

HEROES OR VILLAINS?: A Lockean Approach to Justifying Vigilantism

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§1 Introduction

It has long been argued that the state has a monopoly on the legitimate use of violence and imposition of sanctions. But what happens in cases where the state fails to effectively carry out its duties of punishment and protection? That is where vigilantes come in. Many philosophers deny that vigilantism can ever truly be justified. I disagree, and I believe more people agree with me than they know. Think of the vigilantes we see in movies and television. We call these people heroes, or even superheroes (just look to the massive success of the recent superhero “Avengers” movies). As an audience, we laud these rogue crime-fighters: the lonely cop against a crooked police force, a man seeking justice for a murder that was dismissed due to negligence or corruption, a serial killer who hunts and kills other serial killers. As an audience, we seem to accept vigilantism. Why then, are we so loath to accept it as politically justifiable? That is what I aim to explore.

Vigilantism refers to the non-state sanctioned punishment of criminals and is justified in certain specific instances, namely in a “pseudo-state of nature.” A pseudo-state of nature is a state in between the chaos of a full-blown state of nature (the state into which man is born and exists until some form of order or government is put in place) and the order of an established socio-political state. This is a state wherein the established order has failed in some critical aspect, such as apprehension or punishment of criminals. I will elaborate on the concept of a “pseudo-state of nature” in section three. Using a Lockean approach to governmental rights (which I explain in

section two), I apply the “Natural Executive Right”—a right to punish transgressions that philosopher John Locke believed belonged to all people in a state of nature—in these “pseudo-states of nature,” the end result of which is a philosophical justification for vigilantism. I believe that vigilantism is a reasonable and justifiable response to wrongdoings when the state fails to uphold its duties of punishing criminals and protecting its citizens. That is what I seek to prove in this paper.

§1 Defining the Phenomenon

In this paper I aim to justify only the specific phenomenon known as crime-control vigilantism. Crime-control vigilantism is what we normally think of when we think of vigilantism. As H. Jon Rosenbaum and Peter Sederberg define it, crime-control vigilantism “is directed against people believed to be committing acts proscribed by the formal legal system¹.” Vigilantes are concerned with the same criminals with which the state normally would be concerned. This type of vigilantism occurs especially when the state or establishment fails or is seen to be ineffectual:

The primary causes of these activities [crime-control vigilantism] are disillusionment with the government’s ability to enforce the laws and, apparently, the belief that the police are corrupt. These cases are examples where groups normally classified as potential participants in dissident violence share certain values with the established legal system and are attempting to extend the enforcement of these shared norms into their neglected communities.²

Crime-control vigilantism is characterized by actions that ultimately coincide with the norms of the state even though they may involve the transgression of those same norms.

Specifically, the term vigilante, as I use it, refers to a person or group of persons who protect and restore the establishment (except in cases where the establishment has enacted evil laws, but more on this later) through the use of extralegal actions in situations where the state or legal system has failed to function properly in some crucial way. In their essay “Vigilantism: An Analysis of Establishment Violence,” Rosenbaum and Sederberg classify vigilantism as “establishment violence.” Establishment violence is violence with the goal of maintaining or defending the established order.³ It is not violence aimed **at** the establishment but rather at **restoring** the establishment. Vigilantes are concerned with the ideals and motives of the established order but feel they must resort to actions that violate the formal boundaries of that order to protect it. The idea that they must act outside of the established order to protect

1 Jon Rosenbaum and Peter Sederberg. “Vigilantism: An Analysis of Establishment Violence.” In *Vigilante Politics*. Philadelphia: University of Pennsylvania, (1976). 3-29. 10.

2 *Ibid.*, 3.

3 *Ibid.*, 4.

that order—the feeling that the existing order is so corrupt that one cannot feasibly correct it from within—is what makes “establishment violence” true vigilantism.

