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The moral choice of inFAMOUS: law and morality in video games

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Abstract
With increasing capacity for real-life simulation, high definition graphics, and complex interactive narrativity, video games now offer a high level of sophisticated engagement for players, which contribute significantly to their widespread popular support. As an extremely prevalent sub-culture of new media, they also provoke jurisprudential investigations. This article acknowledges the culturally constructed nature of playing video games, and helps to explore the normative expectations of law that might be facilitated by the narrative structures inherent within the game itself. It does so by exploring one game series within this framework and asks what meaning can be transformed about issues of law, morality and power from playing these games. By analysing and critiquing the way in which both the narrative and the mechanics of this particular game shape our understanding of the relationship between power, law and morality, we argue that Infamous reflects a normative privileging of natural law.

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The moral choice of *inFAMOUS*: law and morality in video games
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With increasing capacity for real-life simulation, high definition graphics, and complex interactive narrativity, video games now offer a high level of sophisticated engagement for players, which contribute significantly to their widespread popular support. As an extremely prevalent sub-culture of new media, they also provoke jurisprudential investigations. This article acknowledges the culturally constructed nature of ‘playing’ video games, and helps to explore the normative expectations of law that might be facilitated by the narrative structures inherent within the game itself. It does so by exploring one game series within this framework and asks what meaning can be transformed about issues of law, morality and power from playing these games. By analysing and critiquing the way in which both the narrative and the mechanics of this particular game shape our understanding of the relationship between power, law and morality, we argue that Infamous reflects a normative privileging of natural law.

Video games are a unique popular medium. In a world where technology is exponentially advancing, video games are certainly keeping pace. With increasing capacity for real-life simulation, high definition graphics, and complex interactive narrativity, video games now offer a high level of sophisticated engagement for players, which contribute significantly to their widespread popular support. Contemporary video games are no longer controlled by ‘mindlessly’ pushing buttons, but are instead navigated by complex problem solving and strategic decision-making within the bounds set by the mechanics of the game. Choices by players are a pivotal element of gameplay, and so while ‘players engage rich narrative storylines and employ complex discursive practices and problem solving strategies in order to understand and master underlying game mechanics’, they do so within a simulated environment that has its own rules, narratives, and ethics constituted within the game’s ideological framework.¹ As an extremely prevalent sub-culture of new media, video games can perform an interesting function of provoking thought on issues of law, justice and crime.² Exploring video games then, from within a cultural legal studies framework, acknowledges not only the culturally constructed nature of ‘playing’ video games, but also the normative expectations of law that are facilitated by the narrative structures inherent within the game itself. This article looks at one game series within this framework

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¹Zagal (2009), p 2.

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(Infamous)\(^3\), and asks what meaning can be transformed about issues of law, morality and power from playing these games.\(^4\) Specifically, the article seeks to analyse and critique the combined effect of the narrative and ‘moral mechanic’ of the game to explore connections between law and morality from a jurisprudential point of view. Our argument is that this connected narrative and moral mechanic of the Infamous video game series, provokes an application of normative value to the ethical choices a player might make that are inevitably underscored by natural law theory.

That is, rather than asking the typical social sciences question of ‘what are the effects of videogames’, we instead ask a question that is more aligned with the framing of cultural legal studies: ‘what vision of law is being represented in the text and how is it constructed and embodied by the player’. Based on recognition that video games are cultural artefacts, or texts with embedded meaning that can be interpreted and transformed by the player, this article draws on the combined methodological insights of narratology\(^5\) and jurisprudential ‘reading’.\(^6\) What we seek to do with this article is illustrate the way Infamous prioritises natural law over legal positivism by applying normative value to the ethical choices of players. As such, Section 1 contextualises this research within the multivalent video game culture of contemporary society and briefly explains the traditional divisions inherent within game study methodology. Section 2 explains the intricacies of the story and mechanics of the selected text (Infamous) and demonstrates the imbrication of law and morality through the dualistic narrative. Section 3 then contextualises this discussion within the Hart/Fuller debate and argues that in this particular game, the connection between moral choices and the ‘law’ depicted reflects a normative privileging of natural law.

1. The gaming world – united yet divided

Video games have ‘firmly established a place in the much wider landscape of popular culture and entertainment in recent decades’.\(^7\) With the video game industry worth $21 billion in the United States alone in 2013,\(^8\) it is unsurprising that its popularity also bleeds into other forms of media, with television shows, movies and books being produced from many video game inspirations.\(^9\) This

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\(^3\)Infamous (Sucker Punch Productions, 2009) and Infamous 2 (Sucker Punch Productions, 2011). For simple reference, the games will be referred to as Infamous and Infamous 2, not in their stylized form.

\(^4\)It is worth noting at this point that this analysis deals only with the first two instalments of the infamous series, and not the latest edition, Infamous: Second Son which was released on PlayStation 4 and is much more attractive graphically. Although the core issues of morality and conflict with law remain the same among all three games, none of the characters and background information in the third instalment are common with that of the first two games, and so we have limited our analysis in this article to the first two.

\(^5\)This is in contrast with the ludological position that games should be understood in their own terms, by analysing the abstract and formal systems they describe and create. The difference between the two methods will be explained in Section 1.

\(^6\)See MacNeil (2007).


\(^8\)Jacobs (2015).

\(^9\)Some notable examples being the Tomb Raider (original game by Core Design, 1996) and Resident Evil (original game by Capcom, 1996) movie series and the Pokemon (original games Pokemon Red Version and Blue Version (Game Freak, 1996)) anime TV program.
transferable saturation of characters and narratives across all forms of pop culture has generated huge revenue streams for key transmedia entities.  

10 Doubtless, video games are enormously popular, successful and distinctive, and in Australia, approximately 65 per cent of Australians play videogames. But who makes up that demographic?

