

*Resolved: Vigilantism is justified when the government has failed to enforce the law.*

This resolution has an interesting, balanced subject hidden behind a word that is loaded with meaning. “Vigilantism” is commonly referred to as “taking the law into one’s own hands.” When some people imagine a group of vigilantes they imagine a lynch mob, and the assumption is that the vigilantes are out-of-control anarchists with no regard for the law. But the wording of the resolution makes it clear that the circumstance in which we are analyzing vigilantism is one in which the government has failed to do its job of enforcing the law (assuming that enforcing the law is one of the jobs of the government). If a law is on the books, and for one reason or another the officials of government do not enforce that law, can people who are not the officials of government enforce that law? With that context in mind, this may be an interesting and balanced question. We just have to get past the negative connotations of vigilantism.

Curiously enough, even though we may initially think of lynch mobs and barely disguised criminals, we hold many cultural examples of vigilantism in high regard. The legendary Robin Hood is certainly an outlaw in folklore, but he is beloved for enforcing justice where the officials responsible for doing so did anything but. In our accepted version of the story, Robin is defending the ideals of the absentee Richard the Lionheart (he was off fighting a Crusade) during the provisional rule of Richard’s evil brother John. Among today’s legendary heroes, it would be difficult to find a more quintessential modern version of the vigilante than Batman, with his tangential-at-best connections to the police authorities (Commissioner Gordon thinks Bruce Wayne is a good guy), fighting the criminals that the Gotham officials are incapable of controlling. So while we may initially think vigilante equals bad, we at the same time culturally often hold that vigilante equals good, and we make heroes out of many vigilantes.

In the real world (Robin Hood is only possibly based on a real person, and that real person is lost in myths and legends of centuries), we also have both good and bad examples of vigilantism. The violent abolitionist John Brown is to many as much a

pre-Civil War hero as the masked militia of Ku Klux Klan members are 20th Century villains (and problematic Reconstruction era heroes, if one accepts the film “Birth of a Nation”). A look at their specific stories, however, does not reveal that these vigilantes were responding to a failure to enforce the law. This resolution will require in-depth knowledge of historical examples so that debaters can show that the examples link to the resolution.

The problem is that there are other activities that are closely related to vigilantism but which are something else altogether. The first one that comes to mind is civil disobedience. An act of civil disobedience is a refusal to obey an existing law, presumably because one feels that the law in question is unjust. Are those people we refer to as the patriots of the Boston Tea Party actually vigilantes? Or were they being civilly disobedient? Were they revolutionaries or terrorists? When analyzing examples, debaters should be certain they illustrate the ground of the resolution.

And what is that ground? It would seem simple-- the analysis of actions taken outside of the normal procedures of law-- but the wording brings up numerous questions. First of all, there is no particular place mentioned in the topic. Therefore, the topic is not about the specific politics or justice system of one particular place. Instead, it seems to be about actions taken outside the normal procedures of law in any specific place. But it can't possibly mean that any action outside the law would be justified, because that would render laws meaningless. Also, actions can't be outside laws that do not exist, so it can't refer to an anarchic state of nature. The resolution is asking for a general principle, applicable once certain circumstances are met. The debater defending vigilantism needs to explain what those circumstances might be, and then show why applying the principle of vigilantism is justified. The topic makes it clear that “the government has failed to enforce the law,” so that is a starting place for establishing a principle of action. But several questions remain. Is the law a just law, or an unjust law? Are governments capable of enacting unjust laws? While it hardly seems logical that vigilantism is justified in enforcing unjust laws, the question of the intrinsic justness of law could arise. **(that sentence confuses me. Do you mean “While it hardly seems logical that vigilantism would be justified because of the non-enforcement of unjust laws” for the first part?)** Debaters might need to know exactly why we hold laws to be

worth obeying and enforcing in the first place. Is the government simply exercising its power when it enforces a law? That is, are laws arbitrary rules and regulations that set up a paradigm of the strong and the weak? Or do laws have a value that makes them to some extent (or completely) absolute? The theories of civil disobedience are worth studying for the answers to those questions. And what precisely is the government failing at if it fails to enforce the laws that it has passed? Is it merely failing to fulfill an obligation, a social promise, a contractual arrangement devoid of intrinsic meaning beyond its contractual nature? Or is there a deeper relationship of the law to morality, keeping in mind that some schools of thought actually equate law and morality?