Moreover, for actions to be considered vigilantism they need to be both voluntary and completely divorced from the state; the vigilante cannot be accountable to the state in any way. Vigilantism occurs when the state has been rendered ineffective, or at the very least, when the state appears ineffective. Vigilantism, as I will use it for the remainder of my argument, is the use or threat of violence by voluntary agents acting without regard for state approval and directed toward protecting the reasonably just morality of a given community and maintaining objective security within that group.⁴ Furthermore, and most importantly, vigilantism is a reaction to crime or transgressions of an established order, especially when that order has been rendered ineffective in some way⁵. I believe it is the “Natural Executive Right”—our individual right to punish all transgressors in the state of nature—that justifies vigilantism.

§2 The Natural Executive Right⁶

Before we discuss Locke’s “Natural Executive Right,” we must first explain his concept of a “state of nature.” A state of nature is the state into which all men are born and in which there is no socio-political order. All men are free from laws and governance until some overarching order is formed. In his *Two Treatises of Government*, Locke argued that all men are naturally free—that they are born into a state of nature—and, as such, have certain inherent rights, such as the right to life, liberty, and property⁷. It is only in the formation of a social or political order or government that man leaves the state of nature. In this formation, man voluntarily transfers his natural rights to the state. It is through this voluntary transfer of man’s natural rights that the state gets its own rights, such as the right to make and enforce laws. Therefore, when the state fails or is disbanded, man is returned to a state of nature and his natural rights are returned.

Among the natural rights that Locke believed man to have is the “Natural Executive Right,” which includes the right to punish any and all transgressions of the law of nature. Let us begin this discussion of Locke’s “Natural Executive Right” by examining why he argued that it is a right belonging to all people in a state of nature. In the *Second Treatise of Government*, Locke claims:

4 This definition is derived from two articles on the subject of vigilantism: Travis Dumsday’s “On Cheering Charles Bronson: The Ethics of Vigilantism” and Les Johnston’s “What Is Vigilantism?”

5 Travis Dumsday, “On Cheering Charles Bronson: The Ethics of Vigilantism.” *The Southern Journal of Philosophy* XLVII (2009): 49-67. 60.

6 The existence of the natural executive right is a contentious one, with many detractors arguing that such a right is even paradoxical in nature. For a full yet ultimately unconvincing argument against the Natural Executive Right, see Jeffrie Murphy’s “A Paradox in Locke’s Theory of Natural Rights.” For the purpose of this paper, however, because I am focusing on arguing for the legitimacy of vigilantism, I urge the reader to simply take the existence of the NER as a conditional; if the natural executive right as I argue for it exists then vigilantism is justified.

7 Alex Tuckness, “Locke’s Political Philosophy”, *The Stanford Encyclopedia of Philosophy* (Spring 2016 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2016/entries/locke-political/>>

To justify bringing such evil [punishment] on any man two things are requisite. First that he who does it has commission and power to do so. Secondly, that it be directly useful for the procuring of some greater good . . . Usefulness, when present, being only one of those conditions, cannot give the other, which is a commission to punish.⁸

Locke believed that punishment is only acceptable when those who execute it have the commission and power to do so. This authoritative power to punish comes from what Locke calls the “Natural Executive Right.” This right gives all individuals in a state of nature the “right to punish the transgressors of that law [of nature] to such a degree as may hinder its violation.”⁹ It is from the transfer of this right from the individual to the state, Locke contends, that the government attains the power to punish its citizens. As the first of his three arguments for the “Natural Executive Right” has no bearing on my concept of vigilantism, I will skip directly to his second and third arguments.

Locke’s second argument for the existence of a natural executive right links the natural executive right with the right to preserve humankind. Locke argues that it is an inherent right in a state of nature to protect and preserve humankind through punishment. Broadly construed, the right to preservation could include the right not only to defend others when they are under attack but also the right to create a “deterrent climate” through punishment and preemptive attacks¹⁰. For the right to preserve humankind through proper punishment, it must be construed in the broad sense because punishment involves much more than defense during an attack: “[P]unishment begins where defense leaves off.”¹¹ It is to this broad construal of the right to preserve humankind that Locke appeals. Punishment of crimes, in the sense that it deters future criminals from acting, becomes a form of protection against future attacks, a protection in which all people have an interest¹². This is how our natural right to protect mankind validates the “Natural Executive Right.”

