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### How Being Right Can Risk Wrongs

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*How Being Right Can Risk Wrongs, Ch. 7 in*

THE VIGILANTE ECHO:  
HOW FAILURES OF JUSTICE INSPIRE LAWLESSNESS

(forthcoming 2018)

By Paul H. Robinson & Sarah M. Robinson

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&  
Sarah M. Robinson

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## PREFACE

Vigilantes have long been vilified, often with good reason, as with the racist lynchings of the Klu Klux Klan. But the origin of the term and the original American "vigilantes" in 1850s San Francisco were models of democratic action saving the community from an ineffective and corrupt government. And there has been a long line of groups who could fairly claim their conduct to be morally justified, albeit technically illegal.

In modern societies, citizens give up most of their natural right to defend themselves or to respond to wrongdoing, in return for a promise of protection and justice from the government. But what happens when government breaches that social contract and persistently fails in its promise? There are difficulties with citizens taking matters into their own hands, but it is hard not to empathize with people in desperate situations where law enforcement seems indifferent. And there are some persuasive moral arguments that people can make in support of some forms of constrained vigilantism.

One might hope that serious failures of justice and protection were rare, and that government takes seriously its obligation under the social contract. However, rightly or wrongly ordinary people believe they have reason to doubt the criminal justice system's devotion to doing justice. In a wide range of rules and practices – what might be called the *doctrines of disillusionment* – the criminal justice system seems to many to advertise an indifference to the importance of doing justice: courts that feast on technicalities, treating criminal justice as if it were a game; judicial rules that suppress reliable evidence and thereby let serious offenders go free; decisionmakers allowed to use their discretion to avoid deserved punishment for serious offenses; and criminal law defenses that shield clearly guilty and blameworthy offenders from liability.

Ultimately, the doctrines of disillusionment tend to undermine the criminal justice system's moral credibility with many ordinary people, and that loss in turn undermines the criminal justice system's ability to harness the powerful forces of social influence and internalized norms. In other words, there are not only strong deontological reasons to be sympathetic to moral vigilante but also compelling instrumentalist crime-control reasons to pay attention to ordinary people's disillusionment with a system they see as failing to give sufficient importance to doing justice.

While vigilantism is something considerably more nuanced than the evil incarnate that its Ku Klux Klan paradigm might suggest, it is not so easy to clearly mark out the importantly different categories of moral vigilantes and immoral vigilantes. An attempt to set out a code for the moral vigilante illustrates the complexity of the problem and the fuzzy lines that inevitably remain.

And even if one could construct a clear detailed code of conduct, it is an inevitable weakness of vigilante action that, once the red line of official criminal prohibition has been crossed, it is easy – too easy – for even the well-meaning vigilante to lose track of the boundaries of moral justification. Perhaps even more troublesome, even if the vigilante is successful in staying within the bounds of moral justification given his situation, it is commonly the case that even moral vigilantism can be problematic for

the larger society. The bottom line is that official action is always to be preferred over vigilante action.

But it does not follow that the moral vigilante must simply suffer in silence. First, this may not be possible. Strong feelings of disillusionment may spark action no matter what the law threatens. Further, asking moral vigilantes to suffer in silence is not only a poor crime-control strategy but, more importantly, it ought not to be asked. The government has obligations to its citizens under its social contract and is not free to simply choose not to perform them. The criminal justice system ought to take seriously its obligation to assure that justice is done and crime avoided whenever possible, so that people are never put in the position of having to consider moral vigilantism.

**B**ut the real danger is not of hordes of citizens, frustrated by the system's doctrines of disillusionment, rising up to take the law into their own hands. Frustration can spark a vigilante impulse but such classic aggressive vigilantism is not the typical response. More common is the expression of disillusionment in less brazen ways, by a more surreptitious undermining and distortion of the operation of the criminal justice system.

*Shadow vigilantes*, as they might be called, can affect the operation of the system in a host of important ways. For example, when people act as classic vigilantes or exceed the legal rules for use of defensive force or when officials exceed their authority in dealing with offenders, shadow vigilantes can refuse to report the crime or to help investigators, or can refuse to indict as grand jurors or refuse to convict as trial jurors. Further, frustration with doctrines of disillusionment can lead politicians to urge legal reforms that seem to avoid failures of justice but that also overreach and produce regular injustices.

Shadow vigilantism can also be seen in the conduct of officials within the system, who feel morally justified in subverting the system because they see it as so regularly and indifferently producing failures of justice. Such subversion is apparent, for example, in refusing to prosecute vigilantes, police, or crime victims who stray beyond legal limitations on the use of force against aggressors, in police testilying to subvert search and seizure technicalities (and judicial toleration of it), and in prosecutorial overcharging to compensate for past perceived justice-failures.

