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# Video Games as Free Speech

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VIDEO GAMES AS FREE SPEECH

by

Benjamin S. Cirrinone

A Thesis Submitted in Partial Fulfillment  
of the Requirements for a Degree with Honors  
(Political Science)

The Honors College

University of Maine

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## Abstract

The prevalence of video game violence remains a concern for members of the mass media as well as political actors, especially in light of recent shootings. However, many individuals who criticize the industry for influencing real-world violence have not played games extensively nor are they aware of the gaming community as a whole. First, this thesis aims to illuminate the chronological history of game distribution. Second, this thesis covers small segments of games of the modern age to illustrate the unique communicative mechanisms offered by games. Third, this thesis analyzes whether or not the industry should be regulated through the Supreme Court case of *Brown v. Entertainment Merchants Association*. Finally, this thesis explores the research about the possible links between game violence and real-world violence, while also summarizing and analyzing recent tragedies associated with the medium. It is suggested that video games should be considered free speech without any governmental regulation and that the medium, as creative expression, has value through its unique communicative mechanisms.

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## Chapter 1

### Introduction

I am Franklin Clinton. I repo cars for a man named Simeon at a dealership that does not go by the book. I live in the streets of Los Santos with my eccentric mother, who chants as she walks throughout her day. I have the entirety of the faux-Los Angeles to explore. More than that, I have an entire rural county to explore as well with many activities to accomplish. I can go anywhere and do anything. So, naturally, I make the choice to walk into a store where I can buy food and drinks. But instead of being a customer, I bust out my AK-47. I decide, by my own free will, to stick the convenience store up like a regular 2-bit gangster. I am playing the latest iteration of the most controversial video game franchise of all time. This is *Grand Theft Auto V*.

Video games are changing. Not very many people are aware of this. Games were originally 2-D and linear. They were short and when you died, you started back at level one. Inserting quarters until mom or dad got fed up with paying used to be the norm. There used to be games that required entire teams of people to put out and distribute to the consumer. Now, small one or two person teams can create games with new technology. Today prominent developers are working to create worlds and in some cases entire universes. The legendary Bungie team is working on *Destiny*, a game that takes place in a fictional Milky Way galaxy. *Fallout 3* takes place in a Cold War era, post-apocalyptic Washington, D.C., United States. Game developers are trying to make games where the decisions you make within the narrative have consequences. Player-driven narrative is an area where other mediums fail. Games are innovating popular

communicative mechanisms to include the audience through its unique mode of interactivity.

When trying to understand the controversy surrounding video games, one must first understand the technological progression to where we are today. For, at the heart of the matter, the unfamiliarity of the popularity of the medium is becoming increasingly important to the controversy. Those who are inappreciative of the medium are those who do not know much about its storied history. These are people who do not know the merits of games like *Pong* and *Super Mario Bros.* to the entire medium and its development in recent years. If consumers did not place their money into the industry in its early formation, then the developments in narrative and technology might never have occurred. Understanding this progression is essential in comprehending the consumers' vested interest in the medium.

The first part of my thesis will be primarily focused on the chronology of the development and distribution of games, gaming consoles, and how this information is relevant to the overarching premise that games are becoming more popular in general and more complex narratively, which is contributing to heightened controversy. This information will be drawn from sources such as IGN, GameSpot, Polygon, Forbes, newspapers, academic articles, etc. From these sources, the stories of the game consoles prevalent in our history will be examined. Furthermore, information on the commercial sales of individual games and game consoles will be pulled from this source pool to show how sales have increased over the years. Understanding the increasing popularity of games and game consoles is integral to understanding the value of a medium that was once a niche hobby only found in bars.

Games tell stories in ways other mediums cannot. Asking or forcing a player to do an action is a mechanism that can change how storytellers approach narrative design. Instead of showing a city or explaining a character, a game can let you experience them through interactivity. In *Fallout 3*, there is a city/settlement built on a broken cruise ship near Washington, D.C. In *Skyrim*, players go into dungeons or caves where corpses lay near traps and written notes lie next to them. Instead of teaching students about storming the beach of Normandy during World War II, teachers could employ *Call of Duty 2* and let students do it themselves. Before they land on the beaches, players are forced to watch soldiers puke in fear and pray to God before they enter a hailstorm of machine gun bullets and mortar strikes. These experiences give players agency through interactivity.

In the second part of the thesis, the unique communicative mechanisms of video games will be explored. Plot explanations and quotes from within games will all be employed as a part of this chapter. The goal here is to show how video games have matured in terms of storytelling. Intriguing characters in obscene circumstances are prevalent throughout the medium. This is a piece of the medium that not a lot of people get to see. Seeing how linear games approach characterization, plot, and world design is essential in understanding the progression of video game narrative. Understanding the role of interactivity in video game narratives is integral to understanding the value of the medium itself.

*Brown v. Entertainment Merchants Association* is seen as a substantial victory for the video game industry. A child psychologist turned California State Senator (District 8), Leland Yee, attempted to limit the sale of “violent video games” to minors because he thought there was a link between real life violence and the violence in video games. The



story of this case will be fully unraveled in this chapter. Thoughts of regulating the medium have been persistent throughout the industry's history. I will specifically analyze the Supreme Court decision, what these ideas of regulation mean for the industry moving forward, and how it pertains to my argument that games have value through their unique communicative mechanisms. I will also assess Justice Breyer's concerns in his dissent. I will argue that government regulation of the medium would have negatively affected the industry and that video games are deserving of First Amendment protection.

The next chapter will be dedicated to instances where video games became scapegoated as the source of real life violence. The part *DOOM* played in the Columbine High School Massacre will be examined as well as more recent events like the Washington Navy Shipyard Shooting and its loose correlation to *Call of Duty*. This chapter will tie into the overarching premise of the thesis that games should be considered free speech. News reporters who blame video games generally cite research that proves a correlation between violent games and real-world violence as evidence. It is specified that games are not responsible or linked in any significant way with these cases of violence.

Later in the fourth section, I will examine the existing research on the supposed link between real life violence and game violence. I will draw quotes from Craig Anderson and Christopher Ferguson as I present their research. The flawed methodology of this research will also be assessed. The lack of a definitive proof of a link only validates my perspective that games have value and deserve First Amendment protection.

Gaming is not going anywhere. In fact, the sales of consoles and video game software prove that gaming is only becoming more popular as distribution becomes even

more diversified through tablets and smartphones. Some predict that the game industry will be an \$82 billion industry by 2017. One technological research company (Gartner) predicted the industry would hit \$112 billion by 2015 (Bilton 2011). Products are valuable because consumers place value in them. Even Barack Obama and Joe Biden have taken interest and dedicated serious assets aside to allow researchers to delve into how video games affect us as individuals (Lejacq 2013). As time and technology move on and games become more popular, progress will be made in regards to narrative/world design. These improvements will only strengthen the argument that games have value through their unique communicative mechanisms.

I will trace the history of video games from *Pong* enjoyed by a few shady men in bars to a multi-billion dollar industry with hundreds of millions of users worldwide. I will explore the evolution of video games from the cathode ray experiment in 1947 to legitimate form of expression, deemed worthy of 1st Amendment protection by the Supreme Court of the United States. A critical examination of the supposed link between video games and real world violence will also be provided.

## Chapter 2

Games started as small experiments. Nobody thought there was a market for video games at the start. The medium developed into a booming industry thanks to the popularity of games like *Pong*, *Space Invaders*, *Super Mario Bros.*, *Donkey Kong*, and *Halo 2*. Today, the total assets of video game publisher and developer Electronic Arts is approximately \$5.491 billion (EA 2013). The industry itself is predicted to hit around \$112 billion by 2015. Game releases have become larger than film premieres and are becoming increasingly relevant in pop culture. This chapter will be dedicated to following that progression.

### *Birth of a Medium and the Rise and Fall of Atari, Inc.*

Video games were first introduced after the invention of the cathode ray tube (CRT) by Thomas Goldsmith Jr. and Estle Ray Mann in 1947. After the CRT was invented, people began experimenting. The Nimrod computer, unveiled by John Bennett of Ferranti during the Festival of Britain in 1951, was one of the earliest games to come out (Baker 2010). *OXO* was a computer game designed by Alexander S. Douglas in 1952. *Tennis for Two* was designed by William Higinbotham in 1958. *Space War!* was created by Martin Graetz, Steve Russell and Wayne Wiitanen on a DEC PDP-1 computer in 1961.

The first relatively substantial development in gaming was *Computer Space*. This was a commercial coin-operated game created by Ted Dabney and Nolan Bushnell in 1971. This was Bushnell's first foray into the video game field. The next substantial development was the Magnavox Odyssey, which was released as the first home console

in August 1972. Then, probably the most important game in the entire history of the industry dropped: *Pong*.

*Pong* was a game that was also developed by Ted Dabney and Nolan Bushnell in 1972. Bushnell was the head of Atari Inc., a company Bushnell created after the success of *Computer Space*. *Pong* became a very popular game in the 1970s. Originally, *Pong* was built as an arcade machine (Bodine 2005).

However, Atari was plagued with many problems during this period. Atari could not receive the benefits of this technological leap as many people sought to copy their success. Soon, the market was cluttered with *Pong* clones, mimicking the mechanics of the game and taking away from Atari's profits. Other failures of Atari after the success of *Pong* included attempting to open arcades in Hawaii and introduce its products in Japan. In an attempt to resolve these problems, Bushnell would end up striking an "*arrangement with Sears, Roebuck & Company for the retailer to buy all 100,000 of the devices that Atari manufactured, as well as helping out with funding for Atari's inventories, to guarantee delivery*" (Bodine 2013). This brought the game to the mass market in the fall of 1975.

By 1976, Bushnell was pressed by a lawsuit and Atari was sold to Warner Communications Inc. for \$28 million. The inventor of *Pong* received around \$15 million. The trouble with the *Pong* machine that was being sold to consumers was that *Pong* was the only game these people could play. These consumers wanted a diverse catalogue of games at their disposal. Playing that same old game from 1972 was becoming stale by 1977. This was about the time that Bushnell decided to release the Atari 2600.

The Atari 2600 was a game console that used a “semiconductor chip in a programmable device.” The player would insert cartridges into the device. Through the holidays in 1977-78, the company saw its product failing to sell against its competition. Furthermore, positions in the company’s administration were shuffling around. Before this change, the company had a playful work environment. After the transition, Atari stressed professionalism in the workplace. This businesslike approach was pushed by Warner Communications. This approach upset Bushnell and he was eventually removed from his position as chair of the company. This new administration took on advertising campaigns to get rid of the growing backlog of games they could not sell and did so successfully. These administrators decided to sell cartridges outside of the holiday season. Though the company had originally been losing money, the successes of the early 80s outweighed the failures of earlier years.

Atari also introduced some popular games during that era. *Space Invaders* was introduced by Midway in 1978 to success in Japan. In 1980 Atari added *Asteroids*. This alternative was a more popular game than *Space Invaders*. Atari achieved solid profits in 1980: “revenues from coin-operated games reached \$170 million, up from \$52 million the year before.” Atari had around 80% of the entire American market.

In spring 1982, the coin-operated *Pac-Man* was released and “the company estimated that it would sell nine million of the games, to reap over \$200 million in that year alone.” *Pac-Man* is a game that bridged the demographic gap. This game was about a  $\frac{3}{4}$  yellow circle eating fruits, pellets, and ghosts. The game was not gender-specific. This was a family game that everyone could enjoy. Atari, for the first time since gaming was introduced as a medium, expanded the user base.

However as 1982 came to a close, Atari found itself in a tricky position. The gaming landscape had expanded and as many as thirty gaming companies challenged Atari. All the research and development they had spent their resources on had not really helped them because all of the innovation was leaving the company. Insider stock trading was being investigated at Atari. Sales were not reaching their estimates. Even more, going back on a campaign where they employed 2500 new American employees the year prior, Atari fired 1700 US employees to move to Taiwan and Hong Kong.