The third argument Locke gives for the “Natural Executive Right,” the right that all people are endowed with to punish any and all transgressions in a state of nature, comes from an examination of the government’s right to punish. The government has a right to punish criminals, but as the government gets its power solely from the voluntary transfer of natural rights from the citizens who agree to be governed,¹³ individuals must have the natural right to punish before there is a government. It follows that individuals in a state of nature—existing before or outside of

8 Jon A. Simmons. “The Right to Punish.” In *The Lockean Theory of Rights*. Princeton, N.J.: Princeton University Press, (1992). 121-66. 122.

9 John Locke. *The Second Treatise of Government*. (1689). Reprint, New York: The Liberal Arts Press, (1956). 6.

10 Simmons, 136.

11 *Ibid.*

12 *Ibid.*, 137.

13 *Ibid.*, 123-4.

government—have the right to punish wrongdoers themselves. It is from the transfer of our natural rights that Locke believes the government gains the commission and power to punish. However, in situations where the state has failed or does not exist, the rights of the people return to the individual. This gives individuals the right to punish when there is no state or when the state has failed in some critical manner (a “pseudo-state of nature”). This is why I believe that what Locke calls the “Natural Executive Right,” applied in a “pseudo-state of nature,” justifies vigilantism¹⁴.

§3 The Pseudo-State of Nature

Having established the possibility¹⁵ of a natural executive right that would allow individuals in a state of nature to punish wrongdoers, what impact does this have for our attempts to justify vigilantism? It seems quite obvious that most humans do not exist in a “pre-political” state; only rarely can one find individuals living without some form of socio-political structure, and states of complete political dissolution do not last long. But when the state ceases to function properly in important aspects such as punishment and crime-deterrence—if it fails partially with respect to some of its duties while still functioning in every other aspect—it becomes, in a very relevant sense, like a state of nature. I call these situations “pseudo-states of nature.” These pseudo-states of nature are akin to a full-blown state of nature in the sense that the state or socio-political order in such a pseudo-state has failed in some critical way. It is not that a state or established order does not exist in these circumstances. Rather, the state or established order is so ineffective in certain aspects that it is as if it were absent in those respects. As I argue, crime-control vigilante justice is permissible in these “pseudo-states of nature” precisely because they are instances where the state fails in some ways but still maintains a semblance of governance in other ways. The relevant state failures for this discussion on vigilantism are the failure to punish those who transgress the laws (or morality in the case of a corrupt government) of the society it governs and the failure to protect its citizens from danger and loss of security.

The crucial characteristic of a pseudo-state of nature is that it is a state that has not yet degraded into chaos—there is still an overarching structure, the skeleton of the state. The laws, procedures, and all other facets of the establishment still exist in a pseudo-state of nature. The only thing that is missing, in the cases I am focusing on, is a properly functioning system of punishment, or, in some situations, a properly working legislative body. In these situations, the state simply fails in one or two aspects. As the state gets its right to punish from our right to punish others (Locke’s

¹⁴ Together, all three of Locke’s arguments for the natural executive right (including the one I have not addressed) make as strong a case as any competing explanation of the natural executive right, the right to punish wrongdoings in a state or pseudo-state of nature. What I have aimed to do here is make a case for the natural executive right as at least as plausible as any other theory.

¹⁵ There are still a great many detractors toward the “Natural Executive Right,” and as I do not have room in this paper to argue all of these points, from here on my argument is conditional, operating under the assumption that the “Natural Executive Right” is real and that, applied in a pseudo-state of nature, justifies vigilantism.

conception of the “Natural Executive Right”), when the state cannot or does not punish, we can, and should, temporarily take back that right and punish wrongdoers ourselves. In these pseudo-states of nature vigilantes fill the gap, so to speak, stepping in, in many cases, for the state but also for the community as a whole. States that are only temporarily without a properly functioning system of punishment can survive if someone—a vigilante—takes over that one function until the state is working properly.

Although he does not specifically call them pseudo-states of nature, Travis Dumsday, in his article “On Cheering Charles Bronson: The Ethics of Vigilantism,” outlines four situations in which vigilantism is permissible. I believe that all of these situations are examples of pseudo-states of nature and cover most, if not all, pseudo-state of nature circumstances relevant to vigilantism. The four situations are: 1) The state has enacted good laws but is failing to enforce them; 2) The state has failed to enact certain good laws; 3) The state has enacted evil laws; and 4) The state has enacted good laws and is enforcing them¹⁶.

