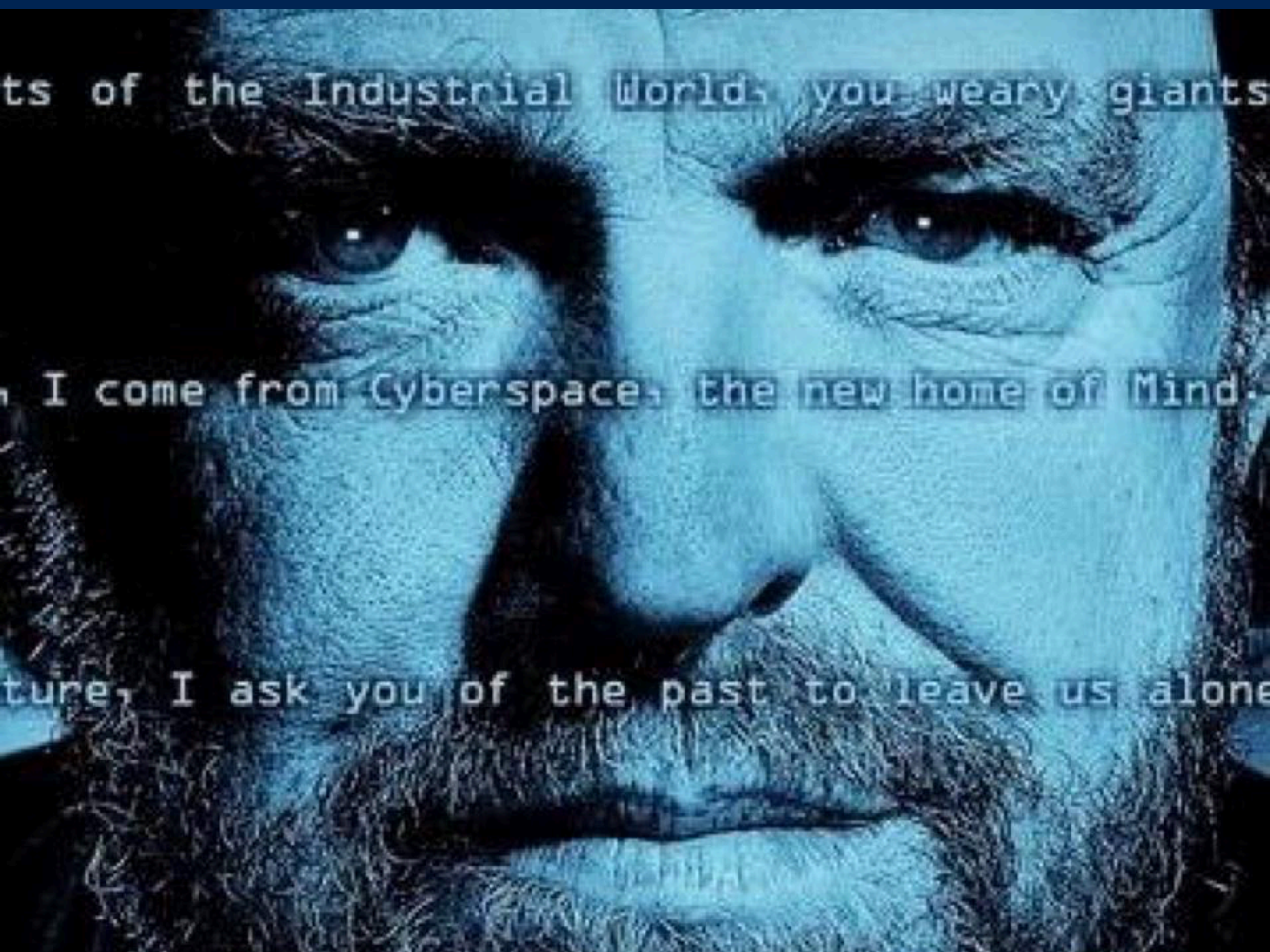


Killfile All the Lawyers?

James Grimmelman

Cornell Computer Science Colloquium

November 16, 2017



ts of the Industrial World, you weary giants

h I come from Cyberspace, the new home of Mind.

ture, I ask you of the past to leave us alone

A world without law?