The danger of shadow vigilantism is not simply in the systemic distortions that it provokes. The distortions have their own effect in further undermining the system's credibility and its crime-control effectiveness. For example, lenient sentencing provokes mandatory minimums, and search and seizure technicalities provoke testilying, but the excessiveness of mandatory minimums and the lost credibility from institutionalized testilying then in turn provokes "stop snitching" campaigns, which guarantee greater witness intimidation, greater criminality, and less justice.

**W**e would all be better off if this dirty war had never started. Systemic failures of justice, shadow vigilantes' distorting response, and blowback from those distortions, end in more crime and more failures of justice – this is the downward spiral.

The only way to effectively stop that tragic cycle is for the criminal justice system to publicly commit itself to the importance of doing justice, and avoiding injustice, at all costs. That means avoiding application of the doctrines of disillusionment where there is

no compelling societal interest to do so or where the interest could be as effectively promoted through a non-justice-frustrating means.

The only way to prevent the downward spiral of lost credibility is to acknowledge the importance of doing justice both as an essential ideal and as a practical necessity.

## CHAPTER 7

### HOW BEING RIGHT CAN RISK WRONGS

If a vigilante group is careful to stay within the rules of moral conduct, can they say that what they are doing, in the larger scheme of things, is best for society? The answer to that simple question turns out to be a bit complicated. Can something that is moral for the individual actor, given his situation, be problematic in its implications for the larger society? And, if so, what, if anything, should a society do about the moral vigilante?

#### ***The Problem of Training and Professional Neutrality***

**Ranch Rescue.** In the late 1990s, ranchers are struggling to make a living along the Mexican border, especially those in “the avenue of choice” for illegal immigrants entering the United States. These ranchers have long complained to the U.S. Border Patrol about the failure to stem the flow of illegals. The illegal crossers regularly kill their livestock, pull down their fences allowing cattle to stray and get injured, steal or damage their trucks and equipment, and break into their houses. The easy and unchecked flow across the border also attracts drug smugglers, who come heavily armed and are highly dangerous.<sup>1</sup>

Getting no meaningful response to their repeated pleas, several of the ranchers organize Ranch Rescue, an organization that seeks to do what the government refuses to do. Volunteers patrol the border using the same kind of equipment and tactics as the Border Patrol. The group typically detains the trespassers and turns them over to the Border Patrol. By 2006, Ranch Rescue claims to have stopped more than 12,000 illegal entries. Other organizations, such as Arizona Guard, are born from this same motivation.

Yet the members of Ranch Rescue are hardly the best people to have performing this role. They do not have the training to properly screen suspects or to most effectively detain them without harm. But even with better training, the members of the group would not be a particularly good substitute for professional law enforcement officers doing their job in an appropriately detached way. The ranchers are the most interested of parties, who are likely to have the emotional response to the intruders of a person defending his property and family. Mistake and overreaction seem inevitable in such a situation.

Roger Barnett, one of the founders of Ranch Rescue, and Casey Nethercott, a member, are both civilly sued by illegal immigrants for making angry threats and for the use of force while detaining them. Nethercott loses his ranch in the civil lawsuits.

While the group is effective in reducing illegal entries and successful in dramatizing and humanizing the illegal entry problem – the number of Border Patrol agents is eventually doubled – the loss of their ranches was an ignominious end to a project aimed at saving ranches.<sup>2</sup> Even if the moral vigilante gets it right in all respects, the vigilante action creates a risk of mistakes that would not exist if it had been undertaken instead by the fully trained and equipped, unbiased official law enforcement.

**W**hat conclusion should one draw from this? Where does this leave the would-be moral vigilante? Is it that prospective vigilantes ought not to act even if they might be morally justified, because official law enforcement, if they were willing to put forth

the effort, could do it better? If that were the conclusion, then even moral vigilantes ought never to act because official law enforcement, with sufficient motivation, can almost always do it better. By that logic, moral vigilantes should defer to the government that has broken its social contract with them simply because that government *could* have fixed the problem. That analysis seems like a nonstarter on its face. The fact that the government *could* have done it better only emphasizes the extent of their breach. They *should* have done it better but chose not to. That would seem to support the moral vigilante's right to act, not undermine it.

A better conclusion to the dilemma might be that the risk of error created by the moral vigilante is one more reason why the government should avoid breaching the social contract and should never tolerate situations that would justify a group in being moral vigilantes. The government ought to take more seriously its obligation to do justice and to protect citizens.

