UNIVERSITY OF LEEDS

This is a repository copy of *Answering the call of duty: the phenomenology of justice in twenty-first-century video games*.

White Rose Research Online URL for this paper:
http://eprints.whiterose.ac.uk/142580/

Version: Accepted Version

White Rose
university consortium
Universities of Leeds, Sheffield & York

eprints@whiterose.ac.uk
https://eprints.whiterose.ac.uk/

Answering the Call of Duty: The Phenomenology of Justice in Twenty-First Century Video

Games

Craig John Newbery-Jones[*]
School of Law, Plymouth University

ABSTRACT

In the twenty-first century, video games have become a major part of the entertainment industry and a pervasive cultural medium. While cultural legal theory has examined other popular forms of culture, little attention has been paid to the relationship between law and justice in video games. Furthermore, the nature of law as a phenomenological experience is closely aligned to the experiential characteristics of video games. This differentiates video games from other modern cultural texts by providing the user with an active experience, instead of mere passive observation. This paper will interrogate these themes at their juncture, and explore how video games allow the individual to conceptualise and experiment with abstract themes, specifically justice. Furthermore, this article will argue that video games encourage the player critically to interrogate these themes in a more-profound way than other modern texts due to its phenomenological process.

KEYWORDS

Law, Video Games, Justice, Phenomenology, Law and Popular Culture,

INTRODUCTION

'I love video games because I have the same experience I have when I watch a movie I love, or read a book that captures my imagination. But I'm an active participant rather than an observer.'

> Will Wheaton, (Video Games: The Movie, 2014)

'Computer games are intrinsically linked to our culture in a way that's irrevocable. I think from here on it goes deeper. I think video games root deeper and deeper in everything we're doing, and until their a part of lives in a way we don't even notice.'

> Max Landis, (Video Games: The Movie, 2014)

In the last two decades, the video game industry has grown into one of the principal global

entertainment industries and an important segment of international popular culture. According

to the Entertainment Software Association (hereafter ESA),[1] consumers spent $21.53 billion

on video games, hardware and accessories in 2013[2] with 59 per cent of Americans playing

video games.[3] This is clearly a generational development. The ESA outlines that average age

of the game player is 31, the average age of the most frequent game purchaser is 35, and the

average gamer and has been game playing for around 14 years.[4] Yet, contrary to common

assumption, this is not a significantly male-orientated market. The ESA has stated that 48 per

cent of all game players are women. Women, over the age of 18, represent a significantly

greater portion of the game-playing population (36 per cent) than boys aged 18 or younger

(17 per cent).[5] Widespread engagement with this pervasive cultural medium continues to

develop with the advance of technological innovations. The ability to play video games on

smartphones, tablet computers and wireless devices has advanced public engagement with

these cultural sources. In 2013, the ESA ascertained that forty-four per cent of gamers play

games on their smartphones and thirty-three percent play on their wireless devices.

It is clear that video games now form a significant part of contemporary popular culture and,

as they become normalised and more ubiquitous in future generations, the influence of this

source on cultural studies will become increasingly significant. Nevertheless, the influence of

video games on legal culture and the representation of law and justice in this novel cultural

text are currently under-researched in existing scholarship. This article will stress the

---

[*]Craig John Newbery-Jones (craig.newbery-jones@plymouth.ac.uk & @CJNewberyJones) is a Lecturer in Law at Plymouth University Law School and is a Part-time PhD Researcher at the University of Exeter Law School. His PhD thesis is examining how a detailed public image of the bar was constructed in the nineteenth century through an examination and analysis of the representation of the bar in the mainstream and popular press of the period. While lecturing at the University of Exeter Law School, Craig acted as the schools e-learning and digital resource co-ordinator and was responsible for incorporating numerous projects and initiatives into the undergraduate curriculum. He is currently undertaking a similar role at Plymouth University Law School and is examining how experiential learning, employability skills and skills-based legal education can be embedded into the legal curriculum. Thank you to William Barrett (University of Exeter), Mitchell Travis (University of Exeter) and Alyssa Schirru for your thoughts and input.
[1] The Entertainment Software Association (ESA) is the US association dedicated to serving the business and public affairs needs of companies that publish computer and video games.
[2] Entertainment Software Association (ESA) Industry Facts, theesa.com,
< www.theesa.com/facts/index.asp> accessed 6 August 2014
[3] ibid
[4] ibid
[5] ibid

importance of video games in future examinations of law and justice in popular culture, as video games construct a wholly different experience of law and justice than other popular sources. This paper will argue that, unlike television, film and news media, which construct a passive experience of legal themes, video games create an active experience, going beyond mere observance and making the player participate in the construction of narratives and in-game decision-making. Where themes of justice are concerned, it is the individual player that becomes the arbiter of justice, often tasked with making decisions that allow society or individual characters to achieve retribution. These interactions with video games are ever-increasingly becoming a part of our daily experience, and where legal issues and themes of justice occur, they become part of our structures of consciousness and part of our Lebenswelt, or life-world. To examine how video games contribute to the construction of the Lebenswelt, this article will use the philosophical concept of phenomenology and will argue that these themes of justice have created a phenomenological experience within the public life-world, perpetuating and popularising these themes.

This article is in three sections. The first section explores the relationship between law and culture, with a specific focus on the importance of video games in contemporary society. The second section introduces the philosophical concept of phenomenology and its relationship to law and culture. The third section examines how contemporary video games represent themes of justice, allow the player actively to engage with them, and constructs opinion and attitudes towards justice in postmodern society.

VIDEO GAMES WITHIN THE STUDY OF LAW AND CULTURE

Law and themes of justice have always existed in cultural texts, but changes in technology in the last two decades have seen these themes permeate culture in a more ubiquitous manner. While the works of Chaucer[6] and Shakespeare[7] critique jurisprudential themes and the press

---

[6] W Scheps, 'Chaucer's Man of Law and the Tale of Constance.' (1974) 89 Publication of the Modern Languages Association, 285

of the nineteenth century truly popularised lawyers and legal procedure, [8] technological advancements of the last two decades have encouraged a greater societal engagement with law through its mere ability to access such sources. In his work Law goes Pop,[9] Sherwin examines the interrelationship between law and popular culture, and explains the proliferation of law in popular culture since the 1980s. His reasoning for such a shift is that changes and developments in technology and society in the last twenty years have led to a proliferation of visual sources and the emergence of an instantaneous news culture which has placed the law at the heart of mass culture and popular culture. He observes 'as culture wars rage, the technology of mass culture rolls on. And the visual mass media, particularly television, have their own models of truth and reason, law and justice, to purvey...Law stories have consistently made up a significant portion of the popular culture.' [10] This sustained transmission of representation of law and lawyers validates and affirms the public fascination with legal narratives and themes of justice in popular cultural texts. It is therefore inevitable that themes of justice and related narratives have permeated all modern cultural texts, including video games. While it cannot be argued that law, lawyers or legal procedure have been a focus of video games,[11] legal themes and justice-based narratives have emerged in game culture due to this proliferation of the legal through cultural texts.

