

# **MEME STOCK VIGILANTISM: A PROPERTY RIGHTS APPROACH**

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## **ABSTRACT**

The meme stock saga upended established rules of the game on Wall Street. In the process, what emerged from the saga was what can be characterized as a form of self-help or vigilantism. The vigilantes in this saga were the small investors who rallied against their targets, the large hedge funds. This article examines the treatment of self-help and vigilantism in the law. Self-help is not the norm in the law, but there are situations where it is allowed or even encouraged, especially when vindicating threats to property or life. The key question in the meme stock saga is what property was being protected by the investors that got them riled up? We argue, analogizing to the *INS v. AP* case recognizing a quasi-property right in ‘hot news,’ that the investors had a legally unenforceable quasi-property in ‘hot opinions’ regarding the financial health of the meme stock companies. Because this quasi-property right is not recognized in the law, the only recourse the investors had was to engage in self-help or vigilantism. This explains the morally righteous and vitriolic tone that permeated the various online forums where these investors congregated.

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## I. INTRODUCTION

In early 2021, a group of small retail investors took down at least one hedge fund that was actively short-selling the stocks of a few companies, collectively known as the meme stocks.<sup>1</sup> The investors banded together to buy the shares of these companies, and the short-sellers lost a lot of money.<sup>2</sup> The price of the stocks rose substantially, and even today, many of these stocks' prices are at levels higher than before the whole meme stock saga unfolded.<sup>3</sup> What brought the investors together was an online forum where the various investors could not only post stock tips but exhort fellow investors to keep buying the meme stocks and hold the stocks until the short-selling hedge funds went away.<sup>4</sup> In many ways, the retail investors exhibited classic vigilante behavior in how they collectively took on the hedge funds and any detractors who disagreed with them. In a previous article,<sup>5</sup> we examined the meme stock saga from an economic perspective, where we offered a hypothesis on why the meme stocks ended up having a higher price after the saga ended, even though many short-sellers thought the stocks were not worth much.

In this article, we examine the meme stock saga from another perspective, the phenomenon of members of an online forum collectively acting in a manner that took on an air of righteousness in addition to the usual profit-making motives. The group's action seems to have been aimed at remedying a perceived injustice, namely the shorting of the meme stocks by the hedge funds when the investors believed the various stocks were grossly undervalued. One could characterize what the investors engaged in as a form of collective self-help, a term that is sometimes synonymous with vigilantism. Self-help, in the law, can be desirable, required, or discouraged. This article uses the lens of vigilantism to examine whether what transpired in early 2021 was indeed a form of self-help and, if so, in which desirable category of self-help the investors' collective acts fell.

At some level, what happened during the meme stock saga was nothing

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<sup>1</sup> Short-selling is the process where a seller sells "a security that the seller does not own . . . and that the seller must borrow to make delivery." Usually, such a "sale is . . . made when the seller expects the security's price to drop. If the price does drop, the seller can make a profit on the difference between the price of the shares sold and the lower price of the shares bought to pay back the borrowed shares." *Short Selling*, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>2</sup> Victoria Chiu & Moin A. Yahya, *The Meme Stock Paradox*, 3 CORP. & BUS. L.J. 51, 54–60 (2022).

<sup>3</sup> *Id.* at 61. A check of the stock price today shows a higher price even today. See *GameStop Corp. (GME)*, YAHOO! FIN. (last checked Jan. 21, 2022), <https://finance.yahoo.com/quote/GME?p=GME&.tsrc=fin-srch> [<https://perma.cc/8D9H-YUSH>].

<sup>4</sup> Chiu & Yahya, *supra* note 2, at 54–58.

<sup>5</sup> See *id.*

new if one thinks of various episodes of vigilantism throughout history. It was a group action facilitated by the quick spread and coalescing of information on the Internet. Digitally facilitated collective self-help has already been taking place on a variety of platforms for many years now. For example, vigilante hacker groups have long existed to take on various criminal activities.<sup>6</sup> More recent developments in the world of cryptocurrencies and associated products, such as non-fungible tokens (NFTs), have not only provided opportunities for online miscreance but also online vigilantism in response.<sup>7</sup> Cryptocurrencies and NFTs, with all their colorful names, have captured the public's imagination with their volatile and sometimes stratospheric prices, as well as stories of hacking, thefts, and other misfeasance aimed at the holders of these digital assets. Just as online vigilantes emerged many years ago, so too has emerged a new group of online cyber-warriors.<sup>8</sup>

However, the difference between these cyber-vigilantes and the meme stock investors is twofold. First, the meme stock saga involved multiple investors all coordinated in their actions, which took place over a short period of time. Second, unlike the cryptocurrencies and other digital assets that are pursued by individuals or even groups of vigilantes where their grievance is obvious, in the meme stock saga, the grievance was amorphous.

In this article, we propose that what the meme stock investors were protecting was an inchoate or nascent property right in information that is ephemeral. As such, there is no real legal mechanism to secure this right, which means that the meme stock investors had to act in the way they did during the meme stock saga. In that regard, we look to the landmark Supreme Court of the United States case of *International News Service v. Associated Press* (“*INS v. AP*”)<sup>9</sup> for inspiration in understanding what may have motivated the investors during the early days of 2021. In that case, the Supreme Court recognized that those who collect information could have a ‘quasi-property’ right in hot news, meaning information whose value is very temporary.<sup>10</sup> However, in contrast to a legally recognized quasi-property right in *INS*, the investors had no way to legally secure their quasi-property.

The article is organized as follows: We first provide a brief overview of what happened in the meme stock saga in section II. Then, in section III, we

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<sup>6</sup> See, e.g., ROBERT MOORE, CYBERCRIME: INVESTIGATING HIGH-TECHNOLOGY COMPUTER CRIME 90–91 (Routledge 2d ed. 2015); Nicholas Schmidle, *The Digital Vigilantes Who Hack Back: American Companies That Fall Victim to Data Breaches Want to Retaliate Against the Culprits. But Can They Do So Without Breaking the Law?*, THE NEW YORKER (Apr. 30, 2018), <https://www.newyorker.com/magazine/2018/05/07/the-digital-vigilantes-who-hack-back> [<https://perma.cc/LAB9-SD35>].

<sup>7</sup> See *infra* text accompanying notes 149–60.

<sup>8</sup> *Id.*

<sup>9</sup> *Int'l News Ser. v. Associated Press*, 248 U.S. 215 (1918).

<sup>10</sup> *Id.* at 238–42.

explain how the law enables self-help and may even condone vigilantism. We also discuss why there seems to be legal and public support for vigilantism, because it is perceived as socially beneficial, and when such collective self-help may veer into dangerously condemnable territory. We then explore the world of digital vigilantism and self-help in section IV and discuss in section V what property rights, if any, the meme stock investors were protecting and whether their behavior can be described as self-help. Finally, we conclude with some thoughts for future work.

## II. THE MEME STOCK SAGA

### A. *What Happened?*

In early 2021, an online crowd collectively decided to take on hedge funds that had short-sold stocks of several companies that seemed to be on the decline, most notably GameStop, AMC Theaters, and Blackberry.<sup>11</sup> This collective action, also known as the meme stock saga, resulted in at least one hedge fund going bankrupt while the shares of these meme stocks rose.<sup>12</sup> The stocks were originally perceived by the short-selling hedge funds as losing propositions and, as such worthy of their short positions.<sup>13</sup> Somehow this lack of confidence in the viability of the stocks, and certainty of their demise, infuriated a group of investors who congregated as a niche online community hosted on the forum website Reddit known as r/WallStreetBets (“WSB”), where participants focus on ‘betting’ on various stocks.<sup>14</sup> It is important to note that WSB is neither a formal nor typical financial discussion forum – its culture is such that users chastise those who ask for genuine financial advice and call each other derogatory and ableist names in an endearing way, and seemingly every member seems to understand that the stocks users post that they are investing in could easily crash and burn at any moment.<sup>15</sup> Each

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<sup>11</sup> Chiu & Yahya, *supra* note 2, at 54.

<sup>12</sup> We collected many of the details and the sources in our earlier article, Chiu & Yahya, *supra* note 2; The Securities & Exchange Commission (SEC)’s report also contains a good summary of what happened in the meme stock saga. *See* SEC report *infra* note 17; additionally, a recently published book documents the entire saga. SPENCER JAKAB, *THE REVOLUTION THAT WASN’T* (2022); a good profile of two GameStop investors who did well in the saga can be found at: Jon Sarlin, *I Don't Feel Like a Pro, But I'm Acting Like a Pro.' These GameStop Traders Struck Gold. Then Came the Hard Part*, CNN, <https://www.cnn.com/2022/02/01/investing/gamestop-meme-stock-anniversary/index.html> [<https://perma.cc/VT9A-MR86>] (last updated Feb. 1, 2022, 11:37 PM).

<sup>13</sup> Chiu & Yahya, *supra* note 2, at 54.

<sup>14</sup> *Id.* at 54–56.

<sup>15</sup> *Id.* at 55–56; JAKAB, *supra* note 12, at ix.

investment is effectively a joke, and WSB members revel in it.<sup>16</sup>

Many of the online investors responsible for the meme stock saga were, therefore, small-time individual investors who decided to collectively strike back at the hedge funds. They did so by purchasing shares of the meme stocks and holding them, which in turn raised the stocks' prices.<sup>17</sup> The rise and fall

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<sup>16</sup> Chiu & Yahya, *supra* note 2, at 55. Spencer Jakab provides more insight into the motivation of the members: It isn't just the potential financial payoff that has made lottery-like bets so popular—internet fame is part of the allure. On algorithmically enhanced sites, only the most appealing messages become highly visible. A core psychological concept known as “reinforcement learning” encourages users to post the sort of things that will turn heads and get clicks. Getting rewarded by your peers for doing something makes you more likely to do it again. On social media, that reward is attention. . . . Having on one's phone an app in which people compete to come up with more outlandish values and another app a few flicks of a finger away that allows the same person to buy a stock seconds later creates a feedback loop. . . . The psychologist and social media scholar Van Bavel notes that the meme stock squeeze “seemed to create its own form of common sense” on WallStreetBets. . . . And in that respect Reddit, a relative midget financially, punched way above its weight during the meme-stock squeeze. Founded as “the front page of the internet,” it had about three percent as many daily active users as Facebook and a fourth as many as Twitter in late 2020. The video sites TikTok and YouTube were bigger as well and, even when it came to investing, more influential. But Reddit's mechanics and demographics made it the perfect vehicle to send GameStop to the moon. With a young, mostly male, and much more US-centric membership than other social networks, the site was a logical place for young men able to trade American stocks to gather virtually. Reddit's use of pseudonyms rather than real identities encouraged both brutal honesty and braggadocio. JAKAB, *supra* note 12, at 35–37.

<sup>17</sup> A year later, the Securities and Exchange Commission (SEC) released a report surrounding the saga. In it, they outlined the events that had transpired, but did not suggest any major policy changes or make any recommendations about how the rules governing securities markets might be improved. Staff Report on Equity and Options Market Structure Conditions in Early 2021, SEC (Oct. 14, 2021), <https://www.sec.gov/files/staff-report-equity-options-market-structure-conditions-early-2021.pdf> [<https://perma.cc/UTY9-TS55>] [hereinafter “SEC report”]. The SEC also announced proposed new rules regarding disclosure of borrowing when short selling. SEC Proposes Rule to Provide Transparency in the Securities Lending Market, SEC (Nov. 18, 2021), <https://www.sec.gov/news/press-release/2021-239> [<https://perma.cc/P3J4-P92W>]; Ariel Zambelich & Alexander Osipovich, *In Post-GameStop Reform Push, SEC Seeks More Disclosure of Stock Lending: Proposed Rule Would Require Securities-lending Data to be Reported Within 15 Minutes of Loan Being Made*, WALL ST. J. (Nov. 18, 2021, 8:25 PM), <https://www.wsj.com/articles/in-post-gamestop-reform-push-sec-seeks-more-disclosure-of-stock-lending-11637285122?mod=flipboard> [<https://perma.cc/6XUP-23WM>]. The Federal Reserve also addressed the meme stock situation in their semi-annual report on financial Stability. In it, they observed that on the one hand there were no “broad financial stability implications of changes in retail equity

of stock prices is not unusual, but what made this particular ascension so notable was that it was driven by retail investors—ordinary, everyday people who invest comparatively small amounts of money in stocks—as opposed to storied hedge funds and other professional financial institutions who regularly shift stock values in the open market.<sup>18</sup>

One prominent WSB user, whose real name was eventually revealed to be Keith Gill, had been posting and updating other members about his belief that GameStop shares were undervalued long before the January 2021 mania.<sup>19</sup> As his updates progressed, there were also rumblings on WSB about how many large hedge funds were betting against GameStop, buying up huge swathes of the stock in anticipation of profiting handsomely from its eventual

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investor characteristics” and the “recent episodes of meme stock volatility did not leave a lasting imprint on broader markets.” However, they noted that the “younger stock investors tend to have more leveraged household balance sheets” with the “median leverage ratios of younger retail investors [being] more than double those of all investors, leaving these investors potentially more vulnerable to large swings in stock prices”. Such investors also have a “heightened risk appetite”, which coupled with “the interaction between social media and retail investors” may lead to “potentially destabilizing outcome[s]” in the marketplace as a whole. Financial Stability Report, FEDERAL RESERVE (Nov. 2021)

<https://www.federalreserve.gov/publications/files/financial-stability-report-20211108.pdf> [<https://perma.cc/SU5M-3P68>].

<sup>18</sup> Alicia Adamczyk, *‘You Will Lose Your Money Very, Very Quickly’: What Investors Need to Know About GameStop’s Stock Surge*, CNBC NEWS (Jan. 2021), <https://www.cnbc.com/2021/01/27/what-to-know-about-gamestops-stock-spike.html> [<https://perma.cc/HN47-7ALC>].

<sup>19</sup> Gill had started taking financial positions on GameStop as far back as September 2019. JAKAB, *supra* note 12, at 15. The price of GameStop would rise on and off, and his position was still positive late 2020. GameStop, a brick and mortar company that sold video games, was seen by many as a dying company akin to Blockbuster video. Nonetheless, Gill was convinced that the stores could be turned around given the underlying fundamentals. “His thesis was a risky one. Gill acknowledged that the company’s traditional stores were struggling, which was why so many pros had bet its shares would fall, but he argued that video games themselves were a booming business and that the company could ‘reinvent itself as a premier gaming hub.’” *Id.* at 43–44. The price rose a bit, but then fell again, and one financial analyst cut his price target of the stock price from \$5 to \$3. *Id.* “Gill thought the stock price could possibly go as high as \$20 or \$25 . . . .” *Id.* at 45. A good profile of Gill and where he is today can be found in Michelle Price, *A Year On, GameStop Champion Roaring Kitty is Quiet -- Yet Much Richer*, REUTERS (Feb. 2, 2022, 4:12 AM), <https://www.reuters.com/technology/year-gamestop-champion-roaring-kitty-is-quiet-yet-much-richer-2022-02-02/> [<https://perma.cc/ZDU4-5HCJ>]. Another user, who went by Senior\_Hedgehog, argued for the merits of the stock, citing the “the console cycle, the fact that demand for video games was surging during the pandemic, and that the increased memory size of digitized games meant that discs were still in demand.” JAKAB, *supra* note 12, at 72.

crash.<sup>20</sup>

Hedge funds had borrowed GameStop stock from their brokers, sold it, and were betting on its price decreasing to pocket the difference after re-buying the stock, or in other words, they were short-selling GameStop's stock.<sup>21</sup> Gill felt that the hedge funds were wrong. Astute WSB participants pointed out that if more investors bought up the stock, increasing its price, this would increase the chances of a phenomenon known as a short squeeze.<sup>22</sup> The central idea was to 'squeeze' hedge funds by forcing them to buy back GameStop stock at higher values than they purchased it for to limit their losses—that as retail investors bought up more and more stock and drove up its price, hedge funds who were counting on being able to short the stock after it crashed would suddenly be left holding the bag.<sup>23</sup>

Over time, Gill's views on GameStop's value gained momentum, first with other WSB users who decided to buy and hold the stock and—as his gains began increasing into the millions and the media began paying attention—then other ordinary people who were not entrenched in the investing scene, but were inspired by the news and wanted to get on board.<sup>24</sup>

Regardless of how they came across GameStop, however, a substantial proportion of all the retail investors involved in the saga were united in one common goal: buy GameStop shares and not sell—no matter what. When faced with the prospect of the price crashing into oblivion or shooting into the stratosphere, investors seemed largely prepared to dig in their heels rather than jump ship to either capitalize on enormous gains or avoid huge losses. Investors hoped this kind of role reversal, unprecedented in size, would teach Wall Street a lesson about the power of the ordinary investor. A plan of this magnitude, however, would only work if the individual retail investors pledged not to sell their shares no matter which way the price went.<sup>25</sup>

This attitude was further nurtured through a constant barrage of online activity from retail investors throughout the duration of the saga, encouraging each other to buy and hold, accompanied by dramatic hourly and sometimes quarter-hourly peaks and valleys in GameStop's price. Gill himself retained most of his shares and rode out the daily peaks and troughs, which seemed to embolden other investors.<sup>26</sup> "IF [Gill] IS HOLDING," one WSB poster crowed, "I AM HOLDING!"<sup>27</sup>

All of this came with plenty of additional controversies. Retail

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<sup>20</sup> Chiu & Yahya, *supra* note 2.

<sup>21</sup> *Id.* at 54.

<sup>22</sup> *Id.* at n. 8.

<sup>23</sup> *Id.* at 57.

<sup>24</sup> *Id.* at 56.

<sup>25</sup> *Id.* at 58.

<sup>26</sup> *Id.* at n. 23–26.

<sup>27</sup> u/Kheraxis, REDDIT (Feb. 1, 2021),

[https://www.reddit.com/r/wallstreetbets/comments/la7zx5/if\\_dfv\\_is\\_holding\\_i\\_am\\_holding](https://www.reddit.com/r/wallstreetbets/comments/la7zx5/if_dfv_is_holding_i_am_holding) [<https://perma.cc/445P-3HC9>].

investment platform Robinhood temporarily halted trading of GameStop shares and raised margin requirements at one point due to concerns about “volatility,” inciting online rage from users and public criticism from members of Congress and the Senate.<sup>28</sup> Other brokerage firms also limited trading of the stock for what they claimed to be reasons related to market liquidity and clearing house protection.<sup>29</sup> Online commentators were alarmed by what they perceived to be pressure on trading platforms, like Robinhood, from major hedge funds in danger of having to bail on their short positions and even more alarmed that those platforms might bend to the whims of their largest sources of revenue.<sup>30</sup>

By the time the frenzy had simmered down, GameStop’s price was still far higher than it was back when the hedge funds had invested, and it remains much higher today.<sup>31</sup> Many of the retail investors’ targets, most notably hedge fund Melvin Capital, were faced with losses higher than they could tolerate in the midst of the saga’s peak and were forced to bail on their GameStop short positions, incurring the punishment retail investors had hoped for. Gill and WSB, along with any other evidence of potentially suspicious social media activity, came under investigation by the SEC for fraud, and Congress held a hearing before its House Financial Services Committee with testimony from Gill and the Chief Executive Officers of

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<sup>28</sup> Chiu & Yahya, *supra* note 2, at 59.