Unfortunately, the moral vigilantes' lack of training and professional detachment is not the only source of problems they create for society.

### ***The Displacement Problem***

*The Crown Heights Maccabees.* In 1964, Crown Heights, New York, is awash in rampant crime and violence. The Hasidic Jewish community is a highly homogenous group surrounded by cultures and people vastly different from themselves. Crime in their few well-defined blocks and those around them is high and growing quickly. . (For religious reasons, the community is tied to the location.) Most crime is committed by persons from outside the immediate neighborhood. Yeshiva students are regularly attacked and robbed. Home invasions have become more frequent and several have recently turned violent. People fear rapists and muggers and become wary of even walking in the street. Shops begin to close earlier and open later.<sup>3</sup>

[Insert Crown Heights photo here]

A local resident, Rabbi Samuel Schrage, seeks additional police patrols, even using his connections to arrange a meeting with New York Mayor Robert Wagner, but his repeated pleas are ignored. Schrage then turns to the community, asking them to take on their own crime problem. Schrage forms the Crown Heights Maccabees, a neighborhood watch group – one of the first of its kind – with four squad cars, a radio network, and other equipment, all funded by the community. The patrols are set up in such a way that no block of the neighborhood is ever without surveillance for more than 2 minutes. More than 100 residents volunteer and are given training on how to handle situations that might arise while they are on duty.

The Maccabees' goal is to be a deterrent force. A typical exchange follows this pattern: a young man is observed peering into shop windows after hours. He appears to be forming a plan while checking the area. The Maccabee patrol pulls up. No one gets out of the car. The man looks at them – they look at the man – he leaves the area. Not a word is spoken. But, simply watching is not always enough and while the Maccabee's are willing to ask the police for help it is not always forthcoming. There is no strict hands-off policy and Maccabee volunteers often end up in confrontations.

As the Maccabees' neighborhood watch program becomes known, fewer offenders come to the neighborhood to commit crimes. The results are dramatic. From

December 1963 to December 1964, crime fell by ninety percent. Some cases are instructive as to the power of the deterrence: A serial rapist attacking women in the areas around that patrolled by the Maccabees never attacks within their area.

But the striking success of the Maccabees is also a problem. Many of the robberies and rapes that are deterred by the Maccabees are simply displaced to the surrounding neighborhoods. The crime rates in the surrounding areas go up as those within the Maccabees' area go down, producing an ever growing disparity. The adjacent areas are predominantly African-American and Puerto Rican the crime-rate disparity, along with claims of racial profiling by the Maccabees, increase racial tensions, sometimes to the boiling point.

One might argue that the surrounding neighborhoods should simply organize the same kind of neighborhood watch that the Maccabees have organized. This argument may seem persuasive if one views the world in terms of groups, as many people tend to do – us versus them. But the government's obligation is to each individual, and most individuals living in the higher crime areas are in no position to organize a neighborhood watch program as effective as the Maccabees.

If the government had taken more seriously its obligation to keep all of its citizens safe, if they had not left the Jews in Crown Heights or the African-Americans or the Puerto Ricans or any other group to fend for themselves, it could have avoided the crime disparity and the racial tensions. Only a society-wide crime-control program can be truly effective; and vigilantes can rarely provide this.

Where does this leave the moral vigilante? Do the residents of Crown Heights lose their moral justification for vigilante action because it will push the crimes to adjacent neighborhoods? That will strike many people as being seriously unfair: the residents of the neighborhood must suffer because the residents of adjacent neighborhoods are unable or unwilling to as effectively organize? The better solution is for government to take more seriously its obligation to provide safety and justice, and to avoid ever putting the Jews of Crown Heights, or any other group, into a position where they must take the role of moral vigilantes.

Here then are two problems inherent in the conduct of moral vigilantes: the risks created by their lack of training and professional detachment, and the risk that their conduct will simply shift the crime victimization to elsewhere with no net societal benefit. It turns out that moral vigilantism presents other societal problems as well.

### ***Blurring the Line of Condemnability and the Problem of Minority Views***

Once one crosses the line of legality, it is less clear where to stop. What begins as moral vigilantism, can easily spill over the moral boundaries as the momentum of the campaign carries a group too far. (Recall the community drug wars in Chapter 6.) But even more problematic than this, vigilante action – particularly vigilante action that provokes community sympathy – tends to blur the line of condemnability. The vigilante action itself, especially when approved by the community, tends to legitimize lawbreaking. What the law makes criminal may no longer be seen as the best guide of what is truly condemnable, and once the legal boundary is no longer seen as the moral boundary, it becomes harder to find the moral boundary.