Sherwin's[12] assertion that law became popular in the last two decades is clearly echoed by the growth in substantial research into the relationship between law and popular culture, but video games have been notably absent. This research on modern cultural texts has been

---

[7] See generally, P Raffield and G Watt, (eds), Shakespeare and the Law, (Hart, 2008), K Elgin, *Shakespeare's World: Crime and Punishment,* (Cherry Tree Books, 2005) and M Bayer, Theatre, Community and Civic Engagement in Jacobean London, (University of Iowa Press, 2011)

[8] See generally, J Rowbotham and K Stevenson, (eds) Criminal Conversations: Victorian Crimes, Social Panic, and Moral Outrage (Ohio State University Press, 2005) and R Crone, Violent Victorians (Manchester University Press, 2012)

[9] RK Sherwin, When Law Goes Pop (University of Chicago Press, 2002) 17

[10] ibid, 17

[11] However, there are some choice examples of lawyers and legal procedure in video games such as Phoenix Wright: Ace Attorney, (Capcom, 2014) and see V Blake, 'Real Life Lawyer Seeks Funding for Courtroom Drama Game Bohemian Killing' ign.com <http://uk.ign.com/articles/2014/11/26/real-life-lawyer-seeks-funding-for-courtroom-drama-game-bohemian-killing> accessed 10 March 2015

[12] Sherwin, When Law Goes Pop, 17

strikingly diverse. For example, Owens[13] examined the depiction of the lawyer in the works of John Grisham; Asimow[14] and Haddad[15] scrutinised the law and lawyer in film; while Menkel-Meadow,[16] Machura and Ulbrich[17] and Asimow[18] all interrogated the representation of the law on television. It is therefore expected that these scholars have critiqued overtly legal texts,[19] and have explored the representation and public reception of systems, procedures and actors within them. While the representation of law and lawyers in film,[20] literature[21] and television[22] has been examined extensively, the depiction of law, lawyers and legal themes in video games has not been widely considered. This is generally due to their lack of obvious legal themes and subject matter. However, in recent years there has been a clear academic migration towards reading non-overtly legal texts with a jurisprudential methodology.[23] Tranter,[24] Travis,[25] and Peters[26] have all explored texts in which a legal focus

---

[13] JB Owens, 'Grisham's Legal Tales: A Moral Compass for the Young Lawyer' (2000–2001) 48 University of California Los Angeles Law Review, 1431

[14] MR Asimow, 'Bad Lawyers in the Movies' (2000) 24 Nova Law Review 533 and MR Asimow, **'**When Lawyers were Heroes' (1995–1996) 30 University of San Francisco Law Review, 1131

[15] T Haddad, 'Silver Tongues on the Silver Screen: Legal Ethics in the Movie' (1999–2000) 24 Nova Law Review, 673

[16] C Menkel-Meadow, 'The Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft' (1999–2000) 31 McGeorge Law Review, 1

[17] S Machura and S Ulbrich, 'Law in Film: Globalizing the Courtroom Drama' (2001) 28 Journal of Law and Society, 117

[18] MR Asimow, (ed) Lawyers in your Living Room: Law on Television (American Bar Association, 2009)

[19] For example, JD Bounds, Perry Mason: The Authorship and Reproduction of a Popular Hero, (Greenwood Press, 1996), MA Failinger, 'Gentleman as Hero: Atticus Finch and the Lonely Path' (1994) 10 Journal of Law and Religion, 303, J Grant, 'Lawyers and Super Heroes: The Firm, The Client, and The Pelican Brief' (1996) 30 University Of San Francisco Law Review, 1111, S Greenfield, 'Hero or Villain? Cinematic Lawyers and the Delivery of Justice' (2001) 28 Journal of Law and Society, 25, B Kitei, 'The Mass Appeal of The Practice and Ally McBeal: An In-depth Analysis of the Impact of These Television Shows on the Public's Perception of Attorneys' (1999) 7 University of California Los Angeles Entertainment Law Review, 169, ME Markey, 'Charles Dickens' Bleak House: Mr. Tulkinghorn as a Successful Literary Lawyer' (2002) 14 St. Thomas Law Review, 689

[20] For Film see MR Asimow, (n 14) and FM Nevins, 'When Celluloid Lawyers Started to Speak: Exploring Juriscinema's First Golden Age' in MDA Freeman (ed), Law and Popular Culture (OUP, 2005), 109

[21] For literature see C Menkel-Meadow (n 16) and RA Posner, Law and Literature, (Harvard University Press, 2009)

[22] For television see J Denvir, 'Law, Lawyers, Film & Television' (2000) 24 Legal Studies Forum, 279 and S Machura and S Ulbrich (n 17)

[23] This approach was pioneered in WP MacNeil, Lex Populi: The Jurisprudence of Popular Culture, (Stanford University Press, 2007)

[24] K Tranter, 'Come a Day there Won't be Room for Naughty Men Like Us to Slip About at All: The Multi-Medium Outlaws of Firefly/Serenity and the Possibilities of Post-Literate Justice.' (2012) 16 Law Text Culture, 277-304

is less apparent, by examining less obvious legal and theoretical implications and their potential influence on public conceptions of law and legality. This legal subtext, specifically moral and social justice, can be explored in the context of contemporary video games.

Although popular culture can convey general jurisprudential concepts of justice and fairness,[27] this article in no way asserts that popular culture provides a distinctive and accurate view of the law and legal procedure. Posner has been critical of popular cultural transmissions of law, exploring how the unrealistic depiction of law in cultural texts can be detrimental to law's reputation. [28] However, MacNeil has emphasised the importance of cultural representations of law in encouraging wider society to engage with jurisprudential concepts. [29] The apparent absence of law, legal procedure and judicial actors from video games allows the scholar of culture to examine themes of justice by jurisprudential means uncluttered by questions of empirical accuracy. This widespread societal engagement with themes of justice underpins this article's approach, while also exploring the manner in which the public engages with justice and jurisprudential subtexts in modern cultural artefacts.

Video games are one such cultural artefact that has not been substantially evaluated with this jurisprudential focus. Until now, the legal scholarship of video games has generally centred on an analysis of their technological content through intellectual property law and their engagement with society through other substantive legal subjects, such as end-user agreements and privacy in relation to personal data.[30] More generally, there has also been some conceptual legal theory applied to the rule-based regulation of players in MMORPGs.[31]

---

[25] M Travis, 'Making Space: Law and Science Fiction' (2011) 23(2) Law and Literature, 241-261, M Travis and K Tranter, 'Interrogating Absence: The Lawyer in Science Fiction' (2014) 21(1) International Journal of the Legal Profession, 23-37 and M Travis, 'We're All Infected: Legal Personhood, Bare Life and The Walking Dead' (2014) International Journal for the Semiotics of Law, <http://link.springer.com/article/10.1007%2Fs11196-014-9396-3> accessed 10 March 2015

[26] TD Peters, 'Unbalancing Justice: Overcoming the Limits of the Law in Batman Begins,' (2007) 16(1) Griffith Law Review, 247

[27] R Posner, (n 21), 22

[28] ibid

[29] WP MacNeil, (n 23) 1-2

[30] For example, Sheppard Mullin, The Law of the Level Blog <www.lawofthelevel.com> accessed 10 March 2015

[31] See generally, JM Balkin and BS Noveck, State of Play: Law, Games, and Virtual Worlds (New York University Press, 2006), N Gervassis, 'In Search of the Value of Online Electronic Personae:

This approach has generally sought to project existing legal analysis upon a specific type of video game and online worlds, and examine the regulation of these unusual communities through standard legal norms. While the popularity of these online worlds cannot be disputed, the status of mainstream video games in contemporary society has a more substantial permeating effect due to their considerable popularity. Mainstream video games can certainly allow scholars a more indicative view of societal engagement with such themes due to their greater public exposure. Furthermore, the characteristics of MMORPGs as online worlds lend themselves to a more anthropological critique, whereas the narrative-based nature of popular video games is more suitable for a jurisprudential exploration of their pertinent themes.

