is Not Your Land: Second Life, CopyBot, and the Looming Question of Virtual Property Rights' (2007) 9 *Texas Review of Entertainment and Sports Law* 141; David P Sheldon, 'Claiming Ownership, but Getting Owned: Contractual Limitations on Asserting Property Interests in Virtual Goods' (2007) 54 *University of California Los Angeles Law Review* 751; Bobby Glushko, 'Tales of the (Virtual) City: Governing Property Disputes in Virtual Worlds' (2007) 22 *Berkeley Technology Law Journal* 507; Charles Blazer, 'The Five Indicia of Virtual Property' (2006) 5 *Pierce Law Review* 137; Allen Chein, 'Note: A Practical Look at Virtual Property' 80 *Saint John's Law Review* 1059; Theodore J Westbrook, 'Owned: Finding a Place for Virtual World Property Rights' (2006) 2006 *Michigan State Law Review* 779; Joshua Fairfield, 'Virtual Property' (2005) 85 *Boston University Law Review* 1047.

17   See, eg, Todd David Marcus, 'Note: Fostering Creativity in Virtual Worlds: Easing the Restrictiveness of Copyright for User-Created Content' (2007) 52 *New York Law School Law Review* 67; Woodrow Barfield, 'Intellectual Property Rights in Virtual Environments: Considering the Rights of Owners, Programmers and Virtual Avatars' (2006) 39 *Akron Law Review* 649; Molly Stephens, 'Note: Sales of In-Game As-

rate law,[18] tax law,[19] contracts and commercial law,[20] civil rights,[21] and tort law[22] to activity that occurs wholly or partially within a virtual world. Work in this vein may be descriptive, asking whether existing 'real world' law does in fact apply to virtual world activity, normative, asking whether existing 'real world' law ought to apply to virtual world activity, or both.

The second perspective examines the relationship of law and virtual worlds 'from the inside looking out'. This approach starts with virtual world activity and disputes, and asks which existing 'real world' legal doctrines or institutions are best suited to governing virtual world activity,[23] or resolving virtual world disputes.[24]

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sets: An Illustration of the Continuing Failure of Intellectual Property Law to Protect Digital-Content Creators' (2002) 80 *Texas Law Review* 1513.

[18] See, eg, Caroline M Bradley, *Gaming the System: Virtual Worlds and the Securities Markets* (2007) <http://ssrn.com/abstract=1022441>; Andrew Jankowich, 'Eulaw: The Complex Web of Corporate Rule-Making in Virtual Worlds' (2006) 8 *Tulane Journal of Technology and Intellectual Property* 1.

[19] See, eg, Bryan T Camp, 'The Play's the Thing: A Theory of Taxing Virtual Worlds' (2007) 59 *Hastings Law Journal* 1; Leandra Lederman, 'Stranger Than Fiction: Taxing Virtual Worlds' (2007) 82 *New York University Law Review* 1620.

[20] See, eg, Michael Passman, 'Transactions of Virtual Items in Virtual Worlds' (2008) 18 *Albany Law Journal of Science and Technology* 259.

[21] See, eg, Mary Anne Franks, 'Unwilling Avatars: Idealism & Discrimination in Cyberspace' (forthcoming) *Columbia Journal of Gender and Law* <http://ssrn.com/abstract=1374533>; Eric Goldman, 'Speech Showdowns at the Virtual Corral' (2005) 21 *Santa Clara Computer and High Technology Law Journal* 845; Peter S Jenkins, 'The Virtual World as a Company Town—Freedom of Speech in Massively Multiple Online Role Playing Games' (2004) 8 *Journal of Internet Law* 1.

[22] See, eg, Bettina M Chin, 'Regulating Your Second Life: Defamation in Virtual Worlds' (2007) 72(4) *Brooklyn Law Review* 1303.

[23] See, eg, Nicolas Suzor, 'The Role of the Rule of Law in Virtual Communities' (forthcoming) *Berkeley Technology Law Journal*
<http://works.bepress.com/suzor/5>; Nicolas Suzor, 'On the (Partially) Inalienable Rights of Participants in Virtual Communities' (2009) 130 *Media International Australia* 90 <http://works.bepress.com/suzor/2>; Michael Risch, 'Virtual Rule of Law' (2009) 112 *West Virginia University Law Review* 1; Michael Risch, 'Virtual Third Parties' (2009) 25 *Santa Clara Computer and High Technology Law Journal* 416; Grimmelmann, above n 8; Jacob Rogers, 'Note: A Passive Approach to Regulation of Virtual Worlds' (2008) 76 *George Washington Law Review* 405; Bobby Glushko, 'Tales of the (Virtual) City: Governing Property Disputes in Virtual Worlds' (2007) 22 *Berkeley Technology Law Journal* 507; Jack M Balkin, 'Law & Liberty in Virtual Worlds' (2004) 49 *New York Law School Law Review* 63; Jack M Balkin, 'Virtual Liberty: Freedom to Design and Freedom to Play in Virtual Worlds' (2004) 90 *Virginia Law Review* 2043.

[24] See, eg, Kevin W Saunders, 'Virtual Worlds-Real Courts' (2007) 52 *Villanova Law Review* 187; Farnaz Alemi, 'An Avatar's Day in Court: A Proposal for Obtaining Relief and Resolving Disputes in Virtual World Games' (2007) 2007 *University of California Los Angeles Journal of Law and Technology* 6; Ethan Katsh, 'Bringing Online

Straddling the two perspectives, Lastowka[25] approaches virtual worlds as 'border or boundary spaces' in which participants and their interactions 'cross[ ] back and forth between fiction and reality.'[26] He focuses accordingly on 'how legal institutions are handling these sorts of crossings between the virtual and the real, detailing the various problems that are arising at the border.'[27]

1.2 Legality in a Virtual World: Inside Looking Around

In contrast to work taking an 'outside looking in' or 'inside looking out' perspective, this paper approaches virtual world legality 'from the inside looking around'. The focus is not on the interface between virtual worlds and 'real world' law, but rather the construction and experience of legality by and among virtual world residents themselves.[28] Rather than ask how 'real world' law applies (or whether it should apply) to virtual world activity, or how 'real world' legal doctrines or institutions might be adapted to virtual world governance and dispute resolution, this approach explores legal consciousness and examines the development of social norms and informal order as an emergent property of social interaction within the virtual world.[29]

Consistent with this perspective, Grimmelmann[30] notes that 'any social group will witness systemic and repeated conflicts among its members; the process of resolving these conflicts is the process by which the group defines itself.' He thus asserts that 'a focus on the conflicts between players and designers is a distraction from an even more important set of conflicts: those between players and other players.'[31]

Dispute Resolution to Virtual Worlds: Creating Process Through Code' (2004) 1 *New York Law School Law Review* 271.

