

---

# A THEORY OF JUSTICE

JOHN RAWLS

---

THE BELKNAP PRESS OF  
HARVARD UNIVERSITY PRESS  
CAMBRIDGE, MASSACHUSETTS



political principle; and so, if it wishes, a well-ordered society can devote a sizable fraction of its resources to expenditures of this kind. But while the claims of culture can be met in this way, the principles of justice do not permit subsidizing universities and institutes, or opera and the theater, on the grounds that these institutions are intrinsically valuable, and that those who engage in them are to be supported even at some significant expense to others who do not receive compensating benefits. Taxation for these purposes can be justified only as promoting directly or indirectly the social conditions that secure the equal liberties and as advancing in an appropriate way the long-term interests of the least advantaged. This seems to authorize those subsidies the justice of which is least in dispute, and so in these cases anyway there is no evident need for a principle of perfection.

With these remarks I conclude the discussion of how the principles of justice apply to institutions. Clearly there are many further questions that should be considered. Other forms of perfectionism are possible and each problem has been examined only briefly. I should emphasize that my intention is solely to indicate that the contract doctrine may serve well enough as an alternative moral conception. When we check its consequences for institutions, it appears to match our common sense convictions more accurately than its traditional rivals, and to extrapolate to previously unsettled cases in a reasonable way.

## CHAPTER VI. DUTY AND OBLIGATION

In the two preceding chapters I have discussed the principles of justice for institutions. I now wish to take up the principles of natural duty and obligation that apply to individuals. The first two sections examine the reasons why these principles would be chosen in the original position and their role in making social cooperation stable. A brief discussion of promising and the principle of fidelity is included. For the most part, however, I shall study the implications of these principles for the theory of political duty and obligation within a constitutional framework. This seems the best way to explain their sense and content for the purposes of a theory of justice. In particular, an account of the special case of civil disobedience is sketched which connects it with the problem of majority rule and the grounds for complying with unjust laws. Civil disobedience is contrasted with other forms of noncompliance such as conscientious refusal in order to bring out its special role in stabilizing a nearly just democratic regime.

### 51. THE ARGUMENTS FOR THE PRINCIPLES OF NATURAL DUTY

In an earlier chapter (§§ 18–19) I described briefly the principles of natural duty and obligation that apply to individuals. We must now consider why these principles would be chosen in the original position. They are an essential part of a conception of right: they define our institutional ties and how we become bound to one another. The conception of justice as fairness is incomplete until these principles have been accounted for.

From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. It follows that if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do what is required of him. Each is bound irrespective of his voluntary acts, performative or otherwise. Now our question is why this principle rather than some other would be adopted. As in the case of institutions, there is no way, let us assume, for the parties to examine all the possible principles that might be proposed. The many possibilities are not clearly defined and among them there may be no best choice. To avoid these difficulties I suppose, as before, that the choice is to be made from a short list of traditional and familiar principles. To expedite matters, I shall mention here only the utilitarian alternative for purposes of clarification and contrast, and very much abbreviate the argument.

Now the choice of principles for individuals is greatly simplified by the fact that the principles for institutions have already been adopted. The feasible alternatives are straightway narrowed down to those that constitute a coherent conception of duty and obligation when taken together with the two principles of justice.<sup>1</sup> This restriction is bound to be particularly important in connection with those principles definitive of our institutional ties. Thus let us suppose that the persons in the original position, having agreed to the two principles of justice, entertain the choice of the principle of utility (either variant) as the standard for the acts of individuals. Even if there is no contradiction in this supposition, the adoption of the utilitarian principle would lead to an incoherent conception of right. The criteria for institutions and individuals do not fit together properly. This is particularly clear in situations in which a person holds a social position regulated by the principles of justice. For example, consider the case of a citizen deciding how to vote between political parties, or the case of a legislator wondering whether to favor a certain statute. The assumption is that these in-

1. For clarification on this point I am indebted to Allan Gibbard.

dividuals are members of a well-ordered society that has adopted the two principles of justice for institutions and the principle of utility for individuals. How are they to act? As a rational citizen or legislator, a person should, it seems, support that party or favor that statute which best conforms to the two principles of justice. This means that he should vote accordingly, urge others to do likewise, and so on. The existence of institutions involves certain patterns of individual conduct in accordance with publicly recognized rules. The principles for institutions have, then, consequences for the acts of persons holding positions in these arrangements. But these persons must also regard their actions as governed by the principle of utility. In this case the rational citizen or legislator should support the party or statute whose victory or enactment is most likely to maximize the net balance (or average) of satisfaction. The choice of the utility principle as the standard for individuals leads to contrary directives. To avoid this conflict it is necessary, at least when the individual holds an institutional position, to choose a principle that matches in some suitable way the two principles of justice. Only in noninstitutional situations is the utilitarian view compatible with the agreements already made. Although the principle of utility may have a place in certain duly circumscribed contexts, it is already excluded as a general account of duty and obligation.

The simplest thing to do, then, is to use the two principles of justice as a part of the conception of right for individuals. We can define the natural duty of justice as that to support and to further the arrangements that satisfy these principles; in this way we arrive at a principle that coheres with the criteria for institutions. There is still the question whether the parties in the original position would not do better if they made the requirement to comply with just institutions conditional upon certain voluntary acts on their part, for example, upon their having accepted the benefits of these arrangements, or upon their having promised or otherwise undertaken to abide by them. Offhand a principle with this kind of condition seems more in accordance with the contract idea with its emphasis upon free consent and the protection of liberty. But, in fact, nothing would be gained by this proviso. In view of the lexical ordering of the two principles, the full complement of the equal

liberties is already guaranteed. No further assurances on this score are necessary. Moreover, there is every reason for the parties to secure the stability of just institutions, and the easiest and most direct way to do this is to accept the requirement to support and to comply with them irrespective of one's voluntary acts.

These remarks can be strengthened by recalling our previous discussion of public goods (§ 42). We noted that in a well-ordered society the public knowledge that citizens generally have an effective sense of justice is a very great social asset. It tends to stabilize just social arrangements. Even when the isolation problem is overcome and fair large-scale schemes already exist for producing public goods, there are two sorts of tendencies leading to instability. From a self-interested point of view each person is tempted to shirk doing his share. He benefits from the public good in any case; and even though the marginal social value of his tax dollar is much greater than that of the marginal dollar spent on himself, only a small fraction thereof redounds to his advantage. These tendencies arising from self-interest lead to instability of the first kind. But since even with a sense of justice men's compliance with a cooperative venture is predicated on the belief that others will do their part, citizens may be tempted to avoid making a contribution when they believe, or with reason suspect, that others are not making theirs. These tendencies arising from apprehensions about the faithfulness of others lead to instability of the second kind. This instability is particularly likely to be strong when it is dangerous to stick to the rules when others are not. It is this difficulty that plagues disarmament agreements; given circumstances of mutual fear, even just men may be condemned to a condition of permanent hostility. The assurance problem, as we have seen, is to maintain stability by removing temptations of the first kind, and since this is done by public institutions, those of the second kind also disappear, at least in a well-ordered society.

The bearing of these remarks is that basing our political ties upon a principle of obligation would complicate the assurance problem. Citizens would not be bound to even a just constitution unless they have accepted and intend to continue to accept its benefits. Moreover this acceptance must be in some appropriate sense voluntary. But what is this sense? It is difficult to find a plausible

account in the case of the political system into which we are born and begin our lives.<sup>2</sup> And even if such an account could be given, citizens might still wonder about one another whether they were bound, or so regarded themselves. The public conviction that all are tied to just arrangements would be less firm, and a greater reliance on the coercive powers of the sovereign might be necessary to achieve stability. But there is no reason to run these risks. Therefore the parties in the original position do best when they acknowledge the natural duty of justice. Given the value of a public and effective sense of justice, it is important that the principle defining the duties of individuals be simple and clear, and that it insure the stability of just arrangements. I assume, then, that the natural duty of justice would be agreed to rather than a principle of utility, and that from the standpoint of the theory of justice, it is the fundamental requirement for individuals. Principles of obligation, while compatible with it, are not alternatives but rather have a complementary role.

There are, of course, other natural duties. A number of these were mentioned earlier (§ 19). Instead of taking up all of these, it may be more instructive to examine a few cases, beginning with the duty of mutual respect, not previously referred to. This is the duty to show a person the respect which is due to him as a moral being, that is, as a being with a sense of justice and a conception of the good. (In some instances these features may be potentialities only, but I leave this complication aside here; see § 77.) Mutual respect is shown in several ways: in our willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected.<sup>3</sup>

These two ways correspond to the two aspects of moral personality. When called for, reasons are to be addressed to those con-

2. I do not accept the whole of Hume's argument in "Of the Original Contract," but I believe it is correct on this count as applied to political duty for citizens generally. See *Essays: Moral, Political, and Literary*, ed. T. H. Green and T. H. Grose (London, 1875), vol. I, pp. 450-452.

3. On the notion of respect, see B. A. O. Williams, "The Idea of Equality," *Philosophy, Politics, and Society*, Second Series, ed. Peter Laslett and W. G. Runciman (Oxford, Basil Blackwell, 1962), pp. 118f.

cerned; they are to be offered in good faith, in the belief that they are sound reasons as defined by a mutually acceptable conception of justice which takes the good of everyone into account. Thus to respect another as a moral person is to try to understand his aims and interests from his standpoint and to present him with considerations that enable him to accept the constraints on his conduct. Since another wishes, let us suppose, to regulate his actions on the basis of principles to which all could agree, he should be acquainted with the relevant facts which explain the restrictions in this way. Also respect is shown in a willingness to do small favors and courtesies, not because they are of any material value, but because they are an appropriate expression of our awareness of another person's feelings and aspirations. Now the reason why this duty would be acknowledged is that although the parties in the original position take no interest in each other's interests, they know that in society they need to be assured by the esteem of their associates. Their self-respect and their confidence in the value of their own system of ends cannot withstand the indifference much less the contempt of others. Everyone benefits then from living in a society where the duty of mutual respect is honored. The cost to self-interest is minor in comparison with the support for the sense of one's own worth.

Similar reasoning supports the other natural duties. Consider, for example, the duty of mutual aid. Kant suggests, and others have followed him here, that the ground for proposing this duty is that situations may arise in which we will need the help of others, and not to acknowledge this principle is to deprive ourselves of their assistance.<sup>4</sup> While on particular occasions we are required to do things not in our own interests, we are likely to gain on balance at least over the longer run under normal circumstances. In each single instance the gain to the person who needs help far outweighs the loss of those required to assist him, and assuming that the chances of being the beneficiary are not much smaller than those of being the one who must give aid, the principle is clearly in our

4. See *The Foundations of the Metaphysics of Morals*, Academy edition, vol. 4, p. 423. There is a fuller discussion in *The Metaphysics of Morals*, pt. II (*Tugendlehre*), §30, vol. 6, pp. 451f. Kant notes here that the duty of beneficence (as he calls it) is to be public, that is, a universal law. See §23, note 8.

interest. But this is not the only argument for the duty of mutual aid, or even the most important one. A sufficient ground for adopting this duty is its pervasive effect on the quality of everyday life. The public knowledge that we are living in a society in which we can depend upon others to come to our assistance in difficult circumstances is itself of great value. It makes little difference that we never, as things turn out, need this assistance and that occasionally we are called on to give it. The balance of gain, narrowly interpreted, may not matter. The primary value of the principle is not measured by the help we actually receive but rather by the sense of confidence and trust in other men's good intentions and the knowledge that they are there if we need them. Indeed, it is only necessary to imagine what a society would be like if it were publicly known that this duty was rejected. Thus while the natural duties are not special cases of a single principle (or so I have assumed), similar reasons no doubt support many of them when one considers the underlying attitudes they represent. Once we try to picture the life of a society in which no one had the slightest desire to act on these duties, we see that it would express an indifference if not disdain for human beings that would make a sense of our own worth impossible. Once again we should note the great importance of publicity effects.

Taking any natural duty by itself, the reasons favoring its adoption are fairly obvious. At least it is evident why these duties are preferable to no similar requirements at all. Although their definition and systematic arrangement are untidy, there is little question that they would be acknowledged. The real difficulty lies in their more detailed specification and with questions of priority: how are these duties to be balanced when they come into conflict, either with each other or with obligations, and with the good that can be achieved by supererogatory actions? There are no obvious rules for settling these questions. We cannot say, for example, that duties are lexically prior with respect to supererogatory actions, or to obligations. Nor can we simply invoke the utilitarian principle to set things straight. Requirements for individuals so often oppose each other that this would come to much the same thing as adopting the standard of utility for individuals; and, as we have seen, this is ruled out as leading to an incoherent conception of right. I do not

Now how this problem is to be settled, or even whether a systematic solution formulating useful and practicable rules is possible. It would seem that the theory for the basic structure is actually simpler. Since we are dealing with a comprehensive scheme of general rules, we can rely on certain procedures of aggregation to cancel out the significance of the complicating elements of particular situations once we take the larger long-term view. Therefore in this book I shall not attempt to discuss these questions of priority in full generality. What I shall do is to examine a few special cases in connection with civil disobedience and conscientious refusal under circumstances of what I shall call a nearly just regime. A satisfactory account of these matters is at best only a start; but it may give us some idea of the kinds of obstacles we face and help to focus our intuitive judgments on the right questions.