Establishing a methodology through which to analyse video games can seem daunting, but these latest cultural texts can be examined, read and critiqued much in the same way that other visual texts have been by cultural legal studies. Video games form a part of the contemporary cultural landscape and can be read, critiqued and evaluated with same manner that other cultural sources have been due to the universality of cultural reception. Generally, the discipline of law and popular culture has examined cultural texts and attempted to read them in an analogous manner to language.[32] Scholars such as Douzinas[33] and Barthes[34] have outlined how images and texts, transmitted by cultural sources, can create signifiers and cultural signs that can be read by society and can mean something specific to society as a whole or individual social groups. Douzinas has stated that 'in the most general sense, the image is the object of vision, seeing is to perceive the images the world projects'.[35] This analysis can apply to both the image created through textual representation and through the constructive interpretation of the visual image. An image that can be constructed through

Commercial MMORPGs and the Terms of Participation in Virtual Communities' (2004) 3 Journal of Information, Law and Technology
<www2.warwick.ac.uk/fac/soc/law/elj/jilt/2004_3/gervassis/> accessed 11 March 2015 and N Gervassis, 'From Laws for Cyberspace to Cyber Laws (literally): Integration of Legal Norms into Internet Protocols & Law for Closed Digital Management Communities' (2004) 1(2) SCRIPT-ed, 307 – 318
[32] C Barker, Cultural Studies: Theory and Practice, (Sage Publications Ltd, 2000) 11
[33] C Douzinas, 'A Legal Phenomenology of Images' in O Ben-Dor, Law and Art: Justice Ethics and Aesthetics (Routledge, 2011), 247
[34] See generally, R Barthes, Mythologies (Vintage Books, 2009)
[35] C Douzinas, (n 33) 247

textual sources allows the reader, consumer or user to perceive the image that the 'world projects'[36] or, at the very least, that the source projects. Mukerji and Schudson[37] have also outlined how society can give a cultural text meaning or definition, even meanings not originally intended by the producer.[38] The discipline of law and popular culture explores this social meaning and the meaning of specific groups can be interrogated. Finally, Aristodemou[39] outlines how popular culture has the ability to lead and influence popular opinion whilst also reaffirming and reflecting beliefs and opinions already inherent in society. Popular sources are interesting 'not simply because they are popular but because they may contribute to, or impede, rational and critical participation in the political world'[40] Therefore, it is important to understand that cultural texts can both lead public opinion and reflect societal beliefs through their transmission.

Video games add a further dimension to existing cultural analysis, as they provide the scholar an opportunity to investigate a cultural text that is more closely aligned with legal procedure through to its experiential nature. Law, by its very characteristics, is an experience within society, and parallels can be drawn to manner of experience that exists in playing a video game. Whereas the format and codes of communication found in cinema and television are largely based around the role of the audience as a passive observer or officious bystander, the role of the user in video games is that of active experimenter or experiencer. Video games place decisions and narratives in the hands of the user, and allow the players to immerse themselves more substantially in the subject matter of the text, engaging more substantially with themes and motifs, choices and decisions. While this article does not argue for a higher esteem to be placed upon video games, it argues that by analysing the representation of law and jurisprudential themes in these sources, studies in law and popular culture can explore a

---

[36] ibid

[37] C Mukerji, & M Schudson, Rethinking Popular Culture; Contemporary Perspectives in Cultural Studies, (University of California Press, 1991), 29

[38] ibid

[39] See generally, M Aristodemou, Law and Literature; Journeys From Her to Eternity, (Oxford University Press, 2000)

[40] C. Mukerji and M. Schudson, (n 37), 37

new dimension of individual societal engagement with cultural texts and can begin to think more holistically about the experience of cultural texts within the Lebenswelt, or life-world.

LAW, JUSTICE AND VIDEO GAMES IN THE LIFE-WORLD AND HOME-WORLD

Law, justice and video games are all experienced by the individual within society as part of their Lebenswelt, or life-world, and to examine fully how individuals experience these cultural phenomena, this article draws upon the concept of phenomenology.[41] Phenomenology exists as a philosophical theory that examines the 'structures of experience or consciousness.'[42] More specifically, 'phenomenology is the study of 'phenomena': appearances of things, or things as they appear in our experience, or the ways we experience things. Thus, it is the meanings that things have in our experience. Phenomenology studies conscious experience from the subjective or first-person point of view.[43] Phenomenology is about being grounded in the experience of individuals, so this theory has been deployed as a research tool to examine the individual's experience in contemporary society[44] or the individual's experience of historical artefacts and heritage.[45] Yet, the phenomenological relationship between individuals and the representation of themes of law and justice in popular culture has not been adequately explored.

The ability to explore the individual's experience of law and justice within the world is of vital importance to understanding societal engagement with cultural texts, especially the experiential medium of video games. The individual experience of law and justice can be

---

[41] L Finlay, 'Introducing Phenomenological Research' Unpublished Article. (2008) Retrieved from <www.google.ca/search> accessed 5 August 2014, 1 - *'Phenomenology is the study* of phenomena: their nature and meanings. The focus is on the way things appear to us through experience or in our consciousness where the phenomenological researcher aims to provide a rich textured description of *lived experience.'*
[42] DW Smith, 'Phenomenology' in EN Zalta (ed.), The Stanford Encyclopedia of Philosophy (Winter 2013 Edition), <http://plato.stanford.edu/archives/win2013/entries/phenomenology/> accessed 5 August 2014
[43] ibid
[44] See D Langdridge, Phenomenological Psychology: Theory, Research and Method (Pearson Prentice Hall, 2007) and K Dahlberg, H Dahlberg and M Nystrom (eds) Reflective Lifeworld Research, (Studentlitteratur, 2008)
[45] See J Pallud, 'The Application of a Phenomenological Framework to Assess User Experience with Museum Technologies,' Conference Paper delivered at the 17th European Conference on Information Systems, 2009

argued to contribute to our life-world, [46] which is a key focus of investigation for phenomenology. The life-world comprises the world of objects around us, as we perceive them and our experience of our self, body and relationships.'[47] Simply put, the life-world is the world as perceived or experienced by the individual in everyday life. It is closely related to the concept of 'Dasein' found in existential Heideggen philosophy,[48] which translates as 'being there' or the sense of 'being' found in human thought and our individual experience of the world. Phenomenology examines this experience and explores how individual interactions or experiences, including interactions with cultural texts, can be seen as the objects that construct our life-world, and the objects that we experience in our interactions. Individuals and social groups perceive cultural texts through this experience, and this reveals how individual understandings of law, legal procedure and justice are constructed. It is widely acknowledged that phenomenology can also shed light on the experiences of several individuals or societal groups, to ascertain and analyse their 'lived experiences'[49] in their collective *'home-world.'*[50] When this is considered alongside the work of Sherwin, it is clear that phenomenology can provide the scholar an opportunity to reflect upon the experience of those groups within society that experience law and justice through cultural texts. Sherwin stated: '[A]ny attempt to understand adequately the way law works in contemporary society requires that popular culture be taken into account.'[51] Phenomenology can go beyond this and can explore the experience through which this knowledge is constructed, because returning 'to the things themselves is to return to that world which precedes knowledge, of which knowledge always speaks.'[52] The process through which individuals and social groups

---

[46] E Husserl, The Crisis of European Sciences and Transcendental Phenomenology (Northwestern University Press, 1970), cited in L Finlay (n 41)

[47] ibid

[48] M Heidegger, Being and Time (Wiley-Blackwell, 1978) 67

[49] J Cresswell and A Hawn, 'Drawing on Bakhtin and Goffman: Toward an Epistemology that Makes Lived Experience Visible' (2012) 13(1) Forum Qualitative Sozialforschung/Forum: Qualitative Social Research, 20

[50] See generally, E Husserl, Zur Phänomenologie der Intersubjektivität (Martinus Nijhoff, 1973)

[51] RK Sherwin, (n 9) 17

[52] T Toadvine and L Lawlor (eds), The Merleau-Ponty Reader, (Northwestern University Press, 2007) 57

experience the representation of law and justice in cultural texts constructs knowledge of these subjects.

