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UGS 303

16 December 2024

Vigilantism in *And Then There Were None*

Despite the best intentions of their architects, legal systems are often rife with injustices. Innocent people are jailed, killers walk free, and victims are left with few avenues of recourse. Faced with these failures, some people take matters into their own hands and seek vigilante justice outside of a courtroom. Agatha Christie's book *And Then There Were None* provides one of the most notorious examples of vigilantism, with Judge Lawrence Wargrave acting as a vigilante both inside and outside the law.

And Then There Were None follows a group of 10 people who are lured to a deserted island off the coast of Devon in England. When they arrive, each of them is accused of murder through a mysterious recorded message. Anthony Marsten is charged with killing two children while driving recklessly. Thomas and Ethyl Rodgers are alleged to have withheld life-saving medication from a woman for whom they were to inherit money. General John MacArthur sent his wife's lover, a soldier whom he commanded, on an unsurvivable mission, where he later died. Emily Brent threw a maid out of her house with nowhere to go, who went on to drown herself, because she had a child out of wedlock. Judge Wargrave is charged with having influenced a jury to return a guilty verdict for a man he then sentenced to death. Dr. George Armstrong killed a woman he was operating on while drunk. William Blore, a police officer, gave perjured evidence on a man who then died in a prison labor camp. Philip Lombard abandoned a group of tribal men whom he worked with in Africa, leaving them to starve. Vera Claythorne led a boy she was

babysitting to drown so that his uncle, whom she was in a relationship with, could inherit the boy's parents' estate. All of the murders were committed outside of the realm the law can punish, either because it was an accident, like Dr. Armstrong, or simply unprovable, like Vera Claythorne. Each of the alleged killers is then killed, one by one, until no one remains.

These murders are revealed to have been orchestrated by Judge Wargrave, who commits them out of a twisted sense of justice. As a judge, he prided himself on punishing the guilty and protecting the innocent, but upon learning of these cases, murders that the law would never be able to touch, he took it upon himself to make sure that some measure of justice was served. Through Judge Wargrave and other characters, *And Then There Were None* examines how and why people take the law into their own hands. The novel describes two types of vigilante justice, the kind that is doled out on the island, known as classic vigilantism, and the kind perpetrated in the courtroom, known as shadow or legal vigilantism.

Classic vigilantes are the most prominent kind of vigilantes. In pop culture, they are best symbolized by Batman, the cartoon vigilante hero who fights crime on his own, outside of the legal system. In real life, they are people who have violently attacked criminals they believe have committed a crime, often against them or a loved one, and who would have escaped punishment if not for their vigilante actions. A prominent example is the case of Bernhard "Bernie" Goetz, the "subway vigilante," who shot 4 black teenagers he accused of attempting to mug him on the New York subway. Goetz had been mugged once and nearly mugged several times with no help from police, so when he was confronted on the subway, he felt that he had to take matters into his own hands.

From Batman to Bernie Goetz, all classic vigilantes share a common trait. Paul Robinson, a law professor at the University of Pennsylvania, describes them as people who aim to "provide

the order and justice that the criminal justice system has failed to provide in a breach of the social contract” (401). Social contract theory states that in a democratic society, governments, whose power is granted by the people, have a responsibility to protect the public interest. Thus, governments, and by extension legal systems, have a responsibility to punish crimes that society deems harmful, as well as prevent more crimes from happening in the future. As Ohio State law professor Ric Simmons articulates, vigilante justice emerges when “the public criminal justice system has failed its obligations under the social contract” and as a consequence, vigilantes “break their side of the social contract and take the law into their own hands” (160).

Judge Wargrave’s actions are explainable under this model. The people brought to the island all committed murders that society would deem harmful, however, they are all unable to be punished by the justice system due to the nature of their crime, whether it be accidental, or simply unprovable. This induces a justice-minded third party, in this case Wargrave, to step in and punish those that the legal system cannot.

The actions of classic vigilantes are additionally sometimes intended as a political statement, to pressure the justice system to better fulfill their duty under the social contract. In 1973, a group of Baltimore vigilantes known as Black October called for members of the public to “off [kill] the pusher,” with “the pusher” referring to the drug dealers pushing heroin (Robinson 421). The group soon killed and claimed responsibility for the deaths of two prominent heroin dealers. Public reaction was overwhelmingly positive, with one resident saying “‘Black October’ is doing the most beneficial job of combating and eradicating the distribution of drugs into the community” (Robinson 422). While the dealers had been shot by multiple people, only one man, Sherman Dobson, a 20-year-old college student, was charged in connection with the murders. After 14 hours of deliberation, the jury deadlocked on the murder

charge, instead convicting Dobson of lesser crimes including robbery and kidnapping, which occurred during the commission of the murder.