25   Lastowka, above n 2, 10-11.

26   Ibid.

27   Ibid.

28   In considering virtual world legality in its own terms, rather than merely as an object or subject of 'official law,' this approach follows the literature on 'multiple legalities'. See Boaventurea deSousa Santos, 'Law: A Map of Misreading' (1987) 14 *Journal of Law in Society* 279; John Brigham, 'Rights, Rage, and Remedy: Forms of Law in Political Discourse' (1987) 2 *Studies in American Political Development* 303; Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings, 1972-1977,* (Vintage, 1980) 78-108.

29   See, eg, Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories From Everyday Life,* (University of Chicago Press, 1998) 35; Sally Engle Merry, 'Concepts of Law & Justice Among Working Class Americans' (1985) 9 *Legal Studies Forum* 59; Susan Silbey, 'After Legal Consciousness' (2005) 1 *Annual Review of Law and Social Science* 323.

30   'Virtual Power Politics' in Jack M Balkin and Beth Simone Noveck (eds), *State of Play: Law, Games, and Virtual Worlds* (New York University Press, 2006) 146, 152.

31   Ibid 151. Player-designer disputes have indeed occupied the attention of law and virtual worlds scholars, who tend to approach such conflicts from an 'outside look-

In a pioneering study of law within a virtual world, Mnookin described a formal system of law-making and dispute resolution that developed within LambdaMOO, an early text-based virtual world. Proposed new rules were put to a vote of all residents and adopted if they received a two-third majority in favor.[32] Disputes were submitted to binding arbitration, with residents serving as arbitrators on a voluntary basis.[33] Mnookin found that most disputes concerned property rights and free expression within the virtual world.[34]

In Mnookin's view, the nature of virtual world legality would be influenced by the metaphors that residents adopted to understanding the relationship between virtual world activity and real-world law. She distinguished four such metaphors: (1) the virtual world as social club; (2) the virtual world as village; (3) the virtual world as a separate country; and (4) the virtual world as a role-playing game.[35] In the 'social club' metaphor, virtual world activity is essentially irrelevant to real-world law.[36] In the 'village' metaphor, the virtual world is conceived as a sub-set of the real world, and residents are expected to attempt internal dispute resolution before seeking recourse in real-world legal remedies.[37] The 'separate country' metaphor entails a fully-developed system of governance, autonomous from the real-world legal system.[38] The 'role-play' metaphor casts virtual world activity as a game, buffered from real-world law by a 'magic circle'[39] except where virtual world conduct causes some real-world damage.[40]

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ing in' or 'inside looking out' perspective — addressing how existing real world law can or should govern such conflicts. See, eg, Suzor, 'The Role of the Rule of Law in Virtual Communities', above n 23; Suzor, 'On the (Partially) Inalienable Rights of Participants in Virtual Communities', above n 23; Glushko, above n 23. A focus on player-player conflicts is more amenable with an 'inside looking around' perspective attentive to the legal consciousness of virtual world residents and their construction of legality through the process of in-world interaction.

32   Mnookin, above n 12, 3-5.

33   Ibid 6-7.

34   Ibid 7.

35   Ibid 15-18.

36   Ibid 15.

37   Ibid 16.

38   Ibid 16-17.

39   Scholars of law and virtual worlds have borrowed the notion of a 'magic circle' from the work of Johan Huizinga, to describe the moral and legal separation of virtual world game space from real world space. See Edward Castronova, 'The Right to Play' in Jack M Balkin and Beth Simone Noveck (eds), *The State of Play: Law, Games & Virtual Worlds* (New York University Press, 2006) 68, 71.

40   Ibid 17-18; Castronova's 'Meme 1: Virtual Worlds Are Play Spaces,' is similar to Mnookin's 'role-play' metaphor in asserting a fundamental separation of virtual world play and real world law. See Ibid 77-78. Castronova suggests that his 'Meme 1' will ultimately lose out to what he calls 'Meme 2: Virtual Worlds Are Extensions

In the experience of LambdaMOO, Mnookin found a 'strong reliance upon existing models of law, both procedural and substantive,' which 'suggests the limits of any paradigm that views virtual reality as completely set apart from real life.'[41] Legality within LambdaMOO was (and in any virtual world would be expected to be) neither wholly autonomous nor 'simply mimetic' of real-world law; rather, it was 'a form of legal bricolage, blending elements of "real" law and elements of lay people's conception of "real" law, together with institutional variations and innovative conceptions.'[42]

Each of these metaphors is evident within Second Life as well. Echoing the 'social club' metaphor, Second Life residents often express sentiments along the lines of 'what happens in Second Life stays in Second Life'.[43] Consistent with the 'village' and 'separate country' metaphors, there have been attempts (none of which have come to fruition thus far) to establish relatively or completely autonomous formal legal systems within Second Life.[44] Such efforts have generally been met with scepticism and derision among Second Life residents who, as in Mnookin's 'role play' metaphor, prefer to maintain a sharp distinction between virtual world activity and 'real world' rules.[45]

1.3 'Griefing' As a Socio-Legal Problem

1.3.1   Inter-Personal Disputes as a Focus of Socio-Legal Research

Within the tradition of socio-legal scholarship, and particularly for legal anthropological and micro-sociological approaches, the study of interpersonal

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of the Earth' (similar to Mnookin's 'village' metaphor), as virtual world commerce 'knit(s) the virtual world and the real world together, gradually erasing any distinction between them'. Ibid.

41   Mnookin, above n 12, 19; Cf Castronova, above n 39, 77-78, predicting the ultimate triumph of 'Meme 2' over 'Meme 1' because of the internal dynamics of virtual worlds.