<sup>29</sup> *Id.* at n.31.

<sup>30</sup> *Id.* at 59–60.

<sup>31</sup> There has been considerable downward movement for the stock almost a year after the saga started over a year ago. As of late 2021, GameStop’s stock was above \$150/share. Perhaps, because of general malaise in the market due to fears of the Federal Reserve’s raising rates, or because of specific concerns regarding the meme stocks, the price of GameStop and other stocks began to decline in January 2022. Notwithstanding the decline, their prices (as of February 2022) are still 4-5 times higher than prior to the saga. Anisha Sircar & Medha Singh, *Meme Stocks Fall Out of Love as Rate Hike Fears Dampen Speculation*, REUTERS (Jan. 24, 2022, 11:35 AM), <https://www.reuters.com/business/finance/meme-stocks-fall-out-love-rate-hike-fears-dampen-speculation-2022-01-24/> [<https://perma.cc/NJT9-HF6P>]; Matt Krantz, *'Meme Stocks' Officially Over As Crash Wipes Out \$191 Billion*, INV.’S BUS. DAILY (Jan. 24, 2022, 12:02 PM), <https://www.investors.com/etfs-and-funds/sectors/sp500-meme-stock-crash-costs-speculators-48-9-billion/> [<https://perma.cc/JZX8-BB2Q>]; Carleton English, *A Year After It Began, Meme-Stock Mania Is on Life Support*, BARRON’S (Jan. 28, 2022, 12:05 AM), <https://www.barrons.com/articles/meme-stock-mania-life-support-51643329471> [<https://perma.cc/P5LF-58K5>].

We note that some of the meme stock companies have taken advantage of their newfound stock prices by cutting their debt levels. Joe Rennison, *AMC’s Meme-Stock Recovery Helps it Cut Debt Costs with Fresh \$1bn Deal*, FIN. TIMES (Feb. 2, 2022), <https://www.ft.com/content/7ee7d7ec-93eb-44ad-b7d7-29dbba3c00e4> [<https://perma.cc/BE7X-NTTU>].



Reddit, Robinhood, and Melvin Capital.<sup>32</sup> Congress's goal was to examine the public policy impacts of the saga and determine whether the rules around trading should change as a result.<sup>33</sup>

Throughout the controversy, the general opinion of the public, Congress, and the Senate were firmly on the side of retail investors.<sup>34</sup> They were the underdogs—random strangers online who had somehow managed to come together and shake Wall Street against all odds and now seemed unfairly to be under investigation by the SEC for doing nothing more than simply chatting up a storm online.<sup>35</sup> In contrast, the hedge funds came across as unsympathetic institutions that were unhappy about being outsmarted by a class of people they had assumed to be unsophisticated.<sup>36</sup> Lawmakers opined that retail investors should not be restricted in their trading; the implication was that doing so limited damage to hedge funds, and that was unfair.<sup>37</sup> If retail investors were able to figure out a legal way to beat Wall Street, they should be allowed to follow through to the fullest extent.<sup>38</sup>

Ultimately, the SEC released a report concluding that the market had operated as intended.<sup>39</sup> Its report did not elaborate on the development of any dramatically new regulations around trading that could result from the saga

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<sup>32</sup> Chiu & Yahya, *supra* note 2, at n. 36.

<sup>33</sup> *Id.* at 60.

<sup>34</sup> For example: House Committee on Financial Services chair Maxine Waters opened with the following statement as she called for hearings about the GameStop squeeze: “Hedge funds have a long history of predatory conduct and that conduct is entirely indefensible. Private funds preying on the pension funds of hard working Americans must be stopped. Private funds engaging in predatory short selling to the detriment of other investors must be stopped. Private funds engaging in vulture strategies that hurt workers must be stopped.” JAKAB, *supra* note 12, at 76.

<sup>35</sup> Nathan Crooks, et al., *Michael Burry Says He Received SEC Subpoena Over GameStop*, BLOOMBERG (Sep. 24, 2021, 3:32 PM), <https://www.bloomberg.com/news/articles/2021-09-24/michael-burry-says-he-received-subpoena-from-sec-over-gamestop?leadSource=verify%20wall> [<https://perma.cc/VFV7-PZT8>].

<sup>36</sup> Bess Levin, *Angry Hedge Fund Billionaire Leon Cooperman is Mad at GameStop Redditors for “Attacking Wealthy People,”* VANITY FAIR (Jan. 28, 2021), <https://www.vanityfair.com/news/2021/01/leon-cooperman-gamestop-rant> [<https://perma.cc/3N8A-25GD>]; Kate Kelly & Matthew Goldstein, *Wall Street’s Most Reviled Investors Worry About Their Fate*, N.Y. TIMES (Feb. 8, 2021), <https://www.nytimes.com/2021/02/08/business/wall-street-short-sellers-game-stop.html> [<https://perma.cc/3HQW-YSCR>].

<sup>37</sup> Chiu & Yahya, *supra* note 2, at 60.

<sup>38</sup> Tucker Higgins, *Lawmakers from AOC to Ted Cruz are Bashing Robinhood Over its GameStop Trading Freeze*, CNBC NEWS (Jan. 28, 2021), <https://www.cnbc.com/2021/01/28/gamestop-cruz-ocasio-cortez-blast-robinhood-over-trade-freeze.html> [<https://perma.cc/DE2A-ZZPV>].

<sup>39</sup> SEC report, *supra* note 17.

or whether it had found any other leads for investigation. The report also did not comment on the allegations that Robinhood shut down trading at the request of its major hedge fund customers. Congress scrutinized the way Robinhood made its money and its decision to halt trading, but any long-term evolution in securities trading resulting from the saga remains to be seen.<sup>40</sup> The majority staff of the Committee on Financial Services of the U.S. House of Representatives also released its report on the saga.<sup>41</sup> It, too, focused on the execution of trades, implying sympathy for the retail investors and hostility to the short-sellers.<sup>42</sup>

The popularity of the meme stock investors, and the lack of any official sanction (so far) for any of the leaders of the saga, seem to validate their actions. From an ex-ante perspective, the hedge funds were not engaged in anything illegal or even seemingly improper as far as normal market trading goes. Rather, they were engaged in an unpopular short-selling position against a group of stocks that individual investors thought were undervalued. The persistent ex-post rise in the prices of these stocks seems to have validated the judgment of these investors, although recent trends in their price may demonstrate that the hedge funds were right after all.<sup>43</sup> Notwithstanding Congressional hearings, the SEC's analysis, and the financial press's reporting, not much action has emerged on the regulatory front. The question, however, still remains what the motivation of the individual investors responsible for the meme stock saga was. We turn to this question in the next section.

## B. *What Motivated Meme Stock Investors?*

As alluded to in the previous section, the unusual motivation behind the strategy of buying and holding GameStop stock regardless of the resulting price evolved from the exponential interest in not only the stock itself but also the looming short squeeze and the idea of 'sticking it to the man' by ruining powerful hedge funds' careful, professionally crafted strategies.

Gill's original motivation for investing \$53,000 of his own money in GameStop was, he later reported to Congress, simply that he really believed

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<sup>40</sup> Matt Phillips, et al., *S.E.C. Describes the GameStop Frenzy, but Not What to Do About It*, N.Y. TIMES, <https://www.nytimes.com/2021/10/18/business/sec-gamestop-meme-report.html> [<https://perma.cc/NC9C-TJ4S>] (last updated Nov. 8, 2021).

<sup>41</sup> Majority Staff of the Committee on Financial Services, *Game Stopped: How the Meme Stock Market Event Exposed Troubling Business Practices, Inadequate Risk Management, and the Need for Legislative and Regulatory Reform* (June 2022), [https://financialservices.house.gov/uploadedfiles/6.22\\_hfsc\\_gs.report\\_hmsmeetbp.irm.nlr.pdf](https://financialservices.house.gov/uploadedfiles/6.22_hfsc_gs.report_hmsmeetbp.irm.nlr.pdf) [<https://perma.cc/LHV2-5LT8>].

<sup>42</sup> There is a brief discussion of the role of social media and online forums. *Id.* at 126.

<sup>43</sup> See *supra* note 31.

the stock was undervalued.<sup>44</sup> As the amount and availability of information about GameStop's stock value and the related short squeeze increased, Gill's original motivation of simply investing in an incorrectly valued stock fell largely to the wayside for many investors. For many investors, the traditional investment goal of making a profit from the stock became secondary to the goal of investing for the fun of participating in these hedge funds' demise—for the 'memes' or, in other words, for no particularly principled reason.<sup>45</sup> The amount of profit or loss did not matter.<sup>46</sup>

This idea of "sticking it to the hedge funds" as part of a quest for revenge fueled by more than a hint of self-righteousness emerged once GameStop's stock price jumped from around \$20 to about \$40, according to one investor.<sup>47</sup> After that, the stock really began to soar, and retail investors also began expressing their desire for vengeance more explicitly.<sup>48</sup> One particularly lauded post written by the creator of WSB from that time applauded the members of the forum for eventually "[making] these old guys drown in their tears"—the "old guys" in question being those who worked at the hedge funds.<sup>49</sup> The post expressed awe regarding how users were able to coordinate a grassroots effort that had gained such momentum that the "fat cats" at the hedge funds were genuinely worried.<sup>50</sup> The post contains a summary of the general sentiment of many WSB users at the time, describing hedge funds as entities that "traditionally used the media as a tool for them to manipulate the market [and] have failed to further line their pockets and now want to accuse [WSB] as being manipulators" and praising participants for demanding—and getting—Wall Street's attention.<sup>51</sup> Replies to the original post show commenters cheering each other on, digitally rallying the moral superiority of the average investor over Wall Street.<sup>52</sup> Many users savored punishing hedge fund managers who, no doubt, were unaccustomed

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<sup>44</sup> Chiu & Yahya, *supra* note 2, at 55. Jakab also documents Gill's journey from his initial investment throughout the meme stock saga throughout his book. JAKAB, *supra* note 12.

<sup>45</sup> Chiu & Yahya, *supra* note 2, at n. 12.

<sup>46</sup> *Id.* at 56.

<sup>47</sup> Jael Goldfine, *Three r/WallStreetBets Gamestop Investors Explain Why They Did It, What Went Wrong, and How Much They Made*, THE BUS. OF BUS. (Feb. 21, 2021, 3:22 PM), <https://www.businessofbusiness.com/articles/wallstreetbets-gamestop-investors-interview-robinhood-GME-AMC-stonks/> [<https://perma.cc/NZ3R-5SFJ>]; *see also* JAKAB, *supra* note 12.

<sup>48</sup> Chiu & Yahya, *supra* note 2, at n. 28.

<sup>49</sup> u/bawse1, REDDIT (Jan. 24, 2021), [https://www.reddit.com/r/wallstreetbets/comments/l3z0n8/howd\\_you\\_guys\\_manage\\_to\\_win\\_so\\_big\\_it\\_made\\_these](https://www.reddit.com/r/wallstreetbets/comments/l3z0n8/howd_you_guys_manage_to_win_so_big_it_made_these) [<https://perma.cc/KY4C-B2F9>].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

to being taken down by amateur retail investors.<sup>53</sup>

Users' comments at the time further demonstrated their belief in the cause of wreaking maximum havoc on Wall Street, even if they also recognized the risk and potential folly of investing in such volatile stocks. In the midst of the frenzy, it was common to see users on WSB posting sentiments such as, "HOLD THE FECKIN LINE!" and "[GameStop] TO THE MOON" followed by plenty of diamond and hand emojis—a representation of "diamond hands," a phrase originating from the cryptocurrency community that means holding onto an asset regardless of risk and fluctuations in value—and rocket emojis, a reflection of retail investors' hope of the stock's price reaching otherworldly heights.<sup>54</sup> These comments are self-aware; having 'diamond hands' is not necessarily viewed as an intelligent quality, even among the WSB community; in fact, the term carries the connotation that one is holding the asset in question against their better judgment.<sup>55</sup> Likewise, posting that a stock is or will be going 'to the moon' is often said in a somewhat maniacal way that betrays how the writer implicitly acknowledges the recklessness of holding the stock, but, like a gambler who is riding the high of putting money down and seeing what happens, refuses to back down purely because the thrill is too exciting.<sup>56</sup> Both terms reflect the idea that despite all the chances that things could go horribly wrong, investors were dedicated to retaining their shares.

The aggregate of what users posted on Reddit at the time seems to indicate that this determination to hold meme stocks, despite the intense risk, came from a desire to teach a lesson to Wall Street because it was the

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<sup>53</sup> One user even "saw \$50,000 come and go claimed he needed the money for knee and back surgery but that he couldn't live with himself for selling and letting Wall Street off the hook. He wanted to wait until he made \$1 million so he could buy his mother a house 'after these f\*\*\*\*\*s stole ours in 2008.'" JAKAB, *supra* note 12, at 145 [original expletive in text].

<sup>54</sup> u/thehanibee, REDDIT (Feb. 1, 2021),

[https://www.reddit.com/r/wallstreetbets/comments/la7zx5/comment/glmclix/?utm\\_source=share&utm\\_medium=web2x&context=3](https://www.reddit.com/r/wallstreetbets/comments/la7zx5/comment/glmclix/?utm_source=share&utm_medium=web2x&context=3) [<https://perma.cc/9972-545B>];

Lyle Daly, *What Does Diamond Hands Mean?*, THE MOTLEY FOOL,

<https://www.fool.com/investing/stock-market/market-sectors/financials/cryptocurrency-stocks/diamond-hands/> [<https://perma.cc/8HJ4-GLKH>] (last updated Jun. 28, 2022, 1:06 PM); u/lennox\_marshall878, REDDIT (Dec. 9, 2020),

[https://www.reddit.com/r/wallstreetbets/comments/k9njhh/gme\\_to\\_the\\_moon](https://www.reddit.com/r/wallstreetbets/comments/k9njhh/gme_to_the_moon) [<https://perma.cc/JJ6J-8J39>].

<sup>55</sup> Eric Reed, *What Does Diamond Hands Mean?*, YAHOO! FIN. (Oct. 8, 2021),

[https://ca.finance.yahoo.com/news/does-diamond-hands-mean-160304297.html?soc\\_src=social-sh&soc\\_trk=ma](https://ca.finance.yahoo.com/news/does-diamond-hands-mean-160304297.html?soc_src=social-sh&soc_trk=ma) [<https://perma.cc/95YX-7QZF>].

<sup>56</sup> Katie Canales, *From HODL to the Moon: All the Cryptocurrency Slang You Need to Sound Like a Bitcoin Expert*, BUS. INSIDER (May 6, 2018, 10:00 AM), <https://www.businessinsider.com/cryptocurrency-bitcoin-slang-explained-2018-4> [<https://perma.cc/768B-CH8T>].

rebellious, righteous thing to do from a revolutionary standpoint, and also to join in on the fun of taking down powerful financial players in such an unusual, unprecedented, and almost goofy way. Organizing a wide-scale short squeeze was one thing, but having that scheme originate and reach mainstream exposure from posts on a subreddit, where users frequently use derogatory terms and internet slang and refer to their activities as ‘gambling,’ carries with it a very different flavor.

There were other motivations behind some meme stock investors’ activities. Many still wanted to make a profit from their shares, and some invested unwisely on that front, using funds allocated for other purposes—such as student loans and mortgage payments—that they arguably should not have put into the stock market.<sup>57</sup> However, the prevailing motivation that most popularly drove the majority of investors was that of vengeance, self-righteousness, and belief in the overarching cause of demonstrating the influence of the traditionally powerless ordinary investor against the perpetually victorious Wall Street.<sup>58</sup> The 99% were taking on the 1%, and they were going all in.

In sum, the investors seemed to be motivated by more than financial fundamentals. In addition to some of the motivations we identified in our earlier article,<sup>59</sup> there seems to also be a desire for vengeance against the big hedge funds. This feeling seems to have been generated by a sense of the funds gaming the system, the security regulatory atmosphere favoring big players, and a sense of individual helplessness that could only be corrected by collective action. Whether the actions of the investors can be characterized as vigilantism is the subject of the next section, where we introduce the concept of vengeance and vigilantism.

### III. VIGILANTE JUSTICE ON THE STREETS & IN THE LEGAL SYSTEM

The concept of vigilantism is closely related to the concept of self-help. Self-help is defined in *Black’s Law Dictionary* as “[a]n attempt to redress a perceived wrong by one’s own action rather than through the normal legal process.”<sup>60</sup> In a classic law review article, four eminent lawyers surveyed the state of the law as it pertains to self-help.<sup>61</sup> They found that there is a long

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<sup>57</sup> Chiu & Yahya, *supra* note 2, at 56.

<sup>58</sup> Adamczyk, *supra* note 18.

<sup>59</sup> Chiu & Yahya, *supra* note 2, at 85–86 (arguing that: 1) information discovery through collective wisdom, 2) discovery of new tastes in stocks, and 3) pride of ownership could explain why the stock prices persistently rose notwithstanding the financial fundamentals prior to the saga favoring the hedge funds short-sale positions).

<sup>60</sup> Self-help Definition, BLACK’S LAW DICTIONARY (9th ed. 2009), *available at* Westlaw.

<sup>61</sup> Douglas Ivor Brandon, et al., *Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society*, 37 VAND. L. REV. 845 (1984).

tradition in the law of allowing and sometimes encouraging self-help. For example, in tort law, self-help is defined as “any extrajudicial act that cures, prevents, or minimizes a tort,” and in early medieval times, due to the scarcity of judicial resources, self-help methods were the exclusive remedies.<sup>62</sup> This complete reliance on self-help ultimately meant that plaintiffs had to often “seek redress directly from the tortfeasor or [their] family, usually by force of arms,” which led to “breaches of the peace and, not uncommonly, bloodshed.”<sup>63</sup> It also meant that only the strongest in society were able to engage in self-help, which led to its own distributional issues when it came to who could seek remedies for torts.<sup>64</sup> Even as late as (or early as) 1768, Blackstone listed rules that related to “self-help privileges of self-defense, recapture of property, and summary abatement of nuisance.”<sup>65</sup>

While modern courts are not as tolerant of self-help in the realm of tort law, the hostility is not universal.<sup>66</sup> Indeed, some courts and legislatures have “validate[d] certain narrow areas of tort self-help.”<sup>67</sup> In this sense, the law seems to be stating that sometimes the social ills from self-help are outweighed by the private (and perhaps social) vindication of rights through self-help. Appeals to the law of nature create a sense that there is a social interest in allowing individuals to “take reasonable steps to protect [their] bodily integrity when there is no time to resort to formal judicial processes.”<sup>68</sup> In the realm of tort law, self-help relates to shielding the victim of an attack from liability for “battery, . . . assault, . . . imprisonment o[f] one’s attacker.”<sup>69</sup> For example, when it comes to the tort of defamation, the Supreme Court of the United States initially encouraged victims of defamation to use self-help to contradict any defamatory statements as well as to rehabilitate any impact on reputation.<sup>70</sup> That being said, a few years later, the Supreme Court walked back its encouragement of self-help when it recognized that engaging in self-help may be futile and constitutionally unworkable.<sup>71</sup>

In the realm of property rights, the common law has long recognized “a person’s privilege to use reasonable force to defend [their] lawful present possessory interest in realty or chattels,” and this “privilege excuses any batteries that the defender commits through use of reasonable force to protect [their] property from another person’s tortious or criminal act.”<sup>72</sup> Despite an “American societal consensus that the interest in peaceful possession and

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<sup>62</sup> *Id.* at 852.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 853.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 854.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 855 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)).