Atari would lose approximately \$46 million in 1983. They tried to bring innovation to the company by hiring the man they ousted years earlier, Nolan Bushnell, to *“sell consumer versions of the coin-operated games he was developing in his new business.”* None of this really had helped the company recoup the losses. By the start of fall 1983, *“the quarterly losses had reached \$180.3 million and its nine-month losses reached \$536.4 million.”* At this point, Atari’s presence in the video game distribution market as a dominating force quickly diminished. Other game companies like Nintendo and SEGA would become big players in the industry.

### **Video Game Crash of 1983**

Atari Inc. was the fastest growing company of its time (Werner 2011) and it even helped start Steve Jobs’ career. The company went from making \$75 million to \$2 billion in 3 years. Nobody had ever seen success at such a rapid rate and when other companies saw what Atari was doing, they quickly started churning out their own video games. At the forefront was the Atari 2600 with most of the market share. It was, however, competing with around a dozen other products. As a young industry, nobody really knew

how to conduct business and reward the top programmers responsible for such innovative work. There was generally one programmer responsible for the game and he/she would make a poor salary despite a game's success. Atari put the company name first and that upset some key members of the company. These individuals left, made their own company called Activision and created their own games for the Atari. This disconcerted Atari because the whole business was built on the idea that Atari would make a console and then make the software for that console. This enabled Atari to drive console prices lower because they could make the money back via software sales. Third-parties disrupted that practice. Atari sued and lost. The courts found that third parties had the right to exist. After this decision was established, other companies decided to go the route of Activision.

Companies decided to jump on the third-party bandwagon. Companies everywhere started to put out terrible games at low prices. Atari, the model for success at the time, started putting out poor games as well. The two most notable failures were *Pac-Man* on the Atari 2600 and *E.T.* With *Pac-Man*, Atari contracted a programmer to make the game in a very short amount of time with a contract that gave him money based off of the amount of games manufactured. They manufactured around 12 million games for a system that had an install base of around 10 million and expected to sell all 12 million. They expected to sell 2 million consoles because of this game! They did not; they sold 7 million copies of the game. That left around 5 million in the warehouse. *E.T.* was a project that had the same story arch as *Pac-Man*. The programmer of the game had a schedule of six months to release the game. Today, it is often considered the worst game of all-time. These two games, as well as the abundance of third-party "shovelware,"

contributed to Atari's downfall. It is said that Atari dumped all of the unsold cartridges, consoles, etc. in the desert of New Mexico and has become an urban legend. Recently Fuel Entertainment, Xbox Entertainment Studios and LightBox Entertainment were granted approval to dig up an Alamogordo landfill in New Mexico in search of these games for a documentary (Miami Herald 2014). After this disaster, investors and retailers were wary of video games until Nintendo came onto the scene with its Nintendo Entertainment System.

### **Nintendo Restores Faith**

According to Jeff Ryan, Nintendo released a plethora of coin-operated titles in the early 1980s. These titles included *Radar Scope*, *Space Firebird*, *Space Fever*, *Space Launcher*, *Monkey Magic*, *Heads-on-N*, and *Sheriff*. Most of these titles took the form of shooters like *Radar Scope* and *Sheriff*. *Radar Scope* was a particularly popular game for the company. Yamauchi thought this game would succeed, so naturally he manufactured around 3,000 machines for Arakawa to sell in the United States. If he sold them, then Nintendo would have its start (Ryan). He ended up managing to sell around 1,000 of these units, which allowed Nintendo to break even on their American endeavor. However, that meant that there were 2,000 machines still in the warehouse. It was still considered a failure. Arakawa did not quit though; instead he had an idea.

The NES (Nintendo Entertainment System), called the Famicom in Japan, restored faith in the fledgling industry when it came to the United States in 1985. This was a console that was already successful in Japan. But before bringing the console to the United States, Nintendo had to convince American retailers to trust in the market again



after the video game market crashed in 1983. To work through this, Nintendo had originally wanted to work with Atari to produce a version of the console. Atari did not want to work with Nintendo once they saw Donkey Kong on the ColecoVision, which prompted them to believe they were working with Coleco. This would be figured out later, but by then it would be irrelevant. So, Nintendo proceeded alone.

Perhaps the most subtle and influential factor contributing to Nintendo's success in America after the video game crash of 1983 was its institution of a lock-out system. To be able to release a game on the console, game-makers had to get Nintendo's seal of approval. This limited the trash "shovelware" that was running the industry to the ground. A game had to have some form of quality or innovation before it was unleashed to the masses. These standards helped pave the way for the company's video game business moving forward.

So Nintendo brought its home computer version of its console named the Nintendo Advanced Video System to the Consumer Electronics Show in 1984. It came equipped with a keyboard and some infrared wireless technology. Consumers did not take to these advancements very well, though they did acknowledge they were technological leaps. Retailers and the press were not impressed. They felt as though Nintendo had made a mistake in its attempt to bring its consoles to America in that time period.

However, Nintendo made an innovation in time for the 1985 CES show in the summer. They took away the home computer feel to it, but kept the grey box design. Cartridges in other consoles were loaded at the top of the console so that the consumer

could see it, but Nintendo designed their system with a front-loading chamber so that the cartridge would be out of view.

Furthermore, the Nintendo worked their marketing campaign to align their product as more of a toy than a video game system. They would advertise their product using a toy robot by the name of R.O.B, Robotic Operating Buddy. This would not really sway retailers. The retailers would only budge after Nintendo put forth a “S.W.A.T” team to take away most of the risk from retailers. This S.W.A.T. team would persuade “some stores to stock NES after an extraordinary blitz that involved 18-hour days” (Hill 2006, page 168).

In *Strategic Management: An Integrated Approach*, the authors explain that

*“By December 1985, between 500 and 600 stores in the New York area were stocking Nintendo systems. Sales were moderate, and only about half of the 100,000 NES machines shipped from Japan were sold, but it was enough to justify going forward. The SWAT team then moved first to Los Angeles, then to Chicago, then to Dallas. As in New York, sales started at a moderate pace, but buy late-1986 they started to accelerate rapidly, and Nintendo went national with the NES.”*

By 1986, Nintendo had become a force to be reckoned with in the games industry. That year “around 1 million NES units were sold in the United States.” In 1987, the number would grow to 3 million and in 1988, over 7 million. Nintendo would let software companies produce up to 5 games a year to keep the fervor alive on their console. Primarily because of the success of the NES and Nintendo as a company, the game industry was worth around \$5 billion worldwide. They had a 90% market share! Nintendo validated the entire video games industry.

Nintendo grew as a company through a unique distribution model. First of all, the idea of a console was not new but the method of software distribution through the console was game-changing. The idea that games had to be approved for release and distribution through their platform limited the games in the market and therefore limited companies from making poor investment decisions. This new distribution model allowed for the console and the games played therein to gain popularity. This popularity manifested itself throughout the world, not just in America. The Nintendo Entertainment System both proved the industry's legitimacy moving forward and that unique distribution models can drive a platform to success. Companies like Sony would seek to replicate their successful business model.

### ***The Second Coming***

The original PlayStation's focus on new technology (Compact Disc) and Sony's marketed approach to mature gamers paid dividends with customers. The PlayStation had led the market over the Nintendo 64 for some time, but some critics and analysts had felt as though Sony could not continue their success. The industry was, and still is, a volatile one. However, Sony would produce another console because the PlayStation brand represented 40% of the company's revenue at the time (McCarthy 2006). They would unveil the successor to the PlayStation in 1996 and call it the PlayStation 2. With the PlayStation 2, there would be a variety of upgrades and changes from the original.

The PlayStation 2 had an impressive list of features accompanying it. First and most importantly at the time, the system could play DVDs. At the time, DVDs were taking off and many found that the PlayStation 2 was a better deal than other machines

capable of DVD playback. Furthermore, the aesthetic design was changed dramatically. It was also capable of backwards compatibility, meaning it could play games from the original PlayStation console. Finally, the system had an Emotion Engine built within it. This engine allowed for fast graphics processing, which made the character models look more realistic.

After they opened the curtain on the system, people were not enthusiastic about Sony's chances. The games did not play very well and many had felt that the machine was difficult to code for. Shinji Mikami, a developer from Capcom, had mentioned that the machine had a lack of tools that they could use for development. Keiji Inafune, creator of Mega Man, thought that the machine was too powerful to design around. The games they showed were clearly intended to be on the original PlayStation. The situation was looking bleak for Sony on its way towards launching the system.

The Electronic Entertainment Expo of 2000 would play host to a trailer for Metal Gear Solid 2. This was received well by fans and critics alike. The price and launch date of the system would also be well received at \$299 and October 26<sup>th</sup> respectively. Twenty games would accompany the device, although they were not all impressive. The Dreamcast, particularly, played host to innovative titles and the PlayStation 2's launch lineup could not compete. However, SEGA's console manufacturing branch would falter and the PS2 would take advantage of this development. SEGA would produce software for the PlayStation brand, bolstering their already large library. Microsoft's original Xbox, released in 2000, also tried to compete with the PS2. However, the price and the install base of the PS2 quickly dismantled those chances.

The issues surrounding the PS2 were primarily related to hardware production. The PS2 had memory card problems that diminished Sony's stock. They also could not produce enough consoles to reach the demand. It sold out in Japan at 600,000 units. An individual in Japan, specifically Akihabara, even killed himself when he could not grab one. A more pressing matter, however, was the lack of software sales. Many individuals were simply purchasing the system for its DVD playback abilities.

The system would release in the USA on October 26 and Europe on November 24 during the year 2000. Originally supposed to ship with around 1 million units, the PS2 shipped to America with 500,000. Software sales would be solid for a launch title. Madden and Midnight Club would sell well with Madden pre-selling 40,000 units. Europe was also plagued with shortages in terms of hardware. The European shipment was only 80,000 units. Advertising and currency exchange rates (it was 299 Euros) also had issues leading up the European launch.

Despite mounting criticisms from a few developers and some reporters, software would pile up for the PlayStation 2. *Grand Theft Auto III*, a game built upon the pop culture of the time, would carry the PlayStation 2's sales. The game system would have all genres covered like the original PlayStation. *FIFA* and *Madden* would buoy the sports genre while titles like *Metal Gear Solid 2* and *Devil May Cry* would cover action. They even covered the kids with games like *Jax and Dexter*. The USB port allowed for tech-savvy minds to develop peripherals like the *Eye Toy*, used for voice recognition and motion control. These titles and the dominance of the ever-increasing install base compared to its competitors made the PlayStation the best place to play in the early 21<sup>st</sup> Century.

As the PlayStation 2's era came to a conclusion, the system reached impressive numbers. The console had a vast library: *“PlayStation 2's vast library of games from all genres for all types of audiences will grow to nearly 1,900 titles this year”* (SCEA 2010). Even more, the system sold an unprecedented 136 million sell-in units across the world. In 2008 *“PlayStation 2™ became the first system in history to reach the 50 million sell-in unit sales milestone in North America, making it one of the most successful technology products ever.”* Around 250 of their titles gained “Greatest Hits” status. Sony brought gaming to the forefront of entertainment. Time would tell if this success would continue in their future endeavors.

### **Microsoft Enters the Arena**

Four men thought that Microsoft should enter the home video game console competition. Their names were Seamus Blackley, Kevin Bachus, Otto Berkes, and Ted Hase (Marshall 2013) These four men would nervously pitch their idea to company head Bill Gates. The console's code name was the DirectX Box because it was being run on DirectX. The men were positioning the system to be built like a PC. They would also integrate a version of Windows 2000. They would come up with the idea to shorten the name to “Xbox,” though they initially felt the name would flop. The name would gain traction in their focus groups and they would go public with their console two years later.

Bill Gates unveiled Microsoft's home video game console vision at the Game Developers Conference in 2000. He told the world snippets of their superior hardware specs and how they would integrate online play and downloadable content in the future.

Critics were wary though and they only saw a PC in a console body. The next step would be acquiring games and marketing the product.