I. Sealand

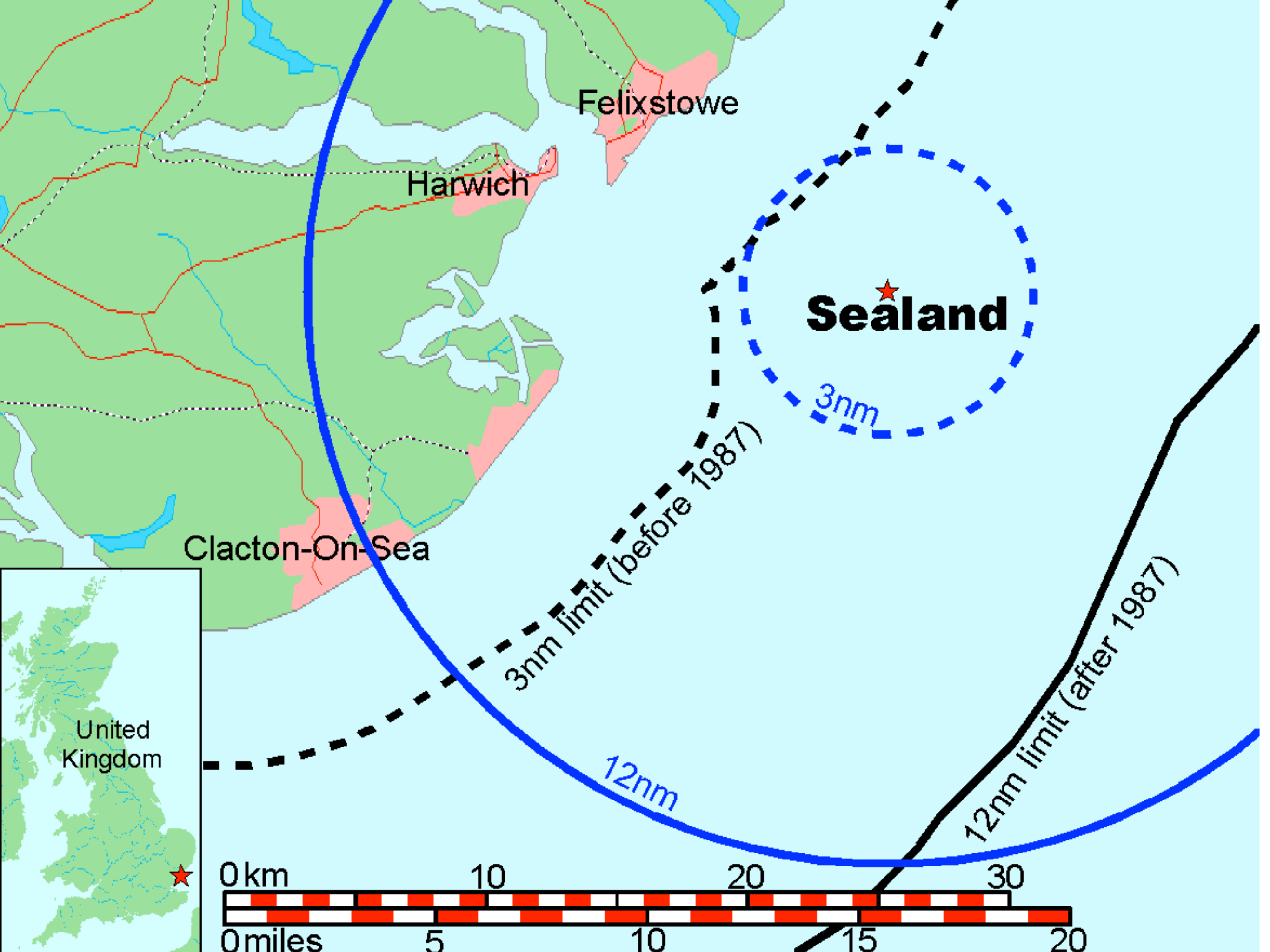
Sealand, HavenCo, and the Rule of Law

2012 University of Illinois Law Review 405



SEALAND
WWW.HAVENCOCOM

SEALAND











Two related questions

- What was HavenCo's relationship to law?
 - National law
 - International law
 - Sealand law
- Why did HavenCo fail?



