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Batman and the Rule of Law

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Butler: Batman and the Rule of Law

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hands on most occasions to protect *ourselves* (and our property). But it has a problem with the sort of proactive superhero who goes out of his way to stalk the dark alleys of the night to protect *other* people.

**Arguments for and against Batman**

Most readers of Batman comics or watchers of Batman movies see Batman as the good guy. He saves the lives of women and children and puppy dogs. He stops the villains from enslaving/killing/sending mad or whatever other villainous things the villain wants to do to ordinary good folk who have done nothing wrong. Of course he is the good guy! So what possible arguments could there be that what Batman does is not so good?

Well when it comes to Batman it is difficult to find any such arguments. This is because the bad guys (and fewer bad girls) in Batman are so clearly very bad! There is no doubt that the Joker is a homicidal, violent, nasty, psychotic lunatic. Someone who, in Alfred’s words, ‘just wants to see the world burn.’ So when you see the nasty, violent, homicidal, psychotic bad guy being, well, a bad guy, of course you know he deserves his just deserts. So what possible arguments could there be that what Batman does is not so good?

Well when it comes to Batman it is difficult to find any such arguments. This is because the bad guys (and fewer bad girls) in Batman are so clearly very bad! There is no doubt that the Joker is a homicidal, violent, nasty, psychotic lunatic. Someone who, in Alfred’s words, ‘just wants to see the world burn.’ So when you see the nasty, violent, homicidal, psychotic bad guy being, well, a bad guy, of course you know he deserves his just deserts. Of course it is ‘just’ and ‘right’ that the superhero brings him to justice, especially when the cops are corrupt and the mayor is otherwise powerless. We think this because we have no option to think any other way. That is the way the movie is scripted.

In the real world is it so simple?

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**Who says what is right and what is wrong?**

As we saw above, what is ‘right and wrong’ in Batman is always very clear. Although the people of Gotham might sometimes be confused we, the watchers, are in no doubt as to the rightness of Batman’s cause. If it was always so clear that someone was evil and what they did was wrong there would be no need for the courts or other legal institutions to catch and try them as we would just need a hunt-and-kill posse to track them down to ensure they get what is coming to them. Our legal system has a very different process to determine whether someone is a wrongdoer. I want to address two particular problems with the vigilante approach to ‘justice.’

We require a ‘suspected’ baddie (innocent until proven baddie) to be arrested according to a certain procedure, to ensure crooked cops do not stitch him or her up and, for serious crimes, only when sufficient evidence is presented to a court with a jury and that jury finds him guilty can we truly call the Penguin the baddie he is. Why a jury? Because we usually do not trust one person to make all of the sometimes complex and subtle judgments about intention, fact and all those other things that make up real life crimes leading to a guilty verdict. We need those things in real life. In Batman, there is never any reasonable doubt about the guilt of the villain.

Maybe some of you will be reading this and thinking
'surely sometimes the Batman method is better!' We have all heard the stories of the bad guy getting off because of the complexity of the rules of evidence etc. But to a great extent, the purpose of all those rules is not to put the bad guys in jail. It is to keep the innocent ones out. The old saying is that it is better to let ten guilty men go free than to imprison one innocent person. If you disagree, put yourself in the innocent guy/girl’s shoes and imagine a life in a high security prison for a horrible murder you did not commit.

There are, unfortunately, also plenty of cases where it is quite clear that a person has committed a crime, or so it seems, when it eventually becomes clear that they have been set up by corrupt officials. This is not generally a problem Batman has to face as, again, his baddies are clearly bad.

The second issue (for me at least) comes in response to the quote with which I opened this article. In an early scene in The Dark Knight Batman is in a darkened car park to see an exchange between a Chechhyn mobster and a crazy psychiatrist who is providing him with drugs. The exchange between the two groups of bad guys is interrupted by a group of vigilantes all dressed as Batman. After the expected gunfire and the arrival of the real Batman we see the conclusion of this particular episode with the baddies (or at least some of them) tied up in nice bundles awaiting collection by the police. Alongside them, also nicely gift wrapped, are the wannabe Batmans. One of the Batmans complains at the unfairness of being left so and asks ‘What makes you any different to me?’ Batman’s response is, of course, ‘I am not wearing hockey pants’—referring to the less than elegant get up of the pretenders.