As video games are so inherently experiential, phenomenology provides a philosophical and qualitative framework through which to explore the variety of processes within numerous models of experience in the life-world.

> 'We all experience various types of experience including perception, imagination, thought, emotion, desire, volition, and action. Thus, the domain of phenomenology is the range of experiences including these types (among others). Experience includes not only relatively passive experience as in vision or hearing, but also active experience as in walking or hammering a nail or kicking a ball.'[53]

This comprehensive definition makes phenomenology a valuable tool in examining individual engagement with cultural texts that depict the law and, more specifically, themes of justice. This multifaceted perspective, which is found within the theory of phenomenology, provides a novel perspective to examine public engagement with popular culture and its representative texts. Furthermore, cultural texts can incite experiential responses from individuals but can also exist as both passive and active experiences. For the purpose of this work, video games can provoke numerous types of experience and reflection, while existing as both a passive and active experience for the user.

There have been attempts by legal theorists to analyse law through the theoretical lens of phenomenology due to law's very existence as a phenomenological experience.[54] The pervasive nature of law in society and its inextricable connection to culture[55] ensures that phenomenological perspectives can be utilised in jurisprudential thought and qualitative examinations.

---

[53] DW Smith (n 42)

[54] See generally, A Reinach, 'The a priori Foundations of the Civil Law' Trans. JF Crosby (1983) 3 Aletheia 1 and W Hamrick, An Existential Phenomenology of Law: Maurice Merleau-Ponty (Martinus Nijhoff, 1987)

[55] M Aristodemou, Law and Literature; Journeys From Her to Eternity

'The science of law is a science of human experience founded on culture and its object is the experience of liberty. Law is a cultural object which people create in function of certain values; law is thus not neutral towards values and the value constituted by law is a positive valuation; there is no transcendental goal, such as justice, immanent to law which law must realize. What is immanent is the understanding of the positive evaluation.'[56]

The nature of law as a pervasive and experiential subject places phenomenology firmly within the realms of jurisprudential scholars and legal theorists. Furthermore, law and legal rules in both common law and codified systems are subjectively understood and experienced, so phenomenological examination of law recognises the experience of individuals and social groups with respect to their involvement, knowledge and immersion in legal structures and social norms.

'Law is a social structure, which has its origin in politics; it is one of the modes of expression of meaning and of giving life to values in a world where there is no a priori meaning. Since the meaning of language is never completely determined, never wholly constituted, judges may use a rule, for example, in a new manner. The rule now is being made to say something new but which it was already capable of saying. This never happens arbitrarily. Law interacts with ethics and politics yet remains distinct because each mode engages in social ordering in its own characteristic way. The task of law is to promote justice, which is conceived as universality and is closely linked to the idea of individual freedom, and to allow the disenfranchised to be respected.'[57]

---

[56] DW Smith, 'Phenomenology' in EN. Zalta (ed.), The Stanford Encyclopedia of Philosophy
[57] H Pallard and R Hudson 'Phenomenology of Law' in C B Gray (ed.) The Philosophy of Law: An Encyclopedia, (Garland Publishing, 1999), vol. 2, 647

It is clear that a phenomenological approach to jurisprudential analysis can draw together the apparent 'objective' language of the law and explore its subjective interpretation and experiential interaction with the individual's life-world, while also considering wider societal concerns and obligations within collective home-worlds. Although it is a juxtaposition, this can provide a fascinating perspective on the philosophy of law and on judicial decision-making. Furthermore, the acknowledgment by jurisprudential scholars as to the validity of a phenomenological perspective to legal analysis demonstrates the significance of this philosophical concept and further validates this methodology for the analysis of engagement with perceptions of justice in cultural texts such as video games.

At this juncture, it is imperative to explain how law, justice and video games exist as phenomena in the experience of the individual life-world, as their interrelationship is specifically relevant to this article. While law and justice are inherently interconnected through their aims, objectives and processes, it is law that exists as a phenomenon that is experienced by all individuals. Law is part of every individual life-world in some respect. While the individual experience may differ from societal 'lived experiences' of the law within the constructed home-world, it is by its very nature pervasive and is a phenomenon that is experienced by all. Law is explicitly and implicitly experienced by individuals throughout their 'Dasein,' their behaviour is impacted and modified by such experience of legal concepts, and their conscious understanding of their own existence in relation to legality is informed. Conversely, justice is something far more metaphysical, an abstract concept that can encompass numerous meanings, interpretations and philosophies. Throughout the history of legal theory, the concept of justice has been interrogated, critiqued and reconceptualised, yet it is impossible to define justice beyond a number of abstract notions related to ethics, moral good, rationality and jurisprudence. Therefore, it is cultural texts that encourage experiential engagement with these themes and conceptions of justice.

Whereas law and legal processes exist as a social experience in the life-world of the individual, video games allow the individual to experience notions of justice within their life-world. Conceptions of justice in the game's life-world can influence conscious understandings

of justice in the individual's life-world, which makes cultural texts, especially the experiential medium of video game, extremely important to the individual's engagement with justice in their everyday lives. Cultural texts allow the individual to engage with abstract conceptions by actually representing and conceptualising theories of justice, morality and ethics in the text's contents. It is clear that these themes are imagined and conceptualised in video games by creators or designers and, on a superficial level, are the imaginings of justice by cultural producers reflected upon the experience of the user. Nevertheless, the user is also able to engage with such concepts within the life-world of the game, and through the experience of such phenomena is able to critique and reconceptualised jurisprudential themes within their own realm of experience, subsequently allowing them to construct conceptions of justice in their own individual life-world. If video games provide us with an experience and opportunity to reconceptualised justice, then phenomenology is the methodology that allows us to examine this experience and investigate how individual interactions with themes of justice in video games construct intimate understandings of jurisprudential themes within our life-world.

Furthermore, the mass nature of cultural texts, specifically experiential mediums such as video games, create a 'lived experience' of justice amongst social groups, within their home-world. Whilst individuals will always possess some differing conception of justice within their life-world, our collective conceptions of justice within our home-world is constructed due to the influence of cultural texts and the intersubjectivity of individual and collective experience. This home-world of a given community can be defined as the 'system of senses or meanings constituting their common language… given that they conceive of the world and themselves in the categories provided by this language.'[58] Cultural texts communicate with their audience (such as social groups) using this system of meaning and, where there are deficiencies in such signification, can construct this meaning amongst their audience. This is

---

[58] C Beyer, 'Edmund Husserl' in EN Zalta (ed.), The Stanford Encyclopedia of Philosophy (Winter 2013 Edition)
<http://plato.stanford.edu/archives/win2013/entries/husserl/> accessed 13 March 2015

particularly true for video games, and the 'video game culture.' In the last two decades, there has always been a more specific community and home-world attributed to video games. However, the growth in video games in recent years has seen this community become more diverse, and the stigma of video games has declined as video games earned a more substantial cultural position. Therefore, the home-world of the video game community has grown significantly and the message that is transmitted by video games is more analytically significant than ever.