It seems appropriate at this juncture to note the familiar distinction between a duty other things equal (a so-called *prima facie* duty), and a duty all things considered. (A parallel distinction holds for obligations.) The formulation of this notion is due to Ross and we may follow him in the main lines.<sup>5</sup> Thus suppose that the full system of principles that would be chosen in the original position is known. It will contain principles for institutions and individuals, and also, of course, priority rules to weigh these principles when they favor contrary sides in given cases. I further suppose that this full conception of right is finite: it consists of a finite number of principles and priority rules. Although there is a sense in which the number of moral principles (virtues of institutions and individuals) is infinite, or indefinitely large, the full conception is approximately complete: that is, the moral considerations that it fails to cover are for the most part of minor importance. Normally they can be neglected without serious risk of error. The significance of the moral reasons that are not accounted for becomes negligible as the conception of right is more fully worked out. Now adjoined to this full conception (finite yet complete in the sense defined) there is a principle asserting its completeness, and, if we like, also a principle enjoining the agent to perform that action which of all those available to him is reasonably judged the

5. See *The Right and the Good* (Oxford, The Clarendon Press, 1930), pp. 18-33, 41f.

right one (or a best one) in the light of the full system (including the priority rules). Here I imagine that the priority rules are sufficient to resolve conflicts of principles, or at least to guide the way to a correct assignment of weights. Obviously, we are not yet in a position to state these rules for more than a few cases; but since we manage to make these judgments, useful rules exist (unless the intuitionist is correct and there are only descriptions). In any case, the full system directs us to act in the light of all the available relevant reasons (as defined by the principles of the system) as far as we can or should ascertain them.

Now with these stipulations in mind, the phrases "other things equal" and "all things considered" (and other related expressions) indicate the extent to which a judgment is based upon the whole system of principles. A principle taken alone does not express a universal statement which always suffices to establish how we should act when the conditions of the antecedent are fulfilled. Rather, first principles single out relevant features of moral situations such that the exemplification of these features lends support to, provides a reason for making, a certain ethical judgment. The correct judgment depends upon all the relevant features as these are identified and tallied up by the complete conception of right. We claim to have surveyed each of these aspects of the case when we say that something is our duty all things considered; or else we imply that we know (or have reason for believing) how this broader inquiry would turn out. By contrast, in speaking of some requirement as a duty other things equal (a so-called *prima facie* duty), we are indicating that we have so far only taken certain principles into account, that we are making a judgment based on only a subpart of the larger scheme of reasons. I shall not usually signal the distinction between something's being a person's duty (or obligation) other things equal, and its being his duty all things considered. Ordinarily the context can be relied upon to gather what is meant.

I believe that these remarks express the essentials of Ross's concept of *prima facie* duty. The important thing is that such riders as "other things equal" and "all things considered" (and of course "*prima facie*") are not operators on single sentences, much less on predicates of actions. Rather they express a relation between sentences, a relation between a judgment and its grounds; or as I



have put it above, they express a relation between a judgment and a part or the whole of the system of principles that defines its grounds.<sup>6</sup> This interpretation allows for the point of Ross's notion. For he introduced it as a way of stating first principles so as to allow the reasons they define to support contrary lines of action in particular cases, as indeed they so often do, without involving us in a contradiction. A traditional doctrine found in Kant, or so Ross believed, is to divide the principles that apply to individuals into two groups, those of perfect and imperfect obligation, and then to rank those of the first kind as lexically prior (to use my term) to those of the second kind. Yet not only is it in general false that imperfect obligations (for example, that of beneficence) should always give way to perfect ones (for example, that of fidelity), but we have no answer if perfect obligations conflict.<sup>7</sup> Maybe Kant's theory permits a way out; but in any case, he left this problem aside. It is convenient to use Ross's notion for this purpose. These remarks do not, of course, accept his contention that first principles are self-evident. This thesis concerns how these principles are known, and what sort of derivation they admit of. This question is independent of how principles hang together in one system of reasons and lend support to particular judgments of duty and obligation.

## 52. THE ARGUMENTS FOR THE PRINCIPLE OF FAIRNESS

Whereas there are various principles of natural duty, all obligations arise from the principle of fairness (as defined in § 18). It will be recalled that this principle holds that a person is under an obligation to do his part as specified by the rules of an institution whenever he has voluntarily accepted the benefits of the scheme or has taken advantage of the opportunities it offers to advance his in-

6. Here I follow Donald Davidson, "How Is Weakness of the Will Possible?" in *Moral Concepts*, ed. Joel Feinberg (London, Oxford University Press, 1969), seep. 109. The whole discussion on pp. 105–110 is relevant here.

7. See *The Right and the Good*, pp. 18f, and *The Foundations of Ethics* (Oxford, The Clarendon Press, 1939), pp. 173, 187.

terests, provided that this institution is just or fair, that is, satisfies the two principles of justice. As noted before, the intuitive idea here is that when a number of persons engage in a mutually advantageous cooperative venture according to certain rules and thus voluntarily restrict their liberty, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission.<sup>8</sup> We are not to gain from the cooperative efforts of others without doing our fair share.

It must not be forgotten that the principle of fairness has two parts: one which states how we acquire obligations, namely, by doing various things voluntarily; and another which lays down the condition that the institution in question be just, if not perfectly just, at least as just as it is reasonable to expect under the circumstances. The purpose of this second clause is to insure that obligations arise only if certain background conditions are satisfied. Acquiescence in, or even consent to, clearly unjust institutions does not give rise to obligations. It is generally agreed that extorted promises are void *ab initio*. But similarly, unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind. The reason for this condition is that the parties in the original position would insist upon it.

Before discussing the derivation of the principle, there is a preliminary matter to straighten out. It may be objected that since the principles of natural duty are on hand, there is no necessity for the principle of fairness. Obligations can be accounted for by the natural duty of justice, for when a person avails himself of an institutional set up, its rules then apply to him and the duty of justice holds. Now this contention is, indeed, sound enough. We can, if we like, explain obligations by invoking the duty of justice. It suffices to construe the requisite voluntary acts as acts by which our natural duties are freely extended. Although previously the scheme in question did not apply to us, and we had no duties in regard to it other than that of not seeking to undermine it, we have now by our deeds enlarged the bonds of natural duty. But it seems appropriate to distinguish between those institutions or aspects thereof which

8. I am indebted here to H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review*, vol. 64 (1955), pp. 185f.



must inevitably apply to us since we are born into them and they regulate the full scope of our activity, and those that apply to us because we have freely done certain things as a rational way of advancing our ends. Thus we have a natural duty to comply with the constitution, say, or with the basic laws regulating property (assuming them to be just), whereas we have an obligation to carry out the duties of an office that we have succeeded in winning, or to follow the rules of associations or activities that we have joined. Sometimes it is reasonable to weigh obligations and duties differently when they conflict precisely because they do not arise in the same way. In some cases at least, the fact that obligations are freely assumed is bound to affect their assessment when they conflict with other moral requirements. It is also true that the better-placed members of society are more likely than others to have political obligations as distinct from political duties. For by and large it is these persons who are best able to gain political office and to take advantage of the opportunities offered by the constitutional system. They are, therefore, bound even more tightly to the scheme of just institutions. To mark this fact, and to emphasize the manner in which many ties are freely assumed, it is useful to have the principle of fairness. This principle should enable us to give a more discriminating account of duty and obligation. The term "obligation" will be reserved, then, for moral requirements that derive from the principle of fairness, while other requirements are called "natural duties."

Since in later sections the principle of fairness is mentioned in connection with political affairs, I shall discuss here its relation to promises. Now the principle of fidelity is but a special case of the principle of fairness applied to the social practice of promising. The argument for this begins with the observation that promising is an action defined by a public system of rules. These rules are, as in the case of institutions generally, a set of constitutive conventions. Just as the rules of games do, they specify certain activities and define certain actions.<sup>9</sup> In the case of promising, the basic rule is that governing the use of the words "I promise to do X."

9. On constitutive rules, see J. R. Searle, *Speech Acts* (Cambridge, The University Press, 1969), pp. 33–42. Promising is discussed in ch. III, esp. pp. 57–62.

It reads roughly as follows: if one says the words "I promise to do X" in the appropriate circumstances, one is to do X, unless certain excusing conditions obtain. This rule we may think of as the rule of promising; it may be taken as representing the practice as a whole. It is not itself a moral principle but a constitutive convention. In this respect it is on a par with legal rules and statutes, and rules of games; as these do, it exists in a society when it is more or less regularly acted upon.

The way in which the rule of promising specifies the appropriate circumstances and excusing conditions determines whether the practice it represents is just. For example, in order to make a binding promise, one must be fully conscious, in a rational frame of mind, and know the meaning of the operative words, their use in making promises, and so on. Furthermore, these words must be spoken freely or voluntarily, when one is not subject to threats or coercion, and in situations where one has a reasonably fair bargaining position, so to speak. A person is not required to perform if the operative words are uttered while he is asleep, or suffering delusions, or if he was forced to promise, or if pertinent information was deceitfully withheld from him. In general, the circumstances giving rise to a promise and the excusing conditions must be defined so as to preserve the equal liberty of the parties and to make the practice a rational means whereby men can enter into and stabilize cooperative agreements for mutual advantage. Unavoidably the many complications here cannot be considered. It must suffice to remark that the principles of justice apply to the practice of promising in the same way that they apply to other institutions. Therefore the restrictions on the appropriate conditions are necessary in order to secure equal liberty. It would be wildly irrational in the original position to agree to be bound by words uttered while asleep, or extorted by force. No doubt it is so irrational that we are inclined to exclude this and other possibilities as inconsistent with the concept (meaning) of promising. However, I shall not regard promising as a practice which is just by definition, since this obscures the distinction between the rule of promising and the obligation derived from the principle of fairness. There are many variations of promising just as there are of the law of contract. Whether the particular practice as it is under-

stood by a person, or group of persons, is just remains to be determined by the principles of justice.

With these remarks as a background, we may introduce two definitions. First, a bona fide promise is one which arises in accordance with the rule of promising when the practice it represents is just. Once a person says the words "I promise to do X" in the appropriate circumstances as defined by a just practice, he has made a bona fide promise. Next, the principle of fidelity is the principle that bona fide promises are to be kept. It is essential, as noted above, to distinguish between the rule of promising and the principle of fidelity. The rule is simply a constitutive convention, whereas the principle of fidelity is a moral principle, a consequence of the principle of fairness. For suppose that a just practice of promising exists. Then in making a promise, that is, in saying the words "I promise to do X" in the appropriate circumstances, one knowingly invokes the rule and accepts the benefits of a just arrangement. There is no obligation to make a promise, let us assume; one is at liberty to do so or not. But since by hypothesis the practice is just, the principle of fairness applies and one is to do as the rule specifies, that is, one is to do X. The obligation to keep a promise is a consequence of the principle of fairness.

I have said that by making a promise one invokes a social practice and accepts the benefits that it makes possible. What are these benefits and how does the practice work? To answer this question, let us assume that the standard reason for making promises is to set up and to stabilize small-scale schemes of cooperation, or a particular pattern of transactions. The role of promises is analogous to that which Hobbes attributed to the sovereign. Just as the sovereign maintains and stabilizes the system of social cooperation by publicly maintaining an effective schedule of penalties, so men in the absence of coercive arrangements establish and stabilize their private ventures by giving one another their word. Such ventures are often hard to initiate and to maintain. This is especially evident in the case of covenants, that is, in those instances where one person is to perform before the other. For this person may believe that the second party will not do his part, and therefore the scheme never gets going. It is subject to instability of the second kind even though the person to perform later would in

fact carry through. Now in these situations there may be no way of assuring the party who is to perform first except by giving him a promise, that is, by putting oneself under an obligation to carry through later. Only in this way can the scheme be made secure so that both can gain from the benefits of their cooperation. The practice of promising exists for precisely this purpose; and so while we normally think of moral requirements as bonds laid upon us, they are sometimes deliberately self-imposed for our advantage. Thus promising is an act done with the public intention of deliberately incurring an obligation the existence of which in the circumstances will further one's ends. We want this obligation to exist and to be known to exist, and we want others to know that we recognize this tie and intend to abide by it. Having, then, availed ourselves of the practice for this reason, we are under an obligation to do as we promised by the principle of fairness.