42   Mnookin, above n 12, 19.

43   See, for example, the online profiles of Second Life residents Shay Daviau and Mariposa Rayna. Shay Daviau, *Second Life Resident Profile*
<http://world.secondlife.com/resident/f80b98ef-5845-436a-86a8-ce21e3e5fb35>;
Mariposa Rayna, *Second Life Resident Profile*
<http://www.slprofiles.com/slprofiles.asp?id=20180>.
See also, Siobhan O'Flynn, *Second Life Forums Archive* (14 April 2006)
<http://forums-archive.secondlife.com/108/38/99975/3.html>.

44   For example, the 'Metaverse Republic' project sought to develop a legislative and judicial system within Second Life for governance and dispute resolution among residents. See, Benjamin Duranske, *Reader Roundtable: The Metaverse Republic* (2007) Virtually Blind
<http://virtuallyblind.com/2007/07/17/reader-roundtable-metaverse-republic/>.

45   Ibid, comments of Mike Gunderloy, Prokofy Neva, Tyffany Flintoff, nectarine; *We teh People* (2008) Ilse's Blog
<http://ilsesblog.wordpress.com/2008/04/07/we-teh-people/>.

disputes and their resolution has been a primary lens through which to examine and understand legal consciousness and legality.[46] Process-oriented theory[47] posits disputes, not 'as discrete and bounded pathological events,' but rather as embedded within 'the ongoing flow of community life'.[48] From this perspective, the focal concern of socio-legal research is 'the social context of dispute resolution and ... the influence of this context on the process,' emphasising the disputants' social relationships and understanding how and why they choose among 'multiple systems' of dispute resolution, doing so not by examining a single dispute, but by studying 'an extended case, or a sequence of related cases, to illustrate in detail the processes and strategies involved'.[49]

Balkin[50] identifies six basic relationships within which virtual world legal disputes might arise:

(1) between the platform owner and the state about how the game space is designed and maintained;

(2) between the players and the state about whether players may participate in certain game spaces and what they may do inside them;

(3) between players and platform owners about what players and platform owners may do (and not do) in the game space;

(4) between players about whether the in-game activities of one violated the legal rights of another;

(5) between the platform owner and third parties not playing the game who complain about activities within the game space that harm the third party's legally protected interests; and

(6) between players and third parties not playing the game who claim that the player's in-game activities harmed the third party's legally protected interests.

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46 See, eg, John L Comaroff and Simon Roberts, *Rules & Processes: The Cultural Logic of Dispute in an African Context* (University Of Chicago Press, 1981) 14; Laura Nader and H Todd (eds), *The Disputing Process—Law in Ten Societies* (Columbia University Press, 1978); Laura Nader and Barbara Yngvesson, 'On Studying the Ethnography of Law and Its Consequences' in JJ Honigmann (ed), *Handbook on Social and Cultural Anthropology* (Houghton Mifflin School, 1973) 883; Sally Engle Merry, 'Going to Court: Strategies of Dispute Management in an American Urban Neighborhood' (1979) 13 *Law and Society Review* 891.

47 See, eg, Nader and Yngvesson, above n 46; Sally Falk Moore, 'The Ethnography of the Present and the Analysis of the Process' in Robert Borofsky (ed), *Assessing Cultural Anthropology* (1994) 362; John M Conley and William M O'Barr, *Rules versus Relationships: The Ethnography of Legal Discourse* (1990); Jane F Collier, 'Legal Processes' (1975) 4 *Annual Review of Anthropology* 121.

48 Comaroff and Roberts, above n 46, 14.

49 Nader and Yngvesson, above n 46.

50 Balkin, Law & Liberty in Virtual Worlds, above n 23, 67.

1.3.2   'Griefing' as Normative Breach

The specific focus of this paper is on inter-resident disputes arising from a type of virtual world activity commonly known as 'griefing'.[51] In simple terms, 'griefing' refers to activity having the purpose or intent of harassing other residents or disrupting their experience within the virtual world.[52] Whether a particular type of activity constitutes griefing depends on the nature and rules (both explicit and implicit[53]) of a particular virtual world:

> [W]hile actions such as attacking other players, stealing their properties, and killing them may be considered acceptable behavior within the bounds of a game world such as World of Warcraft (WoW), these activities are considered to be griefing in most regions of Second Life (SL), and can result in a user being banned from the world either temporarily or indefinitely.[54]

Indeed, the elasticity of the term has led at least some Second Life residents to question its utility:

> Griefing has become a useless umbrella term; it used to be reserved for the people that filled sims with junk and bombed events and built giant dildos in the Welcome Area. Now a griefer is anybody you disagree with. It's gone from someone who's threatened the stability of the grid to someone who says your shirt's a funny color.[55]

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[51]   Griefing is not unique to Second Life, but rather is a phenomenon ubiquitous to virtual worlds and online multiplayer games. Boellstorff, above n 4, 188-189, cites examples of griefing, '[w]hile not being named as such,' in early virtual worlds. See also, C Foo and E M I Koivisto, 'Defining Grief Play in MMORPGs: Player and Developer Perceptions' (2004) 74 *Association for Computing Machinery International Conference Proceeding Series* 1; J Mulligan and B Patrovsky, *Developing Online Games: An Insider's Guide* (New Riders Games, 2003) 250; Julien Dibbell, *A Rape in Cyberspace: How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database Into a Society* (1993) The Village Voice <http://www.juliandibbell.com/texts/bungle_vv.html>, describes an extreme incident of griefing in LambdaMOO, an early text-based virtual world.

[52]   See Bakioglu, above n 3, 4, quoting J Mulligan and B Patrovsky, above n 50, 250. Boellstorff, above n 4, 187, cites a Second Life resident who defines griefing as 'deliberately doing something that interferes with other users' Second Life experience'. As Grimmelmann, above n 26, 156-157, notes, 'What kind of play will generate "emotional distress" obviously cannot be determined without close attention to the expectations of other players and will be highly context-dependent.'

[53]   Bakioglu, above n 3, 7, notes that '[s]ome rules are implicit in that they are loosely defined, such as game-specific social rules of fair play and etiquette of that game'.

[54]   Bakioglu, above n 3, 4. As Foo and Koivisto above n 50, 7, explain, 'what may be considered grief play in one game may be legitimate within the context of another, and even legitimate actions within game play may result in griefing, whether they may be intended to be so or not.'

[55]   Boellstorff, above n 4, 188.

