

APPLICATIONS

Vigilantism and the Rule of Law

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This paper presents an analysis of the ethics of vigilantism through the lens of the Rule of Law. For clarity's sake, the paper sets aside borderline cases and adjacent practices just as terrorism, doxing, and political assassinations in order to focus on classical vigilantism: the unauthorized use of violent force by a civilian to punish or prevent wrongdoing in community-minded pursuit of justice. The paper examines the prima facie defense of vigilantism to be found in the sense that true vigilantes seek to uphold the Rule of Law by, temporarily, ignoring the Rule of Law. It then examines formal, procedural, and substantive elements of the Rule of Law in order to attempt to help differentiate justified from unjustified instances of vigilantism.

*The philosophical literature on vigilantism as such, and on the ethics of vigilantism in particular, is remarkably meager: published papers and book chapters number in the single digits. Notable examples include work by Travis Dumsday¹ and a volume called *Batman and Ethics* by Thomas White.² There is, of course, a vast social scientific literature on vigilantism, seeking to define vigilantism, categorize examples and subtypes, and explain its causes and ramifications.*

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1. See generally Trevor Dumsday, *On Cheering Charles Bronson: The Ethics of Vigilantism*, 47 S. J. OF PHIL. 49 (2009).

2. See generally MARK D. WHITE, *BATMAN AND ETHICS* (2019).

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I. DEFINING VIGILANTISM

Extant definitions of vigilantism vary substantially. There are two key difficulties in arriving at a clear and uncontroversial definition of vigilantism. One is that the cases of vigilantism—or activities that we are all inclined to refer to as such—are so widely varied. Among what we might call the central cases of vigilantism are cases in which the activity in question is: carried out by a group (whether formal or informal), or by an individual; done covertly or in broad daylight in front of witnesses; lethal or minimally violent; done with substantial planning or more impulsively. Activities that merely involve information gathering in aid of identifying a suspect have also been referred to as a form of vigilantism. There is also important and interesting work done on “workplace vigilantism.”³ And if even so-called “ethical consumerism” can be referred to as a form of vigilantism,⁴ then the concept is seemingly very broad indeed.

The other definitional difficulty lies in the number of borderline or adjacent behaviours that might, or might not, be thought to constitute forms of vigilantism. Activities as varied as doxxing, snitching, the carrying out of a vendetta, assassination, lynching, neighbourhood watches, terrorism, defence of self-or-others, and various forms of protest can often have many characteristics in common with core cases of vigilantism.

The most widely cited definition of vigilantism comes to us from criminologist Les Johnston. Johnston⁵ defines vigilantism in terms of six characteristics:

- (i) it involves planning and premeditation;
- (ii) its participants are private citizens (not agents of government);
- (iii) it involves action that is, in some sense, part of a social movement;
- (iv) it uses or threatens the use of force;
- (v) it arises when an established order is under threat from the transgression of institutionalized norms;
- (vi) it aims to offer assurances of security to the community.

Johnston’s definition is popular, but it is not without its problems. The focus on social movements perhaps suggests too much focus on one sub-type of vigilantism that is historically important but rare in modern societies, viz., instances in

3. See Katherine A. Decelles & Karl Aquino, *Dark Knights: When and Why an Employee Becomes a Workplace Vigilante*, 45 ACAD. MGMT. REV. 528, 528 (2020).

4. Christian Barry & Kate MacDonald, *Ethical Consumerism*, 46 PHIL. & PUB. AFFS. 293, 293 (2018).

5. Les Johnston, *What is Vigilantism?*, 36 BRIT. J. CRIMINOLOGY 220, 220 (1996).

which a substantial subgroup within a frontier community band together to, for instance, lynch a cattle thief. Johnston's focus on the use of force can also be questioned⁶—economic harm can be just as dangerous and as physical harm, from the point of view of the person punished, and hence just as effective at achieving the vigilante's objectives, so it is not clear why we focus just on physical harm—but physical harm is certainly an aspect of core cases. Johnston differs from at least some other authors (such as Bateson, discussed below) on the question of legality. Johnston states that he “makes no assumption that vigilante action is necessarily illegal or extra-legal.”⁷ He avoids stipulating illegality or extra-legality roughly because, he suggests, it is sometimes hard to define what counts as legal. After all, when a jury acquits a vigilante, in spite of the evidence, should the behaviour really be thought of as illegal?