The study of jurisprudence and political philosophy takes us to the core of the questions above. Political philosophy does ask “What is law?” “When is it right or wrong to obey laws?” “How should laws be enforced?” Understanding these questions philosophically would be a fruitful starting point for research. The resolution is ultimately asking about the justice of a particular action. If we assume that there is such a thing as justice (one could, perhaps, argue that because there is no such thing as justice, the resolution can never be affirmed, but taking on the burden of proving that justice does not exist seems extreme, at best), then philosophical analyses of ethics and jurisprudence are the place to find them discussed at length. John Locke’s *Second Treatise on Civil Government* is a standard in the field, and can serve as a good starting point. Locke, who explains at length how laws should be enacted and enforced by the government, first explains why the government indeed has this power. His social contract of the individuals to their society is based on the consent of those individuals to be members of that society. Once this consent is given, expressly or tacitly, it is given unconditionally, because otherwise individuals would be second-guessing the government at every turn. But the power of the Government, according to Locke, is limited to the public good. It is a power that has “no other end but preservation.” To paraphrase the *Stanford Encyclopedia of Philosophy*, the aim of such a legitimate government is to preserve, so far as possible, the natural rights of its citizens, to prosecute and punish those of its citizens who violate the rights of others, and to pursue the public good even where this may conflict with the rights of individuals. An illegitimate civil government, on the

other hand, will fail to protect the natural rights of its subjects, or even itself violate those rights. So, going with a Lockean analysis, one could argue that when the government is failing to enforce its laws, and therefore failing to protect its citizens' rights, that government is illegitimate, and its claim on our consent is forfeit.

The opposite position would be that this consent is categorical, and cannot be waived whenever we are in a position of disagreeing with the government. We have structures in place for performing the job of government, those structures being the result of our original consent. Are they not doing their job, or is it that some individuals wish they were doing that job differently? Or even if they are not doing their job, isn't the problem with the structures themselves (we need to change the law, or we need to change the legislators, or we need to change the executors or judges of those laws) rather than our abandonment of the rule of law completely? Vigilantism could be seen as a total disregard for society by creating a counter or shadow society.

## Lesson Plan 1

### Topic Analysis

*Resolved: Vigilantism is justified when the government has failed to enforce the law.*

Before any other steps are taken, a clear understanding of what the resolution is asking is necessary. We need to come up with one or more reasonable interpretations before we begin researching and thinking about arguments. In fact, at this point it is best to ban any talk whatsoever of arguments one might run. What we want to do is get a sense of what the topic means and to find a context for it, both of which precede arguing about it. Write the topic on the board; you might want to get the students to tell you what the topic is before you write it. This gives you a quick feel of who's been giving it some thought already, plus it confirms the wording in everyone's mind to make even the recollection of what the resolution is a group project.

To understand a resolution, you need to break down the wording into the relevant parts. A resolution with as few words as this one doesn't offer too many ways of misconstruing it! There are three clear parts.

An action to be taken, "vigilantism," is specified

An evaluation of the action, "is justified," is specified

A condition in which the action will be taken, "when the government has failed to enforce the law," is specified

The easiest thing to do next is discuss vigilantism. What do people think of when they think of vigilantes? Define. (Wikipedia: "A vigilante is a person who ignores due process of law and enacts their own form of justice in response to a perception of insufficient response by the authorities.")

What is the history of vigilantism? Why were the eponymous vigilance committees formed in 19th Century California? What are some other US examples? Bacon's

Rebellion. The Ku Klux Klan. John Brown. The Boston Tea Party. Civil War draft resistance and draft riots. Cyber vigilantes. NYC's Guardian Angels. Bernhard Goetz.

Non-US examples? (Some wording borrowed, again, from Wikipedia)

- Aggressive animal rightists who attack whaling ships.
- The People Against Gangsterism and Drugs of Cape Town, South Africa, fights drugs and gangsterism in their region.
- The Bakassi Boys of Nigeria were viewed as the frontmen in lowering the region's high crime when police were ineffective.
- In Northern Ireland, vigilantism has been observed against drug dealers and pedophiles. In one such case, a known pedophile had been released from prison early, kidnapped by a group of men dressed in black clothing and balaclavas, much like the Provisional Irish Republican Army or Ulster Volunteer Force. He was stabbed twice, then, put in the back of a Ford Transit van where four Bull Mastiff dogs were waiting for him. He was then driven around Belfast and Derry for two hours. After the dogs mauled him, he was dumped in the verges of a dual carriageway. He survived.
- In 2007, religious vigilantes in the southern Iraqi city of Basrain warning against "violating Islamic teachings" killed at least 40 women not wearing traditional dress and head scarves

Fictional examples: Robin Hood. Batman. Any number of costumed superheroes, for that matter.