Those engaging in acts of griefing ('griefers') may do so variously by exploiting the virtual world's 'structure ... in unintended ways to cause distress for other players,'[56] or by using computer scripts or hacks to stretch the limits of what the virtual world's underlying computer code enables.[57]

In Second Life, common forms of griefing include 'chat spam'[58] (persistent abusive or offensive communication using Second Life's text-based or voice-based chat facilities); 'following'[59] (setting a virtual object to follow the target as she moves through the virtual space); 'pushing'[60] (moving another participant's avatar against her will, often by means of virtual weapons); 'caging'[61] (trapping the target inside a virtual cage or box); 'particle spamming'[62] (flooding the virtual space with visual effects); 'object spamming' (launching a large number of virtual objects, often of a vulgar[63] or offensive[64] nature).[65] The result may be simply to annoy or antagonize other participants, to cause system 'lag' making it difficult for others to move or interact, or to 'crash the sim' (overload the computer server on which the virtual space resides, causing it to

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[56] Bakioglu, above n 3, 6, citing D Warner and M Gaiter, 'Social Context in Massively Multi-Player Online Games (MMOGs): Ethical Questions in Shared Space' (2005) 4 *International Review of Information Ethics* 45.

[57] Bakioglu, above n 3, 4; Warner and Gaiter, above n 56, 15-16; Boellstorff, above n 4, 192.

[58] See, NuschiMartynov, *Second life Griefing: Chat Spam* (2008) YouTube <http://www.youtube.com/watch?v=66fOueTGSkg>.

[59] See, NuschiMartynov, *Second Life Griefing: Following* (2008) YouTube <http://www.youtube.com/watch?v=RM4_HaHZn1g>.

[60] See, Ediblefeet, *Second Life Scripting: How Mega Push Guns Work* (2007) YouTube <http://www.youtube.com/watch?v=uiX9qXqjOzo>.

[61] See, NuschiMartynov, *Second Life Griefing: Cages* (2008) YouTube <http://www.youtube.com/watch?v=3QjtwYIJask>.

[62] See, NuschiMartynov, *Second Life Griefing: Texturen* (2008) YouTube <http://www.youtube.com/watch?v=Zo8B8tI1_Ok>.

[63] See, NuschiMartynov, *Second Life Griefing: Boxes* (2008) YouTube <http://www.youtube.com/watch?v=vBzwhPpIvkM>. In one widely-reported incident, an in-world interview with a Second Life 'land baron' was disrupted by a fusillade of animated virtual penises. See, Chris 'Petey' Peterson, *Room 101 vs. Anshe Chung, Second Life Safari* (2006) Something Awful <http://www.somethingawful.com/d/second-life-safari/room-101-vs.php>; Classemurasame, *Anshe Chung Interview Incident* (2007) YouTube <http://www.youtube.com/watch?v=RedLyae4b2s>.

[64] See, Cartmantul, *Second Life Nazi Attack* (2009) YouTube <http://www.youtube.com/watch?v=wWc1fp1wIvA>; TheGreatGigantor, *Patriotic Nigras — Racist Hitler* (2008) YouTube <http://www.youtube.com/watch?v=eO-sHsdSDdM>.

[65] For further illustrations of actual griefing incidents, see, eg, Jwoulf, *Secondlife Griefers* (2007) YouTube <http://www.youtube.com/watch?v=oPKQ6j9fna4>; NuschiMartynov, Tag des Griefers, (2008) YouTube <http://www.youtube.com/watch?v=pE01ACCGD00>.

become inoperable).[66] In some cases, griefing may have real economic or other consequences outside the virtual world itself, as when a griefing attack disrupts in-world commercial activity or imposes server maintenance costs.[67]

While griefing may be a solitary activity, much griefing in Second Life is associated with various organized groups.[68] These groups differ in the form and intensity of the griefing activities in which they typically engage. [69] For example, 'Goons mostly attack the content of the world with their offensive builds and shocking images,' whereas the 'PN focuses on crippling the medium itself by launching regular raids in-world to cause lag or to crash sims.[70]

These difference in approach to griefing feed inter-group rivalries. Thus, 'Goons believe (for better or worse) that their griefing style is more sophisticated than that of the Chan groups'.[71] The W-Hats (a Goon subgroup) 'disavow any affiliation with the "immature and uncreative" Nigras other than ruefully acknowledge them as "sort of our retarded children".'[72] In turn, 'Patriotic Nigras, /b/tards all, look on the somewhat better-behaved Goon community—in particular the W-Hats [...]—as uptight sellouts.'[73]

Despite stylistic differences and rivalries among various griefer subcultures, they share the same basic motive for griefing: mockery of those who (in the griefers' view) take Second Life too seriously.[74] A common ironic aphorism, 'The Internet is serious business,' neatly captures the disdain with which griefers view their targets. [75]

Other Second Life residents, and especially those who are or have been the targets of griefing, commonly do not attribute much significance to differences among griefers. Rather, the term 'griefer' is applied generally, and

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[66] See Boellstorff, above n 4, 192.

[67] See Ibid; Bakioglu, above n 3, 5-7. One Second Life resident asserts that griefing 'costs me hundreds of US dollars'. Julian Dibbell, *Mutilated Furries, Flying Phalluses: Put the Blame on Griefers, the Sociopaths of the Virtual World* (2008) Wired <http://www.wired.com/gaming/virtualworlds/magazine/16-02/mf_goons>, quoting Second Life resident Prokofy Neva.

[68] Prominent griefer groups in Second Life include the 'Patriotic Nigras' ('PN'), '/b/tards,' 'Goons,' 'W-hats,' and 'V5'. See, Dibbell, above n 67; Bakioglu, above n 3.

[69] Bakioglu, above n 3, 10, suggests that '[t]he ultimate difference' among Second Life griefer groups 'lies in the difference in each group's way of subverting SL culture and of what is deemed to be appropriate use of its platform'.

[70] Ibid.

[71] See, ibid.

[72] Dibbell, above n 67.

[73] Ibid.

[74] Dibbell, above n 67; Bakioglu, above n 3, 11.

[75] Dibbell, above n 67; Bakioglu, above n 3, 11.

without much distinction, to anyone engaging in 'a form of behavior threatening Second Life's social fabric'.[76]

From a sociological perspective, griefing is labeled 'deviant behavior,' and griefers are cast as 'deviants,' precisely in the sense of Howard Becker's classic formulation:

> [S]ocial groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label.[77]

Following Becker, rather than defining 'griefing' in terms of some particular types of (mis)conduct, this study aims to identify the construction of 'griefing' as 'deviance' within the social world of Second Life. Consistent with the sociological perspective, the term 'deviance' is used here not as a normative assessment, but rather an analytical category.

