

Superheroes, Bandits, and Cyber-nerds: Exploring the History and Contemporary Development of the Vigilante

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Abstract: *This article will first discuss what defines a vigilante, the history of vigilantes, and the contemporary vigilante's effect on the legal system as a whole. Also, this article will focus on those scenarios that bring an ordinary person to react in an illegal way to a perceived injustice. In focusing on these scenarios, this article will examine a little more closely the answers of deeper questions about the nature of law and justice, and their roles in the accelerating world of new media.*

1. Introduction

The average person has at the very least an understanding of what he or she considers justice. Regardless of how an individual's view of justice fits into the constructs of law, the motivation behind this view is based primarily in matters of morality, sculpted from societal and familial influence.¹ From these outside influences, individuals conceptualize justice as "personal justice," the idea that justice for me is justice for all. Laws are created based on the theory that society shares a collective personal justice, one which, however, is not without conflict.² The concept of personal justice is represented in our legal system by the jury, where defendants have an opportunity to be judged by a panel of their peers. In *Taylor v. Louisiana*, the Court stated that "the purpose of a jury is to guard against the exercise of arbitrary power to make available the common sense judgment of the community as a hedge against the overzealous or mistaken prosecutor . . . This prophylactic vehicle is not provided if the jury pool is made up of only special segments of the populace."³ A jury, theoretically, is to make a "common sense judgment of the community," but this statement does not encapsulate every factor a jury must consider during decision making, and in fact, only alludes to the one factor the law is meant to uphold—justice. Impliedly, if a jury were not to consider its idea of justice in its decision, then emphasis on diversity would not be an important factor in picking a jury. The jury system is supposed to ensure that what society at large (represented by a small and diverse sample of as many as twelve people) can agree is "justice" is factored into the jury's decision to mitigate corruption in the legal system. However, a jury is not free to decide cases simply based on a collective sense of justice, but must adhere to the law and guidelines of the court. Where a jury strictly adheres to the law and disregards justice, even where the law is clearly insufficient, a void forms that must be filled by the vigilante.

When discussing the concept of personal justice, it is impossible for one to dismiss the vigilante. The timeless mixture of an incontrovertible sense of justice, superheroic self-reliance, and human flaw speaks volumes to our culture's awareness of the inconsistencies present in even the best governing systems. The idea of the citizen taking the law into his or her own hands has gained popularity in recent years. One need only look to any number of contemporary vehicles for the vigilant citizen theme, from movies like "The Dark Knight," to television dramas like "The Shield," and even to reality television series like "To Catch a Predator" to realize its appeal. In fact, real life "superheroes" have organized a number of registries online. One registry, www.reallifesuperheroes.org, provides some insight into the run-of-the-mill superhero's life. These are citizens inspired by the caped crusaders of comic book fame, dedicated to making the world a better place. The website

¹ John Rawls, *A Theory of Justice* 7 (The Belknap Press of Harvard University Press, 1971).

² Jon Mandle, *Rawl's A Theory of Justice: An Introduction* 12 (Cambridge University Press, 2009).

³ *Taylor v. Louisiana*, 419 U.S. 522, 531, 95 S.Ct. 692, 698 (1975).

includes a FAQ section that explains their operation from “What is a real life superhero?” to “Why do you wear costumes?”⁴ The website also provides a list of active and retired superheroes, and even a creed, which states:

We are Real Life Superheroes.
We follow and uphold the law.
We fight for what is right.
We help those in need.
We are role models.
We will be positive and inspirational.
We hold ourselves to a higher standard.
Through our actions we will create a better brighter tomorrow.⁵

However, the Real Life Superheroes claim that they are not vigilantes because this group operates, sometimes in the gray area of the law, but within the confines of the law none-the-less.

Crime fighters exist in other forms that do not require spandex bodysuits and capes. A simple Internet search will uncover thousands of users who have at some point taken it upon themselves to step into the gray margins of the law in an effort to right perceived wrongs. Globalization and the rampant spread and development of technology have introduced several new challenges in the application and enforcement of law; questions of jurisdiction, ethics, and cultural divides have plagued efforts to regulate the Internet.⁶ The anonymity and relative safety of the Internet embolden people with a hidden courage to stand up to injustices in a way they may fear doing in the real world.⁷ In most of these cases, the citizens do not break the law, and therefore probably cannot be titled vigilantes. These citizens follow the law, however, not because they want to, but because they have to, which is a symptom of a greater issue. When a system, for example local communities or federal government, is well-controlled and fairly controlled, the populace tends to support and protect the status quo and seek justice through the proper channels (the police or the courts).⁸ However, when a system is imbalanced, it causes an up rise within the system, enough to compel a citizen to marginalize or completely forego legal recourse in an attempt to achieve justice.⁹

Historically, there has always been a need for vigilantes. When American colonists felt the British government was taxing them unfairly, people began to smuggle goods and destroy shipments. The British government refused to bend to the will of the people, and this situation catalyzed the American Revolution, which ultimately the colonists won, forever removing their colonies from British rule.¹⁰ Similarly, when desperadoes plagued the western frontier, society began to change its code of conduct from a mandatory duty to retreat when faced with conflict to allowing handguns and confrontation during a fight, even if the fight resulted in death. Case law from the late 19th century reflects this position, and in one case stated that a man “needed to retreat no further than ‘the air at his back.’”¹¹ These decisions would be the saving grace that kept the posses of vigilante enforcers loyal to the government and its laws.

⁴ <http://reallifesuperheroes.org/faq>

⁵ <http://reallifesuperheroes.org/rlsh-creed>

⁶ Jack Goldsmith & Tim Wu, *Who Controls the Internet? Illusions of a Borderless World* viii-ix (Oxford University Press, Inc. 2006).

⁷ <http://people.dsv.su.se/~jpalme/society/anonymity.html>

⁸ Rawls, *supra*, at 352.

⁹ *Id.*

¹⁰ <http://law.jrank.org/pages/11129/Vigilantism.html>

¹¹ http://en.wikipedia.org/wiki/American_Old_West#cite_note-131

This paper will discuss first what defines a vigilante, the history of vigilantes, and the contemporary vigilante's effect on the legal system as a whole. Also, the paper will focus on those scenarios that bring an ordinary person to react in an illegal way to a perceived injustice. In focusing on these scenarios, the paper will examine a little more closely the answers of deeper questions about the nature of law and justice, and their roles in the accelerating world of new media.

2. The Varying Definitions and Concepts of the word “Vigilante”

There exists some confusion in our society as to the definition of a vigilante, probably because the concept of the vigilante has changed throughout history. A vigilante is defined in Black's Law Dictionary as “*a person who seeks to avenge a crime by taking the law into his or her own hands.*”¹² This definition is mostly a functional definition of a vigilante, albeit a somewhat vague one. For example, if a newspaper editor of a free newspaper conducts a fraudulent raffle, and a person decides to take every free newspaper in the town to prevent more people from falling for the scam, he has technically avenged a crime (illegal sale of a raffle ticket) by taking the law into his own hands (taking every free newspaper to prevent further ticket sales). However, it is doubtful that anyone would think of this person as a vigilante.

Black's Law Dictionary definition has not been relied on by the court. In *State v. Bramer*, the appellant argued that the prosecution's use of the word “vigilante” to describe the appellant during trial was inflammatory and an attack on his character that was unfairly prejudicial.¹³ The court borrowed the definition from the American Heritage dictionary that defines a vigilante as “one who takes or advocates the taking of law enforcement into one's own hands.”¹⁴ The court held that the appellant's action fit within the definition; that the definition was descriptive in nature; and that the prosecution's use of the word was not unfairly prejudicial.¹⁵ This definition is also very broad: a mother who punishes her child for throwing a candy wrapper out a car window could be a vigilante according to this definition.

For further clarification, the use of “vigilante” as an adjective is defined by the Random House Dictionary as action “done violently and summarily, without recourse to lawful procedures: vigilante justice.”¹⁶ Here, in order to be categorized as a vigilante, there must be violence and summary action. However, this definition is still lacking, as it is safe to assume that every man who has ever defended himself from an attacker with force cannot be called a vigilante.

In an effort to further identify the exact nature of the vigilante, other sources are needed. The definition provided by Wikipedia states that “a vigilante is someone who illegally punishes someone for perceived offenses, or participates in a group which metes out extrajudicial punishment to such a person. Often the victims are criminals in the legal sense; however, a vigilante may follow a different definition of criminal than the local law.”¹⁷

Simply put, a vigilante is someone who breaks the law (hence, the terms illegal and extrajudicial) in favour and/or pursuit of some form of personal justice. This is a simple definition, but it makes a point that is not clearly expressed in other definition—that in order to be a vigilante, one must break the law. For this reason, many of the individuals and groups that the critics refer to as vigilantes are not actually vigilantes at all.

¹² Black's Law Dictionary (8th ed. 2004).

