# Ethical Experiments with the D-Pad: Exploring the Potential of Video Games as a Phenomenological Tool for Experiential Legal Education

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## Abstract

In contemporary society, video games have become a ubiquitous cultural medium, a popular pastime rivalling television and cinema. While many preconceptions exist about the audience of these sources, often perpetuated by stereotypes around 'gamer' culture, recent surveys have shown their wide-ranging demographic. Additionally, the masculine gender bias that is perceived to exist within gaming communities has been shown to be rapidly decreasing. This emerging universality has inevitably encouraged educationalists to consider how best to utilise gaming and elements of video game technology in the development of e-learning tools. Alongside their audio-visual features, it is the experiential and phenomenological characteristics of video games that can be employed to allow students to conceptualise abstract principles and actively experiment with their own ethical beliefs in an environment free of real-world consequences. Building upon the work of Maharg and Owen, and Lettieri et al, this paper will explore the potential of video games as a tool for experiential learning, specifically the study of ethics and related jurisprudential themes, and will propose how existing video games can be used as an educational tool for phenomenological experimentation of concepts. Finally, this article will draw upon the author's previous work to assert how video games can be used as a learning tool for the conceptualisation of abstract themes, specifically justice.

**KEYWORDS:** Video Games, Experiential Learning, Legal Education, Ethics, Phenomenology

## INTRODUCTION

Through an exploration of existing video games[1], game-based technology and pedagogic scholarship, this article argues that video games can be used as

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[1] The source base for this will include the top 20 biggest-selling games of the last year including the first two quarters of 2015 according to the ESA (Entertainment Software Association)

an engaging method for phenomenological experimentation with abstract conceptions of justice and ethical responsibility to encourage a greater understanding of these values. This paper will begin by outlining the importance of video games as a modern cultural medium of phenomenological engagement and the emergence of video game as an educational tool. Secondly, it will also outline the importance of experiential learning in the study of ethics in twenty-first century legal education. Finally, this paper will outline how video games provide the opportunity for student experiential engagement with jurisprudential themes and ethical concepts, therefore being used as a vehicle for teaching legal values. This article will now outline how video games are now a pervasive cultural medium, explore their phenomenological characteristics and explore how video game technology is being adapted for use as experiential educational tools.

## VIDEO GAMES: A POPULAR PHENOMENOLOGICAL TOOL AND AN EMERGENT EDUCATIONAL PARADIGM

*"Video games are **ingrained in our culture**. Driven by some of the most innovative minds in the tech sector, our industry's unprecedented leaps in software and hardware engages and inspires our diverse global audience. Our artists and creators continue to push the entertainment envelope, ensuring that our industry will maintain its **upward trajectory** for years to come."*

Michael D. Gallagher, President and CEO, Entertainment Software Association (ESA)[2]

The growth of the video game industry in the last two decades has seen these texts become an extensive leisure-time pursuit and ubiquitous source of global popular culture. The global market for video games is currently estimated to be worth $83.6bn.[3] In 2014, $22.41bn was spent in the video games industry in the US alone, and the largest share ($15.4bn) of this was on video game content.[4] In the UK, our market share is somewhat smaller, but we are still the 6th biggest global market for video games with an estimated market value of $3.4bn.[5] Furthermore, this is a pan-global market, not only restricted to the West. The top five video game markets include US,

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[2] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 2, available at
<http://www.theesa.com/wp-content/uploads/2015/04/ESA-Essential-Facts-2015.pdf>
accessed 7 Aug 2015
[3] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 3, available at
<http://ukie.org.uk/sites/default/files/cms/UK%20Games%20Industry%20Fact%20Sheet%202 9%20June%202015.pdf> accessed 7 Aug 2015
[4] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 13
[5] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 17

China, Japan, South Korea and Germany.[6] Latin America is currently the fastest growing region in terms of market value[7] and significant growth can be seen in the Middle East and Africa.[8] When this is compared to the global cinema box office revenue for 2014, it is clear that video games have far out-paced the silver screen. Global box office revenue for all films released in 2014 reached $36.4bn,[9] vastly short of the $83.6bn global market for video games. This paper does not propose that video games have surpassed cinema as a cultural source, but instead demonstrates the proliferation of video games within our cultural landscape and argues that further attention should be given to video games. This is also reflected in user demographics of video games.

The video game community is often subject to numerous stereotypes and misconceptions.[10] Images of the nerdy, socially inept loner, pointlessly wasting hours upon hours of time that could be better spent doing other things are widely depicted in popular culture[11] and often held by society.[12] Yet, the reality is very different. It is estimated that 155m people in the US play video games[13] and in the UK around 41% of the population play games (20m people of the 6-64 old population.)[14] Furthermore, stereotypes often represent the principle gamers to be male. However, this is a further misconception.[15] In the US, 56% of gamers are male and 44% of gamers are female.[16] This is echoed exactly in the UK.[17] It often assumed that video games are the

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[6] Ibid

[7] Ibid, 3

[8] Ibid

[9] Motion Picture Association of America (MPAA), *Theatrical Market Statistics 2014,* (MPAA: 2015) 2, available at <http://www.mpaa.org/wp-content/uploads/2015/03/MPAA-Theatrical-Market-Statistics-2014.pdf> accessed 7 Aug 2015

[10] See generally, A Shaw, 'What is video game culture? Cultural studies and game studies' (2010) 5(4) *Games and culture*, 403-424 and TL Taylor, *Play Between Worlds: Exploring Online Game Culture*, (Cambridge, MA: MIT Press, 2009)

[11] Moss from *The IT Crowd* (2006-2013) is an excellent example in British popular culture and most of the cast of *Big Bang Theory* (2007-)

[12] See generally, D Williams, N Yee and SE Caplan, 'Who plays, how much, and why? Debunking the stereotypical gamer profile.' (2008) 13(4) *Journal of Computer-Mediated Communication*, 993-1018, MD Griffiths, MNO Davies and D Chappell, 'Breaking the stereotype: The case of online gaming' (2003) 6(1) *CyberPsychology & Behavior*, 81-91 and K Squire and C Steinkuehler, 'Meet the gamers' (2005) 130(7) *Library journal*, 38-41

[13] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 2

[14] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 29

[15] See generally, J Cassell and H Jenkins, *From Barbie to Mortal Kombat: Gender and Computer Games,* (MIT Press, London: 1998) and J Bryce and J Rutter, 'Killing like a girl: Gendered gaming and girl gamers' visibility' (2002) *Paper presented at the Computer Games and Digital Culture Conferences,* available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.97.9334&rep=rep1&type=pdf> accessed 7 Aug 2015

