A THEORY OF JUSTICE
Revised Edition

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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 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, what-
ever 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. However, 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.¹³ 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

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.
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 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?14

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 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.\(^5\)

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 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 out-

come 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. 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 prob-

ability that the majority vote is correct increases as the likelihood of a correct decision by the representative legislator increases. 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 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 con-
ducted, 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 configu-
ration 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 char-
acterize 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 distribu-
tion, 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. 18

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 domi-
nance 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

18. For the economic theory of democracy, see J. A. Schumpeter, Capitalism, Socialism and
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).
intensity of desire or the strength of conviction is irrelevant when ques-
tions 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 principles of justice. Sometimes how-
ever 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 the situation. 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 conscien-
tiously 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. 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
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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. 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. It allows for what 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

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. 119, 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.

55. Definition of Civil Disobedience

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...
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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. 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. This fidelity to law helps to establish to the majority that the act is 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


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.
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 resis-
tance, 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 revolution-
ary 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.