¹³ *State v. Bramer*, No. A06-2388, 2008 WL 1797954 at 4 (Minn.App. April 22, 2008).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Random House Dictionary (2nd ed. 1987).

¹⁷ <http://en.wikipedia.org/wiki/Vigilante>

2.1 The Vigilante Mentality: Seeks Justice, Law, and Order

In order to better understand the elements of the vigilante mentality, one must analyze the motivations behind vigilante actions. The key to understanding the vigilante thought-process lies in understanding the differences between three concepts: Justice, Law, and Order. The definitions below are taken from Merriam-Webster Online Dictionary.

“Justice: 2 a: the quality of being just, impartial, or fair.”¹⁸

Justice is synonymous with fairness. In essence, personal justice is that which an individual considers to be fair.¹⁹ Justice is very different from the concepts of law and order; it emanates from a higher level of consciousness that has no interest in codified behaviour. Sigmund Freud refers to this as the superego. According to Freud, the superego houses an individual’s ideals. These ideals drive the rational mind (the ego) in an attempt to achieve them. The superego also houses an individual’s conscience.²⁰ The superego is a person’s inner critic; “it is the moralizing and punishing instance in psyche.”²¹ As the superego plays the role of the personal law keeper, the concept of justice can be viewed as a manifestation of the superego. Therefore, justice is personal law.

For the most part, the level of satisfaction people express with a system of law is proportionate to how well that system reflects their personal code. Those people who are unsatisfied with a system of law are those people who perceive a conflict between the legal system and society’s view of justice, which is supported by society’s moral standing.²² These people practice disobedience in a society because they tend to hold strong views in disagreement with the policies implemented by the legal system in which they live.²³ For these reasons, these rebels frequently develop vigilante behaviour, particularly if their disagreement with the law has to do with the fair treatment of the socio-economic groups to which they belong.

“Law: 1 a (1): a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority (2): the whole body of such customs, practices, or rules.”²⁴

Law, as opposed to justice, refers to a codified set of rules established by a society.²⁵ Law can be considered the mingling of different personal justice viewpoints to create a widespread and binding set of guidelines for everyone to follow.²⁶ Further, laws are generally written to prohibit an act; law does not place limitations on what an individual can do, but rather denotes what an individual cannot do, and provides a punishment for those who violate it. Law is necessary to satisfy society and to prevent revolt²⁷; it is also startlingly similar to the role of the superego in an individual. Simply put, the law is a society’s attempt to express its ideals by creating a collective superego.

To a vigilante, the law is always flawed in some way. Even to a person satisfied with the law, no one could claim that the legal system is perfect. What vigilantes do, however, has little to do with the law itself, as a codified set of rules, but rather with the justice the law fails to achieve. By and large, vigilantes are law abiding citizens, except in their vigilante behaviours, which they may consider as a cry for reform or a necessary evil.

¹⁸ <http://www.merriam-webster.com/dictionary/justice>

¹⁹ Rawls, *supra*, at 11.

²⁰ http://en.wikipedia.org/wiki/Id,_ego,_and_super-ego

²¹ <http://www.freudfile.org/psychoanalysis/dictionary.html>

²² Mandle, *supra*, at 106.

²³ *Id.*

²⁴ <http://www.merriam-webster.com/dictionary/law>

“Order: 1: to bring about order: regulate.”²⁸

John Locke’s conception of the Social Contract refers to the government’s role as an entity charged with protecting a person’s property (then expanded to encompass life, liberty, and property).²⁹ In our government, this is expressed through the inalienable rights to life, liberty, and the pursuit of happiness, a modified version of Locke’s natural rights, as well as the other rights expressed in the United States Constitution and the notion of Due Process.³⁰ The only way to create order is by limited intervention on free will—too little intervention will result in chaos, and too much intervention will result revolt. The level of interference the government should ideally take is debatable, and comprises the fundamental disagreement between Democrats, who mostly believe in social freedom and fiscal interference, and Republicans, who essentially advocate fiscal freedom and social interference.

Order is important to a vigilante. For the most part, vigilantes have a strong sense of personal accountability. However, given the fact that to be defined as a vigilante, one must violate the law, the viewpoint of personal accountability is hypocritical as vigilantes justify their behaviour by upholding their perceptions of personal justice.

2.2 *Vigilante versus Criminal*

Due to the nature of a vigilante’s action, namely the violation of law in the interest of pursuing justice, it can sometimes be difficult to separate a vigilante from a common criminal. It is critical at this point to distinguish the vigilante from the criminal by again focusing on the vigilante mentality.³¹ In order for an action to be vigilantism, not only must the vigilante violate a law, but he also must believe that this violation is in the interest of justice (the superego perception). The common criminal, however, acts in an effort to satisfy his or her own desires based on inferiority (the id perception).³² There is a difference in how a vigilante and a criminal react to a crime. A vigilante perpetrates a crime in the interest of personal justice and shows little remorse; he or she may feel pity for a victim, but vigilantes act in the interest of the greater good. By contrast, a criminal may or may not show remorse, but criminals have no passion to achieve justice.

A criminal will sometimes justify his or her behaviour in a way that is similar to a vigilante, but criminals and vigilantes are still essentially different. For example, an underprivileged person may turn to crime and justifies his actions by believing that he is “just evening the score,” or “taking what is rightfully his” in restitution for society’s perceived wrongs. The difference, though, is that the criminal is not punishing anyone for the crimes another has committed or reinterpreting the law; the criminal simply acts out of selfish reasons. Even a criminal who steals to feed his family is not a vigilante because a true vigilante punishes wrongdoing. In this way, criminals and vigilantes are fundamentally different.

2.3 *Vigilante versus Activist*

Both the vigilante and the activist work for the betterment of society, and both pursue personal agendas. For this reason, many people believe that certain activist groups, especially those interested in the punishment of criminals, are vigilante groups. This is a common misconception, and to some extent, an understandable one. While the vigilante and the activist do follow similar ideologies, the activist typically does not break the law. Sometimes activists groups are labeled vigilantes for other reasons besides misunderstanding the term

²⁵ Rawls, *supra*, at 55.

²⁶ *Id.* at 13.

²⁷ James K. Feibleman, *Justice, Law and Culture* 49 (Martinus Nijhoff Publishers 1985).

²⁸ <http://www.merriam-webster.com/dictionary/order>

²⁹ <http://www.iep.utm.edu/soc-cont/#SH2b>

³⁰ <http://www.marylandsar.org/SAR-Documents/Essay/Third-Tie-Essay-MDSSAR-0708.pdf>

³¹ <http://en.wikipedia.org/wiki/Vigilante>

³² John Cuthbert Goodwin, *The Soul of a Criminal* 2-3 (London: Hutchinson 1924).

“vigilante.” Many activist groups are, by their nature, controversial, and some willingly wear the moniker of vigilante to inspire others in their cause; critics of an activist group will label the group vigilantes to inspire distaste for the activist group’s cause.

A common activist group mistaken for vigilantes is the Guardian Angels. Curtis Silwa founded the Guardian Angels in 1979 in New York City.³³ This organization was focused originally on combating violent crime in the New York City subway system by training volunteers in making citizen arrests.³⁴ The Guardian Angels operations have expanded beyond “Safety Patrols” to include other activities, like education and youth programs.³⁵ They also train in self-defence, first aid, and life-saving techniques. Edward Koch, the New York City mayor when the Guardian Angels were founded, criticized the group and described them as “paramilitaries.”³⁶ Despite criticism, the Guardian Angels grew, and today they are one of the largest community watch organizations in the world with chapters in one-hundred-and-forty cities worldwide.³⁷

The primary complaint about activist groups like the Guardian Angels is that the members are not professionals, and therefore are placing themselves and other in the line of danger.³⁸ While this criticism has some merit, these organizations typically have very low rates of casualties. The Guardian Angels, for example, have lost only two members in the line of duty in over their thirty years of service, both of which occurred before 1983.³⁹ Likewise, if results evidence the efficiency of the Guardian Angels, one needs only to look at the organization’s long history and the positive response from every city in which the organization holds a presence, as well as the number of awards the organization has received over the years.⁴⁰

It is worth noting that the validity of calling this kind of organization a “vigilante group” may be up for debate. In order to explain why this argument may be valid, an alternate definition of vigilante must be briefly discussed. The American Heritage dictionary provides a secondary definition, which defines a vigilante as “a member of a vigilance committee.”⁴¹ This definition can be misconstrued unless one is familiar with a vigilance committee. The Online Etymology Dictionary clarifies: “Vigilance committees kept informal rough order on the frontier or in other places where official authority was imperfect.”⁴² In this context, one can argue that the term “vigilante” is not to be applied to any group, but to groups specific to frontier justice. This definition is archaic and no longer can be applicable in a modern context. This paper will continue to argue that a vigilante is one who breaks the law in pursuit of justice.