[16] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 3

[17] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 29

interest of younger people, however there is not an audience divide by generations. In the US, the breakdown of players is as follows: 26% of players are under 18 years, 30% are 18-35 years, 36-49 years make up 17% of the gaming community and 27% are aged 50 years or over.[18] Surprisingly, the most frequent female game player is on average 43 years old, the average male game player is 35 years old and women age 18 or older represent a significantly greater portion of the game-playing population (33%) than boys age 18 or younger (15%).[19] In the UK, 7% of the male gaming population are 6-10 year olds, 5% are 11-14, 15% and 15-24, 11% are 25-34, 9% are 35-44 year olds and 9% are within the 45-64 year old demographic.[20] Within the female gaming community 7% are 6-10 year olds, 5% are 11-14, 7% are 15-24, 8% are 25-34, 9% are 35-44 year olds and 9% are 45-64.[21] Contrary to popular opinion, the contemporary demographic of video gamers is incredibly diverse, and this has been facilitated in recent years by the ever-growing popularity of game consoles, mobile and tablet gaming, the popularisation of certain game franchises and the advancement of technology.

Video games exist in a symbiotic collaboration with technological development, both leading and exploiting high-tech innovations. The advancement of smart phone and tablet technology has made it easier for gamers to participate in their favourite games, using these platforms as a medium of play, through engaging in online communities and managing their game content remotely. According to the ESA, 35% of gamers used a smartphone to play games and 31% used a wireless device.[22] When this is compared PC and console gamers, UKIE estimates there to be 1.1bn mobile and tablet, 650m PC and 200m console players worldwide.[23] Furthermore, games represented 30% of downloads on iOS and 40% on Google Play.[24] While handheld gaming is not a new phenomenon (consider Nintendo's Game & Watch and Gameboy, the Sega Game Gear and the Atari Lynx throughout 1980's), the development of the smart phone and tablet platforms has revolutionised portable gaming. Even the most casual gamers are able to participate, in some way, within the gaming community and play online games. This is evidenced by the top three mobile games in 2014. They were Clash of Clans ($1.8bn), a massively multiplayer online (MMO) strategy game, Puzzle and Dragons ($1.5bn), a puzzle game with elements of roleplaying (RPG) and strategy, and Candy Crush Saga ($1bn), a match three

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[18] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 3
[19] Ibid
[20] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 29
[21] Ibid
[22] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 5
[23] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 7
[24] Ibid

puzzler.[25] The growth of mobile platforms have diversified game communities and broadened the demographic, making such games accessible to more of the population than ever before.

The same can also be said for the current relationship between video games and media content delivery. The growth of Internet content streaming services (for example, Netflix,[26] Amazon Prime,[27] Now TV and Sky Go[28] and various on-demand channel based services) has seen a diversification of console users and an added value in the purchase of video game platforms for home entertainment. The PS4 and Xbox One (both released in November 2013) are viewed as more than just games consoles, but also multimedia home entertainment systems. The ESA have found that 54% of console owners use the to watch films and 33% use them to watch TV shows.[29] While 27% use them for listening to music, 22% use their consoles for streaming other live services, including live game casts (streaming of players playing their favourite games) and other live events.[30] These other live streaming events are closely related to the growth in eSports. [31] While are yet to gain widespread popularity in the UK and Europe, in South Korea and China they are dominant cultural events. The eSports market in Asia is worth around $374m annually (around 63% of the global market share).[32] However, the global market for eSports is expected to grow. In 2013, the US began allowing eSport players to be granted visas as professional athletes.[33] An interesting cultural tale that demonstrates the phenomenon that is eSports in South Korea, is that during the 2012 football World Cup the South Korean StarCraft eSports team were brought into the changing rooms before their opening match so that they could meet their heroes![34] While this medium does not have the same popularity in the UK at present, it is forecast that this market will continue to grow in Europe. A UK video game retailer, GAME, has acquired UK eSports specialist Multiplay in 2015.[35] Their goal is to create a more 'valuable' community of gamers and expand the eSports community in

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[25] Ibid 8

[26] Netflix currently has a global subscription membership of 62 million in over 50 countries.

[27] It is predicted that Amazon Prime has between 40 and 50 million subscribers worldwide.

[28] The number of subscribers to Now TV and Sky Go is more difficult to determine as both services are closely linked to satellite TV subscription in the UK. There are 11.9million subscribers to Sky TV in the UK.

[29] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015) 6

[30] Ibid

[31] eSports is a blanket term that includes live competitive gaming, electronic sports and competitive programming. They usually take the form of live, multiplayer gaming competitions between professional players. These include games such as *DOTA 2, LoL, StarCraft, World of Tanks* or *Call of Duty.*

[32] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 10

[33] Ibid 14

[34] *Free to Play* (2014)

[35] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 10

the UK. While there is clearly potential to capitalise on the current growth of video games, it does show how video games are clearly a major source in the contemporary cultural landscape.

One of the biggest attractions that video games hold over their players is their phenomenological[36] and experiential[37] characteristics. As a gamer, this is what makes video games so attractive. In the 2014 movie, *Video Games: The Movie,* actor and cultural commentator Will Wheaton stated, "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."[38] Many gamers share these sentiments and, as video games have progressed, game designers have drawn upon this understanding, making immersive, open-world play the order of the day. The rapid advancements in video game technology in the last two decade has seen a transition towards more expansive, open-world platforms,[39] moving away from scrolling-screen, single-level platformers.[40] Content has also become far more sophisticated. In modern games, narratives are used to provide context, plot is built into the game mechanics and they have dealt with ever more complex and socially pertinent subject matter.[41] All these factors help to immerse the player in the video game and create a subjective experience of the video game world. It is these phenomenological characteristics that allow individuals to role-play as characters, make decisions, be rewarded and punished for their actions. Video games allow players to engage in experiential processes through trial, error, reflection and retrial. The subjective experience of the video gamer, alongside the active engagement with such narrative devices, leads to a more immersive experience than any existing cultural medium and encourages the gamer to engage more deeply with key themes, issues and concepts.[42]

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[36] Phenomenological here is defined as relating to phenomenology, a philosophical theory that examines the 'structures of experience or consciousness.' 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. See 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 2015

[37] Experiential will be defined shortly.

[38] *Video Games: The Movie* (2014)

[39] Think *Grand Theft Auto 5* (Rockstar Games: 2015) and *The Witcher III* (CD Projekt Red: 2015)

[40] For example, *Super Mario Brothers* and *Sonic the Hedgehog*

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

[42] This will be returned to later, but see also CJ Newbery-Jones, 'Answering the call of duty: the phenomenology of justice in twenty-first-century video games,' (2015) 9(1) *Law and Humanities*, 78-102.

