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JOHN RAWLS'S THEORY OF CIVIL DISOBEDIENCE

PREFACE

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INTRODUCTION

1. AIM OF THE ESSAY

In this essay, I shall present and discuss John Rawls's theory of civil disobedience. The cluster of phenomena called "civil disobedience" and problems tied to their occurrence have caught the attention of many people, and among them some philosophers. Both the general public and the "professionals" are concerned with the following questions: May disobedience to government ever be accepted in democratic societies? And if so, what kinds of disobedience are justified under what circumstances? Our judgments concerning these questions are not sufficiently clear and reasoned, in my opinion. They stand in need of theoretical underpinning. At this point I believe that philosophers may make important contributions to the public discussions, since they presumably possess the tools for analysing ideas and arguments. They may provide interesting considerations for determining which acts that it will be useful to call "acts of civil disobedience", and whether, possibly even when, any such acts may be acceptable in democratic societies. Rawls's theory of civil disobedience is, I believe, a valuable attempt in this direction, and I have chosen it as the subject of my essay.

An important point in favor of looking closer into Rawls's theory is that he provides a broad setting for his discussion: The theory of civil disobedience is fitted into his more general theory of justice, presented in his book A Theory of Justice (1971). I regard it as necessary for a sound treatment of problems of this kind to discuss them in the context of other problems of political philosophy: Defining and justifying civil disobedience requires considerations beyond those immediately

apparent. For instance: When is a citizen obligated, if ever, to obey the laws and other enactments of the state? And why is this so? Generally, these problems are raised, discussed and answered by philosophers and political scientists only. Sometimes, however, especially in times of societal crisis, wider sections of the public become interested in these problems of legitimacy and political obligation. Civil disobedience raises such problems, of interest both of the philosopher and the citizen. It is my hope that this essay will be of use for both, by providing an evaluation of Rawls's contribution to the field.

Rawls understands acts of civil disobedience as extreme means of protest against unjust treatment. Such appeals may serve as ultimate stabilizing devices in societies which, although they are mostly just, nevertheless allow some severe departures from justice. By regarding civil disobedience as filling this role, he is able to present both a partial definition, or partial explication, of civil disobedience and a set of justifying conditions for such acts: the circumstances under which such acts may be justified in what he calls nearly just societies.

This theory gives rise to some questions which I shall discuss. For instance, the theory presents a partial delimitation of acts of civil disobedience. Is this delimitation acceptable? The theory also claims that under certain conditions, civil disobedience is justified. Are these conditions acceptable? Does the theory guide us in satisfactory ways where our judgments are not yet fixed? - i.e. does it point out to us which considerations are relevant when evaluating such acts? The aim of this essay is to aid us in answering such questions.

I intend to clarify the content of Rawls's theory of civil disobedience, rendering it more apt for evaluations of this kind.

I regard it as necessary to present the theory as precisely as possible, and to develop some specific implications of it. If the theory is presented in a precise manner, it will be easier to detect any inconsistencies within the theory itself and to determine the reasons for them. The clearer and more precise the implications of the theory are, the easier will it be to test them. Such testing may be done in at least two ways, I think. Rawls's theory can be confronted with those of other writers concerned with these problems, comparing their claims and arguments. But some of the claims of the theory may also be tested by empirical investigations: Do acts of this kind actually serve as stabilizing devices under these circumstances in nearly just societies? And do people regard such acts as justified under these circumstances? The empirical investigations themselves I consider to be beyond the scope of this essay. Still I believe that parts of the theoretical background which is necessary for such testing may be properly included here.

Ideally, it should be possible for social scientists to use parts of this essay as a checklist for deciding whether specific acts would be considered justified by the theory under those circumstances in which they occur. Since I hope that e.g. students of sociology will find this essay useful, I do not presuppose any extensive acquaintance with philosophy. But prior knowledge of Rawls's book will of course be an advantage.

2. OUTLINE OF THE ESSAY

The aim of this essay, as I said, is to be an aid in the evaluation of Rawls's theory of civil disobedience. I intend to do this by presenting and discussing the content and consequences

of his theory in the following essay, which has four parts in addition to this introduction and a conclusion.

In Chapter I I present the main ideas of Rawls's theory of justice. Some methodological points which will be useful at various places later on are included: A presentation of Rawls's theory of justice viewed as a hypothetico-deductive system, and some comments on Rawls's use of definitions. No attempts are made to defend Rawls's main views. A presentation of criticism directed against the theory of justice in general is beyond the scope of this essay. Instead, I shall take Rawls's theory of justice as a fixed point of departure in this essay, and only deal with points of criticism which are directly concerned with the theory of civil disobedience. The summary is kept as brief as possible, still containing those definitions and restrictions of the theory which I hold to be relevant for my purpose. The brief exposition in Chapter I will prove to be useful, I believe, since it seems that some of those who are critical of Rawls's views concerning civil disobedience have failed to consider the restrictions laid on the scope of the theory of justice. These restrictions apply to the theory of civil disobedience as well. Furthermore, I think that the exposition of the theory of civil disobedience is facilitated by regarding it as a test implication of the theory of justice. This requires some knowledge of the central features and terms of the theory. For these reasons I also include a small index at the end of the essay. For a more thorough presentation of Rawls's theory of justice, see, for instance, Gorovitz 1976.

Turning then to the theory of civil disobedience, in Chapter II, I present Rawls's view on the role of civil disobedience. First I discuss the grounds and limits of

citizens's obedience to states, as the theory of civil disobedience is concerned with some limits of such obedience to laws and governments. Then I discuss Rawls's view concerning civil disobedience as a stabilizing device in nearly just societies. Finally I must determine how Rawls uses the term "nearly just societies", since his theory is meant to apply to such societies only. This restriction on the scope of the theory is also important for the evaluation of his theory and the criticism raised against it.

Only then are we well prepared for what I consider to be the central parts of the essay: A discussion of Rawls's partial definition of civil disobedience, in Chapter III, and a discussion of his conditions for justifying such acts, in Chapter IV. Each of the defining characteristics is discussed and made more precise in Chapter III. I present Rawls's reasons for demanding each of them, stemming from the role such acts are thought to have, together with criticism which may be directed against each characteristic. I give a critical, and I hope complete, survey of the criticism presented by others. I reject most of it, but have added some critical arguments of my own. The discussion of each characteristic leads up to a more precise formulation of the characteristic at hand.

In Chapter IV I discuss the circumstances under which Rawls holds that the acts he calls 'acts of civil disobedience' are justified - in nearly just societies, of course. My approach to each justifying condition is the same as that of the defining characteristics in Chapter III: after a presentation of Rawls's reasons for demanding the condition, I attempt to restate it in more precise terms, guided by various criticisms. My discussions in these two parts have three aims.

In the first place, I want to check Rawls's theory against the theories held by others, in order to see how well it meets criticism and how it deals with central problems facing theories concerning disobedience in democracies.

Secondly, I hope to end up with as precisely stated characteristics and conditions as possible. Precise demands make it easier to determine whether specific acts are acts of civil disobedience according to the theory, and whether they are considered justified by the theory. If the level of preciseness sometimes appears to go beyond that required for the evaluations I shall make in this essay, it is because I also have the empirical investigations mentioned in Section 1 in mind.

The last of my aims is to make explicit the central assumptions Rawls makes while discussing the defining characteristics and the justifying conditions. By isolating the assumptions Rawls makes, I hope to prepare for two areas of research: 1) to determine the extent to which the theory of civil disobedience depends upon these assumptions which are made in addition to the theory of justice, and 2) to test whether the assumptions made are shared by others or are supported by empirical facts. Some of the results have a bearing on the conclusions I shall make concerning Rawls's theory of civil disobedience. But other attempts to make his assumptions explicit will be of use mostly for those interested in testing Rawls's theory against the public opinion and other empirical data.

