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The Justification of Civil Disobedience

(1969)

I. Introduction

I should like to discuss briefly, and in an informal way, the grounds of civil disobedience in a constitutional democracy. Thus, I shall limit my remarks to the conditions under which we may, by civil disobedience, properly oppose legally established democratic authority; I am not concerned with the situation under other kinds of government nor, except incidentally, with other forms of resistance. My thought is that in a reasonably just (though of course not perfectly just) democratic regime, civil disobedience, when it is justified, is normally to be understood as a political action which addresses the sense of justice of the majority in order to urge reconsideration of the measures proposed and to warn that in the firm opinion of the dissenters the conditions of social cooperation are not being honored. This characterization of civil disobedience is intended to apply to dissent on fundamental questions of internal policy, a limitation which I shall follow to simplify our question.

II. The Social Contract Doctrine

It is obvious that the justification of civil disobedience depends upon the theory of political obligation in general, and so we may appropriately begin with a few comments on this question. The two chief virtues of social institutions are justice and efficiency, where by the efficiency of institutions I understand their effectiveness for certain social conditions and ends the fulfillment of which is to everyone's advantage. We should comply with and do our part

in just and efficient social arrangements for at least two reasons: first of all, we have a natural duty not to oppose the establishment of just and efficient institutions (when they do not yet exist) and to uphold and comply with them (when they do exist); and second, assuming that we have knowingly accepted the benefits of these institutions and plan to continue to do so, and that we have encouraged and expect others to do their part, we also have an obligation to do our share when, as the arrangement requires, it comes our turn. Thus, we often have both a natural duty as well as an obligation to support just and efficient institutions, the obligation arising from our voluntary acts while the duty does not.

Now all this is perhaps obvious enough, but it does not take us very far. Any more particular conclusions depend upon the conception of justice which is the basis of a theory of political obligation. I believe that the appropriate conception, at least for an account of political obligation in a constitutional democracy, is that of the social contract theory from which so much of our political thought derives. If we are careful to interpret it in a suitably general way, I hold that this doctrine provides a satisfactory basis for political theory, indeed even for ethical theory itself, but this is beyond our present concern.¹ The interpretation I suggest is the following: that the principles to which social arrangements must conform, and in particular the principles of justice, are those which free and rational men would agree to in an original position of equal liberty; and similarly, the principles which govern men's relations to institutions and define their natural duties and obligations are the principles to which they would consent when so situated. It should be noted straightaway that in this interpretation of the contract theory the principles of justice are understood as the outcome of a hypothetical agreement. They are principles which would be agreed to if the situation of the original position were to arise. There is no mention of an actual agreement, nor need such an agreement ever be made. Social arrangements are just or unjust according to whether they accord with the principles for assigning and securing fundamental rights and liberties which would be chosen in the original position. This position is, to be sure, the analytic analogue of the traditional notion of the state of nature, but it must not be mistaken for a historical occasion. Rather it is a hypothetical situation which embodies the basic ideas of the contract doctrine: the description of this situation enables us to work out which principles would be adopted. I must now say something about these matters.

1. By the social contract theory I have in mind the doctrine found in Locke, Rousseau, and Kant. I have attempted to give an interpretation of this view in Chapters 3-5.

The contract doctrine has always supposed that the persons in the original position have equal powers and rights, that is, that they are symmetrically situated with respect to any arrangements for reaching agreement, and that coalitions and the like are excluded. But it is an essential element (which has not been sufficiently observed although it is implicit in Kant's version of the theory) that there are very strong restrictions on what the contracting parties are presumed to know. In particular, I interpret the theory to hold that the parties do not know their position in society, past, present, or future; nor do they know which institutions exist. Again, they do not know their own place in the distribution of natural talents and abilities, whether they are intelligent or strong, man or woman, and so on. Finally, they do not know their own particular interests and preferences or the system of ends which they wish to advance: they do not know their conception of the good. In all these respects the parties are confronted with a veil of ignorance which prevents any one from being able to take advantage of his good fortune or particular interests or from being disadvantaged by them. What the parties do know (or assume) is that Hume's circumstances of justice obtain: namely, that the bounty of nature is not so generous as to render cooperative schemes superfluous nor so harsh as to make them impossible. Moreover, they assume that the extent of their altruism is limited and that, in general, they do not take an interest in one another's interests. Thus, given the special features of the original position, each man tries to do the best he can for himself by insisting on principles calculated to protect and advance his system of ends whatever it turns out to be.