Johnston's definition has been refined by philosopher Travis Dumsday, in a way that is slightly more philosophically rigorous if not exactly concise. According to Dumsday:

Vigilantism is the organized use of violence or threat of violence by an agent or agents who are not willingly accountable to the state, for the purpose of controlling (preventing and/or punishing) criminal or noncriminal but still deviant actions; which violence or threat of violence is directed specifically against the perpetrators or alleged perpetrators of those actions, in accordance with the vigilante's own system of minimally defensible values, the motivation for which must include what the vigilante perceives to be a concern for justice or the good of the community.⁸

A more recent definition by political scientist Regina Bateson defines vigilantism more succinctly as “the extralegal prevention, investigation, or punishment of offenses.”⁹ One failing of Bateson's definition is that it leaves very much open the nature of the “wrongs or perceived wrongs,” against whom those wrongs were perpetrated, and who gets to decide that they are indeed wrongs. That means that her definition is broad enough to include cases of violent retribution (e.g., hunting down one's assailant, days or weeks later, and killing them) or the carrying out of a vendetta (e.g., killing the brother of the man who killed your brother). In fact, however, most of the social scientific literature on vigilantism is unified in asserting that vigilantism *per se* is always in some sense *impersonal*: it involves individuals or groups taking action in defence of a community's norms, rather than in defence of their own narrow interests. It is also noteworthy that Bateson (unlike Johnston and Dumsday) avoids stipulating the use (or threat) of violence. As noted above, that may be justified, but it also expands the concept very substantially in a way that may distract rather than illuminate. On Bateson's

6. See Chris MacDonald, *Corporate Leadership Versus the Twitter Mob*, in *ETHICAL BUSINESS LEADERSHIP IN TROUBLING TIMES* 264–79 (Joanne B. Ciulla & Tobey K. Scharling, eds. 2019).

7. Johnston, *supra* note 5, at 232.

8. Dumsday, *supra* note 1, at 58.

9. Regina Bateson, *The Politics of Vigilantism*, 54 *COMPAR. POL. STUDS.* 923, 923 (2021).

definition, keeping track of a neighbour's parking violations would likely count as vigilantism, as would protesting outside of the offices of a corporation that you think has behaved badly.

In previous work, I myself have defined vigilantism relatively briefly as “the attempt by those who lack formal authority to impose punishment for wrongs or perceived wrongs [which] typically . . . involves the use of violence.”¹⁰ This definition itself is perhaps too narrow, since it stipulates punishment (which is necessarily after the fact) when in practice vigilantism of the “core” type sometimes involves an attempt to prevent wrongdoing, rather than waiting to punish it.

II. NARROWING OUR FOCUS: WHAT KIND OF VIGILANTISM?

For clarity of exposition, this paper will focus primarily on a specific sub-type of vigilantism, namely the kind of vigilantism:

- that is carried out covertly (rather than in broad daylight),
- that is carried out by an individual or small group (rather than by either a mob or a network of individuals),
- and that involves violence (beyond the kind of force required merely to detain a suspect).

III. WHAT IS THE RULE OF LAW?

I take the core of the concept of the Rule of Law to be comprised of a set of values and principles according to which a community is to be governed, the most central of which is a refusal to permit the arbitrary exercise of power. Following Waldron, I understand the Rule of Law to have at least formal elements (such as those implied by Fuller's internal “morality of the law”)¹¹ and procedural elements (concerning the process by which the law is administered), and possibly, but more controversially, substantive elements (such as democratic liberalism, or a rich conception of human rights or property rights).¹²

Of the various elements (or candidate elements) of the Rule of Law—formal, procedural, and substantive—our focus here will be on the procedural, because procedure is largely about enforcement, and it is enforcement (rather than legislation) that is the distinctive activity of the vigilante.