The inability of the jury to convict Dobson of murder presents an example of what can happen when cases of classic vigilantism are prosecuted. Even if a vigilante's actions are morally justified, and society at large agrees with what they have done, the legal system can and will still prosecute them for violating the law. This can lead to jury nullification, where juries refuse to convict a defendant against the weight of the evidence, typically because of their judgments about the morality of the case, and the laws surrounding it. This is made possible through the combination of two pieces of the constitution, the right to a trial by jury, granted by the 6th Amendment, and the inability to be tried twice for the same offense, granted by the 5th Amendment. Together, these two rules allow a jury to essentially pardon a person, with no risk of the person being tried again. In the case of Sherman Dobson, a juror who had been harmed by the distribution of heroin in Baltimore may have chosen to advocate for a not-guilty verdict, despite the evidence in favor of Dobson's guilt, leading to a deadlocked jury. Had Judge Wargrave's case ever gone to trial, he might have used the guilt of the people he murdered as a justification for his actions, and hoped that the jury would agree that what he did was for the greater good.

Jury nullification, in and of itself, can also be a form of vigilantism. Professor Robinson refers to manipulating the judicial system to "impose the justice that the system has up to that point failed to enact," as "shadow vigilantism" (461). As the name implies, shadow vigilantism occurs subtly, and unlike most classic vigilantism, shadow vigilantism occurs within the legal system.

With the focus now on the legal side of vigilantism, the definition will need to be adjusted. Classic vigilantism has a somewhat standard definition, outlined by philosophy professor Dr. Travis Dumsday as “use of violence or threat of violence by an agent or agents who are not willingly accountable to the state, for the purpose of controlling (preventing and/or punishing) criminal or noncriminal but still deviant actions” (58). By contrast, to examine “shadow vigilantism,” which is not always violent, nor illegal, a broader definition is needed. Professor Simmons provides such a description, broadly defining vigilantism as “a private citizen or group who imposes punishment on those who allegedly perpetrate crimes” (162). The key difference in the second definition is that Simmons removes the requirement that the actions be violent, as well as the requirement that the activity occurs outside the realm of the law. This is to include both “shadow vigilantes,” as well as what Simmons calls “legal vigilantes,” examples of which will be discussed below.

Shadow vigilantism can take numerous forms, but, in contrast to classic vigilantism, most are typically non-violent and legal, though often unethical. Shadow vigilantes can be private citizens who are only temporarily part of the legal system, like jurors who participate in jury nullification, or people who are witnesses to a crime. In 1980, Ken McElroy, a “local thief, bully, and sexual predator” in Skidmore, Missouri was shot to death in broad daylight in front of a group of 45 people (Robinson 460). To this day, no witnesses have ever come forward to provide information in the case. While only one person in the crowd of people around Ken McElroy could be called a classic vigilante by the standard definition, the 44 shadow vigilantes who have stayed silent about who actually pulled the trigger are possibly even more responsible for the dispensation of vigilante justice.

Shadow vigilantes can also be members of the judicial system, like judges or police officers. The case that supposedly lands Judge Wargrave on the island is an example of how judges can become shadow vigilantes by leveraging their power during a trial. In the recording, Judge Wargrave was charged with influencing a jury to return a guilty verdict in contrast to the majority of evidence that had been presented. *And Then There Were None* takes place in Britain, where judges can “sum up,” or reiterate the points of the case to the jury before they go to deliberate. During his summing up, Judge Wargrave influences the jury by subtly arguing in favor of the prosecution. He admits that he knew “without any doubt that the man had actually committed the crime with which he was charged,” and justifies his actions by saying that all he has done is “protect the jury against the emotional effect of emotional appeals” (Christie 259). He further justifies his actions by saying that he has also done the reverse, and “stopped cases where...the accused was palpably innocent, directing the jury that there was no case” (Christie 259). In both cases, however, he has breached the impartiality that judges are supposed to maintain, and allowed his sense of morality to guide his actions, in much the same way a juror promoting jury nullification might. His actions exemplify the insidious nature of shadow vigilantism, as he worked entirely within the law to exact his ideal of justice.

In real life, judges use this, and other tactics to affect the outcome of a trial. Unlike in the UK, judges in the US are not given a regular forum to speak directly to the jury about the facts of the case. Instead, they must attempt to influence juries in more subtle ways. US judges are still allowed to “within certain limits, comment on the evidence” to “assist the jury in its deliberations” (Blanck et al. 95). Drs. Kathryn and Clark Olson, professors of communication at Arizona State University and the University of Wisconsin - Milwaukee respectively, argue that while judges serve as “purportedly ‘impartial’ referee[s],” they exercise “significant influence in

directing the decision” of the jury, and point to the actions of Judge Earl Carroll in the case of *U.S. v. Aguilar* as an example (16).

U.S. v. Aguilar involved the 1985 prosecution of 11 people for smuggling Central American refugees into the country. The defendants believed that the Reagan Administration was failing to follow both “domestic and international humanitarian laws,” as, at the time, Central American refugees faced enormous hurdles to applying for asylum (Olson and Olson 20). They argued this was because the US was involved in conflicts in the refugees' home countries, and was denying them refugee status for political purposes. The case found itself in front of Judge Carroll, who, before the trial even began, made it known to the attorneys that he “thought the defendants were guilty” (Olson and Olson 23).