I believe that as a consequence of the peculiar nature of the original position there would be an agreement on the following two principles for assigning rights and duties and for regulating distributive shares as these are determined by the fundamental institutions of society: first, each person is to have an equal right to the most extensive liberty compatible with a like liberty for all; second, social and economic inequalities (as defined by the institutional structure or fostered by it) are to be arranged so that they are both to everyone's advantage and attached to positions and offices open to all. In view of the content of these two principles and their application to the main institutions of society, and therefore to the social system as a whole, we may regard them as the two principles of justice. Basic social arrangements are just insofar as they conform to these principles, and we can, if we like, discuss questions of justice directly by reference to them. But a deeper understanding of the justification of civil disobedience requires, I think, an account of the derivation of these principles provided by the doctrine of the social contract. Part of our task is to show why this is so.

III. The Grounds of Compliance with an Unjust Law

If we assume that in the original position men would agree both to the principle of doing their part when they have accepted and plan to continue to accept the benefits of just institutions (the principle of fairness), and also to the principle of not preventing the establishment of just institutions and of upholding and complying with them when they do exist, then the contract doctrine easily accounts for our having to conform to just institutions. But how does it account for the fact that we are normally required to comply with unjust laws as well? The injustice of a law is not a sufficient ground for not complying with it any more than the legal validity of legislation is always sufficient to require obedience to it. Sometimes one hears these extremes asserted, but I think that we need not take them seriously.

An answer to our question can be given by elaborating the social contract theory in the following way. I interpret it to hold that one is to envisage a series of agreements as follows: first, men are to agree upon the principles of justice in the original position. Then they are to move to a constitutional convention in which they choose a constitution that satisfies the principles of justice already chosen. Finally they assume the role of a legislative body and, guided by the principles of justice, enact laws subject to the constraints and procedures of the just constitution. The decisions reached in any stage are binding in all subsequent stages. Now whereas in the original position the contracting parties have no knowledge of their society or of their own position in it, in both a constitutional convention and a legislature, they do know certain general facts about their institutions, for example, the statistics regarding employment and output required for fiscal and economic policy. But no one knows particular facts about his own social class or his place in the distribution of natural assets. On each occasion the contracting parties have the knowledge required to make their agreement rational from the appropriate point of view, but not so much as to make them prejudiced. They are unable to tailor principles and legislation to take advantage of their social or natural position; a veil of ignorance prevents their knowing what this position is. With this series of agreements in mind, we can characterize just laws and policies as those which would be enacted were this whole process correctly carried out. In choosing a constitution the aim is to find among the just constitutions the one which is most likely, given the general facts about the society in question, to lead to just and effective legislation. The principles of justice provide a criterion for the laws desired; the problem is to find a set of political procedures that will give this outcome. I shall assume that, at least under the

normal conditions of a modern state, the best constitution is some form of democratic regime affirming equal political liberty and using some sort of majority (or other plurality) rule. Thus it follows that on the contract theory a constitutional democracy of some sort is required by the principles of justice. At the same time it is essential to observe that the constitutional process is always a case of what we may call imperfect procedural justice: that is, there is no feasible political procedure which guarantees that the enacted legislation is just even though we have (let us suppose) a standard for just legislation. In simple cases, such as games of fair division, there are procedures which always lead to the right outcome (assume that equal shares is fair and let the man who cuts the cake take the last piece). These situations are those of perfect procedural justice. In other cases it does not matter what the outcome is as long as the fair procedure is followed: fairness of the process is transferred to the result (fair gambling is an instance of this). These situations are those of pure procedural justice. The constitutional process, like a criminal trial, resembles neither of these; the result matters and we have a standard for it. The difficulty is that we cannot frame a procedure which guarantees that only just and effective legislation is enacted. Thus even under a just constitution unjust laws may be passed and unjust policies enforced. Some form of the majority principle is necessary but the majority may be mistaken, more or less willfully, in what it legislates. In agreeing to a democratic constitution (as an instance of imperfect procedural justice) one accepts at the same time the principle of majority rule. Assuming that the constitution is just and that we have accepted and plan to continue to accept its benefits, we then have both an obligation and a natural duty (and in any case the duty) to comply with what the majority enacts even though it may be unjust. In this way we become bound to follow unjust laws, not always, of course, but provided the injustice does not exceed certain limits. We recognize that we must run the risk of suffering from the defects of one another's sense of justice; this burden we are prepared to carry, as long as it is more or less evenly distributed or does not weigh too heavily. Justice binds us to a just constitution and to the unjust laws which may be enacted under it in precisely the same way that it binds us to any other social arrangement. Once we take the sequence of stages into account, there is nothing unusual in our being required to comply with unjust laws.