Microsoft was well-equipped to acquire games and market their new product. At E3 in 2000, they would purchase Bungie Studios for approximately \$30 million, who would transform their game into a first-person shooter and call it *Halo*. This would be a momentous purchase that would legitimate the platform for years to come. As for marketing, Bill Gates and Dwayne “The Rock” Johnson would unveil the system at CES 2001. Next up would be launch.

One million people picked up the console in its first 3 weeks. The reason behind this success was what is commonly referred to in gaming as a “killer app,” A killer app is a valuable computer program or video game. *Halo* was Xbox’s killer app. The game would sell 1 million units in its first few months.

The Xbox would later launch in Japan and Europe in February and March of 2002 respectively. The system did not sell as well in these locations: “*Only 123,000 Xbox units sold in the first week of release validating Microsoft’s fear that the system would have a tough time breaking into the notoriously difficult overseas marketplace.*” The high manufacturing costs were catching up to the company. This prompted a price drop from \$299 to \$199 on April 18, 2002. Doing this allowed them to put their product in more homes and sustain the life of the Xbox brand.

The most important development for the Xbox brand happened during August of 2002, when Xbox Live went up. This was an online service for Xbox owners that allowed people to play online using a broadband connection. In its first week, there were around 150,000 subscribers to the service, marking it a success. Subscribers could download

maps and play versus their friends in online play. Connecting with strangers on the internet via gameplay was new to console gaming and it genuinely changed the landscape of video games in the years to come.

*Halo 2* was the largest entertainment release of all time when it came out in November 2004. It trumped all movies, television shows, books, etc. This was the day when people across the world acknowledged the game industry as extremely profitable, especially in regards to software sales. The game was popular because of its vast and deep multiplayer mode. People could play with their friends online and even rank up for doing so. Furthermore, the campaign boasted the iconic Master Chief and a cliffhanger for a sequel. The game would go on to sell \$125 million in the first 24 hours. The game, coupled with Xbox Live, validated Microsoft's place in the video game marketplace.

As time went on and the Xbox's technology became more obsolete, Microsoft looked towards their next iteration codenamed Xenon. It would be announced as the Xbox 360 on May 12, 2005. They planned on releasing the console in November. This release date would give Microsoft a jump on competing Sony and Nintendo platforms. The original Xbox would be phased out. Production would cease. The original Xbox would eventually sell a total of 24 million units. Digital Trends compares its sales figures with other consoles of the generation:

*"It was nowhere near the sales totals of the PS2, which went on to sell over 153 million units, but the Xbox did outsell both Nintendo's GameCube (which sold 21.6 million) and Sega's Dreamcast (which sold just 10.6 million)."*

Xbox Live on the original Xbox would be terminated in mid-April of 2010.

The next generation Xbox 360 was a success upon its release. It shipped 1.5 million units worldwide to sellouts and hardware shortages in retail outlets. The only



country where they had less success was Japan, a country the company struggled with during the last generation. However, amidst all the success, the company faced some major problems.

Early adopters of the console faced hardware failures. Infamously labeled the “Red Ring of Death,” the console would die upon seeing a blinking,  $\frac{3}{4}$  red circle on the device. Hardware issues plagued a lot of the consumers early on and became a costly mistake for Microsoft in the years to follow. They had to extend their warranty by three years for that version of the hardware and fix the issues free of charge. This cost the company approximately \$1 billion according to Computer World (Keizer 2007) and Forbes (Rosmarin 2007).

However, this did not impede the high sales figures of the Xbox 360. By January 2010, the console had sold around 39 million units (Marshall 2013). A motion control device by the name of Kinect would be pushed in 2009 and a redesign of the system would come out in 2010 in mid-June with added Wi-Fi functionality, better specs, and additional USB ports. This new redesign would be labeled the Xbox 360 S. By September 2012, it was announced by Microsoft that they had sold 70 million Xbox 360 units worldwide (all versions) and by December 2012, that number had risen to 75 million. These sales, at the time, were ahead of Sony by 5 million units and behind the Nintendo Wii by 25 million units, although the Wii was more cheaply priced.

Microsoft’s programmers and software engineers plotted course for uncharted territory. They created a high-end box that was doubly as powerful as any home console device at the time. They built an online infrastructure in the home that the world had never seen. Xbox Live will remain Microsoft’s greatest feat in the video game space for

the years to come. This idea of connecting boxes, derived from a book called *Snow Crash* by Neal Stephenson that J Allard had read, would come true for Xbox and gamers worldwide. The company crafted third-party relations to avoid other console manufacturer's missteps in an industry where they had no previous experience. The Xbox brand would be here to stay.

### **Conclusion**

Video games started out as an experiment. Nobody in the 1950s thought video games would become as sophisticated and lucrative as they are today. Nobody even suspected there would be a large enough market for the industry to thrive. Atari changed all of that with *Pong*. Though most of the games during that time frame were *Pong* clones, it attracted a wide array of engineers and programmers to the industry. Perhaps the most notable company drawn to the industry was Nintendo.

Nintendo, initially a card company, brought the industry back from its collapse in 1983 with the Famicom and NES. Like Atari did with *Pong*, Nintendo showed the reach of the industry. 7 million consoles were sold to consumers over the 3 years it was on the market. Through its marketing as a toy, Nintendo enraptured the youth of Japan and North America. Nintendo's 90% market share during that timeframe is indicative of this trend.

Sony brought gaming to mature audiences. Instead of marketing their products and games to young children, they appealed to older demographics. Instead of fairies and mythical creatures, Sony invited players to partake in mature storylines and subplots.

Furthermore, Sony ushered in the era of the Compact Disc. The Compact Disc allowed creators to make more extensive and detailed adventures.

Microsoft took this one step further by inviting players to interact with one another in the console space via Xbox Live and online play. With *Halo 2* and other titles, players could squad up with their friends from down the street or across the world and compete against other teams. This gave the industry a social element it was sorely lacking since the years of arcades.

This evolution of the console industry allowed gaming to hit mainstream. Consoles made gaming affordable. With each new console, technology improved. It has developed to the point where today, game creators can mimic human expressions and players can interact with other players across the world in latency-free online environments. Designers can facilitate decision-making arenas for the player, basing their narrative solely on the attributes and values internal to the player. These experiences require time and emotional investment from the player. Furthermore, it requires resources and artistic ability from development teams. In the next chapter, specific experiences will be unraveled and the value of gaming as an art form will be explored.

### Chapter 3

Games provide different experiences than movies, books, films, or poetry. Instead of reading or watching passively, gamers are actively engaged in the actions of the plotline. Instead of debating the moral implications of a decision while the plot continues without them, gamers can stop and mold the plot in their own ways. Some games with a linear narrative force players to do things that they do not want to do in order to progress the plot. Other games force gamers to interact and socialize with other gamers across the world to complete an objective in an online setting. In these ways, games provide a unique and valuable experience to its players.

In this chapter, some of the best narrative-driven experiences in gaming in the last decade will be explored in order to qualify the creative value of the medium's form of expression against traditional media. This chapter will show how games have evolved their storytelling mechanics over the years. Understanding where game narrative is today is essential to understanding the controversy surrounding the rest of the medium and the decisions made by the Supreme Court in *Brown v. Entertainment Merchants Association*.

#### *Under the Sea*

The player takes a bathysphere down under the sea after the player's plane crash lands near a lighthouse. Bobby Darin's "Beyond the Sea" plays on vinyl. A video plays. A character named Andrew Ryan proclaims some nonsense about a man being entitled to the earnings of his hard work. He goes on about how Washington would have given those earnings to the poor and the Vatican would have given those earnings to God. Andrew

Ryan goes on to describe his underwater, dystopian city while the player watches the buildings come into focus and whales traverse the watery landscape.

It is in this one 3-5 minute segment that the magic of the medium of video games comes to life. The developers of this widely acclaimed first-person-shooter were heavily influenced by a writer-philosopher by the name of Ayn Rand. Ayn Rand wrote a book called Atlas Shrugged primarily focused on objectivism, “*one of several doctrines holding that all reality is objective and external to the mind and that knowledge is reliably based on observed objects and events.*” Rand also concentrated on the nature of the elite in an economically stratified society. This book is one that has garnered positive critical reception some years after its release in 1957. Atlas Shrugged is taught in some classrooms as well. Providing young children the tools to think and analyze a plot centralized around these concepts has the capacity to be more effective than traditional schooling.

Fast forward to the end of the plot and the player is in the same room as the man introduced at the beginning: Andrew Ryan. An unknown guide named Atlas has tasked the player over an earpiece with killing Andrew Ryan. Andrew Ryan is practicing his putting with a golf club at this point. He glances up to the player and asks him, “What separates a man from a slave? A man chooses, a slave obeys.” He goes on to reveal to the player that the player has been forced to do everything in the game by a simple phrase from Atlas: “Would you kindly...?” He then proceeds to test the player’s fortitude by saying that phrase and ordering him to kill him. The game forces you to kill Andrew Ryan to proceed. To do so, the player must whack Andrew Ryan in the head four times with a golf club with a pause between each one where Andrew Ryan reiterates his line

that a man chooses and a slave obeys. The game would end with the murder of Atlas, the instigator of this murder, but this remains as one of the most powerful moments in all of gaming.

The developers at what was originally called 2K Boston and now called Irrational Games, criticized the entire industry with this conclusion. At the time, most games forced players to complete certain tasks in order until the game said it was over. The player never questioned why and completed the objectives diligently until the game's credits surfaced. This game, through its narrative, criticized this approach even though there was little choice in the overall plot. With the introduction of this plotline into the masses, developers attempted to expand player choice in their games. Instead of having a linear plotline, games started to have branching plots where players could choose their own ending based on the decisions that they made. Player choice remains as an essential component of modern game story-telling.

### **Mass Effect Trilogy**

I am Commander Shephard. I am the leader of a large spacecraft known as the Normandy. I have several crewmates who have backstories and unique personalities. Some of the female members of my team are vying for my affection. The end of the universe is coming from an enemy threat known as the Reapers. Generations-old conflicts are arising and I am the man who must resolve them. If the universe cannot figure out the solution to these problems, then those planets involved in said universe are sure to perish.

This is a game based on decision-making and relationships. Each conversation I have with a non-playable character (NPC) has a wheel of choices as to what my character can say attached to it. Some of these phrases have negative and positive connotations attached to them. Furthermore, in some scenarios, I have a choice of intervening in violent, passive, or nonresponsive ways. I can kill essential members of the plot. It is a game centralized around the player controlling Commander Shephard. The mindset of that person and the connection he/she makes with other characters will affect the plot of the game in drastic ways. This is a non-linear story that can only be present from within the video game medium.

This approach to storytelling differentiates itself from other forms of media. In movies, the observer only watches as the story unfolds. In books, the reader can only turn the page and read on. Games give the players the power to decide their character's fate. Players have an active role in determining the plot and the direction of the narrative.

### **The Island**

I am tied on a rock near a cliff. I just woke up. I am bleeding, rattled, and scared. I am Jason Brody and I have just been kidnapped by Vaas (voiced by Michael Mando), a drug warlord in the fictional Rook Islands between the Indian and Pacific Oceans. He says to me, in perhaps one of the best monologues in all of gaming:

*“Did I ever tell you what the definition of insanity is? Insanity is doing the exact... same fucking thing... over and over again expecting... shit to change... That. Is. Crazy. The first time somebody told me that, I dunno, I thought they were bullshitting me, so, I shot him. The thing is... He was right. And then I started seeing, everywhere I looked, everywhere I looked all these fucking pricks, everywhere I looked, doing the exact same fucking thing... over and over and over and over again thinking 'this time is gonna be different' no, no, no please... This time is gonna be different, I'm sorry, I don't like... The*

*way... ... you are looking at me... Okay, Do you have a fucking problem in your head, do you think I am bullshitting you, do you think I am lying? Fuck you! Okay? Fuck you!... It's okay, man. I'm gonna chill, hermano. I'm gonna chill... The thing is... Alright, the thing is I killed you once already... and it's not like I am fucking crazy. It's okay... It's like water under the bridge. Did I ever tell you the definition... of insanity?" (IMDB 2013)*

I am kicked into the ocean and I must wrestle with my controller to escape the rope that is tied to my hands and feet underwater. This scene can only happen in gaming, but why?