Although the image of the stereotypical gamer (fuelled by representations in popular culture) is that of a young man with anti-social tendencies, an unhealthy lifestyle and often addicted to their pastime, the average player age in the United States is actually reported to be 33 years of age. Furthermore, there has been an increasing trend towards equality between the number of male and female gamers, with the gender split of gamers now at approximately 60/40 male/female. Whilst males still occupy the majority share, it seems clear that not only is this gap narrowing, with the ‘gamer’ no longer pigeonholed into one demographic (whether according to race, gender or age) but also, that such diversity of ‘players’ contributes to the video gamer population exponentially increasing in size.

Video games are played by the young and old, males and females, and across the world. People play violent games, sport games, puzzle games, and action games. Games help players think, force audiences to be active, are social, and engage the body.

With such a large number of people uniting in their enjoyment of video games, it is important to explore and critique the stories and perspectives that are represented through them. Although there exists a wealth of research concerning the impact of video games on the players themselves (see for example studies in relation to violence, childhood obesity, anti-socialisation), academic consideration of ethical gameplay has been a more recent development and much more limited. Usually, the focus of...

10For example, the DC Comics Universe which began in graphic novels, spawned major movies such as the Batman (most recently, the Christopher Nolan trilogy debuting in 2005) and Superman series (revived by Man of Steel in 2013), television programs including Arrow (distributed by Warner Bros, 2012) and Smallville (Warner Bros, 2001) and also published mainstream games in the form of Injustice: Gods among Us (NetherRealm Studios, 2013) and DC Universe Online (Daybreak Game Company, 2011).

11Even more persuasive of the success and popularity of video game culture, is the success of various conventions, solely devoted to video games that draw quite sizeable crowds. The Penny Arcade Expo is one example, being so successful that it has become an international convention, showcasing in various locations across America, and in Melbourne, Australia: PAX Aus, ‘What is PAX?’, http://aus.paxsite.com/what-is-pax. The Gamescom event in Germany also gives an indication of the impact of an increasingly pervasive video game culture, attracting approximately 335,000 attendees in 2014: Gamescom, ‘Press Releases’, http://www.gamescom-cologne.com/en/gamescom/presse/presseinformationen/gc_pressinformationen.php.


15Dmitri Williams et al (2009), p 820. Contrast with, in 2000 for example, when it was estimated that the market share of female gamers was around 14 per cent: Schott and Horrell (2000), p 37.

16Shaw (2010), p 414.

17For an exploration of the diverse literature in this field see Shaw (2010).
such research is the player’s activity in making choices for the character and the impact game play might have on the player’s capacity for ethical reflection.18 Interestingly however, there has been scant research conducted to address what the games themselves might portray about what is ethical behaviour, or more specifically about what the game itself deems as a specific and distinct morality.19 Furthermore, there seems to be a dearth in literature surrounding video games’ portrayal of the interplay between morality and law. This article takes up the challenge of addressing that gap, by exploring the jurisprudential frameworks deployed through the mechanics of game-play, by which Infamous intertwines law and morality.20

1.1. Methodological distinctions – narratology vs. ludology

Over the last two decades or so, video game scholarship has been somewhat divided over the issue of how best to methodologically approach gaming research. Residing within the realm of traditional video game theory, two significant and distinct approaches to the analysis of games developed – each suggesting the primacy and appropriateness of its methods for the multifaceted world of video games. The first, narratology, regarded video games as simply another form (albeit differentiated) of drama that could be studied using narratological theories.21 As a key concept of the humanities for several decades, narrativity has been an important tool for making sense of perceptions and experience, and was easily extended to the study of video games. As Barthes acknowledged, narrative is ‘trans-cultural’,22 thus allowing video games to provide yet another platform for thought experiments and jurisprudential investigation. The second methodological approach to game studies however, was that of computer game formalism, or ludology, which investigated video games as a discreet experience, ‘disconnected from the kinds of inquiry that have traditionally been applied to other cultural genres’.23 The focus of ludology has been on the rules that constitute video games as abstract and formal systems, with an emphasis on the formal interface properties unique to video games, rather than the representation contained within the story and interpreted by the player. Ludologists have suggested that simulation is an alternative explanatory tool for understanding our realities, and they argued that just as narrative is a form of structuring representation, the new medium of video games is a particular form of structuring simulation.24 In this sense, simulation recognised the cybernetic nature of videogames which ‘are not just made of sequences and signs but, rather, behave like machines or sign-generators’,25

18See, for example, Kelleway (2011); or Zagal (2009).
19For a brief discussion of the work in this small area see Zagal (2009) or Shaw (2010).
20We note that the scope of this article does not extend to exploring the externalization of morality by the player in the midst of gameplay. For a more detailed examination of this issue of video game based player morality, see Heron & Belford (2014) and their reading of Papers Please (Lucas Pope, 2014) and Spec Ops: The Line (Yager Development, 2012).
21Frasca (2003), p 221.
22Barthes (1979).
23Murray (2005).
24Frasca (2003), p 224. For an explanation and critique of the formalist approach of ludology see also Keogh (2014).
and analysed them as ‘games’.\textsuperscript{26} Yet some scholars have argued that the categorical distinction between simulation and representation was simply ‘a matter of perspective’\textsuperscript{27} and ‘unproductively sectarian’,\textsuperscript{28} with significant overlap between the two:

Those interested in both games and stories see game elements in stories and story elements in games: interpenetrating sibling categories, neither of which completely subsumes the other.\textsuperscript{29}