It should be observed that the majority principle has a secondary place as a rule of procedure which is perhaps the most efficient one under usual circumstances for working a democratic constitution. The basis for it rests essentially upon the principles of justice and therefore we may, when conditions allow, appeal to these principles against unjust legislation. The justice of the consti-

itution does not ensure the justice of laws enacted under it; and while we often have both an obligation and a duty to comply with what the majority legislates (as long as it does not exceed certain limits), there is, of course, no corresponding obligation or duty to regard what the majority enacts as itself just. The right to make law does not guarantee that the decision is rightly made; and while the citizen submits in his conduct to the judgment of democratic authority, he does not submit his judgment to it.² And if in his judgment the enactments of the majority exceed certain bounds of injustice, the citizen may consider civil disobedience. For we are not required to accept the majority's acts unconditionally and to acquiesce in the denial of our and others' liberties; rather we submit our conduct to democratic authority to the extent necessary to share the burden of working a constitutional regime, distorted as it must inevitably be by men's lack of wisdom and the defects of their sense of justice.

IV. The Place of Civil Disobedience in a Constitutional Democracy

We are now in a position to say a few things about civil disobedience. I shall understand it to be a public, nonviolent, and conscientious act contrary to law usually done with the intent to bring about a change in the policies or laws of the government.³ Civil disobedience is a political act in the sense that it is an act justified by moral principles which define a conception of civil society and the public good. It rests, then, on political conviction as opposed to a search for self or group interest; and in the case of a constitutional democracy, we may assume that this conviction involves the conception of justice (say that expressed by the contract doctrine) which underlies the constitution itself. That is, in a viable democratic regime there is a common conception of justice by reference to which its citizens regulate their political affairs and interpret the constitution. Civil disobedience is a public act which the dissenter believes to be justified by this conception of justice, and for this reason it may be understood as addressing the sense of justice of the majority in order to urge reconsideration of the measures protested and to warn that, in the sincere opinion of the dissenters, the conditions of social cooperation are not being honored. For the principles of justice express precisely such conditions, and

2. On this point see A. E. Murphy's review of Yves Simon's *The Philosophy of Democratic Government* (Chicago: University of Chicago Press, 1951) in the *Philosophical Review*, 61 (April 1952): 198-211.

3. Here I follow H. A. Bedau's definition of civil disobedience. See his "On Civil Disobedience," *Journal of Philosophy*, 58 (October 1961).

their persistent and deliberate violation in regard to basic liberties over any extended period of time cuts the ties of community and invites either submission or forceful resistance. By engaging in civil disobedience a minority leads the majority to consider whether it wants to have its acts taken in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the claims of the minority.

Civil disobedience is also civil in another sense. Not only is it the outcome of a sincere conviction based on principles which regulate civic life, but it is public and nonviolent, that is, it is done in a situation where arrest and punishment are expected and accepted without resistance. In this way it manifests a respect for legal procedures: Civil disobedience expresses disobedience to law within the limits of fidelity to law, and this feature of it helps to establish in the eyes of the majority that it is indeed conscientious and sincere, that it really is meant to address their sense of justice.⁴ Being completely open about one's acts and being willing to accept the legal consequences of one's conduct is a bond given to make good one's sincerity, for that one's deeds are conscientious is not easy to demonstrate to another or even 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, and men of great honesty who are confident in one another might make such a system work. But as things are such a scheme would be unstable; we must pay a price in order to establish that we believe our actions have a moral basis in the convictions of the community.

