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Batman and the Rule of Law

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*Vigilante (who has been tied up by Batman):
'What's the difference between you and me???'*

Batman: 'I am not wearing hockey pants.'

No, this is not the title of the latest episode of the caped crusader's adventures in the soon-to-be-released next edition of DC Comics. 'What then', you ask, 'is an article about Batman doing in a magazine that is meant to be all about the law?' My response is that Batman has everything to do with the law!

From the very beginning of the Batman saga there has been a tension regarding Batman's real character: is he a good guy out to defend justice and the law or is there a darker reality to Batman? Is he, instead, a criminal operating 'outside' the law wreaking revenge on criminals, according not to the law but to his own rules? After all, Batman regularly does not simply capture the bad guys and hand them over to the cops so they can be sent for trial. You mess with Batman you are likely to end up dead. If we even look at the more recent movies (and I am thinking here particularly of *The Dark Knight*¹), as well as the older comic books, there are times when Batman is considered by the people of Gotham City to be an outlaw.

Batman as 'vigilante'

Batman is what is referred to as a 'vigilante.' The word (coming from Spanish) was first coined in the United States in the mid nineteenth century.² A vigilante is generally someone who, alone or with others, 'takes the law into their own hands.' Usually (but not always) these people are not 'officially endorsed' by the authorities in the area in which they operate (although in many cases those authorities might turn a blind eye to their activities if it suits them). The difference, then, between the vigilantes and an 'official' law enforcement body, such as the police, is that the police have their powers given to them by the law. Vigilantes undertake their mission, usually engaged in actions which are actually 'against' the law.

Inevitably, in real life as in the movies, vigilantes justify their actions (or their actions are justified by their supporters) on the basis that the 'official' means of ensuring justice have failed. This too is the case with Batman. It is only when Gotham City has turned into a jungle of crime and the police are powerless to stop the bad guys that there is a need for Batman. Usually this is when the police force is corrupt (ie in with the bad guys) or simply too weak to take on the dastardly and diabolical might of the powerful and evil crazy villain of the latest episode. Thus the need for a Batman. He can restore order where there is chaos. He can protect the

weak when there is no one else available to do so.

There is a memorable quote in the 2008 film *The Dark Knight* where Bruce Wayne says to Assistant District Attorney (and old friend) Rachel Dawes, 'you know that day you once told me about when Gotham would no longer need Batman? It's coming.'³

The reason why Batman thought (rather optimistically, doesn't he know the Superhero pattern? That day will *never* come!) that day was coming was because Harvey Dent, Gotham City's Public Prosecutor had locked up half the city's criminals (and was well on his way to locking up the other half) and he did it without wearing a mask. 'Gotham,' said Batman, 'needs a hero without a mask.'⁴ In his role as Public Prosecutor Harvey was, of course, the official face of law in Gotham. He was, in fact, an officer of the law. And where the law works, we have no need of a Batman.

Now, that last sentence deserves a second look. Two words particularly: when the law *works* we have no *need* of a Batman. What exactly does it mean for the law to work and what do we expect from the law? What do we mean when we say the law has stopped 'working'? And if the law does 'stop working' is Batman – a vigilante – a valid response? If the law does not do what we want it to do, do we *need* a Batman?

Let's presume the people of Gotham are people just like us. What message can we take from Batman about what everyday citizens – everyday people – want from the law? The Batman movies, in fact all superhero movies, are pretty simple. They all involve an arch-villain – an arch-*criminal* who causes mayhem. People die. People's houses are blown up. Old ladies are robbed on the street. So the basic message of the movies is that we all want to be free from crime. We want our property to be safe and we want to be able to sleep comfortably in our beds at night. Further, we expect the law and our legal institutions to provide that safety. The cops will catch the criminals (or hopefully be so efficient that the criminals do not even try in the first place) and the courts will ensure that the bad guys (and bad girls) are locked safely away for a long time. Of course, we want a lot more from the law than that but from very ancient times a level of safety and surety, a level of protection, was considered to be one of the things that the law, in one way or another, would deliver. This is a form of justice.

Justice

How should we define justice if it is one of the things we expect the law to deliver? A typical definition is 'the exercise of power in maintenance of right', or 'the infliction of punishment, or legal vengeance on an offender or wrongdoer.'⁵ 'Right' in the Batman sense of the word, as we have seen, is firstly freedom from violence. Violence to our property (ie we do not want it forcibly removed from us) and more importantly (for most people) to our persons (we do not want to be assaulted, raped, maimed or murdered). So, in short, we expect the law to provide justice in maintaining our right to safety. But there is a second thing we expect the law to do (the criminal law particularly). That is, what is part of just and right is to *punish* those who 'unjustly' or 'wrongly' do us harm.

So what happens when the law fails to do this? Do we need to take things into our own hands to protect ourselves and others? Or hope for a Batman to do it for us? Actually, the law allows us to take things (reasonably) into our own



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.⁶ 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. 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.⁷ 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?⁸

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 Chechnyan 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 gunfight 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?⁹

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 baddie. 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.¹⁰ 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 they 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).
- ² ‘Vigilante’ in JA Simpson, *The Oxford English Dictionary* (Oxford University Press, 2nd ed, 2009) vol 19, 624-5.
- ³ Above n 1.
- ⁴ Ibid.
- ⁵ ‘Justice’ in JA Simpson, above n 2, vol 8, 325-7.
- 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: Superheroes, 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...
- ¹⁰ Thomas Hobbes, *Leviathan* (1651) Ch13, [9]. What follows is a very broad description of Hobbes’ position.

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: Superheroes, Supervillains, and the Law <<http://lawandthemultiverse.com/>>. Interesting examples include Superheroes and Privacy Rights, Superheroes and Air Safety, Superheroes and Immigration Law or Superheroes and International Law. Can you apply what you learnt to a different Superhero or Supervillain?