The ever-increasing popularity of video games, their phenomenological characteristics and their ability to inform technological development, has seen educationalists draw upon these sources as a medium or platform for teaching. This has also seen the emergence of a market of educational (often called serious) games, designed at a range of age groups. According to UKIE, the UK game industry is one of the "leading players in the use of gaming technologies in education. Its interactive learning software is distributed around the world, and the UK showcase event, Bett, is the one-stop shop for both curriculum-based and lifelong learning content."[43] A fifth of UK game producers create serious games [44] and the Serious Games Institute at Coventry University aims to provide an applied research approach to business and study of serious games.[45] In the US, organisations such as the Institute of Play are working with large commercial game producers to inform on-going productions and collaborate on future educational endeavours.[46] Yet, much of the utilisation of video game technology for educational purposes focuses on the cognitive development of children during early years and primary education. Much of the scholarship has centred on how video games can assist children in the development of their core cognitive faculties, such as problem solving, and can be used to provide a fun alternative to fact-based, rote learning. [47] In both the ESA[48] and UKIE[49] annual report, the focus is largely on the current advancements being made by research groups and private companies that are creating educational resources for children and serious games for learning.

However, this is not necessarily reflective of innovations currently being undertaken by some higher education institutions and proposed by contemporary scholars.[50] In recent years, there has been some movement towards developing games, specifically simulations, for higher education. This is especially true in business and its related subjects.[51] These serious games are usually based around RPG simulations, within which the student plays the role of a CEO in a company or as an individual responsible with a specific

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[43] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015) 32
[44] Ibid
[45] Serious Games Institute, About SGI, *seriousgamesinstitute.co.uk,*
<http://www.seriousgamesinstitute.co.uk/legal/about-sgi.aspx> accessed 11 Aug 2015
[46] Entertainment Software Association, *Games: Improving Education* (ESA: 2015)
[47] An excellent overview of some early literature can be found S Egenfeldt-Nielsen, 'Overview of research on the educational use of video games' (2006) 1(3) *Digital Kompetanse* 184-213. More recently, the educational uses for
[48] Entertainment Software Association, *Essential Facts about the Computer and Video Game Industry* (ESA: 2015)
[49] UKIE, *UK Video Games Fact Sheet,* (UKIE: 2015)
[50] See generally, C Steinkuehler, K Squire and S Barab, (eds) *Games, learning, and society: Learning and meaning in the digital age,* (Cambridge: Cambridge University Press, 2012)
[51] See generally, AJ Faria, D Hutchinson, WJ Wellington and S Gold, 'Developments in Business Gaming: A Review of the Past 40 Years' (2009) 40(4) *Simulation & gaming,* 464-487

brief, such as traders, marketing executives and project managers. These students are given specific briefs, be it investing capital against established forecasts, make decisions concerning the marketing of fictional new products or negotiate in real-time against other teams.[52] These products allow students to engage with the practical aspects of their courses to actively engage with abstract theoretical principles studied in other parts of their education.[53] It also provides student the opportunity to develop their practical, course-informed employability skills.[54] Experiential engagement with these phenomenological tools also allows students to learn through action, experimentation and reflection in a safe, consequence free environment.[55] For this reason, there has also been innovation in other subjects such as government and healthcare.[56]

Video game technology has also been used to develop e-learning tools in legal education, but unfortunately this has yet to become a major part of English legal education. Maharg and Owen[57] outlined the importance of game-based technology, specifically simulation, for further and higher education legal education in their 2007 paper that explored the context and methodology of their SIMPLE (SIMulated Professional Learning Environment) project.[58] Maharg eventually showcased this platform, its theoretical basis and practical application in his book, *Transforming Legal Education.*[59] The SIMPLE project designed, specified, built and used simulation software to create a platform for transactional learning and professional simulation, while providing evaluation on this process, effectiveness and its subsequent use in legal education.[60] This project created a platform for simulated legal

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[52] For example, Harvard Business Publishing, *Simulations,* hbsp.harvard.edu, <https://cb.hbsp.harvard.edu/cbmp/pages/content/simulations> accessed 13 Aug 2015, Cesim, *Simulations,* cesim.com, <http://www.cesim.com/simulations/overview/> accessed 13 Aug 2015 and Edumundo, *Business Simulations,* edumundo.co.uk, <http://www.edumundo.co.uk> accessed 13 Aug 2015. See also Classroom Aid, *15 Business Simulation Games that could Build Hands-On Business Experience,* classroomaid.com, <http://classroom-aid.com/2012/11/09/15-business-simulation-games-could-build-hands-on-business-experience/> accessed 13 Aug 2015

[53] Y Baek, 'Digital simulation in teaching and learning' in D Gibson, *Digital simulations for improving education: Learning through artificial teaching environments,* (Hershey: IGI Global, 2009), 36

[54] Ibid, 36-38

[55] Ibid, 36

[56] T Susi, M Johannesson and P Backlund. 'Serious games: An overview' (2007) *Digitala Vetenskapliga Arkivet,* <http://www.diva-portal.org/smash/record.jsf?pid=diva2:2416> accessed 13 Aug 2015

[57] P Maharg and M Owen, 'Simulations, learning and the metaverse: changing cultures in legal education' (2007) *UK Centre for Legal Education*

[58] HEA UKCLE, *SIMPLE: Innovative Learning Across the Professions,* hea.ac.uk <http://78.158.56.101/archive/law/projects/past-projects/tle/index.html> accessed 14 Aug 2015

[59] P Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century*, (Aldershot: Ashgate Publishing, 2007)

[60] M Hughes, H Gold, P McKellar, P Maharg and E Nicol, *SIMulated Professional Learning Environment (SIMPLE),* (York: UKHEA, 2008) 7

transactions based around the fictional village of Ardcalloch. Within the platform, "students use the environment as a professional working environment. They can receive, send and store documents, graphics, video and other file formats by uploading them to the environment. They can communicate with real or fictitious persons and institutions, and receive feedback on their work in-role."[61] Then within the environment, "students can build up the correspondence and drafts of an entire transaction, and either use the environment as a single student, or as part of a collaborative grouping."[62] In modern undergraduate legal education, this kind of innovation is of paramount importance to encourage a shift to the existing pedagogic paradigm and holistically reform the current outdated approach to practical, transferable employability skills. [63] However, little has been done to incorporate this in any substantial way into existing legal curricular. [64] This could be due to a number of reasons. Principally, there is always resistance against widespread changes to the traditional educational paradigm. Secondly, there are inevitable cost implications. Thirdly, there is often hesitancy against using unknown or unfamiliar technology. Yet, this is a tutor perspective, not a student perspective. The proliferation of video games in popular culture is demonstrable that the primary users, students, could be ready to use such resources and be willing to substantially engage with video game based technology. We are also teaching a generally social media savvy demographic of students, more so than has come before. This further feeds the idea that we should be drawing on digital platforms and video game technology to facilitate experiential engagement with legal subjects. Finally, the increased reliance on digital resources and collaborative cloud-based tools in modern employment should inform the incorporation of digital platforms.