The nonviolent nature of civil disobedience refers to the fact that it is intended to address the sense of justice of the majority and as such it is a form of speech, an expression of conviction. To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. Indeed, an interference with the basic rights of others tends to obscure the civilly disobedient quality of one's act. Civil disobedience is nonviolent in the further sense that the legal penalty for one's action is accepted and that resistance is not (at least for the moment) contemplated. Nonviolence in this sense is to be distinguished from nonviolence as a religious or pacifist principle. While those engaging in civil disobedience have often held some such principle, there is no necessary connection between it and civil disobedience. For on the interpretation suggested, civil disobedience in a democratic society is best understood as an appeal to the principles of justice, the fundamental

conditions of willing social cooperation among free men, which in the view of the community as a whole are expressed in the constitution and guide its interpretation. Being an appeal to the moral basis of public life, civil disobedience is a political and not primarily a religious act. It addresses itself to the common principles of justice which men can require one another to follow and not to the aspirations of love which they cannot. Moreover, by taking part in civilly disobedient acts one does not forswear indefinitely the idea of forceful resistance; for if the appeal against injustice is repeatedly denied, then the majority has declared its intention to invite submission or resistance and the latter may conceivably be justified even in a democratic regime. We are not required to acquiesce in the crushing of fundamental liberties by democratic majorities which have shown themselves blind to the principles of justice upon which justification of the constitution depends.

V. The Justification of Civil Disobedience

So far we have said nothing about the justification of civil disobedience, that is, the conditions under which civil disobedience may be engaged in consistent with the principles of justice that support a democratic regime. Our task is to see how the characterization of civil disobedience as addressed to the sense of justice of the majority (or to the citizens as a body) determines when such action is justified.

First of all, we may suppose that the normal political appeals to the majority have already been made in good faith and have been rejected, and that the standard means of redress have been tried. Thus, for example, existing political parties are indifferent to the claims of the minority, and attempts to repeal the laws protested have been met with further repression since legal institutions are in the control of the majority. While civil disobedience should be recognized, I think, as a form of political action within the limits of fidelity to the rule of law, at the same time it is a rather desperate act just within these limits, and therefore it should, in general, be undertaken as a last resort when standard democratic processes have failed. In this sense it is not a normal political action. When it is justified there has been a serious breakdown; not only is there grave injustice in the law but a refusal more or less deliberate to correct it.

Second, since civil disobedience is a political act addressed to the sense of justice of the majority, it should usually be limited to substantial and clear violations of justice and preferably to those which, if rectified, will establish a basis for doing away with remaining injustices. For this reason there is a

4. For a fuller discussion of this point, to which I am indebted, see Charles Fried, "Moral Causation," *Harvard Law Review*, 77 (May 1964): 1258-1270.

presumption in favor of restricting civil disobedience to violations of the first principle of justice, the principle of equal liberty, and to barriers which contravene the second principle, the principle of open offices which protects equality of opportunity. It is not, of course, always easy to tell whether these principles are satisfied. But if we think of them as guaranteeing the fundamental equal political and civil liberties (including freedom of conscience and liberty of thought) and equality of opportunity, then it is often relatively clear whether their principles are being honored. After all, the equal liberties are defined by the visible structure of social institutions; they are to be incorporated into the recognized practice, if not the letter, of social arrangements. When minorities are denied the right to vote or to hold certain political offices, when certain religious groups are repressed and others denied equality of opportunity in the economy, this is often obvious and there is no doubt that justice is not being given. However, the first part of the second principle which requires that inequalities be to everyone's advantage is a much more imprecise and controversial matter. Not only is there a problem of assigning it a determinate and precise sense, but even if we do so and agree on what it should be, there is often a wide variety of reasonable opinion as to whether the principle is satisfied. The reason for this is that the principle applies primarily to fundamental economic and social policies. The choice of these depends upon theoretical and speculative beliefs as well as upon a wealth of concrete information, and all of this mixed with judgment and plain hunch, not to mention in actual cases prejudice and self-interest. Thus unless the laws of taxation are clearly designed to attack a basic equal liberty, they should not be protested by civil disobedience; the appeal to justice is not sufficiently clear and its resolution is best left to the political process. But violations of the equal liberties that define the common status of citizenship are another matter. The deliberate denial of these more or less over any extended period of time in the face of normal political protest is, in general, an appropriate object of civil disobedience. We may think of the social system as divided roughly into two parts, one which incorporates the fundamental equal liberties (including equality of opportunity) and another which embodies social and economic policies properly aimed at promoting the advantage of everyone. As a rule civil disobedience is best limited to the former where the appeal to justice is not only more definite and precise, but where, if it is effective, it tends to correct the injustices in the latter.