Sealink





A paradox

- HavenCo existed to undermine national laws
 - “Our customers don’t want to break the law; they want a different set of laws they can comply with.”
- But it was completely dependent on international law
 - Otherwise, the Royal Navy could just blow it up
- These can be reconciled only if law is an autonomous system of binding rules independent of politics

Sealand law

- Sealand nationalized HavenCo
 - HavenCo couldn't object without fatally undermining its claim to be free of national laws
- Sealand is a rule-of-law failure
 - An absolute monarch surrounded by courtiers
 - Frequent but irregular state violence
 - No judiciary, free press, political parties, etc.

II. Blockchains

The double-spend problem for land

- Alice owns Blackacre
- Alice conveys to Bob
- Alice conveys to Carol

Who owns Blackacre?

In 1250

- Alice conveys Blackacre to Bob by going onto the land and handing him a clod of dirt
- If Carol sues, a jury will be asked whether Alice gave Bob a clod of dirt
 - (If Bob wins, Carol can sue Alice.)
- This is a distributed system with terrible records. Fraud and mistake are easy.

In 1650

- Alice conveys Blackacre to Bob by signing and sealing a piece of paper (a “deed”)
- If Carol sues, a jury will be asked whether Alice gave Bob a signed and sealed deed
- These are better records, but they’re still not great. Fraud and mistake remain easy.

In 1850

- Alice conveys Blackacre to Bob by signing and sealing a deed
- Bob then records the deed at the land records office: it's bound and indexed
- If Carol sues, a jury will be asked whether Bob's or Carol's deed was recorded first
- Centralization creates better records.

Carol Rose,

Crystals and Mud in Property Law

“[T]he official records become an unimpeachable source of information about the status of land ownership; the law counts the record owner, and only the record owner, as the true owner. . . . The characters to muck up this crystalline system by now should be sounding familiar: ninnies, hard-luck cases, and the occasional scoundrels who take advantage of them.”

Anatomy of a land scam

- Alice conspires with Carol. Immediately after Alice conveys to Bob, she conveys to Carol, who records before Bob does.
- Or Dave searches for unrecorded grants, then swoops in and buys second but records first
- Or Alice conveys to Eve first, but Eve waits to record until after Bob searches

Result: recording first only helps the innocent

- Pure *race* statutes are the law in 3 states
- In the other 47, a subsequent purchaser with *notice* of a prior unrecorded sale takes nothing
 - This foils Carol and Dave and maybe Eve
 - But the records are no longer definitive

Other non-record risks

- Filing mistakes
- Indexing problems
- Forged deeds
- Fraud in the factum (“Sign this ‘petition’”)
- Fraud in the inducement (“I’ll ‘pay’ \$1M”)
- Adverse possession

Blockchains are crystals

- Armor-plated against errors *in the blockchain*
- Brittle against errors *outside the blockchain*

Know-it-all contracts

- Smart contracts securely transfer digital assets to parties under specified conditions
- A blockchain can't verify that a concrete foundation has been properly poured
- Most contractual complexity is an attempt to deal with the complexity of real life

III. Moderation

The Internet Is a Semicommons

78 Fordham Law Review 2799 (2010)

The Virtues of Moderation

17 Yale Journal of Law and Technology 42 (2015)

Anarchy, Status Updates, and Utopia

35 Pace Law Review 135 (2105)

No ESC

The Recorder (Nov. 10, 2017)

ADVERTISEMENT

UNITY IS STRENGTH



share your story now

Where is the Wikitorial?

Unfortunately, we have had to remove this feature, at least temporarily, because a few users posted content with inappropriate material.

Thanks and apologies to the thousands of people who logged on in the right spirit.

The inevitability of moderation

- Congestion (DDOS)
- Cacophony (spam)
- Abuse (harassment)
- Manipulation (fake news)

Moderation is hard: Usenet

- Usenet distributed *user communities* (newsgroups) across *infrastructure* (servers)
- Neither newsgroup readers nor server operators were well positioned to fight spam
- Killfiles, cancelbots, private servers, and moderated newsgroups all failed at scale
- Big platforms have defensible boundaries

Moderation is hard: Reddit

- Reddit's initial "constitution" was libertarian
 - Subreddit moderators have near-absolute authority; offended users should leave
- But some subreddits were awful: /r/jailbait
 - Others were bad neighbors: /r/The_Donald
- In response, Reddit has changed its content policies, its ranking algorithms, its harassment rules, its linking rules, its doxxing rules, its brigading rules ...