*Animal Liberation Front.* Beginning in the 1960s, animal rights activists push to raise public awareness about the improper treatment of animals. There is often a good deal of public antipathy for the kinds of animal cruelty that the activists expose. This includes not only torturous treatment in raising animals for sale for food, but also exposing instances of abuse in laboratories, such as baby chimpanzees locked inside steel boxes, or an infant monkey with its eyes stitched close for a blindness experiment.<sup>4</sup>

In the 1970s, hundreds of US based group's campaign on behalf of animal welfare.<sup>5</sup> In many cases, such advocacy leads to new legislation and some levels of incremental change. However, for some members of the animal rights movement, such change is too little and not fast enough.<sup>6</sup>

The Animal Liberation Front (ALF) represents the more extreme end of the movement. It focuses on "direct action," a euphemism for committing illegal acts of varying degrees of violence in order to save animals or otherwise convey their message.<sup>7</sup> Although the exact year the ALF starts operations in the US is unclear, as early as 1979 individuals who identify themselves with the ALF and its mission break into NYU Medical School, and release animals.<sup>8</sup> This is followed by a spate of similar incidents, some violent.

According to the Department of Justice, between 1979 and the present, ALF-affiliated individuals are responsible for more than 1,500 incidents of trespass, vandalism, arson, and thefts committed in the name of animal rights. The damage they have caused, primarily arson, is well into the millions of dollars.<sup>9</sup> Other forms of violent action include sending letters booby-trapped with razor blades to scientists affiliated with research using animals, and the use of improvised incendiary and explosive devices against property, and occasionally, against the homes of researchers.<sup>10</sup> In 1987, ALF members set a veterinary lab on fire at the University of California, Davis, and in 1992, ALF members, including an activist by the name of Rod Coronado, firebomb a research lab in Michigan.

[Insert ALF poster here]

Researchers are also threatened, leading them to request a temporary restraining order against ALF sympathizers who publish names and addresses of researchers to help target them for harassment. The group also breaks a window in a researcher's house, flooded the ground floor of her home, and set multiple explosive or incendiary devices under researcher's cars, or at their front doors.<sup>11</sup> In other instances, ALF members have contacted researchers and other individuals, stating: "let this message be clear to all who victimize the innocent (animals): we're watching. And by axe, drill, or crowbar -we're coming through your door. Stop or be stopped."<sup>12</sup>

The ALF rails against the general public and particular targets for engaging in "speciesism."<sup>13</sup> One member explains that "speciesism" is "the belief that nonhuman species exist to serve the needs of the human species, that animals are in various senses 'inferior' to human beings, and therefore that one can favor human over nonhuman interests according to species status alone."<sup>14</sup>

Continuing support for ALF is made possible by a public relations branch, which acts within the bounds of the law to provide information about ALF deeds and propaganda for the cause of animal activism. These sites glorify the activities of "direct action" actors, and even compiling reports on aggregated instances of direct action on a

semi-regular basis. The organization also publishes various forms of materials intended to assist individuals interested in the ALF's movement: one ALF activist is arrested for arson has with him an ALF-created document that states that violence to protect animals is justified, rejecting non-violence, and that in order to liberate "brother and sister" animals from human oppressors, actors should "use any and every tactic necessary to win the freedom of our brothers and sisters. This means they cheat, steal, lie, plunder, disable, threaten, and physically harm others to achieve their objective."<sup>15</sup>

As part of its online media campaign, the ALF also publishes guidelines on how to engage in "direct action," offering basic tips on avoiding prosecution, instructions on how to jam locks, and how to make improvised explosive devices. The guide is provided both as a technical manual and as a summary of the ideological position of the group, while also exhorting that its members work on live animal liberations at laboratories, fur farms, and factory farms.

The ALF and affiliated actors and cell groups are still operating, for example by torching a dozen cattle trucks in Fresno, California in 2012. The ALF states that "despite guards, a constant worker presence and a razor wire fence, the enemy is still vulnerable. There is a lot of stuff that needs to be destroyed, and we can't count on spontaneous combustion and careless welders to do all the work."<sup>16</sup>

**T**he public abhorrence of cruelty to animals, and the government's apparent failure to prevent it, helped animal rights activists gain some initial support. And that support in turn helped the activists justify their initial use of vigilante action and continued even when their program expanded far beyond the notion of animal cruelty that the larger community recognized. This is not an uncommon dynamic. Once a group passes the signpost of the majority view, there is no obvious point on the continuum of minority views that distinguishes the nearly-majority view from the extremist-splinter-group view. (This, of course, was one of the reasons in support of the majority-rule requirement set out in Rule 9 in Chapter 5.)