As a result of the above discussion, it is argued that society desires active engagement with notions of justice in order to construct their own understandings with justice within their life-world. While there has always been a phenomenological public engagement with law, legality and justice, there has been a shift in recent decades from active public engagement to passive observation, yet video games are bringing back a more active engagement. From Anglo-Saxon and Norman communal justice[59] to medieval executions[60] and ritualistic punishments,[61] the public of the UK always had an active phenomenological experience of justice. However, with the modernisation of the criminal law in the nineteenth century, encouraged by a 'newly discovered' social morality,[62] executions and public punishments were abolished or moved behind prison walls, and the public relied upon the press[63] to engage with jurisprudential stories.[64] While this continued the tradition of making justice a phenomenological process, it can generally be viewed as encouraging a more passive engagement with judicial themes. Observing justice through fiction and non-fictional visual sources and cultural texts positions the consumer as an independent, unseen and unheard observer. Non-fictional cultural texts, such as news reporting, allow the individual to observe and critique issues within their own cultural paradigm, whereas television, film and literature generally draw the individual into an

---

[59] JH Baker, An Introduction to English Legal History, (Butterworths, 2002), 4-6
[60] See generally N Cawthorne, Public Executions, (Chartwell Books, 2006)
[61] See generally, W Andrews, Medieval Punishments: An Illustrated History of Torture (Skyhorse Publishing, 2013)
[62] A Briggs, The Age of Improvement, (Longman, 1965), 56-65
[63] See generally J Rowbotham, K Stevenson and S Pegg, Crime News in Modern Britain: Press Reporting and Responsibility 1820-2010 (Palgrave, 2013)
[64] See generally J Rowbotham and K Stevenson (n 8) and R Crone (n 8)

imagined, fictional reality through which important issues, dilemmas and questions can be observed and, in a limited manner, experienced. However, following the advent of the internet, a new forum for participation in social issues, including justice, has emerged. The inevitable growth of online news services (coupled with the decline in print journalism) and the invention of social media have provided a new medium through which the public can engage more directly with justice and contribute to wider discussions around crime, punishment and sentencing. This growing trend in phenomenological engagement with issues of law and justice is also overtly apparent in the ever-increasing culture of video games.

SWINGING THE SWORD AND SMASHING THE SCALES: THE PHENOMENOLOGY OF JUSTICE IN VIDEO GAMES

While video games have been a notable feature of the cultural landscape since the late 1970s, it is the growth in this medium in the last two decades that has seen this cultural text truly permeate contemporary society.[65] The emergence of the internet, the destigmatisation of 'video game culture' and the continuing rapid advancement of technology have inevitably encouraged this growth, but it is the active phenomenological engagement with these cultural texts that has led to their prodigious success. This article will now explore how video games construct a distinct experience of justice and allows those who engage with these texts to become an active participant in such themes. It will draw upon earlier discussions to analyse and critique representations of justice in video games using the ESA's top 20 best-selling video games of 2013 as a source base.[66] Once specific genre subjects are removed (such as sport games,[67] family or party games[68] and games marketed directly at a younger

---

[65] T Cross, 'All the world's a game' theeconomist.com
<www.economist.com/node/21541164> accessed 14 January 2015
[66] Entertainment Software Association (ESA), Essential Facts about the Computer and Video Game Industry, theesa.com
<www.theesa.com/wp-content/uploads/2014/10/ESA_EF_2014.pdf> accessed 14 January 2015
[67] For example, Madden NFL 25, FIFA 14, NBA 2K13 and NBA 2K14
[68] For example, Just Dance 2014

demographic[69]), nine games remain that can be explored for their thematic content.[70] These remaining games fall into the two biggest genres in the video game industry, action games and first-person shooters (shoot-em-ups), with these genres sharing over 51.9 per cent of the market.[71] While these games undoubtedly provide an exhilarating experience for the user, it is the emergent narratives of justice that have also led to their overwhelming popularity.

The narrative in video games can be a difficult concept to define due to the experiential, non-linear nature of modern video games. Presently, gamers are able to contribute directly to the progression of the story, be an active participant in the plot and, as we move quickly into the next-generation of games consoles, ever increasingly select or choose the direction of their experience.[72] Unlike films, television or literature these narrative devices are used to contextualise the life-world of the game, but are also used to create important elements of the game, such as character motivation, environmental changes and consequential challenges.

Pearce has explored how the design of the video games creates a 'deconstructed narrative,' and identifies six different narrative operators that exist within these games.[73] The most important components to the discussion in this article include the experiential,[74] augmentary[75] and metastory[76] operators, all of which assist in the construction of the phenomenological experience of themes and motifs while engaging in the game. While it is certainly true that users construct their own narrative and their own phenomenological experience, the

---

[69] For example, Minecraft, Disney Infinity, Pokémon X&Y, Lego: Marvel Superheroes and Skylanders Swapforce

[70] These include Grand Theft Auto V, Call of Duty: Ghosts, Battlefield 4, Assassins Creed IV: Black Flag, Call of Duty: Black Ops II, Injustice: Gods Among Us, The Last of Us, Bioshock Infinite and Batman: Arkham Origins

[71] ESA, Essential Facts about the Computer and Video Game Industry, 31.9 per cent of the market share is given to action games and 20.0 per cent to shooters

[72] There is a growing trend of 'open-world' development in video game production that is continually developing, moving from a linear narrative to multiple-linearity, increasing the gamer's phenomenological engagement with these texts.

[73] C Pearce, 'Towards a Games Theory of Game' (2004) 1 First person: New media as story, performance, and game, 143-153,

[74] ibid – The Experiential Operator 'is the emergent narrative that develops out of the inherent "conflict" of the game as it is played out, as experienced by the players themselves.'

[75] ibid – The Augmentary Operator is the 'layers of information, interpretation, backstory, and contextual frameworks around the game that enhance other narrative operators.'

[76] ibid – The Metastory Operator is the 'specific narrative "overlay" that creates a context or framework for the game conflict.'

development of gaming in the last decade has led to a great increase in the exploitation of augmentary and metastory operators within the emergent narrative in order to blur the lines between cultural texts, and encourage a more immersive experience. To put it simply, video games are being written and designed with an ever increasing focus on the story, background and narrative construction in order to allow users to gain more of a cinematic experience while playing, but still allowing the narrative to contextualise the players actions within the life-world of the game.

Unsurprisingly, these narrative devices also encourage phenomenological engagement with themes and issues that occur in these life-worlds, for good or ill.[77] Pearce[78] has also argued that the characteristics of video games in the modern age have move beyond the individual passive experience of narrative found in film, literature and television, and instead create a phenomenological medium through which to experience this narrative. Pearce explains 'the reason that narrative games have gained such popularity is because they borrow what is engaging and interesting about other forms of narrative and use it to enhance the play experience,'[79] successfully placing the gamer in a play-context rather than a framework of storytelling.[80] This allows the player to become more fully immersed within the life-world of the game, and this is particularly true as the quality and sophistication of games has improved in the last decade. Modern video games are now high-definition, visually impactful experiences, and are very different from the two-dimensional, linear-scrolling style of early video games such as Super Mario Bros,[81] Sonic the Hedgehog[82] and Donkey Kong Country.[83]

---

[77] There has been much criticism of video game violence and substantial research into its effects on violent behaviour, for example, SJ Kirsh, 'The effects of violent video games on adolescents: The overlooked influence of development.' (2003) 8(4) Aggression and Violent Behavior, 377-389. Other authors have highlighted the psychological benefits of such engagement. See generally, G Jones, Killing monsters: Why children need fantasy, super heroes, and make-believe violence. (Basic Books, 2002)

[78] C Pearce, 'Towards a Games Theory of Game,'143

[79] ibid, 144

[80] ibid

[81] Super Mario Bros (Nintendo, 1985)

[82] Sonic the Hedgehog (Sega, 1991)

[83] Donkey Kong Country (Nintendo, 1994)

The current generation of consoles[84] demonstrate any ever-increasing sophistication in visual styling and a reliance on narrative themes to construct an immersive experience and lead the player's experience. This contributes directly to a more substantial development of the life-world and home-world of gamers.