2.4 Vigilante versus Terrorist

At first glance, this delineation seems like a no-brainer; vigilantes work in the name of justice, while terrorists work in the name of fear. Upon more careful examination, however, one must make this division clear. As the adage goes, one man’s terrorist is another man’s freedom fighter, and a freedom fighter can be described as a vigilante who thinks bigger. Terrorists, for the purposes of this paper, will be precisely defined as parties that use terror tactics to try to change a government or society.⁴³

As defined above, terrorists hold few similarities with vigilantes. Both terrorists and vigilantes are likely to seek anonymity to avoid arrest and retribution. Both also seek to fulfil a personal agenda, but the main

³³ <http://www.guardianangels.org/history.php>

³⁴ http://en.wikipedia.org/wiki/Guardian_Angels

³⁵ <http://www.guardianangels.org/history.php>

³⁶ <http://www.time.com/time/magazine/article/0,9171,949448-1,00.html> (*Guardian Angels’ Growing Pains*, Time Magazine, January 18, 1982).

³⁷ http://en.wikipedia.org/wiki/Guardian_Angels

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ <http://www.wordnik.com/words/vigilante>

⁴² <http://www.etymonline.com/index.php?term=vigilante>

⁴³ <http://dictionary.reference.com/browse/terrorism>

similarities end here. The key distinction is the use of terror tactics, which includes violence, fear-mongering, and threats. These cowardly tactics are hardly the modus operandi of the typical vigilante, though some may use them to a limited extent. Moreover, the vigilante seeks to serve justice and the good of society, where most terrorists follow a dogma that may have little to do with justice. The key difference between the vigilante and the terrorist is namely that a vigilante seeks to bridge the gap between law and justice, where the terrorist seeks societal upheaval. This key difference is what separates the vigilante mentality from the terrorist.

2.5 Vigilante versus Revolutionary

The revolutionary and the vigilante are very similar. The revolutionary looks to transform what he perceives as a dysfunctional ruling body in favor of a government⁴⁴ that more closely represents the existing values of that society. Vigilantes aim to improve the quality of life for themselves and their peers, much like the revolutionary; likewise, both employ extrajudicial measures to pursue their agendas.

The main difference between the revolutionary and the vigilante is in the scope of the work they perform. Vigilantes usually act locally, working within a particular community, while revolutionaries seek to dismantle and rebuild entire governments. Vigilantes are usually fundamentally satisfied with their government and its laws, taking issue only with specific shortcomings. Revolutionaries generally take issue with the entire governance of their community, and seek to reconstruct the entire system. In this way, vigilantes can be differentiated from the revolutionary.

3. The History and Origins of Vigilantism

The vigilante has a long history. Hailing back to Robin Hood in the Middle Ages, the vigilante is sometimes celebrated and sometimes reviled and has long stood as a symbol of justice in a corrupt world. In order to understand how the American conceptualization of vigilantism formed, one must analyze the European roots of the outlaw. Vigilantes found their origins in a variety of movements and ideas that inhabited the gray fringes of the law in medieval times. These constructs were all connected by similar viewpoints about justice and fairness.

Some of the earliest concepts that influenced the modern vigilante revolve around the idea of frankpledge. Frankpledge was a system of law employed in Saxon society from the 10th to 14th centuries, which separated citizens into groups that were responsible for their own governance.⁴⁵ According to “A Dictionary of World History,” “communities were grouped into associations of ten men (a tithing) under a headman (chief pledge or tithingman) and held responsible for the good behaviour of members.” In practice, the members would guarantee the behaviour of each other in front of sheriffs during periodic hearings.⁴⁶ For example, if a member was fined, another member would give a frankpledge that the fine would be paid.⁴⁷ Presumably, the rest of the group could be held accountable for any breach of honour, so it was in the group’s best interest to ensure every member held up their ends of promises. The communities also were given authority outside the law to enforce a member’s cooperation.⁴⁸ King Canute II, around 1035 AD, first enacted the frankpledge in Denmark and England, and it applied to every man, regardless of social status. Over time, however, the system was replaced, with regards to the wealthy and powerful, with other duels and feuds, and would eventually only apply to members of society who were not freed, such as slaves and serfs.⁴⁹ Nevertheless, the citizens were responsible for policing themselves and were, in essence, an entire society of vigilantes.

⁴⁴ Black’s Law Dictionary (8th ed., 2004).

⁴⁵ William Alfred Morris, *The Frankpledge System* 1-40 (Longmans Green 1910).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Whereas frankpledge created a lawful system based on a theory similar to vigilantism, feuds were a more ruthless and chaotic manifestation of a similar mentality towards law and order. Until the late 1400s (and still practiced in certain lawless regions today), feuds were in essence private wars, fought between two or more sides in a localized area.⁵⁰ Usually these wars were ignited by tensions between two very close neighbouring groups that competed for resources or territory.

Whatever set the feud in motion, the groups fought until some agreement or resolution was reached. The tradition of the feud actually predates frankpledge, and goes all the way back to ancient times. Feuds have been practiced in ancient Greece, the Biblical lands, 10th century Germany (where the practice of “wergild” – blood money – could negate the need for blood feud before it even began), and 15th century Italy.⁵¹ Feuds were officially outlawed in 1495 at the Holy Roman Empire’s Reichstag at Worms, but the practice continued being widely practiced for several decades afterwards.⁵² According to some references, some regions in Europe still engage in feuds today, and feuds still exist outside of Europe, for example in the Philippines, where feuds continue to present a challenge to local law enforcement.⁵³

Feuds are important to the vigilante because they put the burden of enforcing justice on the offended party. This is an echo of our own constructs for dealing with crime and punishment, in that the wronged party, represented in our system by the State, is responsible for ensuring that criminals are convicted and pay for their crimes. In the feud, however, this responsibility is put directly upon the victims in much the same way that a vigilante is tasked with ensuring personal justice is served.

While the practice of feud was used to settle disputes in the public and frequently led to much bloodshed, the people also could turn to more covert means to pursue justice. The formation of secret societies occurred many times over the course of early European history; these societies would dispense justice under cover of darkness. An example of a secret society like this is the Vendicatori, a Sicilian vigilante group. This organization operated up until its disbandment by William II of Sicily.⁵⁴ Another example of a secret society of vigilantes is the Chivalrous Order of the Holy Vehm.⁵⁵ This infamous group is one of the most well-known organizations devoted to vigilante justice. Originally founded with the approval of both Church and State, the Vehm used oaths of secrecy to protect its members from retaliation by the dangerous outlaws it punished.⁵⁶ Over the next few decades, thousands upon thousands joined its ranks, and it became a powerful, corrupt organization. Holding secret tribunals in the middle of the night, it punished anyone accused with almost no evidence at all, and the punishment was always death.⁵⁷ If an unfortunate accused was shown to be innocent, the accused usually was put to death to preserve the secrecy of the group. At the end of the nineteenth century, the Church and the German State denounced the organization, sending its members into hiding, only to have them resurface with the advent of Nazi influence in Germany.⁵⁸ The Vehm joined the Nazis in their campaign of genocide, setting their sights on Jews, and denouncing them as heretics.

The last of the past influences on the modern vigilante is the fictional knight-errant. The knight-errant populated romantic stories and embodied all the attributes of what today would be called a hero. These wandering champions of justice travelled the lands of fiction, performing feats of courage and chivalry. They saved damsels in distress, rescued travellers from rogues and bandits, fought mighty dragons, and aided kings on noble quests. These characters were mostly the stuff of legend, born of the minds of dreamers who saw the potential for heroic actions in those armoured, horse-riding, battle-hardened, noble souls who took up the mantle

⁵⁰ <http://en.wikipedia.org/wiki/Feud>

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ <http://en.wikipedia.org/wiki/Vendicatori>

⁵⁵ Charles William Heckethorn, *Secret Societies of All Ages and Countries* 163-168 (Kessinger Publishing 1997).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ <http://www.unexplainedstuff.com/Secret-Societies/The-Holy-Vehm.html>

of the knight. Nevertheless, knights, both fictional and real, did undergo heroic tests of bravery, such as the *pas d'armes* (French for "Passage of Arms").⁵⁹ The *Passage of Arms* was challenges set forth by knights or their lords, wherein a visiting or passing knight would be forced to fight or else lose respect.⁶⁰ The Passage of Arms and other games were often dangerous with sometimes deadly consequences.⁶¹ From the knight-errant, vigilantes take strength, comparing themselves to these lone heroic figures in their conquests for justice.

3.1 History of Vigilantism in the United States

The vigilante is an international symbol of personal justice. However, the vigilante is nowhere more idolized or demonized than in the United States. The heroic vigilante espouses personal freedoms that echo the founding principles of the United States, and therefore, vigilantes have long enjoyed the support of the people. Vigilantes are so deeply ingrained in our psyche because of the creation of superheroes and super villains, who have come to be recognized world-wide as symbols for what is best in American culture: "truth, justice, and the American Way."