During the trial, he used his pretrial “rulings and nonverbal behavior...to privilege the prosecution over the defense” (Olson and Olson 23). His pretrial rulings, which came *sua sponte*, meaning unprompted, precluded the defense from bringing up both domestic and international humanitarian laws, the “present or past existence of civil strife” in the lives of the refugees, or “necessity or duress on the part of [the] defendants” (22). This severely hindered the defense's case, as they could not use any of the strategies that they had planned on using during the trial. The pretrial rulings also came only 3 days before the trial began, which further hampered the defense. During the trial, Judge Carroll’s nonverbal behavior also seemed to benefit the prosecution. He interrupted the defense attorney’s opening statement “three times with no precipitating prosecutorial objection,” and “visibly expressed his anger to the jury by grabbing a defense attorney's shoulder” (24). Taken together, Judge Carroll’s actions paint a picture of a judge who believed the defendants were guilty and used his powers as a judge to advocate the position of the prosecution, in violation of his responsibility as a judge to be impartial.

The actions of Judge Wargrave and Judge Carroll both show how shadow vigilantism can be perpetrated by judges in entirely legal ways. While using the power of the gavel in a partial way likely violates the judicial code of conduct, and is assuredly unethical, it does not violate any laws and is difficult to consistently detect.

Police officers are also common shadow vigilantes. Their actions often take the form of “testilying,” which Professor Robinson defines as “lying in court to compensate for what they see as improper rules that regularly lead to failures of justice” (467). This is the crime that William Blore, one of the other alleged killers on the island, is accused of. He perjured himself to get a conviction for a man accused of robbing a bank, who then died a year later after being sentenced to a penal colony. In real life, police often lie to establish probable cause. They may claim that they saw drugs on the floor of the car of a person who, after a technically illegal search, is found to actually possess drugs. If the police had no cause to search the person’s car, the entire case would be thrown out, despite the fact that the person was caught with the drugs red-handed. Police see testilying as the only way of “satisfying the technicalities of search and seizure law,” while still getting “a suspected criminal off the streets” (Robinson 468). Testi-liars are part of the justice system but are breaking the law, thus fulfilling one of the two requirements of the stricter definition of the classic vigilante.

On the opposite end of the vigilante spectrum of testi-liars are “legal vigilantes,” people who are not part of the justice system, but who have been sanctioned by the legal system to punish criminals. Professor Simmons presents citizen’s arrest laws, merchant’s laws, and castle doctrine laws as ones that permit legal vigilantism. These laws allow private citizens to enforce punishment for a crime using violence, including deadly force. Citizen’s arrest laws, for instance, allow private citizens to arrest people using force. Different states have different standards for

when you are allowed to make an arrest. Texas allows private citizens to make arrests of people whom they witness either committing a felony or a crime “against the public peace” (Texas State, Legislature. Code of Criminal Procedure sec. 14.01). By contrast, Oklahoma allows private citizens to arrest a person if a felony has been committed, and the citizen “has reasonable cause for believing the person arrested to have committed it” (Oklahoma State, Legislature. Criminal Procedure sec. 22-202). Merchants are allowed further rights. California allows merchants to use a “reasonable amount of nondeadly force necessary” to prevent a suspected thief from escaping from their store, even though no actual crime has been committed. (California State, Legislature. Penal Code sec. 490.5).

Finally, self-defense laws offer protection from the most extreme charges. States with so-called, “castle doctrine” laws permit the use of deadly force to protect property in various circumstances. Texas, which has some of the broadest castle doctrine laws, allows a person to use deadly force to protect property, either one’s own or another’s, from the “imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime,” or the immediate fleeing thereafter, so long as the person “reasonably believe[s]” that deadly force is necessary (Texas State, Legislature. Penal Code sec. 9.42).

Each of these examples pushes back on the narrow definition of vigilantism. By Dr. Dumsday’s definition, vigilante action is illegal by nature, and thus, the conduct of “legal vigilantes” would not be termed vigilantism. In response, Simmons posits the case of Joe Horn. In 2007, Joe Horn observed two men break into his neighbor’s home in Pasadena, Texas. He called 911 to report the crime but then saw the two burglars leave the house carrying pillowcases full of items. He ignored the 911 dispatcher’s order not to go outside, grabbed a shotgun, and

went outside to confront the burglars. He yelled at them to freeze, and when they did not, he shot and killed them both. In court, Horn used Texas' castle doctrine law to defend his actions, and after two weeks, a grand jury voted not to indict him for murder (Simmons 188).

Horn's actions then, were defensible under Texas law. However, an armed private citizen shooting two unarmed men who have robbed another person's house would be considered a vigilante killer in any other state. The image of thieves carrying pillowcases full of belongings in the way a cartoon burglar would, invite, in contrast, the image of an equally cartoonish vigilante hero to oppose them.

While far from a cartoon hero, Judge Wargrave is unique as a vigilante. He dons both the black cape of Batman, as well as the black robes of a judge in his perceived pursuit of justice. Through the course of the novel, we see his notions of justice coalesce in both legal and extralegal paths. As a judge, he is uniquely aware of the failures of the justice system, and it is these failures that drive him to vigilante action. The real-life Judge Wargraves, classic, shadow, and legal vigilantes alike, exemplify the consequences of systemic problems in the justice system and show how individuals can subsequently feel empowered to seek justice on their own.

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