Finally, in the last chapter I state the conclusions which I draw from the discussions in the previous parts. Two main claims are supported, in my opinion.

My first claim is that Rawls's theory of civil disobedience is very limited in scope - even more restricted, it seems, than

he is aware of himself. The value of the theory considered as an aid to our judgments is therefore somewhat limited. The theory applies to nearly just societies only, and civil disobedience is regarded only from the point of view of justice - where justice is rather narrowly understood. Thus, the protests of Gandhi in colonial India are not covered by the theory, neither are protests against cruel treatment of animals or against the policies of foreign governments: Relations between states are not covered by the theory. Rawls's definition of civil disobedience is partial, applying only to certain acts within what Rawls calls "nearly just societies." For this reason some of the objections raised against the theory is misdirected. I shall also show that the restrictions of scope are misunderstood by several writers. Criticism is directed against these restrictions as if Rawls presented them as conditions of justification of civil disobedience. Such criticism may at best be taken to point to the limited field of application of Rawls's theory. The restrictions on the scope of the theory may in fact be regarded as an advantage: Rawls is able to explain, discuss and justify certain illegal acts by considerations of justice alone. No religious or moral convictions beyond those of justice must be postulated. Thus, the theory of civil disobedience will hold regardless of religious views or personal morality found in the nearly just society.

My second conclusion is that as far as it goes, Rawls's theory is satisfactory - at least for the most part. It presents a coherent view of which acts to call civil disobedience, and when these acts should be considered to be justified. Also, in general it stands up to the criticism presented against it. My essay serves as a "defense" of the theory of civil disobedience

against its critics, by showing that the claims of the theory are much smaller than supposed. Thus, the adequacy of the theory is increased by decreasing its scope. Nevertheless I shall claim that the theory has two main weak points: 1) Rawls's definition of civil disobedience deviates considerably from the "normal" usage of the term. This is likely to cause misunderstandings in discussions, and lessens the utility of the theory for practical considerations. 2) According to the theory, civil disobedience is justified only against political and civil injustice in a society; social and economic injustices are rejected as a basis for justified civil disobedience. The reasoning behind this restriction is not strong, and depends on some of the assumptions in the theory of justice which may reasonably be doubted. A critical reexamination of parts of the theory of justice is therefore supported by this conclusion. This holds even though I shall show that generally, the theory of civil disobedience is of little help for evaluating the theory of justice.

My general conclusion, then, is that Rawls's theory of civil disobedience may give some aid when discussing how the society should respond to acts which are claimed to be acts of civil disobedience. His theory, perhaps in a somewhat modified form, supplies good reasons why some acts of disobedience may be tolerated in democratic societies. And it points out, fairly precisely, many considerations that are important for evaluating whether specific acts are justified or not.

CHAPTER I:

RAWLS'S THEORY OF JUSTICE

In his book A Theory of Justice John Rawls presents a theory which I shall call Rawls 'theory of justice'. To save space, I shall from now on refer to his book as TJ. In my interpretation of TJ, the theory presented contains five main claims, among others:

- 1) The principles of justice, stating the fundamental terms of cooperation in society, may be viewed as the result of a hypothetical selection procedure reminiscent of a social contract.
- 2) The philosophically favored specification of this selection procedure will be the one he calls "The original position."
- 3) The principles selected in this fair original position will be the two principles of justice as fairness.
- 4) These principles will accord with the moral and political views of our period.
- 5) These principles describe a workable social arrangement.

I shall for the most part be concerned with the first four claims.

In the present chapter of the essay I shall concentrate on the main ideas of the first three of these claims. Very little will be said of Rawls's arguments for the claims.

In Sections 3 and 4 I give an outline of the theory of justice, first of the subject of the theory of justice, and then of the first claim.

In Sections 5-7 I present the second and third claims, which constitute what I shall call "justice as fairness". I also show how the principles Rawls argues for are to be used as standards for evaluating existing societies.

Sections 8-9 deal with some methodological features of the theory of justice. I shall indicate how the five claims are linked together: the first three and the last two claims are seen as two ways of "justifying" the principles of justice as fairness. Furthermore, the theory of civil disobedience is linked to this system. Section 9 is a discussion of Rawls's view on definitions.

3. SUBJECT OF THE THEORY OF JUSTICE

In TJ Rawls presents and argues for a theory of justice which establishes certain basic principles of just cooperation in a society. I shall here first determine what these principles are intended to cover, and then distinguish between the theory of justice and justice as fairness on grounds of their scope. Justice as fairness is part of the theory of justice. It is concerned with ideal societies, where the principles are strictly complied with. The theory of justice also includes considerations of other societies. Finally I note some restrictions on the scope of the theory of justice.

The Basic Structure of Society

Rawls's theory of justice deals with social justice. His primary concern within this area is the basic structure of society (TJ 7). The society is understood to be a self-sufficient association of persons who cooperate for mutual advantage (TJ 4).

'The basic structure of society' refers to the distributive aspect of the major social institutions - i.e. of a) the political constitution and b) the principal economic and social arrangements. The distributive aspect is how these institutions a) distribute fundamental rights and duties and b) determine the division of advantages from social cooperation. The basic structure favors certain social positions and starting places in life over others, and thus affects the individual's expectations of life to a large degree. This is why the basic structure is regarded as the primary subject of justice.

Conceptions of Justice and Principles of Justice (TJ 5)

For someone to have a conception of justice means that she holds and understands the need for some principles for distributive justice, and that she is prepared to apply and affirm these principles of justice.

Various principles of justice, or sets of such principles, differ in their specifications of what are to count as relevant

differences between people when deciding how to distribute basic rights and duties , and how the competing claims to the advantages of social cooperation are to be balanced. To each set of principles of justice, then, there is a conception of justice.

Ideal and Non-Ideal Theory

Rawls seeks that conception of justice which is most acceptable in respects we shall soon look closer into. He regards this problem as a decision problem between various conceptions of justice which are listed on TJ 124. The decision is best done, he believes, if starting with an Ideal Theory (TJ 8). This part of the theory of justice covers the principles governing a society in which the principles chosen will be generally complied with, including principles for individuals. Non-Ideal Theory, on the other hand, treats principles for societies where such strict compliance does not take place. It is divided into two parts (TJ 246). One part deals with principles for adjusting to natural limitations and historical contingencies. The other part, called 'Partial Compliance Theory', deals with principles for dealing with injustice. Theories of punishment, just war, compensatory justice and protests against injustice all belong here.

Although not directly applicable to the problems of existing societies, Rawls regards the ideal theory as fundamental in the theory of justice (TJ 9, 391). It provides the standards for judging existing societies, and non-ideal theory is arrived at by modifying the ideal theory. In his book, Rawls is mainly concerned with the ideal part of his theory (TJ 246). But he also develops some fragments of partial compliance theory, among them his theory of civil disobedience.

Well-ordered Societies

A ~~well-ordered society~~, according to Rawls, is a society which is designed to advance the good of its members, and which is effectively regulated by a public conception of justice (TJ 5, 453ff). It is therefore a society in which

- a) everyone accepts and knows that the others accept the same principles of justice, and
- b) the basic social institutions generally satisfy and are known to satisfy these principles.

In a well-ordered society, then, the members acknowledge a common set of principles according to which their competing claims may be settled.

The Theory of Justice and Justice as Fairness

The ideal part of Rawls's theory of justice is concerned with the principles governing a well-ordered society. This part of his theory I shall call 'Justice as Fairness'. His paper with the same name (Rawls 1958) will not be referred to (apart from here!) in my essay. Justice as fairness is a central part of the theory of justice. But the theory of justice also deals with societies that, like all real societies, deviate more or less from perfectly well-ordered societies. I believe that this distinction between justice as fairness and the theory of justice is generally in accordance with Rawls's usage.

In Sections 5 and 6 I treat the claims made in justice as fairness. But first I shall note some of the restrictions laid down on the theory of justice as a whole. Then, in Section 4, I present Rawls method for choosing what he considers to be the best set of principles of justice.