America is a nation whose roots are founded in vigilantism. On December 16, 1773, in Boston harbour, an impromptu group of men boarded three ships – the *Dartmouth*, the *Eleanor*, and the *Beaver* – and proceeded systematically to destroy the ships' cargo – 342 chests of tea – by dumping them over the sides of those ships into the ocean.⁶² This action, performed by a relatively small group of ordinary citizens who at the time called themselves Whigs (but would later come to be known as the Sons of Liberty) was the Boston Tea Party.⁶³ The reasons behind the vandalism are complex, but have to do primarily the British Parliament imposing taxes on the colonists. Colonists did not elect Parliament officials and declared the British Parliament's imposition of taxes illegal because the British Constitution did not allow "taxation without representation."⁶⁴ Unlike other protests that may make use of the name today, the Boston Tea Party was a mob action, completely and unquestionably against the law, and a reflection of the deeply rooted sentiment of the people involved. It was meant not just as a symbolic action, but also as a direct fix to the immediate problem; the *Dartmouth* had only twenty days to pay its duties, and the deadline was that very night.⁶⁵ By destroying the tea rather than bringing it in, the Whigs had decisively settled the dispute in their favour, not without retaliatory action from Parliament.⁶⁶ It should be noted that while this is the most famous case of this kind of resistance, every other colony already had seized or returned tea shipments to England, making the Whig's act of defiance one of the last and most direct reproaches the people were able to deliver to their British overseers.

Of course, the Boston Tea Party is probably the most famous of many examples of the American People revolting against Britain in the colonial era, though not the first. Among the very first movements of the time was the War of Regulation in North Carolina.⁶⁷ Here, a group of poor, lower-class farmers banded together in the hopes of breaking up a corrupt ring of power-mongers in the upper elite. Essentially, these farmers were like serfs in a feudal system established by the governor and a small group of wealthy merchants and lawyers who used their superior legal knowledge and wealth to oppress the lower-income colonists.⁶⁸ This group of leaders imposed strict taxation on the impoverished landowners.⁶⁹ When the farmers were forced to take on debt that they were unable to repay, they were dragged into the court and forced to forfeit what little they had, which then

⁵⁹ <http://www.chronique.com/Library/Tourneys/pasessay.htm>

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² David A. Copeland, *Debating the Issues in Colonial Newspapers: Primary Documents on Events of the Period 288* (Greenwood Press 2000).

⁶³ *Id.*

⁶⁴ *Id.* at 289.

⁶⁵ <http://www.u-s-history.com/pages/h646.html>

⁶⁶ Copeland, *supra*, at 289.

⁶⁷ <http://statelibrary.ncdcr.gov/nc/ncsites/alamance.htm>

⁶⁸ <http://www.tamu.edu/ccbn/dewitt/mckstmerreg3.htm>

⁶⁹ <http://statelibrary.ncdcr.gov/nc/ncsites/alamance.htm>

went to line the pockets of these corrupt officials.⁷⁰ The Regulators, as these farmers called themselves, formed not as an organized force, but rather as a loosely-knit group of frustrated citizens. The Regulators used violence to send their message to these officials.⁷¹ Though their movement was not against the Crown and was essentially unsuccessful (they were defeated en masse by the Governor's standing militia and forced to realign themselves with British loyalties), they did inspire many of the Revolutionaries to look deeper into the widespread corruption that plagued the colonial local governments.⁷²

While the colonial era has countless examples of people breaking with the law to enact their own brand of justice, it is certainly not the only time period in which examples of this tradition can be found. A later period that cannot possibly be overlooked for American vigilantism is the American Old West. Explored primarily in the late 1800s, the western frontier is a source of much vigilante action and behaviour. The laws of "civilized" states did not reach far enough into this coarse territory, so the people who populated it often lived by laws of their own making, inadvertently creating a distinctly separate period of American history in the process.

During the California Gold Rush, the western region experienced explosive population growth.⁷³ The town of San Francisco, the main port of arrival for the Gold Rush, experienced a twenty-five-fold population growth in a year and a half (800 to 20,000 residents, primarily men).⁷⁴ Other regions surrounding San Francisco experienced similar, if less pronounced, population changes. In these towns and settlements, where the population was almost entirely adult males and where there was little development, the primary foci of the people were gold, gambling, alcohol, and prostitutes.⁷⁵ Lacking any real legal system, the greed-inspired settlers resorted to "mining codes" to settle legal issues. These codes often gave way to mob rule and punishment by popular vote, and the results of this vigilante justice were often violent and lethal, particularly against minorities.⁷⁶ This racist behaviour birthed even more vigilantes. Two Mexican men in the Old West, Juan Cortina and Joaquin Murrieta, both experienced racism, but experienced it differently, and so chose to walk two separate paths that led them to clash with the law.

Juan Cortina was a rancher as well as a political and military leader.⁷⁷ He raised a militia from Mexican "vaqueros" (cowboys) in the Rio Grande Valley and participated in the Mexican-American War. After the war, he found his lands bisected by the newly-signed treaties, with half the territory sitting on newly-appointed American soil.⁷⁸ Consequently, Cortina became very involved in cross-border politics and was exposed to some of the same racism as other "Tejanos," who were Texans of Mexican descent, at the hands of the "Anglos," who were Texans of American descent.⁷⁹ Cortina began to clash with the new, local authorities in Brownsville, specifically with a group of lawyers and judges that he considered "landgrabbers" and people who victimized the impoverished Tejanos.⁸⁰ This violence escalated after an encounter with Marshall Robert Shears.⁸¹ Cortina witnessed the marshal savagely beating Tomas Cabrera, a former employee of Cortina. When Cortina tried to assist in ending the beating, the Marshall reportedly told him, "What is it to you, Mexican?"⁸² Upon hearing this, Cortina fired a warning shot, but when the Marshall did not stop his attack, Cortina shot the Marshall through the shoulder. Over the next few weeks, tensions continued to mount until finally Cortina used a large posse to occupy the town of Brownsville, looking to punish his opponents, but they had already escaped.⁸³ At that point,

⁷⁰ http://en.wikipedia.org/wiki/War_of_the_Regulation

⁷¹ <http://www.tamu.edu/ccbn/dewitt/mckstmerreg3.htm>

⁷² *Id.*

⁷³ Kevin Starr, *Americans and The California Dream :1850-1915* 49 (Oxford University Press 1973).

⁷⁴ http://en.wikipedia.org/wiki/American_Old_West

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ http://www.pbs.org/weta/thewest/people/a_c/cortina.htm

⁷⁸ http://en.wikipedia.org/wiki/Juan_Cortina

⁷⁹ <http://noblebandits.asu.edu/Bio/Cortina.html>

⁸⁰ http://en.wikipedia.org/wiki/Juan_Cortina

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

Cortina occupied the town for two days before finally retreating to his mother's ranch in Santa Rita. The Brownsville Tigers, a fighting force composed of men from Brownsville, pursued Cortina, but they were promptly chased off by Cortina's posse.⁸⁴ The Texas rangers, military, and local militia defeated Cortina in December of that year, and forced him to retreat into the mountains.⁸⁵ This series of events was significant enough to be called the First Cortina War (the Second Cortina War was a shorter-lived conflict wherein Cortina allied himself with the Union and was eventually defeated by the Confederate Army and forced to retreat into Mexico).⁸⁶

Joaquin Murrieta's story is steeped in as much legend as fact. Murrieta was a prospector during the Gold Rush who suffered a sequence of injustices.⁸⁷ The Anglos, jealous of Murrieta's success, beat him and raped his wife.⁸⁸ Later, Murrieta's half-brother was lynched as a result of a mistaken robbery charge.⁸⁹ Murrieta killed at least six of the people who had wronged him, then escaped to the hills and became one of California's most notorious outlaws.⁹⁰ To some, Murrieta was a sort of folk hero, while to others he was simply a bloodthirsty menace. Even Murrieta's death is mystery. While Murrieta supposedly was gunned down by lawmen and beheaded to collect a bounty, rumours swirled that the lawmen, unable to locate Murrieta, instead had murdered an innocent man.⁹¹ Many witnesses claimed to have seen Murrieta years after his supposed death, and accounts of how he finally met his end are varied.

Lawlessness in border towns was a way of life, and several towns turned to vigilante committees to police themselves in the absence of organized law enforcement. The vigilante committees were occasionally dutiful and fair, but far more frequently were motivated by racial tension and reactive reasoning.⁹² It is worth noting, however, that most of this vigilante justice ceased as soon as a proper police force was established.⁹³ In this way, the law was adapting to the situation and responding to a public need for order.

While most of these examples were representative of their respective time periods, vigilante actions are by no means confined to the realm of history. Contemporary examples of vigilantism are better documented and carefully studied than older historical examples, and are even more useful in analyzing the mindset of the vigilante.