Detailed Listing

Korfield (224,160) Moderate 3584m

[Teleport to this location](#)

Opening bid: LIN 1,800

My Maximum Proxy Bid: LIN

(Enter **LIN 1,800** or more)

Place Your Bid

0 Bids

Price per m²: LIN 0.50

Open Date: Nov 14, 2017 12:00:00 PM **PST**

Close Date: Nov 16, 2017 12:00:00 PM **PST**

Note: Please ensure your computer clock set correctly

Time Remaining: 1d 3h 9min 18s



CHESTER COUNTY COURT OF COMMON PLEAS
CIVIL COVER SHEET

Do not staple or attach on this side

08 OCT -3 PM 12:19

OFFICE OF THE
PROthonARY
CHESTER CO. PA.

1. CASE CAPTION:

IA. CASE NO.: 06-08711

MARC BRAGG, ESQ. v LINDEN RESEARCH, INC., a
corporation, and PHILIP ROSEDALE, an individual

2. PLAINTIFF(s): (Name, address)

MARC BRAGG, ESQ.
230 WEST MARKET STREET
WEST CHESTER, PA 19382

3. PLAINTIFF'S or (circle one)

DEFENDANT'S COUNSEL: (FILING ATTORNEY)

(Name, firm, address, telephone and attorney ID#)

JASON A. ARCHINACO, ESQ. (Plaintiff Counsel)
WHITE AND WILLIAMS, LLP
THE FRICK BUILDING, SUITE 1001
437 GRANT STREET, PITTSBURGH, PA 15219
(412) 566-3520 PA ID 76691

4. DEFENDANT(s): (Name, address)

LINDEN RESEARCH, INC. 1100 SANSOME
STREET, SAN FRANCISCO, CA 94111

PHILIP ROSEDALE, 2717 PACIFIC AVENUE,
SAN FRANCISCO, CA 94115-1129

5. ARE THERE, ANY RELATED CASES?

(see C.C.R.C.P. 200B)

Yes No

IF YES, SHOW CASE NOS. AND CAPTIONS:

6. IF THIS IS AN APPEAL FROM A DISTRICT JUSTICE JUDGMENT, WAS APPELLANT PLAINTIFF OR
 DEFENDANT IN THE ORIGINAL ACTION?

7. CASE CODE: 83 DESCRIPTION: (see reverse side)

SEE THE RECORD FOR
EQUITABLE RELIEF

8. IS THIS AN ARBITRATION CASE? Yes No

YES JURY TRIAL DEMANDED

(Arbitration Limit is \$50,000. See C.C.R.C.P. 1301.1)

The law of moderation

- Except for copyright and obscenity, platforms can do whatever they want
- Section 230: no liability for allowing user-posted content, and no liability for removing “objectionable” content in good faith
- Terms of service: “We can do whatever we want, and you agree to arbitrate all disputes.”

Threats

Global credibility standard - Details on method of violence

Details on method of violence that take the content beyond a generic threat of death or violence

Violating:

- I'm going to kill you John, I have the perfect knife to do it!
- Let's destroy Paul's car, I have baseball bats we can use!
- I'm going to slap John
- I'm going to shoot Paul
- Bomb the FB Dublin office

Non violating:

- I'm going to kill you John!
- Paul, your car is absolutely disgusting, I'm going to destroy it!
- Fuck off and die Kevin!
- Destroy the FB Dublin office

« I'm going to burn you »: look at the context (fire or making a fool of someone?)

The story of law (simplified)

- The king metes out justice as he sees fit
- The king delegates the work to his officials
- Clerks write out the same writs over and over
- Judges start following precedent
- The precedents are written down and codified
- The king can't make arbitrary changes

The story of moderation (simplified)

- Zuck metes out justice as he sees fit
- Zuck delegates the work to customer support
- Customer support sees issues over and over
- Customer support starts following precedent
- The precedents are written down and codified
- Zuck can't or won't make arbitrary changes

Conclusion

Why law?

Yes, law is an exercise of power and a mechanism for self-government, but it's also ...

I. A source of stability against arbitrary power

II. A repository of solutions to difficult problems

III. A set of institutions that provide consistency and adapt intelligently to unexpected cases

You can't escape

- Every community depends on power
- Every community generates conflicts
- Law channels power and resolves conflicts

*Those who cannot remember law
are doomed to recreate it.*