Furthermore, it is the experiential operator in narrative construction that is most salient for this investigation, as it places the user within life-world of the game and as an active participant in the development, decisions and direction of the narrative. Video games have always centred on achieving objectives, passing levels or successfully completing challenges that drive the narrative forward to completion of the game. The player is obviously responsible for this progress throughout the game, but this has become more significant in modern video games as more decisions are placed in the hands of the player. There has been a clear departure from linear game play and undeviating level-structure, towards more open-world, individualistic interactions that allow the player to create customisable experiences and make decisions that dictate the direction of game play. This fluid structure allows the individuals to construct their own narrative within the games life-world and this in turn encourages a more extensive engagement with themes that emerge from the augmentary and metastory operators. Players have to think about their decisions and the possible consequences before deciding how to proceed, allowing the individual to conceptualise abstract themes and cognitively engage with such themes. This is especially true for conceptions of justice, including retributive justice, restorative justice, social justice and wider ethical and moral questions.

Jurisprudential themes have emerged throughout the narratives of the video games in the much the same way that they have permeated other cultural texts.[85] While other cultural texts, such as television, film and literature are able to explore themes of justice through legal narratives, the absence of law from video games has made this less overt, but it is still prevalent. Issues around justice often arise from the conflict between the metastory and the

---

[84] Including the PlayStation 4 and Xbox One
[85] See generally, WP MacNeil (n 23)

underlying motivations of characters found in the augmentary operators. However, the conceptual nature of jurisprudential themes, alongside the numerous theories of justice that exist to critique such themes, make it difficult to define a particular meaning of justice that is represented in video games. Instead, a number of thematic representations emerge through the narrative operators, that allow for the player to observe, experience, assess and reconceptualise their own beliefs and ideas of justice. This allows the individual to construct his or her own conception of justice in the life-world of the game, and this in turn can affect their own life-world understandings of justice and the function of law and legality in their home-world. This is particularly important when conceptions of justice, such as the function of criminal justice and protection of individual rights, are continually questioned in contemporary society.

The Call of Duty (COD) franchise has used themes related to justice extensively throughout their emergent narrative. This has specifically concerned issues around retribution and their metastory is often concerned with bringing traitors, betrayers of trust, terrorists, the immoral and (dare it be said?!) the un-American to justice. For example, in Call of Duty: Ghosts,[86] the primary metastory operators are betrayal, treason and vengeance. The protagonists in COD: Ghosts are the elite 'Ghost' unit, a US Special Forces Unit, undertaking clandestine missions behind enemy lines during a global conflict against 'The Federation.' Inevitably, the player takes the role of the heroes, specifically a member of this elite squad Logan Walker. Conversely, Gabriel Rorke is the chief antagonist and villain to Logan's hero. Rorke is a former American solider and a prior leader of the infamous Ghost unit, who defected to fight for 'The Federation' after being left for dead by Logan's father, Elias. The emergent narrative sees Logan and the Ghosts attempting to capture and bring to justice the traitor. This concept of retribution, capturing a traitor and bringing him to justice for his betrayal of his country, demonstrates how this text focuses on retributive justice as a means through which to resolve the inherent conflict.

---

[86] Call of Duty: Ghosts (Activision, 2013)

The player is tasked with working though various battle-zone levels in order to reach Rorke and capture him for his treasonous defection. Throughout the game, the player is the arbiter of justice driven by the desire for retributive justice on behalf of society for the disloyalty and treachery of the antagonist. It is the fundamental characteristics of this genre (the first-person shooter) that places decision related to justice in the hands of the user and creates active participation in these important themes and concepts. The player does not merely observe these themes, as they do in other cultural texts, but participates as an experiential actor, making decisions, constructing the emergent narrative and creating their own phenomenological process of experiencing justice. First-person shooter's very literally position the player in the protagonists point of view, allowing the player to experience the events and emergent narrative through the eyes of the character, and permitting the player to control the dispensation of justice by allowing them to decide when to pull the trigger. The player's active role distinguishes video games from other forms of cultural texts. While cinema, television and literature can position the user in the position of the protagonist or antagonist, only video games give the user an active experience in such a way where decisions can diverge from a linear narrative, subsequently exploring multiple lines of potential direction. This game deals with themes of justice, specifically concepts of retribution and creates an active experience of justice to encourage a deeper conceptualisation of such ideas. The result is a conception of justice that is distinctly focused on retribution and vengeance, not restorative or rehabilitative justice. This can be deeply problematic for widespread conceptions of justice and the function of law in the home-world of those engaging with video games.

While this concept of retributivism is a principal motivation for the player, this is exacerbated further when, during a foiled attempt to extract Rorke, Logan's father is killed. These augmentary operators and the development of the metastory heighten the experiential operator and emergent narrative of justice, shifting from a contextual to personal paradigm within the life-world of character, and therefore, the player. It is evident that the emergent narrative is based around achieving a sense of retribution, punishing a traitor for their betrayal

of the US and the specific, personal retribution for the murder of the protagonist's father. The immersion of the player in the narrative and the experiential characteristics of video games, mean that this personal motivation is replicated in the psychology and life-world of the player. This emotional stimulus deliberately deepens the sense of justice and retribution, and intensifies the personal emotion attached to the motivation of the player in reference to this particular theme of justice. This is also something that is highly relatable to an individual player, allowing them to sympathise with character and draw upon their own emotions as motivation.

The immersion which players experience within the life-world of video games can also elicit emotional responses within the player's own life-world, which influences individual conceptions of justice in the home-world. These texts link conceptions of justice to emotional subjects, which remove the inherent objectivity in the function of judicial systems and individual conceptions are often clouded by personal emotions. COD: Ghosts constructs this distinct understanding of justice as retributive, using emotion as the principal motivation. This is particularly important when issues around jurisprudential themes in contemporary society are often based around highly emotive subjects, such as the public depiction and press reporting of crime and punishment.

In COD: Black Ops II[87] the metastory operators are again concerned with retributive conceptions of justice, but in this text the player is asked to wield the 'sword' as an arbiter of justice and is given control of the final, key decision in bringing the villain to justice. In Black Ops II, the augmentary operators are more convoluted as the game occurs in two different time periods, 1980's Cold War era and 2025 the 'Second' Cold War era. The two principal protagonists are Alex and David Mason, father and son, both acting as elite US Special Forces Operatives in their respective time periods. The chief antagonist and villain of the piece, Raul Menendez, is the same throughout. Raul is a terrorist who has devoted his life to bringing about the fall of American neo-imperialism through continual attacks on US

---

[87] Call of Duty: Black Ops II (Activision, 2012)

personnel, infrastructure and military targets. Specifically, he is responsible for inciting the Second Cold War between the US and China by hacking and decimating the Chinese stock exchange. The player takes control of Alex and David in their respective timelines, and progress through levels as both are sent to apprehend Raul and bring him to justice. The outcome of these levels depends on the actions of the player, and the decisions made by the individual throughout affect the eventual outcome of the game. Depending on the player's success and decisions throughout the game, different characters survive or are killed with distinctive outcomes. This demonstrates the phenomenological experience that now exists within video games, where players have to consider the long-term consequences of their actions. While this also allows for experimentation when defining such concepts, it also means that engagement with such themes is a phenomenological process that allows the individual to conceptualise themes of justice that are important to the user. This is particularly true at the climax of the game, when the player is asked to decide how to punish Raul and is given direct control as to whether he is apprehended or killed. This allows the individual player to experiment with his or her own conception of justice; adhering to ideologies of the judicial process through his lawful apprehension and trial, or conversely the player can exact instant, retributive justice by killing him. The player is required to consider their actions, and through their experimentation, gain a greater appreciation of these conceptions. The ability to balance due process and instant justice in 'scales' allows the player to conceptualise their own theory of justice within their own life-world.