3.2 *Modern Vigilantism*

In 1984, a few days before Christmas, a man boarded the downtown Number 2 express subway at the 14th Street station in New York City.⁹⁴ Shortly after getting on the train, he encountered four black men, and was greeted by one. What happened next is somewhat contested, depending which version of the story you believe, but what is clear is that Bernhard Goetz, the man who boarded that train, pulled out a gun and shot all four men.⁹⁵ Goetz then checked on some bystanders to make sure they were all right, spoke with the conductor, and after refusing to hand over his gun, leaped on to the tracks and escaped from the scene.⁹⁶ Goetz would eventually turn himself in and tell his story, and the story he told was indeed an amazing one.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Walter Noble Burns, *The Robin Hood of El Dorado* 6 (Coward-McCann, Inc. 1932).

⁸⁸ *Id.* at 16-17.

⁸⁹ *Id.* at 32.

⁹⁰ *Id.* at 37.

⁹¹ *Id.* at 288.

⁹² http://en.wikipedia.org/wiki/American_Old_West

⁹³ *Id.*

⁹⁴ Joel J. Seidemann, *In the Interest of Justice* 165 (HarperCollins Publisher, Inc. 2004).

⁹⁵ *Id.* at 164.

⁹⁶ http://en.wikipedia.org/wiki/Bernhard_Goetz

According to Goetz, the four men, Barry Allen, Troy Canty, James Ramseur, and Darrell Cabey had surrounded him.⁹⁷ Troy Canty told Goetz, "Give me five dollars."⁹⁸ Goetz pretended not to hear Canty and asked him to repeat himself, to which Canty again responded with "Give me five dollars." Canty later claim that he was just panhandling, but the other passengers on the train testified that the group did seem aggressive.⁹⁹ Then, according to Goetz, fearing for his life, he pulled a five-shot .38 revolver from his pocket and began to fire.¹⁰⁰ Goetz hit all four men, missing only once. Although Goetz did not kill anyone, one of the shots pierced Darrell Cabey's spinal cord, turning him into a paraplegic.¹⁰¹ Thinking Cabey was not hit the first time, Goetz allegedly either said or only thought, "You look all right, here's another," and shot at Cabey again, but Goetz was out of bullets.¹⁰² After verifying that all four men were "taken care of," he went to check on two passengers who were pinned down close to the shots.¹⁰³ Shortly thereafter, the conductor arrived and asked if Goetz was a police officer. When Goetz said he was not, the conductor asked Goetz to turn over his weapon, but Goetz refused shortly before jumping off the train on to the tracks.¹⁰⁴

The media referred to Bernie Goetz as the "Subway Vigilante," and the story ran on the front pages of local media for months.¹⁰⁵ The majority of the public considered him a hero. At that time, New York City's violent crime levels were out of control, and the subways in particular were a den of criminal activity, one that most of the public was aware of and forced to deal with at one time or another.¹⁰⁶ The grand jury "refused to indict Goetz on the more serious charges, voting indictments only for unlawful gun possession – one count of criminal possession of a weapon in the third degree, for carrying in public the loaded unlicensed gun used in the subway shooting, and two counts of possession in the fourth degree, for keeping two other unlicensed handguns in his home."¹⁰⁷ Once Goetz's statement, "You look all right, have another," was made public, many more people demanded that Goetz be charged with the more serious charges.¹⁰⁸ The court convened a second grand jury, and it voted to indict Goetz on multiple counts of attempted murder, reckless endangerment, assault, and one count of criminal possession of a weapon.¹⁰⁹ Judge Stephen Crane granted Goetz's motion to dismiss the charges based on errors in prosecutorial instructions to the jury and the suspected false nature of the testimony given by Canty and Ramseur. The New York Court of Appeals reversed the dismissal and, with all charges reinstated, the case went to trial.¹¹⁰

Goetz's attorney argued that Goetz acted in self-defence, and the mostly-white jury apparently agreed. The jury found him only guilty of criminal possession of a weapon in the third degree.¹¹¹ "[Goetz] was sentenced to six months in jail, one year's psychiatric treatment, five years' probation, 200 hours community service, and a fine of \$5,000. He appealed, and the appellate court affirmed the conviction and ordered a resentencing for a period of one year in jail without probation."¹¹² Goetz served eight months.

Some people suggested the shootings were racially motivated, or an overreaction along the lines of race, and that the verdict at trial was an indicator of the race relations at the time.¹¹³ These perspectives were fuelled by

⁹⁷ Seidemann, *supra*, at 173.

⁹⁸ *Id.*

⁹⁹ http://en.wikipedia.org/wiki/Bernhard_Goetz

¹⁰⁰ *Id.*

¹⁰¹ Seidemann, *supra*, at 166.

¹⁰² *Id.*

¹⁰³ http://en.wikipedia.org/wiki/Bernhard_Goetz

¹⁰⁴ *Id.*

¹⁰⁵ *Speidemann*, *supra*, at 164.

¹⁰⁶ *Id.*

¹⁰⁷ http://en.wikipedia.org/wiki/Bernhard_Goetz

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ <http://www.articlesbase.com/culture-articles/the-bernie-goetz-story-25-years-later-1432680.html>

some of Goetz's language in the past. Eighteen months earlier, Goetz stated at a community meeting that “the only way we’re going to clean up this street is to get rid of the spics and niggers.”¹¹⁴ When this statement became public, black political leaders called for a federal investigation twice, but the U.S. Attorney’s office claimed that Goetz acted out of fear, not racism.¹¹⁵ The argument that the shootings were unwarranted was further discredited both by the four men’s criminal histories, including fourteen criminal bench warrants, and also by their actions after the incident: Ramseur and Allen were both convicted of violent crimes after the incident, and were sent to prison.¹¹⁶ There was even a newspaper interview in which Mr. Cabey admitted that his friends were going to rob Mr. Goetz, who looked like “easy bait,” though he denied any involvement himself.¹¹⁷

In addition to the criminal charges, Mr. Cabey filed a civil suit against Goetz. The entirely black and Hispanic jury found in favour of Mr. Cabey, ordering Goetz to pay \$43 million dollars to the plaintiff.¹¹⁸ Goetz filed for bankruptcy soon after, but the bankruptcy court did not discharge the judgment. Goetz also became a pop icon and is referenced in several works of music, art, and culture throughout the last twenty-five years.¹¹⁹

The repercussions of this incident were far-reaching. Today, crime in New York City is astonishingly low for a large city, a far cry from what it was in 1984.¹²⁰ Crime continued to decline through the 1980s. New York City’s almost miraculous turnaround has piqued experts’ interest for years, and the turnaround is believed to be a result of more effective police work, but it is widely believed to be the result of community crime-fighting initiatives.¹²¹ After the Goetz case, the legal standard for self-defence using deadly force in New York was amended to allow the jury to consider the defendant’s background when deciding if the reaction was reasonable.¹²² (One of Goetz’s defensive arguments was that he was already accosted and mugged once before, and that the law had done little to help him, and that the weapon used during the shooting incident had been brandished twice previously to deter two other muggings). The ensuing rise in the efficacy of law enforcement, as well as the law’s growth and adaptation after the incident, are representative of the legal system’s response to the need of the people, and to the propensity of the people to take justice into their own hands when the legal system and law enforcement fails to keep “bad guys” in line. That response has proven effective in reducing crime to historically low levels in one of the most densely populated cities in the country.

Although vigilante actions can lead to positive social change, they are far from perfect justice and can become tragedies very easily. In Huntsville, Tennessee in 2007, Timothy Chandler pled guilty to sexual exploitation of a minor after his mother-in-law discovered child pornography on a diskette she borrowed.¹²³ In response to this development, two men, Gary Sellers and Robert Bell, decided to try to drive Chandler out of their town by setting his house on fire. Sellers and Bell claimed no one was supposed to get hurt.¹²⁴ Unfortunately, Chandler’s wife, Melissa Chandler, was trapped in the burning building and died.¹²⁵ The men originally pled not guilty, but Robert Bell changed his mind and pled guilty to second degree murder and aggravated arson charges, and is currently serving two 25-year sentences concurrently.¹²⁶ As part of Bell’s plea bargain, he must testify, if called, in Timothy Chandler’s trial, which is still awaiting resolution.¹²⁷

¹¹⁴ http://en.wikipedia.org/wiki/Bernhard_Goetz

¹¹⁵ *Id.*

¹¹⁶ Speidemann, *supra*, at 169.