Nevertheless, one subject that has not been widely considered through the lens of video game technology and experiential education is legal ethics.[65] Experiential modes of learning lend themselves to the study of ethics due to the disconnection between rules and practice. It can also provide practical, real-world context to rules enshrined in codes. Finally, phenomenological

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[61] Ibid, 22

[62] Ibid

[63] See generally, CJ Newbery-Jones, 'Trying to do the right thing: Experiential Learning, e-learning and Employability in Modern Legal Education,' (2015) 6(1) *European Journal of Law and Technology*

[64] However, there is sufficient call from scholars to see this RPG-type video game technology to be brought into legal education. See N Lettieri, E Fabiani, AT Polcini, R De Chiara, V Scarano and PAI Benevento, 'Emerging Paradigms in Legal Education: A Learning Environment to Teach Law through Online Role Playing Games.' in *Handbook of Research on Improving Learning and Motivation through Educational Games: Multidisciplinary Approaches,* (Hershey: IGI Global, 2011)

[65] A notable exception to this is outlined in CB Liebman, 'The profession of law: Columbia Law School's use of experiential learning techniques to teach professional responsibility,' (1995) 58(3&4) *Law and Contemporary Problems*, 73-86

experiences, outside of the legal context, can assist students in conceptualising more abstract principles such as access to justice. This article will now outline why experiential curricular are important in modern legal education, specifically when discussing legal ethics.

## THE IMPORTANCE OF EXPERIENTIAL LEARNING IN THE TWENTY-FIRST CENTURY LEGAL EDUCATION OF ETHICS

*"The process whereby people individually and in association with others, engage in direct encounter, then **purposefully reflect** upon, **validate**, **transform**, give **personal meaning** to and seek to integrate their different ways of knowing. Experiential learning therefore enables the discovery of possibilities that may not be evident from direct experience alone"*

McGill and Warner Weil[66]

In modern pedagogy, experiential learning is something of a nebulous term, but for the benefit of this paper it does require defining. One of the difficulties that exist in the definition and understanding of experiential learning is that "all learning, in effect, is learning from experience."[67] However, experiential learning and learning from experience can be viewed to be two very distinct learning modalities. All learning is certainly learning from experience, whether it involves attending a lecture or seminar, preparing for class through reading recommended texts or undertaking exercises, and even attending tutorial sessions with their tutor. However, what sets apart the experience of learning and experiential learning is the ability to reflect upon that experience.[68] This is the vital component of Kolb's learning cycle, reflective observation. [69] However, this should go beyond mere observation. Instead, this reflection should be in-depth reflection on prior practice and constructive feeding forward to future practice. While reflection is a personal experience, we can guide students to think more critically about their own abilities, successes and weakness, specifically to focus on development, improvement and future actions. As Saddington has argued, "experiential learning is a process in

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[66] I McGill and S Warner Weil, 'Continuing the Dialogue: New Possibilities for Experiential Learning' in S Warner Weil and I McGill, (eds.) *Making Sense of Experiential Learning* (Milton Keynes: SRHE/Open University Press 1989) 258

[67] JA Moon, *A handbook of reflective and experiential learning theory and practice* (London, New York: Routledge, 2006) 105

[68] See generally, D Boud, R Keogh and D Walker, *Reflection: Turning Experience in to Learning* (London: Kogan Page, 1895) and N Kenny, *What is Critical Reflection?* (Centre for Open Learning and Educational Support 2010)
 <http://www.coles.uoguelph.ca/pdf/Critical%20Reflection.pdf > accessed 30 May 2014

[69] DA Kolb, *Experiential learning: experience as the source of learning and development.* (Englewood Cliffs, N.J: Prentice-Hall, 1984)

which an experience is reflected upon and then translated into concepts which in turn become guidelines for new experiences."[70] The process of in-depth reflection is how we learn from our previous experiences in order to guide our future actions, beliefs and knowledge. It is this process that defines experiential curriculum as opposed to the experience of learning.

Experiential curricular can also change the context of learning, from passive learning to active engagement [71] and abstract conceptualisation through personal experience. The ability to contextualise academic subject matter and put theory into practice is vitally important, especially in professional subjects such as business studies, law, medicine and engineering. While the study of theory and substance is important, their practical applications are vital to truly understand the subjects being taught. Experiential curriculum not only places substance, knowledge and theory into context, but through the processes of reflection that are integral to experiential learning, allows students to conceptualise deeply around substance and practice. This is particularly important for the study of legal ethics due to the diverse distinction between ethical rules embodied in codes and their practical application. The traditional model of ethical education is centered on a reading of specific regulatory codes alongside problem-based, case study analysis of specific ethical problems. That is not to say that there are no experiential programmes to teach ethics, [72] but instead highlights the general prevailing modality for exploring ethics in modern legal education. However, there is often a disconnection between understanding regulatory rules and their application in practice. As is often the case with regulatory codes, they are designed as broad guiding principles for practice. These are often supported by practice guidance but can only truly be understood through practical experimentation to allow student to conceptualise these notions.

An experiential approach to legal ethics provides the opportunity to present a practical, real-world context to the rules that are presently enshrined in the

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[70] J Saddington, 'Learner experience: a rich resource for learning', in J Mulligan and C Griffin (eds*) Empowerment through Experiential Learning* (London: Kogan Page, 1992) 37-49

[71] AY Kolb and DA Kolb, 'Learning styles and learning spaces: Enhancing experiential learning in higher education' (2005) 4(2) *Academy of management learning & education*, 193-212