Limits to the Theory of Justice

Rawls's theory of justice is mainly concerned with the basic structure of society. This restricts the scope of the theory in various ways. I consider the following four restrictions to be the most important ones.

i) The principles to be chosen apply to institutions only (TJ 54). But Rawls also argues for some principles for individuals which we must know about. By not looking closer at these before in Chapter II, I emphasize that these principles are beyond the primary subject of his theory of justice.

ii) The principles of justice discussed may not apply directly and unmodified to private associations, customs etc., as the principles are meant only to cover the major social institutions (TJ 7f).

iii) It is mostly the distributive aspect of these institutions that is considered. Other social problems and moral considerations are sometimes discussed, but not so fully. The main exception is the problem of the stability of societies. This is important to Rawls, and also relevant for the theory of civil disobedience.

iv) Many other moral problems are left undiscussed. Thus international law is hardly mentioned at all in the theory of justice, since the society is regarded as a closed system, isolated from other societies. (TJ 8). Moreover, our relations to animals and to nature at large fall for the most part beyond the scope of the theory (TJ 512).

Rawls acknowledges these restrictions on his theory, but conjectures that once reasonable principles of distributive justice are found, other problems of justice will be easier to solve. He believes that the theory may be modified to provide

solutions to such problems (TJ 8). I take him to mean that the method for choosing principles of justice may be useful for these other cases as well. We now turn to one of Rawls's major claims, concerning this method of choice.

4. THE METHOD OF CHOICE

Among all the conceptions of justice, Rawls wants to find the one which lays down impartial conditions of cooperation between members of society. He believes that the best principles are those that free and rational persons would agree to in an initial situation of equality. I shall here treat this social contract idea and an underlying assumption concerning the relationship between procedure and outcome in this case. Rawls calls this relationship 'Pure Procedural Justice'.

The Initial Situation

Rawls claims that the principles of justice may be regarded as the outcome of a hypothetical agreement between the members of a society: Those terms of cooperation are just that persons would agree to in a qualified "state of nature" - The Initial Situation (TJ 13). This claim, that the basis of justice is that to which men would consent, ties Rawls's theory to the social contract tradition.

Rawls believes that there are many conditions which may reasonably be laid on the sets of principles of justice to be accepted. These restrictions and considerations express the limits of what we would regard as fair terms of social cooperation (TJ 21). The initial situation is introduced partly as an expository device of the restrictions thought reasonable to lay on arguments when choosing principles, in this case principles of justice. The restrictions are transformed into a description of the initial situation.

The initial situation also provides an analytic method for

comparing conceptions of justice (TJ 121). It may be specified in various ways. If other kinds of principles of right were to be chosen, the conditions would presumably be different. Also, it is not so obvious which restrictions to demand when deciding for principles of justice. The participants can be described in various ways by supposing certain beliefs, attitudes, interests and knowledge. And the alternative conceptions of justice open for choice can be limited in various ways. Differently specified initial situations are thought to lead to the acceptance of different principles of justice. Thus, one variety of utilitarianism might be chosen in one specification of the initial situation (TJ 166), and another type of utilitarianism in another (TJ 189). However, Rawls finds those specifications - i.e. the corresponding conditions on choice - unacceptable.

Rawls chooses what he believes is the philosophically most satisfactory specification of the initial situation, and calls it 'The Original Position' (TJ 121). The participants will there be in a fair initial situation of equality. In this position, he claims, the parties will find the two Principles of Justice as Fairness most reasonable. They will therefore choose them rather than the competing alternatives - even prefer those principles to utilitarian principles. I present the particulars of the original position and the principles of justice as fairness in the next two sections.

A last comment on Rawls's method of choice: Although this social contract situation is purely hypothetical, Rawls holds that knowledge of it may be useful in a society. It serves to justify the principles chosen in the original position: These principles state the terms of cooperation to which the members of society would agree if they were free and equal persons whose

relations with each other were fair (TJ 13).

Pure Procedural Justice

I shall here make some brief remarks on the decision procedure involved in Rawls's method of choice just described.

The principles of justice as fairness are regarded as just because they are the outcome of a fair procedure: They would be agreed to in the fair original position. This relationship between procedure and outcome incorporates Pure Procedural Justice, which Rawls contrasts with Perfect Procedural Justice and Imperfect Procedural Justice (TJ 85ff).

Perfect Procedural Justice comes into play when there is a criterion for what is a just outcome defined independently from, and prior to, the procedure to be followed, and a procedure which is bound to have this outcome can be devised. An example: The cutting of a cake into equal pieces - the just outcome - by the procedure of letting the man who does the cutting get the last piece. (Assuming among other things that the cutter likes the cake.)

Imperfect Procedural Justice has an independent criterion for what is a just outcome, but no procedure exists which is certain to lead to this outcome. A criminal trial illustrates this: The just aim is to declare all those and only those guilty who have committed a legal offence. But no procedure - i.e. no set of legal rules will always lead to this outcome: Some unjust results may occur.

Pure Procedural Justice occurs when there are no criteria for what is to count as a just outcome, independent of the procedure. The outcome is regarded as just if it is the actual result of a fair procedure properly followed. Fair gambling is an

example of this: The outcome of such gambling is just if it is the result of a fair gambling procedure which is correctly carried through.

When choosing principles of justice in the initial situation, there are no previously accepted criteria for determining which principles are just, since it is exactly these criteria the participants are to decide on. Furthermore, Rawls claims that the original position is fair, and so the procedure for choosing principles is fair (TJ 120). Assuming pure procedural justice, then, he concludes that the principles of justice as fairness agreed to in the fair original position are just.

5. THE ORIGINAL POSITION

The following three sections contain those points of justice as fairness that I regard as necessary for understanding Rawls's theory of civil disobedience. First certain features of the original position are noted. I then present the two principles of justice as fairness, with a brief explanation of some of their notions. Section 7 deals with how the principles are to be applied to the various parts of the basic structure.

Justice as fairness consists of two parts: 1) a specification of the initial situation and of the problem of choice posed there, and 2) a set of principles which Rawls claims would be agreed to (TJ 15). In this section I shall treat the first of these parts: Some of the restrictions and assumptions on the original position. Rawls believes that these conditions are weak and widely accepted (TJ 14). The parties know that they are all moral and rational persons, in senses to be explained. They are also presumed to take no interest in one another's interests. Apart from this, their knowledge about themselves and their society is strictly limited: Beyond knowing that they all seek primary goods, all particular facts are hidden behind a Veil of Ignorance. Finally, certain formal restrictions are laid on the sets of principles open for them to choose between.

Moral and Rational Persons

The parties in the original position are Moral Persons and are known to be such by the others. This means that they share two features: 1) Each of them has a conception of his own good, and 2) each of them is capable of a Sense of Justice (TJ 505).

That they have a conception of their own good means among other things that they have a rational plan of life calculated to promote their particular ends and interests (TJ 142). Being rational they choose those means open to them that best furthers their goals (TJ 14, 143). Rawls discusses this more fully in Part Three of TJ, but those discussions are beyond our needs.

The Sense of Justice is a normally effective desire to apply and act upon whatever principles are agreed to, at least to a certain degree (TJ 505). One who has a conception of justice, then, has a sense of justice.

Mutual Disinterestedness

The persons are conceived of as not taking an interest in one another's interests (TJ 13). This assumption emphasizes the need for principles of justice which can order conflicting claims where no prior moral ties exist (TJ 13). In contrast, Classical Utilitarianism would be accepted in the initial situation only if the parties were perfect altruists - an assumption that seems less plausible than Rawls's assumption of mutual disinterest. Rawls claims that the participants of the original position will not act egoistically, although they are mutually disinterested: Their lack of knowledge - the Veil of Ignorance - will force each person to take the good of others into account. (TJ 148).