<sup>71</sup> *Id.* at 856–57.

<sup>72</sup> *Id.* at 860–61.

enjoyment of property is a paramount concern of an ordered society,” and a sense that the use of self-help can deter bad behavior against property owners, courts and legislatures have limited this ability of self-help.<sup>73</sup> Although, we note that some recent developments may indicate that legislatures are expanding the privileges again.<sup>74</sup>

When it comes to protecting property, the courts and legislatures have generally required some imminent threat to the property that can only be repelled by force, usually preceded by some warning by the victim.<sup>75</sup> But when it comes to recovering stolen property, the law affords the victim a right to recover the property only if “nondeadly force” is used.<sup>76</sup> Merchants, for example, are allowed under various state statutes to detain suspected shoplifters under certain limited circumstances.<sup>77</sup> When it comes to nuisance abatement, courts have allowed those whose enjoyment of their private property rights is interfered with to take steps to abate the nuisance, which may include destroying the cause of the nuisance.<sup>78</sup>

In the criminal law context, there is a fine line between self-help and committing a criminal offense that is prosecutable.<sup>79</sup> Self-help, which can threaten “public peace, order, and the administration of justice,” is the type that may incur criminal liability for the self-helpers both in theory and in practice.<sup>80</sup> In their book *Shadow Vigilantes*, Paul and Sarah Robinson (“the Robinsons”) systematically analyze the phenomenon of vigilantism.<sup>81</sup> The book discusses how vigilantism can be used as a tool to avenge the helpless when the law fails to help them. The book also discusses how vigilantism can

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<sup>73</sup> *Id.* at 861.

<sup>74</sup> See notes associated with note 114 *infra*.

<sup>75</sup> Brandon, et al., *supra* note 61, at 861.

<sup>76</sup> *Id.* at 863.

<sup>77</sup> *Id.* at 865–67.

<sup>78</sup> *Id.* at 868. There are other areas of the law, where self-help is not only encouraged but built in as a remedy. For example, secured creditors are allowed to repossess the property acting as the security from the debtor in the event the debtor defaults, regardless of whether the debt agreement allows for this right or not and under certain conditions. *Id.* at 916–19. A similar remedy is available to landlords, at least in the common law subject to modifications by statute especially for residential tenants, that allows them to enter the tenant’s premises and seize their personal property as security for unpaid rent. *Id.* at 938, 946.

<sup>79</sup> *Id.* at 873–74.

<sup>80</sup> *Id.* at 873; see also Kelly D. Hine, *Vigilantism Revisited: An Economic Analysis of the Law of Extra-Judicial Self-Help or Why Can't Dick Shoot Henry for Stealing Jane's Truck*, 47 AM. U. L. REV. 1221 (1998) (providing an economic analysis of the tradeoffs between the competing social costs of allowing self-help and vigilantism versus prohibiting altogether).

<sup>81</sup> PAUL H. ROBINSON & SARAH M. ROBINSON [hereinafter “THE ROBINSONS”], *SHADOW VIGILANTES: HOW DISTRUST IN THE JUSTICE SYSTEM BREEDS A NEW KIND OF LAWLESSNESS* (Prometheus, 2018); see also Paul H. Robinson, *The Moral Vigilante and Her Cousins in the Shadows*, 2015 U. ILL. L. REV. 401 (2015).

lead to lawlessness and a breakdown in social order. As such, the book concludes that while there may be a moral high ground for those engaged in vigilantism, such ground may give way over time.<sup>82</sup> The book sets out the motivation of vigilantism by highlighting examples of victims of crimes and how the legal system failed them.<sup>83</sup> The justice system includes the police, the prosecution, the judiciary, and the legislature.<sup>84</sup>

In that sense, the public hankering for justice does not differentiate between the source of the ineffectiveness when it decides that unofficial vigilantism is better than recourse to the law.

As the Robinsons point out, it is not easy standing up to abusive bullies. They give the example of a local thug in a suburb of San Diego who terrorized the suburb, threatening anyone who stood up to him, including witnesses to his crimes.<sup>85</sup> Finally, a retired navy commander killed the thug after another incident, and he was charged with murder. Locals, while not supportive of the killing, stated that they would have no trouble acquitting the retired commander were they serving on his jury.<sup>86</sup> Explaining their rationale, one local stated “[that the retired officer] did not abandon the legal system. It is clear that the problem was ignored by law enforcement and the neighborhood was ultimately abandoned by a twisted and polluted legal system.”<sup>87</sup> Ultimately, he was convicted of second-degree murder with a potential sentence of 18 to 20 years in jail.<sup>88</sup> The judge overruled the jury verdict and lowered the charge to involuntary manslaughter, which resulted in a sentence closer to eight and a half years.<sup>89</sup> The judge, who noted that he had never reduced a jury verdict before, called the murder victim a “jerk” and a “ne’er-do-well” who “set the wheels in motion for his own death.”<sup>90</sup> Notwithstanding the community’s support for the killer, the victim’s brother was not happy, stating that “the message . . . is you can get a gun and waste somebody and get manslaughter. The judge should have honored the jury’s verdict.”<sup>91</sup>

With this and other vignettes, the book explains that vigilantism can be motivated by different beliefs. Some vigilantes can be motivated by a desire

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<sup>82</sup> A good summary of the book can be found in Carson Guy, *A Case Study of Vigilantes*, 82 TEX. B.J. 493 (2019). There is also a good discussion in Brandon, et al., *supra* note 61, at 874.

<sup>83</sup> THE ROBINSONS, *supra* note 81, at 19–23.

<sup>84</sup> *Id.* at 19–31.

<sup>85</sup> *Id.* at 24–27.

<sup>86</sup> *Id.* at 27–28.

<sup>87</sup> *Id.* at 29.

<sup>88</sup> *Id.* at 29.

<sup>89</sup> *Id.* at 236.

<sup>90</sup> The Associated Press, *Judge Reduces Term for Man Who Killed Bully*, N.Y. TIMES (April 19, 1997), <https://www.nytimes.com/1997/04/19/us/judge-reduces-term-for-man-who-killed-bully.html> [<https://perma.cc/2LCW-HK25>].

<sup>91</sup> *Id.*



to suppress social change, especially when it comes to the treatment of oppressed populations.<sup>92</sup> Others can be motivated to respond to the same vigilantes trying to suppress social change.<sup>93</sup> Those vigilantes motivated by standing up to the bullies and other oppressive systems are examples of what the Robinsons call “moral vigilantism.”<sup>94</sup> They conclude, based on their examples, that “vigilantism is not itself an evil. Indeed, it may be a moral response to an otherwise impossible situation. Vigilantism is like war: while it is never desirable, it is sometimes just.”<sup>95</sup>

Moral vigilantism, the Robinsons document, can lead to what they call shadow vigilantism.<sup>96</sup> This is when those involved in the justice system undermine the official rules to achieve certain just results that the normal rules would frustrate.<sup>97</sup> One example of shadow vigilantism is when the police break the rules to secure the arrest and conviction of those whom they believe are guilty, even when the technical rules of criminal procedure would lead to evidence being suppressed and charges dismissed.<sup>98</sup> Jury nullification is another example.<sup>99</sup> Jurors sitting in judgment of a peer accused of a crime committed by a vigilante may be inclined to acquit or convict of a lesser charge.<sup>100</sup> This makes them, in effect, also vigilantes operating in the

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<sup>92</sup> The Ku Klux Klan is the most famous of such organizations created to suppress Black Americans after the end of the civil war. THE ROBINSONS, *supra* note 81, at 33–36.

<sup>93</sup> In response to the Klan, Black Americans also created their organizations, such as the Deacons for Defense. *Id.* at 36–39. These armed groups, with 21 chapters at their height, provided protection to civil rights leaders and organizations when the police failed to protect them. Despite the occasional disapproval of their armed tactics and their scrutiny by the FBI, they were effective in stopping attacks and were sought after by civil rights leaders such as Dr. Martin Luther King. *Id.* at 36–39; *see also* Kimberly V. Legocki, et al., *Sound and Fury: Digital Vigilantism as a Form of Consumer Voice*, 39 J. PUB. POL’Y & MARKETING 1 (2020) (analyzing tweets related to 2017 Charlottesville Unite the Right rally, and how citizens used Twitter to name and shame those who participated in the face of a perceived letdown by the authorities).

<sup>94</sup> THE ROBINSONS, *supra* note 81, at 33–48.

<sup>95</sup> *Id.* at 48.

<sup>96</sup> *Id.* at 49–59.

<sup>97</sup> *Id.* at 49.

<sup>98</sup> *Id.* at 55–59.

<sup>99</sup> *Id.* at 50; *see also* Richard Lorren Jolly, *Jury Nullification as a Spectrum*, 49 PEPP. L. REV. 341 (2021) (providing an update of where jury nullification practically sits in today’s courtrooms). The 19<sup>th</sup> century American lawyer and pamphleteer Lysander Spooner argued in favor of jury nullification as a check on the power of the state. His arguments as well as modern applications can be found in Steve J. Shone, *Lysander Spooner, Jury Nullification, and Magna Carta*, 22 QUINNIPLAC L. REV. 651 (2004).

<sup>100</sup> THE ROBINSONS, *supra* note 81, at 50–54.

shadows.<sup>101</sup> In these examples, the Robinsons demonstrate that moral vigilantism can be aided by shadow vigilantism.<sup>102</sup>

Shadow vigilantes are typically motivated by disillusionment with the justice system and its technical criminal procedure rules but can also be motivated by emotions and prejudices.<sup>103</sup> This leads the Robinsons to identify

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<sup>101</sup> Examples include the now infamous incident of Bernhard Goetz who shot four young Black men on a subway, because he thought they wanted to rob him. *Id.* at 51–52. The authors explain the atmosphere of crime that had plagued New York City in the 1970s and early 1980s, as well as the personal circumstances of Mr. Goetz who had himself been a victim of crime. *Id.* at 50–51. Despite having shot four men leaving one of them paralyzed with severe brain damage, the jury acquitted on all the serious charges, and only convicted him of illegally possessing a weapon. *Id.* at 54.

<sup>102</sup> We note that sometimes jury nullification can also take place when the jury perceives the state prosecution to be heavy handed or unnecessarily targeting an accused, perhaps technically guilty, but not in the popular sense. For example, when the jury acquitted one of the greatest baseball pitchers of all time, Roger Clemens, of perjury for lying about his steroid use, the jury was expressing its displeasure at the pursuit of the charges in the first place. Lou Rom, *Roger Clemens Verdict Is Not About Innocence, It's About Jury Nullification*, BLEACHER REP. (June 19, 2012), <https://bleacherreport.com/articles/1228514-if-roger-clemens-verdict-not-about-innocence-is-it-about-jury-nullification> [<https://perma.cc/CN84-GHKD>]. As an aside, we resisted mentioning the O.J. Simpson verdict as an example of jury nullification (and we note the Robinsons do not mention that verdict in their book), as it is not obvious that the jury disregarded the evidence to render a not guilty verdict. Nancy S. Marder, *The Interplay of Race and False Claims of Jury Nullification*, 32 U. MICH. J. L. REFORM 285 (1999).

<sup>103</sup> Some examples in their book have also been extensively studied by others in this regard. For example, the Goetz trial exposed the tensions on the street that made their way into the courtroom. On the one hand, the “resulting verdict of not guilty may have served as vindication for many subway riders who experience fear from the constant threat of muggings.” Aaron Goldstein, *Race, Reasonableness, and the Rule of Law*, 76 S. CALIF. L. REV. 1189, 1192 (2003). Notwithstanding that what Goetz did clearly did not fall under New York’s self-defense laws, “the explanation for this legally inexplicable decision [lay] in the defense’s ability to pander to the fears of the jury.” *Id.* Several tactics by the defense made Goetz’s acts seem reasonable, but in a manner that also implicated the race of the victims. *Id.* at 1193. Worse, “nothing was done [at trial] to mitigate the potential impact of the subtle (and sometimes not so subtle) playing of race cards.” *Id.*; see also Janine Young Kim, *The Rhetoric of Self-Defense*, 13 BERKELEY J. CRIM. L. 261, 283–86 (2008) (discussing the uncertainty and tensions in cases of self-defense including the Goetz case). Similarly, the Robinsons document another example where two racists in Detroit attacked an Asian man and killed him were only given probation. THE ROBINSONS, *supra* note 81, at 75–77. The attacks took place in the early 1980s when anti-Japanese sentiment was high in the industrial heartland due to the stiff competition Japanese automobiles posed to American manufacturing. *Id.* at 75. The two killers, two “recently laid-off autoworkers,” chased and yelled at the “young

the dangers of vigilantism in all its forms.<sup>104</sup> As such, they posit a set of rules to keep vigilantism grounded in morality.<sup>105</sup> These rules include the admonition that vigilante action should not be taken unless there is a serious “failure of justice” or if there is no lawful way to solve the problem.<sup>106</sup> Furthermore, those contemplating action should not cause more harm than is necessary and should avoid injuring innocent bystanders.<sup>107</sup> Making sure of the facts and taking into account all relevant excuses is another important rule for vigilantes to follow.<sup>108</sup> Restraint and temperance should be displayed, and arrogance and vindictiveness should be avoided.<sup>109</sup> Two more rules include the admonition against acting alone,<sup>110</sup> as well as the exhortation that the action must be publicly reported afterward, explaining the reasons behind the action.<sup>111</sup> The danger of not following these rules is that vigilantism, even if it starts off morally motivated, can end up going too far, leading to more lawlessness and harm.<sup>112</sup>

Indeed, the Robinsons argue:

[S]hadow vigilantism introduces into the criminal justice system serious arbitrariness as well as disparity among cases. That is the level of shadow vigilantism in any given case may be unpredictable, dependent as it is on a variety of factors. . . . In other words, shadow vigilantism only serves to exacerbate the system's loss of moral credibility, which is what helped trigger the vigilantism in the first place. It invites a downward spiral of lost credibility and therefore increased subversion.<sup>113</sup>

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Chinese American” who was “enjoying his bachelor party with friends,” saying, “It's because of you little m\*\*\*s that we're out of work.” *Id.* at 75. [original expletive in text] Notwithstanding that they were charged with second-degree murder, the prosecution offered them a plea-deal whereby they pled guilty to manslaughter, a charge that still could attract jail-time at sentencing. *Id.* at 76. When they accept the deal, the judge only sentences them to three years of probation plus a fine and court fees. *Id.* at 77. The judge explained his sentence by stating that “[t]hese weren't the kind of men you sent to jail . . . . You don't make the punishment fit the crime: you make the punishment fit the criminal.” *Id.* at 77. [collectively, hereinafter *Emotions and Prejudices*].

<sup>104</sup> *Id.* at 95–96.

<sup>105</sup> *Id.* at 97–110.

<sup>106</sup> *Id.* at 97, 100.

<sup>107</sup> *Id.* at 98.

<sup>108</sup> *Id.* at 105.

<sup>109</sup> *Id.* at 106.

<sup>110</sup> *Id.* at 104.

<sup>111</sup> *Id.* at 108.

<sup>112</sup> *Id.* at 197.

<sup>113</sup> *Id.*

We note that shadow vigilantism can then permeate back into the legal system, the very system that may have caused the vigilantism in the first place. In other words, there is a feedback loop mechanism that translates anger on the streets, and perhaps the jury boxes, into actions by prosecutors, police, the courts, and ultimately the legislatures. The difference is that now the actions are sanctioned by law and, in some sense, are no longer vigilante actions. But in another sense, they are very much the product of the same sentiments that generate the vigilantism, namely public anger at perceived lawlessness and helplessness. That being said, these official acts then carry the same risks of loss of moral credibility that can affect shadow vigilantism.

For example, consider the proliferation of sentencing guidelines at the state and federal levels. Originally passed because of a perception of sentencing disparity, the idea of guidelines and mandatory minimums for certain crimes seems to come from a place of vengeance and not earlier ideas of rehabilitation.<sup>114</sup> Similarly, states also began passing “Stand Your Ground” laws due to a perception that citizens were being victimized and not afforded a right to defend themselves,<sup>115</sup> but of course, these laws can be applied with the same prejudices that can afflict vigilantism.<sup>116</sup>

Not all laws that are enacted as a response to a crisis or failure of existing laws are necessarily motivated by social prejudices. They are, however, usually motivated by anger towards a target group.<sup>117</sup> Relevant to the meme stock saga, financial regulations seem to always be motivated by a reaction

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<sup>114</sup> Leonard Orland, *From Vengeance to Vengeance: Sentencing Reform and the Demise of Rehabilitation*, 7 HOFSTRA L. REV. 29, *passim* (1978). For a good history detailing the original motivations and the trends over time, see Brent E. Newton & Dawinder S. Sidhu, *The History of the Original United States Sentencing Commission, 1985-1987*, 45 HOFSTRA L. REV. 1167 (2017); Nancy Gertner, *A Short History of American Sentencing: Too Little Law, Too Much Law, or Just Right*, 100 J. CRIM. L. & CRIMINOLOGY 691 (2010); Kate Stith & Steve Y. Koh, *The Politics of Sentencing Reform: The Legislative History of the Federal Sentencing Guidelines*, 28 WAKE FOREST L. REV. 223 (1993).

<sup>115</sup> Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827 (2013).

<sup>116</sup> Justin Murphy, *Are “Stand Your Ground” Laws Racist and Sexist? A Statistical Analysis of Cases in Florida, 2005–2013*, 99 SOC. SCI. Q. 439 (2018).