Similarly, in Battlefield 4, [88] the player takes the role of Recker, a Sergeant in the US Special Forces Squad 'Tombstone.' The metastory is less clearly based around retributive justice, but there are occasions throughout the game where it becomes clear that Recker is an advocate for social justice and democracy. This is an important conception for the public to explore in contemporary society, considering the role of the individual or the instrument of the state in the home-world of the social group. For example, during the final scene of the game the

---

[88] Battlefield 4 (Electronic Arts, 2013)

player is given an ethical choice. Recker has to decide to send his friend, Irish, or another protagonist, Hannah, to place demolition charges on the side of the antagonist's ship or otherwise allow him to escape. This is similar to the decision posed at the end of COD: Black Ops II, and places the choice directly in the hand of the player. The player is forced to consider themes of personal sacrifice, alongside more collective ethical jurisprudential values in the name of the public good. Essentially, the conflict that is created in the life-world of the game inevitably causes the player to evaluate his or her own beliefs around these ethical issues. The player is forced to consider the paramount importance of social justice and concepts of justice as fairness, above issues of personal sacrifice. The player is essentially asked to consider the age-old legal dilemma of necessity and morality-the trolley car dilemma.[89] The player must consider sacrificing one person, namely a friend or love interest, in order to restore some global security and stability, and is asked to put the greater good above their own personal sacrifice. This is important, and themes within the phenomenological medium of video games encourage the player to reconceptualise their own understandings of the life-world and their role in the home-world around them.

Unsurprisingly, justice is the core theme and central narrative of the Batman Arkham series due to the inherent themes within the original source material. Batman is a super hero, dedicated to fighting crime and restoring order in the chaotic Gotham city. While his original impetus is to bring his parents killer to justice, and therefore enacting his own personal retribution, he is also dedicated to bringing his beloved city's criminal underworld to its knees. What is so interesting about the Batman is that while he is clearly a vigilante, he does not kill the criminals he pursues, but instead leaves them restrained for the Gotham Police. In Batman: Arkham Origins,[90] the metastory operators provide peril and conflict to lead the emergent narrative, however it is Batman's motivation that gives the player and active experience of justice. The principal objective of the game is to apprehend Black Mask and

---

[89] J Clark, How the Trolley Problem Works, howstuffworks.com,
<http://people.howstuffworks.com/trolley-problem.htm> accessed 21 March 2015
[90] Batman: Arkham Origins (Warner Bros. Interactive Entertainment, 2013)

various other villains, including his arch nemesis, the Joker. The augmentary operators allow the individual player to become a vigilante, a facilitator of justice where legal processes and law enforcement has failed. The player's experience is constructed around this vigilantism and encourages ethical and moral considerations of how the justice is fundamental to the function of society. For example, the individual is the only true hero when law and order has failed, the only arbiter of justice in this fictional dystopia. This allows the player to conceptual the importance of law and justice to society, and where they fail, to critique the chaos that subsequently ensues. An additional augmentary operator concerns Batman's ongoing conflict with the Gotham City Police Department (GCPD). During Batman: Arkham Origins, the GCPD are perusing and seeking to apprehend the Dark Knight for his vigilante activities, while a corrupt SWAT team led by Branden seeks to kill the Batman. Consequently, this encourages a greater engagement with personal justice, as the socially accepted law enforcement and judicial process is compromised. The player becomes the only enforcer of justice in an ever-increasing lawless world.

Nevertheless, this is also problematic. In Arkham Origins, the individual player experiences an absence of justice but is encouraged to replace this with his or her own vigilantism. The ability to conceptualise a society without justice is also of vital importance for the individual's conception of justice, and should highlight the importance of law, order and subsequently justice to the efficient function of democracy and continuation of society. However, the fact that the player must take justice into his or her own hands is a dangerous notion. The player as a participant is made to conceptualise justice as personal and individual venture where socially accepted forms of justice collapse. This can be problematic as it encourages the individual to conceive vigilantism as the only alternative to state-administered justice, and this phenomenological experience of vigilantism in video games encourages those dissatisfied with jurisprudential approaches to take the law into their own hands, swing the proverbial sword and become their own arbiter of justice. As discussed, the life-world of the game can often translate to individual beliefs in the life-world and actively encourages and engagement with their retributive vigilantism.

In Assassins Creed IV: Black Flag,[91] themes of justice are less overt, but still allow the player to seek their own personal justice, specifically retribution in an often lawless and unjust world. In Assassins Creed IV: Black Flag,[92] the playable protagonist is Edward Kenway, a privateer in the Caribbean during the golden age of privacy. As an 'assassin'[93] Kenway seeks to protect these secrets, but his true motivation is to make his fortune. However, as the emergent narrative develops he becomes more concerned with preserving and protecting this secret and upholding the status quo. He also becomes a crusader for justice, ensuring that the Templars do not gain these desired resources and their accompanying power. There are numerous occasions when minor characters or antagonists betray Kenway, and these augmentary operators forwards the emergent narrative as Kenway seeks personal justice upon these individuals. Unlike the COD and Battlefield franchises, the Assassins Creed franchise is deliberately modelled on a more expansive and open-world style of play, where the individual is able to decide where they go, what they do and how they carry out their actions, in particular carrying out assassinations in the name of justice. Inevitably, missions guide the player, but the order that these are completed and the manner through which they are completed totally depends on the choice of the participant. In open-world games such as this, the player has more substantial influence on the progression of the game, and a more substantial phenomenological experience is created through which the player engages the various narrative operators and thematic concepts. Additionally, the open-world characteristics of games such as this create a more substantial life-world within which the individual player operates. This immersion means that the player has more of an active experience and can experiment with such themes more substantially within this digital world.

---

[91] Assassins Creed IV: Black Flag (Ubisoft, 2013)

[92] ibid

[93] The Assassins are an ancient order dedicated to protecting the secret truth from the Templars. However, it is clearly demonstrated early in the game that Edward Kenway is merely an imposter, looking to find this hidden treasure and make his fortune.

Conversely, in The Last of Us[94] and Bioshock Infinite[95] the phenomenological experience is detached somewhat as the player is not given the same options and decisions as they are in other games. While the player may be an active participant in the progression of the game, the final outcome is pre-determined and in both texts the player becomes an observer. In The Last of Us, issues of personal sacrifice, retribution and social justice contextualise the life-world of the game. The metastory operator sees the US destroyed by the spread of a mutant Cordyceps fungus that turns sufferers into cannibalistic monsters, akin to zombies. The emergent narrative follows the protagonist, Joel, as he escorts an infected Ellie to the Firefly Rebel Camp for them to examine her as a potential cure carrier. In this lawless world, Ellie provides the only possibility of a cure and the subsequent restoration of social order. To achieve this restoration of justice and order, Joel has to combat numerous infected and other survivors who exist as lawless gangs that do anything to survive. In the closing scenes of the game, Joel learns that to develop a cure, Ellie's infected brain must be removed to extract the mutated virus. Joel subsequently kills the doctors and escapes with Ellie, preserving her life but at the expense of the survival of humanity. The player is given no choice in this, instead watches the action unfold through cut scenes. This important argument around necessity and social good are taken from the player's hands, something that seems to go against the growing trend in video games. However, this game still allows the individual to engage and conceptualise these notions of social justice within their life-world.

Finally, Bioshock Infinite also explores issues of social justice as the protagonist, Brooker DeWitt, directly challenges the authority of Zachary Comstock and the ruling 'Founders,' racist ultra-nationalist white supremacists, in the dystopian floating city of Columbia. While DeWitt's motives are originally self-interested (he must rescue Elizabeth, a prisoner, from Columbia to pay his gambling debts), through the metastory development, he becomes her protector and assists the 'Vex Populi' resistance group in upsetting the social order and attempting to restore equality. These concepts of social justice, fairness and equality are

---

[94] The Last of Us (Sony Computer Entertainment, 2013)
[95] Bioshock Infinite (2K Games, 2013)

fundamental to modern society and the player is able to examine and critique the importance of equality in democratic society. Eventually, DeWitt must sacrifice his own life in order to prevent the continued existence of Columbia and Comstock. Again, like The Last of Us, the player has no choice in this, but instead experiences the emergent narratives that unfold before them. All of these examples illustrate how themes of justice, social order and equality are playing out as metastory operators within the emergent narratives of modern video games, once again giving the player a phenomenological experience through which to conceptualise these themes.