It is no surprise that this problem regularly arises in the context of vigilante action. The people most inclined toward vigilante action are people who usually have a greater motivation to act because they have an exaggerated view of the importance of the interests that they promote. Alienated people often feel that they have less to lose when they reject the status quo. With strong beliefs comes an exaggerated sense of the importance of the government's failures. In the case of the animal rights activists, for example, it is their exaggerated view of animal rights that both motivates them to vigilantism, which the community might initially support, and propels them to extremes that the community does not support.

### ***Inspiring Outside Extremists***

**T**he unhealthy relationship between vigilantism and extremists appears in other forms as well. Even if a vigilante group stays within moral bounds, its lawbreaking conduct may inspire others outside the group to go far beyond those bounds. No matter how scrupulous the group is to remain moral, they may have little control over those outside the group who see their example and are moved to act. Indeed, the stronger the group's public credibility, perhaps earned by staying within moral bounds, the more inspired the outside extremist may be, believing through magical thinking that they too are cloaked with the mantle of moral justification. Consider two examples.

*Project Perverted Justice.* In 2002, a group of computer-savvy volunteers, led by a man adopting the nom de guerre of Xavier von Erck, form Project Perverted Justice in the belief that pedophiles are using the expanding web technologies to better lure children for abuse. Consisting of former abuse victims, retired law enforcement officers, and civilian volunteers, the group finds and monitors online chat rooms where pedophiles are trying to make connections with teenagers. Once they identify a trolling predator, the group seeks to embarrass him with his spouse, significant others, employers, or the community, by posting his chats with the teenage girls. More aggressive forms of action include arranging to meet the man, and filming his embarrassment when they, rather than a young teen, appears for the meeting.<sup>17</sup> (NBC's Dateline wildly successful show "To Catch a Predator" was in partnership with the group.)

In one instance, a 29 year old Portland, Oregon man surfs Yahoo! chat rooms in which teenagers hang out. He strikes up a conversation with "misspunkgirlie13," identified herself as a 14 year old Portland girl. The man quickly steers the conversation toward sex. "I'm 29, your [sic] 14 and adorable,"<sup>18</sup> he writes, and the chat group member continues the flirting. He emails her a photo of his penis and a pornographic video and arranges to meet later at her apartment – once her mother was gone.

The man drives an hour to the girl's house, there he is greeted not by a 14 year old girl but rather by two large men with baseball bats and a camera. They chase him back to his minivan, scold him for soliciting sex from a young girl, as they film his flight. By the end of the day, the group has posted the man's contact information along with the chat conversation and the retreat video to its website, Perverted-Justice.com.

The organization allows anyone ensnared by one of their ruses to post a reply letter justifying their actions. Most use the opportunity to plea that they have learned their lesson and just want the site to take down their information so others will stop harassing them. A 20 year old that the group trapped complained, "[p]eople pm [private message] me all the time and tell me that they are going to find me and hurt me, threaten to kill me, and etc.... i cry at night sometimes cause i fear for my life, since people seem to see what I look like, im very scared."<sup>19</sup>

The group has been accused of falsely representing themselves and of endangering those persons that it publicly claims to be pedophiles. Some critics also accuse the group of endangering the lives of the very children it claims to protect by bringing the predators into the neighborhoods at all. And as the aggressive tactics rarely result in convictions, at least according to some law enforcement officials, the actions only lead to embarrassment but not incarceration of the would-be assailants. Police investigators undergo extensive training on how to chat online with potential offenders in such a way to build a strong criminal case. Perverted Justice volunteers do not undergo any such training nor does the group perform background checks on any the participants.

Authorities caution the group not to make law enforcement's job more difficult. Sgt. Nick Battaglia, head of San Jose, California's child exploitation unit says, "Their hearts are in the right place, but the law needs to be enforced by someone who is qualified to enforce them. They need to be very careful.... If they're insinuating that someone is committing a criminal offense and putting their photograph and personal information online, they could be held liable in a civil suit."<sup>20</sup>

As of 2013, the group claims to have led to 559 chat-based convictions, and claims it has information-sharing agreements with hundreds of local police agencies, as well as the Department of Homeland Security.

While people may disagree about whether the Operation Perverted Justice program is ultimately beneficial or harmful, it is clear that its publicity elevates the public's emotional level of outrage against child sex-abuse, and, most importantly, many people will see it as demonstrating that citizens can be as, or more, effective than law enforcement and exposing pedophiles. In seeming to legitimize such citizen conduct, it is that much more likely to inspire more extreme conduct by others.