<sup>117</sup> Anger can be a strong motivation for many behaviors that may defy rationality. Indeed, legal scholars have dedicated much scholarship to the question of how emotions can affect the law and the behavior of legal actors. See e.g., SUSAN A. BANDES, ET AL., RESEARCH HANDBOOK ON LAW AND EMOTION, (2021); Carlton J. Patrick, *A New Synthesis for Law and Emotions: Insights from the Behavioral Sciences*, 47 ARIZ. ST. L.J. 1239 (2015); Eric A. Posner, *Law and the Emotions*, 89 GEO. L.J. 1977 (2001); Peter H. Huang, *Reasons Within Passions: Emotions and Intentions in Property Rights Bargaining*, 79 OR. L. REV. 435 (2000).

to some perceived misfeasance by the markets and its actors.<sup>118</sup> Legislation, such as *Sarbanes-Oxley* and *Dodd-Frank*, was enacted in the wake of financial meltdowns and the perception of bad behavior by financial actors.<sup>119</sup> In that sense, it is important to see these legislative developments as a form of collective financial vigilantism.

In all of the examples discussed so far, the focus has been on the victims. But in many ways, there is also an aspect of vigilantism that is focused on the targets of the vigilante actions. Indeed, without even resorting to street vigilantism, it is not too hard to notice the vitriol with which the public, the press, and prosecutors pursue those accused of being greedy.

Even back in the 1980s, when the stock market was roaring, and Donald Trump was a young hotshot entrepreneur,<sup>120</sup> there was still a target on the back of the rich who may have gotten too rich too quickly. Rudy Giuliani, then a U.S. Attorney, made a name for himself arresting high-profile Wall Street executives, usually on charges of insider trading.<sup>121</sup> They would be cuffed and paraded as if they were common criminals in an attempt to both create publicity for the arrests and perhaps to induce guilty pleas, something that did not always happen or even materialize in terms of convictions.<sup>122</sup> The latter pled guilty to a variety of financial crimes,<sup>123</sup> perhaps brought on by the death of his original lawyer, the legendary Edward Bennett Williams.<sup>124</sup> But in hindsight, it is not clear, according to some, that he actually committed

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<sup>118</sup> Jihad Dagher, *Regulatory Cycles: Revisiting the Political Economy of Financial Crises*, IMF WORKING PAPERS (Jan. 15, 2018), available at <https://www.imf.org/en/Publications/WP/Issues/2018/01/15/Regulatory-Cycles-Revisiting-the-Political-Economy-of-Financial-Crises-45562>.

<sup>119</sup> Dahli Gray, & Clemense Ehoff Jr., *Sarbanes-Oxley and Dodd Frank: Then There Was Fraud*. 13 J. BUS. & ECON. RSCH. 19 (2015).

<sup>120</sup> A good montage of his life back then can be seen in Conor Friedersdorf, *When Donald Trump Became a Celebrity*, THE ATLANTIC (Jan. 6, 2016), <https://www.theatlantic.com/politics/archive/2016/01/the-decade-when-donald-trump-became-a-celebrity/422838/> [<https://perma.cc/9P3B-CY TZ>].

<sup>121</sup> Paul Richter, *Rudolph W. Giuliani: Crime Buster Finds Image Is on Trial*, L.A. TIMES (Mar. 27, 1987), <https://www.latimes.com/archives/la-xpm-1987-03-27-mn-311-story.html> [<https://perma.cc/7DNK-Y38F>].

<sup>122</sup> Scot J. Paltrow, *Giuliani Gaffe Leaves Wall St. Executives in Legal Limbo*, L.A. TIMES (Feb. 26, 1989), <https://www.latimes.com/archives/la-xpm-1989-02-26-fi-817-story.html> [<https://perma.cc/ATX9-5X9J>].

<sup>123</sup> Kurt Eichenwald, *Milken Set To Pay A \$600 Million Fine In Wall St. Fraud*, N.Y. TIMES (Apr. 21, 1990), [https://www.nytimes.com/1990/04/21/business/milken-set-to-pay-a-600-million-fine-in-wall-st-fraud.html#:~:text=Milken%2C%20who%20created%20the%20",briefed%20about%20the%20decision%20said](https://www.nytimes.com/1990/04/21/business/milken-set-to-pay-a-600-million-fine-in-wall-st-fraud.html#:~:text=Milken%2C%20who%20created%20the%20) [<https://perma.cc/376H-Q6GF>].

<sup>124</sup> EVAN THOMAS, THE MAN TO SEE 14 (1991) (biography of Edward Bennett Williams).

any crimes at all.<sup>125</sup> Indeed, when he was indicted, the government made a big deal of his wealth.<sup>126</sup> “The government understood that by disclosing the Milkens’ spectacular wealth right up front, the rest of the indictment almost didn’t matter. The Milkens’ compensation was sufficient to prove their guilt.”<sup>127</sup>

In present times, Martin Shkreli, an early moderator of WallStreetBets,<sup>128</sup> was sent to prison after being convicted of securities fraud charges but faced other legal consequences as a result of his hiking the price of the life-saving drug Daraprim from \$13.50 to \$750 USD per pill upon obtaining exclusive rights to the drug while he was the CEO of Vyera, then known as Turing Pharmaceuticals.<sup>129</sup> While he did not technically violate any laws in instituting the price increase, the drug was a critical part of many patients’ weeks-long treatment programs, and the obvious money grab from vulnerable patients and their insurance companies left a bad taste in the mouths of many United States medical centers and on the 2016 presidential campaign trail.<sup>130</sup> Despite the criticism he received about the “unjustifiable” price hike, Shkreli continually defended the increase as merely being the result of capitalism.<sup>131</sup> With the perception of him as a villain of cartoonish proportions whose smug attitude and arrogance at trial gave the impression that he felt he was above the ordinary person, the press and the public immediately turned against him and his staunch arguments that higher prices meant higher profits. Dozens of news articles proclaimed him to be a jerk, and the sentiment of the public can be seen in the comments of dismissed jurors for his case, many of whom expressed hatred and disdain for Shkreli,

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<sup>125</sup> Professor Dan Fischel authored a book dedicated to vindicating Milken against the charges. DANIEL FISCHEL, *PAYBACK: THE CONSPIRACY TO DESTROY MICHAEL MILKEN AND HIS FINANCIAL REVOLUTION* (1995) (Kindle Edition).

<sup>126</sup> Dan Mangan, *Trump Pardons Michael Milken, Face of 1980s Insider Trading Scandals*, CNBC (Feb. 18, 2020, 2:02 PM), <https://www.cnbc.com/2020/02/18/trump-pardons-michael-milken-face-of-1980s-financial-scandals.html> [<https://perma.cc/6KW5-7CRG>].

<sup>127</sup> Ultimately, Milken was pardoned by President Trump. *Id.*

<sup>128</sup> JAKAB, *supra* note 12, at 39.

<sup>129</sup> Jordan Hoffman, *Martin Shkreli, Still “Most Hated” Man, Must Fork Over Almost \$65 Million*, VANITY FAIR (Jan. 15, 2022), <https://www.vanityfair.com/style/2022/01/martin-shkreli-still-most-hated-man-must-fork-over-almost-65-million> [<https://perma.cc/XEK3-KJTM>].

<sup>130</sup> The Associated Press, *‘Pharma Bro’ Martin Shkreli is Ordered to Return \$64M, Barred from Drug Industry*, NPR (Jan. 13, 2022, 3:13 PM), <https://www.npr.org/2022/01/14/1073161736/pharma-bro-martin-shkreli-barred> [<https://perma.cc/Q35E-A3GR>].

<sup>131</sup> Kelefa Sanneh, *Everyone Hates Martin Shkreli. Everyone is Missing the Point*, THE NEW YORKER (Feb. 5, 2016), <https://www.newyorker.com/culture/cultural-comment/everyone-hates-martin-shkreli-everyone-is-missing-the-point> [<https://perma.cc/8HUK-UFSV>].

wished harm on him, and emphasized how egregious his actions were.<sup>132</sup> The fact that the price increase was done legally did not matter—as a “pharma bro,” Shkreli represented the greed of the medical industry, which did not endear him to the public. His refusal to admit that his practices may have been morally wrong earned him the moniker of being “the most hated man in America.”<sup>133</sup>

In January 2022, Elizabeth Holmes, the infamous former CEO of blood-testing company Theranos, was convicted of four of the eleven counts of fraud brought against her by the United States government.<sup>134</sup> Holmes, once lauded as the world’s youngest female self-made billionaire,<sup>135</sup> was found guilty of defrauding investors after lying about the capabilities of her former company’s technology, which she falsely claimed could test for hundreds of illnesses using a single drop of blood.<sup>136</sup> She was acquitted of charges that accused her of defrauding patients to whom Theranos sent faulty and inaccurate test results.<sup>137</sup>

Holmes’ trial demonstrates a different twist on moral vigilantism wherein the vitriol of the public and press turned to focus not on the wrongdoer but on a subset of the wrongdoer’s victims. The reaction online to Holmes’ trial reflects the moral stance the public tends to take when it comes to wrongdoing against unsympathetic victims, as well as what their

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<sup>132</sup> Anna Cafolla, *Rejected Martin Shkreli Trial Jurors: ‘He Looks Like a Dick’*, DAZED (Aug. 17, 2017), <https://www.dazeddigital.com/life-culture/article/37083/1/rejected-martin-shkreli-trial-jurors-he-looks-like-a-dick> [https://perma.cc/5YXB-F2PR].

<sup>133</sup> Rebecca Robbins & Cecilia Kang, *Martin Shkreli is Barred from the Drug Industry and Ordered to Repay \$64.6 Million*, N.Y. TIMES (Jan. 14, 2022), <https://www.nytimes.com/2022/01/14/business/martin-shkreli-barred.html> [https://perma.cc/RGU7-TXJG].

<sup>134</sup> Sara Ashley O’Brien, *Elizabeth Holmes Found Guilty on Four out of 11 Federal Charges*, CNN BUSINESS (Jan. 4, 2022), <https://www.cnn.com/2022/01/03/tech/elizabeth-holmes-verdict> [https://perma.cc/E474-A2X4]. For a detailed look at the Theranos saga, up until the trial, see JOHN CARREYROU, *BAD BLOOD: SECRETS AND LIES IN A SILICON VALLEY STARTUP* (2018).

<sup>135</sup> Daniel Thomas, *Theranos Scandal: Who is Elizabeth Holmes and Why Was She on Trial?*, BBC NEWS (Jan. 4, 2022), <https://www.bbc.com/news/business-58336998> [https://perma.cc/PDM3-MQM4].

<sup>136</sup> Nicole Wetsman, *Theranos Promised a Blood Testing Revolution – Here’s What’s Really Possible*, THE VERGE (Dec. 15, 2021, 10:00 AM), <https://www.theverge.com/22834348/theranos-blood-testing-innovation-drop-holmes> [https://perma.cc/69TQ-SWQB].

<sup>137</sup> Nicole Goodkind, *False HIV Results, Miscarriage, and Cancer Diagnosis—the Theranos Patients Elizabeth Holmes was Found Not Guilty of Defrauding*, FORTUNE (Jan. 4, 2022, 3:37 PM), <https://fortune.com/2022/01/04/theranos-elizabeth-holmes-human-cost-fraud-faulty-blood-test-patients> [https://perma.cc/A242-U2C5].

reaction would have been had Holmes' victims been more sympathetic. Holmes was roundly reviled online in the aftermath of her conviction for her deception in general, but although netizens seemed to agree overall that her deception of patients was abhorrent, many were less sympathetic to the investors who lost tens of millions of dollars to her scheme and would benefit from her conviction.<sup>138</sup> A common sentiment among online commenters was that Holmes was only tried and put through the legal ringer for defrauding some very wealthy people as opposed to ripping off the average, vulnerable patient.<sup>139</sup> Commenters generally disapproved of Holmes' actions but were far less sympathetic to the victims of the crimes than they would have been if those victims were not multi-millionaires and billionaires. Some were pleased that these uber-wealthy investors had lost millions and were almost disappointed that they would recoup their losses—the reasoning being that these powerful investors had the resources to do their due diligence and should suffer the consequences of their foolhardiness even if they had been entangled with a master manipulator like Holmes.<sup>140</sup>

The reaction to Holmes' verdict, as well as the many examples discussed above, demonstrate that the same forces motivating vigilantism on the streets are also operating inside the halls of justice. Yet, these motivations do not necessarily lead to sound legal doctrine. In addition to those who argued that Michael Milken may not have been guilty of anything,<sup>141</sup> others have argued that there are “conflicting moral evaluations,” which in turn create “confusion in U.S. securities regulation,” and this confusion essentially creates liability based on “some conception of what kind of market activity is ‘fair.’”<sup>142</sup> This results in “muddled legal doctrines when we cannot agree

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<sup>138</sup> u/essentialrobert, *Theranos Founder Elizabeth Holmes is Found Guilty of Defrauding Investors*, REDDIT (Jan. 3, 2022, 6:07 PM), [https://www.reddit.com/r/technology/comments/rvgeve/comment/\[https://perma.cc/AV4Y-9B3E\]](https://www.reddit.com/r/technology/comments/rvgeve/comment/[https://perma.cc/AV4Y-9B3E]) (“The entire medical system defrauds patients and no one blinks an eye. But take money from billionaires and they will hunt you down.”); u/gladd86, *Theranos Founder Elizabeth Holmes is Found Guilty of Defrauding Investors*, REDDIT (Jan. 3, 2022, 6:12 PM), [https://www.reddit.com/\[https://perma.cc/JZD3-5DVB\]](https://www.reddit.com/[https://perma.cc/JZD3-5DVB]) (“Very on-brand of the America[n] justice system to punish her for the investors but not the patients”).

<sup>139</sup> *Emotions and Prejudices*, *supra* note 103.

<sup>140</sup> u/Humorousphlegmflam, *Theranos Founder Elizabeth Holmes is Found Guilty of Defrauding Investors*, REDDIT (Jan. 4, 2022, 4:42 AM), [https://www.reddit.com/r/technology/comments/rvgeve/comment/\[https://perma.cc/2SJQ-V98X\]](https://www.reddit.com/r/technology/comments/rvgeve/comment/[https://perma.cc/2SJQ-V98X]) (“Hot take, but if you believed in needless blood testing you deserve to get scammed”); u/P1r4nha, *Theranos Founder Elizabeth Holmes is Found Guilty of Defrauding Investors*, REDDIT (Jan. 4, 2022, 9:18 AM), [https://www.reddit.com/r/technology/comments/rvgeve/comment/\[https://perma.cc/2SJQ-V98X\]](https://www.reddit.com/r/technology/comments/rvgeve/comment/[https://perma.cc/2SJQ-V98X]) (“Yeah to a certain extent the lack of due diligence should factor in (maybe it did”).

<sup>141</sup> See FISCHER, *supra* note 125.

<sup>142</sup> Kevin R. Douglas, *Michael Milken*, 15 TENN. J.L. POL'Y 128, 139 (2020).



about the fairness of trading with an information advantage.”<sup>143</sup> The legislative reactions to these events, such as *Sarbanes-Oxley* and *Dodd-Frank*, led to other unintended consequences, including a perception of overregulation by firms, which then lobby and litigate to water down or repeal various provisions of these acts.<sup>144</sup>

The discussion in this section illustrates the various sentiments that could have gone into the meme stock saga. Were the meme stock investors a group of moral, or even shadow, vigilantes motivated by taking on the rich and powerful in a coordinated manner because they felt that the law afforded them no legal recourse? The answer requires some more analysis regarding the nature of online vigilantism and what right was being vindicated by the meme stock investors.

#### IV. VIGILANTISM/SELF-HELP IN THE DIGITAL SPHERE

The discussion above has been confined to self-help and vigilantism in a “brick and mortar” world. In some ways, the meme stock saga concerned stocks of classic ‘brick and mortar’ companies. Indeed, that was, in many ways, the theory of the short-sellers, namely that companies such as GameStop were too old-fashioned for the new virtual world. And yet, the collective decision to take on the short-sellers was hatched in the virtual chatrooms, or online forums. The online and digital world is more prone to hacking by random outsiders but is also more convenient for vigilantism.<sup>145</sup>

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<sup>143</sup> *Id.*

<sup>144</sup> John C. Coffee Jr., *Political Economy of Dodd-Frank: Why Financial Reform Tends to be Frustrated and Systemic Risk Perpetuated*, 97 CORNELL L. REV. 1019, 1067 (2012).

<sup>145</sup> A good introduction to the subject can be found in Richard A. Epstein, *The Theory and Practice of Self-Help*, 1 J.L. ECON. & POL’Y 1 (2005). Professor Epstein explains, in a manner similar to Brandon, et al., *supra* note 61 and THE ROBINSONS *supra* note 81, the theories of self-help and their applications in the cyber-world. See also Benjamin Loveluck, *The Many Shades of Digital Vigilantism: A Typology of Online Self-Justice*, 21 GLOBAL CRIME 213 (2020) (explaining the various types of digital vigilantism); Gilles Favarel-Garrigues, et al., *Introducing Digital Vigilantism*, 21 GLOBAL CRIME 3 (2020); Daniel Trottier, *Denunciation and Doxing: Towards a Conceptual Model of Digital Vigilantism*, 21 GLOBAL CRIME 196 (2020) (discussing the pros and cons of digital vigilantism); K. K. e Silva, *Vigilantism and Cooperative Criminal Justice: Is There a Place for Cybersecurity Vigilantes in Cybercrime Fighting?*, 32 INT. REV. L. COMPUTERS & TECH. 21 (2018) (arguing that cyber-vigilantism can sometimes impede law enforcement against cyber-criminals); Lennon Y.C. Chang, et al., *Citizen Co-Production of Cyber Security: Self-Help, Vigilantes, and Cybercrime*, 12 REG. & GOVERNANCE 101 (2018) (arguing that self-help and online vigilantism can be productive in combatting cyber-crime, but only if done within the confines of what is legal); Neal Katyal, *Community Self-Help*, 1 J.L. ECON. & POL’Y 33 (2005)

This is because those committing the wrongdoing do so behind the impunity of their computer or phone screens, unlike their “brick and mortar” counterparts, such as those committing physical assaults or physical thefts. For that same reason, it is also easy for those with the know-how to retaliate and take on hackers or whoever else is engaged in online or digital misfeasance.