The Veil of Ignorance

The veil of ignorance is introduced to exclude facts that might cause unfair bias from the participants in the original position.

Hardly any particular knowledge concerning themselves and their society is available (TJ 137): They are ignorant of their position in society, their natural assets and abilities, their specific aims of life (although they know that they have such aims), and their psychological propensities. The circumstances of their own society are not known at this stage: Its economical and political situation, its level of civilization and the like.

This veil limits the range of arguments which the parties present for various conceptions of justice. Arbitrary natural or social contingencies will not affect the choice of principles. But general facts are known and are taken into consideration: principles of economic theory, laws of human psychology and so forth.

No one knows enough to be able to promote principles which will be specifically to his advantage. This together with mutual disinterestedness will have the same effects as assuming that the parties are benevolent to some degree. The participants must choose principles which they would be prepared to live with whatever position they end up in.

Primary Social Goods

The contracting parties know that being moral persons, they have a plan of life, with own ends and interests. But due to the veil of ignorance they do not know which particular conception of their good they have. They will therefore choose principles of justice according to how these distribute Primary Social Goods. These are the goods controlled by the basic structure which a

rational person will want whatever her plan of life (TJ 62): Rights and liberties, opportunities and powers of offices, wealth and the bases of self-respect (TJ 92).

Formal Constraints on the Principles of Justice

There are certain formal conditions Rawls thinks are reasonable to impose on all ethical principles. Such principles of right include the conceptions of justice open to choose between (TJ 130ff). Moreover, these conditions also apply to conditions for when civil disobedience is justified.

i) Principles should be General; i.e. formulated without the use of proper names or definite descriptions. ii) The principles should be Universal: They must hold for all moral persons, and it should not be selfcontradictory or selfdefeating for everyone to act according to them. iii) The principles should be Publicly acknowledged. iv) The principles should Order conflicting claims. v) The system of principles should be the Final court for settling conflicts; the principles of justice, then, should settle conflicts within the basic structure of society.

6. THE PRINCIPLES OF JUSTICE AS FAIRNESS

I shall here consider the two principles Rawls argues would be chosen in the original position. Before I present the principles and the two priority rules for applying them some of the terms used are briefly explained. I also point out the difference between liberties and the worth of such liberties.

The Basic Liberties

The basic liberties are to be equal for all according to the first principle of justice. They include

The right to vote

Freedom of speech

Freedom of assembly

Liberty of conscience

Freedom of thought

Freedom of the person, including the right to hold personal property

Freedom from arbitrary arrest and seizure.

These liberties (stated on TJ 61) resemble closely the human rights found in the 1966 U.N. Covenant on Civil and Political Rights, and it seems reasonable to hold that Rawls has these civil and political rights in mind although they are never explicitly referred to as these Human Rights. But he sometimes refers to the first two (or four) of the liberties as the Political Liberties.

Liberties and Worth of Liberties

Rawls distinguishes between the basic liberties and the worth of them, which is "the value to individuals of the rights that the first principle defines" (TJ 204). The ability to take advantage of the basic liberties is proportional to one's economic and social resources. These are the subject of the second principle of justice. Rawls argues that together the two principles give preference to that basic structure where the least advantaged member of society enjoys the maximum worth of the total system of liberties.

Fair Equality of Opportunity

The second principle of justice has two parts. One concerns the various positions in society. This requirement, **Fair Equality of Opportunity**, demands that

Those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system.

(TJ 73)

A society satisfying this principle must, for instance, provide education for all (TJ 87).

The Just Savings Principle

The distribution of social and economic goods is partly to be regulated with future generations in mind. Each generation must put aside a suitable amount of real capital accumulation, not only factories, machines and the like, but also knowledge and culture, techniques and skills which make just institutions and the fair value of liberty possible. The rate of such saving cannot be determined precisely, but Rawls claims that certain ethical bounds would be agreed to in the original position (TJ 285ff). These bounds are the content of the Just Savings Principle.

Lexical Ordering of Principles

When requiring Lexical Ordering of principles one demands that the first principle in the ordering must be satisfied before giving any weight to the next principle (TJ 42-43).

The Principle of Efficiency

The Principle of Efficiency requires that goods should be distributed in such a way that no one can be made better off without at the same time making anybody else worse off (TJ 67,

79). This principle is lexically ordered after the two principles of justice as fairness: An efficient distribution of goods should be changed if the distribution is not just according to the two principles.

The Two Principles of Justice as Fairness

These two principles are those Rawls believes to be those the participants would agree to in the original position as defining the basic structure of a well-ordered society (TJ 60f, 302f).

The First Principle - The Principle of (Equal) Liberty:

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

The Second Principle

Social and economic inequalities are to be arranged so that they satisfy both

a) - The Principle of Equal Opportunity :

they should be attached to offices and positions open to all under conditions of fair equality of opportunity; and

b) - The Difference Principle :

they should be to the greatest benefit of the least advantaged, consistent with the just savings principle.

Two priority rules are necessary to ensure correct application of these principles:

First Priority Rule - The Priority of Liberty:

The principles of justice are to be ranked in lexical order and therefore liberty can only be restricted for the sake of liberty. There are two cases:

a) A less extensive liberty must strengthen the total system of liberty shared by all;

b) A less than equal liberty must be acceptable to those with the lesser liberty.

Second Priority Rule - The Priority of Justice over Efficiency and Welfare:

The second principle of justice is prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle. There are two cases:

- a) An inequality of opportunity must enhance the opportunities of those with the lesser opportunity;
- b) An excessive rate of saving must on balance mitigate the burden of those bearing this hardship.

These principles and priority rules are stated on TJ 302f - I have only changed the order of the two parts of the second principle so that they stand in the prescribed lexical ordering.

The General Conception of Justice as Fairness

Going from ideal theory to non-ideal theory may involve retreating from the two principles of justice to this more general conception of justice (TJ 302):

All social primary goods are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.

7. APPLICATION OF THE PRINCIPLES OF JUSTICE AS FAIRNESS

Rawls's idea of a Four-Stage Sequence is explained here. It is a hypothetical device for applying the two principles to a basic structure. This makes it possible to evaluate the justice of constitutions, laws and applications of laws. A comment on the stability of societies is included. I also discuss the notion of Quasi-Pure Procedural Justice and its relation to Majority Rule for enacting just laws.

The Four-Stage Sequence

Standards for evaluating various parts of the basic structure may be developed from the two principles of justice by modifying the original position in a hypothetical Four-Stage Sequence (TJ 195ff). The principles are first chosen in the original position, they are then secondly used to find a just

constitution, thirdly applied when legislating, and fourthly used to facilitate the application of laws and policies in individual cases. The veil of ignorance is gradually lifted, restricting knowledge at each stage to admit only enough for a rational application of the principles. Knowledge which would cause unfair bias and distortion is excluded.

Stage 1: The Original Position

The first stage has already been described: it is the original position where the two principles of justice as fairness are selected and accepted under the total veil of ignorance. The conception of justice chosen for a well-ordered society is partly accepted on the basis of general facts known to the parties (TJ 454). One important consideration when choosing any moral principle is whether the moral conception and the society regulated by it will be stable (TJ 455). Some remarks concerning stability are appropriate here.

The Stability of Societies

The basic structure of a well-ordered society is by Rawls said to be stable if the inevitable deviations of justice are effectively corrected or held within tolerable bounds by forces within the structure (TJ 450). The common sense of justice found in these societies is thought to be important: Those taking part in the arrangements should acquire the corresponding sense of justice and desire to do their part in maintaining them (TJ 454).

Other things equal, Rawls claims that the persons in the original position will adopt those principles which determine a more stable society (TJ 455). He argues in Part Three of TJ that the sense of justice corresponding to justice as fairness will be stronger than the senses of justice tied to the other conceptions

(TJ 499). I shall not consider these claims, but later I will show that Rawls's concern for stability helps to explain the role of civil disobedience.