In the first circumstance, when the state has enacted good laws but is failing to enforce them, the legislative aspect of the state is functioning properly but the executive branch is not punishing transgressions of these laws. This can happen for a number of reasons. If the police force or other players in the justice system are corrupt,¹⁷ have ulterior motives (such as racist agendas), or are simply inept, then they will ultimately fail to uphold the system of punishment the state has put in place. In such cases, individuals not only have the right to protect themselves from criminal activities, they also have the right to punish transgressors because the state has failed to do so. Such instances seem to be fairly clear examples of pseudo-states of nature in that the state is functioning properly in some aspects but has failed completely in others, mainly the punishment of criminals. Vigilantes are concerned with the same criminals with which the state should normally be concerned. Instances of grievous injustice, such as when a murderer is acquitted because evidence was obtained illegally or because he bribed or intimidated jurors, should be considered failures of the state under this conception of pseudo-states of nature. In such cases, the state is unable to punish wrongdoers and protect its citizens effectively. The state itself may not be corrupt or willfully blind, but, because of forces out of the state’s control or mistakes made along the way, the state has failed to completely uphold its duties, becoming a pseudo-state of nature.

The second situation in which the state has failed to enact good laws is slightly more difficult to justify. Dumsday explains these circumstances as ones where a state has failed to prohibit actions that, from a rational point of view, would have been deemed

¹⁶ Dumsday, 58.

¹⁷ *Ibid.*

wrong or breaches of natural law¹⁸. For example, if a theoretical state did not prohibit murder or rape, or, in a more realistic example, excluded certain races, religions, or creeds from protection, then it has not enacted good laws¹⁹. Dumsday also includes under this category instances of a state enacting good laws but failing to endorse sufficient punishment²⁰. In this case, a government may prohibit murder but attach a grievously insufficient punishment to its transgression—Dumsday uses the example of a one week jail sentence²¹. It is helpful, in defending Dumsday's argument, to use the idea of the morality of a state. If we look to the general morality of the citizens in a corrupt state as establishing the proper norms, it becomes easier to argue that the state has failed in some way by not enacting certain laws or sufficient punishment.

The same principle applies to Dumsday's third category, instances where the state has enacted evil laws²². It would seem impossible, to some degree, for a state to enact "evil" laws if the laws are merely a construct of the state alone. But if the state enacts laws that go against the overall morality of its community, such as the sterilization of mentally ill individuals or the prohibition or limiting of African American voting rights, when the community feels these actions are unethical, then the state has failed. Also, if the state itself is evil, such as in Nazi Germany, and is enacting laws that do not align with the majority morality of its community, then such laws can be considered evil, and the state has failed in its duties to protect its citizens.

The fourth and final situation in which vigilantism is permissible according to Dumsday is when the state has enacted good laws and is enforcing them²³. Dumsday begins his explanation of these situations by noting that this is the hardest circumstance in which to justify vigilantism²⁴. This last category does not clearly describe a pseudo-state of nature and is therefore an exception, but a very small one. The only types of vigilantism that are permissible in cases where the state has enacted good laws and is enforcing those laws properly, according to Dumsday, is when the vigilante has a certain skill that can aid law enforcement²⁵. In these situations, the vigilante in question has some ability that the state does not. It is important to note, however, that the vigilante is not willingly accountable to the state; he is not working with law enforcement, hired by the state, or in any other way responsible to the state. The most prominent example of this would be superheroes with special powers that law enforcement officers do not have. Another more realistic example is the specialized skill of hunting and trapping runaway criminals²⁶. In either case, if the vigilante uses his skills to help the police but does not hold himself accountable

18 *Ibid.*, 61.
19 *Ibid.*, 61-2.
20 *Ibid.*, 62.
21 *Ibid.*
22 *Ibid.*, 64.
23 *Ibid.*
24 *Ibid.*
25 *Ibid.*
26 *Ibid.*

to the state and does not need the state's approval then this would be, according to Dumsday, an acceptable use of vigilantism.