[72] See JE Moliterno, 'Legal Education, Experiential Education, and Professional Responsibility,' (1996) 38 *Wm. & Mary L. Rev.* 71, C Menkel-Meadow, 'Telling stories in school: Using case studies and stories to teach legal ethics.' (2000) 69 *Fordham L. Rev.* 787, BA Green, 'Less is More: Teaching Legal Ethics in Context' (1997) 39 *Wm. & Mary L. Rev.* 357, DA Maranville, MA Lynch, SL Kay, P Goldfarb and R Engler, 'Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering' (2011) 56 *New York Law School Law Review* 517, DL Rhode, 'Legal Education: Rethinking the Problem, Reimagining the Reforms,' (2012) 40 *Pepp. L. Rev.* 437 and M Oberman, 'Changes in Legal Education and Legal Ethics: Article: Getting Past Legal Analysis... Or How I Learned to Stop Worrying and Love Teaching Rape' (2012) 42 *Creighton Law Review*, 799

relevant codes of conduct.[73] The nature of legal ethics and professional responsibility means that they often exist as guidelines or guiding principles, the bones of good practice. Whereas their practical application, contextual purposes and, to some degree, personal conceptualisation exist as the flesh. This is due to the inability of written regulations being able to take into account all individual occurrences and all-pervasive principles. For example, outcome 1 of the SRA Code of Conduct specifies that the lawyer must 'treat your clients fairly.'[74] While this may seem a vague statement, through education some of the nuances of this outcome can be explored. Previous cases (real or fictional) can be used to instruct students and act as guides for future behaviour.[75] However, by allowing students to experience these, experiment with possible outcomes and conceptualise their own understandings, we can guide students to reconsider their own understandings of their role as lawyers in society. Fairness can take on a newer, more enlightened meaning that perhaps the student, trainee or practitioner did not consider prior to his or her own experimentation. It is this personal self-discovery that can be facilitated by experiential programmes, and placed into context by educators. However, self-discovery and personal moral character inevitably exists at odds with professional regulation and the codes of conduct. Such codes have to exist as an objective standard in a largely subjective discipline.

Nevertheless, this is where undergraduate or academic legal education can be an important opportunity to explore less professional ethics but more general legal ethics and value ethics. The recent LETR[76] outlined the paramount importance of ethical issues in every stage of legal education,[77] and there have been widespread discussions amongst scholars as to how best to embed ethical education in twenty-first century legal education.[78]

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[73] For the purpose of this discussion, this article will use the SRA Code of Conduct as the basis of its proceeding discussion. See SRA Handbook, SRA Code of Conduct (2011) available at <http://www.sra.org.uk/solicitors/handbook/code/content.page> accessed 13 Aug 2015

[74] Ibid, O(1.1)

[75] For an interesting discussion along a similar vein, see A Woolley and W Bradley Wendel 'Legal Ethics and Moral Character,' (2010) 23 *Georgetown Journal of Legal Ethics,* 1065

[76] Legal Education and Training Review (LETR) <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf> accessed 14 Aug 2015

[77] Ibid, 7.51, p. 281

[78] For example, M Travis, 'Teaching professional ethics through popular culture,' (2015) *The Law Teacher* (forthcoming), G Ferris, 'Values ethics and legal ethics: the QLD and LETR Recommendations 6, 7, 10, and 11', (2014) 48(1) *The Law Teacher*, 20-32, C Sandford-Couch and J Bainbridge, 'Educating towards ethical lawyers: a progress report,' (2015) *The Law Teacher,* (forthcoming) and CJ Newbery-Jones, 'Screencasting Ethics and Values: Teaching Contemporary Legal Issues and Collective Legal Values through Live Screencasting,' (2015) *The Law Teacher,* (forthcoming). However, that's not to say that discussions around ethical education had not been had before. Specifically, see L Webley, 'Legal Ethics in the Academic Curriculum: 'Correspondent's Report from' the United Kingdom' (2011) 14(1) *Legal Ethics*, 132-134, PB Wachs, 'Teaching Legal Ethics: Exploring the Continuum' (1995) 58 (3) *Law and Contemporary Problems*, 153-172, R Brownsword, 'Ethics and Legal Education: Ticks, Crosses, and Question-Marks,' (1987) 50(4) *The Modern Law*

While scholars have argued that professional ethics and the codes of conduct should have a place in legal education. However, it is the author's contention that it would be more valuable to explore value-based ethics and collective legal values.[79] As mentioned in an earlier article in *The Law Teacher*, "the author's conception of collective legal values are closely linked to professional ethics and the aims of professional codes of conduct, but deal more substantially with wider jurisprudential issues that exist in the effective administration of justice within society. Concepts such as access to justice, neutral partisanship, equality, and fairness in all legal proceedings are all important collective legal values, but they can also include issues around the suitability of our present adversarial system or how far our present system serves all individuals within society."[80] These collective legal values are of paramount importance for students to truly understand the role of law and the lawyer in society. These values can be explored and considered more substantially through experiential teaching methods as they allow students to engage actively with such values and experiment with their own conceptions of jurisprudential ideas. Experiential tools, resources and learning modalities allow students to construct meaning around abstract principles through their phenomenological experiences.

Furthermore, phenomenological experiences outside of the legal context can assist students in conceptualising abstract principles such as access to justice, equality of arms and theories of justice. While these examples are unquestionably the purview of the legal academy, they are also pan-social, pan-global concepts that exist in many cultural texts. The representation of law, lawyers and legal processes in popular culture has been examined extensively[81] and, more recently, jurisprudential themes in non-overtly legal texts have been examined.[82] It is these non-overt legal texts that can allow

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*Review*, 529-535, C Menkel-Meadow "Can a law teacher avoid teaching legal ethics?" (1991) 41 *Journal of Legal Education*, 3, K Economides, 'Anglo-American Conceptions of Professional Responsibility and the Reform of Japanese Legal Education: Creating A Virtuous Circle?' (2007) 41 (2) *The Law Teacher,* 155 and K Economides and J Webb, "Do Law Schools Care About Law Students and Legal Values?" (2000) 3 (1) *Legal Ethics,* 1-9

[79] CJ Newbery-Jones, 'Screencasting Ethics and Values: Teaching Contemporary Legal Issues and Collective Legal Values through Live Screencasting,' (2015) *The Law Teacher,* (forthcoming), 6-8

[80] ibid

[81] For example, MR Asimow, 'Bad Lawyers in the Movies' (2000) 24 *Nova Law Review* 533, MR Asimow, 'When Lawyers were Heroes' (1995–1996) 30 *University of San Francisco Law Review,* 1131, J Denvir, 'Law, Lawyers, Film & Television' (2000) 24 *Legal Studies Forum,* 279, 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, JB Owens, 'Grisham's Legal Tales: A Moral Compass for the Young Lawyer' (2000–2001) 48 *University of California Los Angeles Law Review,* 1431,

[82] See WP MacNeil, *Lex Populi: The Jurisprudence of Popular Culture*, (Stanford University Press, 2007). Specifically, 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, M Travis, 'Making Space: Law

students to engage with jurisprudential concepts. However, it is video games that allow students to experiment in an active way with such themes, and it is this phenomenological engagement that can allow students to construct their own conceptions. If students are afforded the opportunity to construct individual understandings of such themes and, through guidance, are asked to interrogate these, students can be made aware of the importance of such themes in society. The value of these experiential phenomena is that "in our doing and our experience, it is learning which illuminates that experience and provides direction for the making of judgments as a guide to choice and action." [83] This article will now argue that video games, due to their charactistics as a phenomenological source, can be used as an experiential tool to facilitate student engagement with jurisprudential concepts.