In 2006, Michael Anthony Mullen, incensed by a recent case he had heard about, pretended to be an F.B.I. agent and arranged to "interview" three sex offenders living together in Whatcom County, Washington. When one of the "interviewees" left the meeting, Mullen shot and killed the other two.

*Operation Rescue.* Although abortion is legal in the US, it remains a highly controversial issue: some consider abortion to be a matter of free choice and women's rights, while others see it as little more than state-sanctioned murder of unborn children.<sup>21</sup>

Among the more militant groups is Operation Rescue, a pro-life protest group founded in Texas by Randall Terry in the mid-1980s. Terry and Operation Rescue are known for illegal protests in front of abortion clinics and for training individual pro-life advocates in "boot camp" to turn them into the "shock troops" of the pro-life movement. The training includes instruction on how to trace license plate numbers of clients and doctors at the clinics, how to jam their phone lines, picket, and videotape those who enter. The group is also known to deliberately block entrances, and display grisly photos and exhibits of dead or aborted fetuses to those who visit the clinic.

In the 1990s, mid-term abortions are controversial but of particular concern are late term abortions – abortions performed in the last trimester of a woman's pregnancy they require what many see as a horribly cruel procedure. A flashpoint of the debate is Dr. George Tiller, an abortion doctor at a clinic in Wichita, Kansas, who is one of the few medical professionals in the country willing to provide the controversial procedure at the time. Tiller performs such procedures rarely, typically for reasons such as for the health of the mother or because the unborn fetus has development issues.

Furious at Tiller's apparent willingness to commit murder for profit, as they see it, Operation Rescue targets Tiller and his clinic. In 1991, Operation Rescue organizes an event called the Summer of Mercy, during which they plan to shut Tiller's clinic down by blocking entrances and harassing those who enter. The group also keeps close tabs on Tiller and the clinic's patients and staff, to the point where pro-life protestors boast that "we know when Tiller's using the bathroom."<sup>22</sup>

Their tactics include near-constant harassment by protestors day and night, which leads the clinic to seek legal and law enforcement help. Nearly 40 police officers have a full time job trying to keep the pathway to the clinic's entrance open.<sup>23</sup> As a result of their refusal to obey police orders, a federal district court issues an injunction to the protestors on July 23, 1991, but this too is ignored. The next day, protestors crawl under Tiller's van preventing him from entering the clinic's driveway.

For nearly six weeks, Operation Rescue defies federal court injunctions and blockades the clinic, doing everything from chaining themselves to fences, to bussing in protestors every morning. Protesters are not deterred by arrest; some activists are jailed six times in the course of the protests, while many protestors have to be physically carried by police officers. By the time the protests end, nearly 2,600 people have been arrested for blockading the clinic. In total, the mass protest prevents 29 abortions, and lasts 42 days. Tiller's clinic does not cease operations.

During the protests, protesters are usually released on their own recognizance and simply rejoin the human blockade, so Wichita enacts a city ordinance imposing \$2,000 bail for individuals blocking access to local businesses. In 1994, Federal authorities enact legislation that bars this type of protest when Congress enacts the Freedom of Access to Clinic Entrances Act (FACE).<sup>24</sup> The FACE Act makes it a federal offense to block access to a clinic entrance, by means of intimidation, threat or actual use of force, or physical obstruction; it also increased penalties for blocking clinics from two to three days in jail in most cases, to up to 18 months in jail and a \$25,000 fine. As a result of the FACE Act, as well as Supreme Court cases of the same period, illegal blockades cease to be a workable strategy of the pro-life movement. Operation Rescue abandons the tactic.

Operation Rescue continues to issue its heated statements condemning Tiller and other abortion providers, and continues to run a boot camp for its members and other pro-life protestors in the hopes that they will "go home and make babykillers lives miserable."<sup>25</sup> The group also issues "wanted posters" of abortion providers, providing names, pictures, and addresses of abortion doctors to pro-choice advocates. No longer able to blockade the entrance to the facility, activists stalk him, search his trash, harass his employees by providing their identities to local businesses, and can confront Tiller at his home and church.

Although Operation Rescue itself is not implicated in overt violence, its inflammatory rhetoric inspires others more inclined toward violence.<sup>26</sup> In a 1993 assassination attempt, Tiller is shot twice by a woman with ties to anti-abortion groups. Scott Roeder is another militant inspired by Operation Rescue. He is a donor to the organization who posts on its online message board. In 2007, he calls Tiller's clinic "the concentration camp of Mengele of our day [who] needs to be stopped."<sup>27</sup> In May 2009, Roeder confronts Tiller in the lobby of Tiller's church, where he is serving as an usher, and shoots him in the head, killing him instantly.