¹¹⁷ http://en.wikipedia.org/wiki/Bernhard_Goetz

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ http://www.nyc.gov/html/nypd/downloads/pdf/crime_statistics/cscity.pdf

¹²¹ http://en.wikipedia.org/wiki/Crime_in_New_York_City

¹²² http://en.wikipedia.org/wiki/Bernhard_Goetz

¹²³ http://www4.vindy.com/content/national_world/300552499002811.php

¹²⁴ <http://www.msnbc.msn.com/id/20780983/>

¹²⁵ *Id.*

¹²⁶ <http://www.wbir.com/news/watercooler/story.aspx?storyid=58223&catid=141>

¹²⁷ *Id.*

3.3 Modern Trends in Vigilantism

The Sellers and Bell crime is an example of a one of numerous modern trends of vigilantes targeting known and suspected sex offenders in an effort to get them out of neighborhoods when the judicial and legislative system do not. The repulsive nature of sex offenses and increased media attention, including several television shows dramatizing these kinds of crimes, have led to increased public awareness and readily available information about the whereabouts of sex offenders (i.e. potential targets). Sex offender registries have given those who have a predisposition for vigilantism an easy path to violence. According to the website eAdvocate, which compiles reports in the media of violent crime perpetrated against sex offenders, there have been one-hundred and eighty-four accused or convicted sexual offenders killed since 1991.¹²⁸ The disturbing portion of the report is the sharp increase in recent years, with the number jumping from one or two killed a year from 1991-2002 to double-digits every year later, up to forty-five killed in 2008.¹²⁹

This modern trend in vigilante reaction seems to be fed by alarmist reporting in the media and a panic-stricken body of parents who believes that all sexual predators are cunning, proliferated, and incurable. While it is true that sex offenders have many new tools that they can use to manipulate and trick children, the media has done a lot to aggrandize and hyperbolize the threat. Shows like “Law and Order: Special Victims Unit” repeatedly declare that rapists and child molesters are incurable, yet many modern studies place the recidivism levels at below those of other criminal offenders.¹³⁰ Additionally, the studies seem to suggest that adequate treatment of sex offenders has a dramatic impact on the probability of a criminal reoffending after release.¹³¹

While it is difficult to prove the accuracy of this reporting, due in large part to the tendency to “lump together” offenders who are very different in nature, the meta-analysis study of Hanson and Bussiere indicates that sexual recidivism rates during a four to five year period for child molesters and rapists are 12.7% and 18.9% respectively.¹³² Compare this to the overall reconviction rate for all crimes of 52% within three years of release.¹³³ Because of the disturbing and deeply psychological nature of sex crimes, we have a tendency as a society to demonize this deviant behaviour more than others, but the evidence is simply not there to support our collective conclusion that these people are incurable and therefore deserve to die. Nonetheless, our demonization of this deviant behaviour is what fuels the activities of this new breed of modern-day vigilantes.

Sometimes the victim becomes the vigilante. In London, a 14-year old girl, who remains unidentified at this time, was arrested in April 2010, after allegedly murdering a man. The girl accused the victim, Robert Daley, of raping both her and her 18-year old sister.¹³⁴ After police released the man based on insufficient evidence to charge him, the girl allegedly went to the attacker’s apartment and stabbed him to death.¹³⁵ When paramedics arrived, Daley was still alive, but died only a few moments later after giving the paramedics his first name. The media is already asking for leniency in her sentencing, presumably taking both her guilt and Mr. Daley’s guilt as a foregone conclusion.¹³⁶ This situation exemplifies the difficulties we face in calling for traditional justice to be served when we view the vigilante as the victim.

The issues attached to conventional vigilantism are still alive and well today, but there is an even greater threat to the law brought about by modern technology. As the world embraces the accessibility of the Internet, we create a “virtual space” where the law becomes muddled by issues of jurisdiction, accountability, and responsibility.

¹²⁸ <http://sexoffenderresearch.blogspot.com/2009/02/murdered-in-united-states-2008.html>

¹²⁹ *Id.*

¹³⁰ <http://www.csom.org/pubs/recidsexof.html>

¹³¹ *Id.*

¹³² *Id.*

¹³³ <http://www.infoplease.com/ipa/A0933722.html>

¹³⁴ <http://news.gather.com/viewArticle.action?articleId=281474978201562>

¹³⁵ *Id.*

¹³⁶ *Id.*

4. Cyber-Vigilantism: the New Frontier

As more people use the Internet, acts ranging from the immoral to the depraved have been chronicled on web pages, YouTube videos, social sites, and blogs. In response to what some see as an epidemic of amorality, or simply as a reaction to a specific event, a growing number of people have taken to using the Internet and the tools it provides to deliver personal justice on those who violate both real-world and “netizen” (a combination of the words “net” and “citizen”) codes of conduct.¹³⁷

In Korea in 2005, a girl’s dog defecated on the subway train.¹³⁸ When some elderly people told her to clean up the faeces, the girl became angry and responded rudely. At this point, an outraged bystander took pictures of the girl next to the dog faeces on the ground and posted them online.¹³⁹ The cell phone camera captured the girl ignoring the smeared faeces and displayed her giving the finger while onlookers reacted in disgust. Within a few days, the girl became known as the “dog-shit-girl.”¹⁴⁰ The “dog-shit-girl” came under public attack as an entire nation turned against her, breaching her privacy by providing personal information about her, attacking her both online and in the real world, and just engaging in general nationwide harassment.¹⁴¹ According to some reports, as a direct result of this harassment, the girl was forced to leave her university.

The “dog-shit-girl” is an example of a worst case scenario wherein a relatively innocuous transgression, refusing to clean up after a pet, results in a disproportionate amount of outrage. The fact that the girl’s cultural faux pas is punished by widespread derision, and even threats, is a grim reminder of what can happen when mob rule dictates justice.

In 2009, two Oklahoma teens were charged with two counts of animal abuse after the duo decided to post video of themselves torturing a cat named “Dusty” on YouTube.¹⁴² Outraged viewers banded together and flagged the channel, forcing YouTube to shut down the channel within mere hours of the video upload.¹⁴³ Within the same day, Internet do-gooders hunted down these teenagers using simple search-engine based research, and publicly posted contact information for them, which led to their arrest by police shortly thereafter.¹⁴⁴

The incident noted above is another example of the mob mentality. However, in the cat abuse case, by contrast to the “dog-shit-girl” case, the mob acted in the interest of protecting an animal, rather than merely ridiculing a person. The interest to protect an animal from abuse is in line with the law. One could argue that the lack of governance over vigilante actions online helped capture these offenders. Further, these people would have never been caught without the intervention of the online community.

In 2008, Jesse McPherson returned home from a trip to discover that his home had been burglarized.¹⁴⁵ After McPherson reported his Xbox 360, television, and laptop as stolen to the police, McPherson researched the potential pawn shops where the thief could sell his belongings, and located the pawn shop where the thief attempted to sell his laptop.¹⁴⁶ McPherson managed to get a copy of the thief’s picture from security images at the pawn shop, and posted the picture online for his Internet friends and users to help identify the thief.¹⁴⁷ Soon,

¹³⁷ <http://whatis.techtarget.com/definition/> (then enter “netizen” in the search box.)

¹³⁸ <http://blog.japundit.com/archives/2005/06/30/808/>

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² <http://www.indypaws.com/post/index/24180>

¹⁴³ <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/4678878/YouTube-cat-torturer-traced-by-web-detectives.html>

¹⁴⁴ *Id.*

¹⁴⁵ <http://www.theage.com.au/news/web/cyber-vigilantes-foil-gadget-thief/2008/03/26/1206207172792.html>

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

McPherson's digital friends had identified almost every piece of the thief's personal life, and proceeded to harass the thief until the thief finally confessed to his mother that he had stolen McPherson's property. Shortly thereafter, McPherson's property was returned to him.¹⁴⁸

In 2006, a young bride-to-be, Ivanna, accidentally left her Sidekick II phone in a taxi. Ivanna asked her tech-savvy friend, Evan Guttman, to help her get the phone back.¹⁴⁹ After dozens of failed attempts at getting the person who found the phone to "do the right thing" via phone calls and text messages to the Sidekick II cell phone number, Ivanna decided to purchase a new Sidekick II.¹⁵⁰ After finally purchasing a new cell phone several days later, Ivanna and Guttman were surprised to find that the new cell phone had downloaded text messages, emails, pictures, and log-on details from the stolen cell phone.¹⁵¹ This information belonged to the person who had stolen Ivanna's cell phone. Guttman posted what details Ivanna had, including emails, profile names, and pictures online. In response, Guttman received messages from hundreds of thousands of Internet users offering information and invitations of assistance, including a helpful hand from anonymous NYPD policemen, support and criticism from thousands of strangers, and offers for interviews and promotions.¹⁵² The person who stole the phone and the person's family threatened Ivanna and Guttman. Eventually, Ivanna and Guttman leveraged the popularity of the story to force the NYPD to take action. The NYPD finally arrested the girl who had stolen the phone and returned the Sidekick II to its rightful owner.¹⁵³ Ivanna and Guttman then sold the cell phone and donated the money to a charity that helps single mothers (the alleged thief, a girl identified as "Sasha," was a 16 year-old single parent).¹⁵⁴

In both the preceding cases, the victims attempted to employ legal means to retrieve their stolen property. In both cases, however, they found police intervention to be lacking, and so decided to take action on their own. In the McPherson case, the victim successfully retrieved his property without involving law enforcement any further than the initial stolen property report. In the Ivanna/Guttman case, public pressure compelled the police to take action. The success these individuals experienced in retrieving their stolen property was connected to their sharing of the thieves' personal information with the online community.