IV. RULE OF LAW AND VIGILANTISM

The moral complexity of vigilantism is closely connected, I argue, to the ambivalence that the vigilante typically exhibits towards the Rule of Law. On one

10. MacDonald, *supra* note 6, at 271.

11. See generally LON L. FULLER, *THE MORALITY OF LAW* (1964).

12. *The Rule of Law*, in STAN. ENCYCLOPEDIA OF PHIL. § 5.3 (June 22, 2016), [https://plato.stanford.edu/entries/rule-of-law/\[https://perma.cc/V22J-ELA9\]](https://plato.stanford.edu/entries/rule-of-law/[https://perma.cc/V22J-ELA9]).

hand (*pace* Johnston), the vigilante is almost always involved in breaking the law: when he metes out punishment, that punishment typically constitutes battery or murder or some other form of criminal violence. More generally, the vigilante arrogates unto himself the right to impose punishment, in a way that flies in the face of the standard requirement that, under the Rule of Law, power not be exercised arbitrarily.

On the other hand, central elements of most treatments of vigilantism make clear that vigilantes actually tend to be *supportive* of the law. They tend to attempt, at least, to enforce the law (or at least their understanding of it), in order to protect their communities from miscreants who would, in violating the law themselves, put individuals and communities at risk. In some cases, it might make more sense to say that the vigilante seeks justice (rather than enforcement of law *per se*). But in most cases, vigilantes seek to punish individuals they take not just to have violated the vigilante's own sensibilities, but the law of the land.¹³

This leads us to mention briefly one further aspect of vigilantism that should be noted, though it is not typically included in formal definitions. In central cases, vigilantes take action specifically because duly authorized officials do not or cannot take action,¹⁴ for instance because of one or more of the following:

- they are corrupt;
- they are distracted;
- they are incompetent;
- they are overwhelmed;
- they are physically distant or otherwise unavailable;
- they use their discretion to determine (correctly or incorrectly, ethically or unethically) that other matters within their purview are more urgent.

The vigilante, that is, inserts himself into the role of law enforcement, and arrogates unto himself the authority to use physical force in enforcing the law. Lacking official authorization, the vigilante is subject to a *prima facie* accusation of exercising power in an arbitrary way, in contravention of the Rule of Law. In the section that follows, we look at this in greater detail.

13. The focus on law here may bother some social scientists who prefer to focus more broadly on social norms. I have no interest in arguing against the use of the term "vigilante" for those who enforce social norms more generally, but I take it that law-enforcement vigilantes are the most interesting core type. Those who disagree can simply take the present analysis as an analysis of 'vigilantism of the law-enforcement sub-type.'

14. This notion is implicit in the last element of Johnston's definition, namely that vigilantism aims to offer assurances of security to the community. Where the activities of duly authorized officials is seen as sufficient, it would be otiose for the vigilante to aim to offer such assurances.

V. THREE PROCEDURAL ISSUES

I proceed next to outline what I take to be three key worries about vigilantism related to the procedural aspects of the Rule of Law. The first two are what we might call epistemic worries—worries that vigilantism might proceed in ways that are epistemically impoverished compared to law enforcement carried out by trained agents of the state empowered under the Rule of Law.

Modern criminal justice systems are “modern” to the extent that they manifest a range of rules and procedures aimed at reaching a suitable level of certainty before subjecting an individual to punishment.¹⁵ These rules and procedures are, roughly speaking, aimed at achieving a suitable level of epistemic certainty. The following sketch of some of those rules and procedures is non-technical, and is merely intended to evoke a sense of the procedural complexity of modern law enforcement and the modern justice system, and where it might be that vigilantism is most likely to be epistemically deficient.

These rules and procedures of modern law enforcement and criminal justice, guided by the Rule of Law, fall into roughly two (sometimes overlapping) categories: rules and procedures for police work, and rules and procedures for the work of courts.

The first category has to do with the investigatory work done by police. This category can be further broken down into rules and procedures guiding the identification and apprehension of a suspect, on one hand, and rules and procedures guiding the gathering of evidence, on the other. (The order in which those two activities occur of course depends on the case. In some cases, police arrive on the scene, identify a culprit based on what they see before them, and then later gather additional evidence aimed at determining charges or securing a conviction. In other cases, police might spend days, weeks, or months gathering evidence before identifying a suspect to arrest. Thus, in some cases the gathering of evidence has as its goal the identification of a suspect, and in other cases it has as its goal the securing of a conviction.)