Movies, books, songs, and plays can all have monologues attached to them. But in each of those mediums, the reader or observer is not actively involved. The main character in a video game is the player. Everything done by the character is inexplicably linked with the player. The perspective of the character is inherently that of the player. That character's ups and downs are the player's as well. Before all of these events transpired in the game, Jason Brody was shot with a bullet by Vaas after the helicopter he tried to escape the island in crashed and fell. That bullet hit a zippo lighter in his pocket. This experience of escaping and being caught again by a mad, villainous figure such as Vaas is frustrating and scary. It prompts a rivalry between the player and Vaas. The player aches vengeance against Vaas. When the player does get the chance to murder Vaas in the end, it is cathartic to the player because of the struggles he/she went through playing the game.

### **Shanked!**

I am a part of a secret organization known as the Assassins modeled after the historical Assassin's Order. Our enemies are the Templars which are modeled after their real-life counterpart. I am in Renaissance Italy. My assassinations revolve around



important figures such as Niccolo Machiavelli, Rodrigo Borgia, Cesare Borgia, Lorenzo de Medici, and Leonardo da Vinci. They side with one of these two factions and work to spread the influence of their own.

*Assassin's Creed* is a video game franchise with numerous titles attached to it. As of March 2013, the series has sold over 55 million copies. This was before the release of its most recent iteration, *Assassin's Creed IV: Black Flag*, a take on the age of pirates. This series has enraptured the youth across the world. If this game has seen so much success, then perhaps there is a way to educate the children through this medium.

Professors in Political Science classes generally assign Niccoló Machiavelli's *The Prince* to students. A lecture covering the Italian Renaissance accompanies this assignment, going over the key players and events of the era. But what if this lesson took place in an interactive setting? The *Assassin's Creed* franchise does this successfully. It meshes historical fact and fiction. Some children might not see anything past the violent nature of the plot. But what if some did? *Assassin's Creed* provides these curious minds with a Codex. If a player approaches a famous landmark in Renaissance Italy, the Codex will be updated to provide the player with biographical data regarding that landmark. This Codex extends to historical events and people. This Codex provides the player with the ability to acquire information without the air of fiction present in the rest of the game. In this way, the Codex acts as an encyclopedia for those interested in reading it.

The *Assassin's Creed* franchise poses a serious question to critics of the violence of the video game medium as a whole. What if that graphic violence could incite curiosity? If game developers plant history, literature, film, music, etc. in violent games,

this impetus to research the subject related to games could be feasible because of new developments in technology. Characters look as real as ever and interact with the world with the appropriate physics. Emotions can be shown through these games. Tears, anger, and happiness can be exhibited through this new technology. Famous actors are becoming drawn into these games. Actors like Elijah Wood, Gary Oldman, Dennis Hopper, Christopher Walken, Ellen Page, Mark Hamill, Samuel L. Jackson, George Takei, Liam Neeson, John Goodman, 50 Cent, Sean Bean, Kiefer Sutherland, Patrick Stewart, and Seth Green (Danko 2013) have all lent their voices to video game characters. Games are becoming a part of pop culture.

### *Hoorah*

I am on a boat. There are many other boats around me. I am dressed in uniform as are my compatriots aboard the boat. We are approaching the beach of Normandy. There is a man next to me who is vomiting uncontrollably. Another man is holding the cross around his neck, praying to his God. These men know they will likely not survive this invasion. As I hear the machine gun and mortar fire, I start to agree with that sentiment. As we get closer, some of the men are shot down. The boat topples and I fall underneath the water. I surface, then frantically look around and swim towards the river. I avoid gunfire and mortar fire to find my teammates. This is the invasion of Normandy.

Many times children are forced to endure lectures on the history of World War II. *Call of Duty 2* brings all of those skirmishes to life in realistic fashion. The player takes control of soldiers in all fronts of the war. Locales include Tunisia, Stalingrad, and

Normandy among others. These battles give the player a look at what these historical events must have looked like.

Like the *Assassin's Creed* franchise, this game could be an educational force. Mowing down hordes of enemies may not be the most intellectually stimulating mode of grasping important historical content, but it may produce motivation within a student to dive deeper in the annals of their local library to uncover factual truths. One of John Stuart Mill's most impressive quotes in *On Liberty* summarizes this argument: "*The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error*" (Chapter 2). The success of any art form is not about if the content creator is right or wrong or if the audience perceives it as right or wrong, but whether or not that audience attempts to uncover a subjective or objective truth because of the artwork presented to them. In this way, Call of Duty and other video games can be instrumental in education and individual development.

### **To Live and Die in L.A**

I am driving my drop-top in the streets of Los Angeles. A rap song is playing on my car radio, while I talk to one of my fellow gangsters. We are meeting up with some members of our gang. We are going to attack a rival gang on their turf. Before we do that, I park my car at a fast-food restaurant. I walk inside and order a hamburger. Then, I order

a pizza and return to my vehicle. We then proceed to meet up and shoot members of the other gang to take over their turf.

*Grand Theft Auto* is one of the most popular games in the medium. Its latest iteration, *Grand Theft Auto*, had a budget of approximately \$260 million. The game made \$1 billion in three days (Graser 2014). Around 32.5 million copies of the game were shipped to retailers. The game is in demand, but why?

*Grand Theft Auto* mixes critically acclaimed gameplay, a consistently high-quality brand name, and a slew of pop culture references to sway members of a variety of demographics into purchasing the title. The team at Rockstar Games often incorporates movies and television shows into their games through missions and dialogue. This allows for more people to become attached to the games as a whole. As more people become attached to it, the more they talk about it and the more it sells and gains popularity.

*Grand Theft Auto* games are different than productions in other media because these games create a familiar world with the player at the center. *Grand Theft Auto: San Andreas* and *Grand Theft Auto V* take place in a fictionalized Los Angeles named Los Santos. *Grand Theft Auto: Vice City* has a setting in 1980s Miami. *Grand Theft Auto IV* is in a fictional New York City. These games give the player a sandbox and allow the player to do whatever he/she wants within that sandbox. In a movie or a song or literature, the audience must observe others' interactions with the setting. The audience is never allowed to participate. The audience is not given the freedom of choice. In games, players are able to take elements of those other mediums (plot, dialogue, music) and couple it with the interactivity that only games can provide.

## Implications

Video games are unique because they allow players to interact with the narrative. Games are at their best when they place players in the center of the action, giving them a choice in how the story unfolds. Other mediums do not allow their audience to shape the direction of the narrative. For some, interactivity in gaming is a source of controversy.

Games are different than other mediums because they let the player take control of the narrative through interactivity. Decisions made by the player alter the plot and player experience. In movies and television, the audience can only watch as the plot progresses. The audience cannot change the script. In books, the reader's only interaction with the plot is turning to the next page. Giving the audience choice empowers them. This empowerment through interactivity makes games different than other mediums.

If games are different than other media because of their interactive nature, then games can be singled out. It means that arguments against the medium will become louder. To appease the dissenters, games should be researched more heavily and scientists should seek to prove whether or not there is a causal link between game violence and real-world violence. In their studies, variables such as length of play, emotional attachment, and mental stability should be considered as well. Games might not be the cause of real-world violence, but they may play the role of desensitizing an instable individual to the point where he/she may consider it a viable option.

This unique element of interactivity and the implications that derive from it have been scrutinized by critics from the news media. Many individuals in the press have said that playing violent games can lead an individual to engage in real world violence. The

criticisms and analysis by these commentators on the industry will be investigated more thoroughly in Chapters 4 and 5.

## Chapter 4

### Background of the Case

California Senator Leland Yee (D) of District 8 introduced a law in 2005 that restricted the sale of violent games to those under the age of 18 (Salanga III 2010). He claimed that these violent games were harmful to children. His aim with the bill was to restrict minors from accessing these games. That being said, Yee was not very familiar with the medium. His opinion on the potential danger of the medium came from watching other people play. Yee acknowledged that video games were an art form. He did not want to ban the games in their entirety. The goal with the law was simply to restrict the sale of violent video games to those under the age of 18. California Governor Arnold Schwarzenegger signed the bill because it allowed the parents to become more “involved in the decision-making process” (Thorsen 2005).

Many supporters were behind Schwarzenegger and Yee after the Governor signed the bill into law (Brown 2011). Other groups and individuals in support of California in this case included Common Sense Media, The Eagle Forum, California Chapter of the American Academy of Pediatrics, California Psychological Association as well as the Attorneys General of Louisiana, Connecticut, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Mississippi, Texas, and Virginia. These were the groups that wanted to have video game ratings regulated by the state.

The second side belonged to the Entertainment Merchants Association. This side wanted to keep the voluntary ESRB rating system in place. They believed that games and violence had links with one another. They thought that the government should not have a

role in restricting these violent games to underage consumers. Various video game publishers came to support this side such as Activision Blizzard, Inc., Microsoft Corporation, and ID Software LLC. Members outside of the video game industry, such as the Comic Book Legal Defense Fund, the Motion Picture Association of America, and the American Civil Liberties Union, also showed their support by filing amicus briefs. Various First Amendment Coalitions and Free Speech groups also filed amicus briefs.

The ESRB (Entertainment Software Rating Board) is a voluntary rating system in place for the game industry. Games are labeled “Everyone,” “Teens,” or “Mature” (“E,” “T,” and “M” respectively). Occasionally there will be a rating labeled “AO” for adults only. Games are rarely rated “AO” because retailers like Wal-Mart and GameStop refuse to sell those games. Game developers are then inclined to edit the mature content out and send in a new copy in order to appease the ESRB team. “RP” stands for “Rating Pending” for games that have yet to go through the rating process. To review a game, publishers of the game send reviewers a copy of a DVD of the most graphic instances in the game. Three or more reviewers engage the material and assess what rating the game deserves. Full-Time reviewers represent the team of the Entertainment Software Rating Board (Sinclair 2007). If a publisher misrepresents their game, they can be fined up to \$1 million (Sinclair 2007).

In the proposed bill, California would have control over the rating system for video games. Generally this task was delegated to the Entertainment Software Rating Board (ESRB). It was, and still is, labeled an effective system in terms of rating games. The ESRB is often seen as a better system than similar ratings systems in other mediums such as movies. With this bill, the state of California would be responsible for rating



approximately one hundred video games a year, gauging each for violence. First, California needed to convince taxpayers to support the job of analyzing 100+ games every year to protect their children via tax dollars. After that, California would also need to define what makes a game violent. If the state of California had won this case, other states would likely would have likely made and passed similar legislation.

To determine whether or not a game was violent, it would have to go through a version of the Miller Test. The Miller Test is a way to determine whether or not a piece of speech or expression should be protected under the First Amendment. The Miller Test has three parts attached to it. All three must be satisfied in order to label an expression as obscene: “(a) whether *“the average person, applying contemporary community standards”* would find that the work, taken as a whole, appeals to the prurient interest, *Roth, supra, at 489, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value”* (Miller 1973). The Miller Test was created in the 1973 case *Miller v. California*.

In addition to making the Entertainment Software Rating Board irrelevant, the proposed bill would ban the sale of violent video games to children under the age of 18 (Boyd 2010). If this were to be violated, vendors would have been fined up to \$1000 dollars for each time that it happened. California State Senator for District 8, Leland Yee, introduced this bill because he strongly believed that there was a link between game violence and real-world violence in youngsters as a child psychologist.

### Majority Opinion

The Supreme Court agreed with the Entertainment Merchants Association. The majority of the Supreme Court believed that “*video games qualify for First Amendment protection. Like protected books, plays, and movies, they communicate ideas through familiar literary devices and features distinctive to the medium*” (564 U.S. \_\_\_ (2011)). In other words, the Supreme Court decided to keep games at the same level as film and books in terms of first amendment protection. Justice Scalia –author of the majority opinion - likened violent games children’s fables such as Hansel and Gretel and Cinderella. Furthermore, he touched upon some of the books high school students are required to read such as Homer’s Odyssey, Lord of the Flies, and Dante’s Inferno.