In 2006, an eBay buyer purchased a laptop from a seller in the United Kingdom.¹⁵⁵ The laptop did not arrive for two months and was broken. Enraged, the buyer tore apart the laptop and scanned the hard drive. The buyer discovered that the seller did not bother to wipe the drive before sending the laptop.¹⁵⁶ The buyer then proceeded to copy the contents of the hard drive and discovered the identity of the seller, Amir Massoud Tofangsazan. From a blog the buyer created, the buyer ridiculed Tofangsazan and posted pictures of Tofangsazan, his friends, and family, as well as several pictures of pornography and candid shots of women's legs allegedly retrieved from the hard drive.¹⁵⁷ The buyer also posted personal documents, including excerpts from Tofangsazan's Curriculum Vitae. In an interview with *The Daily Mail*, Tofangsazan revealed that he was studying to become a lawyer and claims the laptop was not even broken.¹⁵⁸ Tofangsazan contacted the police, who investigated and discovered the identity of the buyer, named Thomas Sawyer from Exeter. Sawyer offered to take the site down if Tofangsazan would give him a refund. Additionally, *The Daily Mail* reported that this was not Tofangsazan's first scam; he allegedly pulled a similar trick on Debbie McInerney, wherein she paid him for an iPod that never

¹⁴⁸ *Id.*

¹⁴⁹ <http://www.evanwashere.com/StolenSidekick/>

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ <http://www.dailymail.co.uk/news/article-388189/Revenge-eBay-customer-sold-faulty-laptop.html>

arrived.¹⁵⁹ According to at least one source, Tofangszan was sentenced to two years in prison in 2009 for defrauding his former employer, *The Financial Times*, a business newspaper.¹⁶⁰

Not all cases of justice by public ridicule are successful in achieving their original goal. While Sawyer never was compensated the money that he paid for the broken laptop, his experience brought shame and attention to the person who wronged him. The personal and professional embarrassment that Tofangszan experienced, while not worth anything in a strictly monetary sense, did provide Sawyer a sense of satisfaction and empowerment. That empowerment allowed Sawyer to elevate himself beyond the level of a mere victim.

Since the inception of electronic mail and similar mass communication techniques, there has been a massive explosion of scams. These scams are typically difficult to pull off in person, but many follow the same or very similar patterns to scams performed historically. The targets are typically naïve people who do not know better. To quote Michael Scott from the popular television show, *The Office*: “When the son of the deposed king of Nigeria emails you directly asking for help, you help!”¹⁶¹ The goal of the scam is to collect profits and personal information. The profits or information are then used in any numbers of ways, from simple theft and fraud to identity theft and support for terrorism.¹⁶² Almost every email user is, or should be, familiar with these attempts to separate the greedy, naïve, or under-informed from their money and information. The scammers are usually in remote or hostile areas with no applicable jurisdiction or possibility of extradition. Some Netizens, however, have begun fighting back. The website 419eater.com is just one example of a number of “scambaiting” groups that have cropped up all over the Internet.¹⁶³ These groups not only consider themselves advocates of justice and public servants, they consider scambaiting a sport to be performed for fun, as well as in the interest of justice and fair play.¹⁶⁴

The 419eater group specializes in advanced fee scams, like the infamous Nigerian 4-1-9 Scam. This scheme is named after the section of the Nigerian penal code it violates.¹⁶⁵ Typically, companies and people are selected from mailing lists. A company or an individual will then receive a random letter or email from a Nigerian person claiming to be a top official in the Nigerian government.¹⁶⁶ The letter states that the Nigerian official seeks the help of an “overseas partner” to transfer money, which has been trapped in the Central Bank of Nigeria and cannot be collected by the government officials, into the company’s or individual’s bank account.¹⁶⁷ The amount of money ranges from ten to sixty million dollars that the Nigerian government overpaid on procurement contracts. In exchange for the company’s or person’s cooperation, the Nigerian official promises that the company or person will receive a percentage of the transferred funds.¹⁶⁸

The companies are directed to send company letterhead via fax to show completion of the contract. The Nigerian scammers then use the various letterheads to send fake letters of recommendation to other companies to convince the companies that the scam is legitimate.¹⁶⁹ After the company delivers the letterhead, the letter states that the contract will be submitted for approval to the Central Bank of Nigeria. After approval, the money will be transferred into the company’s or individual’s account.¹⁷⁰

¹⁵⁹ http://www.theregister.co.uk/2006/05/31/ebay_laptop_site/

¹⁶⁰ <http://www.miltonkeynes.co.uk/news/39Playboy39-jailed-after-60k-Financial.5757888.jp>

¹⁶¹ <http://www.tv.com/the-office/michaels-birthday/episode/631891/trivia.html>

¹⁶² <http://home.rmci.net/alphae/419coal/news2010.htm>

¹⁶³ <http://www.419eater.com/html/419faq.htm>

¹⁶⁴ *Id.*

¹⁶⁵ <http://web.archive.org/web/20020802151417/http://www.secretservice.gov/alert419.shtml>

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

To complete the transaction, the letter will frequently request that a representative from the company or the person travel to Nigeria or a border country.¹⁷¹ The person can enter the country without a visa because the Nigerian scammers bribe airport officials to let the person through Immigration and Customs.¹⁷² The Nigerian scammers then use the fact that the person entered the country without a visa, which is a violation of Nigerian law, to leverage the person into giving them money.¹⁷³

Even if the letter does not request that a representative or a person travel to Nigeria, if the person falls for the scam, something will inevitably go wrong in the transfer. The Nigerian scammer will claim anything: a delay in paperwork, an unexpected tax or fee, a government official must be bribed.¹⁷⁴ The scammer then asks the person for money to help things move along. In comparison to the amount of money the person thinks he or she is about to receive, the person willingly pays the amount, which often is in the thousands.¹⁷⁵ Once the person realizes that his dream of fast money from a foreign land will not come to fruition, he contacts the Nigerian scammer, who is suddenly non-communicative.¹⁷⁶

Threats of violence have been used to pressure people to comply.¹⁷⁷ Even more extreme, in June 1995, an American, who was participating in the scam, was murdered in Nigeria. Many others have been reported missing.¹⁷⁸

While this is not the only advanced fee scam that exists, it is one of the most prevalent and renowned. These scams are dangerous, and have cost billions of dollars over the past several years. The Nigerian Government does little to pursue the criminals who implement the scam, but they are not confined to Nigeria. Indeed, these scammers are located all over the world, from North Korea and Russia, to South America and Africa.¹⁷⁹

The scammers use the latest technology and a vast, surprisingly well-organized black market system to broker information and resources internationally in order to facilitate the scam. The 419eater group, and others like them, intentionally initiates conversations with these scammers, in an effort to get them to divulge incriminating information.¹⁸⁰ Another benefit of the conversation is to simply waste the scammers' time and resources, understanding that every minute the scammers waste with scambaiters is a minute the scammers are unable to spend deceiving some less savvy individual to give them his or her money.¹⁸¹ Many of the baiters even request pictures from the scammers in a variety of poses or posing with a sign for humorous results (the 419 FAQ webpage uses one of these pictures in its header, which depicts a Nigerian scammer holding up a sign that says, "What's 419")¹⁸²; this has had the welcome side effect of making scammers ignore legitimate victims who request photographs, possibly saving those victims from further losses. There is also a sense of vindication associated with making the scammers look foolish, especially in light of their attitude towards the people they scam.

Because the goal is to keep baiting the scam as far as it will possibly go, much like fishing, the participants of this activity refer to it as "sport."¹⁸³ One website, The Road to the Skeleton Coast, recounts by email and images a lengthy and complex "counter-scam" perpetrated on a 4-1-9 scammer by an ambitious scambaiter calling

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ <http://web.archive.org/web/20071013221958/http://bbb.org/alerts/article.asp?ID=41>

¹⁸⁰ <http://www.419eater.com/index.htm>

¹⁸¹ *Id.*

¹⁸² <http://www.419eater.com/html/419faq.htm>

¹⁸³ <http://www.419eater.com/index.php>

himself, Troy McClure.¹⁸⁴ According to the website, Mr. McClure was approached via email by a Nigerian scammer calling himself, “Steven Okoma.”¹⁸⁵ On June 30, 2006, McClure responded to Okoma’s unsolicited email. McClure explained to Okoma that the email is a scam and that he needed someone with question moral standards to be his partner in an illegal money moving operation.¹⁸⁶ Okoma was initially suspicious.¹⁸⁷ To confirm that McClure’s operation was not also a scam, Okoma asked McClure for proof. As proof, McClure gave Okoma a website address where Okoma could track the “trunk box” full of money via GPS.¹⁸⁸

With Okoma’s doubts assuaged, Okoma communicated over the course of several weeks with McClure in preparation to move the money. On July 13, 2006, McClure convinced Okoma that he was going to move the money to a drop off point at a nearby beach.¹⁸⁹ According to their bargain, Okoma’s brother-in-law was to pick up the money and move it to Nigeria where it could be safely divided among the parties.¹⁹⁰ Upon arriving at the drop-off point, Okoma’s brother-in-law, Tony Kabali, could not find the trunk box.¹⁹¹ When Okoma looked at McClure’s GPS locator, it showed that the box had washed offshore and was travelling north along the African coast line at a high rate of speed.¹⁹² At this point, Okoma tried to secure a boat in order to go out to sea and retrieve the box. Unfortunately for Okoma his streak of bad luck resulted in his boat sinking before he could retrieve the trunk box.¹⁹³ The money was presumably lost forever.