To carry the analysis over from “brick and mortar” to the digital and online world, the analogies between the two worlds must be properly laid out.<sup>146</sup> After all, protecting life or property seems like an intuitive object of self-help, but what exactly is an online or digital self-helper or vigilante protecting? Early digital and online case law provided some answers to these questions. Computer viruses and other malicious code have been a feature of computers for decades.<sup>147</sup> As governments and citizens tried to deal with these attacks, many in the legal community proposed a variety of remedies to deal with them.<sup>148</sup> Some of these suggestions, such as criminal sanctions for

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(arguing that “community self-help” can be an efficient way to reduce crime in both the brick-and-mortar world as well as the cyber-world); Bruce P. Smith, *Hacking, Poaching, and Counterattacking: Digital Counterstrikes and the Contours of Self-Help*, 1 J.L. ECON. & POL’Y 171 (2005) (providing brick and mortar analogies to cyber self-help); Douglas Lichtman, *How the Law Responds to Self-Help*, 1 J.L. ECON. & POL’Y 215 (2005) (providing examples of where the law encourages self-help in the digital world); Bruce L. Benson, *The Spontaneous Evolution of Cyber Law: Norms, Property Rights, Contracting, Dispute Resolution and Enforcement without the State*, 1 J.L. ECON. & POL’Y 269 (2005) (arguing that self-help is more efficient than any state-imposed laws in policing crime in the cyber-world); Christopher J. Coyne & Peter T. Leeson, *Who’s to Protect Cyberspace*, 1 J.L. ECON. & POL’Y 473 (2005) (arguing that the market is better equipped at providing solutions to cyber-crime than reliance on the state); Benjamin Powell, *Is Cyberspace a Public Good - Evidence from the Financial Services Industry*, 1 J.L. ECON. & POL’Y 497 (2005) (using the financial sector as an example of where self-help has been successful at managing cyber-crimes); Peter T. Leeson & Christopher J. Coyne, *The Economics of Computer Hacking*, 1 J.L. ECON. & POL’Y 511 (2005) (providing an economic analysis of designing optimal punishments for cyber-criminals; the article is useful for its taxonomy of hackers and their motivations). The classic law and economics article that motivates much of these views that private enforcement can be efficient is Gary S. Becker & George J. Stigler, *Law Enforcement, Malfeasance, and Compensation of Enforcers*, 3 J. LEGAL STUD. 1 (1974).

<sup>146</sup> For a discussion of how to apply traditional property law concepts to digital assets, see João Marinotti, *Possessing Intangibles*, 116 NW. U. L. REV. 1227 (2022) (discussing whether the concept of possession applies to data, cryptocurrencies, NFTs, or other intangible assets).

<sup>147</sup> See e.g., JUSTICE DEPARTMENT BUDGET, TESTIMONY OF MICHAEL E. HOROWITZ CHIEF OF STAFF, 2001 WL 520557.

<sup>148</sup> Mary M. Calkins, *They Shoot Trojan Horses, Don’t They? An Economic Analysis of Anti-Hacking Regulatory Models*, 89 GEO. L.J. 171 (2000); Robin A.

launching virus attacks,<sup>149</sup> have been implemented by legislation for many years now.<sup>150</sup> Other proposals, such as tort liability for wrongdoers, were met with mixed success in the courts.<sup>151</sup>

In these early cases, the issue was how to analogize the action against the wrongdoer to one of the classic ‘brick and mortar’ torts.<sup>152</sup> Some cases utilized a long-dormant tort, the trespass to chattel, as a means of arguing against wrongdoers in the digital world.<sup>153</sup> Trespass to chattel is defined as trespass “to damage goods or destroy them, to make an unpermitted use of

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Brooks, *Detering the Spread of Viruses Online: Can Tort Law Tighten the 'Net'?*, 17 REV. LITIG. 343 (1998); David L. Gripman, *The Doors Are Locked but the Thieves and Vandals Are Still Getting in: A Proposal in Tort to Alleviate Corporate America's Cyber-Crime Problem*, 16 J. MARSHALL J. COMPUTER & INFO. L. 167 (1997).

<sup>149</sup> Calkins, *supra* note 148.

<sup>150</sup> There have been both federal and state statutes passed. The main federal statute is the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (Supp. 1996), while examples of state statutes include N.Y. Penal Law § 156.20, 156.25-.27 (Consol. 1984 & Supp. 1994). See Alois V. Gross, *Criminal Liability for Theft of, Interference with, or Unauthorized Use of, Computer Programs, Files, or Systems*, 51 A.L.R.4th 971 (1987), for a survey of cases and statutes.

<sup>151</sup> Gripman, *supra* note 148.

<sup>152</sup> For a good discussion of these analogies and whether they are apt or even useful, see Greg Lastowka, *Decoding Cyberproperty*, 40 IND. L. REV. 23 (2007); Michael A. Carrier & Greg Lastowka, *Against Cyberproperty*, 22 BERKELEY TECH. L.J. 1485 (2007); Shyamkrishna Balganes, *Common Law Property Metaphors on the Internet: The Real Problem with the Doctrine of Cybertrespass*, 12 MICH. TELECOMM. & TECH. L. REV. 265 (2006); Kevin Emerson Collins, *Cybertrespass and Trespass to Documents*, 54 CLEV. ST. L. REV. 41 (2006); Henry E. Smith, *Self-Help and the Nature of Property*, 1 J.L. ECON. & POL'Y 69 (2005); David McGowan, *The Trespass Trouble and the Metaphor Muddle*, 1 J.L. ECON. & POL'Y 109 (2005); Orin S. Kerr, *Virtual Crime, Virtual Deterrence: A Skeptical View of Self-Help, Architecture, and Civil Liability*, 1 J.L. ECON. & POL'Y 197 (2005); Kathleen K. Olson, *Cyberspace as Place and the Limits of Metaphor*, 11 CONVERGENCE 10 (2005); Richard A. Epstein, *Cybertrespass*, 70 U. CHI. L. REV. 73 (2003).

<sup>153</sup> *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058 (N.D. Cal. 2000); *CompuServe Inc. v. Cyber Promotions Inc.*, 962 F. Supp. 1015, 1021 (S.D. Ohio 1997). The Court in *CompuServe* noted that the law on trespass to chattel in Ohio was “extremely meager.” *Id.* In *eBay, Inc.*, the Court notes that the doctrine of trespass to chattel was seldom used in California. *Id.* Another court trying a cyber-tort case also struggled to find recent evidence of the doctrine of trespass to Chattel in Virginia. *America Online, Inc. v. IMS*, 24 F. Supp. 2d 548, 550 (E.D. Va. 1998); see also *America Online, Inc. v. National Health Care Discount, Inc.*, 121 F. Supp. 2d 1255 (N.D. Iowa 2000); *America Online, Inc. v. GreatDeals.Net*, 49 F. Supp. 2d 851 (E.D. Va. 1999).

them, or to move them from one place to another.”<sup>154</sup> In *CompuServe Inc. v. Cyber Promotions*, the district court issued a preliminary injunction enjoining a marketing company from sending unauthorized e-mail advertisements, i.e., spam e-mail, to the users of the Internet Service Provider (ISP) CompuServe.<sup>155</sup> The Court first reasoned that electronic signals were “sufficiently physically tangible to support a trespass cause of action.”<sup>156</sup> Citing the Restatement (Second of Torts § 218(b)), the Court held that “[h]arm to the personal property or diminution of its quality, condition, or value as a result of defendants’ use can also be the predicate for liability.”<sup>157</sup> Finding that the unwanted e-mail was causing an inconvenience to the users of CompuServe and causing some of them to cancel their CompuServe memberships, as well as causing costs associated with storing the bulk e-mail, the Court found that the unwanted e-mail resulted in a diminution in the value of the plaintiff’s chattel.<sup>158</sup> This allowed a finding of trespass to chattel.<sup>159</sup> The Court rejected the defendant’s argument that CompuServe “made the business decision to connect to the Internet and that therefore it cannot now successfully maintain an action for trespass to chattels.”<sup>160</sup> This argument, the Court held, is “analogous to the argument that because an establishment invites the public to enter its property for business purposes, it cannot later restrict or revoke access to that property, a proposition which is erroneous under [the] law.”<sup>161</sup> The Court also rejected the analogy of CompuServe to a public utility or a common carrier.<sup>162</sup> While *CompuServe* and other early cases suggested a path to deal with unwanted attacks, using official judicial help instead of self-help, the decision of the Supreme Court

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<sup>154</sup> PAGE KEETON & WILLIAM L. PROSSER, PROSSER AND KEETON ON THE LAW OF TORTS 85 (5th ed. 1984); see also Restatement (Second) of Torts § 217 (1965).

<sup>155</sup> *CompuServe*, 962 F. Supp. at 1015. This case is the basis for most of the cases cited in note 153.

<sup>156</sup> *Id.* at 1021.

<sup>157</sup> *Id.* at 1022.

<sup>158</sup> *Id.* at 1021–23.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 1024.

<sup>161</sup> *CompuServe Inc. v. Cyber Promotions Inc.*, 962 F. Supp. 1015, 1024 (S.D. Ohio 1997).

<sup>162</sup> *Id.* at 1025. The analogies that emerged from this case are interesting for present purposes. The ISP’s servers were analogized to physical property where it has chattel that could be interfered with. When an outside party sent an unwanted e-mail, this was seen as an intentional physical intrusion onto the ISP’s property. Furthermore, once these e-mails reached a certain volume or size and it caused some loss in value to the ISP, this could be deemed a trespass to chattel. Another interesting analogy is that of the ISP to a merchant. This analogy invokes an image of CompuServe as a local baker with a store on the main street downtown waiting for customers. This analogy is quite powerful and comes from the model of the Internet that we all implicitly have in our imagination of what the Internet and websites look like.

of California in *Intel Corp. v. Hamidi* halted the successful march of ‘trespass to chattel’ as a legal vehicle for protecting one’s digital assets.<sup>163</sup>

In *Intel*, a disgruntled former employee of the Intel Corporation sent mass e-mails to current employees with various grievances. Intel asked him to stop, but he refused. Intel tried to block his spam-like messages, but it failed. So, Intel sought an injunction against him, which it received from the lower courts. The California Supreme Court reversed.<sup>164</sup> The Court found that Intel could not show any damage to their server, and unlike trespass to land, trespass to chattel requires showing of harm.<sup>165</sup> This demonstrates some of the limitations of using the trespass to chattel doctrine to protect digital assets from outside intrusions.<sup>166</sup> By denying relief to Intel, the California Supreme Court signaled that, unlike real property, where no showing of damage is needed when seeking judicial assistance against trespass, digital asset owners must resort to self-help as the exclusive remedy in situations when their assets are under attack.<sup>167</sup>

In this regard, owners of digital assets are treated like secured lenders, where self-help is encouraged as a means of protecting their property.<sup>168</sup> Unlike real property, where self-help is discouraged, such as in the case of landlords evicting tenants,<sup>169</sup> when it comes to personal property, encouraging self-help seems to be the norm.<sup>170</sup> This rule carried over in *Intel*. The rationale seems to be that as long as self-help may lead to violence, self-help is discouraged. But in the realm of digital assets, perhaps this is not a risk, and therefore self-help may be encouraged, especially if this leads to positive outcomes.<sup>171</sup>

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<sup>163</sup> *Intel Corp. v. Hamidi*, 71 P.3d 296 (Cal. 2003); much of the discussion that follows is taken from Catherine M. Sharkey, *Trespass Torts and Self-Help for an Electronic Age*, 44 TULSA L. REV. 677 (2009).

<sup>164</sup> This exposition is explained in Sharkey, *supra* note 163, at 678. See also Richard A. Epstein, *Intel v. Hamidi: The Role of Self-Help in Cyberspace*, 1 J.L. ECON. & POL’Y 147 (2005).

<sup>165</sup> *Hamidi*, 71 P.3d 296; much of the discussion that follows is taken from Sharkey, *supra* note 163, at 678–79.

<sup>166</sup> Sharkey, *supra* note 163, at 678–79.

<sup>167</sup> *Id.* at 679–81.

<sup>168</sup> There are other realms where self-help applies, such as copyrights and trademarks, but the analogies to the meme stock situation are too remote for further consideration. See, e.g., Kenneth W. Dam, *Self-Help in the Digital Jungle*, 28 J. LEGAL STUDIES 393 (1998) (examining self-help in the digital copyright area); Julie E. Cohen, *Copyright and the Jurisprudence of Self-Help*, 13 BERKELY TECH. L.J. 1089 (1998).

<sup>169</sup> Sharkey, *supra* note 163, at 682.

<sup>170</sup> *Id.* (citing THOMAS W. MERRILL & HENRY E. SMITH, PROPERTY: PRINCIPLES AND POLICIES 438 (2007)).

<sup>171</sup> *Id.* at 683. Professor Sharkey discusses “prophylactic measures that one might take to protect one’s property that do not infringe upon anyone else’s legal rights,”

That being said, it is generally rare in tort law to condition the “entitlement to legal remedies on the exercise of self-help.”<sup>172</sup> There may be certain instances where mitigation is expected of the victim, say going to the doctor after being injured to get treated in order to minimize the victim’s injury.<sup>173</sup> These requirements could be seen as a form of “cheapest cost avoider” approach that tort law is argued to take,<sup>174</sup> at least from those in the law and economics side of the profession.<sup>175</sup> Other forms of self-help can include marking one’s property in order to prevent trespass, something that might or might not be so easy to do in the online world.<sup>176</sup>

But of course, using self-help methods such as use agreements does not always achieve their desired effects, as the *CompuServe* case demonstrates, thereby necessitating the resort to legal remedies. With the advent of the blockchain, smart contracts promise to bring about a revolution in the way contracts are not only executed but also remedied in the event of a breach. These contracts may therefore present a tool for self-help. The idea of the blockchain took off when cryptocurrencies made their appearance a few years ago.<sup>177</sup> The term blockchain, generally speaking, refers to how a platform maintains a ledger of accounts in its system.<sup>178</sup> In the various decentralized platforms, such as Ethereum, in addition to the ability to house currencies on the blockchain, other pieces of information can also be stored.

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such as “install[ing] sound-proof glass and sound-resistant walls in one’s home in order to minimize noise intrusions from the outside, which if severe, could amount to a nuisance.” In these instances, “the exercise of self-help does not affect one’s resort to legal remedies.” *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> See, e.g., Stephen G. Gilles, *Negligence, Strict Liability, and the Cheapest Cost-Avoider*, 78 VA. L. REV. 1291 (1992) (explaining and critiquing the concept from a law and economics perspective).

<sup>176</sup> Sharkey, *supra* note 163, at 684. Professor Sharkey gives examples of notices posted on websites that indicate that usage of the site creates user agreements that prohibit the scraping of data by web-crawlers and other bots. *Id.* at 685. Indeed, in the earlier case of *CompuServe v. Cyber Promotions*, Professor Sharkey notes that the court conditioned the availability of relief on the plaintiff taking self-help steps to stop the spam e-mails. *Id.* at 686.

<sup>177</sup> Jean Bacon, et al., *Blockchain Demystified: A Technical and Legal Introduction to Distributed and Centralised Ledgers*, 25 RICH J. L. & TECH. 1 (2018) (providing an introduction to the concepts of blockchain).

<sup>178</sup> ANTONY LEWIS, THE BASICS OF BITCOINS AND BLOCKCHAINS: AN INTRODUCTION TO CRYPTOCURRENCIES AND THE TECHNOLOGY THAT POWERS THEM 23 (2018) (“Blockchain technologies are the rules or standards for how a ledger is created and maintained. Different technologies have different rules for participation, different network rules, different specifications for how to create transactions, different methods of storing data, and different consensus mechanisms.”).

These include contracts between two parties.

The contracts can also have self-executing code that includes penalties for breach of the contract.<sup>179</sup> Self-executing means that the terms and conditions of the agreement are specified to be executed, verified, and delivered using code. The code can also be stored publicly and executed in a manner that is openly verifiable by all on the blockchain using standard verification mechanisms that these blockchains employ.<sup>180</sup> Therefore, if two parties can specify all the terms and conditions in their agreement, presumably they can also specify the remedies available to either side in the event of non-compliance with the terms of the contract.<sup>181</sup> Hence, smart contracts may be a way to allow users of smart online platforms, such as the blockchain, to protect themselves without recourse to a third party or even the courts.

Suppose A transacts with B on the blockchain and promises to deliver certain units of currencies to B in exchange for B delivering a digital asset to A. Now suppose that B delivers the digital asset to A, but it turns out that the digital asset is not the asset bargained for. In theory, the smart contract will not deliver the currency from A's account to B. But if B deceives the code by hacking the smart contract or by gaining access to A's password and changing the terms of the contract from A's end, B could transfer the currency units to its account without delivering what it promised.<sup>182</sup> Worse, if the currency is actually transferred to B, this means that the blockchain has verified or validated the transfer, and reversing the transaction is not that easy, especially in decentralized platforms or with the passage of time. If the transfer takes place according to the rules of the platform, if one hacks or steals someone's digital assets from the blockchain, have they truly committed a wrong?<sup>183</sup> In a moral sense, the answer is yes, but in a technical sense, the answer is not clear. In many ways, it is akin to the Torrens land title transfer system, where the state sometimes guarantees the validity of

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<sup>179</sup> See Anthony J. Casey & Anthony Niblett, *Self-Driving Contracts*, 43 J. CORP. L. 1, 2 (2017) (defining self-executing or self-driving contracts as agreements “where (1) the parties set only broad ex ante objectives; but (2) the contract uses machine-driven analytics and artificial intelligence to translate the general ex ante objective into a specific term or directive at the time of performance; [and] where (3) those terms are based on information gathered after the parties execute the initial agreement.”). The law of contracts has always had its own self-help mechanisms built into it. See, e.g., Celia R. Taylor, *Self-Help in Contract Law: An Exploration and Proposal*, 33 WAKE FOREST L. REV. 839 (1998).

<sup>180</sup> Larry A. DiMatteo & Cristina Poncibó, *Quandary of Smart Contracts and Remedies: The Role of Contract Law and Self-Help Remedies*, 6 EUR. REV. PRIV. LAW 805 (2019).

<sup>181</sup> *Id.* at 808. Of course, the remedies themselves have to comply with the law, and in some sense, the law, via judicial enforcement, will ultimately play some role.

<sup>182</sup> *Id.* at 815.

<sup>183</sup> *Id.*

official transfers of land, even if the transfer is conducted under fraudulent circumstances.<sup>184</sup>

A very recent example where digital misfeasance has occurred is in the Non-Fungible Token (NFT) space.<sup>185</sup> On December 31, 2021, a well-to-do Manhattan art dealer who had invested around \$2.3 million in NFTs called “Bored Apes” and “Mutant Apes” had his entire NFT collection stolen from his digital wallet by scammers. His collection was subsequently posted for sale on OpenSea, a peer-to-peer NFT marketplace. When he took to Twitter to plead for assistance from OpenSea and other NFT traders to recover his assets, he was skewered by fellow traders for failing to adequately protect his digital apes from this type of thievery. OpenSea also did not return the NFTs to the dealer but did block the sale of stolen NFTs on its marketplace.<sup>186</sup> The NFT community’s reaction reflected the key principle of NFT trading that

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<sup>184</sup> Note, *Real Property—Torrens System—Impeachment of Title for Forgery*, 39 YALE L.J. 292 (1929) (discussing the various approaches the Torrens systems take with respect to fraud in transfer of title).