Stage 2: The Constitutional Convention

From the original position the parties move on to a Constitutional Convention. The natural circumstances and resources of their society, its economic situation etc. are known to them.

The participants first determine the set of Just Constitutions. Some remarks to this set follow shortly; here we need only note that all these constitutions will lead to legislation which is compatible with the principle of equal liberty. Guided by their knowledge of the society, the parties are to choose the most efficient of these constitutions: That just constitution which is thought most likely to lead to just and efficient legislation as determined by both principles of justice (TJ 197). No scheme will guarantee that unjust legislation will never occur. However, this way of choosing a constitution limits the injustice to transgressions of the second principle of justice.

The Set of Just Constitutions

Here I try to determine what Rawls claims when he says that a constitution is just. This is important to know, since the role of civil disobedience is discussed only for societies with such constitutions.

Rawls assumes that the political system prescribed in the just constitutions is some form of democracy (TJ 197f), involving some kind of majority rule. Thus, the government must be representative in some sense.

All just constitutions satisfy the principle of equal

liberty: they incorporate and protect the basic liberties of all citizens (TJ 197).

But we are also told that this principle ensures that the constitution preserves the fair value for all of the political liberties. That is, Political Justice must be realized (TJ 199). We must ascertain more precisely what this means.

The protection of the basic liberties is not enough to guarantee that all get to exercise their fair degree of political influence. In order to keep the public forum free and open to all, certain measures must be taken. Property and wealth must be kept widely distributed in the society. Also, the society should bear the cost of organization, encouraging free public discussion. Finally, political parties should be allotted tax revenues so that they are independent from private economic interests (TJ 225).

Rawls assumes that it is easy to determine whether a constitution is just in this sense. Injustice against the principle of equal liberty is manifest in the public structure of institutions (TJ 199). Rawls does not exclude any constitutions on grounds of the second principle, particularly not because of transgressions of the difference principle alone. He justifies this on the assumption that these kinds of injustice are seldom plain and manifest.

Stage 3: The Legislative Stage

At the third stage, the meeting parties are to determine which laws and policies to accept. Their choice is constrained by the principles of justice, notably the second principle, and the constitution. It is mostly the economic and social arrangements which are of interest here. The participants do not

know any particular facts about individuals, but they have access to all general economic and social facts needed for making an intelligent choice; they are assumed to know which beliefs and interests people in the various systems would be liable to have. Choosing a constitution at stage 2 requires going a bit back and forth between stages 2 and 3. Whether a law or policy satisfies the difference principle is not easily determined, according to Rawls: judgment depends upon "speculative political and economic doctrines" (TJ 199). Thus, the just legislation is that set of at least not clearly unjust laws which are in fact enacted according to the constitution.

Stage 4: Application of Laws and Policies

At stage 4, the laws and policies are applied by the judges and administrators. No limits are laid on knowledge at this stage, but the application must be consistent with the two principles, the constitution and the legislation in their society.

These four stages provide appropriate positions for evaluating the various parts of existing basic structures. For instance, a legislation is just to the extent that it would be agreed to at the legislative stage.

Bringing this section to an end, I shall note how Rawls treats the problem of procedural justice when determining a just basic structure, and the place of majority rule for determining laws and policies.

Quasi-Pure Procedural Justice

When applying the four-stage sequence, Rawls tries to design a social system where the method of pure procedural justice applies. The outcome, the legislation, should be just

whatever it turns out to be (TJ 85). The required fair procedure is in part achieved by guaranteeing equal basic liberties for all and by ensuring fair equality of opportunity (TJ 87).

However, Rawls acknowledges that no scheme of procedural political rules will guarantee that unjust legislation is not enacted (TJ 198). Moreover, the two principles of justice provide a standard, though insufficient, for judging the legislation independently of the procedure. The method Rawls chooses for deciding what are just laws will therefore rely on what he calls 'Quasi-Pure Procedural Justice' (TJ 206):

Laws and policies are just only if both

- 1) they are within the allowed range as defined by the two principles of justice; and if
- 2) they have in fact been enacted by the legislature in ways authorized by a just constitution.

This method of enacting laws and policies will involve majority rule, duly circumscribed. The role and limits of majority rule and the government must be clarified.

The Place of Majority Rule

We have seen that not even here in ideal theory will the two principles of justice pick out one set of laws as "The Just Legislation." Some procedure must be chosen for determining which set of laws - within the allowed range - is to govern conduct. According to Rawls a restricted sort of majority rule will be agreed to at the constitutional convention. I shall here consider some of his reasons (TJ 356ff).

A majority decision procedure is thought to give the benefits of discussion. The probability of reaching the best policy is increased by increasing the legislators' knowledge of

consequences in this way (TJ 358). After all, they are not ideal observers.

A majority-based procedure also seems natural since the parties in the constitutional convention would not agree to let any minority decide for them. Furthermore, a majority procedure is compatible with the principle of equal liberty (TJ 363).

The main problem with majority rule is that the agreement at which the majority arrives is not necessarily right or just, even though - in ideal theory at least - this will often be the case. Certain constitutional constraints are therefore necessary to limit the range of alternatives open to the majority. Such constraints may limit the political liberties of all, but only to guarantee their fair value or to protect the other basic liberties. This is acceptable, as it is in accordance with the first case of the first priority rule. It is also consistent with the idea of quasi-pure procedural justice.

These considerations support the acceptance of some sort of majority rule, duly circumscribed, in the just constitutions.

The Role of Governments

Rawls discusses the role of the government in Section 43 of TJ. He regards the government as establishing and maintaining certain political and legal institutions, the background institutions. These institutions control the social and economic process. By keeping this distributive system fair the results will be fair, however they turn out to be. In a state with private ownership of capital and natural resources the government must keep the price system competitive, and maintain reasonably full employment. It must also guarantee a certain level of well-being, and prevent distributions of power that hinder the fair value of political liberty and fair equality of opportunity. The

just constitutions all prescribe some sort of majority rule. I take this to mean that the government it defines is in some sense representative.

8. THE THEORY OF CIVIL DISOBEDIENCE AS A TEST OF JUSTICE AS FAIRNESS

The following two sections are both concerned with methodological features of the theory of justice. Section 8 describes the methods Rawls uses for justifying the two principles of justice as fairness. In Section 9 I discuss Rawls's use of definitions, and conclude that some of his stipulative definitions may be regarded as condensed explications.

In this section I shall show that the theory of civil disobedience may be regarded as a test of the two principles of justice. Justice as fairness and the whole theory of justice are first presented as deductive systems. The two principles of justice as fairness are derived from the original position, and from them the theory of civil disobedience is derived. The whole theory of justice is a hypothetico-deductive system, which is justified from below: The acceptability of the system depends on the truth of its ultimate consequences. The theory of civil disobedience serves as a test of the theory of justice. I shall claim that this test will not be very conclusive, since it does not provide good reasons for rejecting or accepting the two principles.

Justification of Deductive Systems

Theories are here understood to be sets of statements, the logical connections between which are made explicit. When certain of the statements form a basis, and from these principles certain others statements, the consequences, are derived or deduced, we speak of Deductive Systems (Føllesdal & Walløe 1977 p. 53f).

In a deductive system, two methods of justification are possible. The consequences may be justified from above, i.e. proved from the principles of the system. In this case the principles are called 'axioms', and the consequences 'theorems'. On the other hand, the validity of the principles may be tested by checking whether their consequences are true and consistent.

This method is called 'justification from below', and the principles are here called 'hypotheses'. The whole system is here called a hypothetico-deductive system. The hypotheses are supported by favorable tests, and must be modified or rejected if the results are unfavorable.

Justice as Fairness as a Deductive System

Justice as fairness has two parts: the description and justification of the original position, and the two principles of justice as fairness (TJ 15). I find it reasonable to regard justice as fairness as a deductive system. The assumptions presented as conditions in the original position have the status of principles in the deductive system, and the set of principles of justice as fairness follows as consequences: The two principles of justice are derived from the assumptions in the original position.