The application of the 'deviant' label may be subject to contest or resistance:

> [T]he person who is thus labeled an outsider may have a different view of the matter. He may not accept the rule by which he is being judged and may not regard those who judge him as either competent or legitimately entitled to do so.[78]

Indeed, Second Life residents who engage in griefing, while embracing the name 'griefer' and the outsider status it implies, do not necessarily accept the normative frame of those who label them as deviants. To the contrary, griefers commonly frame their own activity as a normative critique of non-griefer Second Life culture.[79]

Griefing thus offers a lens through which to observe and delineate the construction of social meaning, the contestation over social norms, and the maintenance of informal order within Second Life.[80] As Boellstorff[81] observes, '"griefing", as a form of deviant behavior, only makes sense in the context of a code of conduct'. Griefing may be treated sociologically as a natural 'breaching experiment,' in which the responses and reactions of residents who expe-

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[76] Boellstorff, above n 4, 196.

[77] Howard S Becker, *Outsiders: Studies in the Sociology of Deviance* (Simon & Schuster, 1963), 9, 2 (emphasis omitted).

[78] Ibid 1-2.

[79] See below Part 2.3.

[80] See, Boellstorff, above n 4, 195.

[81] Ibid.

rience or witness griefing illuminate the underlying, but unstated, normative code of Second Life, and highlight the ways that Second Life residents make sense of, and seek to maintain a sense of order in, their virtual world.[82]

This article thus uses griefing in Second Life as a case study of legal consciousness and emergent legality in a virtual world.[83] The study relies on a combination of qualitative research methods using data gathered over a two-year period, from July 2008 to July 2010.[84] The primary method is content analysis of published communications by and among Second Life residents about their experiences and understandings of 'griefing'.[85] To supplement and add context to the content analysis, this study also draws on participant observation of activity within Second Life, and informal interviews with Second Life residents. The aim is to identify and distinguish themes and pat-

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[82]   See, Harold Garfinkel, *Studies in Ethnomethodology* (Polity, 1984); Boellstorff, above n 4, 196. See also, Stuart Hall, et al, *Policing the Crisis: Mugging, the State, and Law and Order* (Palgrave Macmillan, 1978); Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (Routledge, revised ed, 1980); Mark Fishman, 'Crime Waves as Ideology' in Stanley Cohen and Jock Young (eds), *The Manufacture of News: Social Problems, Deviance, and the Mass Media* (Sage, revised ed, 1981).

[83]   Because of the distinct structural and social features of Second Life, the observations and conclusions offered here will not necessarily apply to other virtual worlds, particularly those organised around more goal-oriented game play, in which explicit rules define the bounds between permissible and impermissible conduct. See above n 6-7 and accompanying text.

[84]   Cf, the reliance on multi-faceted qualitative research methods here follows the methodological approach of two pioneering studies in virtual world ethnography. Boellstorff, above n 4, 60-86; Bakioglu, above n 3, 6.

[85]   These communications are drawn from a review of websites devoted to discussions of Second Life and other virtual worlds:
      The Alphaville Herald <http://alphavilleherald.com/>;
      Second Life Insider <http://www.secondlifeinsider.com/>;
      Massively <http://massively.joystiq.com/category/second-life>;
      New World Notes <http://nwn.blogs.com/nwn/>;
      Terra Nova <http://terranova.blogs.com/>.
      These sites were selected because they were commonly mentioned by Second Life residents with whom I interacted in the course of my ethnographic observations and informal interviews. Many residents indicated that they read these sites with some regularity, and that they consider them to be part of the social world of Second Life.

      In addition, comments were drawn from articles about Second Life appearing in the more general-interest media. Dibbel, *Mutilated Furries*, above n 66; Jeff Young, *Woodbury U. Banned From Second Life, Again* (comment by Wayfinder) (2010) Chronicle of Higher Education <http://chronicle.com/blogPost/Woodbury-U-Banned-From-Second/23352/>; Catherine Holahan, *The Dark Side of Second Life* (2006) Business Week
      <http://www.businessweek.com/technology/content/nov2006/tc20061121_7272 43.htm>.

      The comments examined here reflect the perspective of participants who are sufficiently engaged in Second Life that they read and comment on these sites and articles, and whose perspectives may differ from more casual or sporadic participants.

terns in residents' experiences, understandings, and actions in relation to griefing, and thereby to elucidate the social meaning of griefing and its place in the construction and maintenance of informal order within Second Life.

2   Rhetorical Frames of Griefing

As with the adolescent gang members in *West Side Story*,[86] explanations of griefers' behaviour vary from the indulgent to the clinical to the punitive. Several rhetorical frames[87] can be identified in discourse about griefing in Second Life. In some instances, these frames are in conflict, while in other instances they may be complementary or overlapping. They represent differing social schemas by which Second Life residents make sense of, and act upon, conduct labeled as 'griefing', and as such distinguish contending forms of consciousness through which an emergent legal order is constructed within Second Life.[88]

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[86] In the song 'Gee Officer Krupke,' members of the Jets street gang parody the competing legal, psychological, and sociological explanations for their delinquent behavior:

Action and Jets: 'Gee, Officer Krupke, we're very upset; We never had the love that ev'ry child oughta get. We ain't no delinquents, We're mis–understood. Deep down inside us there is good! '

[...]

Diesel (as Judge): 'Officer Krupke, you're really a square; This boy don't need a judge, he needs an analyst's care! It's just his neurosis that oughta be curbed. He's psychologic'ly disturbed!'

[...]

A-rab (as Psychiatrist): 'Officer Krupke, you're really a slob. This boy don't need a doctor, just a good honest job. Society's played him a terrible trick, And sociologic'ly he's sick! '

[...]

Baby John (as female Social Worker): 'Officer Krupke, you've done it again. This boy don't need a job, he needs a year in the pen. It ain't just a question of misunderstood; Deep down inside him, he's no good!'

Stephen   Sondheim,   *Gee   Officer   Krupke*   (1956)   West   Side   Story <http://www.westsidestory.com/site/level2/lyrics/krupke.html>.