<sup>185</sup> NFTs may seem like an abstract idea on the blockchain, but it is fast becoming a real tangible commodity that people can relate to. *See, e.g.*, Phil Rosen, *This 18-year-old just Raked in \$700,000 of Revenue Selling Bored Ape Toys—and NFT Holders Say the Physical Replicas Reinforce Their Attachment to Digital Identities*, YAHOO! FIN. (June 23, 2022, 1:52 PM), <https://finance.yahoo.com/news/18-old-just-raked-700-195214888.html> [<https://perma.cc/6UQN-YGNB>]; Sander Lutz, *TAG Heuer Wants You to Wear Your Bored Ape on Your Wrist*, DECRYPT (June 15, 2022), <https://decrypt.co/103013/tag-heuer-wants-you-to-wear-your-bored-ape-on-your-wrist> [<https://perma.cc/PL2F-FDQM>].

<sup>186</sup> Edward Ongweso Jr., *‘All My Apes Gone’: NFT Theft Victims Beg for Centralized Saviors*, VICE (Jan. 6, 2022, 12:38 PM), <https://www.vice.com/en/article/y3v3ny/all-my-apes-gone-nft-theft-victims-beg-for-centralized-saviors> [<https://perma.cc/CUK9-ERHP>]; that hack was not the only one. Recently, a similarly executed hack took place again. Ronny Reyes, *Bored Ape Yacht Club is Hacked AGAIN: Malware Group ‘Steal Hundreds of Thousands of Dollars Worth of NFTs’ a Month After \$3M Seized by Thieves*, DAILY MAIL (June 4, 2022), <https://www.dailymail.co.uk/news/article-10884827/Bored-Ape-Yacht-Club-Otherside-Metaverse-Discord-servers-reportedly-hacked.html> [<https://perma.cc/34FM-J6GR>]; other example of NFT scams can be found in Ryan Hindle, *From ‘Rug Pulls’ to Counterfeits, Here are the Biggest Scams in the NFT Space*, CBC NEWS (May 6, 2022), <https://www.cbc.ca/news/business/nft-investing-explainer-1.6435126> [<https://perma.cc/F2Z4-9M9X>]; other online hacking continues on other platforms, such as Horizon, which recently saw \$100 million worth of crypto stolen. Ryan Browne, *\$100 Million Worth of Crypto has been Stolen in Another Major Hack*, CNBC (June 24, 2022), <https://www.cnbc.com/2022/06/24/hackers-steal-100-million-in-crypto-from-harmonys-horizon-bridge.html> [<https://perma.cc/ZE2B-6C62>]; *see also* Ken Dilanian & Michelle Cho, *He Thought He was Logging in to His Cryptocurrency Account. Then Hackers Stole His Life Savings.*, NBC NEWS (May 14, 2022), <https://www.nbcnews.com/news/crime-courts/hackers-stole-entire-165000-crypto-account-fbi-says-cant-help-rcna23841> [<https://perma.cc/89DZ-PXAD>].



“code is law,” meaning that once someone manages to transfer someone else’s code into their own wallet, they legally own the associated assets and cannot face any repercussions.<sup>187</sup> Instead, it is on the rightful owner to secure their NFT assets in the first place by using an offline wallet.<sup>188</sup> Interestingly, the current regulation of NFTs is such that although stealing of NFTs is not necessarily encouraged, there are also few consequences if one manages to pull off this kind of digital robbery. Indeed, sometimes all a victim can do is pay to get their NFTs back.<sup>189</sup>

For the blockchain enthusiasts who cling to the “code is law” ethos, recourse to the courts would be seen as anathema to the idea of a decentralized platform that is outside the control of any one party, including the courts.<sup>190</sup> While no person or entity is truly outside the jurisdiction of the courts or at least some court somewhere, it may not be easy to find the target of a judicial action, given that the identity of actors on the blockchain is not

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<sup>187</sup> See, e.g., Thibault Schrepel, *Law + Technology*, (Stan. Univ. CodeX, Working Paper, 2022) (on file with Ohio State Business Law Journal) (discussing the various movements and features of these movements); see also Mark Verstraete, *The Stakes of Smart Contracts*, 50 LOY. U. CHI. L.J. 743 (2019) (discussing the dangers of a completely code-based contracts system that would essentially harken back to a *Lochnerian* freedom of contract era). For an early look at the concept, see Tim Wu, *When Code Isn't Law*, 89 VA. L. REV. 679 (2003). For a good story on how a young mathematician exploited glitches in one platform’s code and hacked over \$16 million, see Stefan Stankovic, *Inside the War Room: How Indexed Finance Traced Its \$16M Hacker*, CRYPTO BRIEFING (Nov. 3, 2021), <https://cryptobriefing.com/inside-the-war-room-how-indexed-finance-traced-its-16m-hacker/> [<https://perma.cc/Q5NE-L8VL>]. The hacker is unrepentant and claims he did nothing wrong. Indeed, based on his tweets, the attacker believes that he didn’t do anything illegal but instead executed a clever arbitrage trade. Technically, that is correct. This wasn’t a hack in the pure sense of the word, but a complex series of transactions that “exploited” the operational logic of Indexed Finance’s smart contract to disproportionately benefit the attacker. He didn’t technically “steal” the funds—he just executed a bunch of ultra-complex trades to get hold of them.

<sup>188</sup> Schrepel, *supra* note 187.

<sup>189</sup> Indeed, a recently hacked actor had to pay to get his NFTs back instead of trying to use the legal system. Andrew Asmakov, *Seth Green Pays \$300K to Recover His Stolen Bored Ape Ethereum NFT*, DECRYPT (June 10, 2022), <https://decrypt.co/102505/seth-green-pays-300k-to-recover-his-stolen-bored-ape-yacht-club-nft> [<https://perma.cc/24XS-KCLN>].

<sup>190</sup> DiMatteo & Poncibó, *supra* note 180, at 815. A recent English High Court decision attempted to impose an injunction on an account that supposedly held some hacked NFTs. It remains to be seen how successful these legal actions will be at retrieving stolen digital assets. *English High Court Ruling on NFTs ‘Hugely Significant’ for Fraud Victims*, PINSENT MASONS (June 17, 2022), <https://www.pinsentmasons.com/out-law/news/english-high-court-nfts-hugely-significant-fraud-victims> [<https://perma.cc/7W9Z-87NP>].

always known.<sup>191</sup> In traditional financial markets, various laws, such as anti-money laundering regulations, require that the identity of the actors be known in a manner that can ultimately be confirmed. That being said, the balances in each account are usually not known to anyone except the financial institution that hosts the account and perhaps the legal authorities. On the decentralized blockchain platforms, the identities of the actors are not necessarily known, but the contents of the accounts are usually public. This is important to operate a decentralized ledger.

As such, if entity A steals, hacks, or fraudulently induces the transfer of currency or digital property from B, the content of A's account will be known. A's identity may and most likely will not be. After all, A is the wrongdoer. While B may attempt to pursue legal remedies against A, usually, by the time that happens, A has cashed out the account and moved on. Sometimes, however, the collective users come to some resolution as to how to block A from profiting from the hack. This happened in the infamous DAO incident, where the Ethereum community engaged in what was known as a hard fork.<sup>192</sup>

But what to do when the community and the legal authorities can't or won't do much? This is where cyber-vigilantism may come in. But how exactly does one defend one's virtual property on the blockchain specifically or even on the world-wide-web generally? There are many approaches. For example, one could not only resort to the disclaimers and notices discussed above but also install codes that protect against hacking. The next level is for

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<sup>191</sup> For an overview of the blockchain and the issues that criminality poses, *see, e.g.*, Henry S. Zaytoun, *Cyber Pickpockets: Blockchain, Cryptocurrency, and the Law of Theft*, 97 N.C. L. REV. 395 (2019); Jonathan Mayer, *Cybercrime Litigation*, 164 U. PENN. L. REV. 1453 (2016).

<sup>192</sup> Hackers had stolen a large number of ethers (the unit of currency on the Ethereum platform) and moved them to an address on the platform. The hack took place because the decentralized autonomous organization (DAO), where the ethers were stored, had some vulnerability in its code that allowed the theft to take place. In fact, some 'good' hackers stole the rest of the funds in order to protect them from the 'bad' hackers. The conundrum was how to retrieve the stolen ethers. The platform users collectively had to agree to move the stolen ethers away from the address where they were housed and return them to the DAO. This also meant that the address on which the stolen ethers were stored had to be shunned and not part of the platform anymore. Hence, the metaphor of hard fork is used to describe when a platform shuns certain transactions and addresses in order to maintain some integrity in the system. LEWIS, *supra* note 178, at 195–99; *see also* DiMatteo & Poncibó, *supra* note 180, at 821–22; Patrick Hofer, *The DAO Case—Block Chain Technology Based Knowledge Intensive Business Models*, in KNOWLEDGE MANAGEMENT IN DIGITAL CHANGE: NEW FINDINGS AND PRACTICAL CASES 359 (Klaus North et al. eds., 2018).

the hacked victim to hack back and retrieve what is rightfully theirs.<sup>193</sup> Indeed, this may be the only recourse available, as some recent hacking events have shown. One could envision a situation in the future where vigilantism in this area could thrive.

If NFT robberies become more common, vigilantes could step in by either taking back stolen goods and returning them to their rightful owners or stealing NFTs outright from wealthy owners who seemingly will not be hurt *too* badly by the loss of their digital assets. Again, there is a duality here: it may be considered ‘good’ to steal from someone who owns an asset rightfully but who perhaps does not deserve or appreciate it, or it may be ‘good’ to return goods to their rightful owners. Alternatively, perhaps it is ‘bad’ to return those assets if the rightful owner should not own them in the first place or if they have ‘enough’ in the way of assets already and can thus withstand a loss. As the digital landscape continues to evolve, we can expect to see more of these moral quandaries crop up and for the law to have to adapt and respond to these changing conditions.

Vigilante hackers, sometimes known as red-hat hackers, will employ hacking techniques to exact revenge on the malicious hackers, known as black-hat hackers.<sup>194</sup> The vigilantes may simply retrieve their lost digital assets and/or exact revenge without notifying the authorities. Other vigilante hackers may act with the purpose of turning the black-hat hackers over to the

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<sup>193</sup> See, e.g., Gian M. Volpicelli, *Twitter Vigilantes Are Hunting Down Crypto Scammers*, WIRED (Nov. 15, 2021, 7:00 AM), <https://www.wired.com/story/twitters-crypto-vigilantes-are-just-getting-started/> [<https://perma.cc/6ENP-RKQU>]; Michael del Castillo, *The DAO Crisis: Or How Vigilantism and Blockchain Democracy Became the Best Hope for Burned Investors*, COINDESK (July 13, 2016), <https://www.coindesk.com/markets/2016/07/13/the-dao-crisis-or-how-vigilantism-and-blockchain-democracy-became-the-best-hope-for-burned-investors/> [<https://perma.cc/V9YQ-EMKF>]; Ethan Lou, *The Case Of The Missing \$46 Million*, TORONTO LIFE (June 22, 2022), <https://torontolife.com/city/the-case-of-the-missing-46-million/> [<https://perma.cc/TF68-6D29>].

<sup>194</sup> Sharon Shea, *6 Different Types of Hackers, from Black Hat to Red Hat*, TECHTARGET (Oct. 2019), <https://www.techtargget.com/searchsecurity/answer/What-is-red-and-white-hat-hacking> [<https://perma.cc/7MWB-UN3J>]. While the discussion in this article is focused on individuals taking actions against other individuals or organizations, there is also a state-to-state dimension that is beyond the scope of the article. Nonetheless with all the international conflicts, cyber-warfare has become a key tool in international conflict. See, e.g., Michael N. Schmitt & Sean Watts, *Collective Cyber Countermeasures?*, 12 HARV. NAT’L SEC. J. 373 (2021); Katharine Hinkle, *Countermeasures in the Cyber Context: One More Thing to Worry About*, 37 YALE J. INT’L L. ONLINE 11 (2011); Nonetheless, some have argued that harnessing state enforcement and self-help can and should complement each other when it comes to cyber- attacks. Shane Huang, Note, *Proposing a Self-Help Privilege for Victims of Cyber Attacks*, 82 GEO. WASH. L. REV. 1229 (2014).

authorities. Some of these techniques may include: “[b]aiting an internet scammer into giving the hacker their credentials who in turn monitors, disrupts, and gathers evidence on the illegal behavior.”<sup>195</sup> When it comes to blockchain-driven platforms, the most recent NFT hack reveals how vulnerable a decentralized blockchain platform can be if individual users are not careful. It also reveals that it is very hard to reverse the damage. Some online vigilantes will resort to tracking down the stolen NFTs and currencies, but it is not that easy.<sup>196</sup>

All in all, it seems that sometimes the law can formally provide recourse to victims of attacks online, for instance, through actions such as trespass to chattel. Sometimes, however, the victims may have to resort to self-help to retrieve their stolen digital objects. The next section applies the lessons in the previous two sections to what transpired during the meme stock saga.

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<sup>195</sup> Joe Jabara, *Vigilante Hacking: Where True Crime, Ethical Hacking, & Cyber L. Collide*, CLEARANCE JOBS (Dec. 1, 2021), <https://news.clearancejobs.com/2021/12/01/vigilante-hacking-where-true-crime-ethical-hacking-and-cyber-law-collide/> [<https://perma.cc/8SZF-2U8N>].

<sup>196</sup> Prior to the NFT thefts, hackers had also been stealing bitcoins from exchanges for some time now. Omkar Godbole, *Hackers Move \$3.55B Worth of Bitcoin From 2016 Bitfinex Hack: Bad Actors will have a Tough Time Cashing Out the Stolen Bitcoin as Most of Them Are Blacklisted*, COINDESK (Feb 9, 2022, 2:20PM), <https://www.coindesk.com/markets/2022/02/01/hackers-move-383m-worth-of-bitcoin-from-2016-bitfinex-hack> [<https://perma.cc/P2YD-7RZ3>]. A few days after this story broke, a couple were arrested for the heist. Although Bitfinex had offered a substantial reward for the return, it is not clear yet if anyone tipped them off. It seems also that most of the stolen bitcoins have been recovered. Justin Rohrlch, *Hipster Couple Charged in \$4.5 Billion Crypto Heist Is Even Weirder Than You Think: A Rapping Tech Entrepreneur and Her Husband Allegedly Laundered Billions in Hacked Cryptocurrency*, DAILYBEAST (Feb. 9, 2022, 4:38 PM), <https://www.thedailybeast.com/heather-morgan-rapping-tech-ceo-accused-of-laundering-billions-in-hacked-crypto-with-ilya-lichtenstein> [<https://perma.cc/D6ZG-YGZA>]; Lukas I. Alpert, *Feds Arrest Husband-and-Wife Team and Recover \$3.6 Billion in Bitcoin Stolen in 2016 from Bitfinex — the Largest Government Seizure in History*, MARKETWATCH (Feb. 8, 2022, 7:56 PM), <https://www.marketwatch.com/story/feds-arrest-two-and-seize-3-6-billion-in-bitcoin-stolen-in-2016-hack-of-bitfinex-exchange-11644339957> [<https://perma.cc/BF6U-GHS3>].

Sometimes the hackers lure investors in by tempting them with fake crypto-giveaway scams. In one case, an anonymous vigilante was able to track down the scammers and have the police arrest them. Arijit Sarkar, *Cyber Vigilante Hunts Down DeFi Scammers Running Away with \$25M Rug Pull: An Exclusive Cointelegraph Interview on Tracking Down a Group of DeFi Scammers Responsible for the \$25 Million StableMagnet Rug Pull*, COINTELEGRAPH (Jan. 30, 2022), <https://cointelegraph.com/news/cyber-vigilante-hunts-down-defi-scammers-running-away-with-25m-rug-pull> [<https://perma.cc/ZS48-HT9R>].

## V. SO, WHAT WAS THE MEME STOCK SAGA?

Notwithstanding all the discussion so far of online vigilantism and self-help, the analogy between hacking incidents and efforts at retrieving stolen digital assets and what transpired during the meme stock saga are inapposite. If one were to try to create an analogy, the common theme might be that what allowed the meme stock traders to exact their vengeance on the short-sellers was that they came together and strategized in online forums. Additionally, most of the traders also put their orders in using online brokerage platforms such as the Robinhood app. However, that is where the analogy begins to break down.

The asset that was being putatively attacked was the stock of a ‘brick and mortar’ company. While the stock is traded digitally, the story of what happened would be no less dramatic or possible had we been still trading stocks using the old ticker tapes for quotes and news, making orders by landline telephones, and having the orders executed by blue-jacketed men yelling at each other in a trading pit. Even if the stock was that of a company that operates exclusively online, the analogy is still inept. After all, there is no digital asset being stolen by any nefarious actors. Insofar as the meme stock traders viewed the short-selling hedge funds as the ‘bad guys,’ the short-sellers did not seem to break any laws or act in any secretive or fraudulent manner. After all, the short-sales and the identity of the short-sellers are publicly known. Even if one wishes to analogize the meme stock traders to the Ethereum users who created the hard fork to isolate the hacked DAO assets,<sup>197</sup> it is not clear what asset or property was stolen by the short-sellers. Yet, viscerally, the public, regulators, and politicians all seemed to cheer on the traders and jeer the short-sellers.<sup>198</sup> Whether this reaction is grounded in sound legal logic or not, the puzzle is to identify the object that the traders were protecting.

The earlier discussion informs us that vigilante justice is sometimes tolerated and sometimes encouraged. These situations include various real-world instances where the public has formed a clear opinion regarding who they support—or do not support—consistent with principles that make vigilantism attractive. The rules of when it is acceptable, also discussed above, include only taking action if nothing else could be done,<sup>199</sup> only doing what is necessary and avoiding harming bystanders,<sup>200</sup> making sure of the facts prior to acting,<sup>201</sup> the admonition against acting alone,<sup>202</sup> as well as that

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<sup>197</sup> See *supra* note 192.

<sup>198</sup> Reading the House report on the meme stock saga betrays this sentiment very clearly. See *supra* note 41.

<sup>199</sup> THE ROBINSONS, *supra* note 81, at 97, 100.

<sup>200</sup> *Id.* at 97.

<sup>201</sup> *Id.* at 104.

<sup>202</sup> *Id.*

the action must be publicly reported afterward explaining the reasons behind it.<sup>203</sup> Additionally, vigilantism seems to be acceptable, at least socially, although not clear if morally, when the targets of the actions are perceived to have profited in an immoral manner. In the sense of these lessons, the meme stock investors may have satisfied some of these rules.

As a legal matter, it is not clear whose actions were in the wrong, the short-selling hedge funds or the Redditors. The short-sellers seemed to have perceived the stocks as being worth less than what they were trading for, not because of any inside information (that we know of so far) but based on their research. The Redditors, as we argued in our earlier article, engaged in a pattern of ‘pump and hold,’ something that doesn’t seem to offend any securities laws.<sup>204</sup> Given that the law is not clear, we propose two alternative approaches regarding the merits of what took place. The first is a moral approach where the struggle between the two sides was one of the classic self-help heroic acts of vengeance as outlined in the previous sections. The second is a property-rights approach, albeit with legally unenforceable rights, which also dovetails the discussion surrounding the moral approach.