Justice Scalia also mentioned the issue of the medium’s interactivity. He likened the participation to the choose-your-own adventure genre of literature and concluded via a sentiment from Judge Posner that “*all literature is interactive*” and that “*literature when it is successful draws the reader into the story, makes him identify with the characters, invites him to judge them and quarrel with them, to experience their joys and sufferings as the reader’s own.*”

Justice Scalia then moved into whether or not the State could meet strict scrutiny. Scalia illustrated that a problem in need of resolution had to be identified. He explained that California’s examples of studies and research that allegedly proved that violent video games caused real world violence are unfounded and only proved a weak correlation. California relied on a decision in *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994). Justice Scalia said that California’s burden was much higher than in that case because that case “applied *intermediate scrutiny* to a content-neutral regulation.” He

discredited the research brought forth by California. He explained that the research only showed “miniscule real-world effects” as a result of playing these violent games. He said that the same effects can be attributed to children’s television shows such with characters like Bugs Bunny or the Road Runner.

This led into a discussion about the legislation being “underinclusive.” He felt as though California directed their disfavor towards the games industry as a whole instead of attempting to correct a problem. California did not attack people such as booksellers, movie producers, and cartoonists. The state attempted to only restrict games. Justice Scalia also mentioned that *“The California Legislature is perfectly willing to leave this dangerous, mind-altering material in the hands of children so long as one parent (or even an aunt or uncle) says it’s OK. And there are not even any requirements as to how this parental or avuncular relationship is to be verified; apparently the child’s or putative parent’s, aunt’s, or uncle’s say-so suffices. That is not how one addresses a serious social problem.”* He explained that the Entertainment Software Ratings Board had the responsibility of informing consumers about what types of interactions take place in the game. He added that the Federal Trade Commission said that the video game industry was ahead of other mediums like music and film in *“restricting target-marketing of mature-rated products to children, clearly and prominently disclosing rating information, and restricting children’s access to mature-rated products at retail.”* Justice Scalia believed that the methods proposed by California were overinclusive. The State’s proposed plan had its basis planted in what “parents *ought* to what” or what is morally right. This sort of tailoring was not narrow enough to result in any sort of First Amendment restrictions. In his conclusion, Justice Scalia said that “as a means of

protecting children” that the state law was underinclusive and “as a means of assisting concerned parents” it was “seriously overinclusive” due to its failure to acknowledge the parents who believed video games were “harmless.”

### ***Analysis of Majority Opinion***

Justice Scalia and the majority of the Supreme Court agreed with the sentiment that California’s proposal violated the First Amendment. In a lot of ways, this argument did not relate to the legitimacy of gaming as a medium. The Supreme Court did not condone these violent games. Through this decision, the Supreme Court simply acknowledged the medium was worthy of protection. With that being said, the phrasing of the majority opinion indicated that the Supreme Court felt that content within games was no different than content in other mediums. In this way, the Supreme Court indirectly qualified the medium as having some redeeming value to the consumer.

Justice Scalia’s approach of comparing video games to other mediums played an integral role in the case and the medium as a whole. He explained that games were like fables, books, movies, music, etc. He showed that some books, fables, and music had violent aspects as well. He then went onto mention that the ESRB system of rating games was more effective than other mediums’ rating systems. He basically said that games were ahead of other mediums in regards to keeping illicit material from minors. Furthermore, he dismissed the idea that because games were “interactive,” it somehow heightened the effects of its consumption. Scalia and the majority of the Supreme Court believed that all media was in some way interactive and that the more interaction involved, the better the media.

The Supreme Court did not go so far as to directly say that these games had value. Many of the Supreme Court justices found discomfort in the objectives and happenings within these games. They viewed the medium as vulgar and unnecessary. None of this really mattered because of the low bar of what deserves First Amendment protection. Most creative expression in the United States is granted First Amendment protection. Though this fact depreciates the value of this win for the video game industry, its loss would have been disastrous.

Justice Scalia and the majority opinion understood that games were unique in terms of the degree of interactivity, but teetered with regards whether or not they believed that interactivity to be positive. The majority opinion acknowledged that “all literature was interactive,” but video games varied in the magnitude of interactivity: *“As for the argument that video games enable participation in the violent action, that seems to us more a matter of degree than kind.”* Justice Scalia drew upon Judge Posner even further, when he agreed that interactivity in creative works was positive. Justice Scalia also quoted *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 818 (2000): *“esthetic and moral judgments about art and literature...are for the individual to make, not for the Government to decree, even with the mandate or the approval of a majority.”* Here, Justice Scalia and the majority opinion deferred judgment on whether or not they found the ideas and actions prevalent in interactive video games to be morally sound.

At the end of Section II, Justice Scalia drew upon Justice Alito’s argument. He said the “ideas expressed by speech...and not its objective effects may be the real reason for government proscription.” Justice Scalia meant that California brought this case to the Supreme Court because they feared the messages in these games. The State of California

was not upset by the nature of the interactivity in games, but merely the themes of violence present within games. Justice Scalia asserted that restricting artistic expression because of violent themes went against First Amendment laws.

If California's bill passed, the state would have been given the right to rate these video games and enforce the rules associated with it. Other states would have followed as represented by those states attorney generals showing solidarity in the measure:

*"...Louisiana, Connecticut, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Mississippi, Texas, and Virginia"*.

As stated by Justice Scalia, these measures would have been based upon some vague idea of what constitutes violence. He asked the important questions of when does violence become obscene or excessive. He asked whether or not a Bugs Bunny or Roadrunner cartoon could be considered violent? Then, he proceeded to ask about Sonic the Hedgehog and his antics in the games he was featured in. If California and other states had the capacity to restrict games to a certain extent, the medium would be compromised in some fashion. The states would have control of the messages in games and the creativity of the medium would diminish. Perhaps, as a commercial product, it would cease to exist if consumers lost interest in the propaganda pushed by the state.

### **Concurring Opinion**

Justice Alito agreed with the overall judgment on the case, but with some reservations. He agreed with Justice Scalia and the majority opinion in that though the state measure was "well-intentioned," that it was "not framed with the precision that the Constitution demands." He disagreed with the sentiment that these games are the same

as other mediums. He said “there are reasons to suspect that the experience of playing violent video games just might be very different from reading a book, listening to the radio, or watching a movie or television show.” In other words, he felt as though the effects of the medium might not parallel those of other mediums. He thought that the Supreme Court should proceed with this new technology with “caution” because of the lack of knowledge surrounding its effects on minors who invest a great deal of time into it.

The two primary issues Justice Alito had with the measures taken by California was the lack of fair notice and the proposed measure’s “impermissibly vague” definition of violent. Justice Alito contended that there needed to be a narrow specificity in regards to restrictions of expressive activity. In other words, the wording of any measure attempting to prohibit any expressive activity must be narrow enough so that those with “ordinary intelligence” might understand. According to Justice Alito and the majority opinion, the proposed bill by California did not satisfy those requirements.

Justice Alito strayed from the majority in his view of the effects of the medium as a whole and its relationship to other mediums. He believed that it was too early to decide whether or not the medium was destructive to children based upon the lack of substantive research and its growing realism realized through evolving technology. He acknowledged that these games were moving into new realms of technology like 3-D and motion detection. He then proceeded to mention how much interactivity the players had in regards to shaping events within the game as a whole. Justice Alito commented on the fact that many games allowed players to make decisions that alter the story and world within the game. He believed this level of interactivity was fundamentally different from

other mediums and used the International Game Developers Association (IGDA) to validate that perspective, who said that video games were “far more concretely interactive.”

He then proceeded into a hypothetical scenario, comparing the interactions with violence between different mediums. Justice Alito quoted the majority opinion: “literature, when it is successful draws the reader into the story, makes him identify with the characters, invites him to judge them and quarrel with them, to experience their joys and sufferings as the reader’s own.” He then drew upon the work of Dostoyevsky and compared the murder to an ultra-realistic example of murder within the video game space. He acknowledged this approach as taking in all of the characteristics of video games into consideration. He concluded by reiterating his belief that the Supreme Court’s decision was “premature” and “dismissive.”

In this way, Justice Alito viewed the interactivity prevalent in video games as a negative. He claimed that violent, ultra-realistic games could severely impact children. He said “it also appears that there is no antisocial theme too base for some in the video-game industry to exploit.” Justice Alito picked obscure, niche independent games with small audiences to prove this point. He explained how in one of the games “the objective...is to rape a mother and her daughters” and another “the objective...is to rape a mother and her daughters.” Justice Alito concluded by asserting that games, through sophisticated technology, could “allow troubled teens to experience in an extraordinarily personal and vivid way what it would be like to carry out unspeakable acts of violence.”



### *Analysis of Concurring Opinion*

Justice Alito simultaneously understood and misinterpreted the medium. He recognized the benefits of video games as whole and how the narratives of said games provided players with unique experiences. However, he failed to remain cognizant of the nature of the violence of these games.

Games today are ultra-realistic and that realism is only going to increase with technological advances, commercial success, and increased distribution channels. This realism permeates into the sphere of interactivity. Games frequently are asking players to make decisions that have lasting consequences in the world of the game. In a game like *Skyrim*, players can decide to just kill Non-Playable Characters (NPCs). There is no prompt or story attached to this profound act. The player decides the things he/she wants to do in an open-world sandbox game like *Skyrim* or *Grand Theft Auto V*. A game like *Fallout 3*, as explained above, allows the player to decide whether or not to make a sum of money or destroy an entire town with a nuclear bomb.

Violence does not necessitate a lack of creative value. In many mediums, violence draws a link to the heart and captivates the audience. A re-creation of the horrors of Auschwitz in film might prompt tears and frustration from the audience. This becomes even more realistic and substantial when the player is participating in the madness. The scene in *Bioshock* discussed earlier is an example of this. The betrayal of Atlas and the player's forced murder of Andrew Ryan were so effective because of the interactive elements of the medium of video games. The *player* carried out all of the orders of Atlas and the *player* murdered Andrew Ryan, who attempted to prove the point that "a man chooses, a slave obeys."

Video games do not exist in isolation. Many game developers take influences from popularized books, novellas, film, and children's fables. Telltale Games, Inc. makes games based on popularized television and comic book franchises such as *Game of Thrones* and *The Walking Dead*. *Far Cry 3* has a quote from *Alice in Wonderland* in between every act/chapter. *Spec Ops: The Line* was primarily influenced by Joseph Conrad's *Heart of Darkness*. *Batman: Arkham Asylum* is a 2009 action-adventure game based on a graphic novel written by Grant Morrison. In many ways, the violence exercised in games is derivative of these other mediums.

Justice Alito highlighted the evolving technological advances in the medium in order to justify that it was premature to dismiss these issues. By that logic, then perhaps regulation in other mediums such as film should be reconsidered as well. There is an abundance of IMAX and 3-D films in theatres in society today. These motion pictures, enhanced by computer graphics, increase the audience's interactivity with the film. In some amusement parks like Universal Studios in Orlando, this interactivity in film increases in scale to include stimulation of other senses such as touch and smell.

### **Justice Breyer's Dissent**

Justice Breyer dissented from the majority on this case. He believed, primarily, that the law California proposed was legitimate. The proposed law did not prevent children from playing these violent games nor did it prevent the parents or adults from purchasing them. He said, "*All it prevents is a child or adolescent from buying, without a parent's assistance, a gruesomely violent video game of a kind that the industry itself*

*tells us it wants to keep out of the hands of those under the age of 17.*” In his view the industry would not suffer any harm if the California law were enacted.