## ETHICAL EXPERIMENTS WITH A D-PAD: THE POTENTIAL OF EXISTING VIDEO GAMES AS A LEARNING TOOL IN LAW

*"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."*

Newbery-Jones, CJ, *Answering the Call of Duty*[84]

The proliferation of video games in the twenty-first century cultural landscape means that a larger proportion of our student population can access resources such as these or, at the very least, are familiar with video game technology. Additionally, as the predicted engagement with these sources continues to increase, more students will be exposed to video game culture and their equivalent platforms. The phenomenological characteristics and experiential value of video games means that these sources can be utilised in the education of legal ethics. This section will now outline how video games

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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, 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 Aug 2015 and CJ Newbery-Jones, 'Answering the call of duty: the phenomenology of justice in twenty-first-century video games,' (2015) 9(1) *Law and Humanities*, 78-102.

[83] M Hutton, 'Learning from action: a conceptual framework', in S Warner Weil and M McGill (eds) *Making Sense of Experiential Learning* (Milton Keynes: SRHE/Open University Press, 1989) 51

[84] CJ Newbery-Jones, 'Answering the call of duty: the phenomenology of justice in twenty-first-century video games,' (2015) 9(1) *Law and Humanities*, 101

and their equivalent technology can be used to allow students to phenomenologically experiment with jurisprudential concepts, ethical ideas and collective legal values. Specifically, this section will outline how existing video games can be used to engage students in value-based discussions and phenomenological experimentation.

Ideally, video game technology should be applied to the creation of bespoke learning tools that can allow students to experiment with ethical scenarios. This can allow for virtual simulations of legal and non-legal situations, permit trial and error around the student's decision-making and accommodate for reflection on their own understandings of jurisprudential concepts. While examples of legal simulations exist [85] they focus on transactional and collaborative elements of legal practice with resultant ethical dilemmas created as a consequence of the individuals actions.[86] As Maharg argues in *Transforming Legal Education,* the ethical dilemma works best through the creation of those dilemmas, their actions to resolve them and reflection upon those actions. Transactional simulation can be a rich and powerful environment for ethical learning.[87] Platforms could also be developed to allow students to engage with specific ethical scenarios. One way this could be done is through virtual role-playing games (RPG) within simulated worlds. [88] Students can be given a plethora of roles and positions, and issued any manner of tasks with numerous outcomes for their actions and decisions. The various different situations, actions and outcomes can increase existing standardised client programmes and existing ethical roleplaying.[89] However, to develop, design and implement a platform such as this would require substantial financial support and industry collaboration. While this is not impossible, it would be a substantial undertaking. Furthermore, this is not necessarily something that belongs in the academic stage of legal education, but instead in the professional qualification stage. As described earlier, it would be more valuable to explore value-based ethics and collective legal values in undergraduate curricular and leave professional ethics to the

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[85] For example, see M Hughes, H Gold, P McKellar, P Maharg and E Nicol, *SIMulated Professional Learning Environment (SIMPLE),* (York: UKHEA, 2008) and P Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century*, (Aldershot: Ashgate Publishing, 2007). Also; generally, S de Freitas and P Maharg, *Digital Games and Learning,* (London: Continuum, 2011)

[86] See P Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century*, (Aldershot: Ashgate Publishing, 2007), 268-269

[87] Ibid

[88] An excellent example of a platform is *Revolution* in R Francis, 'Revolution: Experiential Learning through Virtual Role Play' in S de Freitas and P Maharg, *Digital Games and Learning,* (London: Continuum, 2011), 83-106

[89] K Barton, CD Cunningham, GT Jones and P Maharg, 'Valuing what clients think: standardized clients and the assessment of communicative competence' (2006) 13(1) *Clinical Law Review,* 1-65

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professional qualification providers.[90] This would provide students with a more wholesome legal education, while providing them with an understanding of collective legal values that would be beneficial to any professional role and as legally trained members of society.

Whilst existing scholars have outlined numerous methods for ethical education,[91] existing video games have never been considered. However, these popular sources can provide our students an interesting and innovative source for value-based experimentation and jurisprudential critique. While video games are popular, often exhilarating pastimes, it is their emergent narratives[92] that engage players most significantly. It is within these emergent narratives that ethical, value-based issues play out. Individual players contribute to the progression of these stories and, more increasingly, their choices impact upon the direction of the narrative.[93] This emergent narrative contextualises gameplay and makes individual players accountable for their choices, which increases things such as peril, accountability and personal jeopardy allowing for a deeper experiential engagement with these texts. Although this exists in the *life-world*[94] of the game, it can also construct understandings within the individual's *home-world*.[95] This can, and often does, include jurisprudential themes. While less overt than in other cultural sources, [96] these themes are still prevalent and provide much more opportunity for experimentation and conceptualisation. This is particularly important for such themes, as they are less tangible and abstract than other definable subjects. Law surrounds us and is clearly definable by students. However, the philosophical characteristics of justice and the subjective nature of its related concepts mean that only through experimentation can these notions be conceptualised.

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[90] CJ Newbery-Jones, 'Screencasting Ethics and Values: Teaching Contemporary Legal Issues and Collective Legal Values through Live Screencasting,' (2015) *The Law Teacher,* (forthcoming)

[91] Including more conventional medias of popular culture, such as film and TV. See M Travis, 'Teaching professional ethics through popular culture,' (2015) *The Law Teacher* (forthcoming)

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

[93] "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." CJ Newbery-Jones, 'Answering the call of duty: the phenomenology of justice in twenty-first-century video games,' (2015) 9(1) *Law and Humanities*, 88

[94] "The *life-world* comprises the world of objects around us, as we perceive them and our experience of our self, body and relationships" in E Husserl, *The Crisis of European Sciences and Transcendental Phenomenology* (Northwestern University Press, 1970) cited in L Finlay, 'Introducing Phenomenological Research' *Unpublished Article.* (2008) Retrieved from <www.google.ca/search> accessed 19 August 2015

[95] "The experiences of several individuals or societal groups, to ascertain and analyse their 'lived experiences' in their collective *'home-world.*" in CJ Newbery-Jones, 'Answering the call of duty: the phenomenology of justice in twenty-first-century video games,' (2015) 9(1) *Law and Humanities*, 77

[96] For example, Film, Television and Literature.