The theory of civil disobedience is not part of justice as fairness, since justice as fairness is limited to a perfectly well-ordered society. However, the theory of civil disobedience is part of the more comprehensive theory of justice, to which we now turn.

The Theory of Justice as a Deductive System

I hold that the theory of justice as a whole can be understood as a hypothetico-deductive system where justice as fairness occupies the top position of the system. The two principles are used for deriving the rest of the theory of justice, including the theory of civil disobedience. This whole deductive theory is justified from below, and hence is a hypothetico-deductive system. The original position and the two principles of justice as fairness are justified by seeing whether

the consequences that are derived from them are true. But how are the consequences to be checked for truth? Normally we would simply require that the consequences must fit in with our experiences - those "facts" that we have good reason to believe in. In this case, the consequences must match what Rawls calls our 'Considered Judgments of Justice in Reflective Equilibrium', or the consequences must extend these judgments in satisfactory ways (TJ 19, 51). The notions Rawls uses must be explained.

Considered Judgments of Justice

Our considered judgments of justice are those of our judgments made without hesitation that involve our sense of justice and in which we have confidence (TJ 47). One problem arises in connection with these "facts" that justice of fairness is tested against: although some judgments are quite fixed, others may change because of the theory presented.

Moral philosophy is Socratic: we may want to change our present considered judgment once their regulative principles are brought to light.

(TJ 49)

The required match between "facts" and theory can therefore be achieved either by changing the conditions laid out in the initial situation or by changing the considered judgments. Rawls takes this into account by requiring that the considered judgments involved should be those held in Reflective Equilibrium.

The State of Reflective Equilibrium

The State of Reflective Equilibrium is tied up with the relationship between a persons principles and his judgments reached after considering various conceptions of justice (TJ 48). If the principles which he finally accepts match those judgments

the person has ended up with, his principles and judgments are in a state of Reflective Equilibrium. His principles and judgments coincide, and he knows how they are related to one another (TJ 20).

Justification of the Conception of Justice as Fairness

We have seen that the two principles of justice may be derived from above and justified from below. Within justice as fairness they follow from the weak and commonly held assumptions of the original position. This is the subject of Part One of TJ. Part Two of TJ contains some consequences of the principles developed in the theory of justice which are thought to match our considered judgments. The derivation from above and the justification from below are closely tied together: the assumptions thought reasonable to impose in the original position rest on some of our considered judgments. Thus, Rawls claims that

A conception of justice cannot be deduced from self-evident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view.

(TJ 21)

The Theory of Civil Disobedience as a Test

The theory of civil disobedience fits into the hypothetico-deductive system as a consequence of the principles of justice as fairness.

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.

(TJ 385)

How may a theory of civil disobedience function as a consequence of the principles of justice as fairness? I find it

reasonable to regard the theory of civil disobedience as expressing a complex If - then statement, based on the two principles:

BECAUSE OF the principles of justice as fairness,
IF certain illegal acts called "acts of civil disobedience"
are done under certain circumstances,
THEN they are justified.

The characteristics of the acts and the justifying circumstances thus follow, in some sense, from the two principles.

This If-then-claim may be tested in two ways. It can be tested against considered judgments: Do people in fact regard such acts as justified under such circumstances? Chapters III and IV of my essay may be regarded as an attempt to answer this question. There I confront Rawls's theory of civil disobedience with theories held by others on this topic.

But the theory of civil disobedience may also be tested for consistency against justice as fairness and other parts of the theory of justice: It should not contradict any other statements of the theory. It seems on first glance that this will be a difficult task: **How can lawbreaking ever be justified in societies with just laws?**

I shall show that consistency is maintained. However, the question posed blurs the distinction between ideal and non-ideal theory. So far we have been concerned with ideal theory, while the theory of civil disobedience is part of non-ideal theory. The question posed mixes these two parts of the theory of justice. My first major claim is related to this distinction. I believe that the theory of civil disobedience is not very conclusive as a test of justice as fairness.

The Theory of Civil Disobedience is not very Conclusive as a Test

I shall here develop my claim that the theory of civil disobedience will be of little use for testing justice as fairness. It provides feeble grounds for rejecting or supporting justice as fairness, because the theory of civil disobedience relies on important auxiliary assumptions, and makes small claims.

In order to develop the theory of civil disobedience from justice as fairness Rawls must make a number of additional assumptions. One of the reasons for this is that justice as fairness belongs to ideal theory, while the theory of civil disobedience belongs to the partial compliance part of non-ideal theory. I shall show at various places that much of Rawls's reasoning depends on such Auxiliary Assumptions. This dependency affects the consequences of a negative test. Assume that the claims of the theory of civil disobedience do not match our considered judgments or that the claims are found to lead to contradictions. It will not be possible to determine whether it is justice as fairness which is wrong, or whether the fault lies with one or more of these auxiliary assumptions (Hempel 1966 p. 23). Thus justice as fairness need not be rejected or modified if the claims of the theory of civil disobedience are unacceptable. This is most likely to happen if we have reason to doubt the auxiliary assumptions. Indeed, I shall argue that the assumptions Rawls makes are open to reasonable doubt.

Since justice as fairness is not very falsifiable, it follows that it is not much supported if the theory of civil disobedience is accepted.

We must also keep in mind a formal restriction on the value of such tests: various incompatible theories may all match our experience equally well. That justice as fairness fits our considered judgments concerning civil disobedience does not

therefore imply that justice as fairness is ~~the~~ correct conception of justice: Utilitarianism, for instance, may well match these considered judgments too.

Furthermore, the value of a test for supporting a theory depends in part on the variety of facts which the test can be checked against (Hempel 1966 p. 35). Thus, it seems that the value of the theory of civil disobedience is proportional to the diversity of its claims. This in turn is determined by the scope of the theory. I shall show that the scope of the theory of civil disobedience is very limited: It only applies to what Rawls calls 'Nearly Just Societies', and only concerns what I shall call 'Civil Disobedience on grounds of Justice'. The claims of the theory are therefore within a narrow range, and this renders the theory of civil disobedience of small value for supporting justice as fairness.

In the following chapters of the essay I shall provide support for the claim I have presented here: That the theory of civil disobedience is of little importance when regarded as a test of justice as fairness. The theory of civil disobedience alone provides little basis for rejecting, modifying or supporting justice as fairness to any large degree.

9. RAWLS'S VIEW ON DEFINITIONS

Some criticisms against Rawls's theory of civil disobedience only apply if his definition of 'civil disobedience' is reportive. I shall now show that Rawls's definitions are not reportive. They are better regarded as stipulative extensional definitions, often of previously used terms. In these cases they function as Condensed Explications.

First I present a set of quotes from TJ which I regard as particularly useful. Then I show that Rawls's definitions cannot be essentialist, and argue for the claim that they are stipulative rather than reportive. Some of his definitions are

found to function as explications in TJ. At this point I include a short presentation of what I take to be his views concerning the role of definitions in the theories in TJ. The last claim I defend in this section is that Rawls's definitions are best regarded as extensional rather than intensional.

Quotes from TJ

So far I have presented some of the main ideas in TJ. Various definitions have been introduced along the way. At this point I wish to determine more precisely what kind of definitions he proposes and which status they have. This will prove useful for the evaluation of his theory of civil disobedience. Some critics have misunderstood the status of his definitions.

Rawls mentions and discusses the role of definitions at various places in TJ. The following comments I find particularly informative, and I shall refer to them later.

the notions of meaning and analyticity play no essential role in moral theory as I conceive of it.

(TJ xi)

Definitions and analyses of meaning do not have a special place: definition is but one device used in setting up the general structure of theory. Once the whole framework is worked out, definitions have no distinct status and stand or fall with the theory itself.