[87] See Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (1974); D A Snow, et al, 'Frame Alignment Processes, Micromobilization, and Movement Participation' (1986) 51 *American Sociological Review* 464; D A Snow and R D Benford, 'Ideology, Frame Resonance, and Participant Mobilization', (1988) 1 *International Social Movement Research* 197; J A Kuypers, 'Framing Analysis From a Rhetorical Perspective' in P D'Angelo and J A Kuypers (eds), *Doing News Framing Analysis: Empirical and Theoretical Perspectives* (Routledge, 2010) 286.

[88] See, Ewick and Silbey, above n 29.

2.1   The 'Lawbreaker' Frame: Griefing as Crime or Tort

The first frame is the most explicitly 'legal' in character, casting griefing as harmful behavior to be prohibited and punished. One version of this frame equates griefing with crime and griefers with criminals:

> Griefers are the criminals and felons in the attenuated universes of MMO rules and regulations.[89]

> 'Griefing' is no longer just griefing ... it is now classified as a 'computer hate crime' with very real criminal consequences.[90]

> These new media majors at [Woodbury University] are members of deliberate griefing groups, neither injured nor innocent, the worse organized criminals of the Internet – 4chan, b-tards, Anonymous etc. They have cost other users of SL hundreds of real dollars in losses for downed sim time when they crash them, disrupt events, and force tenants out of rentals due to their harassment. This is all known and documented.[91]

The labeling of griefers as 'criminals' resembles the construction of deviance as a 'criminal' problem in the real world:

> Once the category of "law and order" has come into existence as a legitimate news category, whole different orders of meaning and association can be made to cluster together. Terms of understanding — such as the criminal categories reserved for acts of collective social delinquency

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[89]   See, eg, Tateru Nino, *Who are the griefers?* (2006) Second Life Insider <http://www.secondlifeinsider.com/2006/11/03/who-are-the-griefers/> archived at <http://marsouin.infini.fr/etic2008/index.php/Griefers_et_objets>

[90]   Young, above n 85, comment by Wayfinder.

[91]   Young, above n 85, comment by Prokofy Neva. 'Prokofy Neva' is the avatar of a Second Life participant who 'has earned a widespread reputation as being everything from a successful land entrepreneur, to a vanguard in promoting privacy rights for avatars, to a widespread annoyance who regularly writes seething personal attacks riddled with inaccuracies.' Ron Blechner, *Griefers: Why Dibbell's Wired Article Was 1-Sided* (2008) Second Tense <http://www.secondtense.com/2008/02/griefers-why-dibbells-wired-article-was.html>. See also, Bakioglu, above n 3, 12. Dibbel, above n 67. Both on Neva's blog, Second Thoughts <http://secondthoughts.typepad.com/>, and in frequent comments at other Second Life-oriented sites, Neva regularly expresses robust, often strident, commentary on a broad range of issues concerning Second Life, including but not limited to griefing. See, http://secondthoughts.typepad.com; http://www.massively.com/profile/239480/. Neva has been a particular target of griefers (sometimes extending beyond the virtual confines of Second Life into the real world life of the individual behind the 'Prokofy Neva' avatar). See Bakioglu, above n 3; Dibbel, above n 67. While the real-world individual behind the 'Prokofy Neva' avatar is a female, see Dibbel, the avatar is male and will be referred to as such here.

("hooligans", say, or "layabouts") — become transferred to new events like the clashes between citizens and the army in Ulster.[92]

Hall's focus was on '[t]he process of news production' and how that process helped to construct popular conceptions and beliefs about 'violence,' 'crime,' and other disruptions to social order. However, a similar process of cultural-ideological production operates in discourse among Second Life participants. Categories such as 'criminals,' 'thugs,' 'goons,' 'terrorists,' etc. become transferred to the new setting of a virtual world, their application helping to construct the meaning of, and responses to, 'griefing'.

A second variant of the 'Lawbreaker' frame treats griefing akin to tortious conduct. In particular, residents commonly describe griefing in terms analogous to the tort of 'nuisance,' as a disruption of residents' 'right of quiet enjoyment'.[93] While the equation of griefing with 'crime' rests on claims that the virtual world misconduct causes financial or other real-world harm, the treatment of griefing as 'nuisance' recognizes the disruption of residents' virtual world social experience as an injury in itself:

> The argument that it does 'no real damage' is a straw man... of course it does no real damage. These are bytes inside a computer, and little lights that we look at on a screen. Does that excuse acting like an f'in jackass in anonymity? No chance.

> If I were to walk down the street following men in business suits and tapping them on the shoulder repeatedly, even after they told me to stop, would you defend my position as "I'm not hurting anyone, so it's ok"? If I were sitting in a bus terminal clucking like a chicken every five seconds, would you not be annoyed? Why should you have to go to another terminal just to avoid some idiot whose trying to annoy you?

> It doesn't matter whether or not it does real damage, and to argue that is missing the point completely: if you harass other people and become a public nuisance just for the fun of it, you should be locked in a closet for three weeks with a hungry Richard Simmons.[94]

> It may be only a minor annoyance to me, but to the person they're perpetrating it on it's a major hassle.[95]

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92 Stuart Hall, 'A World at One With Itself' in Cohen and Young, *The Manufacture of News: Deviance, Social Problems and the Mass Media* (Sage, revised ed, 1981), 149.

93 Cf, Restatement (2d) of Torts, § 821D, defining 'private nuisance' as 'nontrespassory invasion of another's interest in the private use and enjoyment of land'.

94 *Second Life Griefers Claim Credit for Attack on John Edwards Campaign HQ* (2007) GamePolitics.com, comment by JoeBourrie, <http://www.gamepolitics.com/2007/03/06/second-life-griefers-unmasked-in-attack-of-edwards-hq>.