Interestingly, although the ‘ludology/narratology turf war is long over … the desire to find a pure, essential “gameness” persists as a tendency underlining game studies’.\textsuperscript{30} As a result, the formalist ludological approach has been significantly challenged within recent scholarship. Rather than prioritising an evaluation of what constitutes a ‘game’, \textsuperscript{31} some scholars argue that the focus of video game analysis should shift to those phenomenological moments where the player and game are joined through narrative and moral choice.\textsuperscript{32} By eschewing conventional games studies’ reluctance to engage with individual games as a whole,\textsuperscript{33} this newer approach recognises that narrative, agency and embodiment come together to create those ephemeral and ineffable aspects of \textit{playing} video games that make them so engaging.\textsuperscript{34} Rather than providing a passive form of escapism, the act of \textit{playing} video games uniquely promotes an escapist adventure that is complex, \textit{inter}-active and embodied.\textsuperscript{35} It is precisely this participatory and immersive context of \textit{playing} within the fictional narrative of a video game that prioritises agency and enables the transformation of meaning. Moreover, the ‘affordances and constraints of videogame play, what the player can or cannot ‘do’, only make sense in relation to the constructed fictional narrative taking place within the world of the game.\textsuperscript{36} For this reason contemporary video game scholars are increasingly utilising interdisciplinary approaches when traditional game methodologies fail to encompass the enormity of the video game playing experience.\textsuperscript{37}

The methodological approach adopted in this article is primarily based in this newer approach to game studies that incorporates aspects of narratology, while at the same time acknowledges the impact of game structures on the narrative itself. As will be demonstrated, we recognize that ‘narrative is always and in a very central

\textsuperscript{26}Hence the derivation of the term ‘ludology’ – from \textit{ludus}, the Latin word for ‘game’ and instituted by Frasca to denote the new discipline by which game study focuses on video games as ‘games’ with corresponding rules: Frasca (1999).

\textsuperscript{27}Simons (2007).

\textsuperscript{28}Murray (2005).

\textsuperscript{29}Murray (2005).

\textsuperscript{30}Keogh (2014), p 9.

\textsuperscript{31}For example whether the elements that might constitute a game excludes cut-scenes. See further Latorre (2015).

\textsuperscript{32}Keogh (2014), p 30.

\textsuperscript{33}Latorre (2015), p 420.

\textsuperscript{34}It is interesting to note that with a younger generation of game study theorists approaching the scholarship from the position of an in-depth experience and knowledge of particular games, different critiques of games are emerging: Keogh (2014), pp 6–7.

\textsuperscript{35}[T]hough we may refer to film spectatorship as ‘active’, due to the viewer’s ongoing attempt to makes sense of the film, the video game player is even more active, making sense of the game as well as causing and reacting to the events depicted’: Wolf (2010), p 3.

\textsuperscript{36}Keogh (2014), p 10.

\textsuperscript{37}See Latorre (2015).
way precisely a game structure, involving its readers in a hermeneutic contest\textsuperscript{38} over meaning, and we argue that such an approach sits nicely alongside the cultural legal studies paradigm as another means through which to transform or animate questions of law, justice and morality. Indeed, cultural legal studies delights in this type of encounter – to move beyond the traditional and familiar texts of law to locate and analyse that which is ‘law’ in a variety of other texts. This is the heart of MacNeil’s work, which jurisprudentially interrogates and reflects upon the storied nature of popular imagination to test and push the boundaries of what law is, does and promise.\textsuperscript{39} To ‘read’ a text jurisprudentially, is to engage in an interpretive exercise designed to help us make sense of law, and to understand more fully the normative universe within which law and narrative are inseparably related. As Cover argues, law is insistent ‘in its demand to be located in discourse – to be supplied with history and destiny, beginning and end, explanation and purpose’, and, narrative is equally insistent in its demands for its prescriptive point, or moral.\textsuperscript{40} Legal meaning is thus constantly being constructed and transformed within the normative universe in which law, justice and morality play their interconnected parts. Video games then, as part of this normative universe, are capable of conveying meaning, extending the possibilities for storytelling, and widening the experiences available to appreciate and understand the legal world we inhabit.

Analysing Infamous within this framework, it is our argument that the game narrative coupled with the ‘moral mechanic’ provokes within the player a response to divergent worldviews of legality that inevitably privilege natural law. The next section then, analyses the inherent story of the first two games of the Infamous series, and critiques the way in which the mechanics contribute to our understanding of the relationship between power, law and morality.

2. The story of Infamous and how it’s played

The Infamous series is heavily influenced by comic book mythologies and thus opens in Infamous 1 with an origin sequence in which the protagonist, Cole McGrath, is unwittingly granted astounding superhuman electrical powers after a device explodes, leveling several city blocks. While he recovers from this event, the government, due to a disease that has begun to infect the city’s population, quarantines the island Empire City, leaving the inhabitants with a sudden lack of legitimate governing authorities. This creates a power vacuum in Empire City, which is now occupied by various gangs under the command of individuals who have powers similar to Cole (those whom possess powers are known as conduits). Infamous 2 provides a similar story, though the city of New Marais that he visits is not cut off by the government, but has instead a powerful anti-conduit militia that has seized control and blockaded

\textsuperscript{38}O’Neill (1996), p 34.
\textsuperscript{39}See for example MacNeil (2007).
\textsuperscript{40}History and literature cannot escape their location in a normative universe, nor can prescription, even when embodied in a legal text, escape its origin and its end in experience, in the narratives that are the trajectories plotted upon material reality by our imaginations: Cover (1983), p 5.
In both these games, the player takes on the role of Cole McGrath, and navigates through Empire City/New Marais to carry out specific missions to progress the story.