(TJ 51)

the concept of something's being right is the same as, or better, may be replaced by, the concept of its being in accordance with the principles that in the original position would be acknowledged to apply to things of its kind. I do not interpret this concept of right as providing an analysis of the meaning of the term "right" as normally used in moral concepts. It is not meant as an analysis of the concept of right in the traditional sense.

(TJ 111a)

There is no necessity to say that sameness of meaning holds between the word "right" (and its relatives) in its ordinary use and the more elaborate locutions needed to express this ideal contractarian concept of right.

(TJ 111b)

I accept the view that a sound analysis is best understood as providing a satisfactory substitute, one that meets certain desiderata while avoiding certain obscurities and confusions. In other words, explication is elimination: we start with a concept the expression for which is somehow troublesome; but it serves certain ends that cannot be given up. An explication achieves these ends in other ways that are relatively free of difficulty. . . . So understood one may think of justice as fairness and rightness as fairness as providing a definition or explication of the concepts of justice and right.

(TJ 111c)

There are certain formal restrictions that it seems reasonable to impose on the conceptions of justice that are to be allowed on the list presented to the parties. I do not claim that these conditions follow from the concept of right, much less from the meaning of morality. I avoid an appeal to the analysis of concepts at crucial points of this kind.

(TJ 130a)

The merit of any definition depends on the soundness of theory that results; by itself, a definition cannot settle any fundamental questions.

(TJ 130b)

In discussing the application of the first principle of justice I shall try to bypass the dispute about the meaning of liberty that has so often troubled this topic. The controversy between the proponents of negative and positive liberty as to how freedom should be defined is one I shall leave aside.

(TJ 201)

As we have noted before, justification is a matter of the mutual support of many considerations, of everything fitting into one coherent view. Accepting this idea allows us to leave questions of meanings and definition aside and to get on with the task of developing a substantive theory of justice.

(TJ 579)

On the basis of these passages I shall argue for the following claim: some of Rawls's definitions are "condensed explications", or stipulative extensional definitions of previously used terms.

"Rawls's Definitions are not Essentialist"

First I want to exclude the possibility that Rawls's definitions are essentialist as defined in The Encyclopedia of Philosophy (2 p. 314-317). If the definitions were essentialist, they would be conveying information concerning things provided by an infallible mode of cognition. The information would be of a more exact and certain kind than that provided by descriptive statements. Rawls does not seem to have such opinions about his definitions, and does not make any claim that they were arrived at by "intellectual vision", "intuition", "reflection" or "conceptual analysis". The quotes show that Rawls seeks to avoid placing stress on the definitions when "proving" his theory - which might well be the case if the definitions were essentialist (TJ 51, 130a, 130b). Rather, the definitions seem to be regarded as statements within the theory.

Reportive, Stipulative, Extensional and Intensional Definitions

Elaborate discussions are possible concerning how to classify various kinds of "nominal" definitions, and how these classifications overlap. Only two dichotomies are of interest for us: Are Rawls's definitions reportive or stipulative, and are they extensional or intensional?

The remaining kinds of definitions may have one of the two following functions: They may report linguistic behaviour - or word usage - within a certain area, or they may stipulate such usage within an area. The first type of definitions I shall call 'reportive', and the second type 'stipulative'.

It is sometimes said that all definitions claim sameness of meaning - synonymity - between the definiendum and the definiens. I shall here call these definitions 'intensional'. But in addition to those I also want to speak about extensional definitions, which express the more limited claim of

coextensionality between definiendum and definiens. In these cases, the definiendum and the definiens apply to the same set of elements, although the definiendum and the definiens may have different meanings. Some may want to call these extensional definitions 'descriptions' instead.

"Rawls's Definitions are Stipulative"

Reportive definitions may be true or false, depending on whether the claim presented is supported or defied by empirically based investigations concerning how the term defined is used in the area. 'Descriptive Synonymic Definitions of Usage' as used by Arne Næss (Næss 1953 p. 169) seems to refer to approximately the same definitions as those I would label 'reportive intensional definitions': These definitions state that the definition is used synonymously with the definiens within a certain class of situations, which Næss calls 'the intended field of validity'.

The stipulative definitions, on the other hand, propose a certain way of using a term within a book or a theory. Such definitions can seldom, if at all, be deemed true or false in isolation from the rest of the theory. They are true or false according to whether the theory of which they are part is true or false. Apart from this, these definitions are also evaluated according to their fruitfulness, simplicity etc.

Especially TJ 111a and TJ 130b seem to support my claim that Rawls's definitions are stipulative rather than reportive. But the main support comes from TJ 111c, where Rawls refers to some of his definitions as explications.

Explications are a kind of stipulative definitions which are found in scientific theories. They are used when introducing terms which are normally used in not very precise ways outside of such theories (Føllesdal & Walløe 1977 p. 160f). I shall now show

how some of Rawls's definitions can be regarded as explications in this sense, and some consequences of this view. First I shall present a "Theory of Natural Kinds" which I believe accords with Rawls's view on the role of definitions. I then compare Rawls with Carnap and Quine on their use of the term 'explication'.

On Natural Kinds

In all theories various natural kinds of elements are discerned. These are sets of elements which have certain characteristics in common. Some of these natural kinds may be of special interest for the development of the theory, and they are therefore given names to facilitate the discussion and exposition of the various parts of the theory.

Some of the natural kinds Rawls's theory of justice deals with are acts, institutions, principles, citizens, societies. Among the acts again, natural kinds of acts may be distinguished. Some acts are thought to have certain characteristics rendering them of special interest. The acts belonging to this natural kind are set apart within the theory by means of a definition: A term, in this case a name, is linked to the set of elements to which it shall apply. The characteristics constituting the definiens are some of those which make the set of elements important to the theory. The definiendum is introduced to refer to those elements which satisfy the conditions stated in the definiens.

The definitions in Rawls's theory seem to have only these two functions: to facilitate the construction of the theory, and to simplify the presentation of it - see TJ 51.

Problems arise when the names have been used before by other writers or in other theories. Then we may ask whether the term refers to the same or to different elements each place it is

used. This can be difficult to determine, especially if the theories differ very much. A set of elements may of course be described in widely different ways when one includes only some of the common characteristics in each description. Further problems arise when the term has been used to cover various sets of elements, or when it cannot be clearly determined for every element whether it properly belongs to the set referred to. Confusions and unnecessary discussions may be the result. Sometimes explications are introduced in order to avoid such problems. On TJ 111c Rawls holds that some of his definitions are such explications. What does this imply?

"Rawls's Definitions are Explications"

Rudolf Carnap and W. Quine talk of the process of explication when changing the way of using certain terms - or of using concepts expressed by these terms, if one prefers to talk of concepts:

The task of explication consists in transforming a given more or less inexact concept into an exact one - or rather, in replacing the first by the second.

(Carnap 1950 p. 3)

Note how this idea appears in TJ 111a and c. I shall now discuss the notion of explication.

A term has been used to refer to a set of elements in rather inexact ways. For some reason one wants to retain the term, but its extension must be determined more precisely and possibly changed in important ways to fit the theory. These changes are brought about by explicating the old term. The resulting explication contains two parts: the term as originally used - the explicandum, and the term with the new proposed way of usage stated - the explicatum. The set of elements referred to in the theory from now on by the term will in general be different

from the previous set, most often being a subset of the old one. Moreover, the rules for the use of the term may limit the set in new ways, for instance by utilizing characteristics shared by the acts which have never been noticed before. So the changes may be extensive. Thus Quine remarks that when presenting explications

We do not claim synonymy. We do not claim to make clear and explicit what the users of the unclear expression had unconsciously in mind all along.

(Quine 1960 p. 258)

Rawls, in the quotes from TJ 111, seem to hold that his definitions are explications of this kind - he even paraphrases some passages from Quine's book at one point. This leads me to conclude that Rawls indeed intends his definitions to improve on the usage of old terms in the manner of explications just described.