95 Ibid, comment by Grahamr.

However, the premise that virtual world residents have a right of quiet enjoyment is not uniformly accepted:

> You don't have a right to peace of mind when you join a giant community that potentially stretches around the world.[96]

> This "loss of time" whine is a special stupid, however. The point of this game is to be open ended, rife with your own and users content and to be wielded as they will be the users. Getting angry because your time is wasted, either because you realize this game is a waste of time or because it doesn't live up to your expectations (which applies to far more games than this one) is retarded, period.[97]

The tort-like nature of this frame is further evident in the advice offered to Second Life residents about how to avoid and respond to incidents of griefing. Residents are typically advised to 'remain calm' and not to 'rise to the bait'; ignore griefers by using the 'mute' function in the Second Life browser; avoid being pushed by 'sitting' on a virtual object; escape griefers by 'teleporting' to a different location; and report griefers by filing an 'abuse report' with Linden Lab.[98]

In suggesting that residents themselves have a responsibility to take affirmative steps to avoid becoming the targets of griefers, or to take appropriate action to mitigate the harm if they are griefed, such advice tacitly embraces tort concepts of 'assumption of the risk'[99] and 'contributory negligence'.[100] The notion that the responsibility for dealing with griefers rests with residents themselves, and not with some legal authority, has deep roots in virtual world culture:

> [T]here were what I'll call the technolibertarians. For them, MUD rapists were of course assholes, but the presence of assholes on the system was a technical inevitability, like noise on a phone line, and best dealt with not through repressive social disciplinary mechanisms but through the timely deployment of defensive software tools. Some asshole blasting violent, graphic language at you? Don't whine to the authorities about it – hit the

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96   Dibbel, above n 67, comment by Klakov.

97   *Second Life Griefers Claim Credit for Attack*, above n 94, comment by Timmy.

98   See, eg, *Dealing with Griefers* (undated) Rainbow Creations
      <http://rainbowdragon.ca/rainbowcreations/grief.shtml>;   Hotspur   O'Toole,
      NCI's 'Dealing with Griefers' Lecture (2009) Hibernia on the Skids
      <http://hiberniaskids.blogspot.com/2009/03/ncis-dealing-with-griefers-
      lecture.html>.

99   Restatement (2d) of Torts, § 496A, expressing the principle that '[a] plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.'

100   Restatement (2d) of Torts, § 463, defining 'contributory negligence' as 'conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection'.

@gag command and the asshole's statements will be blocked from your screen (and only yours). It's simple, it's effective, and it censors no one.[101]

Contrary to the technolibertarian view, the 'Lawbreaker' frame portrays the virtual world community as requiring some form of legal order to defend itself against attack by unruly griefers. As Mary Douglas observes, '[m]ost little local cultures develop some common term that runs across the gamut of social life to moralize and politicize dangers.'[102] Within the 'Lawbreaker' frame, the term 'griefing' in Second Life carries a meaning akin to 'sin' or 'taboo', denoting behavior that endangers the community.[103]

Douglas highlights the intimate connection between notions of dangerousness and the construction of legality: 'The claims of justice and danger are rhetorical resources for all parties. On this fulcrum, concepts of liability and tort are continuously at stake, always in process of revision.'[104]

Casting 'griefers' as criminals or tortfeasors, whose conduct causes injury within and beyond the confines of the virtual world, the 'Lawbreaker' frame expresses a form of legal consciousness in which rules and sanctions provide the community with necessary protection against transgressive individuals.[105]

2.2   The 'Misfit' Frame: Griefing as Personality Disorder

A second frame casts griefing as a manifestation of social maladjustment or psychological pathology. In some instances, this frame is applied in a quasi-clinical manner, suggesting that griefers require psychological care: 'If a Griefer doesn't have the guts to seek mental health treatment in real life, then exposing them here in SL may help that person recognize that they have a problem before they act out their threats in real life.'[106]

More often, this frame is applied in a dismissive manner, mocking griefers for their pathetic antisocial behavior:

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101 Dibbel, above n 51, discussing attitudes toward griefing in LambdaMOO.

102 Mary Douglas, *Risk and Blame: Essays in Cultural Theory* (Routledge, 1992) 25.

103 See ibid 25-26.

104 Ibid 25.

105 See ibid 28.

106 Rich1 Lyle, *Fighting Back Through Griefers-Exposed* (2009) Rez Magazine, quoting Second Life avatar Marijuana Janus
<http://www.rezmagazine.co.uk/2009/07/fighting-back-through-griefers.html>.

> So this is how young, unattractive guys deal with their inability to find girlfriends? Flying phalluses indeed. Dr. Freud would have had a field day [...]. Hey griefers – take a shower (using soap), develop some social skills, and maybe things will get better.[107]

> It's sad that Goons and b/tards spend their online lives being jackasses to hide the fact they have unhappy offline lives. Maybe if they weren't such jackasses people might like them more. Just a thought.[108]

> Griefing doesn't drive me bananas because I see it for what it is: bored internet children who are so desperate for attention they'll act like jackasses to get it. They're not really offensive, just sad and pathetic.[109]

The 'Misfit' frame is sometimes offered in response to the assertion[110] that griefing is simply a form of play or a performative critique:

> [Y]ou can't justifiably say whatever tf [sic] you want just by adding "just kidding" or "for the lulz." Emotional abusers do this all the time; it's a classic tactic to try and make everything your fault for getting upset and not theirs [sic] for being a dick.[111]

> What is more pathetic, the person who wastes their life online but derives some modicum of pleasure from it or a person who wastes their life depriving other people of virtual amusement. The irony and ultimately pathetic nature of the "Griefer" is sad vicarious. [sic] These people are parasites on a virtual world, and derive satisfaction by pretending to be superior to the virtual hosts they feed on.[112]

The treatment of griefing as a manifestation of social-psychological pathology, while not explicitly 'legal,' nevertheless operates to reproduce a normative order within which griefing is treated as 'outlaw' behavior. In this sense, the 'Misfit' frame is enmeshed in the process of constructing legality within Second Life. Even where it is unaccompanied by appeals to 'legal' rules or calls for the imposition of 'legal' punishment, it nonetheless demarcates the bounds of socially acceptable behavior, and labels griefers as 'outsiders' whose conduct breaches the normative order of the dominant community.

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[107] Dibbel, above n 67, comment by GotAFirstLife.

[108] Ibid comment by cabbagetown.

[109] Ibid.

[110] See part 2.3, below.

[111] Dibbel, above n 67, comment by Squeedle.

[112] Ibid comment by Ragnar_Donaschold.