In both Infamous 1 and 2, while it might appear that the police force still constitute a physical presence, they have been entirely superseded by the powerful gangs and the anti-conduit militia, respectively. Although they make many attempts to enforce procedural goals, they are ill equipped to deal with the well-armed and powerful factions that have seized control, and they can no longer provide adequate civilian protection or effective legal authority. In this way, the gangs and militia, who now embody an alternative form of law constituted by violence, tyranny and fear, have usurped the traditional authority of ‘law’. The narrative of the game thus places the only practical means of curbing dangerous and harmful behaviours in the hands of a single man (Cole McGrath) who has no formal standing or authority, only that which is accorded to him by virtue of force. Of course, this then constructs the actions of Cole as squarely within the realm of the vigilante, serving as an independent agent potentially representing and acting in pursuit of the inherent aims of the traditional legal system – justice and protection. Vigilantism, as the use of violence to impose social control in the face of nonexistent law, is a common superhero motif deployed when the law has failed or is absent, and is justified on the basis that exceptional circumstances allow for the rule of law to be put aside. As will be discussed in Section 3, the construction of the lawlessness of Empire City and the vigilantism of Cole McGrath (whether evil or good) contributes to a reading of law that is inextricably tied to morality, but first, a word on the mechanics of the game.

2.1. The mechanics of Infamous

Crucial to a discussion centred on a game and its particular mechanics, is to first define and describe the genre and play-style of that game. This is primarily because the interaction between the player and the game is fundamentally framed and construed in these terms. Moreover, it is important to understand how the success and failure conditions of the game are defined, as this also impacts on how the game is played. The Infamous series implements a mix of genres and styles, utilising both linear and non-linear mechanics to create a rounded game full of depth.

The linear style of the game is contained within the mission-based, third person shooter elements of the game that are used to advance the narrative. It is through

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41 The city of New Marais (the French word Marais translates as ‘swamp’) is loosely based on the US city of New Orleans post-hurricane Katrina. New Marais suffers devastating loss due to flooding and enters into a state of lawlessness. Compounding these issues is the fact that an epidemic is revealed to be the possible end of humanity, as well as the imminent destruction of the city due to the mysterious Beast. The progression of the Beast through the city tracks like a hurricane and is also well documented by media reports that appear every time the game is paused. Interestingly, this portrayal of New Marais allows players to experience the vulnerability of lawlessness through the birds-eye view of the devastation caused by flooding and tragedy – ‘In a way only a video game can, it puts you there, on the roofs above the drowning waters’: Totillo (2011).
42 We say ‘potentially’, because his pursuit of the interests of law and justice are entirely dependent upon the player selecting the good karmic path – as will be discussed later in this section.
43 Cole is clearly a ‘vigilante’, defined by Juliano as being one who breaks the law in order to pursue some form of justice: Juliano (2012), p 46.
44 Taslitz (2004), p 702.
this very structured form of narrative that blunt moral choices are offered, with explicit ‘good’ or ‘evil’ options available via cutscenes or player choice. In this aspect, the success or failure of the gamer is strictly defined via the objective that each mission imposes on the player. The player does have some choice over objectives within missions that contain a moral choice component (e.g. the side quests which are only available to the moral disposition that the player character embraces), however, it can be argued that more nuanced morally reflective choices in the game are borne from its non-linear, sandbox and open-world nature.

These non-linear elements are integral to the game and allow the player free rein in completing objectives in whichever manner they choose, as well as creating an unrestricted environment that the player can inhabit similar to the real world. When outside of the structured mission system, Cole moves freely through the world, impacting on those around him and organically affecting how other characters in the game respond to the morality of the player character. Unlike the linear aspects to the game, there is no clear ‘success’ of the gamer that may be observed in the non-linear open world mechanic, yet the player must still make important moral decisions regarding how they will interact with their surroundings, outside of a specific mission. As we will demonstrate, in combination these linear and non-linear elements contribute to an overall narrative that imbricates law and morality.

2.2. The morality based karma mechanic

The Infamous series implements one primary linear game mechanic that has become increasingly popular in modern video games, namely that of the moral choice system. As described in Section 1, instead of the traditional audience-content dichotomy found in film and other mediums where the viewer is simply an observer of moral choices, video games occupy a unique space in that it is designed for the player to openly engage. This draws the individual from the position in which they are mere passengers of the story to one that engages their intellect, imagination and emotion in the content of the game. Rather than simply manipulating a controller, the player’s moral choices become the game. In Infamous, the game play is that of the morality based Karma mechanic, where players make moral choices (playing as the main character Cole) along a karmic spectrum. Starting from a neutral position, the growth of Cole’s superhuman powers depend upon the actions he performs within the karma level. That is, players can either perform ‘good’ actions (and progress in power from Guardian to Champion to the final Hero) or perform ‘evil’ actions (and progress in power from Thug to Outlaw to the titular Infamous).

Of course, the system implemented in Infamous is not the most sophisticated version of this type of mechanism presented in video games, as it simply situates the

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45Cutscene is the term used to describe a short cinematic interlude in games usually used to advance the plot, though some developers make these sequences interactive by adding opportunity for player input, as in the case of Infamous.
46For example, healing civilians will increase the player character’s ‘good’ points while silencing those who protest Cole’s actions will make him more ‘evil’.
47Weaver and Lewis (2012), p 610.
49For example, selflessly stopping to help injured citizens.
50For example, selfishly draining their health to restore his own.
player along a continuum between ‘good’ and ‘evil’, with the critical moral decisions (or Karma Moments) pausing the game to force a choice between heroic or villainous.\textsuperscript{51} This is in contrast to games such as the \textit{Fallout}\textsuperscript{52} or \textit{The Walking Dead} series,\textsuperscript{53} which do not provide an overt moral gauge, but instead allow the player to interact with their environment in a number of ways, from a reasonable real-world reaction to the ultra-violent response often associated with video games. This interaction is then monitored, and provokes change in the way the story progresses and the manner in which other characters treat the player character. Despite this seeming lack of corresponding depth in \textit{Infamous} with regards to the available moral choices of the player character (Cole), it is the morality spectrum in combination with the bifurcated narrative structure that is most intriguing. In this, it adopts what may be described as a ‘single axis’ exclusive, where Cole’s nature exists on a spectrum defined as either heroic or villainous and a single value is used to represent this.\textsuperscript{54} This is in contrast to games such as \textit{Mass Effect}\textsuperscript{55} which totals the character’s two extremes and provides a moral assessment based on the prevalence of one over the other, or \textit{The Elder Scrolls: Skyrim}\textsuperscript{56} which are non-diegetic systems that do not provide any external guide or reference to one’s morality, only that which might be revealed through a player’s experience of the game.\textsuperscript{57} Interestingly, it is this aspect of the game that drew perhaps the most criticism upon the release of the \textit{Infamous} series, with reviewers suggesting that it was a cynical attempt to simply add replay value to the game,\textsuperscript{58} and that the choices were ridiculously drastic.\textsuperscript{59} They further argued that these options added little value to the story and gameplay, and broke the immersion of the game.\textsuperscript{60} However, critical gaming studies has recently acknowledged that the concept of immersion is one that is difficult to assess objectively, as the interactive nature of games makes the entire experience wholly dependent on the player’s willingness to accept the reality of the game that is being presented. The ‘concept of “immersion”’ thus obscures critical analysis of videogames as cultural forms that actually exist’ by separating form and content,\textsuperscript{61} and diverts attention away from close critical analysis of the actual content of the game.\textsuperscript{62} In this regard, the blunt approach \textit{Infamous} applies to the Karma mechanic (as one aspect of the formalistic gameplay),