§4 Objections to Vigilantism

The conception of vigilantism as “establishment violence” stemming from the “Natural Executive Right” and only applying in a pseudo-state of nature still does not satisfy some theorists. Alon Harel, an opponent of vigilantism, argues that the state has a monopoly on the use of force to punish or protect²⁷. Harel argues that criminal sanctions are legitimate **only** because they are state inflicted. Although Harel gives three arguments against privately-imposed sanctions, only his integrationist argument pertains to vigilantism as I have defined it. In this section I will examine Harel's integrationist condition for the right to punish as it applies in a pseudo-state of a nature, and, as a result, will prove that it does not preclude vigilantism as I have argued for it.

Harel's most important argument for the legitimacy of state-exclusive criminal punishments comes from his integrationist, or state-centered, argument. This roughly means that the power to punish is an “agent-dependent” power; only the state can punish because state-imposed sanctions are designed to realize specific goals and perform specific tasks²⁸. Another way to explain Harel's argument is to say that criminal sanctions are, fundamentally, an expression of the community's disapproval of criminal acts²⁹. As such, only the state can inflict legitimate punishment because only the state, and not private entities or other individuals, speaks for the community. Privately inflicted sanctions may serve some of the other functions of punishment, such as deterrence or retribution, but they will never embody the symbolic significance that state-imposed sanctions do³⁰. This view—that state-exclusive punishment is the only legitimate form of punishment because it is part of the duties and powers of the state—is what Harel calls an integrationist justification³¹. The state's right to punish, then, is entirely tied to its power to issue prohibitions in the first place³².

This integrationist justification for state inflicted sanctions relies on the premise that punishment of criminal transgressions is part of the state's network of rights and duties. To take this away from the state—to allow for the privatization of punishment—would fundamentally disrupt its proper functioning³³. The state sets

27 Harel has three arguments against the “Natural Executive Right”—instrumental, normative, and integrationist.

Only his integrationist argument is germane to my premise and so that is what I will focus on. For Harel's full argument against the natural executive right see Alon Harel. “Why Only the State May Inflict Criminal Sanctions: The Case Against Privately Inflicted Sanctions,” *Legal Theory* 14 (2008): 113-33.

28 Alon Harel, “Why Only the State May Inflict Criminal Sanctions: The Case Against Privately Inflicted Sanctions.” *Legal Theory* 14 (2008): 113-33. 118.

29 *Ibid.*

30 *Ibid.*

31 *Ibid.*, 123.

32 *Ibid.*

33 *Ibid.*, 125.

the prohibitions, and so it must also set and consequently enforce the punishments attached to these prohibitions if these punishments are to be just³⁴. Harel goes as far as to say that a society without a system of state-issued punishments for the violation of norms or laws is “tantamount to . . . a stateless existence^{35 36}.” For the state to be effective—for it to govern justly—it must have the power to set norms as well as enforce them. I have no qualms with this claim. In fact, I agree with Harel for the most part. A state without the power to enforce sanctions is tantamount to a stateless existence in many respects: it is a pseudo-state of nature. But what Harel neglects to account for is an improperly functioning state. Harel’s integrationist justification of state sanctions does have force in the situations in which it applies, but this theory of punishment justification simply does not pertain to actions in a pseudo-state of nature. Vigilantism is only permissible in those circumstances where the state cannot punish effectively, where the state’s proper functioning has already been disrupted. In these circumstances, non-state inflicted sanctions would not strip the state of its power to punish, as Harel argues,³⁷ because the state has already lost this power some other way. Therefore, my argument for the legitimacy of vigilantism in pseudo-states of nature does not conflict with Harel’s ultimately valid integrationist justification for state inflicted sanctions.

While Harel is unconvincing in his argument for the state’s express right to punish, he does raise some very important concerns regarding non-state-imposed sanctions, concerns that frequently appear in the discussion of vigilantism. One of the first objections he raises toward privately inflicted sanctions is that when a punishment is not state-imposed it loses its ties with the state-imposed laws; there is a disconnect between the law being transgressed—a law imposed by the state—and the punishment for that transgression³⁸.