In this account of how promising (or entering into covenants) is used to initiate and to stabilize forms of cooperation I have largely followed Prichard.<sup>10</sup> His discussion contains all the essential points. I have also assumed, as he does, that each person knows, or at least reasonably believes, that the other has a sense of justice and so a normally effective desire to carry out his bona fide obligations. Without this mutual confidence nothing is accomplished by uttering words. In a well-ordered society, however, this knowledge is present: when its members give promises there is a reciprocal recognition of their intention to put themselves under an obligation and a shared rational belief that this obligation is honored. It is this reciprocal recognition and common knowledge that enables an arrangement to get started and preserves it in being.

There is no need to comment further on the extent to which a common conception of justice (including the principles of fairness and natural duty), and the public awareness of men's willingness to act in accordance with it, are a great collective asset. I have already noted the many advantages from the standpoint of the assurance problem. It is now equally evident that, having trust

10. See H. A. Prichard, "The Obligation To Keep a Promise," (c. 1940) in *Moral Obligation* (Oxford, The Clarendon Press, 1949), pp. 169-179.

and confidence in one another, men can use their public acceptance of these principles enormously to extend the scope and value of mutually advantageous schemes of cooperation. From the standpoint of the original position, then, it is clearly rational for the parties to agree to the principle of fairness. This principle can be used to secure these ventures in ways consistent with freedom of choice and without unnecessarily multiplying moral requirements. At the same time, given the principle of fairness, we see why there should exist the practice of promising as a way of freely establishing an obligation when this is to the mutual advantage of both parties. Such an arrangement is obviously in the common interest. I shall suppose that these considerations are sufficient to argue for the principle of fairness.

Before taking up the question of political duty and obligation, I should note several further points. First of all, as the discussion of promises illustrates, the contract doctrine holds that no moral requirements follow from the existence of institutions alone. Even the rule of promising does not give rise to a moral obligation by itself. To account for fiduciary obligations we must take the principle of fairness as a premise. Thus along with most other ethical theories, justice as fairness holds that natural duties and obligations arise only in virtue of ethical principles. These principles are those that would be chosen in the original position. Together with the relevant facts of the circumstances at hand, it is these criteria that determine our obligations and duties, and single out what count as moral reasons. A (sound) moral reason is a fact which one or more of these principles identifies as supporting a judgment. The correct moral decision is the one most in line with the dictates of this system of principles when it is applied to all the facts it deems to be relevant. Thus the reason identified by one principle may be supported, overridden, or even canceled (brought to naught) by reasons identified by one or more other principles. I assume, though, that out of the totality of facts, presumably in some sense infinite, a finite or surveyable number are selected as those that bear upon any particular case so that the full system enables us to reach a judgment, all things considered.

By contrast, institutional requirements, and those deriving from social practices generally, can be ascertained from the existing

rules and how they are to be interpreted. For example, as citizens our legal duties and obligations are settled by what the law is, insofar as it can be ascertained. The norms applying to persons who are players in a game depend upon the rules of the game. Whether these requirements are connected with moral duties and obligations is a separate question. This is so even if the standards used by judges and others to interpret and to apply the law resemble the principles of right and justice, or are identical with them. It may be, for example, that in a well-ordered society the two principles of justice are used by courts to interpret those parts of the constitution regulating freedom of thought and conscience, and guaranteeing equal protection of the laws.<sup>11</sup> Although in this case it is clear that, should the law satisfy its own standards, we are morally bound, other things equal, to comply with it, the questions what the law demands and what justice requires are still distinct. The tendency to conflate the rule of promising and the principle of fidelity (as a special case arising from the principle of fairness) is particularly strong. At first sight they may seem to be the same thing; but one is defined by the existing constitutive conventions, while the other is explained by the principles that would be chosen in the original position. In this way, then, we can distinguish two kinds of norms. The terms "duty" and "obligation" are used in the context of both kinds; but the ambiguities stemming from this usage should be easy enough to resolve.

Finally, I should like to remark that the preceding account of the principle of fidelity answers a question posed by Prichard. He wondered how it is possible, without appealing to a prior general promise, or agreement to keep agreements, to explain the fact that by uttering certain words (by availing oneself of a convention) one becomes bound to do something, particularly when the action whereby one becomes bound is publicly performed with the very intention, which one wants others to recognize, of bringing about this obligation. Or as Prichard expressed it: what is the something implied in there being bona fide agreements which looks much like an agreement to keep agreements and yet which, strictly speaking, cannot be one (since no such agreement has

11. On this point, see Ronald Dworkin, "The Model of Rules," *University of Chicago Law Review*, vol. 35 (1967), esp. pp. 21-29.

been entered into)?<sup>12</sup> Now the existence of a just practice of promising as a system of public constitutive rules and the principle of fairness suffice for a theory of fiduciary obligations. And neither implies the existence of an actual prior agreement to keep agreements. The adoption of the principle of fairness is purely hypothetical; we only need the fact that this principle would be acknowledged. For the rest, once we assume that a just practice of promising obtains, however it may have come to be established, the principle of fairness is enough to bind those who take advantage of it, given the appropriate conditions already described. Thus what corresponds to the something, which to Prichard looked like a prior agreement but is not, is the just practice of giving one's word in conjunction with the hypothetical agreement on the principle of fairness. Of course, another ethical theory might derive this principle without using the conception of the original position. For the moment I need not maintain that fiduciary ties cannot be explained in some other way. Rather, what I am concerned to show is that even though justice as fairness uses the notion of an original agreement, it is still able to give a satisfactory answer to Prichard's question.

### 53. THE DUTY TO COMPLY WITH AN UNJUST LAW

There is quite clearly no difficulty in explaining why we are to comply with just laws enacted under a just constitution. In this case the principles of natural duty and the principle of fairness establish the requisite duties and obligations. Citizens generally are bound by the duty of justice, and those who have assumed favored offices and positions, or who have taken advantage of certain opportunities to further their interests, are in addition obligated to do their part by the principle of fairness. The real question is under which circumstances and to what extent we are bound to comply with unjust arrangements. Now it is sometimes said that we are never required to comply in these cases. But this is a mistake. The injustice of a law is not, in general, a sufficient reason for not adhering to it any more than the legal validity of

12. See "The Obligation To Keep a Promise," pp. 172, 178f.

legislation (as defined by the existing constitution) is a sufficient reason for going along with it. When the basic structure of society is reasonably just, as estimated by what the current state of things allows, we are to recognize unjust laws as binding provided that they do not exceed certain limits of injustice. In trying to discern these limits we approach the deeper problem of political duty and obligation. The difficulty here lies in part in the fact that there is a conflict of principles in these cases. Some principles counsel compliance while others direct us the other way. Thus the claims of political duty and obligation must be balanced by a conception of the appropriate priorities.

There is, however, a further problem. As we have seen, the principles of justice (in lexical order) belong to ideal theory (§39). The persons in the original position assume that the principles they acknowledge, whatever they are, will be strictly complied with and followed by everyone. Thus the principles of justice that result are those defining a perfectly just society, given favorable conditions. With the presumption of strict compliance, we arrive at a certain ideal conception. When we ask whether and under what circumstances unjust arrangements are to be tolerated, we are faced with a different sort of question. We must ascertain how the ideal conception of justice applies, if indeed it applies at all, to cases where rather than having to make adjustments to natural limitations, we are confronted with injustice. The discussion of these problems belongs to the partial compliance part of nonideal theory. It includes, among other things, the theory of punishment and compensatory justice, just war and conscientious objection, civil disobedience and militant resistance. These are among the central issues of political life, yet so far the conception of justice as fairness does not directly apply to them. Now I shall not attempt to discuss these matters in full generality. In fact, I shall take up but one fragment of partial compliance theory: namely, the problem of civil disobedience and conscientious refusal. And even here I shall assume that the context is one of a state of near justice, that is, one in which the basic structure of society is nearly just, making due allowance for what it is reasonable to expect in the circumstances. An understanding of this admittedly special case may help to clarify the more difficult problems. How-

ever, in order to consider civil disobedience and conscientious refusal, we must first discuss several points concerning political duty and obligation.

For one thing, it is evident that our duty or obligation to accept existing arrangements may sometimes be overridden. These requirements depend upon the principles of right, which may justify noncompliance in certain situations, all things considered. Whether noncompliance is justified depends on the extent to which laws and institutions are unjust. Unjust laws do not all stand on a par, and the same is true of policies and institutions. Now there are two ways in which injustice can arise: current arrangements may depart in varying degrees from publicly accepted standards that are more or less just; or these arrangements may conform to a society's conception of justice, or to the view of the dominant class, but this conception itself may be unreasonable, and in many cases clearly unjust. As we have seen, some conceptions of justice are more reasonable than others (see § 49). While the two principles of justice and the related principles of natural duty and obligation define the most reasonable view among those on the list, other principles are not unreasonable. Indeed, some mixed conceptions are certainly adequate enough for many purposes. As a rough rule a conception of justice is reasonable in proportion to the strength of the arguments that can be given for adopting it in the original position. This criterion is, of course, perfectly natural if the original position incorporates the various conditions which are to be imposed on the choice of principles and which lead to a match with our considered judgments.

Although it is easy enough to distinguish these two ways in which existing institutions can be unjust, a workable theory of how they affect our political duty and obligation is another matter. When laws and policies deviate from publicly recognized standards, an appeal to the society's sense of justice is presumably possible to some extent. I argue below that this condition is presupposed in undertaking civil disobedience. If, however, the prevailing conception of justice is not violated, then the situation is very different. The course of action to be followed depends largely on how reasonable the accepted doctrine is and what means are available to change it. Doubtless one can manage to live with a

variety of mixed and intuitionistic conceptions, and with utilitarian views when they are not too rigorously interpreted. In other cases, though, as when a society is regulated by principles favoring narrow class interests, one may have no recourse but to oppose the prevailing conception and the institutions it justifies in such ways as promise some success.

Secondly, we must consider the question why, in a situation of near justice anyway, we normally have a duty to comply with unjust, and not simply with just, laws. While some writers have questioned this contention, I believe that most would accept it; only a few think that any deviation from justice, however small, nullifies the duty to comply with existing rules. How, then, is this fact to be accounted for? Since the duty of justice and the principle of fairness presuppose that institutions are just, some further explanation is required.<sup>13</sup> Now one can answer this question if we postulate a nearly just society in which there exists a viable constitutional regime more or less satisfying the principles of justice. Thus I suppose that for the most part the social system is well-ordered, although not of course perfectly ordered, for in this event the question of whether to comply with unjust laws and policies would not arise. Under these assumptions, the earlier account of a just constitution as an instance of imperfect procedural justice (§ 31) provides an answer.

It will be recalled that in the constitutional convention the aim of the parties is to find among the just constitutions (those satisfying the principle of equal liberty) the one most likely to lead to just and effective legislation in view of the general facts about the society in question. The constitution is regarded as a just but imperfect procedure framed as far as the circumstances permit to insure a just outcome. It is imperfect because there is no feasible political process which guarantees that the laws enacted in accordance with it will be just. In political affairs perfect procedural justice cannot be achieved. Moreover, the constitutional

13. I did not note this fact in my essay "Legal Obligation and the Duty of Fair Play" in *Law and Philosophy*, ed. Sidney Hook (New York, New York University Press, 1964). In this section I have tried to make good this defect. The view argued for here is different, however, in that the natural duty of justice is the main principle of political duty for citizens generally, the principle of fairness having a secondary role.



process must rely, to a large degree, on some form of voting. I assume for simplicity that a variant of majority rule suitably circumscribed is a practical necessity. Yet majorities (or coalitions of minorities) are bound to make mistakes, if not from a lack of knowledge and judgment, then as a result of partial and self-interested views. Nevertheless, our natural duty to uphold just institutions binds us to comply with unjust laws and policies, or at least not to oppose them by illegal means as long as they do not exceed certain limits of injustice. Being required to support a just constitution, we must go along with one of its essential principles, that of majority rule. In a state of near justice, then, we normally have a duty to comply with unjust laws in virtue of our duty to support a just constitution. Given men as they are, there are many occasions when this duty will come into play.