Among the rules that police may be required to follow in detaining and charging a suspect:¹⁶

- Rules regarding probable cause;
- Rules regarding the gathering of evidence (for example, rules regarding chain of custody);
- Rules regarding the conduct of lineups;
- Rules regarding the interviewing of witnesses;
- Rules regarding the interrogation of suspects.

15. Of course, not all rules have an epistemic rationale: some are instead intended to protect the rights of the accused. And some are intended to protect the rights of the accused *in order* not to jeopardize successful prosecution at trial.

16. No specific jurisdiction is intended here.

The second category of rules and procedures consists of the ones that guide—and set the epistemic standards for—criminal courts. These add up to what Sunstein calls “hearing rights.” They are subsequent to the general right, under the Rule of Law, “to a hearing in which people can contest the government’s claim that their conduct meets legal requirements for either the imposition of harm or the denial of benefits.”¹⁷

The first and perhaps most essential procedural rule in criminal courts is the one that sets the standard of evidence, namely that the prosecution must prove its case ‘beyond a reasonable doubt.’ Also crucial is the way this standard is applied—for example, the stipulation that the ‘reasonable doubt’ standard applies not merely to the crime as a whole, but to each element of the crime individually.

Other rules relevant to courtroom procedure include:

- Rules about the accused’s access to legal representation;
- Rules requiring that the accused be permitted to know the charges against them;
- Rules requiring that the accused be permitted to testify;
- Rules requiring that the accused be permitted to challenge witnesses;
- Rules requiring application of a specific standard of proof (and the particular way in which that standard is to be applied, viz., to every element of the crime)
- Admissibility rules, including:
 - Rules about the admissibility of various kinds of forensic evidence
 - Rules about the admissibility of hearsay;
 - Rules about the admissibility of, and weight given to, expert testimony;
- Rules about what kinds of evidence count as prejudicial (e.g., evidence about prior convictions, or evidence that evokes racial biases).

These rules, together, stand to raise the level of epistemic certainty, lowering the likelihood of both false positives (wrongful convictions) and false negatives (situations in which a person who ought to have been convicted is not convicted). Both of these categories are morally significant. Wrongful convictions (and wrongful punishment) are widely considered deeply problematic because it involves both blame and harm to an innocent party. And failing to convict and punish someone who is, in fact, blameworthy is morally problematic both because, in so failing, we fail to ‘balance the scales of justice,’ and because in so failing we may be releasing a dangerous person into the community. Thus these rules, where well-implemented, are *pro tanto* morally important.

17. Cass R. Sunstein, *The Rule of Law*, 4 AM. J. L. & EQUAL. 498, 500 (2024).

How do vigilante procedures measure up against the standard set by the procedural rules that are supposed to guide police and courts? In general, cases of vigilantism are ones that proceed without much regard for such careful epistemic standards.¹⁸ This can be due to a combination of factors, including:

- The apparent certainty of the identity and culpability of the culprit (which implies that there is little *need* for additional careful gathering of evidence);
- The vigilante's inability to safely make use of the option of merely restraining the culprit in order to carry out further fact-finding;
- Some vigilantes will not be in an emotional state well-suited to paying attention to epistemic standards.
- Other vigilantes, more likely, will simply not know of the rules that raise epistemic certainty;
- In some cases, vigilantes might know about such rules (from watching TV, perhaps) but may not understand their epistemic significance.

It is worth emphasizing the depth of the deficit faced by most vigilantes. For example, even when the identity of the culprit is clear, and even when it is ascertained with great certainty that they did in fact commit the act in question—there is, let us imagine, no reasonable doubt or any doubt at all—important epistemic questions still arise to which the vigilante may be oblivious. For example, the vigilante might be sure he has the right guy, but not as sure about whether the crime he aims summarily to punish is, for example, an instance of murder rather than manslaughter. And establishing that it is murder requires careful attention to various epistemic issues, notably the application of the 'reasonable doubt' standard to various individual elements of the crime, many of which cannot even be named by most non-experts.¹⁹

These considerations regarding the epistemic requirements for taking action against a fellow citizen should give us pause,²⁰ and they help us draw a line, or perhaps describe a spectrum, ranging between instances in which vigilantism is intuitively morally appealing, instances in which we have moral doubts, and instances in which it is morally repugnant. We can all imagine ideal cases in which the epistemic circumstances are perfect, and vigilante action seems relatively

18. Some beloved fictional vigilantes—both Batman and Dexter come to mind—have very high epistemic standards indeed, exhibiting near obsessive levels of attention to detail. But again, those are fictional.

