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.[19] 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.[20] 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.[21] 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.[22] 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 Loev.

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.[23] 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.[24]

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 many 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.[25] 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.[26] 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.[27] 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.*[28] 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.[29] 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.[30]

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.[31] 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.[32] 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.[33] 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.[84] 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.