The contract doctrine naturally leads us to wonder how we could ever consent to a constitutional rule that would require us to comply with laws that we think are unjust. One might ask: how is it possible that when we are free and still without chains, we can rationally accept a procedure that may decide against our own opinion and give effect to that of others?<sup>14</sup> Once we take up the point of view of the constitutional convention, the answer is clear enough. First, among the very limited number of feasible procedures that have any chance of being accepted at all, there are none that would always decide in our favor. And second, consenting to one of these procedures is surely preferable to no agreement at all. The situation is analogous to that of the original position where the parties give up any hope of free-rider egoism: this alternative is each person's best (or second best) candidate (leaving aside the constraint of generality), but it is obviously not acceptable to anyone else. Similarly, although at the stage of the constitutional convention the parties are now committed to the principles of justice, they must make some concession to one another to operate a constitutional regime. Even with the best of

14. The metaphor of being free and still without chains is from I. M. D. Little's review of K. J. Arrow, *Social Choice and Individual Values*, in *The Journal of Political Economy*, vol. 60 (1952), p. 431. My remarks here follow Little.

intentions, their opinions of justice are bound to clash. In choosing a constitution, then, and in adopting some form of majority rule, the parties accept the risks of suffering the defects of one another's knowledge and sense of justice in order to gain the advantages of an effective legislative procedure. There is no other way to manage a democratic regime.

Nevertheless, when they adopt the majority principle the parties agree to put up with unjust laws only on certain conditions. Roughly speaking, in the long run the burden of injustice should be more or less evenly distributed over different groups in society, and the hardship of unjust policies should not weigh too heavily in any particular case. Therefore the duty to comply is problematic for permanent minorities that have suffered from injustice for many years. And certainly we are not required to acquiesce in the denial of our own and others' basic liberties, since this requirement could not have been within the meaning of the duty of justice in the original position, nor consistent with the understanding of the rights of the majority in the constitutional convention. Instead, we submit our conduct to democratic authority only to the extent necessary to share equitably in the inevitable imperfections of a constitutional system. Accepting these hardships is simply recognizing and being willing to work within the limits imposed by the circumstances of human life. In view of this, we have a natural duty of civility not to invoke the faults of social arrangements as a too ready excuse for not complying with them, nor to exploit inevitable loopholes in the rules to advance our interests. The duty of civility imposes a due acceptance of the defects of institutions and a certain restraint in taking advantage of them. Without some recognition of this duty mutual trust and confidence are liable to break down. Thus in a state of near justice at least, there is normally a duty (and for some also the obligation) to comply with unjust laws provided that they do not exceed certain bounds of injustice. This conclusion is not much stronger than that asserting our duty to comply with just laws. It does, however, take us a step further, since it covers a wider range of situations; but more important, it gives some idea of the questions that are to be asked in ascertaining our political duty.

## 54. THE STATUS OF MAJORITY RULE

It is evident from the preceding remarks that the procedure of majority rule, however it is defined and circumscribed, has a subordinate place as a procedural device. The justification for it rests squarely on the political ends that the constitution is designed to achieve, and therefore on the two principles of justice. I have assumed that some form of majority rule is justified as the best available way of insuring just and effective legislation. It is compatible with equal liberty (§36) and possesses a certain naturalness; for if minority rule is allowed, there is no obvious criterion to select which one is to decide and equality is violated. A fundamental part of the majority principle is that the procedure should satisfy the conditions of background justice. In this case these conditions are those of political liberty—freedom of speech and assembly, freedom to take part in public affairs and to influence by constitutional means the course of legislation—and the guarantee of the fair value of these freedoms. When this background is absent, the first principle of justice is not satisfied; yet even when it is present, there is no assurance that just legislation will be enacted.<sup>15</sup>

There is nothing to the view, then, that what the majority wills is right. In fact, none of the traditional conceptions of justice have held this doctrine, maintaining always that the outcome of the voting is subject to political principles. Although in given circumstances it is justified that the majority (suitably defined and circumscribed) has the constitutional right to make law, this does not imply that the laws enacted are just. The dispute of substance about majority rule concerns how it is best defined and whether constitutional constraints are effective and reasonable devices for strengthening the overall balance of justice. These limitations may often be used by entrenched

15. For further discussion of majority rule see Herbert McCloskey, "The Fallacy of Majority Rule," *Journal of Politics*, vol. II (1949), and J. R. Pennock, *Liberal Democracy* (New York, Rinehart, 1950), pp. 112–114, 117f. For some of the attractive features of the majority principle from the standpoint of social choice, see A. K. Sen, *Collective Choice and Social Welfare* (San Francisco, Holden-Day, 1970), pp. 68–70, 71–73, 161–186. One problem with this procedure is that it may allow cyclical majorities. But the primary defect from the point of view of justice is that it permits the violation of liberty. Also see Sen, pp. 79–83, 87–89, where his paradox of liberalism is discussed.

minorities to preserve their illicit advantages. This question is one of political judgment and does not belong to the theory of justice. It suffices to note that while citizens normally submit their conduct to democratic authority, that is, recognize the outcome of a vote as establishing a binding rule, other things equal, they do not submit their judgment to it.

I now wish to take up the place of the principle of majority rule in the ideal procedure that forms a part of the theory of justice. A just constitution is defined as a constitution that would be agreed upon by rational delegates in a constitutional convention who are guided by the two principles of justice. When we justify a constitution, we present considerations to show that it would be adopted under these conditions. Similarly, just laws and policies are those that would be enacted by rational legislators at the legislative stage who are constrained by a just constitution and who are conscientiously trying to follow the principles of justice as their standard. When we criticize laws and policies we try to show that they would not be chosen under this ideal procedure. Now since even rational legislators would often reach different conclusions, there is a necessity for a vote under ideal conditions. The restrictions on information will not guarantee agreement, since the tendencies of the general social facts will often be ambiguous and difficult to assess.

A law or policy is sufficiently just, or at least not unjust, if when we try to imagine how the ideal procedure would work out, we conclude that most persons taking part in this procedure and carrying out its stipulations would favor that law or policy. In the ideal procedure, the decision reached is not a compromise, a bargain struck between opposing parties trying to advance their ends. The legislative discussion must be conceived not as a contest between interests, but as an attempt to find the best policy as defined by the principles of justice. I suppose, then, as part of the theory of justice, that an impartial legislator's only desire is to make the correct decision in this regard, given the general facts known to him. He is to vote solely according to his judgment. The outcome of the vote gives an estimate of what is most in line with the conception of justice.

If we ask how likely it is that the majority opinion will be



correct, it is evident that the ideal procedure bears a certain analogy to the statistical problem of pooling the views of a group of experts to arrive at a best judgment.<sup>16</sup> Here the experts are rational legislators able to take an objective perspective because they are impartial. The suggestion goes back to Condorcet that if the likelihood of a correct judgment on the part of the representative legislator is greater than that of an incorrect one, the probability that the majority vote is correct increases as the likelihood of a correct decision by the representative legislator increases.<sup>17</sup> Thus we might be tempted to suppose that if many rational persons were to try to simulate the conditions of the ideal procedure and conducted their reasoning and discussion accordingly, a large majority anyway would be almost certainly right. This would be a mistake. We must not only be sure that there is a greater chance of a correct than of an incorrect judgment on the part of the representative legislator, but it is also clear that the votes of different persons are not independent. Since their views will be influenced by the course of the discussion, the simpler sorts of probabilistic reasoning do not apply.

Nevertheless, we normally assume that an ideally conducted discussion among many persons is more likely to arrive at the correct conclusion (by a vote if necessary) than the deliberations of any one of them by himself. Why should this be so? In everyday life the exchange of opinion with others checks our partiality and widens our perspective; we are made to see things from their standpoint and the limits of our vision are brought home to us. But in the ideal process the veil of ignorance means that the legislators are already impartial. The benefits from discussion lie in the fact that even representative legislators are limited in knowledge and the ability to reason. No one of them knows everything the others know, or can make all the same inferences that they can draw in

16. On this point, see K. J. Arrow, *Social Choice and Individual Values*, 2nd ed. (New York, John Wiley and Sons, 1963), pp. 85f. For the notion of legislative discussion as an objective inquiry and not a contest between interests, see F. H. Knight, *The Ethics of Competition* (New York, Harper and Brothers, 1935), pp. 296, 345–347. In both cases see the footnotes.

17. See Duncan Black, *Theory of Committee and Elections*, 2nd ed. (Cambridge, The University Press, 1963), pp. 159–165.

concert. Discussion is a way of combining information and enlarging the range of arguments. At least in the course of time, the effects of common deliberation seem bound to improve matters.

Thus we arrive at the problem of trying to formulate an ideal constitution of public deliberation in matters of justice, a set of rules well-designed to bring to bear the greater knowledge and reasoning powers of the group so as best to approximate if not to reach the correct judgment. I shall not, however, pursue this question. The important point here is that the idealized procedure is part of the theory of justice. I have mentioned some of its features in order to elucidate to some degree what is meant by it. The more definite our conception of this procedure as it might be realized under favorable conditions, the more firm the guidance that the four-stage sequence gives to our reflections. For we then have a more precise idea of how laws and policies would be assessed in the light of general facts about society. Often we can make good intuitive sense of the question how deliberations at the legislative stage, when properly conducted, would turn out.

The ideal procedure is further clarified by noting that it stands in contrast to the ideal market process. Thus, granting that the classical assumptions for perfect competition hold, and that there are no external economies or diseconomies, and the like, an efficient economic configuration results. The ideal market is a perfect procedure with respect to efficiency. A peculiarity of the ideal market process, as distinct from the ideal political process conducted by rational and impartial legislators, is that the market achieves an efficient outcome even if everyone pursues his own advantage. Indeed, the presumption is that this is how economic agents normally behave. In buying and selling to maximize satisfaction or profits, households and firms are not giving a judgment as to what is from a social point of view the most efficient economic configuration, given the initial distribution of assets. Rather they are advancing their ends as the rules allow, and any judgment they make is from their own point of view. It is the system as a whole, so to speak, that makes the judgment of efficiency, this judgment being derived from the many separate sources of information provided by the activities of firms and households. The

system provides an answer, even though individuals have no opinion of this question, and often do not know what it means.

Thus despite certain resemblances between markets and elections, the ideal market process and the ideal legislative procedure are different in crucial respects. They are designed to achieve distinct ends, the first leading to efficiency, the latter if possible to justice. And while the ideal market is a perfect process with regard to its objective, even the ideal legislature is an imperfect procedure. There seems to be no way to characterize a feasible procedure guaranteed to lead to just legislation. One consequence of this fact is that whereas a citizen may be bound to comply with the policies enacted, other things equal, he is not required to think that these policies are just, and it would be mistaken of him to submit his judgment to the vote. But in a perfect market system, an economic agent, so far as he has any opinion at all, must suppose that the resulting outcome is indeed efficient. Although the household or firm has gotten everything that it wanted, it must concede that, given the initial distribution, an efficient situation has been attained. But the parallel recognition of the outcome of the legislative process concerning questions of justice cannot be demanded, for although, of course, actual constitutions should be designed as far as possible to make the same determinations as the ideal legislative procedure, they are bound in practice to fall short of what is just. This is not only because, as existing markets do, they fail to conform to their ideal counterpart, but also because this counterpart is that of an imperfect procedure. A just constitution must rely to some extent on citizens and legislators adopting a wider view and exercising good judgment in applying the principles of justice. There seems to be no way of allowing them to take a narrow or group-interested standpoint and then regulating the process so that it leads to a just outcome. So far at least there does not exist a theory of just constitutions as procedures leading to just legislation which corresponds to the theory of competitive markets as procedures resulting in efficiency. And this would seem to imply that the application of economic theory to the actual constitutional process has grave limitations insofar as political conduct is affected by men's sense of justice, as it must

be in any viable society, and just legislation is the primary social end (§76). Certainly economic theory does not fit the ideal procedure.<sup>18</sup>

These remarks are confirmed by a further contrast. In the ideal market process some weight is given to the relative intensity of desire. A person can spend a greater part of his income on things he wants more of and in this way, together with other buyers, he encourages the use of resources in ways he most prefers. The market allows for finely graded adjustments in answer to the overall balance of preferences and the relative dominance of certain wants. There is nothing corresponding to this in the ideal legislative procedure. Each rational legislator is to vote his opinion as to which laws and policies best conform to principles of justice. No special weight is or should be given to opinions that are held with greater confidence, or to the votes of those who let it be known that their being in the minority will cause them great displeasure (§37). Of course, such a voting rule is conceivable, but there are no grounds for adopting it in the ideal procedure. Even among rational and impartial persons, those with greater confidence in their opinion are not, it seems, more likely to be right. Some may be more sensitive to the complexities of the case than others. In defining the criterion for just legislation one should stress the weight of considered collective judgment arrived at when each person does his best under ideal conditions to apply the correct principles. The intensity of desire or the strength of conviction is irrelevant when questions of justice arise.