\footnotesize
\textsuperscript{51}For example, one scenario the player is presented with is to either pull a valve and get a spray of tar in his face (Good), or force a civilian to do it for him (Evil).
\textsuperscript{52}\textit{Fallout 3} (Bethesda Game Studios, 2008) is a post-apocalyptic action role-playing game.
\textsuperscript{53}\textit{The Walking Dead} (Telltale Games, 2012) is a dramatic adventure game based on the comic series of the same name.
\textsuperscript{54}Heron and Belford (2014), pp 6–7.
\textsuperscript{55}\textit{Mass Effect 3} (Bioware, 2012).
\textsuperscript{56}\textit{The Elder Scrolls: Skyrim} (Bethesda Game Studios, 2011)
\textsuperscript{57}Heron and Belford (2014), pp 7–8.
\textsuperscript{59}One reviewer described the polarised options in the extremes of ‘defending nuns from gangs of evil, paint-huffing youth youths … [or] to burn a puppy dog orphanage to the ground, then sell the charred meat as a delicacy’: Lambrechts (2011).
\textsuperscript{60}Ben ‘Yahtzee’ Croshaw, ‘Zero Punctuation: Infamous 2’ (June 29 2011) \url{http://www.escapistmagazine.com/videos/view/zero-punctuation/3611-Infamous-2}.
\textsuperscript{61}Keogh (2014), p 6.
\textsuperscript{62}Keogh (2014), p 18.
nevertheless contribute to the overall fictional world within which the player observes, enacts, and embodies various choices.

Indeed, while the basic elements of the *Infamous* storyline largely remains unchanged irrespective of whether the player opts for the ‘Good’ or ‘Evil’ karma path, there are some crucial elements of the story regarding the absence/presence and recognition/abnegation of law that will change depending on the player’s binary choice. For example, in the narrative (in which the universal fail condition is death), legitimate forms of law are no longer recognisable due to the desertion of law enforcement officials and the ensuing chaos and criminality thriving under an illegitimate force in both Empire City and New Marais. Instead, pseudo laws of violence reign, and so each ‘good’ decision made by the player pushes Cole towards embracing a return to the traditional rule of law, which consequentially addresses and eradicates the crime and inequality existing in both cities.\(^{63}\) In contrast, the ‘evil’ karmic choices create a hostile environment in which one cannot depend on any legitimate community protection or enforcement of basic individual rights, and it becomes simply a survival of the fittest, or rather, strongest and most powerful.\(^{64}\)

This binary ethical mechanic can be further illustrated using a particular example of a dualistic mission-based choice within *Infamous 2*. In order to complete the objective of capturing an enemy position and rescuing an accomplice, the player character is offered two alternative courses of action. The ‘evil’ choice is to crash a bomb into the enemy fort, whereas the ‘good’ alternative requires the player to free a number of remnant police officers from captivity who will then seek to provide reinforcements for Cole to rescue his accomplice. This latter option for fulfilling the objective, which is labelled as ‘good’ within the structure of the game (and provides an in-game karma shift towards that path), exists as the only available option that would support the existence and reinstatement of the previous legal regime. In addition to this, throughout *Infamous 1*, there exist randomly generated events in the game where Cole’s actions become a statement about the lack of morality that pervades in an absence of law. For example, when Cole happens upon a man hanging from a light pole, condemned for stealing food from those in need, he earns good Karma by cutting the body free. This could read as a statement that in the decimated Empire City, capital punishment is in no way an appropriate sentence for committing such a minor (and morally motivated) crime, and that the ‘law’ that has been effected in this instance (such as it is devoid of moral considerations) is not true law.

The bifurcation described above is deployed throughout the game and culminates with the contrasting endings of *Infamous*. On the one hand, if you complete the game as a ‘Hero’, Cole looks over a city that is rebuilding itself, implying that a form of traditional law and authority will be reinstated\(^{65}\) with Cole as a beacon of hope and

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\(^{63}\) As an aside, it is interesting to note that ‘good’ Cole is in essence seeking the reconstruction of the system which failed him and the cities that he inhabits. Such actions are, as Kapica points out in relation to *Falling Skies*, problematic because it assumes that our previous structure of governance was both right and natural. Kapica (2013), p 3.

\(^{64}\) See Section 3 where this Hobbesian warring for survival is further explained.