It is clear that the mise-en-scène [96] of these games must be taken into account when considering the context within which the player engages with themes of justice. In the COD and Battlefield franchises, the mise-en-scène is generally military and centred firmly on global conflict and security. In The Last of Us, Batman: Arkham Origins and Bioshock Infinite, the mise-en-scène focuses instead on dystopia and imagined anarchic futures. These visual environments demonstrate the most extreme scenarios through which to consider jurisprudential themes but they still provide the player an opportunity to consider conceptions of justice. For example, themes of retribution in video games are often based around extreme situations; such as kill-or-be-killed,[97] which contrasts day-to-day engagement with themes of justice. However, while this paper acknowledges that within this mise-en-scène our conception of legality and justice must be adjusted, it provides a text through which to consider the importance of such concepts within society. Retributive conceptions of justice are often prevalent in society, and these texts can provide the player with affirmation as to the function of justice and the purpose of legal processes. Individuals can carry forward their experiences in these extreme scenarios into the construction of their life-world and, as the popularity of video games grow, into societal home-worlds. It is this process of

---

[96] In this context, the definition of mise-en-scène is given its broader definition found in film and includes the general visual environment that is constructed by the text. See generally, J Gibbs, Mise-En-Scène: Film, Style and Interpretation, (Columbia University Press, 2013)

[97] This is especially true for Call of Duty: Black Ops II where the player has to kill or be killed by Raul Menendez.

phenomenological engagement that allows the player to experience justice and carry forward beliefs into their own consciousness, beliefs that can be detrimental to society.

However, video games that allow the player to participate, engage and consider themes of equality, fairness and social justice through dystopian futures, can encourage important considerations of the value of justice in our own democratic societies. Travis has exalted the importance of science fiction in allowing the legal scholar to examine, conceptualise and critique imagined futures and address hypothetical legal challenges.[98] This is similar for video games that place the player within the context of exaggerated visual environments. Video games allow the player to experiment, conceptualise and critique these themes for their own personal notions, and can illustrate the importance of such themes for the continued survival of justice. Furthermore, these imagined dystopias also encourage individuals to analyse social issues within their own societies and consider the possible problems that may emerge from such issues. This is particularly important in video games, as the player is able to experiment to conceptualise and play to learn.

The phenomenological experiences that video games create allows the individual to experiment actively with themes and concepts that are largely intangible and theoretical in our individual life-world and existing home-world. While justice is something that surrounds us and underpins our democratic and legal ideals, defining and engaging with such a subject is often something that lies with philosophers, criminologists, sociologists and lawyers. As MacNeil has outlined

> '…contemporary pop culture has something important to say to and about jurisprudence, above and beyond what the mainstream legal academy has to offer…The various media… not only reach a much larger audience than standard legal texts, but potentially, and even more democratically, they also help restore topics of jurisprudential import - justice, rights, ethics - to where they belong: not

---

[98] M Travis (n 25)

with the economists, not with the sociologists, not even with the philosophers, but

rather with the community at large.'[99]

Video games allow the player to experiment with such themes in the life-world of the game,

going beyond the passive, observant characteristics of film, television and literature and

promoting active engagement with jurisprudential concepts. The ability to conceptualise these

abstract notions means that individuals are able to construct their own ideas and theories of

justice within their own life-world. This process of conceptualisation is also related to the

psychological concept of 'play,'[100] as a process through which to learn what is not taught and

creatively develop wider understandings of established subjects. In developmental

psychology, play is seen as vital in the cognitive development and socialisation of children, as

it encourages flexible behaviours and exploration of the child's own creativity.[101] Children

can also begin to understand important societal concepts through play. Gray has outlined how

children learn democratic values by experiencing those values in real life settings through free

play.[102] Adults also engage in play, and through these interactions they are able to experiment,

develop, critique and reconceptualise ideas that cannot or are not taught through our cognitive

and social development. This is particularly true of notions of justice. Justice is a concept that

can be unique to individuals and their life-worlds, but is also an idea that is fundamental to

perpetuation of societal home-worlds. In twenty-first century society, both children and adults

reconceptualise justice based on their experiences of cultural texts, especially via their

phenomenological engagement with video games. The individual life-world of the player is

reconfigured and reconceptualised through experience and this in turn can affect the

---

[99] WP MacNeil (n 23)

[100] DB Elkonin, 'Theories of Play' (2005) 43(2) Journal of Russian & East European Psychology, 3-89

[101] See generally, JP Shonkoff and DA Phillips, 'From Neurons to Neighbourhoods: The Science of Early Childhood Development' Committee on Integrating the Science of Early Childhood Development (National Academies Press, 2000) 182

[102] P Gray, 'Social Play and the Genesis of Democracy' (2009) psychologytoday.com, <www.psychologytoday.com/blog/freedom-learn/200903/social-play-and-the-genesis-democracy> accessed 22 March 2015

understanding of justice amongst social groups and within the home-world of the communities.

Finally, social groups and communities throughout history have always experienced law as a phenomenological process, and engagement with jurisprudential concepts has often been through their active participation. The ability to witness the legal process and punishment allowed the individual to conceptualise justice as something personal to themselves and to their respective communities. However, the changes of the nineteenth century have seen a shift from participatory and experiential engagement with the legal process to a mode of passive observation, perceiving jurisprudential themes via cultural texts. Video games have once more allowed the public to experiment and actively engage with notions of justice, helping society to reconceptualise what justice means.

CONCLUSION

Currently, modern video games are an underused cultural text in legal research but exist as an important site of active engagement through which the public can explore concepts of legality and jurisprudential themes. Whereas law is something that surrounds us and is perceptible within our personal experience, justice exists as a less definable concept. Phenomenology allows us to examine the individual's engagement with video games due to their characteristics as a media of active engagement, but also as a site of critical experimentation and conceptualisation of abstract themes. Video games allow players actively to experiment with various conceptions of justice and participate within various narrative operators to contribute to the emergent narrative. The ability to experiment with themes and conceptions of justice means that these themes are experienced subjectively within the individual life-world. Justice becomes a subjective construction that is guided by engagement with narrative operators found in video games. Justice is conceptualised in the course of playing games through the active participation in the life-world of the game. This includes weighing options, taking risks and making specific decisions. This is especially true for the games explored above, which have markedly military and dystopian mise-en-scènes. For example, the murder

or mass killing of an individual's enemies is deemed appropriate, even necessary, but murder or mass killings of individuals or groups within your community is viewed as abhorrent and demands retribution. Furthermore, it is clear that these texts transmit a deceptive and misleading representation of justice, which in turn constructs a negative impression in the life-world of the individual and the home-world of gaming communities. The problem lies with the way that justice is learned through video games and because of this procedural aspect there is a cautionary message to be acknowledged. Notions of retributive justice, vengeance and vigilantism should be discouraged, while social justice, equality and freedom need to be promoted. Because justice exists as an abstract notion, individuals and communities fail to consider the law when it comes to justice, and the influence of video games immediately associates punishment with justice. This leads to a trend of people exacting their own harsh punishments, believing that punishment is the only way to achieve justice. As engagement with video games continues to become more substantial, the legal academy needs to be wary of notions of justice which video gamers are implicitly promoting and participating in. It is our call of duty to introduce guiding principles into the uncritical programmes of game play before future gaming communities take it upon themselves to swing the sword and smash the scales.