Justice Breyer believed there was a strong difference between games and other forms of expression. He mentioned that games require physical activity via button-presses: *“A typical video game involves a significant amount of physical activity.”* This was Breyer’s most direct response to the majority opinion of this case, which said that games were similar to other mediums in regards to interactivity: *“all literature is interactive.”*

Although Justice Breyer felt this way, he also explained that video games can be utilized for teaching. He brought up a video game used by the military to teach soldiers perform tasks necessary to their job. It allowed them to find a pattern and understand the process more thoroughly than a standard lecture. However, Justice Breyer went on to say that this method of teaching can be “put to less desirable ends” and “harm can ensue.” He believed that the interactivity of the medium can go further than other forms of expression in causing real-world violence: *“extremely violent games can harm children by rewarding them for being violently aggressive in play, and thereby often teaching them to be violently aggressive in life.”*

Justice Breyer relied on research and analysis regarding the relationship of aggression and video games to make said arguments. However, at the end of his list of source material, he explained that there were *“Experts [that] debate the conclusions of all these studies”* and *“some of those critics have produced studies of their own in which they reach different conclusions.”* That being said, he quickly deferred to a series of joint quotes from a variety of research institutions regarding the topic of interactive

entertainment and aggression. He suggested that the majority opinion should have sought deference to a member of elected legislature due to the lack of information they have to go on.

He believed, unlike the majority opinion, that the voluntary ESRB rating system done by the industry did not adequately protect minors from illicit material and that there was a “*compelling state interest in “supplementing parents’ efforts to prevent their children from purchasing potentially harmful violent, interactive material.”*” He quoted Federal Trade Commission statistics from 2004, seven years prior to the year of the case in 2011, as evidence of the ESRB rating system’s deficiency. He argued that the industry could “easily revert back to the substantial noncompliance that existed in 2004, particularly after today’s broad ruling reduces the industry’s incentive to police itself.” Justice Breyer did not see the merit in the ESRB system and believed that California’s proposed law was a better alternative.

### *Analysis of Breyer’s Dissent*

Breyer’s argument rested upon his belief that games had the capacity to promote real-life violence because of the medium’s interactive elements. This is simply not the case. As the majority opinion established, games can only enhance the plotline of a given narrative or a specific set-piece. A piece of art replicates an event or transcribes the artist’s perspective/interpretation of an event. Video games do the same, but do so with technology in an interactive setting. Instead of a picture of the gruesome nature of World War II, players are placed in the middle of the mortar fire on Normandy. Instead of reading Objectivist philosophy by Ayn Rand in a book, they are presented with an interactive, fictional character named Andrew Ryan who follows Ayn Rand’s philosophy.

Justice Breyer also seemed to insinuate that the education element of gaming can manifest itself in terms of real-world violence. He started off by mentioning that these games can educate the military, but then quickly reverted back to his overarching negative tone towards the medium as a whole. He said that games reward violence and that some individuals might believe that this is the case in the real world as well. In other words, these people might feel as though they will be gratified upon murdering or violently hitting another person.

Games treat violence in two major ways. First, games treat violence as means to accomplish a given objective. There are a variety of objectives in the narrative of each game. For example, in *Call of Duty 2*, one of the tasks is to destroy an AA gun in a military conflict during World War II. At the end of *Gears of War*, the player is supposed to defeat (kill) General Raam, an alien leader of the Locust Horde. Games also treat violence as a means to exploit the sandbox nature of the game itself. An example of this lies in *Saints Row* and *Grand Theft Auto V*. In both of these games, the player can participate in vehicular manslaughter, mowing down hordes of pedestrians in SUVs, trucks, sports cars, etc. Most times, this is completely unrealistic violence. Running someone over in a car launches them 100 feet into the air or makes the character model become a complete ragdoll using the Havok physics engine. This violence is almost comical in nature.

To say that game designers do not seek ways to enhance the murder experience would be a falsehood. Frequently, game designers push their animation departments to make more memorable death sequences and kill moves. In *Ryse: Son of Rome*, the back of the box says “over 100 executions” as a feature of the game. *Call of Duty* frequently

touts its arsenal of weapons available to players in its multiplayer mode. Entertainment is always at the center of this interactive medium and murder is a popular route to take in regards to entertainment. This is the case in almost every medium. Rap songs illustrate bullets flying in “hoods” across America, while movies portray the violence of megalomaniacs like the Joker.

Another important part of Justice Breyer’s dissent was his approach towards the studies of the medium and the research that “proves” that violent games were inexplicably linked to real-world violence. He believed that what these researchers were saying was accurate, but also acknowledged that these studies were not conclusive and that there were numerous critics of those studies. That being said, his endorsement of the studies took place over the course of around two pages, while his acknowledgment of critics acted as footnote over 2-3 sentences. After this acknowledgment, he then proceeded to list off quotes from a joint statement from the American Academy of Pediatrics, the American Academy of Child & Adolescent Psychiatry, the American Psychological Association, the American Medical Association, the American Academy of Family Physicians, and the American Psychiatric Association. Justice Breyer believes these studies.

### **Obscenity, The Miller Test, and the Media**

Community interests are intrinsic to the Miller Test. Two of the three prongs deal with whether or not the work in question violates social norms and expectations. The popularity of violent video games has ignited controversy within the industry and the

media covering it. However, the violence contained in video games is not obscene. It is not outside the norm of the narratives present in the news, television, and film.

Turn on Facebook. If statistics are correct, 86% of internet users from the ages of 18-29 are on it (Smith 2014). Statuses about *Game of Thrones* and *The Walking Dead* flood news feeds. They are the most popular new franchises in the television space. This is likely due to the obscene violence, gore, and mature content that is prevalent throughout each episode. *The Walking Dead* commonly has hordes of zombies depicted with blood-stained clothes and rotting flesh. *Game of Thrones* not only has violence, but it also has sexual content and themes as well. The first episode of the series includes incest and rape. As the episodes go by, acts of castration and homosexuality are portrayed as well. To think that these shows are only consumed by those in the 18-29 range would be naïve. Once a work hits the mainstream in the Internet age, most people can and will find a way to consume it.

Turn on CNN, NBC, ABC, and watch the news. The first picture will almost always be some war ravaged landscape. Violent acts will be put on display in order to accrue ratings. Perhaps the most recent example of this was the Boston Marathon Bombing. Videos and pictures were put front-and-center for viewers to eye. The death and injury count is generally across the headlines on newspapers and websites.

Film has always found a way to display some variety of violence. In the silent film era, bandits would frequently rob trains and shoot-outs would ensue. Westerns would pit cowboys and criminals up against one another in duels. Today, violence escalates with CGI. Aliens are massacred and enemies are busted by heroes and heroines via a green-screen. Today, that CGI violence goes further in 3-D and IMAX.

Interactivity is a primary concern with gaming. Individuals, even in the Supreme Court case, bring up notions that the interactive element of gaming differentiates it from other mediums. However, interactivity is central to every medium. Consider a book. To understand the plot, a reader must grasp the situation and the characters involved. Comprehension is an active process. Film and music only add to the interactivity of books and other forms of literature. By this progression and logic, it would seem as though video games are the most interactive platform for narratives. But is that such a bad thing?

Picture 1984 by George Orwell as a video game. You can play as Winston Smith. The game revolves around meeting and continuing a love affair with Julia. The player must sneak around Big Brother. Cut-scenes of torture are shown to the player as he/she nears the end. The threats of totalitarian governments are exposed. The city comes to life as do the drones of people in each Ministry and office.

The player would experience the entirety of Winston Smith's story arch. Emotional ties would be created between the player and the character of Julia. Fear would envelop the player as he/she was chased by Big Brother through the streets of London. Music catered to each scene would heighten the thoughts and emotions coursing through the player. These pivotal moments in classic storytelling could become interactive. Instead of paragraphs dedicated to explaining the landscape of fictional environments, the player could be placed at the forefront of the piece and explore the place on his/her own. Instead of explaining how characters feel through descriptions of their facial expressions, players could watch as the technology shows them.



Games can bring narrative to life. Games can enhance messages because of the nature of their interactivity. Players grow close to characters because of their experiences with them. More than that, games can provide players with the ability to satiate their curiosity via exploration. Imagine exploring Hogwarts School of Witchcraft and Wizardry from Harry Potter. The plot of that narrative could be shown rather than told. Audience interaction with plot and narrative is the new frontier for storytellers.

### ***The End Result***

This case was a landmark win for the video game industry. Games would not be regulated by states and would continue to be monitored by the ESRB rating system already in place. This means that game-makers would not be subjected to the restrictions of the government. The content of the games would not be judged or monitored by people with little to no knowledge of the medium or the industry. If this were the case, the results could have been disastrous to the industry. These regulations could have pushed the games industry out of the mainstream to niche status, similar to comic book culture today (Rousse 2011).

If games were regulated by the states as proposed by California, it would have set the industry below other mediums and forms of expression like movies. That decision could have also set the precedent for other forms of interactive entertainment such as 3-D or IMAX movies. This is why representatives of those other mediums like the Motion Picture Association of America showed their support for the Entertainment Merchants Association in this case. The film industry also operates on a voluntary system of ratings management with ratings including G, PG, PG-13, and R. Naturally, the Motion Picture

Association of America has a vested interest in suppressing government intervention of creative expression.

The majority of the members involved in the industry viewed this decision as a victory. Ken Levine, the creative director behind the *Bioshock* series said this of the Supreme Court decision:

*“It could have effectively made ALL games M-rated games, because publishers would have been rightly nervous about "under-labeling" their titles and facing the wrath of the state (or, more precisely, states, because a California law would have no doubt spawned up to 49 deformed siblings). A cartoon plumber lands on top of an anthropomorphic mushroom and crushes it to death? Hmmm. Better label it "M". This in turn would have discouraged the industry developing content for non-adults. Why bother, if you're just going to have to label it in a way which means it can't be sold to them? This would have the net effect of the industry under-serving children.”* (Reilly 2011)

Other leaders of the industry felt the same way. Ted Price, CEO and president of Insomniac Games (*Resistance* and *Ratchet and Clank* franchises), said *“The decision further underscores the importance of videogames as a culturally significant form of artistic and creative expression.”* The Senior Vice President of Operations of GameStop, Mike Dzura had this to say of the decision: *“...As the leading retailer in ESRB ratings compliance, GameStop continues to believe that the video game industry's voluntary ratings system and our committed associates, not legislation, are the best ways to ensure age-appropriate video games make it into the hands of our younger customers.”*

However obvious this support of the decision seems on the surface, the reaction to the case by members of the industry illustrates the significance and magnitude of this landmark decision by the Supreme Court of the United States.

## Conclusion

This case answers a lot of questions about the game industry. One, the game industry does not need to be regulated by the government. Two, the game industry is becoming increasingly relevant and lucrative in today's society. Finally, games deserve the same rights as other mediums, regardless of their supposed effects on children.

However, this case leaves many questions unanswered as well. Many of the Supreme Court justices never qualified the industry in any way. These Supreme Court justices never directly endorsed the medium. They never placed a value on the medium as a whole. They merely recognized it as artistic expression and deemed it worthy of First Amendment Protection. With that being said, the Supreme Court's job is not to place value on products, but to protect the provisions of the Constitution. What remains to be seen is whether or not the Supreme Court justices acknowledge the medium's unique communicative toolset.

Some members of the Supreme Court did touch upon the idea of interactivity. However, when they did, they only mentioned how these tools could incite violence or spur aggression. None of the opinions outlined in the case indicated that these Supreme Court justices understood how games could be positive with regards to individual development and education outside of a minor Army game reference.

They also seemed oblivious to the idea of social gaming. These opinions do not mention how games could instill skills in communication, teambuilding, and leadership. Games like the first-person shooter *Halo 2* (released in 2005) pit two or more teams of players up against one another to achieve victory by capturing an objective or killing more enemies than the other team. This requires strategy. Players must vie for map

control and work with one another to overtake the opposing team. Though the nature of the game is firmly based in shooting opponents, the competitive nature of the online, social space brings in an intellectual component as well.

The Supreme Court also did not come to a conclusion about whether or not game violence causes individuals to become violent in real life. The dissenters mentioned some studies that showed some correlation to violence. They mentioned that games were a higher risk for children because of their interactive elements. For the most part, the dissenters acknowledged that these studies did not provide enough proof for a causal link between real life violence and virtual violence. In the next chapter, I will examine high-profile shootings as well as assess the studies on the subject.