So much for several differences between the ideal legislative and the ideal market process. I now wish to note the use of the procedure of majority rule as a way of achieving a political settlement. As we have seen, majority rule is adopted as the most feasible way to realize certain ends antecedently defined by the

18. For the economic theory of democracy, see J. A. Schumpeter, *Capitalism, Socialism and Democracy*, 3rd ed. (New York, Harper and Brothers, 1950), chs. 21–23, and Anthony Downs, *An Economic Theory of Democracy* (New York, Harper and Brothers, 1957). The pluralist account of democracy, insofar as the rivalry between interests is believed to regulate the political process, is open to similar objection. See R. A. Dahl, *A Preface to Democratic Theory* (Chicago, University of Chicago Press, 1956), and more recently, *Pluralist Democracy in the United States* (Chicago, Rand McNally, 1967).

principles of justice. Sometimes however these principles are not clear or definite as to what they require. This is not always because the evidence is complicated and ambiguous, or difficult to survey and assess. The nature of the principles themselves may leave open a range of options rather than singling out any particular alternative. The rate of savings, for example, is specified only within certain limits; the main idea of the just savings principle is to exclude certain extremes. Eventually in applying the difference principle we wish to include in the prospects of the least advantaged the primary good of self-respect; and there are a variety of ways of taking account of this value consistent with the difference principle. How heavily this good and others related to it should count in the index is to be decided in view of the general features of the particular society and by what it is rational for its least favored members to want as seen from the legislative stage. In such cases as these, then, the principles of justice set up a certain range within which the rate of savings or the emphasis given to self-respect should lie. But they do not say where in this range the choice should fall.

Now for these situations the principle of political settlement applies: if the law actually voted is, so far as one can ascertain, within the range of those that could reasonably be favored by rational legislators conscientiously trying to follow the principles of justice, then the decision of the majority is practically authoritative, though not definitive. The situation is one of quasi-pure procedural justice. We must rely on the actual course of discussion at the legislative stage to select a policy within the allowed bounds. These cases are not instances of pure procedural justice because the outcome does not literally define the right result. It is simply that those who disagree with the decision made cannot convincingly establish their point within the framework of the public conception of justice. The question is one that cannot be sharply defined. In practice political parties will no doubt take different stands on these kinds of issues. The aim of constitutional design is to make sure, if possible, that the self-interest of social classes does not so distort the political settlement that it is made outside the permitted limits.

## 55. THE DEFINITION OF CIVIL DISOBEDIENCE

I now wish to illustrate the content of the principles of natural duty and obligation by sketching a theory of civil disobedience. As I have already indicated, this theory is designed only for the special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur. Since I assume that a state of near justice requires a democratic regime, the theory concerns the role and the appropriateness of civil disobedience to legitimately established democratic authority. It does not apply to the other forms of government nor, except incidentally, to other kinds of dissent or resistance. I shall not discuss this mode of protest, along with militant action and resistance, as a tactic for transforming or even overturning an unjust and corrupt system. There is no difficulty about such action in this case. If any means to this end are justified, then surely nonviolent opposition is justified. The problem of civil disobedience, as I shall interpret it, arises only within a more or less just democratic state for those citizens who recognize and accept the legitimacy of the constitution. The difficulty is one of a conflict of duties. At what point does the duty to comply with laws enacted by a legislative majority (or with executive acts supported by such a majority) cease to be binding in view of the right to defend one's liberties and the duty to oppose injustice? This question involves the nature and limits of majority rule. For this reason the problem of civil disobedience is a crucial test case for any theory of the moral basis of democracy.

A constitutional theory of civil disobedience has three parts. First, it defines this kind of dissent and separates it from other forms of opposition to democratic authority. These range from legal demonstrations and infractions of law designed to raise test cases before the courts to militant action and organized resistance. A theory specifies the place of civil disobedience in this spectrum of possibilities. Next, it sets out the grounds of civil disobedience and the conditions under which such action is justified in a (more or less) just democratic regime. And finally, a theory should explain the role of civil disobedience within a constitutional system and

account for the appropriateness of this mode of protest within a free society.

Before I take up these matters, a word of caution. We should not expect too much of a theory of civil disobedience, even one framed for special circumstances. Precise principles that straightway decide actual cases are clearly out of the question. Instead, a useful theory defines a perspective within which the problem of civil disobedience can be approached; it identifies the relevant considerations and helps us to assign them their correct weights in the more important instances. If a theory about these matters appears to us, on reflection, to have cleared our vision and to have made our considered judgments more coherent, then it has been worthwhile. The theory has done what, for the present, one may reasonably expect it to do: namely, to narrow the disparity between the conscientious convictions of those who accept the basic principles of a democratic society.

I shall begin by defining civil disobedience as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.<sup>19</sup> By acting in this way one addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected. A preliminary gloss on this definition is that it does not require that the civilly disobedient act breach the same law that is being protested.<sup>20</sup> It allows for what

19. Here I follow H. A. Bedau's definition of civil disobedience. See his "On Civil Disobedience," *Journal of Philosophy*, vol. 58 (1961), pp. 653-661. It should be noted that this definition is narrower than the meaning suggested by Thoreau's essay, as I note in the next section. A statement of a similar view is found in Martin Luther King's "Letter from Birmingham City Jail" (1963), reprinted in H. A. Bedau, ed., *Civil Disobedience* (New York, Pegasus, 1969), pp. 72-89. The theory of civil disobedience in the text tries to set this sort of conception into a wider framework. Some recent writers have also defined civil disobedience more broadly. For example, Howard Zinn, *Disobedience and Democracy* (New York, Random House, 1968), pp. 119f, defines it as "the deliberate, discriminate violation of law for a vital social purpose." I am concerned with a more restricted notion. I do not at all mean to say that only this form of dissent is ever justified in a democratic state.

20. This and the following gloss are from Marshall Cohen, "Civil Disobedience in a Constitutional Democracy," *The Massachusetts Review*, vol. 10 (1969), pp. 224-226, 218-221, respectively.

some have called indirect as well as direct civil disobedience. And this a definition should do, as there are sometimes strong reasons for not infringing on the law or policy held to be unjust. Instead, one may disobey traffic ordinances or laws of trespass as a way of presenting one's case. Thus, if the government enacts a vague and harsh statute against treason, it would not be appropriate to commit treason as a way of objecting to it, and in any event, the penalty might be far more than one should reasonably be ready to accept. In other cases there is no way to violate the government's policy directly, as when it concerns foreign affairs, or affects another part of the country. A second gloss is that the civilly disobedient act is indeed thought to be contrary to law, at least in the sense that those engaged in it are not simply presenting a test case for a constitutional decision; they are prepared to oppose the statute even if it should be upheld. To be sure, in a constitutional regime, the courts may finally side with the dissenters and declare the law or policy objected to unconstitutional. It often happens, then, that there is some uncertainty as to whether the dissenters' action will be held illegal or not. But this is merely a complicating element. Those who use civil disobedience to protest unjust laws are not prepared to desist should the courts eventually disagree with them, however pleased they might have been with the opposite decision.

It should also be noted that civil disobedience is a political act not only in the sense that it is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally. In justifying civil disobedience one does not appeal to principles of personal morality or to religious doctrines, though these may coincide with and support one's claims; and it goes without saying that civil disobedience cannot be grounded solely on group or self-interest. Instead one invokes the commonly shared conception of justice that underlies the political order. It is assumed that in a reasonably just democratic regime there is a public conception of justice by reference to which citizens regulate their political affairs and interpret the constitution. The persistent and deliberate violation of the basic principles of this conception over any extended period

of time, especially the infringement of the fundamental equal liberties, invites either submission or resistance. By engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority.

A further point is that civil disobedience is a public act. Not only is it addressed to public principles, it is done in public. It is engaged in openly with fair notice; it is not covert or secretive. One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum. For this reason, among others, civil disobedience is nonviolent. It tries to avoid the use of violence, especially against persons, not from the abhorrence of the use of force in principle, but because it is a final expression of one's case. To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act. Sometimes if the appeal fails in its purpose, forceful resistance may later be entertained. Yet civil disobedience is giving voice to conscientious and deeply held convictions; while it may warn and admonish, it is not itself a threat.

Civil disobedience is nonviolent for another reason. It expresses disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof.<sup>21</sup> The law is broken, but fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct.<sup>22</sup> This fidelity to law helps to establish to the majority that the act is

21. For a fuller discussion of this point, see Charles Fried, "Moral Causation," *Harvard Law Review*, vol. 77 (1964), pp. 1268f. For clarification below of the notion of militant action, I am indebted to Gerald Loew.

22. Those who define civil disobedience more broadly might not accept this description. See, for example, Zinn, *Disobedience and Democracy*, pp. 27-31, 39, 119f. Moreover he denies that civil disobedience need be nonviolent. Certainly one does not accept the punishment as right, that is, as deserved for an unjustified act. Rather one is willing to undergo the legal consequences for the sake of fidelity to law, which is a different matter. There is room for latitude here in that the definition allows that the charge may be contested in court, should this prove appropriate. But there comes a point beyond which dissent ceases to be civil disobedience as defined here.

indeed politically conscientious and sincere, and that it is intended to address the public's sense of justice. To be completely open and nonviolent is to give bond of one's sincerity, for it is not easy to convince another that one's acts are conscientious, or even to be sure of this before oneself. No doubt it is possible to imagine a legal system in which conscientious belief that the law is unjust is accepted as a defense for noncompliance. Men of great honesty with full confidence in one another might make such a system work. But as things are, such a scheme would presumably be unstable even in a state of near justice. We must pay a certain price to convince others that our actions have, in our carefully considered view, a sufficient moral basis in the political convictions of the community.

Civil disobedience has been defined so that it falls between legal protest and the raising of test cases on the one side, and conscientious refusal and the various forms of resistance on the other. In this range of possibilities it stands for that form of dissent at the boundary of fidelity to law. Civil disobedience, so understood, is clearly distinct from militant action and obstruction; it is far removed from organized forcible resistance. The militant, for example, is much more deeply opposed to the existing political system. He does not accept it as one which is nearly just or reasonably so; he believes either that it departs widely from its professed principles or that it pursues a mistaken conception of justice altogether. While his action is conscientious in its own terms, he does not appeal to the sense of justice of the majority (or those having effective political power), since he thinks that their sense of justice is erroneous, or else without effect. Instead, he seeks by well-framed militant acts of disruption and resistance, and the like, to attack the prevalent view of justice or to force a movement in the desired direction. Thus the militant may try to evade the penalty, since he is not prepared to accept the legal consequences of his violation of the law; this would not only be to play into the hands of forces that he believes cannot be trusted, but also to express a recognition of the legitimacy of the constitution to which he is opposed. In this sense militant action is not within the bounds of fidelity to law, but represents a more profound opposition to the legal order. The basic structure is thought to be so unjust or else to depart so widely from



its own professed ideals that one must try to prepare the way for radical or even revolutionary change. And this is to be done by trying to arouse the public to an awareness of the fundamental reforms that need to be made. Now in certain circumstances militant action and other kinds of resistance are surely justified. I shall not, however, consider these cases. As I have said, my aim here is the limited one of defining a concept of civil disobedience and understanding its role in a nearly just constitutional regime.

## 56. THE DEFINITION OF CONSCIENTIOUS REFUSAL

Although I have distinguished civil disobedience from conscientious refusal, I have yet to explain the latter notion. This will now be done. It must be recognized, however, that to separate these two ideas is to give a narrower definition to civil disobedience than is traditional; for it is customary to think of civil disobedience in a broader sense as any noncompliance with law for conscientious reasons, at least when it is not covert and does not involve the use of force. Thoreau's essay is characteristic, if not definitive, of the traditional meaning.<sup>23</sup> The usefulness of the narrower sense will, I believe, be clear once the definition of conscientious refusal is examined.

Conscientious refusal is noncompliance with a more or less direct legal injunction or administrative order. It is refusal since an order is addressed to us and, given the nature of the situation, whether we accede to it is known to the authorities. Typical examples are the refusal of the early Christians to perform certain acts of piety prescribed by the pagan state, and the refusal of the Jehovah's Witnesses to salute the flag. Other examples are the unwillingness of a pacifist to serve in the armed forces, or of a soldier to obey an order that he thinks is manifestly contrary to the moral law as it applies to war. Or again, in Thoreau's case, the refusal to pay a tax on the grounds that to do so would make him an agent of grave injustice to another. One's action is assumed to be

23. See Henry David Thoreau, "Civil Disobedience" (1848), reprinted in H. A. Bedau, ed., *Civil Disobedience*, pp. 27-48. For a critical discussion, see Bedau's remarks, pp. 15-26.

known to the authorities, however much one might wish, in some cases, to conceal it. Where it can be covert, one might speak of conscientious evasion rather than conscientious refusal. Covert infractions of a fugitive slave law are instances of conscientious evasion.<sup>24</sup>

There are several contrasts between conscientious refusal (or evasion) and civil disobedience. First of all, conscientious refusal is not a form of address appealing to the sense of justice of the majority. To be sure, such acts are not generally secretive or covert, as concealment is often impossible anyway. One simply refuses on conscientious grounds to obey a command or to comply with a legal injunction. One does not invoke the convictions of the community, and in this sense conscientious refusal is not an act in the public forum. Those ready to withhold obedience recognize that there may be no basis for mutual understanding; they do not seek out occasions for disobedience as a way to state their cause. Rather, they bide their time hoping that the necessity to disobey will not arise. They are less optimistic than those undertaking civil disobedience and they may entertain no expectation of changing laws or policies. The situation may allow no time for them to make their case, or again there may not be any chance that the majority will be receptive to their claims.