#### A. *The Moral Approach*

In some ways, not all the rules of moral vigilantism, as posited by the Robinsons, were followed by the meme stock traders. There may have been a perception of a failure of justice, and other than the hedge funds, no innocent bystanders were harmed. If anything, the companies and the shareholders did quite well. But there was a lack of restraint and temperance, in addition to a sense of vindictiveness, in the way the investors egged each other on the forums. However, on the positive side, they acted collectively, made their acts known, and explained their reasons, namely their belief in the viability of the companies and their disdain for the short-sellers.

We should note that while most of the small investors limited their activities to discussions on the forums and trading the various meme stocks, some of them engaged in undesirable acts of vigilantism. For example, one of the short-sellers, Andrew Left, had to appeal to one of the founders of Reddit, as well as the FBI, after he and his family started to experience harassment.<sup>205</sup> His children received profane texts, and some of his accounts were hacked.

Another industry analyst who opined that AMC’s stock was worthless

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<sup>203</sup> *Id.* at 108.

<sup>204</sup> Chiu & Yahya, *supra* note 2, at 64–65. *But see* Mark Loewenstein, *Short Squeeze, GameStop, the Common Law and a Call for Regulation*, 50 SEC. REGUL. L.J. 1 (2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4001978](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4001978) [<https://perma.cc/4HG6-H2DY>] (arguing that the short-squeeze could amount to common law fraud against the short-sellers under securities laws).

<sup>205</sup> JAKAB, *supra* note 12, at 49–50, 123–24.

saw his address posted on Twitter, and his children received death threats by text messages.<sup>206</sup> Although no physical violence took place, we note that in the recent collapse of the Terra Stablecoin universe and its associated Luna crypto-platform, one disgruntled investor actually broke into the home of the CEO.<sup>207</sup>

On the other hand, given most of what happened in the meme stock saga was confined to trading and discussions on the Reddit forums, the Redditors came off looking like they were on the side of good rather than evil. The Redditors seemed heroic, taking power from the institution of Wall Street and what appeared to be morally corrupt hedge funds that have historically always won. These storied hedge funds have typically made money-taking and withholding power from smaller investors. These smaller investors—often ordinary people who are not particularly well-connected or part of the top one percent—generally have the investment game perpetually rigged against them.<sup>208</sup> After the meme stock saga, it seemed that now that these ‘dumb money’ investors had gotten the best of the hedge funds,<sup>209</sup> Wall Street was fighting to stay on top by smothering retail investors with SEC investigations and cutting off trading through online platforms.<sup>210</sup> The combination of hedge funds fretting about losing against ‘dumb money,’ Robinhood appearing to side with Wall Street, and the SEC investigation gave the impression that the entities in power largely wanted to maintain the status quo. The SEC recently even seemed to mock meme stock investors,

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<sup>206</sup> *Id.* 49–50.

<sup>207</sup> Jordan Major, *The Man Who Broke into Terra CEO’s Residence Was a Crypto Investor Who Lost \$2 Million*, FINBOLD (May 16, 2022), <https://finbold.com/the-man-who-broke-into-terra-ceos-residence-was-a-crypto-investor-who-lost-2-million/> [<https://perma.cc/D8MX-77WH>].

<sup>208</sup> Liam Vaughan, ‘*Most Americans Today Believe the Stock Market Is Rigged, and They’re Right*’: *New Research Shows Insider Trading is Everywhere. So Far, No One Seems to Care*, BLOOMBERG (Sep 28, 2021, 10:01 PM), [https://www.bloomberg.com/news/features/2021-09-29/is-stock-market-rigged-insider-trading-by-executives-is-pervasive-critics-say?utm\\_content=business&utm\\_source=facebook&cmpid=socialflow-facebook-business&utm\\_campaign=socialflow-organic&utm\\_medium=social&fbclid=IwAR0q6jXDCPni0pC2XXqQ19FmV5uePCNp6VqkzSo5\\_2XC6Hp8n3Fck2Xzt-g](https://www.bloomberg.com/news/features/2021-09-29/is-stock-market-rigged-insider-trading-by-executives-is-pervasive-critics-say?utm_content=business&utm_source=facebook&cmpid=socialflow-facebook-business&utm_campaign=socialflow-organic&utm_medium=social&fbclid=IwAR0q6jXDCPni0pC2XXqQ19FmV5uePCNp6VqkzSo5_2XC6Hp8n3Fck2Xzt-g) [<https://perma.cc/R7ZB-X6MJ>].

<sup>209</sup> *But see* JAKAB, *supra* note 12 (for a contrary view on who were the real winners and losers in the saga).

<sup>210</sup> *See also* Sue S. Guan, *Meme Investors and Retail Risk*, 63 BOSTON COLL. L. REV. 2051 (Jan 14, 2022)

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4002708](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4002708) [<https://perma.cc/T63W-QSAE>] (arguing that small investors should no longer be ignored in theories of market behavior and the implications this has for securities regulation).

something the investors on Reddit were not too thrilled about.<sup>211</sup> The SEC also appeared only to be cracking down on ordinary people for talking innocuously about what investments they were making online, which did not help to counteract that narrative.<sup>212</sup>

The impression to many members of the public and lawmakers was that retail investors had pulled off an impossible feat, fairly beating Wall Street at its own game—only to have regulators, who were supposed to be neutral trading platforms, and hedge funds themselves colluding to help those in power maintain that power. Given all that, it is understandable how the public rallied behind the retail investors and turned against the SEC, Robinhood, and the hedge funds, despite these parties not technically doing anything illegal. The tale of the retail investors was a popular and endearing one of David taking on Goliath and winning. Of course, the public would root for the underdogs, who, on top of being the traditionally powerless parties in the struggle against Wall Street, also seemed to be motivated by something inherently good, pure, and heroic, namely advocating for changes in the law that would decrease hedge fund advantages while increasing fairness for smaller ordinary investors. At least some measure of the public's interest also likely came from the joy of seeing unshakeable hedge funds meet their untimely comeuppance at the hands of these unlikely heroes, from seeing these bullies being brought down a peg. Finally, this all took place in the realm of online investments, options, shorts, and brokerages—one that was foreign to many members of the public. This lack of widespread in-depth knowledge of the rules involved in this sphere may have nurtured public support for retail investors.

In analyzing the Redditors' actions rather than their perceived cause, was this an instance of good or bad moral vigilantism? It depends on one's perspective. Was it fair *per se* for hedge funds to have decades of advantages over the average investor simply by virtue of their size and the amount of capital they had access to, which allowed them to theoretically change the market itself if they so decided? On the one hand, these advantages are the result of what happens when a large company comes together after years of

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<sup>211</sup> In a video posted on the SEC's YouTube channel, a game show contestant named Brad picks the "meme stock" category and hits the "invest" buzzer. He immediately loses a pile of cash and is hit in the face with a pie. His opponent is rewarded when she says she's going to do some research first. Connor Smith, *The SEC Sends a Warning About Meme Stocks. Reddit Traders Aren't Happy*, BARRON'S (June 2, 2022, 7:15 PM), <https://www.barrons.com/articles/sec-meme-stocks-video-commercial-51654125267> [<https://perma.cc/7XMR-E2ZV>].

<sup>212</sup> The SEC has also announced that it will be bringing new regulations to address some of the issues that affected the meme stock investors. As of the writing of this article, we have not seen the new rules. Ben Bain & David Westin, *SEC Response to Meme-Stock Mania Coming Next Week, Gensler Says*, BLOOMBERG NEWS (Feb. 3, 2022, 11:50 AM), <https://www.bnnbloomberg.ca/sec-response-to-meme-stock-mania-coming-next-week-gensler-says-1.1718037> [<https://perma.cc/PX2F-MP7V>].



being in business and amassing resources like analysts and wealthy clientele. On the other hand, these advantages rig the investment game in these companies' favor and wrench power from the average individual investor. How much fairness can there be in a market which is inherently fickle in the first place? And how much should securities laws aim to level the playing field between amateurs and professionals?

If one takes the view of the retail investors, this type of vigilantism was good because it increased fairness; it revealed cracks in the current securities laws, shone a light on hedge funds' shorting practices, and provoked action from Congress and the SEC. Although some hedge funds lost money, the system is such that these companies, such as Melvin Capital, were bailed out; no one was truly harmed in that sense. If one takes the view of the hedge funds and perhaps of the SEC, these retail investors were clearly in the wrong, egging each other on using misinformation and driving up the prices of meme stocks with the possible intent of manipulating the market.<sup>213</sup> That said, however, these perspectives stem from matters of public policy upon which ultimately only regulators and lawmakers can make the final call.

### B. *The Property Rights Approach*

Having established that self-help, and sometimes outright vigilantism, is tolerated or encouraged when defending real or virtual property, a key remaining question in the meme stock saga is what was it that the investors were protecting? From the narrow perspective of securities law, the answer is most likely nothing. There was no evidence that the short-selling hedge funds had obtained any insider information that they were using to surmise the demise of their target stocks. The onset of the Covid pandemic has battered the businesses of many of their targets, and it seemed logical that these stocks would fall in price even further. Further, there was no evidence of the types of shenanigans where the short-sellers may have been behind the bad news affecting the target companies. Hence, the outrage of the investors boils down to a disagreement of perception regarding the performance of the stocks. However, the collective desire to exact vengeance suggests that the disagreement over the perception was more than an academic difference of viewpoints. Rather, the collective investors felt that if only the management of these companies were given a chance to turn things around, there was great potential in these fledgling companies. Unfortunately, the short-selling was affecting the ability of these companies to turn their fortunes around. Quick action was needed, or else there would be no tomorrow for these companies, or so the collective investors felt.

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<sup>213</sup> Andrew Ross Sorkin et al., *It's Memes vs. Regulators*, N.Y. TIMES (Feb. 4, 2021), <https://www.nytimes.com/2021/02/04/business/dealbook/meme-stocks-regulators.html> [<https://perma.cc/G5EN-VSAY>]; see also Loewenstein, *supra* note 204.

At one level, our depiction seems to be describing a group of investors defending the ‘life’ of the companies targeted by the hedge funds. It was a ‘do or die’ situation, where they were defending these companies from a terrible fate at the hand of the hedge funds. This description may have some appeal, especially when the general public and politicians were concerned, but it provides no coherent legal status to what the collective of investors was trying to protect. After all, companies come under short-selling attacks all the time. What was so special about these meme stocks that generated so much ire amongst the investors? Even a year after the saga, the price of GameStop and many of the other meme stocks are higher, some significantly, than where they were prior to the whole kerfuffle erupting in January 2021.<sup>214</sup> As such, whatever faith the investors had in these stocks was validated.

In our earlier article on the subject, we argued that these investors created information that wasn’t available to the hedge funds. This information was created by discovery through collective wisdom about the potential of the stocks, a discovery about new tastes regarding the products being sold by the companies under short-selling attack, or simply a discovery of a newfound pride of ownership of these companies.<sup>215</sup> In other words, the investors congregating in the chat rooms, otherwise known as the Reddit forums, generated information that needed to be acted upon in a quick manner; otherwise, it would become worthless, especially if the hedge funds got their way.<sup>216</sup>

Discovery of information is not a monolithic endeavor. There can be separate paths to discovery of somewhat contradictory pieces of assessment regarding the true state of the world. A simple example is two sports aficionados making a bet on the outcome of a sporting event.

Both may genuinely believe that the team they are betting on will win based on the objective evidence, and yet only one of them can be correct

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<sup>214</sup> The price of GameStop is \$20.79/share as of January 18, 2023, which is the equivalent to \$104/share, as the stock was split into five new shares for each old share.

<sup>215</sup> Chiu & Yahya, *supra* note 2, at 85–86.

<sup>216</sup> It is interesting that Reddit itself has managed to monetize the existence of all these forums and discussions regarding not only stocks but pretty much every facet of life. See JAKAB, *supra* note 12, at 47–49 (discussing the financial history of Reddit and its founders). Indeed, after the saga, even sophisticated investors have started paying attention to social media when researching information on various stocks. Kungpeng Sun, et al., *Another victory of retail investors: Social media's monitoring role on firms' earnings management*, 82 INT’L REV. OF FIN. ANALYSIS (July 2022). There is evidence that social media can even influence overall consumer sentiment, something that many implications for macroeconomic policy. Alistair Macaulay & Wenting Song, *Narrative-Driven Fluctuations in Sentiment: Evidence Linking Traditional and Social Media*, (Dec. 22, 2022), <https://t.co/IF6pN9wvcY> [<https://perma.cc/BQ6Q-GHY7>] (showing that social media can influence drops in public economic sentiment differently from traditional media).

(assuming ties are not allowed). In the world of financial markets, as Nobel Laureate Hayek argued, “the knowledge relevant to decision-making goes beyond market prices; it also includes knowledge such as individual skills and alertness to or awareness of profit opportunities.”<sup>217</sup> Additionally, “the knowledge relevant to decision-making is dispersed among agents in the economy . . . , and yet a market economy enables the spontaneous interaction of these agents with diffuse private knowledge”.<sup>218</sup> Indeed, he observed that “the knowledge of the circumstances of which we must make use never exists in concentrated or integrated form, but solely as the dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess.”<sup>219</sup>

This describes the knowledge dispersed among the retail investors and the short-selling hedge funds. Both sides had contradictory assessments of the viability of the various companies, even though they both had access to the same public information. Yet, each side seemed to interpret the evidence very differently. These differences of opinion can sometimes give alert entrepreneurs the opportunity to seek profit opportunities from “the discovery of new products, services, business models, or other ways to create value through economic activity.”<sup>220</sup> In financial markets, the market is also a process for “social learning,” providing “feedback channels for entrepreneurial alertness.”<sup>221</sup> In the meme-stock saga, what emboldened the retail investors was the arrival of Ryan Cohen of RC Ventures LLC, who decided to invest in GameStop and Bed, Bath & Beyond.<sup>222</sup> The arrival of a large investor validated the beliefs of the small retail investors who felt vindicated.<sup>223</sup> So why the vitriol if the retail investors were finally winning?

If the issue were a simple bet between the short-sellers and the retail investors where one side would eventually win the bet, and life would go on, perhaps there would be no reason for this. But the short-selling was seen not

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<sup>217</sup> Lynne Kiesling, *The Knowledge Problem*, in THE OXFORD HANDBOOK OF AUSTRIAN ECON. 45, 49 (Peter J. Boettke & Christopher J. Coyne eds., 2015).

<sup>218</sup> See *id.* (citing F. A. von Hayek, Economics and Knowledge, 4 *ECONOMICA* 33, 50–51 (1937)).

<sup>219</sup> See *id.* (quoting F. A. von Hayek, The Use of Knowledge in Society, 35 *AM. ECON. REV.* 519 (1945)).

<sup>220</sup> *Id.* at 50.

<sup>221</sup> *Id.*

<sup>222</sup> JAKAB, *supra* note 12, at 114–17, 128, 133. Recently, however, Bed, Bath & Beyond has experienced financial difficulties resulting in criticism from Ryan Cohen and resulting in the departure of its CEO. Bailey Lipschultz, *Bed Bath & Beyond Fallout Offers a Warning to Meme-Stock Traders*, THE SPOKESMAN-REV. (June 29, 2022, 7:39 PM), <https://www.spokesman.com/stories/2022/jun/29/bed-bath-beyond-fallout-offers-a-warning-to-meme-s/> [<https://perma.cc/5JGZ-7348>].

<sup>223</sup> JAKAB, *supra* note 12, at 129 (citing an incident where Jim Cramer of CNBC’s Mad Money proclaimed that it was over for the short-sellers based on a note a fan sent him describing the financial strategy to take down Melvin Capital).

only as bad behavior based on bad interpretation of the same information, but more importantly, bad behavior that had the potential to destroy. Short-selling, it is sometimes argued,<sup>224</sup> is about the process of discovering information. After all, short-sellers perceive a company to be overvalued, and the short-selling is simply a bet that the true value of the company will be revealed over time. Andrew Left, who was short-selling GameStop, had previously successfully short-sold Valeant, a company that was eventually exposed as overvalued. While there is ample evidence that short-sellers are informed investors who have excellent track records at predicting when companies will fail,<sup>225</sup> there is also other evidence that not all short-selling activity is purely about information discovery and predictive prowess<sup>226</sup>—selling may even trigger the bankruptcy or financial distress of the target.

For example, the debts of the target company may contain covenants that the share price must not go below a certain price (because the share price is somewhat of a collateral for the debt). When a short-seller sells the company's stock, this usually lowers the stock price. If the short-seller is wrong, the price will eventually rise, just as it did in the meme stock saga. But if the drop in share price triggers some debt covenants that force the company into insolvency or liquidation, a sufficiently large short-sale position could wipe out the target company.<sup>227</sup> As such, when it comes to a

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<sup>224</sup> Ekkehart Boehmer & Juan (Julie) Wu, *Short Selling and the Price Discovery Process*, 26 REV. FIN. STUD. 287, 287–288 (2013).

<sup>225</sup> Asher Curtis & Neil L. Fargher, *Does Short Selling Amplify Price Declines or Align Stocks with Their Fundamental Values?*, 60 MGMT. SCIENCE 2324 (2014); Boehmer & Wu, *supra* note 224 (finding that prices were more accurate when the market has more active short-sellers).

<sup>226</sup> Panagiotis Andrikopoulos, et al., *UK Short Selling Activity and Firm Performance*, 39 J. BUS. FIN. ACCT. 1403, 1415–16 (2012) (finding that U.K. short-sellers' "ability to predict firm performance is weak", except during the financial crisis of 2008 when short-sellers were good at predicting which firms were in financial distress and on their way to bankruptcy).

<sup>227</sup> Wuyang Zhao, *Activist Short-Selling and Corporate Opacity*, MCCOMBS SCH. OF BUS., UNIV. OF TEX. AT AUSTIN (Oct. 19, 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2852041](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2852041) [<https://perma.cc/U9PQ-LUAK>] (finding that while short-sellers can be discovering information regarding their targets, there was also evidence that the short-selling could manipulate the price to make the short-sales profitable); Gustavo Grullon, et al., *The Real Effects of Short-Selling Constraints*, 28 REV. FIN. STUD. 1737 (2015) (finding that "short-selling constraints affect asset prices, [and] also confirm[ing] that short-selling activity has a causal impact on financing and investment decisions."); Markus K. Brunnermeier & Martin Oehmke, *Predatory Short Selling*, 18 REV. FIN. 2153 (2014) (providing a theoretic model demonstrating this point in the context of banks); Xuewen Liu, *Short-Selling Attacks and Creditor Runs*, 61 MGMT. SCIENCE 814, 815 (2015) (explaining the mechanism in 4 steps:

standoff between the short-sellers and the retail investors, perhaps what was at stake was more than a bet between two contrary viewpoints. Rather, what was at stake was two differing perspectives on time-sensitive information. This fleeting information needed to be monetized immediately by the small investors, otherwise, they sensed, the short-sellers could wipe out the companies.