2.3 The 'Jester' Frame: Griefing as Play or Performative Critique

A third frame presents griefing as a form of game play, albeit one that tests and breaks the rules of the game,[113] or as a performative critique of the prevailing norms and culture in Second Life:[114]

> Hmm... in a virtual sandbox environment where anything is possible, can we really say that one style of play is better (or more valid) than another? Is pretending to build a house really better than pretending to fill the house with penises? Doesn't mean you're not a dick (pun intended) if you follow the latter course of action, but it's still allowed and, in a sense, encouraged by the design of the game itself.[115]

Griefers themselves frequently assert that their disruptive conduct is aimed at those who (inappropriately, in the griefers' view) regard Second Life as 'Serious Business':

> Second Life's own attempts in creating a virtual "world" rather than a implicitly less immersive game creates a environment where griefers can do the most damage. This is hardly a new concept – the PN, along with W-HAT and others, have repeated the 'Second Life is not serious business' mantra for a long time. Only now, though, can that concept be explained in concrete terms. The only prescription is to perceive griefing events in the manner in which they are often intended: to poke fun at the "metaverse" and its institutions. Users of online communities must step out of immersion and judge griefing events on their own merits – for their own sake.[116]

Other Second Life residents also sometimes express this view:

> On Second Life, there are a lot of people who take the game very very seriously, and sometimes they need a few flying penises to remind them that it isn't real. If anyone makes gamers look bad, it's not the griefers —

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[113] See Bakioglu, above n 3; Peter Ludlow, *Watching the Watchers: Power and Politics in Second Life (Part One)*, (2010) Confessions of an Aca/Fan
<http://henryjenkins.org/2010/04/watching_the_watchers_power_an_1.html>;
Mark Wallace, *W-Hat is Emergent Gameplay?* (2007) Terra Nova
<http://terranova.blogs.com/terra_nova/2007/02/what_is_emergen_1.html#more>.

[114] See Bakioglu, above n 3.

[115] Dibbel, above n 67, comment by Hannah.

[116] Mudkips Acronym, *Why Griefing = Drama: Broken Immersion*, (2008) The Alphaville Herald <http://alphavilleherald.com/2008/02/why-griefing-dr.html>. 'Mudkips Acronym' is a former leader of the 'Patriotic Nigras' griefing group. Ibid; see above, text accompanying n 68-73.

it's the people who react to the attacks as if they were physically assault-ed in real life.[117]

The 'Jester' frame provokes objections from Second Life residents, who view it as little more than an apologia for anti-social behavior:

> And no, no, no, NO, Mark, I will NOT let you put up this crap about "games" and "meta guild theories" and prettify the ugliness that is W-Hat by forking off to some fun, groovy, Ludology around them. No way. I'm here to remind you that your fun, groovy, Ludology is *based on criminality*. Meta-guild THAT Mark!!!![118]

> So now they're self-appointed vigilantes who not only smear shit on people's walls for kicks, they do it to fight against "the man"? Please, these people wouldn't know social justice if it kicked them in the teeth and stuffed a rubber chicken in their pants. They just assault high-profile targets, or people they know will garner the biggest reaction.[119]

Of course, for scholarly observers, the analysis of griefing in terms of the 'game play' or 'performative critique' frame is not necessarily an endorse-ment or exculpation of the activity under study. Rather, it constitutes an effort 'to understand the cultural logics behind [griefers'] actions'.[120] Nevertheless, the offense that some Second Life residents take to the 'griefing as play' or 'griefing and critique' frame speaks to the negative meaning attached to grief-ing within that virtual community,[121] and the extent to which griefers repre-sent a transgression against or threat to the dominant normative order of that community.[122]

For griefers themselves, the transgressive nature of the activity, and the of-fense it causes for those who share the 'Lawbreaker' and 'Misfit' frames, is precisely what gives it appeal and power. Within the 'Jester' frame, griefing

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[117] Dibbell, above n 67, comment by Hannah. Hannah concludes that griefing is 'not a very nice thing to do, but not wholly bad either.'

[118] Wallace, above n 113, comment by Prokofy Neva.

[119] *Second Life Griefers Claim Credit for Attack*, above n 94, comment by Jabrwock, March 6, 2007 at 10:00 am.

[120] Boellstorff, above n 4, 193. As Boellstorff notes, 'Ethnography is often used to un-derstand the lifeworlds of the "repugnant other"; for instance, to explore how forms of racism or sexism are culturally reproduced over time in specific historical contexts.'

[121] Not all non-griefer residents share this view. See, eg, *Second Life Griefers Claim Cred-it for Attack*, above n 94, comment by Hannah: 'I'm not exactly pro-griefer, but I still find the whole "Griefers are horrible human beings who should be punished in re-al life" attitude to be a wee bit extreme.'

[122] In this respect, griefers are very much 'folk devils' within the culture of Second Life. Cf. Cohen, above n 82. As with other such folk devils, the 'Griefer' represents a social type constructed through social interaction and amplified through media and other popular-cultural representations. See Ibid 10-19, 22-23.

may be understood as a form of 'subaltern cosmopolitanism'[123] arising in response to the colonisation of the virtual world by those who seek to impose their own sense of order and exploit Second Life for their own profit and pleasure. Disrupting the hegemonic order of 'serious business', griefers pursue their own counter-hegemonic project of resistance against social exclusion.[124]

Conclusion

The study of griefing in Second Life provides insight into the process of emergent legality within a virtual world lacking a formal internal legal system. This investigation suggests that Second Life residents variously frame griefing as criminal or tortuous conduct, as an expression of social pathology, or as a performative critique of the virtual world itself. The frames that residents apply suggest different responses to griefing. Within the 'criminal' frame, griefing is a problem to be addressed through the promulgation and enforcement of rules, and the punishment of offenders. Within the 'pathology' frame, griefing may also require rule enforcement and punishment, but is more likely to view the griefer as an object of pathos or ridicule. Within the 'performative critique' frame, griefing is not a problem to be eradicated at all, but rather a valid form of play that calls attention to the absurdity of taking the virtual world too seriously and resists the social exclusion of those who reject the hegemony of 'serious business'.

This investigation complements existing scholarship on law and virtual worlds, which focuses primarily on the interface between existing 'real world' law and virtual world activity, by shedding light on the ways that virtual world residents themselves construct and deploy an informal normative order in the absence of a formal legal system and official legal institutions within that world.

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[123] Cf Boaventura de Sousa Santos, *Toward a New Legal Common Sense* (Cambridge University Press, 2nd ed, 2002) 458-459.

[124] See ibid 459-460.