In response to Harel’s argument that extralegal punishment severs the link between the body enacting the laws and the individuals enforcing them, I would argue that this is true to a small degree. But most often vigilantes enforce those very same laws of the state (except in cases where the laws are evil, but this difficulty is cleared when “state” is replaced with “morality of community”). Vigilantes are more than capable of enforcing the same or analogous punishments for criminal transgressions. And because the vigilante, under the specific paradigm laid out in section one, strives to uphold the morality of his community, he is likely to mimic state sanctions as best he can. Therefore, the vigilante is acting as a substitute for the state, enforcing the state’s laws and, in most cases, keeping to the state’s designated sanctions.

³⁴ *Ibid.*, 130.

³⁵ Surprisingly, Harel’s remarks re-enforce my classification of an ill-functioning state as a pseudo-state of nature.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*, 114.

However, even when a vigilante acts as a substitute for the state, he is still only human, and so subject to extreme bias. This leads to the next problem Harel mentions, the same one that Locke notes in the *Second Treatise of Government*: non-state inflicted punishment is highly susceptible to the whims and fancies of the individuals doling out the punishments³⁹. Extralegal punishment can quickly become excessive or too lenient, based on the interests of the punishers. Furthermore, who metes out sanctions for the non-state punishers in this situation?: **Quis custodiet ipsos custodes?** Who watches the watchmen? It seems unrealistic to expect all humans to judge themselves objectively. As Locke says, “[I]t is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves⁴⁰.”

The difficulty of bias and human error is the basis for another problem extralegal punishment faces: privately inflicted sanctions are grounded in private judgments⁴¹. When an individual imposes punishment for any transgression—whether a state issued prohibition or a moral transgression—he is governed by his own judgments of wrongness. This individual is also subject to his own conceptions of proper degrees of severity of punishment for any given transgression. Even if the vigilante is acting as a substitute for the state and his judgments coincide with those of the state, those judgments simply are not the **same** as the state’s.

Both of these concerns are easily solved. The question of who watches the watchman is answered through appeal to Locke’s original construction of the “Natural Executive Right.” Because every individual in the (pseudo) state of nature has the right to punish all wrongdoers, any other individual can thus punish the vigilante if he should do something wrong⁴². If a vigilante oversteps his bounds and begins to punish indiscriminately and contrary to the morality of the community to which he belongs, he can be punished, too. In these situations, the vigilante himself has become a “wrongdoer” and can consequently be punished by another vigilante or the state, if it is functioning properly in that respect. This proviso also helps solve the other problem—that the vigilante, as a human, is subject to his own whims and may be driven by his own selfish motivations to committing undeserved vengeance. Together with the condition that in order for vigilante actions to be legitimate they must conform to, or at least tend toward, those actions of a maximally rational agent—the “system of vigilante checks and balances,” so to speak—greatly diminishes the risk of unjust or unwarranted punishment. It is true that no human being is a maximally rational agent, nor can any person divorce himself from his emotions and personal motives, but neither can the state be completely unbiased and totally fair. If the

39 *Ibid.*, 118.

40 Locke, 9.

41 Harel, 127.

42 Establishing what a vigilante could do that deserves punishment is somewhat difficult, as he is already operating outside of the confines of the law, so his simply breaking the law is not enough to warrant sanctions; in this case, we can again appeal to the idea of a general morality. When the vigilante transgresses the morality of the community then he can and shall be punished.

vigilante should fail to punish in a way that tends toward a maximally rational agent, slipping into vengeance and unnecessary and unnecessarily harsh punishments, then he is no longer a proper vigilante and should be subject to punishment.

Aside from the objections Harel raises, vigilantism is often charged with several other extreme difficulties. One such difficulty is an epistemic difficulty: how can any one individual know that another individual is guilty of committing a crime? This problem is inextricably linked with another difficulty facing vigilantism: the lack of procedural systems of justice and due process. Because vigilantes do not have to abide by the legal procedures that the state must follow, it seems that there is no standard of judgment for who is guilty in such pseudo-states of nature.