Third, civil disobedience should be restricted to those cases where the dissenter is willing to affirm that everyone else similarly subjected to the same degree of injustice has the right to protest in a similar way. That is, we must

be prepared to authorize others to dissent in similar situations and in the same way, and to accept the consequences of their doing so. Thus, we may hold, for example, that the widespread disposition to disobey civilly clear violations of fundamental liberties more or less deliberate over an extended period of time would raise the degree of justice throughout society and would ensure men's self-esteem as well as their respect for one another. Indeed, I believe this to be true, though certainly it is partly a matter of conjecture. As the contract doctrine emphasizes, since the principles of justice are principles which we would agree to in an original position of equality when we do not know our social position and the like, the refusal to grant justice is either the denial of the other as an equal (as one in regard to whom we are prepared to constrain our actions by principles which we would consent to) or the manifestation of a willingness to take advantage of natural contingencies and social fortune at his expense. In either case, injustice invites submission or resistance; but submission arouses the contempt of the oppressor and confirms him in his intention. If straightaway, after a decent period of time to make reasonable political appeals in the normal way, men were in general to dissent by civil disobedience from infractions of the fundamental equal liberties, these liberties would, I believe, be more rather than less secure. Legitimate civil disobedience properly exercised is a stabilizing device in a constitutional regime, tending to make it more firmly just.

Sometimes, however, there may be a complication in connection with this third condition. It is possible, although perhaps unlikely, that there are so many persons or groups with a sound case for resorting to civil disobedience (as judged by the foregoing criteria) that disorder would follow if they all did so. There might be serious injury to the just constitution. Or again, a group might be so large that some extra precaution is necessary in the extent to which its members organize and engage in civil disobedience. Theoretically the case is one in which a number of persons or groups are equally entitled to and all want to resort to civil disobedience, yet if they all do this, grave consequences for everyone may result. The question, then, is who among them may exercise their right, and it falls under the general problem of fairness. I cannot discuss the complexities of the matter here. Often a lottery or a rationing system can be set up to handle the case; but unfortunately the circumstances of civil disobedience rule out this solution. It suffices to note that a problem of fairness may arise and that those who contemplate civil disobedience should take it into account. They may have to reach an understanding as to who can exercise their right in the immediate situation and to recognize the need for special constraint.

The final condition, of a different nature, is the following. We have been considering when one has a right to engage in civil disobedience, and our conclusion is that one has this right should three conditions hold: when one is subject to injustice more or less deliberate over an extended period of time in the face of normal political protests; where the injustice is a clear violation of the liberties of equal citizenship; and provided that the general disposition to protest similarly in similar cases would have acceptable consequences. These conditions are not, I think, exhaustive, but they seem to cover the more obvious points; yet even when they are satisfied and one has the right to engage in civil disobedience, there is still the different question of whether one should exercise this right, that is, whether by doing so one is likely to further one's ends. Having established one's right to protest, one is then free to consider these tactical questions. We may be acting within our rights but still foolishly if our action only serves to provoke the harsh retaliation of the majority; and it is likely to do so if the majority lacks a sense of justice, or if the action is poorly timed or not well designed to make the appeal to the sense of justice effective. It is easy to think of instances of this sort, and in each case these practical questions have to be faced. From the standpoint of the theory of political obligation we can only say that the exercise of the right should be rational and reasonably designed to advance the protester's aims, and that weighing tactical questions presupposes that one has already established one's right, since tactical advantages in themselves do not support it.

VI. Conclusion: Several Objections Considered

In a reasonably affluent democratic society justice becomes the first virtue of institutions. Social arrangements irrespective of their efficiency must be reformed if they are significantly unjust. No increase in efficiency in the form of greater advantages for many justifies the loss of liberty of a few. That we believe this is shown by the fact that in a democracy the fundamental liberties of citizenship are not understood as the outcome of political bargaining, nor are they subject to the calculus of social interests. Rather these liberties are fixed points which serve to limit political transactions and which determine the scope of calculations of social advantage. It is this fundamental place of the equal liberties which makes their systematic violation over any extended period of time a proper object of civil disobedience. For to deny men these rights is to infringe the conditions of social cooperation among free and rational persons, a fact which is evident to the citizens of a constitutional regime since

it follows from the principles of justice which underlie their institutions. The justification of civil disobedience rests on the priority of justice and the equal liberties which it guarantees.