Conscientious refusal is not necessarily based on political principles; it may be founded on religious or other principles at variance with the constitutional order. Civil disobedience is an appeal to a commonly shared conception of justice, whereas conscientious refusal may have other grounds. For example, assuming that the early Christians would not justify their refusal to comply with the religious customs of the Empire by reasons of justice but simply as being contrary to their religious convictions, their argument would not be political; nor, with similar qualifications, are the views of a pacifist, assuming that wars of self-defense at least are recognized by the conception of justice that underlies a constitutional regime. Conscientious refusal may, however, be grounded on political principles. One may decline to go along with a law thinking that it is so unjust that complying with it is simply out of the question. This would be the case if, say, the law were to enjoin

24. For these distinctions I am indebted to Burton Dreben.

our being the agent of enslaving another, or to require us to submit to a similar fate. These are patent violations of recognized political principles.

It is a difficult matter to find the right course when some men appeal to religious principles in refusing to do actions which, it seems, are required by principles of political justice. Does the pacifist possess an immunity from military service in a just war, assuming that there are such wars? Or is the state permitted to impose certain hardships for noncompliance? There is a temptation to say that the law must always respect the dictates of conscience, but this cannot be right. As we have seen in the case of the intolerant, the legal order must regulate men's pursuit of their religious interests so as to realize the principle of equal liberty; and it may certainly forbid religious practices such as human sacrifice, to take an extreme case. Neither religiosity nor conscientiousness suffices to protect this practice. A theory of justice must work out from its own point of view how to treat those who dissent from it. The aim of a well-ordered society, or one in a state of near justice, is to preserve and strengthen the institutions of justice. If a religion is denied its full expression, it is presumably because it is in violation of the equal liberties of others. In general, the degree of tolerance accorded opposing moral conceptions depends upon the extent to which they can be allowed an equal place within a just system of liberty.

If pacifism is to be treated with respect and not merely tolerated, the explanation must be that it accords reasonably well with the principles of justice, the main exception arising from its attitude toward engaging in a just war (assuming here that in some situations wars of self-defense are justified). The political principles recognized by the community have a certain affinity with the doctrine the pacifist professes. There is a common abhorrence of war and the use of force, and a belief in the equal status of men as moral persons. And given the tendency of nations, particularly great powers, to engage in war unjustifiably and to set in motion the apparatus of the state to suppress dissent, the respect accorded to pacifism serves the purpose of alerting citizens to the wrongs that governments are prone to commit in their name. Even though his views are not altogether sound, the warnings and

protests that a pacifist is disposed to express may have the result that on balance the principles of justice are more rather than less secure. Pacifism as a natural departure from the correct doctrine conceivably compensates for the weakness of men in living up to their professions.

It should be noted that there is, of course, in actual situations no sharp distinction between civil disobedience and conscientious refusal. Moreover the same action (or sequence of actions) may have strong elements of both. While there are clear cases of each, the contrast between them is intended as a way of elucidating the interpretation of civil disobedience and its role in a democratic society. Given the nature of this way of acting as a special kind of political appeal, it is not usually justified until other steps have been taken within the legal framework. By contrast this requirement often fails in the obvious cases of legitimate conscientious refusal. In a free society no one may be compelled, as the early Christians were, to perform religious acts in violation of equal liberty, nor must a soldier comply with inherently evil commands while awaiting an appeal to higher authority. These remarks lead up to the question of justification.

## 57. THE JUSTIFICATION OF CIVIL DISOBEDIENCE

With these various distinctions in mind, I shall consider the circumstances under which civil disobedience is justified. For simplicity I shall limit the discussion to domestic institutions and so to injustices internal to a given society. The somewhat narrow nature of this restriction will be mitigated a bit by taking up the contrasting problem of conscientious refusal in connection with the moral law as it applies to war. I shall begin by setting out what seem to be reasonable conditions for engaging in civil disobedience, and then later connect these conditions more systematically with the place of civil disobedience in a state of near justice. Of course, the conditions enumerated should be taken as presumptions; no doubt there will be situations when they do not hold, and other arguments could be given for civil disobedience.

The first point concerns the kinds of wrongs that are appropri-



ate objects of civil disobedience. Now if one views such disobedience as a political act addressed to the sense of justice of the community, then it seems reasonable, other things equal, to limit it to instances of substantial and clear injustice, and preferably to those which obstruct the path to removing other injustices. For this reason there is a presumption in favor of restricting civil disobedience to serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity. Of course, it is not always easy to tell whether these principles are satisfied. Still, if we think of them as guaranteeing the basic liberties, it is often clear that these freedoms are not being honored. After all, they impose certain strict requirements that must be visibly expressed in institutions. Thus when certain minorities are denied the right to vote or to hold office, or to own property and to move from place to place, or when certain religious groups are repressed and others denied various opportunities, these injustices may be obvious to all. They are publicly incorporated into the recognized practice, if not the letter, of social arrangements. The establishment of these wrongs does not presuppose an informed examination of institutional effects.

By contrast infractions of the difference principle are more difficult to ascertain. There is usually a wide range of conflicting yet rational opinion as to whether this principle is satisfied. The reason for this is that it applies primarily to economic and social institutions and policies. A choice among these depends upon theoretical and speculative beliefs as well as upon a wealth of statistical and other information, all of this seasoned with shrewd judgment and plain hunch. In view of the complexities of these questions, it is difficult to check the influence of self-interest and prejudice; and even if we can do this in our own case, it is another matter to convince others of our good faith. Thus unless tax laws, for example, are clearly designed to attack or to abridge a basic equal liberty, they should not normally be protested by civil disobedience. The appeal to the public's conception of justice is not sufficiently clear. The resolution of these issues is best left to the political process provided that the requisite equal liberties are

secure. In this case a reasonable compromise can presumably be reached. The violation of the principle of equal liberty is, then, the more appropriate object of civil disobedience. This principle defines the common status of equal citizenship in a constitutional regime and lies at the basis of the political order. When it is fully honored the presumption is that other injustices, while possibly persistent and significant, will not get out of hand.

A further condition for civil disobedience is the following. We may suppose that the normal appeals to the political majority have already been made in good faith and that they have failed. The legal means of redress have proved of no avail. Thus, for example, the existing political parties have shown themselves indifferent to the claims of the minority or have proved unwilling to accommodate them. Attempts to have the laws repealed have been ignored and legal protests and demonstrations have had no success. Since civil disobedience is a last resort, we should be sure that it is necessary. Note that it has not been said, however, that legal means have been exhausted. At any rate, further normal appeals can be repeated; free speech is always possible. But if past actions have shown the majority immovable or apathetic, further attempts may reasonably be thought fruitless, and a second condition for justified civil disobedience is met. This condition is, however, a presumption. Some cases may be so extreme that there may be no duty to use first only legal means of political opposition. If, for example, the legislature were to enact some outrageous violation of equal liberty, say by forbidding the religion of a weak and defenseless minority, we surely could not expect that sect to oppose the law by normal political procedures. Indeed, even civil disobedience might be much too mild, the majority having already convicted itself of wantonly unjust and overtly hostile aims.

The third and last condition I shall discuss can be rather complicated. It arises from the fact that while the two preceding conditions are often sufficient to justify civil disobedience, this is not always the case. In certain circumstances the natural duty of justice may require a certain restraint. We can see this as follows. If a certain minority is justified in engaging in civil disobedience, then any other minority in relevantly similar circumstances is likewise justified. Using the two previous conditions as the criteria

of relevantly similar circumstances, we can say that, other things equal, two minorities are similarly justified in resorting to civil disobedience if they have suffered for the same length of time from the same degree of injustice and if their equally sincere and normal political appeals have likewise been to no avail. It is conceivable, however, even if it is unlikely, that there should be many groups with an equally sound case (in the sense just defined) for being civilly disobedient; but that, if they were all to act in this way, serious disorder would follow which might well undermine the efficacy of the just constitution. I assume here that there is a limit on the extent to which civil disobedience can be engaged in without leading to a breakdown in the respect for law and the constitution, thereby setting in motion consequences unfortunate for all. There is also an upper bound on the ability of the public forum to handle such forms of dissent; the appeal that civilly disobedient groups wish to make can be distorted and their intention to appeal to the sense of justice of the majority lost sight of. For one or both of these reasons, the effectiveness of civil disobedience as a form of protest declines beyond a certain point; and those contemplating it must consider these constraints.

The ideal solution from a theoretical point of view calls for a cooperative political alliance of the minorities to regulate the overall level of dissent. For consider the nature of the situation: there are many groups each equally entitled to engage in civil disobedience. Moreover they all wish to exercise this right, equally strong in each case; but if they all do so, lasting injury may result to the just constitution to which they each recognize a natural duty of justice. Now when there are many equally strong claims which if taken together exceed what can be granted, some fair plan should be adopted so that all are equitably considered. In simple cases of claims to goods that are indivisible and fixed in number, some rotation or lottery scheme may be the fair solution when the number of equally valid claims is too great.<sup>25</sup> But this

25. For a discussion of the conditions when some fair arrangement is called for, see Kurt Baier, *The Moral Point of View* (Ithaca, N.Y., Cornell University Press, 1958), pp. 207–213; and David Lyons, *Forms and Limits of Utilitarianism* (Oxford, The Clarendon Press, 1965), pp. 160–176. Lyons gives an example of a fair rotation scheme and he also observes that (waiving costs of setting them

sort of device is completely unrealistic here. What seems called for is a political understanding among the minorities suffering from injustice. They can meet their duty to democratic institutions by coordinating their actions so that while each has an opportunity to exercise its right, the limits on the degree of civil disobedience are not exceeded. To be sure, an alliance of this sort is difficult to arrange; but with perceptive leadership, it does not appear impossible.

Certainly the situation envisaged is a special one, and it is quite possible that these sorts of considerations will not be a bar to justified civil disobedience. There are not likely to be many groups similarly entitled to engage in this form of dissent while at the same time recognizing a duty to a just constitution. One should note, however, that an injured minority is tempted to believe its claims as strong as those of any other; and therefore even if the reasons that different groups have for engaging in civil disobedience are not equally compelling, it is often wise to presume that their claims are indistinguishable. Adopting this maxim, the circumstance imagined seems more likely to happen. This kind of case is also instructive in showing that the exercise of the right to dissent, like the exercise of rights generally, is sometimes limited by others having the very same right. Everyone's exercising this right would have deleterious consequences for all, and some equitable plan is called for.

Suppose that in the light of the three conditions, one has a right to appeal one's case by civil disobedience. The injustice one protests is a clear violation of the liberties of equal citizenship, or of equality of opportunity, this violation having been more or less deliberate over an extended period of time in the face of normal political opposition, and any complications raised by the question of fairness are met. These conditions are not exhaustive; some allowance still has to be made for the possibility of injury to third parties, to the innocent, so to speak. But I assume that they cover

up) such fair procedures may be reasonably efficient. See pp. 169–171. I accept the conclusions of his account, including his contention that the notion of fairness cannot be explained by assimilating it to utility, pp. 176f. The earlier discussion by C. D. Broad, "On the Function of False Hypotheses in Ethics," *International Journal of Ethics*, vol. 26 (1916), esp. pp. 385–390, should also be noted here.

the main points. There is still, of course, the question whether it is wise or prudent to exercise this right. Having established the right, one is now free, as one is not before, to let these matters decide the issue. We may be acting within our rights but nevertheless unwisely if our conduct only serves to provoke the harsh retaliation of the majority. To be sure, in a state of near justice, vindictive repression of legitimate dissent is unlikely, but it is important that the action be properly designed to make an effective appeal to the wider community. Since civil disobedience is a mode of address taking place in the public forum, care must be taken to see that it is understood. Thus the exercise of the right to civil disobedience should, like any other right, be rationally framed to advance one's ends or the ends of those one wishes to assist. The theory of justice has nothing specific to say about these practical considerations. In any event questions of strategy and tactics depend upon the circumstances of each case. But the theory of justice should say at what point these matters are properly raised.