Of course, you may know Troy McClure from the hit television show, *The Simpsons*. It is also important to note that “Troy McClure” was never in Namibia, had no access to any trunk box full of money, does have enough knowledge of html to create a falsified GPS satellite tracking webpage, and is actually a disgruntled, and very creative, scambaiter. All told, the scam continued until August 3, 2006, at which point Okoma was down four week of planning, several thousand dollars, one boat, and the respect of his family.¹⁹⁴

People who use computers and networks to perform a variety of tasks that are not performed by typical users are known colloquially as “hackers.” Hackers have been an active part of the Internet since its inception, and have grown to become a massive subculture. This subculture encompasses dozens of ideologies and value systems. The most clear subdivision of these ideologies is the one between “good,” “bad,” and “neutral” hackers, also known as White Hat, Black Hat (or Crackers), and Grey Hat Hackers.¹⁹⁵ The division between the three operative ideologies of these groups is somewhat blurry, but essentially, black hats break the law and hack for profit and/or bragging rights, while white hats hack to discover vulnerabilities in systems and then work with administrators to fix those vulnerabilities (sometimes with the administrators’ blessings and for which they are sometimes paid).¹⁹⁶ The third group, grey hats, will often fix vulnerabilities after exploiting them, but will usually make sure to take what they are after before they do.¹⁹⁷

Over time, these hackers banded together in order to create more efficient forms of attack and defence. Several of these “clans” have gained notoriety in the world of systems security. One such group, Anonymous, has been described by critics and supporters as everything from “domestic terrorists” (FOX News) to “supremely bored 15 year-olds” (Wired News journalist, Ryan Singel).¹⁹⁸ Anonymous’ agenda is difficult to ascertain, but

¹⁸⁴ <http://www.419eater.com/html/SkeletonCoast/index.html>

¹⁸⁵ *Id.*

¹⁸⁶ <http://www.419eater.com/html/SkeletonCoast/safari2.html>

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ <http://www.419eater.com/html/SkeletonCoast/safari4.html>

¹⁹⁰ *Id.*

¹⁹¹ <http://www.419eater.com/html/SkeletonCoast/safari5.html>

¹⁹² *Id.*

¹⁹³ <http://www.419eater.com/html/SkeletonCoast/safari7.html>

¹⁹⁴ *Id.*

¹⁹⁵ <http://hubpages.com/hub/Meaning-of-Hacking-and-the-Different-Kinds-of-Hackers>

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ http://en.wikipedia.org/wiki/Anonymous_%28group%29

the group has been described as “the first Internet-based super consciousness.”¹⁹⁹ Anonymous has claimed or has been accused of committing a number of “operations.” These operations usually have some overarching goal, but actually take the form of complicated pranks (“for the lulz”). However, the group does fight for some noble causes.

Anonymous is best known for its attacks on the Church of Scientology. On January 21, 2008, Anonymous posted a video entitled, “Message to Scientology,” on YouTube.²⁰⁰ The video warned of a movement against Scientology. Anonymous threatened to wipe the existence of Scientology from the Internet.²⁰¹ Anonymous posted this video in response to the perceived censorship perpetrated by the Church of Scientology. Earlier, the Church removed a video interview that leaked onto the Internet, which featured Tom Cruise professing his views on Scientology.²⁰²

After Anonymous posted its message, the Church of Scientology’s websites began experiencing a series of distributed denial-of-service attacks.²⁰³ Essentially, a denial-of-service attack is perpetrated by flooding a web server with communications requests. The excessive traffic either causes the server to crash or makes the server so slow to use as to render it practically inoperable.²⁰⁴ In addition, Scientology centres experienced an influx of prank telephone calls and black faxes.²⁰⁵ A black fax is composed of a black square that is dozens of pages long, thereby wasting printer toner at an alarming rate. As a result, the Church of Scientology was forced to move its website to a service provider that specializes in protecting against denial-of-service attacks.²⁰⁶ After those attacks, Anonymous changed its tactics and focused on legal protests and online campaigns.

At least two of these protests carried out in February 2008 were considered widely successful. The first protest, on February 2, 2008, garnered 150 people outside a centre in Orlando, Florida, as well as smaller gatherings in Santa Barbara, California and Manchester, England.²⁰⁷ The second protest, held two days later on February 10, 2008, involved 7,000 people in at least 100 cities worldwide, including London, Dallas, Boston, New York City, Melbourne.²⁰⁸ The participants, who typically wear Guy Fawkes masks, do what they can to preserve their anonymity during these protests in keeping with the fundamental tenets of their ideology. These protests have continued for years, and Anonymous sees it as an ongoing battle. These protests seem to be working on at least some level. In November 2009, Australian Senator, Nick Xenophon, “accused the Church of Scientology of being a criminal organization.”²⁰⁹ The shift in tactics from illegal hacking and defacement to legal protest and campaigning is proof that Anonymous both considers this issue very serious and can operate within the system when needed.

In 2007, Anonymous was involved in the arrest of an accused sex offender in Canada named Chris Forcand.²¹⁰ According to reports from Anonymous members and Toronto police, Forcand solicited members he believed were underage for sex and shared naked pictures of himself.²¹¹ Shortly thereafter, Toronto police arranged a sting operation where a police officer impersonated an underage girl and arrested Forcand as a result of his solicitation.²¹² Forcand was charged with “two counts of luring a child under the age of 14, attempt to

¹⁹⁹ *Id.*

²⁰⁰ <http://www.youtube.com/watch?v=JCbKv9yiLiQ>

²⁰¹ *Id.*

²⁰² <http://www.emorywheel.com/detail.php?n=24945>

²⁰³ *Id.*

²⁰⁴ <http://www.us-cert.gov/cas/tips/ST04-015.html>

²⁰⁵ *Id.*

²⁰⁶ http://en.wikipedia.org/wiki/Project_Chanology

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ <http://cnews.canoe.ca/CNEWS/Crime/2007/12/07/4712680-sun.html>

²¹¹ *Id.*

²¹² *Id.*

invite sexual touching, attempt exposure, possessing a dangerous weapon, and carrying a concealed weapon.”²¹³ According to the Global Television Network, this marks the “first time a suspected Internet predator was arrested by the police as a result of Internet vigilantism.”²¹⁴ Forcand’s arrest is another example of what a group as powerful as Anonymous can do when they rise above their puerile antics and cooperate with law enforcement to remove potentially dangerous child predators from the internet and community

5. Conclusion

The vigilante tradition is a long and diverse one. From the time society created and codified laws, there have existed insufficiencies in those laws that resulted in injustice, and vigilantes seeking to right those injustices. As laws have traveled from the mother country to newfound land, they evolved, and so have those men and women who inhabit that gray space between law and justice. Where in the past the vigilante may have been a rogue and knave, or desperado and cattle rustler, today the vigilante wears a different mask, a digital bandana across his face. The mouse and keyboard his pistols. The public forum is O.K. Corral.

The vigilante, however, is more than just a symbol of justice. The vigilante is also a symbol of need. As stated previously, the vigilante exists to bridge the gap between law and justice, but there should be no gap between law and justice. Most reasonable people would agree that the ideal and logical end result of law is to achieve justice for all involved. The victim should be vindicated completely; the criminal punished fairly; the populace protected properly. The vigilante appears only when the legal system fails to fulfil its responsibilities to one of these parties. Therefore, it behoves us as part of that legal system to see the vigilante as a symptom of legal insufficiencies and address those insufficiencies as quickly and completely as possible.

The Internet has created an environment in which even the most mild-mannered person can become an anonymous, virtuous champion of justice. As history has repeatedly proven, however, vigilantism can prove dangerous to both the vigilante and victim. With such wide-spread accessibility to the tools to be an independent crime fighter, it is no surprise that so many otherwise law abiding citizens have decided to take the law into their own hands. In the interest of upholding law and obtaining order, the United States legal system has a responsibility to minimize vigilante activities. There is no simple solution to this complex issue. The best course of action would be one that combines carefully drafted legislation, specially trained law enforcement personnel, and technologically-savvy judges. Even then we will also need to develop systems that allow us to cooperate with a public eager to help in the fight against criminal behaviour. The legal system has a veritable army that it has not had access to before, and it should find a way to incorporate these people into the process.

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²¹³ *Id.*

²¹⁴ http://en.wikipedia.org/wiki/Anonymous_%28group%29