What does this line mean? Does Batman have a better outfit, cooler gadgets or what? Does Batman have a better sense of justice? Why would he think this? Both the real and the pretend Batmen have targeted the same baddies. They are both using the same methods to apprehend (or kill) them. So why is the Batman different from those other Batmen?'

This gives rise to the second problem. What gives one individual or a small group of individuals the right to determine what is right and wrong? Again in Batman it is not an issue because it is clear who is and is not a badder. But in reality there is plenty of grey. Would we be comfortable leaving that judgment to one individual we could trust to make the right and just decision every time? Or would we prefer a system with checks and balances to deliver our justice for us with oversight of the police, the potential to appeal a judge’s decision if we think they have made a mistake and provisions in place to force people and institutions to produce records and give evidence if those records or that evidence is likely to show our innocence? Do we prefer clear rules that might not always produce the right and just outcome but at least give us predictability? In the case of Batman, he knows in his heart who has been good and who has been bad (a bit like Santa I guess) but we certainly do not know what is in Batman’s heart. We can understand a system of rules and institutions and the rules that govern them and therefore it is likely we can figure out what to do not to get locked up (and ensure we get our Christmas presents regularly each December).

From ancient times some philosophers have thought such a utopian system was preferable and possible. The main being Plato who suggested in his Republic that the ideal State would be one ruled by wise philosophers (looking for a job was he, do you think?) but there seem to be few instances in history where this has worked out. Systems ruled by a wise few usually collapse into despotism before too long (think of France following the French revolution or the Soviet Union following the Russian revolution).

The other problem with this approach to justice is that inevitably different individuals or groups often think that they and they alone hold the key to what is right and just. Would this lead to competition? A situation of Batman and his army versus Superman and his is not one that is likely to lead to a good outcome. Well it might but there would be plenty of trouble for us normal people whilst they worked it out. The English philosopher Thomas Hobbes once commented that man’s life, in nature, was solitary, poor, nasty, brutish, and short. That is why we band together in society, because when we work together to support each other and form a consensus as to how we will be ruled, agreeing that it will be according to a set of rules rather than according to the whim of whomever is the strongest (or in Batman’s case the richest) among us, things work a lot smoother.

Perhaps, then, we should take Batman as a warning. If we let our legal institutions break down to the degree that we inevitably seem to do in the comic books we will be stuck with Batman justice. Let’s hope if that ever happens we get the right Batman for the job at the time!

References

1. The Dark Knight (Directed by Christopher Nolan, Warner Bros, 2008).
3. Above n 1.
4. Ibid.
6. Or was that Superman?
7. Don’t you sometimes think the Mayor should call up the President, who could simply order in the Marines or special forces? Of course not! Gotham, like Metropolis and all other superhero cities, is an island. There is simply no other solution but the superhero!
8. If you are interested in this sort of stuff there is a whole blog in the United States devoted to questions about superheroes, supervillains) and the law – see James Daily and Ryan Davidson, Law and the Multiverse: Supervillains, and the Law <http://lawandthemultiverse.com/>. My thanks to one of my students, Emma, for the reference (she should have been studying more!)
9. One explanation could be that the Batman (aka Bruce Wayne) is filthy rich and therefore not only has the means but also the right to make moral judgments about baddie’s badness? But the purpose of this article is not this sort of social commentary…

Thinking outside the square!

How else might the law be relevant to superheroes? Divide your class into groups. Each group should examine one of the various areas of law that have been discussed on the blog by James Daily and Ryan Davidson, Law and the Multiverse: Supervillains, and the Law <http://lawandthemultiverse.com/>. Interesting examples include Supervillains and Privacy Rights, Supervillains and Superheroes and Immigration Law or Supervillains and International Law. Can you apply what you learnt to a different Supervillian?