This is where I disagree. It is true that a vigilante is not subject to the same rules as the state, but this does not mean he should be allowed to make rash, uninformed decisions. In fact, vigilantes should be held to a higher level of certainty of guilt precisely because they do not have to deal with procedural red tape and legal technicalities. This is why I would like to add one last condition for legitimate vigilante actions: vigilantes must be certain of the guilt of whomever they seek to punish. They must have evidence or firm knowledge that a crime has been committed. A vigilante may even follow his own procedural process, collecting evidence (both legally and illegally), interviewing witnesses, and even giving the accused a chance to confess or make a case for his innocence. This stipulation—that a vigilante must have absolute certainty that an individual has committed some wrongdoing—solves the epistemic and procedural problems faced by vigilantism and precludes impulsive or reactionary violence as legitimate vigilante actions. Furthermore, I believe that the fact that a vigilante is not held to any procedural standards before acting saves him from the trappings of a corrupt state. For it is during this practice of “due process” that corruption is most likely to occur; crucial evidence gets thrown out on technicalities, witnesses lie under oath, judge and jury are bribed or threatened to give a sentence of not guilty. The vigilante, acting on his own and not tied to these procedural measures, is better able to assess guilt and assign punishment in a pseudo-state of nature.

There still lies the problem of what justifies the proclamation by the vigilante that a person is guilty. Without any procedural system in place to ensure justice, what makes the vigilante’s judgment a correct one? Here is where I look again to the epistemic constraints put on vigilantism. Before he can act, a vigilante must know for certain that the offender has committed some wrong. As for what makes the vigilante’s judgment just, I turn back to the “Natural Executive Right.” In a state of nature, or pseudo-state of nature, everyone has the right to assess and punish transgressions of the laws of nature or the mores of his community. We all have an equal right to confer judgments on others. As John Simmons writes:

Neither one's general level of virtue nor one's talents in the area of punishment (e.g., special aptitude for being a judge, jailer, or executioner) are normally taken to establish any special claim to be the one who should punish others⁴³.

Everyone is equal in his or her right to judge others in a state, or pseudo-state, of nature.

Additionally, because vigilantism must coincide with the morality of a community and tend toward the actions of a maximally rational agent, the vigilante cannot simply punish what he believes is wrong but must punish what the community he represents believes is wrong. The vigilante must punish in a way that coincides with his community's beliefs. Simmons, quoting Locke, agrees:

While "every man in the state of nature has a power to kill a murderer" (II, 11), "lesser breaches" of the law of nature must be punished less severely (II, 12). The executive right is a right only to retribute to him, so far as calm reason and conscience dictates, what is proportionate to his transgression, which is so much as may serve for reparation and restraint⁴⁴.

It is here that we must remember that while a vigilante is not beholden to the state, he does not operate completely free from the state. He is not isolated from the legislation and punishments of the state but, rather, is a free entity working outside the bounds of the state in order to protect and restore that same state. The vigilante acts outside the confines of a non-working state in an attempt to protect or improve the state and uphold the values of his community. Vigilante actions, going back to Rosenbaum and Sederberg, are establishment violence, violence aimed at protecting or correcting the existing establishment. That is why a vigilante's judgment of wrongs, in a pseudo-state of nature, is valid and can lead to the just imposition of sanctions while still being free from the state.

Conclusion

The goal of this paper has been to justify the highly specific phenomenon of crime-control vigilantism in a Lockean pseudo-state of nature. Ultimately, I hope to have proven that "Crime-Control Vigilantism" is a legitimate and just recourse when the state has failed to effectively fulfill its functions because of John Locke's conception of the "Natural Executive Right" applied in "pseudo-states of nature." My goal was to give credence to our intuitions of vigilantes as good guys, heroes, or even superheroes, while finding a proper foundation for extralegal punishment. I believe that Locke's "Natural Executive Right," the individual's natural right to punish, applied in a pseudo-state of nature, a situation in which the state has failed in some crucial aspect

⁴³ Simmons, 312.

⁴⁴ *Idid*, 318.

but exists in all other aspects, presents a solid philosophical justification for "Crime-Control Vigilantism."

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