## Chapter 5

The most popular games today are violent and they exhibit this violence in many forms. There is the traditional first-person-shooter where an individual assumes the role of an unseen character and fires weapons at humans or monsters. This sort of shooting can also take place in the third-person. Another form of violent game is the fighter, where one player takes on the role of a character they see in the third-person, fighting another character until he/she is knocked out or dead. Then, there are the third-person brawlers. In these games, players take control of a character and fight endless waves of enemies. Game creators generally mix and match these types of games and genres to provide the most appealing product.

Some of these violent games have been played by those who have perpetrated real life violence. This connection has been brought up in the media several times. In this chapter, some real world examples of violence with connections to violent games will be explored. Examples will include the Columbine Massacre in Colorado, the Navy Shipyard shooting in Washington, D.C., and Sandy Hook shooting in Connecticut.

With these examples, the background of each event will be explained. With respect to the Columbine and the Washington Navy Shipyard shooting, information will be dispersed regarding the games claimed to be responsible. In the case of Sandy Hook, propositions from lawmakers will be discussed and analyzed. At the end, the recent studies on the links between violent games and game violence will be assessed.

## Columbine

On April 20, 1999 two individuals named Dylan Klebold and Eric Harris came to Columbine High School ready to open fire upon the students and faculty. They murdered twelve students and one teacher (Cullen 2004). Afterwards, the two killed themselves. Dylan Klebold and Eric Harris were rabid gamers. They even created their own levels. One of these levels included alterations where two players had unlimited ammo, extra weapons, and helpless victims. Many critics felt as though this game led to the real-world violence at Columbine High School.

*DOOM* is a first-person-shooter developed by id Software. In this game, the player is tasked with killing monsters in a variety of corridors. The character the player controls has no name. The designer of the game, John Romero, said this is because the shooter is supposed to be the player. *DOOM* alongside *Wolfenstein 3D*, is credited with popularizing the genre as a whole. In fact, every game that came out subsequent to *DOOM* would be labeled a “*DOOM* clone.”

Important to this discussion of the Columbine shooting and its relationship to *DOOM* is the game’s art style. The graphics, at the time, were impressive. IGN describes *DOOM*’s visuals as “*super old, pixilated, sprite-based...*” (Perry 2006) in a 2006 re-release on Xbox Live Arcade. If a game is this stylized, can it really influence a person to murder real people? Throughout the game, monsters are the only enemies being killed. Human enemies are zombies called “former humans.” It is hard to imagine anyone making the leap from killing digital monsters in a stylized game to murdering classmates and faculty members.

The relationship between this game and the two perpetrators begs a question: If the game was popular and broke mainstream, then is playing *DOOM* indicative of anything outside of the norm? Assuming that millions of other players have played this game as the sales seem to exhibit, then many other individuals were left unaffected by the nature of the violence of the game. If it is true that *DOOM* motivates individuals to accrue aggression, then even a small fraction of that population of players would amount to thousands of murderers. If it is false, then the media must consider a much more complicated issue: dealing with mental illness.

The Columbine Shooting caused lawsuits against game-makers. Some of the companies included in this lawsuit were “Sony America, AOL/TimeWarner, ID Software, Atari, Sega of America, Virgin Interactive Media, Activision, Polygram Film Entertainment Distribution, New Line Cinema, GT Interactive Software and Nintendo.” The aim of this lawsuit was to change the marketing ploys of the gaming industry and prevent children from becoming murderers (Ward 2001). The case was dismissed in 2002 because “the makers of violent videogames and movies could not have foreseen that their products would cause the Columbine shooting or other acts of violence” (Baynes 2012).

### **Washington Navy Yard**

A man named Aaron Alexis shot and killed 13 people before being shot dead on September 16, 2013 (Allen 2013). Some of his friends revealed that he had been playing *Call of Duty* and *Resident Evil* for up to 16 hours at a time. Both of these games contain strong depictions of violence and murder. These friends seemed to imply that playing

these games for such an extended length may have influenced him to go through with the shooting at the Washington Navy Yard.

*Call of Duty* is a first-person shooter in the same vein as *DOOM*. However, it is aided with modern visuals and set-pieces with high production value. Players are often tasked with approaching enemies with stealth, stabbing them with their daggers from behind. Other missions common throughout the series involve sniping, slow-motion breach and clears, and vehicle-based endeavors. Infinity Ward, Treyarch, and now Sledgehammer Games give players the ability to play as experienced army men in exotic locales within a fictionalized, linear narrative. These narratives generally last between 5-10 hours.

Perhaps more important to the series is its focus on multiplayer since *Call of Duty 2*. *Call of Duty 2* was the first game in the series to implement an online multiplayer component. Players could be matched up throughout the world on Xbox Live when the Xbox 360 was released in 2005. In *Call of Duty 4: Modern Warfare*, the game warped from the WWII era to the modern day. Antique weapons like the M1 Garand and the Springfield were replaced with the AK-47 and Desert Eagle pistol.

If Aaron Alexis played for 16 hour sessions, he likely played multiplayer games with his friends. The narrative does not last that long and it probably would not have held his attention enough to warrant running through in one sitting. Furthermore, at that point, there had been around 7-8 *Call of Duty* titles released, each with similar narrative and cinematic structures. He also likely also played with friends given the game's sales figures. *Black Ops II*, the most recent game of the series at the time of the shooting, hit sales of \$500 million in 24 hours (Warman 2012).



Not much changed after the Washington Navy Yard Shooting. It spurred many of the same questions asked in previous mass shootings. Loose correlations between Aaron Alexis and video games were made. Rep Louie Gohmert (R-Texas) reiterated his stance that guns were not the problem. He even advocated for more guns around military installations and schools. He also mentioned a link between gamers and killing sprees. He said, *“it’s interesting that these people seem to have a common tie with extremely violent video games...if they have mental health issues and play extremely violent video games, they seem to have trouble distinguishing between what is reality and what isn’t”* (Bendery 2013). Brad Bushman, a researcher on the subject, said that the government should *“make it more difficult to get access to [video games]”* and *“...strengthen our laws against teens acquiring these games”* (Bushman 2013). Absent in Bushman’s advocacy for keeping violent games out of the hands of minors is his acknowledgment of the effectiveness of the ESRB system already in place. This system was deemed more effective than other industries in restricting mature content by the Supreme Court of the United States.

### **Sandy Hook**

Adam Lanza acquired three weapons. They were a semi-automatic AR-15 assault rifle, a Glock handgun, and a Sig Sauer handgun (CNN 2013). He wore a vest and entered the school, shooting the locked door. He entered two classrooms and killed 14 in the first, and 6 in the second. As the first responders arrived, Adam Lanza took his own life.

The 20-year old Adam Lanza played video games. The video games listed in the final report that were retrieved from his home include “Left for Dead,” “Metal Gear

Solid,” “Dead Rising,” “Half-Life,” “Battlefield,” “Call of Duty,” “Grand Theft Auto,” “Shiin Megami Tensei,” “Dynasty Warriors,” “GTA: Vice City,” “Team Fortress,” and “DOOM” (Report 2013). All of these games are violent in some capacity. Most of them are in the mainstream as well.

Connecticut Senator Chris Murphy (5<sup>th</sup> District) blamed the ordeal on the perpetrator’s ability to acquire weapons and video games (Spiering 2013). He said, “*I think there's a question as to whether he would have driven in his mother's car in the first place if he didn't have access to a weapon that he saw in video games that gave him a false sense of courage about what he could do that day.*” He believes that games provided Adam Lanza the bravery to shoot those civilians. Bravery is a complex emotion. To minimize his decision-making to one aspect of his life would be naïve. Many factors contributed to his choice to kill those people and end his own life.

The NRA argued against video games as well as a result of the Sandy Hook Elementary shooting. They displayed pictures and videos of a niche video game programmed in Shockwave called *Kindergarten Killers*. Executive Vice President Wayne LaPierre put the blame on online games like *Kindergarten Killers*. LaPierre went so far as to say that “armed security should be in every school” (Beekman 2012). Does putting more weapons in schools resolve potential violent scenarios? Regardless of whether or not Adam Lanza played video games, he grabbed real, physical weapons and shot up the school. Putting up a barrier between idea and action may prove more effective than banning a piece of media or putting violent tools in facilities that house hundreds of children.

Legislators began to introduce bills to the floor. “*Diane Franklin, a Republican from the Missouri House of Representatives, seeks to amend existing Missouri tax law with an ‘emergency clause’ that would apply a 1 percent tax on ‘violent video games’*” (Graft 2013). In the bill, anything classified by the ESRB as “Teen,” “Mature,” and “Adults Only” is considered a “violent video game.” The only problem with this is that many games that do not involve any murder or aggressive acts can be rating “Teen.” Skateboarding games like *Skate 3*, racing games like *Forza Horizon* and *Dirt*, and dancing games like *Dance Central 3* would all be considered “violent video games” and be taxed accordingly.

Democratic Rep. Jim Matheson also proposed a bill. In his bill, a retailer who sold “Mature” and “Adults Only” rated games to anyone below the ages of 17 and 18, would be fined a maximum of \$5000. This provision also makes shipping, distributing, and packaging games without ESRB ratings illegal. In this way, Matheson is not interested in changing the system already in place. The aim with this proposition is to enforce the system via the use of fines. This differentiates itself from the California law present in the *Brown v. Entertainment Merchants Association* case because the California law takes the act of classifying “violent video games” out of the ESRB’s hands.

### *Analysis*

All of these perpetrators played violent games in one form or another. But perhaps the most important variable in this discussion is the perpetrators’ age.

Most of these shooters are males in their early 20s. The games they played, according to police reports, are in the mainstream. These are all games that sold millions

of copies. These people likely played games in a *social* manner. They play because their friends are playing. Gaming is not a niche anymore. Over 82 million PS3s and 81.12 million Xbox 360s have been purchased worldwide (Platform Totals 2014). The Wii sold 100.95 million units. It is reasonable to assume that an instable, adolescent male might have bought a violent video game in order to fit in and socialize with his peers.

Games have direct benefits to players. They allow players, even those with mental illness, to communicate and work as a team with other people across the globe. It gives these people who feel as though they do not fit in a sense of community. Many individuals who marathon these games for around 16 hours like Aaron Alexis have issues in their real life. Having some escapist entertainment is a good way to relive the stress coming from those issues (Texas A&M International University 2010). For most people without serious, untreated mental disorders, games help ease the troubles of daily life.

The only conclusion that can be drawn from these factors is that young people play video games. The perpetrators were all males in their 20s. Most of the reports do not indicate how long these individuals played the games. Some of these shooters could have only played Call of Duty for a couple hours a week or month. Many people casually play World of Warcraft to socialize with their friends. Everything outside of this conclusion is based in speculation and assumption.

This does, however, beg the question of whether in-game violence influences real world violence. Researchers have looked to answer this question in their respective studies.

### *Studying the Influence of In-Game Violence*

Craig A. Anderson and Brad J. Bushman researched the “Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior.” In their study, they came to the conclusion that “a meta-analytic review of the video-game research literature reveals that violent video games increase aggressive behavior in children and young adults.” The article goes further in saying that “experimental and non-experimental studies with males and females in laboratory and field settings support this conclusion.”

To reach this conclusion, three different types of studies have been produced. The first involves experimental research: “participants are randomly assigned to view either violent or nonviolent media and are later assessed for aggression.” The second involves cross-sectional correlational research: “participants’ TV and movie-viewing habits and aggression are assessed at one point in time.” This attempts to establish some sort of link between media violence and real-world aggression. Finally, longitudinal research is explored: “TV and movie-viewing habits and aggression are assessed repeatedly over time.” This is supposed to establish a causal link between media violence and real-world aggression.