Of all of these, which sound right to you? Which sound wrong? Did the government fail to enforce the law in these situations? Let's make sure our condition is met before we attempt to evaluate (i.e., justify) the action.

Finally, the big question. In the situations where the government failed to enforce the law, were the vigilantes justified?

- What is the philosophical/political justification for government enforcing the law in the first place? What is the government responsibility?
- If the government fails in its responsibility, then what?

- In the question at hand, if you feel that all of the vigilante actions were justified because the government had failed to enforce the law, then you're looking for an understanding of government/individual responsibilities, a philosophical construct that claims that the government must perform this obligation, and when it doesn't, performing the obligation devolves to the citizens working outside the law enforcement standards of the government
- In the question at hand, if you feel that none of the vigilante actions were justified because the government had failed to enforce the law, then you're looking for a philosophical construct that claims that regardless of its effectiveness in doing so, only the government is justified in even trying.
- Finally, in the question at hand, if you think that sometimes yes, sometimes no, then you're really not taking a position. The resolution clearly states that the government has failed to enforce the law. Has failed means that the failure has happened, and there is no question about it. You could, perhaps, argue that there is no way to certify that this has happened, but that would require an opponent who is willing to grant you an unnecessary boon. It has happened. The resolution says so. That is the condition. We are talking about the condition existing, not whether the condition can or could exist. By the same token, the vigilantes have to act like vigilantes. They have to take the law into their own hands. They have to become de facto officers of the law in lieu of the failed government officers of the law. The vigilante action taken can't be, for instance, calling an emergency session of the legislature or demanding more cops on the beat or petitioning the courts. It has to be an action of law enforcement outside the government's law enforcement agencies.

It is easier, of course, to work from an accepted view of government and analyze whether in this view the resolution should be affirmed or negated than to work from the resolution back to a view of government. What standard philosophers apply to the resolution?

- If the government fails, have we reverted to a Hobbesian state of nature?

- John Locke's view of government is a solid basis of much modern thought. What does he say about this subject?
- Are there other relevant social contract theories/theorists that can be studied?

## Lesson 2

Some readings and some questions

My selected bibliography, such as it is, is here. Students should look at these articles and discuss.

**Vigilante Justice: A Proper Response to Government Failure** by William L. Anderson

(<http://www.lewrockwell.com/anderson/anderson6.html>)

This article supports vigilantism, and decries the government's "monopoly" on "law enforcement and the administration of justice." Does the example support the conclusion, that vigilantism is justified? Is the author going too far with his monopoly arguments?

**Is self-defense law vigilante justice?** by Patrik Jonsson (Staff writer of The Christian Science Monitor)

<http://www.csmonitor.com/2006/0224/p02s01-usju.html>

This may be a little less than relevant, but the discussion of self-defense and a citizen's "duty to retreat" in the face of a physical attack certainly seems to be vigilante-based. Is self-defense vigilantism? Can it be justified (or condemned) according to the same arguments?

**Vigilante Justice: Common Law Courts** by Devin Burghart and Robert Crawford

<http://mediafilter.org/CAQ/CAQ57COMNLAW.HTML>

This is a pretty dense article but it's also a little scary. "Across the country, far-right activists are building an alternative judicial system. With militias as their enforcement arm, these common law courts are an incubator for trouble." Why do, or don't, the standard ideas we have about vigilantism work for these US extremists?

**Political philosophy**, Rutledge encyclopedia of Philosophy

<http://www.rep.routledge.com/article/S099>

This paragraph offers a wealth of ideas worth examining and paths worth taking: “What are the issues that, historically and today, have most exercised political philosophers? To begin with, there is a set of questions about how political institutions should be arranged. Today we would think of this as an enquiry into the best form of state, though we should note that the state itself is a particular kind of political arrangement of relatively recent origin - for most of their history human beings have not been governed by states (see State, the). Since all states claim Authority over their subjects, two fundamental issues are the very meaning of authority, and the criteria by which we can judge forms of political rule legitimate (see Legitimacy; Contractarianism; General will; Power; Tradition and traditionalism). Connected to this is the issue of whether individual subjects have a moral obligation to obey the laws of their state (see Obligation, political), and of the circumstances under which politically-inspired disobedience is justifiable (see Civil disobedience; Revolution). Next there is a series of questions about the form that the state should take: whether authority should be absolute or constitutionally limited (see Absolutism; Constitutionalism); whether its structure should be unitary or federal (see Federalism and confederalism); whether it should be democratically controlled, and if so by what means (see Democracy; Representation, political). Finally here there is the question of whether any general limits can be set to the authority of the state - whether there are areas of individual freedom or privacy that the state must never invade on any pretext (see Law, limits of; Freedom of speech; Coercion; Property; Slavery), and whether there are subjects such as religious doctrine on which the state must adopt a strictly neutral posture (see Neutrality, political; Toleration).”