Now in this account of the justification of civil disobedience I have not mentioned the principle of fairness. The natural duty of justice is the primary basis of our political ties to a constitutional regime. As we noted before (§52), only the more favored members of society are likely to have a clear political obligation as opposed to a political duty. They are better situated to win public office and find it easier to take advantage of the political system. And having done so, they have acquired an obligation owed to citizens generally to uphold the just constitution. But members of subjected minorities, say, who have a strong case for civil disobedience will not generally have a political obligation of this sort. This does not mean, however, that the principle of fairness will not give rise to important obligations in their case.<sup>26</sup> For not only do many of the requirements of private life derive from this principle, but it comes into force when persons or groups come together for common political purposes. Just as we acquire obligations to others with whom we have joined in various private

26. For a discussion of these obligations, see Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, Harvard University Press, 1970), ch. III.

associations, those who engage in political action assume obligatory ties to one another. Thus while the political obligation of dissenters to citizens generally is problematical, bonds of loyalty and fidelity still develop between them as they seek to advance their cause. In general, free association under a just constitution gives rise to obligations provided that the ends of the group are legitimate and its arrangements fair. This is as true of political as it is of other associations. These obligations are of immense significance and they constrain in many ways what individuals can do. But they are distinct from an obligation to comply with a just constitution. My discussion of civil disobedience is in terms of the duty of justice alone; a fuller view would note the place of these other requirements.

## 58. THE JUSTIFICATION OF CONSCIENTIOUS REFUSAL

In examining the justification of civil disobedience I assumed for simplicity that the laws and policies protested concerned domestic affairs. It is natural to ask how the theory of political duty applies to foreign policy. Now in order to do this it is necessary to extend the theory of justice to the law of nations. I shall try to indicate how this can be done. To fix ideas I shall consider briefly the justification of conscientious refusal to engage in certain acts of war, or to serve in the armed forces. I assume that this refusal is based upon political and not upon religious or other principles; that is, the principles cited by way of justification are those of the conception of justice underlying the constitution. Our problem, then, is to relate the just political principles regulating the conduct of states to the contract doctrine and to explain the moral basis of the law of nations from this point of view.

Let us assume that we have already derived the principles of justice as these apply to societies as units and to the basic structure. Imagine also that the various principles of natural duty and of obligation that apply to individuals have been adopted. Thus the persons in the original position have agreed to the principles

of right as these apply to their own society and to themselves as members of it. Now at this point one may extend the interpretation of the original position and think of the parties as representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states. Following out the conception of the initial situation, I assume that these representatives are deprived of various kinds of information. While they know that they represent different nations each living under the normal circumstances of human life, they know nothing about the particular circumstances of their own society, its power and strength in comparison with other nations, nor do they know their place in their own society. Once again the contracting parties, in this case representatives of states, are allowed only enough knowledge to make a rational choice to protect their interests but not so much that the more fortunate among them can take advantage of their special situation. This original position is fair between nations; it nullifies the contingencies and biases of historical fate. Justice between states is determined by the principles that would be chosen in the original position so interpreted. These principles are political principles, for they govern public policies toward other nations.

I can give only an indication of the principles that would be acknowledged. But, in any case, there would be no surprises, since the principles chosen would, I think, be familiar ones.<sup>27</sup> The basic principle of the law of nations is a principle of equality. Independent peoples organized as states have certain fundamental equal rights. This principle is analogous to the equal rights of citizens in a constitutional regime. One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers. Another consequence is the right of self-defense against attack, including the right to form defensive alliances to protect this right. A further principle is that treaties are to be kept, provided they are consistent with the other principles governing the relations of states. Thus treaties for self-defense, suitably

27. See J. L. Brierly, *The Law of Nations*, 6th ed. (Oxford, The Clarendon Press, 1963), esp. chs. IV-V. This work contains all that we need here.

interpreted, would be binding, but agreements to cooperate in an unjustified attack are void *ab initio*.

These principles define when a nation has a just cause in war or, in the traditional phrase, its *jus ad bellum*. But there are also principles regulating the means that a nation may use to wage war, its *jus in bello*.<sup>28</sup> Even in a just war certain forms of violence are strictly inadmissible; and where a country's right to war is questionable and uncertain, the constraints on the means it can use are all the more severe. Acts permissible in a war of legitimate self-defense, when these are necessary, may be flatly excluded in a more doubtful situation. The aim of war is a just peace, and therefore the means employed must not destroy the possibility of peace or encourage a contempt for human life that puts the safety of ourselves and of mankind in jeopardy. The conduct of war is to be constrained and adjusted to this end. The representatives of states would recognize that their national interest, as seen from the original position, is best served by acknowledging these limits on the means of war. This is because the national interest of a just state is defined by the principles of justice that have already been acknowledged. Therefore such a nation will aim above all to maintain and to preserve its just institutions and the conditions that make them possible. It is not moved by the desire for world power or national glory; nor does it wage war for purposes of economic gain or the acquisition of territory. These ends are contrary to the conception of justice that defines a society's legitimate interest, however prevalent they have been in the actual conduct of states. Granting these presumptions, then, it seems reasonable to suppose that the traditional prohibitions incorporating the natural duties that protect human life would be chosen.

Now if conscientious refusal in time of war appeals to these principles, it is founded upon a political conception, and not necessarily upon religious or other notions. While this form of denial may not be a political act, since it does not take place in the public forum, it is based upon the same theory of justice that

28. For a recent discussion, see Paul Ramsey, *War and the Christian Conscience* (Durham, N.C., The Duke University Press, 1961); and also R. B. Potter, *War and Moral Discourse* (Richmond, Va., John Knox Press, 1969). The latter contains a useful bibliographical essay, pp. 87-123.

underlies the constitution and guides its interpretation. Moreover, the legal order itself presumably recognizes in the form of treaties the validity of at least some of these principles of the law of nations. Therefore if a soldier is ordered to engage in certain illicit acts of war, he may refuse if he reasonably and conscientiously believes that the principles applying to the conduct of war are plainly violated. He can maintain that, all things considered, his natural duty not to be made the agent of grave injustice and evil to another outweighs his duty to obey. I cannot discuss here what constitutes a manifest violation of these principles. It must suffice to note that certain clear cases are perfectly familiar. The essential point is that the justification cites political principles that can be accounted for by the contract doctrine. The theory of justice can be developed, I believe, to cover this case.

A somewhat different question is whether one should join the armed forces at all during some particular war. The answer is likely to depend upon the aim of the war as well as upon its conduct. In order to make the situation definite, let us suppose that conscription is in force and that the individual has to consider whether to comply with his legal duty to enter military service. Now I shall assume that since conscription is a drastic interference with the basic liberties of equal citizenship, it cannot be justified by any needs less compelling than those of national security.<sup>29</sup> In a well-ordered society (or in one nearly just) these needs are determined by the end of preserving just institutions. Conscription is permissible only if it is demanded for the defense of liberty itself, including here not only the liberties of the citizens of the society in question, but also those of persons in other societies as well. Therefore if a conscript army is less likely to be an instrument of unjustified foreign adventures, it may be justified on this basis alone despite the fact that conscription infringes upon the equal liberties of citizens. But in any case, the priority of liberty (assuming serial order to obtain) requires that conscription be used only as the security of liberty necessitates. Viewed from the standpoint of the legislature (the appropriate stage for this question), the mechanism of the draft can be defended only

29. I am indebted to R. G. Albritton for clarification on this and other matters in this paragraph.

on this ground. Citizens agree to this arrangement as a fair way of sharing in the burdens of national defense. To be sure, the hazards that any particular individual must face are in part the result of accident and historical happenstance. But in a well-ordered society anyway, these evils arise externally, that is, from unjustified attacks from the outside. It is impossible for just institutions to eliminate these hardships entirely. The most that they can do is to try to make sure that the risks of suffering from these imposed misfortunes are more or less evenly shared by all members of society over the course of their life, and that there is no avoidable class bias in selecting those who are called for duty.

Imagine, then, a democratic society in which conscription exists. A person may conscientiously refuse to comply with his duty to enter the armed forces during a particular war on the ground that the aims of the conflict are unjust. It may be that the objective sought by war is economic advantage or national power. The basic liberty of citizens cannot be interfered with to achieve these ends. And, of course, it is unjust and contrary to the law of nations to attack the liberty of other societies for these reasons. Therefore a just cause for war does not exist, and this may be sufficiently evident that a citizen is justified in refusing to discharge his legal duty. Both the law of nations and the principles of justice for his own society uphold him in this claim. There is sometimes a further ground for refusal based not on the aim of the war but upon its conduct. A citizen may maintain that once it is clear that the moral law of war is being regularly violated, he has a right to decline military service on the ground that he is entitled to insure that he honors his natural duty. Once he is in the armed forces, and in a situation where he finds himself ordered to do acts contrary to the moral law of war, he may not be able to resist the demand to obey. Actually, if the aims of the conflict are sufficiently dubious and the likelihood of receiving flagrantly unjust commands is sufficiently great, one may have a duty and not only a right to refuse. Indeed, the conduct and aims of states in waging war, especially large and powerful ones, are in some circumstances so likely to be unjust that one is forced to conclude that in the foreseeable future one must abjure military service altogether. So understood a form of contingent pacifism may be a perfectly



reasonable position: the possibility of a just war is conceded but not under present circumstances.<sup>30</sup>

What is needed, then, is not a general pacifism but a discriminating conscientious refusal to engage in war in certain circumstances. States have not been loath to recognize pacifism and to grant it a special status. The refusal to take part in all war under any conditions is an unworldly view bound to remain a sectarian doctrine. It no more challenges the state's authority than the celibacy of priests challenges the sanctity of marriage.<sup>31</sup> By exempting pacifists from its prescriptions the state may even seem to display a certain magnanimity. But conscientious refusal based upon the principles of justice between peoples as they apply to particular conflicts is another matter. For such refusal is an affront to the government's pretensions, and when it becomes widespread, the continuation of an unjust war may prove impossible. Given the often predatory aims of state power, and the tendency of men to defer to their government's decision to wage war, a general willingness to resist the state's claims is all the more necessary.

## 59. THE ROLE OF CIVIL DISOBEDIENCE

The third aim of a theory of civil disobedience is to explain its role within a constitutional system and to account for its connection with a democratic polity. As always, I assume that the society in question is one that is nearly just; and this implies that it has some form of democratic government, although serious injustices may nevertheless exist. In such a society I assume that the principles of justice are for the most part publicly recognized as the fundamental terms of willing cooperation among free and equal persons. By engaging in civil disobedience one intends, then, to address the sense of justice of the majority and to serve fair notice that in one's sincere and considered opinion the conditions of

30. See *Nuclear Weapons and Christian Conscience*, ed. Walter Stein (London, The Merlin Press, 1965), for a presentation of this sort of doctrine in connection with nuclear war.

31. I borrow this point from Walzer, *Obligations*, p. 127.

free cooperation are being violated. We are appealing to others to reconsider, to put themselves in our position, and to recognize that they cannot expect us to acquiesce indefinitely in the terms they impose upon us.

Now the force of this appeal depends upon the democratic conception of society as a system of cooperation among equal persons. If one thinks of society in another way, this form of protest may be out of place. For example, if the basic law is thought to reflect the order of nature and if the sovereign is held to govern by divine right as God's chosen lieutenant, then his subjects have only the right of suppliants. They can plead their cause but they cannot disobey should their appeal be denied. To do this would be to rebel against the final legitimate moral (and not simply legal) authority. This is not to say that the sovereign cannot be in error but only that the situation is not one for his subjects to correct. But once society is interpreted as a scheme of cooperation among equals, those injured by serious injustice need not submit. Indeed, civil disobedience (and conscientious refusal as well) is one of the stabilizing devices of a constitutional system, although by definition an illegal one. Along with such things as free and regular elections and an independent judiciary empowered to interpret the constitution (not necessarily written), civil disobedience used with due restraint and sound judgment helps to maintain and strengthen just institutions. By resisting injustice within the limits of fidelity to law, it serves to inhibit departures from justice and to correct them when they occur. A general disposition to engage in justified civil disobedience introduces stability into a well-ordered society, or one that is nearly just.

It is necessary to look at this doctrine from the standpoint of the persons in the original position. There are two related problems which they must consider. The first is that, having chosen principles for individuals, they must work out guidelines for assessing the strength of the natural duties and obligations, and, in particular, the strength of the duty to comply with a just constitution and one of its basic procedures, that of majority rule. The second problem is that of finding reasonable principles for dealing with unjust situations, or with circumstances in which the compliance with just principles is only partial. Now it seems that,

given the assumptions characterizing a nearly just society, the parties would agree to the presumptions (previously discussed) that specify when civil disobedience is justified. They would acknowledge these criteria as spelling out when this form of dissent is appropriate. Doing this would indicate the weight of the natural duty of justice in one important special case. It would also tend to enhance the realization of justice throughout the society by strengthening men's self-esteem as well as their respect for one another. As the contract doctrine emphasizes, the principles of justice are the principles of willing cooperation among equals. To deny justice to another is either to refuse to recognize him as an equal (one in regard to whom we are prepared to constrain our actions by principles that we would choose in a situation of equality that is fair), or to manifest a willingness to exploit the contingencies of natural fortune and happenstance for our own advantage. In either case deliberate injustice invites submission or resistance. Submission arouses the contempt of those who perpetuate injustice and confirms their intention, whereas resistance cuts the ties of community. If after a decent period of time to allow for reasonable political appeals in the normal way, citizens were to dissent by civil disobedience when infractions of the basic liberties occurred, these liberties would, it seems, be more rather than less secure. For these reasons, then, the parties would adopt the conditions defining justified civil disobedience as a way of setting up, within the limits of fidelity to law, a final device to maintain the stability of a just constitution. Although this mode of action is strictly speaking contrary to law, it is nevertheless a morally correct way of maintaining a constitutional regime.