The idea that information can be valuable for a very limited time was judicially recognized in the concept of ‘hot news,’ the subject of the landmark United States Supreme Court case, *INS v. AP*.<sup>228</sup> During World War I, there were two main news services. These services provided the latest news to their member newspapers, which they then printed. One of the services was banned from reporting by the British, which meant that it had no news to provide to its members. As such, it would purchase the newspapers of the rival news service, paraphrase its stories and then transmit those stories to its members, who then published the news as if it were a product of their own reporting.<sup>229</sup> Needless to say, the second news service, the one that was still allowed to report by the British and which was expending its own efforts into the collection and dissemination of the news, was upset. It sued the offending rival all the way to the Supreme Court. The Court held that the news service possessed a “quasi-property” interest in the news it collected.<sup>230</sup> This “quasi-property” gave it a legally cognizable right to sue and enjoin the rival from ‘stealing’ their news.

The case is interesting because once the news was transmitted to and then printed by the member newspapers, the news almost instantly became

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Step 1. Speculative short selling increases noise in the price signal. Step 2. This lowers the expected payoff for the creditors with higher uncertainty (less information) about the fundamentals. Step 3. There is a larger withdrawal among the creditors. Step 4. This in turn leads to more incentives to short among the speculators.”).

<sup>228</sup> *Int’l News Serv. v. Associated Press*, 248 U.S. 215 (1918). A good explanation of the case can be found in Douglas G. Baird, “*Common Law Intellectual Property and the Legacy of International News Service v. Associated Press*,” 50 UNIV. CHI. L. REV. 411 (1983); Richard A. Epstein, *International News Service v. Associated Press: Custom and Law as Sources of Property Rights in News*, 78 VA. L. REV. 85 (1992). For a skeptical view on the viability of the ‘hot-news’ doctrine today, see Shyamkrishna Balganesh, *The Uncertain Future of “Hot News” Misappropriation after Barclays Capital v. Theflyonthewall.com*, 112 COLUM. L. REV. SIDEBAR 134 (2012). But see the counterpoint by Richard A. Epstein, *The Protection of ‘Hot News’: Putting Balganesh’s ‘Enduring Myth’ About International New Service v. Associated Press in Perspective*, 111 COLUM. L. REV. SIDEBAR 79 (2011).

<sup>229</sup> Douglas G. Baird, *Common Law Intellectual Property and the Legacy of International News Service v. Associated Press*, 50 UNIV. CHI. L. REV. 411, 412 (1983).

<sup>230</sup> *Id.*

worthless.<sup>231</sup> News and information, once made public, is what economists call a public good: something whose enjoyment by one does not impede the enjoyment by others. As such, for the newspapers to have any advantage over their rivals, they need to be the first to print it. If the news service that ‘stole’ the news could just reprint the information, even if paraphrased, this news service could ‘free ride’ off the efforts of the news service that actually collected the information. Indeed, an earlier case at the United States Court of Appeals for the Seventh Circuit, *National Telegraph News Co. v. Western Union Telegraph Co.*, provided much of the framework that the Supreme Court used.<sup>232</sup> The case involved news and information appearing on ticker tapes received from the wires owned by one party that was being stolen by another. The Seventh Circuit held that the company broadcasting the news could enjoin the other company from stealing its information and rebroadcasting it on its wires to its customers. The Supreme Court effectively adopted the holding in this case.

The Supreme Court held, in a majority opinion penned by Justice Pitney, that the news service that expended the effort in collecting the information had some property interest in this ‘hot news’ that would become cold once disseminated. He noted that the value of the news “depends upon the promptness of transmission, as well as upon the accuracy and impartiality of the news.”<sup>233</sup> Justice Pitney opined that it was essential that the news service be allowed to exclude those who did not contribute to the expense of gathering the news from using their information.<sup>234</sup> He rejected the argument that the information was “too fugitive or evanescent to be regarded as property.”<sup>235</sup> Rather, he held that the information had “all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition.”<sup>236</sup> Using what economists would call public good economic arguments, Justice Pitney observed that if there were no property interest in the hot or fresh news, no one would have an incentive to collect it in the first place. The cost of collecting news is beyond the capacity of one newspaper. If there was no way to protect the claim to the news for the initial distribution of the news, no one would have any incentive to collect the news.<sup>237</sup> As such, the news service collecting the news stories

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<sup>231</sup> “The peculiar value of news is in the spreading of it while it is fresh; and it is evident that a valuable property interest in the news, as news, cannot be maintained by keeping it secret.” *Int’l News Serv.*, 248 U.S., at 235.

<sup>232</sup> *National Tel. News Co. v. Western Union Tel. Co.* 119 F. 294 (7th Cir. 1902). See also Professor Richard Epstein’s discussion of the case in *International News Service v. Associated Press: Custom and Law as Sources of Property Rights in News*, 78 VA. L. REV. 85, 96 (1992).

<sup>233</sup> *Int’l News Serv.*, 248 U.S., at 230.

<sup>234</sup> *Id.* at 231.

<sup>235</sup> *Id.* at 240.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 240–41.

had a “quasi property,” and the competitor had engaged in “misappropriation” of this quasi-property when it copied the stories, repackaged them, and then claimed them as its own.<sup>238</sup> The quasi-property right status of the ‘hot news’ would only last for, at best, a day from when the news was printed, and the right was only enforceable against the misappropriating competitor.<sup>239</sup>

In dissent, Justices Holmes and Brandeis took issue with the majority’s characterization of the freshly collected news as having any property status.<sup>240</sup> They questioned whether the common law or statutory laws supported such a finding, and Brandeis argued that it was up to the legislature to legislate on this question rather than the courts. The crux of their argument was an appeal to positive law, namely that property rights were something that had to be defined at law first before being capable of judicial recognition. In contrast, Justice Pitney took a more “bottom up” approach, namely that the state and courts do “not hand down the law or create property rights, any more than [they] decree[] the laws of physics or chemistry.”<sup>241</sup> Instead, their “chief function is to discover and reflect accurately what the community has customarily regarded as binding social rules and then to enforce those rules in specific controversies.”<sup>242</sup>

Professor Richard Epstein has argued that once this “custom is accepted as controlling, it is no longer necessary for judges to guess what set of rules best accommodate the communities they serve.”<sup>243</sup> Trial and error in the community will generate a set of best practices that ultimately should be recognized by the courts as being the optimal rules of the game.<sup>244</sup> It is true that customs can lack “regularity, uniformity, or predictability,” making it hard to understand and apply.<sup>245</sup> In this regard, defaulting to only applying laws as decreed by the legislature or ancient common laws is easier to apply.<sup>246</sup> Professor Epstein, nonetheless, argues that allowing customs to emerge over time and having the courts recognize these customs is not only beneficial in the long run but also generates a system superior to any centrally planned property rights system.<sup>247</sup> He points to the endurance of customs and the emergence of these customs via what economic Nobel Laureate Hayek called “spontaneous order.”<sup>248</sup> In this sense, therefore, what the meme stock

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<sup>238</sup> *Id.* at 242.

<sup>239</sup> *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 245 (1918).

<sup>240</sup> *Id.* at 246, 251.

<sup>241</sup> Richard A. Epstein, *International News Service v. Associated Press: Custom and Law as Sources of Property Rights in News*, 78 VA. L. REV. 85 (1992).

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at 86.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 87.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.* at 88.

<sup>248</sup> *Id.* at 89, 95.

retailers were trying to establish was a property right in the companies whose stock they had purchased.

More specifically, they were trying to lay claim to their vision of the information they had discovered and created regarding the potential financial health of the meme stock companies. In that spirit, we note that when it comes to the question of insider trading, one of the justifications for the prohibition on insider trading has been a property rights argument.<sup>249</sup> The idea is that the corporation owns any non-public information regarding its operations, earnings, or any other matters that could impact its share price. As such, when insiders use this non-public information to trade in the stock of the company, they are ‘stealing’ or misappropriating this information.<sup>250</sup>

In the meme stock saga, there is no evidence that the short-sellers had somehow misappropriated any corporate information, nor were the investors angry about that. Rather, the claim was that the short-sellers were somehow going to deprive the investors of seeing the various companies flourish. In other words, what the investors were complaining about was somewhat akin to what the news service was complaining about in *INS v. AP*. The investors had through their collective discussions, bantering, and cheerleading had generated information that made the case for the viability of the meme stocks. This information, they believed, meant that the companies were actually in better shape than what the short-sellers thought. One side needed to prevail quickly over the other in order to see their information and belief in the information validated. This was their ‘hot news,’ or something more of a ‘hot opinion.’ The short-selling hedge funds were, in essence, misappropriating this ‘hot news’ by betting against the company’s performance. Using their muscle, i.e., their large financial backing, the hedge funds were able to

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<sup>249</sup> Moin A. Yahya, *The Law and Economics of “Sue and Dump”*: Should Plaintiffs’ Attorneys be Prohibited from Trading the Stock of Companies They Sue? 34 SUFFOLK L. REV. 425, 447 (2006).

<sup>250</sup> See Kevin R. Douglas, *Missing the Role of Property in the Regulation of Insider Trading*, 69 CATH. U. L. REV. 209 (2020) (providing a good overview of the various property rights theories and applications to the question of insider trading); Zohar Goshen & Gideon Parchomovsky, *On Insider Trading, Markets, and “Negative” Property Rights in Information*, 87 VA. L. REV. 1229 (2001) (providing an earlier view of the various theories and approaches to insider trading and who owns the information); Andrew Verstein, *Crypto Assets and Insider Trading Law’s Domain*, 105 IOWA L. REV. 1 (2019) (applying some of the concepts of insider trading to crypto-assets); Stephen M. Bainbridge, *Insider Trading Regulation: The Path Dependent Choice between Property Rights and Securities Fraud*, 52 SMU L. REV. 1589 (1999) (arguing that the only sensible justification for prohibiting insider trading is the protection of the company’s property rights in the information). *But see* Michael D. Guttentag, *Avoiding Wasteful Competition: Why Trading on Inside Information Should Be Illegal*, 86 BROOK L. REV. 895 (2021) (arguing that wasteful competition for information and not property rights should be the core reason to prohibit insider trading, and as such, all insider trading should be illegal regardless of how legitimately the insider obtained the information).



deprive the investors of capitalizing on the new information that could see the meme stock prices rise.

To see the analogy more clearly, consider the actors in the *INS* case: two news services competing over the production of information. The information is ephemerally valuable in that whoever possesses it first can capitalize on it, but once the information is released to the public, it is worthless to either side. In the meme stock saga, there are also two parties, the short-selling hedge funds on one side and the collective of the meme stock investors on the other side. They too are competing to generate information that is ephemerally valuable to each side. The short-selling hedge fund believes the true information is negative regarding their target companies, while the investors believe the true information is positive. The reason the investors have this positive belief, however, is not some sense of contrarianism but rather because they created this information themselves collectively. If they allow the hedge-funds to ‘win,’ their information will become worthless.<sup>251</sup> If the stock can rise, this can not only drive away the short-sellers but allow the companies to capitalize on the higher stock prices to refinance and load up on cash.<sup>252</sup>

The retail investors came together when Keith Gill posted quite early on that he was confident that there was so much potential for GameStop with the right management.<sup>253</sup> As the stock price defied the odds of expectations, more and more investors became convinced that there might be something to his confidence in the company. Indeed, once other financiers started to acquire shares in the company and discuss strategies with management, it began to become clear that predictions of the company’s demise were premature, and GameStop could be turned around.<sup>254</sup> In this manner, the information generated by the investors is actually their property, or quasi-property, in contrast to the property of the corporation itself.

The short-sellers, we note, may also have generated their own quasi-property by investigating the bona fides of the various companies, poring over their financial statements, or just by using their experiences and market acumen. In other words, there were two actors who each had their own quasi-property rights in information that they had generated. This can be seen in

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<sup>251</sup> See, e.g., Thomas Yeung, *Redditors, Ryan Cohen Needs Your Help to Send GME Stock Back to \$500*, INVESTORPLACE (Feb 26, 2021, 1:32 PM), <https://investorplace.com/2021/02/how-ryan-cohen-and-reddit-could-send-gme-stock-to-500/> [<https://perma.cc/VE5N-2J6T>]. In this entreaty, a financial analyst exhorts investors not to let GameStop go the way of Radio Shack a few years ago. He urges the retail investors to keep driving the price high in order to keep away the short-sellers and in order to allow legendary investor Ryan Cohen to take over management of GameStop.

<sup>252</sup> We also document in our article how some companies managed to use the higher stock prices to refinance their debt. See JAKAB, *supra* note 12, at 220–26.

<sup>253</sup> See *id.* at 52–56, 103–04.

<sup>254</sup> See *id.* at 52–56, 91.

Figure 1.

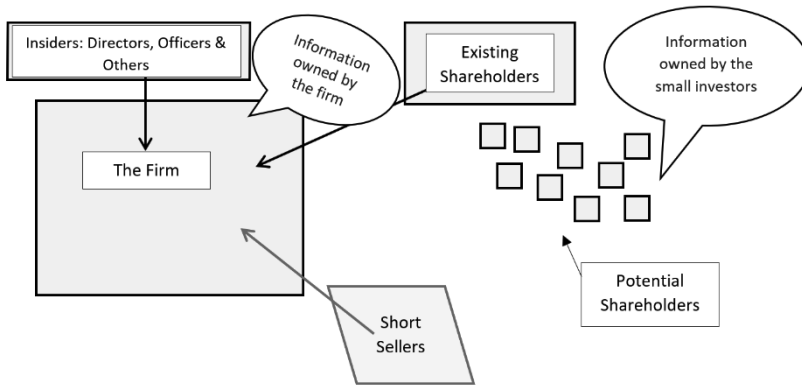


Figure 1

Sometimes, large investors are on both sides of these speculative bets. William Ackman had sold short shares of Herbalife many years ago and ended up engaging in a nasty fight both personally and financially with the legendary Carl Icahn. Similarly, Ackman and Andrew Left (who bet against GameStop) duked it out over Valeant when Left sold it short, while Ackman bought into it. These episodes saw one lose large sums of money while the other profit. But these were two large investors who had all their research and wealth behind them. In the meme stock saga, instead of two individuals with a billion dollars, we had thousands of investors with small amounts at stake. As one author put it: “[a] million people with \$1,000 of buying power each, either in cash or through margin borrowing or call options, have as much heft as a hedge fund with \$1 billion.”<sup>255</sup>

## VI. CONCLUSION

In this article, we argue that the retail investors involved in the meme stock saga were engaging in moral vigilantism where they had a legally unenforceable quasi-property right in their hot opinion regarding the state of the companies they were investing in. As we stated above, the forums and other social media hangouts allow new smaller users to generate new information and ideas regarding the merits of various financial instruments.

<sup>255</sup> See *id.* at 138.

This means that institutional investors and regulators need to learn to live with this new normal.

Indeed, at the time of writing, the stock of Revlon saw its share price rise dramatically even after it had declared itself bankrupt.<sup>256</sup> This, analysts say, is another meme stock waiting to attract alternative funding and interest. Will Revlon stave off bankruptcy or insolvency proceedings because of the newfound interest in its stock?<sup>257</sup> Only time will tell, just as some of the early meme stocks have turned their fortunes around and others have not. Indeed, another one of the meme stocks that had attracted much attention during the saga, Bed Bath & Beyond, has not been able to turn around its performance.<sup>258</sup> We suspect that hedge fund analysts will now be paying more attention to the various online forums to get a sense of where the popular sentiment lies. This does not mean that there will not be any more opportunities to observe vigilantism, moral or *per se*, in the financial sphere. The relatively new crypto sphere undoubtedly will be providing much more fodder for this type of behavior, especially as the rules are still uncertain and evolving and not necessarily in the stolen NFTs and cryptocurrency realm.<sup>259</sup>

As such, the regulatory implications of the meme stock saga will continue to be felt for some time to come. Scholars, regulators, and the courts will continue to discuss the merits of various legal claims against the various players. The saga, however, will be most remembered for how a group of dispersed investors came together in what they perceived was a righteous

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<sup>256</sup> David Randall, *Latest Meme Stock Revlon Surges More Than 50% In Heavy Trading*, YAHOO! FIN. (June 22, 2022, 1:52 PM), <https://finance.yahoo.com/news/latest-meme-stock-revlon-surges-195214607.html> [<https://perma.cc/ZX98-52T3>].

<sup>257</sup> Jodi Xu Klein, *Pro Take: Revlon Stock Rally Could Be a Terrible Thing To Waste: Retail Investors Don't Need the Regulator to Determine Whether Revlon, or Any Other Struggling Company, Is a Good Investment or Not*, WALL ST. J. (July 1, 2022), <https://www.wsj.com/articles/pro-take-revlon-stock-rally-could-be-a-terrible-thing-to-waste-11656679481> [<https://perma.cc/76WD-X8ZW>].

<sup>258</sup> Bailey Lipschultz, *Bed Bath & Beyond Fallout Offers a Warning to Meme-Stock Traders*, BLOOMBERG (June 29, 2022, 9:04 AM), <https://www.bloomberg.com/news/articles/2022-06-29/bed-bath-beyond-fallout-offers-a-warning-to-meme-stock-traders> [<https://perma.cc/2L7X-969K>].

<sup>259</sup> With the crash of the price of Bitcoin and other cryptocurrencies, a sort of gloating has emerged on the part of gamers who had been priced out of high performing graphics cards. Crypto-miners use these cards, because of their heavy computing power, for crypto-mining, and as such regular gamers were unable to find any decent graphics cards. In response to online complaints of this conundrum, crypto miners had originally responded with mockery, something the gamers are all too happy to give back now. John Loeffler, *Did I Make It Harder to Sell Your Crappy, Used Crypto Mining Graphics Card? Good: The Best Time to Stop Crypto Mining Was 2009. The Second Best Time Is Now*, TECHRADAR (June 26, 2021), <https://www.techradar.com/news/did-i-make-it-harder-to-sell-your-crappy-used-crypto-mining-graphics-card-good> [<https://perma.cc/4XPP-N42R>].

cause and took on a giant of Wall Street. This act can easily be classified as moral vigilantism on a group level. Unlike episodes of vigilantism that may involve breaking the law or objectionable behavior, this specific saga did not seem to involve any misfeasance. The current securities law system is structured in a way that leaves power imbalances open to moral vigilantism, and it remains to be seen whether lawmakers will adjust regulations to fill those gaps and correct injustices to decrease or eliminate the need for such vigilantism. The emergence of new financial technologies means that there will be more and more opportunities for various varieties of vigilantism and, ultimately, more and more regulations.