Video games such as the *Call of Duty (COD)*[97] franchise, the *Grand Theft Auto*[98] franchise and *The Witcher*[89] series all contain narrative operators that allow players to explore such concepts. In *COD* franchise*,* themes of justice, including retributory and social justice, are central to the emergent narratives in the games. In *COD: Ghosts,*[100] the player takes the role of Logan Walker and is tasked with bringing a traitor (a military defector named Rorke) to justice. Apologies for the following spoiler, but this is exacerbated when Rorke murders Walker's father, Elias. This personal retribution becomes the primary metastory operator, encouraging the player to seek vengeance for Rorke's treason and the murder of the protagonist's father. Players are able to conceptualise justice in this context and critique 'their' within the story. This could act as a starting point for a wider internal dialogue around the theory of justice or through educational intervention. It could provide a means to critique retributive justice in an educational setting. The students can be encouraged to reflect upon the experience they have undertaken and think about the various consequences of the actions they have performed, including the importance of separating personal emotions from the administration of justice. Issues around the inherent objectivity desired in the administration of justice can be examined and personal reflection can be encouraged when considered against the psychological and emotional responses that were elicited in the individual through the *life-world* of the game. Furthermore, this could also provide an opportunity to consider the role of neutral partisanship[101] and the implications of this on an individual's future practice.

This phenomenological engagement deepens in *Call of Duty: Black Ops II,*[102] *as* the player actually becomes the arbiter of justice. Through their experience of the game and their own personal concepts of justice, the player has to exercise their discretion, pass judgement and witness the consequences. In this game, the player takes control of two characters (Alex and David Mason, a father and son who are operatives in the clandestine American Ghost unit) in two distinct time periods (the 1960s Cold War and 2025 during a fictional Second Cold War) with the goal of apprehending the antagonist, a South American warlord and terrorist called Raul Menendez. There are numerous points throughout the game where the individual players actions affect the outcome of the game. This includes deciding whether individual characters

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[97] For example, *Call of Duty: Ghosts* (Activision, 2013) and *Call of Duty: Black Ops II* (Activision, 2012)
[98] For example, *Grand Theft Auto V* (Rockstar Games: 2013), *Grand Theft Auto IV* (Rockstar Games: 2008) and *Grand Theft Auto: San Andreas* (Rockstar Games: 2004)
[99] For example, *The Witcher,* (CD Projekt Red, 2007), *The Witcher II: Assassins of Kings* (CD Projekt Red, 2011) and *The Witcher III* (CD Projekt Red, 2015)
[100] *Call of Duty: Ghosts* (Activision, 2013)
[101] See D Nicholson and J Webb, *Professional Legal Ethics: Critical Interrogations,* (Oxford: OUP, 2000), 182-190
[102] *Call of Duty: Black Ops II* (Activision, 2012)

live or die, and dealing with the subsequent results. Again, my deepest apologies for those who have not played the game, but during the final act the player is given the opportunity to decide whether Raul is apprehended and taken for trial or is killed in a summary execution. The player is very literally the arbiter of justice, and can experiment with his or her own conceptions of justice. This includes adhering to ideologies of the judicial process through apprehension and trial or can exact retribution and instant justice through his execution. All of the decisions have different consequences. The player is allowed to experiment with their pre-existing notions of justice and can reconceptualise them in light of their actions. The opportunity to see the results of their decisions can encourage a deeper reflection on these themes and allow the students to critically reflect upon their conceptions of justice.

The emergent themes in the *Grand Theft Auto* franchise allow much scope for critical engagement with legal and quasi-legal themes due to their open-world, non-linear approach to gameplay. Individual players are able to explore this world, engage in various types of interactions and make active decisions as to their behaviour. While the premise of these games often revolves around crime, their emergent narratives are far more complex and very often the protagonist takes the role of an anti-hero. This complexity can allow the player to re-evaluate the choices they make and encourage experimentation with social, cultural and jurisprudential values. For example, the metastory operators in *Grand Theft Auto San Andreas*[103] focus around police corruption, police brutality and its relationship to organised crime. The chief antagonists are corrupt SAPD (San Andreas Police Department) officers from the anti-gang CRASH team.[104] The protagonist, CJ, is a gang member but must fight to clear his name after being framed for the murder of another police officer, which had been committed by the CRASH team. This turns CJ into an unlikely hero, who turns to crime to clear his name. The themes and issues arising throughout this game are as poignant today as they were upon the games release in 2008,[105] and allow individual players to experientially engage with such concepts. Unlike the games mentioned earlier, this game demonstrates how the specific subject matter of some video games can encourage players to examine socio-cultural and criminological themes, alongside jurisprudential concepts. This can inform student's ideas of corruption and assist in the

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[103] *Grand Theft Auto: San Andreas* (Rockstar Games: 2004)
[104] This is a fictional representation of the notorious LAPD CRASH Team (Rampart Division) that was implicated in the Rampart Scandal and indicted for widespread corruption, misconduct, racketeering and various violent offences. See generally, E Chemerinsky, 'Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal,' (2000) 34 *Loy. LAL Rev.* 545. The complete extent of the crimes committed by this small number of LAPD officers has yet to be fully resolved.
[105] Police brutality, institutional racism and corruption are never far from the mainstream press. At the time of writing, the shooting of Michael Brown in Ferguson, Missouri is a salient reminder of the tensions that exist between the police and minority communities.

construction of personal and collective values around the role of the law and justice in society.

In the most recent addition to the *Grand Theft Auto* franchise, *Grand Theft Auto V,* [106] a sub-plot within the emergent narrative see's the principle protagonists blackmailed and exploited by FIB[107] agents to discredit and disrupt another government department, the IAA[108]. Government corruption and institutional vice are widespread in the fictional world of Los Santos, and this is highlighted further by the fact that the protagonist, Michael, has been brought out of witness protection (and his crime-free life) to assist. Again, issues of institutional corruption encourage the player to reconsider the role of such organisations and can encourage a theoretical dialogue around the importance of ethical and moralistic behaviour in the administration of social responsibility. Inferences can be drawn here to the role of the law and lawyers and, when placed in a legal context, can guide a reconceptualisation of professional responsibility. [109] The ability to experience corruption and blackmail can also elicit an emotional response in players and encourage a deeper engagement with concepts that would ordinarily be unfamiliar to undergraduate law students. It is only through this experimentation that students can conceptualise, experience and reflect upon these concepts.