The original organizers of Project Perverted Justice would no doubt be appalled at the notion of murdering a sex offender. Should they have known, however, that their highly public campaign might stir up all manner of backlash against sex offenders? (Recall the Pittsburgh Prison Guards in Chapter 5.) Even if they understood this possibility, should it vitiate their moral justification for stepping in where government fails to take seriously its obligation to protect its vulnerable children and teenagers?

But Operation Rescue presents an importantly different case. There, the organizers' public rhetoric might be taken as inviting extremists to do more than what the organization itself was willing to do, and as indicating to the extremists that they have the organization's private approval even if not its official public support. This seems a stronger case for holding the organizers morally accountable for the subsequent murder.

As the cases in this chapter make clear, there is no substitute for the government providing protection and doing justice. Under the right circumstances, vigilantes can do it with good short-term results, and perhaps even in a moral way, but the larger society will often suffer. The only solution to the problem is for the government to take more seriously its moral obligation to hold up its end of the social contract, and to avoid at all cost putting citizens in a position where they must be moral vigilantes if they are to obtain protection and justice.

## NOTES

<sup>1</sup> This narrative is derived from the following sources: Andrew Pollack, "2 Illegal Immigrants Win Arizona Ranch In Court," *N.Y. Times*, Aug. 19, 2005; Jerry Seper, "16 Illegals Sue Arizona Rancher," *Wash. Times*, Feb. 9, 2009; Craig Bannister, "After Finding 13 Illegal Aliens Sleeping in his Barn, AZ Rancher Now Armed 24/7," *CNSNews.com*, May 10, 2012, <http://cnsnes.com/blog/craig-bannister/after-finding-13-illegal-aliens-sleeping-his-barn-a-z-rancher-now-armed-247> ; Mark Potok, "Anti Immigration Vigilante Loses Lawsuit," *United Press Int'l*, Nov. 23, 2006, [http://www.upi.com/Top\\_News/2006/11/23/Anti-immigration-vigilante-loses-lawsuit/UPI-84731164343631/](http://www.upi.com/Top_News/2006/11/23/Anti-immigration-vigilante-loses-lawsuit/UPI-84731164343631/) ; Newmexican, "Border Security Through the Eyes of Southern Arizona Ranger," *Americans for Legal Immigration PAC*, Feb. 09, 2013, <http://www.alipac.us/content/border-security-through-eyes-southern-arizona-rancher-1367/> .

<sup>2</sup> Border Patrol agents on the Southwest border of the United States increased from 9,100 agents in 2001 to more than 18,500 in 2013. See Dept. of Homeland Sec. FY 2014 Budget; see also Dept. of Homeland Sec. Border Security Results, available at <http://www.dhs.gov/border-security-results> .

<sup>3</sup> This narrative is derived from the following source: Austin Scott, "Maccabees' Patrol Helps Reduce Crime," *Daytona Beach Morning J.*, (Daytona Beach, FL), Dec. 21, 1964, 3, <http://news.google.com/newspapers?id=DpMeAAAIBAJ&sjid=mMwEAAAIBAJ&pg=907%2C4655777> ; Matthew Shaer, "Tough Jews," *Tablet Magazine*, Dec. 14, 2011, <http://www.tabletmag.com/jewish-news-and-politics/86067/tough-jews?all=1> ; Rabbi Michael Seligson, "Rabbi Samuel Schrage: the Maccabee," *Crown Heights News*, Dec. 18, 2010, <http://crownheights.info/crown-heights-news/30851/rabbi-samuel-schrage-the-maccabee/> .