\(^{65}\) This is supported by the ‘good’ beginning to *Infamous 2* (by importing saved data from *Infamous 1*, one is able to begin the game with narrative assumptions in keeping with the previous save file, that is, if one was ‘heroic’, they start *Infamous 2* as ‘good’) which depicts Empire City as free from the quarantine, but still populated as its citizens stayed due to the reinstallation of legitimate authority and the ousting of force-based rule, namely the street gangs that took power.
justice. On the other hand, the Infamous ending depicts a crumbling, decaying metropolis, complete with people dying in the streets and Cole laughing at the idea that his powers could have been used for the greater good.

Because Infamous provides players with only two ethically charged alternatives where certain behaviours, responses and actions are either ‘good’ and promote lawfulness, or ‘evil’ and disavows the place of law, the game provides an intriguing opportunity to reflect upon not only the imbricated nature of law and morality, but also the polarised circumstances in which a player might view law as legitimate or otherwise, depending on their in-game manipulations of the actions of Cole. It is important to note that although this seemingly intuitive ethical construct of the game is integral to the immersive environment in which the player makes decisions, the binary choice is in essence an illusory one, in as far as ethical reflection. Babij argues that these moral spectrum mechanics which require players to choose from two polarised sets of pre-determined ethical positions set forth by the game architecture ‘actually dis-empowers the players from using their own ethical judgment in playing the game’.66 This is because while players may feel as though they have substantial control over their characters, the game structure itself forces players to relinquish ‘the ability to ethically reflect on actions in the game’.67 Furthermore, because in the course of the game increased movement in one direction is rewarded with commensurate abilities, the framework of the game provokes strategies that prioritise achievement of the strongest possible extreme on either end of the games imposed ethical spectrum. This of course then, has the consequence of limiting true ethical consideration to a secondary aim of gameplay strategy.68

Although the ethical reflexivity of players is not our argument here, this illusory nature of the player’s binary choice in Infamous is illustrative of our argument. That is, the dualistic moral mechanic serves to provide a contextual basis for our connection of morality and lawfulness in this game. This particular game mechanic, with its predetermined sliding scale of law/morality on one side and lawlessness/immorality on the other, perpetuates a worldview that privileges natural law. The strict bifurcation of this morality system pushes the gamer towards the conclusion that there are consequences related to the legality of the actions taken within the gameplay. Put differently, the linear style of the game portrays a reading that the only legitimate and ‘true’ legal regime is one that is connected with morality. The narrative itself thus creates a dynamic in which moral actions are recognised as contributing to, or denigrating from a legitimate and recognisable form of law. This is reinforced by the non-linear game mechanics, which as described above, allow free movement outside the specific karmic-based missions, and require circumstantial moral decisions to be made, which have significant impact upon interpretations of law. For example, the ‘good’ Cole will never be pursued by the police in a random, non-mission based encounter, but the ‘evil’ Cole will. Likewise, on the hero path, civilians will seek help from Cole, while on the infamous path civilians will hurl rocks and abuse at him. These divergent effects of random encounters with background elements69 of the game perpetuates the perspective that it is only possible to recognise the law, and re-institute a system

66Babij (2013), p 159.
69Namely the non-playable and randomly generated civilians, police and enemies.
that may be described as fair governance, if the player-character themselves embraces a ‘good’ morality.

The binary of the Karma mechanic is also mirrored in the supporting characters of Infamous, particularly in Infamous 2. In the second game of the series, the supporting cast is expanded to include two female characters known as Lucy Kuo and Nix. In many ways, these characters clearly perform the same narrative role, given that they are both portrayed at various points as a possible love interest for Cole, and are both painted in a sympathetic light as a result of trauma that also granted them their superhuman powers. Yet, it is equally clear that the two are designed to represent polar opposites of one another, and be illustrative of the extreme moralities inherent in the Infamous narrative. On the one hand, Nix as the ‘evil’ of the pair is: costumed in red; manipulates oil and fire as her power; and advocates severely brutal and violent offensive strategies to attract supporters for Cole (e.g. to steal an enemy uniform, storm a fortified enemy position, and begin slaughtering the potential allies as a ruse for Cole to ‘disarm’ her, thus earning the trust of the potential supporters). On the other hand, Kuo performing the ‘good’ function is: costumed primarily in blue; has powers relating to ice; and approaches the same tactical situation of supporter recruitment by embarking on a ‘hearts and minds’ campaign, winning over allies by delivering much-needed medical supplies and defending their headquarters.

As such, this constructed character juxtaposition seems just as stark as that of the Karma mechanic, with Kuo representing the unequivocal good and Nix the unrelenting evil. Interestingly, the climax of Infamous 2 relays a twist to this dynamic, in what prima facie appears to be a break in the binary mechanic. When Cole is faced with the choice of sacrificing the small Conduit population to save mankind or abandoning it to the grips of a deadly plague and saving himself, Nix argues for the option of forfeiting their lives whilst Kuo selfishly seeks to save her own skin. Despite there being an element of revenge-seeking behaviour in Nix’s actions, as by offering up herself, it will also result in the destruction of the entity responsible for killing her ‘pets’ (corrupted Conduits that she raised as a pseudo-family), Nix crucially aids Cole in the final heroic mission of the game, and Kuo opposes them. However in the final stages of the game, the binary is seemingly restored as a mortally wounded Kuo confesses that she was wrong and was scared, declaring the correct option to be the one advocated by Nix. If one chooses the evil final mission, Kuo has no change of heart and Cole has to kill a defiant Nix and Zeke who both seek to save humanity.

These interactions between Cole and the secondary characters indicate that even though there are personal considerations tied in with their decisions, whether it be revenge or personal survival, there is only one option presented by the narrative that allows the survival of a traditional system of law – the fulfilment of the morally ‘good’ pathway, which allows the world and its binding construction of law to continue. This is yet again demonstrated in a mission contained within Infamous 2, where Cole has the option to either expose a horrific practice that is being carried out on civilians, or create an army with which to combat the many evils that he

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70 In Infamous 1 the only true moral interaction by a secondary character was when Cole’s best friend Zeke stole a device for personal gain, though he does later repent for his actions.