19. This, in part, is why judges in criminal cases need to give instructions to juries.

20. The epistemic obligations of private citizens who insert themselves into law enforcement scenarios is raised, but not fully considered, by Jason Brennan in his otherwise useful and illuminating paper on the defensibility of killing government agents. Brennan considers whether a private individual might be justified in thinking that they know more or better than a particular person in a position of (legal) authority, but does not ask whether an individual considering taking direct action against a government official is likely to be able to meet the requisite epistemic requirements for action in such a case (and, in particular, outside of highly idealized cases). See Jason Brennan, *When May We Kill Governmental Agents? In Defense of Moral Parity*, 32 SOC. PHIL. & POL. 40, 53–55 (2016).

easily justified. But we do not *need* to *imagine* cases in which vigilantes have taken action in spite of a serious lack of adequate information²¹—such cases are not imaginary, but real, and some have been tragic. In one case, a Bethesda man was mistakenly identified by Twitter users, based on a blurry photo, as the individual who had hit children and rammed his bike into adults in a local park, after having harassed individuals posting flyers in support of George Floyd. The man was harassed and threatened online, and police dispatched patrol cars to his neighbourhood because they believed he might be in danger.²² In another case, two men went to jail after they burned down the house of a neighbour who had been arrested for child pornography and then released. Their intended victim escaped, but his wife died in the blaze.²³ In one particularly egregious case, a 44-year-old disabled man was dragged from his home, beaten, had his head stomped upon, and was then set on fire, after he was mistakenly accused of being a pedophile. He died of his injuries, and his killer was sentenced to life in prison.²⁴ Such cases are relatively common.

VI. THEORIES OF PUNISHMENT

The third procedural worry to be examined here has to do with the carrying out of punishment. Vigilantes often act, in a very literal sense, as judge, jury, and executioner. This means that they not only engage in gathering and weighing information,²⁵ but also in carrying out punishment. Under the Rule of Law, punishment must not be arbitrary. Punishment should be principled—we must know, and be able to enunciate at least roughly, why it is that we are punishing a given individual, and why the assigned punishment is the appropriate one. And then, ideally, we need a system to make sure that the punishment assigned is the one that is actually carried out.

In carrying out punishment, vigilantes typically risk violating one or more of the morally grounded procedural restrictions followed by the court system in imposing punishments. For one, vigilantes tend not to recognize or respect any right of appeal—that is, the right only to be punished only after a system of appeals has been exhausted. Further, vigilantes tend not to be concerned with the requirement of humane treatment, or the principles forbidding cruel and unusual punishment.

From a procedural perspective, what the vigilante tends most strikingly to lack is what we might call a *theory* of punishment. They tend to acquire what they

21. Of course, police officers and courts also sometimes fail in their duty to uphold suitable epistemic standards. But in those cases, there is at least the possibility of corrective action.

22. Olivia Nuzzi, *What It's Like to Get Doxed for Taking a Bike Ride*, N.Y. MAG. (June 8, 2020), <https://nymag.com/intelligencer/2020/06/what-its-like-to-get-doxed-for-taking-a-bike-ride.html> [perma.cc/2MY4-4YUQ].

23. *Vigilantes Set Fire, Killing Target's Wife*, CBS NEWS (Sept. 14, 2007), <http://cbsnews.com/news/vigilantes-set-fire-killing-targets-wife/> [perma.cc/C9CD-WM38].

24. Steven Morris et al., *Investigations Opened into Vigilante Murder of Man Mistaken for Paedophile*, THE GUARDIAN (Oct. 29, 2013), <https://www.theguardian.com/uk-news/2013/nov/28/vigilante-lee-james-life-murdering-bijan-ebrahimi> [perma.cc/D8Q6-26L5].