<sup>4</sup> This narrative is derived from the following sources: Bill Maher, "Celebrating 20 years of Free the Animals," *Huffington Post*, Apr. 30, 2012, [http://www.huffingtonpost.com/bill-maher/peta-ingrid-newkirk-free-the-animals\\_b\\_1464990.html](http://www.huffingtonpost.com/bill-maher/peta-ingrid-newkirk-free-the-animals_b_1464990.html) ; David S. Hawtin, *Animal Rights Extremists Tactics and Their Effects On Animal Research*, Thesis, American Public University System, May, 2014; Michael Janofsky, "Feds Accuse 11 of Ecoterrorism, Targeted Meatpacker, Ski Resort, Timber Firm," *The Chicago Tribune*, Jan 21, 2006; Richard C. Paddock, "UCLA to Take Activists to Court," *Los Angeles Times*, Feb 21, 2008, <http://articles.latimes.com/2008/feb/21/local/me-animals> ; Kristen Scharnberg and Tim Jones, "Ground Zero of Labs vs. Animal-Rights Activists," *The Chicago Tribune*, Jun. 9, 2005; Steven Best and Anthony J. Nocella II, *Terrorists or Freedom Fighters: Reflections on the Liberation of Animals*, (Herndon, VA: Lantern Books, 2004), introduction; "Ecoterrorism: Extremism in the Animal Rights and Environmentalist Movements," *The Anti-Defamation League*, [http://archive.adl.org/learn/ext\\_us/Ecoterrorism.asp](http://archive.adl.org/learn/ext_us/Ecoterrorism.asp) ; Scott Stewart, "Escalating Violence from the Animal Liberation Front," *Stratfor Global Intelligence: Security Weekly*, July 29, 201, [http://www.stratfor.com/weekly/20100728\\_escalating\\_violence\\_animal\\_liberation\\_front#axzz38ln8lozp](http://www.stratfor.com/weekly/20100728_escalating_violence_animal_liberation_front#axzz38ln8lozp) ; "The Animal Liberation Primer," *Animal Liberation Front*, <http://www.animalliberationfront.com/ALFront/ALFPrime.htm>; David Martosko, ed.,

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<http://dailycaller.com/2012/01/12/animal-rights-terror-group-takes-credit-for-torching-cattle-trucks> .

<sup>5</sup> Maher, “Celebrating 20 years.”

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Hawtin, “Animal Rights Extremists.”

<sup>10</sup> Janofsky, “Feds Accuse 11 of Ecoterrorism.”

<sup>11</sup> Paddock, “UCLA to Take Activists to Court.”

<sup>12</sup> Scharnberg, “Ground Zero of Labs.”

<sup>13</sup> Best, *Terrorist or Freedom Fighters*, 13.

<sup>14</sup> Ibid.

<sup>15</sup> Stewart, “Escalating Violence”

<sup>16</sup> Martosko, “Animal Rights Terror Group Takes Credit.”

<sup>17</sup> This narrative is derived from the following sources: Jason Trahan and Chris Colgin, “Campaign Against Child Sex Predators Draws Critics,” *Dallas Morning News*, Sept. 11, 2006; Allen Salkin, “Web Pedophile Hunters Go Too Far, Some Critics Claim,” *N.Y. Times*, Dec. 17, 2006; Marisa Schultz, “Online Vigilantes Hunt Down Pedophiles,” *USA Today*, Mar. 16, 2004; Eric Zorn, “Did Vigilante Catch Pedophile, or a Wreck a Life?,” *Chi. Trib.*, May 9, 2004; Donna Blankinship, “Man turns Himself In For Killing 2 Child Rapists: Police Say They Believe Man’s Claim and that He Was Able to Locate the Victims Through a County Sheriff’s Website that Lists Addresses of Sex Offenders,” *Vancouver Sun*, (Vancouver, B.C.), Sept. 7, 2005; Julia Scheeres, “Vigilantes Troll for Pedophiles,” *Wired.com*, Mar. 18, 2004,  
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<sup>18</sup> Scheeres, “Vigilantes Troll for Pedophiles.”

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> The Michael Mullen Killings of the two Sex Offenders was similar in this respect to the killing by Scott Roeder of George Tiller, the abortion doctor. For sources on the facts of this case: “911 Call Reveals Cold-Hearted Attitude Toward MA Woman’s Abortion Death,” *Operation Rescue*, Dec. 6, 2007,  
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<sup>22</sup> Wilkerson, "Drive Against Abortion."

<sup>23</sup> Murtha, "Anti Abortion Group Operation Rescue."

<sup>24</sup> "Abortion Blockades on Decline Trend Was Established Before Buffer Zone Ruling," *San Francisco Chronicle*, July 5, 1994, A3.

<sup>25</sup> Rimer, "Abortion Foes in Boot Camp."

<sup>26</sup> Operation Rescue published stories of abortions it claims Tiller botched, killing patients, <http://www.justiceforchristin.com/>. One article on its web site is entitled, "You Can Help Put George Tiller in Prison," which includes passages such as, "You see, right now the infamous late-term baby-killer George Tiller is in the fight of his life!," <http://www.operationrescue.org/noblog/you-can-help-put-george-tiller-in-prison/>

<sup>27</sup> Williams, "The Murder of Dr. George Tiller."