In a fuller account the same kind of explanation could presumably be given for the justifying conditions of conscientious refusal (again assuming the context of a nearly just state). I shall not, however, discuss these conditions here. I should like to emphasize instead that the constitutional theory of civil disobedience rests solely upon a conception of justice. Even the features of publicity and nonviolence are explained on this basis. And the same is true of the account of conscientious refusal, although it requires a further elaboration of the contract doctrine. At no point has a reference been made to other than political principles; religious

or pacifist conceptions are not essential. While those engaging in civil disobedience have often been moved by convictions of this kind, there is no necessary connection between them and civil disobedience. For this form of political action can be understood as a way of addressing the sense of justice of the community, an invocation of the recognized principles of cooperation among equals. Being an appeal to the moral basis of civic life, it is a political and not a religious act. It relies upon common sense principles of justice that men can require one another to follow and not upon the affirmations of religious faith and love which they cannot demand that everyone accept. I do not mean, of course, that nonpolitical conceptions have no validity. They may, in fact, confirm our judgment and support our acting in ways known on other grounds to be just. Nevertheless, it is not these principles but the principles of justice, the fundamental terms of social cooperation between free and equal persons, that underlie the constitution. Civil disobedience as defined does not require a sectarian foundation but is derived from the public conception of justice that characterizes a democratic society. So understood a conception of civil disobedience is part of the theory of free government.

One distinction between medieval and modern constitutionalism is that in the former the supremacy of law was not secured by established institutional controls. The check to the ruler who in his judgments and edicts opposed the sense of justice of the community was limited for the most part to the right of resistance by the whole society, or any part. Even this right seems not to have been interpreted as a corporate act; an unjust king was simply put aside.<sup>32</sup> Thus the Middle Ages lacked the basic ideas of modern constitutional government, the idea of the sovereign people who have final authority and the institutionalizing of this authority by means of elections and parliaments, and other constitutional forms. Now in much the same way that the modern conception of constitutional government builds upon the medieval, the theory of civil disobedience supplements the purely legal conception of constitutional democracy. It attempts to formulate the grounds upon which legitimate democratic authority may be dis-

32. See J. H. Franklin, ed., *Constitutionalism and Resistance in the Sixteenth Century* (New York, Pegasus, 1969), in the introduction, pp. 11-15.



sented from in ways that while admittedly contrary to law nevertheless express a fidelity to law and appeal to the fundamental political principles of a democratic regime. Thus to the legal forms of constitutionalism one may adjoin certain modes of illegal protest that do not violate the aims of a democratic constitution in view of the principles by which such dissent is guided. I have tried to show how these principles can be accounted for by the contract doctrine.

Some may object to this theory of civil disobedience that it is unrealistic. It presupposes that the majority has a sense of justice, and one might reply that moral sentiments are not a significant political force. What moves men are various interests, the desires for power, prestige, wealth, and the like. Although they are clever at producing moral arguments to support their claims, between one situation and another their opinions do not fit into a coherent conception of justice. Rather their views at any given time are occasional pieces calculated to advance certain interests. Unquestionably there is much truth in this contention, and in some societies it is more true than in others. But the essential question is the relative strength of the tendencies that oppose the sense of justice and whether the latter is ever strong enough so that it can be invoked to some significant effect.

A few comments may make the account presented more plausible. First of all, I have assumed throughout that we have to do with a nearly just society. This implies that there exists a constitutional regime and a publicly recognized conception of justice. Of course, in any particular situation certain individuals and groups may be tempted to violate its principles but the collective sentiment in their behalf has considerable strength when properly addressed. These principles are affirmed as the necessary terms of cooperation between free and equal persons. If those who perpetrate injustice can be clearly identified and isolated from the larger community, the convictions of the greater part of society may be of sufficient weight. Or if the contending parties are roughly equal, the sentiment of justice of those not engaged can be the deciding factor. In any case, should circumstances of this kind not obtain, the wisdom of civil disobedience is highly problematic. For unless one can appeal to the sense of justice of the

larger society, the majority may simply be aroused to more repressive measures if the calculation of advantages points in this direction. Courts should take into account the civilly disobedient nature of the protester's act, and the fact that it is justifiable (or may seem so) by the political principles underlying the constitution, and on these grounds reduce and in some cases suspend the legal sanction.<sup>33</sup> Yet quite the opposite may happen when the necessary background is lacking. We have to recognize then that justifiable civil disobedience is normally a reasonable and effective form of dissent only in a society regulated to some considerable degree by a sense of justice.

There may be some misapprehension about the manner in which the sense of justice is said to work. One may think that this sentiment expresses itself in sincere professions of principle and in actions requiring a considerable degree of self-sacrifice. But this supposition asks too much. A community's sense of justice is more likely to be revealed in the fact that the majority cannot bring itself to take the steps necessary to suppress the minority and to punish acts of civil disobedience as the law allows. Ruthless tactics that might be contemplated in other societies are not entertained as real alternatives. Thus the sense of justice affects, in ways we are often unaware of, our interpretation of political life, our perception of the possible courses of action, our will to resist the justified protests of others, and so on. In spite of its superior power, the majority may abandon its position and acquiesce in the proposals of the dissenters; its desire to give justice weakens its capacity to defend its unjust advantages. The sentiment of justice will be seen as a more vital political force once the subtle forms in which it exerts its influence are recognized, and in particular its role in rendering certain social positions indefensible.

In these remarks I have assumed that in a nearly just society there is a public acceptance of the same principles of justice. Fortunately this assumption is stronger than necessary. There can, in fact, be considerable differences in citizens' conceptions of justice provided that these conceptions lead to similar political judgments. And this is possible, since different premises can yield the

33. For a general discussion, see Ronald Dworkin, "On Not Prosecuting Civil Disobedience," *The New York Review of Books*, June 6, 1968.

same conclusion. In this case there exists what we may refer to as overlapping rather than strict consensus. In general, the overlapping of professed conceptions of justice suffices for civil disobedience to be a reasonable and prudent form of political dissent. Of course, this overlapping need not be perfect; it is enough that a condition of reciprocity is satisfied. Both sides must believe that however much their conceptions of justice differ, their views support the same judgment in the situation at hand, and would do so even should their respective positions be interchanged. Eventually, though, there comes a point beyond which the requisite agreement in judgment breaks down and society splits into more or less distinct parts that hold diverse opinions on fundamental political questions. In this case of strictly partitioned consensus, the basis for civil disobedience no longer obtains. For example, suppose those who do not believe in toleration, and who would not tolerate others had they the power, wish to protest their lesser liberty by appealing to the sense of justice of the majority which holds the principle of equal liberty. While those who accept this principle should, as we have seen, tolerate the intolerant as far as the safety of free institutions permits, they are likely to resent being reminded of this duty by the intolerant who would, if positions were switched, establish their own dominion. The majority is bound to feel that their allegiance to equal liberty is being exploited by others for unjust ends. This situation illustrates once again the fact that a common sense of justice is a great collective asset which requires the cooperation of many to maintain. The intolerant can be viewed as free-riders, as persons who seek the advantages of just institutions while not doing their share to uphold them. Although those who acknowledge the principles of justice should always be guided by them, in a fragmented society as well as in one moved by group egoisms, the conditions for civil disobedience do not exist. Still, it is not necessary to have strict consensus, for often a degree of overlapping consensus allows the reciprocity condition to be fulfilled.

There are, to be sure, definite risks in the resort to civil disobedience. One reason for constitutional forms and their judicial interpretation is to establish a public reading of the political conception of justice and an explanation of the application of its

principles to social questions. Up to a certain point it is better that the law and its interpretation be settled than that it be settled rightly. Therefore it may be protested that the preceding account does not determine who is to say when circumstances are such as to justify civil disobedience. It invites anarchy by encouraging everyone to decide for himself, and to abandon the public rendering of political principles. The reply to this is that each person must indeed make his own decision. Even though men normally seek advice and counsel, and accept the injunctions of those in authority when these seem reasonable to them, they are always accountable for their deeds. We cannot divest ourselves of our responsibility and transfer the burden of blame to others. This is true on any theory of political duty and obligation that is compatible with the principles of a democratic constitution. The citizen is autonomous yet he is held responsible for what he does (§78). If we ordinarily think that we should comply with the law, this is because our political principles normally lead to this conclusion. Certainly in a state of near justice there is a presumption in favor of compliance in the absence of strong reasons to the contrary. The many free and reasoned decisions of individuals fit together into an orderly political regime.

But while each person must decide for himself whether the circumstances justify civil disobedience, it does not follow that one is to decide as one pleases. It is not by looking to our personal interests, or to our political allegiances narrowly construed, that we should make up our minds. To act autonomously and responsibly a citizen must look to the political principles that underlie and guide the interpretation of the constitution. He must try to assess how these principles should be applied in the existing circumstances. If he comes to the conclusion after due consideration that civil disobedience is justified and conducts himself accordingly, he acts conscientiously. And though he may be mistaken, he has not done as he pleased. The theory of political duty and obligation enables us to draw these distinctions.

There are parallels with the common understandings and conclusions reached in the sciences. Here, too, everyone is autonomous yet responsible. We are to assess theories and hypotheses in the light of the evidence by publicly recognized principles. It is true

that there are authoritative works, but these sum up the consensus of many persons each deciding for himself. The absence of a final authority to decide, and so of an official interpretation that all must accept, does not lead to confusion, but is rather a condition of theoretical advance. Equals accepting and applying reasonable principles need have no established superior. To the question, who is to decide? The answer is: all are to decide, everyone taking counsel with himself, and with reasonableness, comity, and good fortune, it often works out well enough.

In a democratic society, then, it is recognized that each citizen is responsible for his interpretation of the principles of justice and for his conduct in the light of them. There can be no legal or socially approved rendering of these principles that we are always morally bound to accept, not even when it is given by a supreme court or legislature. Indeed each constitutional agency, the legislature, the executive, and the court, puts forward its interpretation of the constitution and the political ideals that inform it.<sup>34</sup> Although the court may have the last say in settling any particular case, it is not immune from powerful political influences that may force a revision of its reading of the constitution. The court presents its doctrine by reason and argument; its conception of the constitution must, if it is to endure, persuade the major part of the citizens of its soundness. The final court of appeal is not the court, nor the executive, nor the legislature, but the electorate as a whole. The civilly disobedient appeal in a special way to this body. There is no danger of anarchy so long as there is a sufficient working agreement in citizens' conceptions of justice and the conditions for resorting to civil disobedience are respected. That men can achieve such an understanding and honor these limits when the basic political liberties are maintained is an assumption implicit in a democratic polity. There is no way to avoid entirely the danger of divisive strife, any more than one can rule out the possibility of profound scientific controversy. Yet if justified civil disobedience seems to threaten civic concord, the responsibility falls not upon those who protest but upon those whose abuse of

34. For a presentation of this view to which I am indebted, see A. M. Bickel, *The Least Dangerous Branch* (New York, Bobbs-Merrill, 1962), esp. chs. V and VI.

authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist.

With these remarks we have reached the end of our discussion of the content of the principles of justice. Throughout this part my aim has been to describe a scheme of institutions that satisfies these principles and to indicate how duties and obligations arise. These things must be done to see if the theory of justice put forward matches our considered judgments and extends them in an acceptable way. We need to check whether it defines a workable political conception and helps to focus our reflections on the most relevant and basic moral concerns. The account in this part is still highly abstract, but I hope to have provided some guidance as to how the principles of justice apply in practice. However, we should not forget the limited scope of the theory presented. For the most part I have tried to develop an ideal conception, only occasionally commenting on the various cases of nonideal theory. To be sure the priority rules suggest directives in many instances, and they may be useful if not pressed too far. Even so, the only question of nonideal theory examined in any detail is that of civil disobedience in the special case of near justice. If ideal theory is worthy of study, it must be because, as I have conjectured, it is the fundamental part of the theory of justice and essential for the nonideal part as well. I shall not pursue these matters further. We have still to complete the theory of justice by seeing how it is rooted in human thought and feeling, and tied in with our ends and aspirations.