In an article with New York Times on February 12, 2013 (Carey 2013) Craig Anderson explained the results of his studies. He said, “None of these extreme acts, like a school shooting, occurs because of one risk factor; there are many factors, including feeling socially isolated, being bullied...but if you look at the literature, I think it’s clear that violent media is one factor...” In other words, Anderson is proclaiming that large-scale events like school shootings occur because of a variety of reasons, one being video

games. Other researchers like Christopher J. Ferguson disagree with this conclusion: “This is a pool of research that, so far, has not been very well done. I look at it and I can’t say what it means.”

This New York Times article goes on to examine some of the more concrete statistics revolving around violent youth offenders. It says “the number of violent youth offenders fell by more than half between 1994 and 2010, to 224 per 100,000 population, according to government statistics, while video game sales have more than doubled since 1996.” Researcher Dr. Michael R. Ward analyzed the week-by-week sales of violent video games and “found that higher rates of violent video game sales related to a decrease in crimes, and especially violent crimes.” The studies involving correlational results tend to go both ways, which begs the question of whether or not a causal link can be established.

### **Correlational and Causal Links**

Causal and correlational relationships between two variables have opposing definitions. A correlation simply implies that there is a relationship between two variables. A causal relationship implies that one variable produces a change in the other variable. Real-world violence and in-game violence have a correlational relationship.

Looking at the comments from Craig A. Anderson and his in-depth research, he claims that video game violence is a factor in causing real-world violence. These games likely spur desensitization to violent and aggressive acts. But what does that actually mean?

Media has been around for centuries. Violence has been portrayed to people across the world ever since the days of silent movies and children's fables. Violence appears every day in literature, the news, comic books, music, etc. Even in the Bible, acts of violence appear. Regardless of the medium, individuals are used to situations of violence. They become desensitized with each murder and bloody battle. However, like Christopher J. Ferguson of Stetson University said, this does not necessitate violent action from the individual exposed to such situations.

If violence is correlated to media violence, it would explain the age group of the more high-profile shootings of the past decade. Each shooter had at least some exposure to media violence. Perhaps these experiences numbed them to the concept of murder because they had seen and in a digital sense, participated in it, so many times. However, desensitization does not produce a murderer. If reading a book about a murderer made a person violent, then the entirety of Western Civilization would be in a Hobbesian free-for-all.

Causal links between media violence and real-world violence will likely never be established. Media may influence emotions associated with violence such as aggression. However, it takes a large leap to go from an emotion to an act of violence. To make that jump, an individual must have a high level of motivation and determination. Unfortunately, lack of mental and emotional stability as a result of poor network building and social group bonding can provide enough reason to propel these people towards these acts. And like many problems, the more difficult resolution is the one worth seeking.

### Summary of Studies

A number of studies have been compiled regarding the relationship between video game violence and real-world violence. These studies generally “*include experiments in which participants, usually college students, are randomized to play different types of video games and correlational studies in which participants are asked about their video game playing habits and then asked about their aggressive thoughts or behaviors*” (Ferguson 5). In this way, aggression is determined in a way that may be too broad to come to a valid conclusion.

Another key portion of these studies is how they measure aggression. Ferguson goes on to mention that “*outcome measures including filling in the missing letters of words (‘kill’ being more aggressive than ‘kiss’ for instance), giving consenting opponents in a reaction time game a burst of white noise or asking another person to eat spicy hot sauce*” (Ferguson 6). These types of studies do not adequately provide conclusive evidence of a link between games and real-world violence. Many researchers find these studies irrelevant or “unclear.”

In most of these studies, it is difficult to find the source of the aggression. A player may be accruing aggression based on the violent content embedded within the game or they may just be frustrated with the game. Video game controls require significant coordination and timing. Sometimes game creators litter their games with puzzles. Perhaps the aggression is due to the “competitiveness or frustration” that comes as a result of the difficulty of the video game.

Violent video game studies are not standardized. These studies “*may inform us more about what experimenters wanted to see rather than what actually happened*”



(Ferguson 7). These studies are dependent upon how a researcher acquires and measures information. If a researcher wanted to show that games are inexplicably linked to real-world violence, he/she could with unstandardized measures. Methodology problems like this invalidate much of the research on the subject.

In an article called “Do Video Games Kill? in *Contexts*, published by Sage Publications, Inc., Karen Sternheimer illustrated some of these methodology problems even further. Sternheimer said that the research done by the *Psychological Science* authors was research done by measuring “aggression in part by subjects’ speed in reading ‘aggressive’ words on a computer screen or blasting opponents with sound after playing a violent video game.” Sternheimer said later that “these measures do not approximate the conditions the school shooters experienced, nor do they offer much insight as to why they, and not the millions of other players, decided to acquire actual weapons and shoot real people.” Perhaps, as Sternheimer notes, this lapse in the research can be attributed to basing the studies off of the sole demographic of college undergraduates rather than troubled teens.

Anderson and Bushman exhibit one of these methodology problems highlighted by Sternheimer in September 2001 in “*Effects of Violent Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature.*” Anderson and Bushman went on “PsychINFO” and searched for terms like “video,” “game,” “attack,” “fight,” etc. This search received “35 research reports that included 54 independent samples of participants” (Anderson 356). They concluded, through searching on a database, that the “effect of violent video games on aggression is as strong as the effect of condom use on

risk of HIV infection.” Even at the end of the piece, Anderson and Bushman admit that “longitudinal research is badly needed.” All this research proves is that games and aggression are related to one another. This does not prove that one variable causes the other.

### *Other Studies*

There are other studies that envelop the topic of violent video games and real-world aggression. There was a three year study at Iowa State University on 8-19 year olds who played violent video games (Starr 2014). How much these children were monitored by their parents and their specific age were measured. To determine aggression, researchers would ask the children if they had violent thoughts or thought about acts of aggression. They found that as they grew older and matured, these children had less violent thoughts. However, they also found that those who played the violent video games had a “slightly increased chance that violent attitudes would prevail.” However, as Ferguson says at the end of the article, this study only shows a “loose correlation” or association. It would prove difficult to show causation for any form of media violence. There are too many outside factors.

Another study by Craig A. Anderson in “The Effects of Reward and Punishment in Violent Video Games on Aggressive Affect, Cognition, and Behavior” tested two games. One of those games was one that was primarily based in violence, while the other was nonviolent and competitive. The game that rewarded violence yielded more of an aggressive response than the one that was competitive and nonviolent. According to Anderson, this proves that violent aspects of games affect children’s aggression more

than the competitive aspect. Unfortunately, in this study, neither game is given a name. The audience does not know if the violent game in question is *Grand Theft Auto* or *Manhunt*. Games have varying degrees of violence and illicit material, like most films. Also, like the Iowa State University study, this does not prove that games cause real-world violence and aggression. All it suggests is that there is a link between increased levels of aggression and games. It proves that the two variables are related to one another.

Studies of the connections between violent video games and aggression are minimal in comparison to other subjects. Barack Obama, as a result of the increasing number of mass shootings, has invested millions of American dollars (Lejacq 2013) in research to improve our knowledge of the medium and its effects on our youth. However, conclusive data will be difficult to acquire. Media violence is, and can only be, just one small factor in these shootings. Individuals have to make the decision to actually go through with the violent act. Association between increased aggression and video game violence will likely be the only relationship that will be established.

## Chapter 6

### Conclusion

Games are becoming ubiquitous in today's society. Children today have access to games through smartphones, tablets, game consoles, personal computers, laptops, handheld devices, etc. Developers have better tools that allow them to create games quicker and with higher graphical fidelity because of improved technology and distribution models. Even if children cannot play the games themselves, they can watch others play them via Twitch and YouTube. The industry has become much more lucrative since the early days of Atari and Nintendo. People place financial value on the industry through their purchases. Consumer activity is indicative of market and perhaps artistic value.

The potential return on investment in the video game industry has allowed game creators the freedom to make games with messages. Games like *Far Cry 3* and *Bioshock* are narrative driven experiences developed by experienced studios. *Call of Duty: Modern Warfare 2* and *Grand Theft Auto V* are video games that have political messages embedded within them. This medium has developed beyond mere shooters and 8-bit, 2-D side-scrolling. 3-Dimensional, High-Definition games with voice acting and elaborate musical scores are commonplace in the realm of gaming. Games are now interactive, 12-hour movies that transport players into exotic realms and intricate plotlines. This development in interactivity has led to controversy and attempts to regulate the medium.

*Brown v. Entertainment Merchants Association* is a landmark case for the gaming industry. The majority opinion of the Supreme Court drew similarities between video games and other mediums. Justice Scalia likened the interactivity present in games to

fairy tales and classic books. The Supreme Court decided that video games should not be regulated outside of the voluntary Entertainment Software Ratings Board. Though they acknowledged video games as a legitimate form of expression, the narrative in this case was primarily focused on the law proposed and the broadness of First Amendment rights. This decision has not kept the industry out of controversy, but it did affirm that the industry was worthy of First Amendment protection.

Games offer a unique form of communication. Video games place players in the center of the narrative. Video games ask players to make decisions. They have the power to educate through visceral experiences and historical settings. Games like *Grand Theft Auto V* place players in familiar settings with contemporary music and themes. Books, movies, and television shows do not allow the player to alter the plot in any significant way. These forms of expression only ask the individual to become an observer to the events in the plot. Games force people to interact with the plot.

This mechanism of interactivity has been the source of the industry's success since the invention of the cathode ray tube experiment in 1947. It has also been a source of controversy for the medium. Games have become more realistic over time. This has made the violence in games much more life-like. Commentators have suggested a causal link between games and violence. As stated before, this research has been proven to be only correlative and inconclusive. The lack of conclusive evidence of a causal link between game violence and real-life violence further establishes video games as a legitimate form of expression worthy of First Amendment protection.

More research on the subject should be done. Perhaps research analyzing the social effects of playing games for extended periods of time should be prioritized.

Playing games may isolate a person from his/her friends or family, depending on the type of game he/she plays. This isolation could contribute to drastic decision-making. This research would not play a role in regulatory discussions as it only pertains as to whether or not games contribute to an isolated lifestyle. However, it would help in further understanding the relationship between in-game violence and real-world violence.

For now, the game industry is slowly becoming larger than any other industry. Blockbuster titles like *Grand Theft Auto V* and *Call of Duty* are earning billions of dollars over the course of weeks. The industry will continue to develop and mature as it becomes even more engrained in our culture. Interactive narrative will continue to improve as creators attempt to tackle more serious themes. Video games will only increase their value as a form of expression and validate my argument that they are deserving of First Amendment protection.

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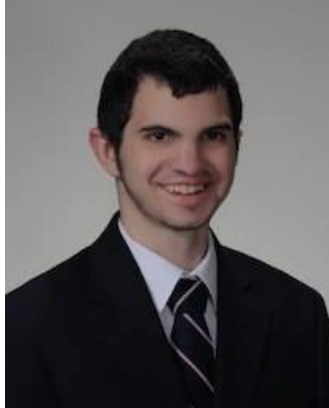
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## **Benjamin Cirrinone**



Benjamin was born with a cleft lip and palate on April 1<sup>st</sup> 1992 in Vorhees, NJ. He would live in Sicklerville, NJ until he turned 7, when he moved to Hampden, Maine. Here, he would acquire braces and an ear infection called cholesteatoma. This infection would take four surgeries to remove. Cholesteatoma left Benjamin half deaf until the summer before his sophomore year of high school. A titanium implant was installed and Benjamin would reclaim the hearing in his left ear. A pair of surgeries involving the deviated septum as a result of his cleft palate would ensue during two summers in his undergraduate career.

These struggles only pushed Benjamin to work harder. Throughout his entire career at the University of Maine in Orono, Benjamin worked part-time at the Wal-Mart Supercenter in Bangor as a cashier. He also joined an upstart fraternity called Alpha Tau Omega. Benjamin would become a Founding Father of the chapter of Beta Upsilon of Alpha Tau Omega in the fall of 2013. He also became a member of the Political Science Honors Fraternity, Pi Sigma Alpha, in spring 2013. After acquiring his Bachelor of Arts in Political Science and minor in Anthropology at the University of Maine, Benjamin will attend the University of Maine School of Law in Portland to acquire a Juris Doctor.