The *Grand Theft Auto* franchise also gives rise to one of the most infamous 'cheats' in video game history, the hooker cheat.[110] Cheats in video games embody this idea of experimentation and individual choice, and its discourse within this medium does not have the same negative connotations they do in the real world. In video games, cheats generally present opportunities to reap additional rewards, fast-track progress or unlock exclusive bonuses. However, they do raise problems alongside these opportunities. Cheats are analogous to opportunities that often exists as temptation to individuals in professional life, specifically shortcuts that can create quicker, easier and better ways of achieving objectives. When this added to a competitive marketplace or high-billing culture, individuals often face temptation to use these cheats and cut-corners at the expense of their professional responsibility. This is particularly problematic when these cheats can disregard moral and ethical responsibilities. Cheats in video games can provide a critical juncture through

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[106] *Grand Theft Auto V* (Rockstar Games: 2013)
[107] Federal Investigation Bureau – One of the less subtle and unimaginative fictional creations in video game history!
[108] Internal Affairs Agency – Ditto!
[109] For example, see P Maharg outlining N Duncan and S Hughes, 'Experiential Learning in Preparing Lawyers to Encounter Corruption' (2015) conference presentation. Summary and slides available at <http://paulmaharg.com/2015/06/19/experiential-learning-in-preparing-lawyers-to-encounter-corruption-pm/> accessed 21 Aug 2015
[110] This is outlined and discussed in P Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century*, (Aldershot: Ashgate Publishing, 2007), 268

which to consider legal ethics education through reflection upon choice, actions and consequences. As Maharg stated, the fundamental choice to cheat (he specifically discusses the hooker cheat) lies with the player, not with the developer, but these virtuous and malign (even criminal) choices and actions should be played out in these simulated world before immersion in real world practice. In summary, cheats can also be useful tools in creating ethical situations and dilemmas. Students can be asked to interrogate their decisions as to whether they engage with these cheats and then asked to consider temptation in both the virtual and physical world. Their individual choice and subsequent consequences, instantaneously or when played out over time, can be reflected upon to inform future practice.

Another example of a game that places individual choice and subsequent consequences as part of its gameplay mechanic is *The Witcher* franchise. *The Witcher* series is a fantasy RPG in which the player takes the role of Geralt of Rivea, a monster hunter, in the fictional world of the Northern Realms. This is an open-world platform with non-linear gameplay, within which the player dictates the direction and style of play. This RPG follows a quest-based format, including compulsory and optional quests, within which the player chooses their own path. Individual interactions within the game and decisions made while questing often have differing consequences later. This franchise deliberately built a game mechanic within which the player does not find out the consequence of their action until far later in the game to prevent replaying. This was intended to encourage the player to consider their actions and speech more carefully. These choices include negotiation, conflict-resolution and moral judgments. The player's actions have consequences in game and can affect your reputation and allies. If the player makes bad or immoral choices, it makes the game more difficult. Whilst the game is set in a fictional fantasy world, it still explores social issues such as racial persecution and war crimes, including genocide. The player is often tasked with assisting or resisting such acts and is called upon to subjective moral judgements.

It is common practice for lecturers to use films and television series' to engage students, encourage the critique of legal issues and assist in the conceptualisation of jurisprudential ideas. However, these sources position the student as a passive observer. Existing video games can encourage active experimentation in these concepts due to their experiential characteristics. These games provide a phenomenological tool for the engagement with such themes and their accompanying social issues, within which students can conceptualise and reflect upon their understandings of such themes. While it is very clear that video games don't always convey the

ethics or values we wish our students to follow,[111] they can provide a platform for experimentation; a source upon which we can guide personal reflection and encourage a greater awareness of important legal and quasi-legal themes. While this may seem a radical, even unrealistic, approach to teaching, it is no different to asking students to reflect upon news articles, cinema, television or literature. What sets video games apart from other cultural texts are their immersive and active participatory characteristics. Students are not merely asked to observe and consider key themes and issues, but instead experience them, conceptualise them and reflect upon their own understandings of such concepts.

As an additional note, there is clearly an issue here with addressing the inherent requirements of learners when designing exploiting such technology as a substantive learning and teaching activity. The inherently visual characteristics of modern video games would render these games difficult, even impossible, for those students with a visual impairment. Games for blind and partially sighted players is seen as the next key 'battleground in accessibility.'[112]There is currently much work being undertaken by developers to make these sources more accessible to those with visual impairment[113] and individual developers are designing gaming solutions for blind players. [114] However, this does pose a problem for inclusive learning strategy. One solution could be found through group working and collective decision-making. Students could be encouraged to work in teams to play through certain games or parts of games, outlining to those students with inherent requirements the action as it unfolds. An appointed academic learning facilitator could also do this. Furthermore, as technology advances and develops solutions to accessibility issues it will become increasingly easier to use such resources as inclusive educational tools.

## CONCLUSION

Video games have become an important source in the contemporary cultural landscape, with a varied market and a diverse game-playing demographic. More students are familiar with video games than ever before, and the public is becoming more literate in digital play platforms as technological reliance increases. People enjoy the active experiential characteristics of game playing

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[111] CJ Newbery-Jones, 'Answering the call of duty: the phenomenology of justice in twenty-first-century video games,' (2015) 9(1) *Law and Humanities*, 100-101

[112] R Moss, 'Blind Game: The Next Battleground in Accessibility' polgon.com, <www.polygon.com/features/2013/8/6/4550490/blind-games-rock-vibe> accessed 28 Sept 2015

[113] J Webber, 'Video Games which open the door for the blind to play' theguardian.com, <www.theguardian.com/technology/2014/oct/13/video-games-that-let-blind-people-play> accessed 28 Sept 2015

[114] See the ODIMO Games Console. While its ethical educational function is unclear, it does show development towards gaming platforms and hardware for those with accessibility issues. <www.odimo.fr> accessed 28 Sept 2015

and feel that they provide a deeper cognitive experience than other cultural texts. These experiential characteristics of video games can also allow for a deeper engagement with the narrative operators within them and a phenomenological experience of contextual themes and motifs. The ability to experiment with this phenomenon allows the player to conceptualise themes within their *home-world* and cognitively evaluate such values. In an ideal world, we as educators could exploit video game technology to create bespoke legal learning tools to provide richly detailed, immersive and reactive environments with which to teach and explore legal themes. However, budgetary constraints and a knowledge deficit mean that for many law schools, custom-designed platforms are simply unobtainable. Yet, through an important utilisation of existing video games, we can encourage a wider, more contextualise consideration of important legal and jurisprudential values. Video games can also be used to illustrate how legal and quasi-legal themes are embedded deep within our cultural landscape, and students can be encouraged to consider the importance of themes in constructing individual conceptions. The proliferation of video games amongst our student population mean that teachers can design assignments that require students to report and discuss the themes within these fictional games, and contrast these themes to real life situations they may find themselves in as legal professionals. They can be encouraged to draw parallels between the fictional worlds of the video game and themes prevalent in modern society. Furthermore, these games can allow students to experiment, reflect, replay and conceptualise such themes. While we cannot give all our students games consoles, this will become increasingly easier as video games continue to emerge as a principal cultural text and become ever more prolific in society. We should be encouraging our students to consider these sources critically and ethically experiment with their D-pads.

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