71 Nix suffered a tragic childhood event that left her without a family and Kuo survived a horrific medical procedure at the hands of one of the game’s antagonists.

72 Whereas previously she represented the ‘evil’ choice in branching split-karma missions.
faces, accepting that those who have been transformed are doomed. In the first option, Cole acts as a whistleblower and leaves the process of judgement and sentencing to those who should be entrusted with such a power. The latter option on the other hand, represents a pragmatic attempt to utilise the ‘law’ as it stands in New Marais (a right to rule granted purely by power and devoid of morality), in a callous pursuit of power.

In combination, both the linear and non-linear game mechanics reinforce the positive impacts of a lawful morality, because it is only possible for the player to recognise their own choices as ‘lawful’ when the missions and random encounters are undertaken in keeping with a ‘good’ morality. This reading of the Infamous game series is reminiscent of key aspects of the Hart/Fuller debate and so the last section of the article argues that this video game places normative emphasis on natural law.

3. The battle for sovereignty in the world of Infamous

Cole McGrath exists in a self-contained post-apocalyptic world that is chaotic, broken and absent of legal sanction and protection. It is, in one sense, a Hobbesian world, with self-interest driving every action/inaction, and the natural state of the human condition facilitating brutal enmity. Cole’s existence (and survival) within this world thus depends on his primal instinct for self-preservation (whether motivated by good or evil) and he continually clashes with criminals, tyrants and the militia who seek to rule through fear and brute strength. It is a mighty battle derived from man’s natural tendency to fight for power:

>...the most frequent reason why men desire to hurt each other, ariseth hence, that many men at the same time have an appetite to the same thing; which yet very often they can neither enjoy in common, nor yet divide it; whence it follows that the strongest must have it, and who is strongest must be decided by the sword.

Yet, this continuous clash of wills between those ‘good’ actions fighting for survival, and those ‘evil’ actions that threaten survival, demonstrates not only the world of Infamous as a battleground for sovereignty, but also the inherent tension therein that exists between natural law and positivism. With the memory of legitimate sovereignty on the one hand, and the bleakness of disorder and destruction emanating from the criminals/militant forces on the other, Infamous represents a dualistic expectation of law within the narrative – by constructing Cole’s actions as either morally upholding, or immorally supplanting, ‘law’. Such a reading resonates strongly with the competing jurisprudential theories of natural law and positivism exemplified in the Hart/Fuller debate.

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73 See Fuller (1958) and Hart (1958). See also Desmond Manderson’s use of The turn of the Screw as a literary mechanism through which to explore the rhetoric and narrative at work in the arguments of Hart and Fuller: Manderson (2009).
74 In no setting do we see any judicial process or government intervention, save that of the quarantine itself that allowed the illegitimate factions and groups to be installed as ruling through the prism of fear.
76 Hobbes (1642), Art VI, Chap 1.
This famous debate was an intellectually rigorous jurisprudential argument surrounding the legal consequences of the Nazi ‘grudge’ cases.\(^7^7\) The debate questioned ‘whether law’s validity and normative force are dependant on its moral credentials’ and explored ‘how far moral criteria are implicated in the identification of valid law’.\(^7^8\) Presented as two papers in the *Harvard Law Review* in 1958, Hart and Fuller each outlined and defended their vision of law in terms of legitimacy, authority and morality. Hart, representing a ‘distinctive version of legal positivism’ that ‘spoke to the social realities of law in a secular and democratic age’ viewed law as a system of rules connected with social power, yet distinctly separate from morals.\(^7^9\) Fuller, on the other hand, argued that morality is the source of law’s binding power because law is so much more than rules. To him, law must possess certain characteristics if it is to be classified correctly as law, the most important of which is ‘inner morality’. It is the inner morality that ‘guaranteed a law worthy of “fidelity”, underpinned the existence of an obligation to obey the law, and marked the distinction between law and arbitrary power’.\(^8^0\)

Disregarding for a moment, the binary karmic choice available to players in the linear mechanic, one reading of the battle over sovereignty in Empire City and New Marais in *Infamous*, is that each side (the remnant police officers and helpers v the conduits/militant forces) propose the possibilities of contradictory worldviews, and reflects the jurisprudential divide described above. The first possibility portrays natural law: it is a world where the ‘law’ that once existed, is desired again – where law is remembered, valued and fought for because it represents both justice and morality. It is a worldview that sees law as a collaborative effort to aid in satisfying the needs of mankind, and as a framework that can be used to create laws that conform to notions of good morality and ethics. In this worldview, the legitimacy of ‘law’ is dependant on popular support, rather than constitutional technicalities, and law that is totally divorced from morality ceases to be law. The ‘good’ karmic choices of *Infamous* represent a desire to return Empire City/New Marais to this natural law state. It is a choice and fight to reinstitute, in a teleological sense, the law as a purposeful, moral enterprise. This of course, is in comparison with those who reject a traditional form of law, and value only power, tyranny and corruption, which is the second possible worldview represented in *Infamous* by the ‘enemies’ (the conduits and the militants). This worldview says that if ‘law’ exists, it is enacted and enforced as social authority or power, and it is completely distinguished from morality and justice. Taking this positivistic approach, it could be argued that the ‘law’ on offer in this world is still ‘law’ even though it may not satisfy the demands of morality. Hart’s argument that a criterion of legal validity need not be referential to justice or morality, and that there is only law when there is power,\(^8^1\) resonates with the opposition constituted in both the conduits and militants who autocratically assume societal authority on the basis of power, and rule by force and terror. This is the fight for sovereignty that occupies the *Infamous* narrative – the battle to find and declare ‘law’, whether revived (natural law) or reborn (positivist).