It is natural to object to this view of civil disobedience that it relies too heavily upon the existence of a sense of justice. Some may hold that the feeling for justice is not a vital political force, and that what moves men are various other interests, the desire for wealth, power, prestige, and so on. Now this is a large question the answer to which is highly conjectural, and each tends to have his own opinion. But there are two remarks which may clarify what I have said: first, I have assumed that there is in a constitutional regime a common sense of justice the principles of which are recognized to support the constitution and to guide its interpretation. In any given situation particular men may be tempted to violate these principles, but the collective force in their behalf is usually effective since they are seen as the necessary terms of cooperation among free men; and presumably the citizens of a democracy (or sufficiently many of them) want to see justice done. Where these assumptions fail, the justifying conditions for civil disobedience (the first three) are not affected, but the rationality of engaging in it certainly is. In this case, unless the costs of repressing civil dissent injures the economic self-interest (or whatever) of the majority, protest may simply make the position of the minority worse. No doubt as a tactical matter civil disobedience is more effective when its appeal coincides with other interests, but a constitutional regime is not viable in the long run without an attachment to the principles of justice of the sort which we have assumed.

Then, further, there may be a misapprehension about the manner in which a sense of justice manifests itself. There is a tendency to think that it is shown by professions of the relevant principles together with actions of an altruistic nature requiring a considerable degree of self-sacrifice. But these conditions are obviously too strong, for the majority's sense of justice may show itself simply in its being unable to undertake the measures required to suppress the minority and to punish as the law requires the various acts of civil disobedience. The sense of justice undermines the will to uphold unjust institutions, and so a majority despite its superior power may give way. It is unprepared to force the minority to be subject to injustice. Thus, although the majority's action is reluctant and grudging, the role of the sense of justice is nevertheless essential, for without it the majority would have been willing to enforce the law and to defend its position. Once we see the sense of justice as working in this negative way to make established injustices indefensible, then it is recognized as a central element of democratic politics.

Finally, it may be objected against this account that it does not settle the question of who is to say when the situation is such as to justify civil disobedience. And because it does not answer this question, it invites anarchy by encouraging every man to decide the matter for himself. Now the reply to this is that each man must indeed settle this question for himself, although he may, of course, decide wrongly. This is true on any theory of political duty and obligation, at least on any theory compatible with the principles of a democratic constitution. The citizen is responsible for what he does. If we usually think that we should comply with the law, this is because our political principles normally lead to this conclusion. There is a presumption in favor of compliance in the absence of good reasons to the contrary. But because each man is responsible and must decide for himself as best he can whether the circumstances justify civil disobedience, it does not follow that he may decide as he pleases. It is not by looking to our personal interests or to political allegiances narrowly construed, that we should make up our mind. The citizen must decide on the basis of the principles of justice that underlie and guide the interpretation of the constitution and in the light of his sincere conviction as to how these principles should be applied in the circumstances. If he concludes that conditions obtain which justify civil disobedience and conducts himself accordingly, he has acted conscientiously and perhaps mistakenly, but not in any case at his convenience.

In a democratic society each man must act as he thinks the principles of political right require him to. We are to follow our understanding of these principles, and we cannot do otherwise. There can be no morally binding legal interpretation of these principles, not even by a supreme court or legislature. Nor is there any infallible procedure for determining what or who is right. In our system the Supreme Court, Congress, and the President often put forward rival interpretations of the Constitution.⁵ Although the Court has the final say in settling any particular case, it is not immune from powerful political influence that may change its reading of the law of the land. The Court presents its point of view by reason and argument; its conception of the Constitution must, if it is to endure, persuade men of its soundness. The final court of appeal is not the Court, or Congress, or the President, but the electorate as a whole. The civilly disobedient appeal in effect to this body. There is no danger of anarchy as long as there is a sufficient working agreement in men's conceptions of political justice and what it requires. That men can

achieve such an understanding when the essential political liberties are maintained is the assumption implicit in democratic institutions. There is no way to avoid entirely the risk of divisive strife. But if legitimate civil disobedience seems to threaten civil peace, the responsibility falls not so much on those who protest as upon those whose abuse of authority and power justifies such opposition.

5. For a presentation of this view to which I am indebted, see A. M. Bickel, *The Least Dangerous Branch* (Indianapolis: Bobbs-Merrill, 1962), especially chs. 5 and 6.