25. There are borderline cases of vigilantism in which the individuals involved do merely gather evidence, as when a suspect's image is posted online and social media users collaborate to identify him and pass his identity along to police.

perceive to be a high level of certainty that a given individual needs to be punished—certainty, that is, both that the individual did the thing in question, and that the thing in question warrants punishment. But it seems reasonably clear that most vigilantes will not have any sophisticated explanation of why a particular culprit, having committed a particular offence, warrants the particular punishment the vigilante has meted out.

In particular, little consideration seems likely to be given as to whether the punishment handed out fits the crime. In fact, the punishments handed out by vigilantes tend to be relatively blunt, and of relatively few types. The sentence is almost always capital or at least corporal punishment, and not always with attention to any kind of proportionality.²⁶

Modern court systems, by contrast, apply criminal statutes that typically outline the appropriate punishment for a particular crime, sometimes dictating (or rather permitting) a range of jail times or a range of monetary fines. In applying those standards, courts are guided by precedent and sometimes by sentencing guidelines issued by a sentencing commission. Judges, at least those with proper legal training, tend also to be aware of various competing theories or principles of punishment—for example, the theories that say that the proper goal of punishment is variously incapacitation, rehabilitation, or general or specific deterrence—and judges have the option of crafting sentences that suit those goals. The vigilante, in typical cases, will have neither the training nor the inclination to formulate and act upon a reasonably robust theory of punishment. And further, they may—because their thinking is clouded by emotion or by cognitive biases—be emotionally incapable of acting according to such a theory, even if they could formulate one. This was in effect John Locke’s worry about self-help justice in the state of nature. In the *Second Treatise*, Locke famously worried that “self-love will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others.”²⁷

VII. CONCLUSION

The goal of this paper has been to use the notion of Rule of Law as a lens through which to examine the ethics of vigilantism. Under the Rule of Law, the arbitrary exercise of power is forbidden, and in modern legal systems guided by the Rule of Law, we have relatively sophisticated rules and procedures to make sure that, in particular, the power of the state (or of its functionaries) is not being

26. I’ve written elsewhere (see MacDonald, *Corporate Leadership Against the Twitter Mob*, in *ETHICAL BUSINESS LEADERSHIP IN TROUBLING TIMES* 264, 272 (Joanne B. Ciulla & Tobey K. Scharding eds., 2019)) about the generally non-violent cases of social media vigilantism, in which the mob identifies a miscreant, identifies their employer, and insists that action be taken. It is noteworthy that the penalty insisted upon is pretty much always that the wrongdoer be fired. Employers of course have various tools at their disposal that can be used to punish employees (or, for that matter, to attempt to ‘rehabilitate’ them). But the punishment sought by the social media mob is virtually always loss of employment.

27. JOHN LOCKE, *TWO TREATISES OF GOVERNMENT*, book II, ch. II, § 13 (1689).

exercised arbitrarily in controlling and punishing criminal behaviour. Some of these rules and procedures aim to raise the epistemic standards of police and courts in a way that lowers the risk of wrongful conviction and wrongful acquittal. Vigilantes tend to lack such rules and procedures, and hence are at risk of behaving wrongfully in attempting to enforce the law.

But I propose here no formula, nor litmus test for the justifiability of particular instances of vigilantism. The prohibition, under the Rule of Law, on arbitrary exercise of power, suggests a defeasible moral presumption against vigilantism, and provides theoretical grounding for the simple intuition that there is (most often) something problematic about private individuals 'taking the law into their own hands.' When individuals make use of impoverished epistemic standards to reach verdicts that they then mete out in poorly-considered ways, that is the very picture of arbitrariness. But on the other hand, most of us can think of instances of what we would consider justified vigilantism. We can imagine instances in which the facts of the case are clear enough, cases in which the would-be vigilante takes careful stock and applies a punishment that truly fits the crime. And of course, it must be acknowledged that the requirement for strict epistemic standards and careful application of a theory of punishment may need to be softened in exigent circumstances. And if law enforcement is unavailable, or (sufficiently) corrupt, then individuals might well be justified in taking vigilante action.