\(^7^7\)Freeman (2008), p 111.
\(^7^8\)Lacey (2008), p 1066.
\(^7^9\)Lacey (2008), p 1065.
\(^8^0\)Lacey (2008), p 1070.
\(^8^1\)Hart (1958).
Yet, such a reading of this jurisprudential divide, is complicated by the nature of the video-game ‘play’. As described at the beginning of the article, this particular cultural medium provides an added layer of complexity to the cultural legal studies analysis. It is not just the polarised narrative that can be read jurisprudentially, but also the moral mechanic that is enacted by the player. Returning now to the binary moral choices offered to players along the Karmic spectrum, we argue that as a whole, the Infamous game presents a legal worldview that privileges natural law and contributes to normative expectations that morality and law are intimately connected.

3.1. The world of Infamous – ‘a place with no law’

As Cole fights for control of the city back from the factions, there are a number of missions to help him achieve this aim. However, as we have noted, it is only within the ‘good’ karma missions that Cole is seen to be supporting a return to law, and it is only Cole’s journey on the karmic ‘good’ path that reflects a quest to revive ‘true’ law, justice and morality. This is of course a direct contrast with the polarised ‘evil’ Cole who immorally seeks the destruction of the oppressive and militant forces in order to garner power and notoriety for himself. Playing in ‘evil’ karmic mode, the narrative of both Infamous 1 and 2 presents Cole as selfishly pursuing goals that do not account for anyone else around him, with allegiance to no authority but his own. Indeed at the ‘evil’ conclusion of each game, Cole is portrayed as rising to be the singular most powerful (and immoral) entity who reigns by virtue of power, terror and violence over a world that Cole himself describes as ‘a place with no law’. He says:

> These powers are only good for one thing. Letting me take what I want, when I want. In a place with no law, the strong take what they want and the weak are their slaves, their play-things. And no one is stronger than me.82

This is clearly distinguished from the ‘good’ endings to each game where Cole is depicted choosing to act morally, using his powers to protect the general public, and seeking to restore the primary function of the law by re-building society at a significant personal sacrifice. At either end of this Karmic spectrum however, it is clear that natural law theory sits just under the representation. By creating the binary choice as dependant on a sliding scale of morality, the law, whether present or absent, is defined by morality. Fighting on the ‘good’ karmic path, each moral decision places Cole one step closer towards reviving law, with each choice reinforcing that law, as a ‘process of subjecting human conduct to the governance of rules [is] informed by an “inner morality” of aspiration’.83 Likewise, the portrayal of an absent law within the construction of the ‘evil’ karmic path, also contributes to the expectation that law is a fundamentally human enterprise that relies on morality to give it life. Resonant of Devlin’s argument that disintegrated society is inevitable in the absence of a common morality,84 every immoral decision and unjust act that Cole performs validates natural law theory. For a legal regime that ignores the principles and rights of

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82 Cole’s narration in the ‘evil’ ending of the game.
83 Lacey (2008), p 1070 quoting Fuller (1964) at pp 49–50.
84 Devlin (1959). Devlin argued that morality as a ‘single seamless web’ would be torn beyond repair without the protection of and integration within law.
its people and actively perpetuates injustice, forfeits any right to expect citizenry allegiance, and as such ‘the immorality of a law, vitiates its right to be called law’.\(^8^5\)

The various choices made by the player character along the moral spectrum further shapes the way in which the outside world reacts to their presence in the game. The clearest example of this is in the divergent way the remnant law enforcers will respond to Cole as a result of the conflicting moral choices. There are enemies of the game that will always pursue the player, regardless of their moral alignment, however on the ‘evil’ end of the spectrum, members of the traditional police force in Empire City and New Marais will also engage an ‘evil’ Cole in combat upon sight. In contrast, if Cole is of a heroic karmic alignment, the police will only pursue him if the player engages in negative behaviours such as the harming of civilians or other police officers.\(^8^6\) This is further illustrated in *Infamous 2*, when Cole comes across a ‘rebellion’ movement that seeks to overthrow the oppressive and illegitimate militia. In the context of the narrative, at first it is uncertain whether the rebellion is seeking a return to the traditional system of law and justice, or instead is pursuing the power and authority of a new ruling entity. Yet, given that the police officers support the endeavours of the rebellion, as does Cole when in ‘good’ karmic mode, it becomes clear that the rebellion represents the quest for a return to traditional, legitimate law.

Fuller insisted that law needed ‘to be deployed using the energy, insight, intelligence, and conscientiousness of those who conduct it’\(^8^7\) and so both karmic possibilities provide the context within which to identify natural law. A ‘good’ act/decision affirms the presence of law, while conversely an ‘evil’ decision indicates an absence of law, yet nevertheless, irrespective of the particular choice made, the player is constantly reinforcing the inseparable nature of law and morality.

While this is not a narrative path unique to *Infamous*, with the power inequity a common theme of post-apocalyptic literature,\(^8^8\) it is the complex presentation of this story that provides the point of difference to the traditional forms of media. In combination, the narrative and moral mechanic of the *Infamous* video game series, provides a multifarious site of jurisprudential encounter. Our reading is that it is underscored by natural law theory and as a result effects the application of normative value to the ethical choices a player might make. No matter which path is adopted by the player, whether it is ‘good’ or ‘evil’, the game constructs law as defined and enacted by morality. Yet, perhaps we could argue that although Cole declares Empire City a ‘place with no law’, in the world of *Infamous*, law is never really present, nor absent – rather it is simply a promise at both ends of the karmic spectrum that lingers on the horizon of possibility.

References

\(^{8^5}\)Curzon (2002), p 95 quoting Fuller (1964).

\(^{8^6}\)There are even some side missions available to those of a good alignment to help the police carry out their duties, in which he acts as an auxiliary to their formally appointed power, reminiscent of Superman in Metropolis.

\(^{8^7}\)Leiboff and Thomas (2014), p 191.

\(^{8^8}\)Ames (2013), pp 8–9.

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