**Consent, Political Obligation, and the Ends of Government** (from the John Locke entry), The Stanford Encyclopedia of Philosophy

<http://plato.stanford.edu/entries/locke-political/#ConPolOblEndGov>

This analysis of Locke is excellent. It offers Locke’s ideas and subsequent (and occasionally differing) interpretations of them. The questions boil down to the section description: What is the meaning of individual consent? What are the obligations of the individual and the government? What is the purpose of government?

**Ghana: The Scourge of Vigilante Justice** ([Ghanaian Chronicle](http://ghanaianchronicle.com) (Accra) by Ap-piah Kusi Adomako <http://allafrica.com/stories/200808070873.html>)

This is a good think piece that takes the issue outside of the US. Vigilante justice

seems to be the de facto standard in Ghana. Does that somehow make it the official law enforcement? Not really, but the situation is far from clear.

**Methodological Anarchy and Vigilante Justice: Arguing about Preventive War** by George R. Lucas, Jr.,

[http://www.allacademic.com/meta/p98206\\_index.html](http://www.allacademic.com/meta/p98206_index.html)

This takes the topic to a whole different area. “From the standpoint of international law, the preventive war undertaken in Iraq by the U.S., Great Britain, and their allies can be understood as an act of vigilantism, involving a moral critique of the ineffectiveness of international institutions in coping with humanitarian disasters and the spread of terrorism since the end of the Cold War, driving moral discourse in the process back upon older conceptions of just war reasoning, within which such vigilante actions would range from permissible to obligatory.”

## Lesson 3

### Arguments

For brainstorming purposes, one can elicit from the team arguments about various aspects of the resolution. It is best to treat all arguments as potentially worthwhile; dismissing ideas as bad may prevent the team from finding a good idea further down that path. Try to look at both sides of any potential argument. No argument is so good that it can't be refuted. Put what seem to be affirmative ideas on one side of the board and negative ideas on the other side.

Some ideas for brainstorming starters:

If the purpose of government is rights protection, and the government fails to protect rights, then how can rights otherwise be protected?

Another way of putting this: What should citizens do when the government fails to do its job? Are there alternatives to vigilantism that preclude vigilantism as a solution?

How does the government enforce the law? How should the government enforce the law? Does the government have to enforce the law?

Is the government "monopoly" on law enforcement intrinsically flawed?

If the government is not doing its job, how can questions of justice be adjudicated?

How can we determine whether the government is failing to enforce the law?

What about situations where the law is unclear?

What about situations where the law is unjust?

What about situations where the law is too harsh, or too weak?

Are vigilantes simply a different version of law enforcement from "official" law enforcement? Police are, after all, simply citizens. What difference does a badge entail?

Is vigilantism a reversion to a Hobbesian state of nature with might equaling right?

Is vigilantism setting up a shadow government?

The American Revolution is enshrined in history and tradition. Violence was put to the end of revolutionary ideals and objectives—the ends justify the means, in other words. Were the Revolutionary patriots vigilantes? If so, what about them and their situation justified their actions?

In a post-9/11 environment, mustn't all citizens become more than just vigilant in certain situations? "If you see something, act"?

Professor Ken Attafuah quotation: "Virtually anyone can easily be 'mistaken' for a criminal and summarily punished." True?

Does Lockean consent to government preclude disassociation from that government?

If slavery was categorically wrong, yet officially legal, was John Brown right in fomenting armed rebellion?

Is vigilantism justifiable if turned against the government itself?

In situations where there are no governments (e.g., the anarchy of the internet), is vigilantism acceptable?

In situations where there is no overarching government (e.g., planet earth), is national action such as the US invasion of Iraq vigilantism? Is it justified?

What about this: The three fundamental rules (the precedent of Pinchas' slaying of Zimri, as described in the Bible and discussed in the Talmud and the commentaries) on how to take the law into your own hands are:

There has to be a truly extraordinary compelling need--e.g., tens of thousands of people are dying in a plague, and hundreds of thousands more will die unless drastic action is taken to stop it.

You must be prepared to pay the price. The law will not protect you from the consequences of your deed. You must be willing to sacrifice all--including your righteousness.

It must be completely against your nature to act this way, and it must pain you no end that you are forced to do so. In other words, if you enjoy doing this,

then you shouldn't be doing this.  
Do you accept these guidelines?