We must now determine how explications are to be evaluated.

Carnap holds that it cannot be decided in an exact way whether an explication is right or wrong. This position is not commonly accepted, however. The explications of a theory are rather regarded as having the status of statements within the theory. They may therefore be counted right or wrong depending on the validity of the theory itself. This accords quite well with Rawls's view on the status of his definitions, expressed in TJ 130b.

Another important question when evaluating explications is one which Carnap considers: whether the explication is satisfactory, or at least more satisfactory than another explication. He lays down four requirements which explications should meet in order to be adequate (Carnap 1950 p. 7). These requirements specify the standards for evaluating stipulative definitions in general.

- 1) The explicatum is to be similar to the explicandum.
That is: it should be possible to use the explicatum in most cases where the explicandum has been used so far. But they need not correspond completely, especially not if this hinders the satisfaction of 2) and 3).
- 2) The characterization of the explicatum is to be given in an exact form:
The rules of its use should introduce the explicatum into a well-connected system of scientific concepts.
- 3) The explicatum must be fruitful:
It must be useful for formulating universal statements, e.g. empirical laws.
- 4) The explicatum should be simple, but only so far as 1) and especially 2) and 3) permit.

I shall return to these four standards when discussing Rawls's definition - or explication - of civil disobedience.

Definitions as Explications

Treating definitions as explications gives rise to the following difficulty: we have seen that the explicandum and the explicatum are often neither synonymous nor coextensional, while the definiendum and the definiens must be regarded as coextensional, and often synonymous as well. This discrepancy must be explained.

According to Carnap, definitions often occur in explications (Carnap 1950 p. 3). The definition then determines the new reference or extension of the term. So if a definition is used it only expresses the explicatum of an explication. If a definition is claimed to be an explication, then, I take it that the explicandum is not explicitly mentioned. That is: When a definition is presented and said to be an explication, it only tells how the term is to be used from now on, and not how it has been used before. When an explication is given in the form of a definition I therefore choose to call the definition a condensed

explication. The objection raised against presenting a definition and calling it an explication then no longer applies. I find it reasonable to accept Rawls's definitions of previously used terms as condensed explications of this kind.

My last claim is still untouched, as to whether Rawls's stipulative definitions are intensional or extensional.

"Rawls's Definitions are Extensional"

Arne Næss seems to use the term 'normative definition' approximately as I would use 'stipulative intensional definition' (Næss 1953 p. 147). Such definitions stipulate synonymy between definiendum and definiens within the intended area - which Næss calls 'the intended field of application'.

The other group of stipulative definitions which is made room for by the terminology I introduced in the beginning of this section is the set of stipulative extensional definitions. Such definitions are often used in extensional languages as mathematics. I shall show that there are reasons for accepting Rawls's definitions as extensional.

Rawls is concerned with presenting and justifying a certain theory of justice. For him, nothing is gained by stipulating synonymy between definiendum and definiens in addition to stipulating coextensionality. The presentation of his theory is facilitated by claiming coextensionality, but the presentation is not made easier by claiming synonymy as well. See, for instance, TJ 111b.

In fact, discussions concerning the presentation and attempts at justification of the theory may be hampered if the definitions are said to be intensional: The discussions might then center on whether the definitions provide satisfactory analyses of the new meanings of the terms rather than on whether

the presented theory is acceptable. And the answer to the first of these two questions is of little importance when answering the second - which is what Rawls is concerned with (TJ xi, 130b, 579).

I conclude, then, that Rawls's definitions are extensional rather than intensional, since nothing is gained and something is lost by claiming synonymy in addition to coextensionality between definiendum and definiens.

I have shown that when Rawls defines terms which are generally used in English, he presents condensed explications. He changes the rules which determine how a term is to be applied, presenting more exact rules. The definition states the explicatum only, by telling how the term is to be used within a certain context, most often the theory of justice. These condensed explications may be regarded as stipulative extensional definitions of previously used terms. Rawls's explication of 'civil disobedience' deserves special mention.

Rawls confines his discussion to one particular kind of civil disobedience that is committed in nearly just societies and justified by appeal to the principles of justice. He gives a partial definition of the term geared to this purpose. However, he does not claim that this definition is complete: He seems to exclude acts that are not justified by appeal to justice, when these take place in nearly just society. But he leaves it completely open what to include under the term in societies that are not nearly just.

CHAPTER II:

THE ROLE OF CIVIL DISOBEDIENCE

Rawls's theory of civil disobedience is divided into three parts (TJ 363f). The term 'civil disobedience' is defined in Section 55 of TJ, conditions for when the acts so defined are justified are laid down in Section 57, and in Section 59 Rawls discusses the role and appropriateness of civil disobedience in nearly just societies. The next three chapters of my essay deal with these three parts of Rawls's theory. However, I alter the sequence by starting with the discussion of the role of civil disobedience. This will help to explain how Rawls reasons, and hence prepares for the next two chapters. In Section 10 I leave the primary subject of justice and discuss the principles for individuals. Ordinary members of society are found to be bound to the just basic structure by the Duty of Justice.

In the next section I turn from ideal theory to the partial compliance theory. In what Rawls calls Nearly Just Societies the citizens are found to have a duty to comply with not only just but even some unjust laws - at least when the injustice is within certain limits. Beyond these limits, however, the duty to obey expires. Section 12 shows how justified civil disobedience is thought to function in these cases, where only a duty to obey a just constitution remains. In this case illegal protest may have a stabilizing function in the society, by correcting and preventing injustice.

Section 13 deals with the definition of 'nearly just societies'. It is important to determine which societies are nearly just, because Rawls's theory of civil disobedience only applies to them.

The last section in this part deals with the restrictions laid on the scope of the theory of civil disobedience.

10. PRINCIPLES FOR INDIVIDUALS

This section and the following deal with certain requirements laid on individuals according to justice as fairness. The present section remains within ideal theory, and discusses how citizens are bound to the basic structure in just societies. Duties and obligations are discerned, and the duty of justice is found to explain why people are required to comply with just institutions.

An explanation of how individuals become bound to institutions and to each other is important for evaluating a theory of justice: The just institutions of a well-ordered society must be supported by its members, otherwise its stability is threatened. Therefore certain principles for individuals are

discussed within the frame of justice as fairness even though this theory was originally limited to principles for the institutions of the basic structure of society. So Rawls imagines that after choosing principles for the major social institutions, the participants in the original position choose matching principles for individuals (TJ 110).

The principles for individuals are also necessary for grasping the problem posed by civil disobedience, and for attempting to solve it: Under which conditions, if ever, can it be justified to threaten the stability of a society by violating its laws? I shall return to this problem later on. The problem facing us at present is more fundamental: for what reason is a person required to obey the laws of his society in the first place?

Obligations and Duties

According to Rawls, there is a general presumption in favor of obedience to laws in a just society: its members have a duty and sometimes also an obligation to obey (TJ 376). How does Rawls define these two kinds of moral requirements? His leading idea is that

it seems appropriate to distinguish between those institutions or aspects thereof which must inevitably apply to us since we are born into them and they regulate the full scope of our activity, and those that apply to us because we have freely done certain things as a rational way of advancing our ends.

(TJ 343f)

The first group he calls 'duties', the second one 'obligations'.

Rawls's obligations seem to correspond to what is often called 'commitments'. An obligation is based on an obligation-institution and the Principle of Fairness, which binds one to do one's part of the institution or practice. The obligation arises

as a result of our voluntary acts, and its content will be defined by the obligation-institution. Moreover, obligations are only owed to those who cooperate to maintain the institution or practice (TJ 113). The social practice of promising is an example of an obligation-institution.

The duties, on the other hand, are moral requirements that apply to a person without regard to his voluntary acts. Their content is not defined by the rules of institutions or social practices, and they hold between all moral persons regardless of their institutional relationships (TJ 114f). Among the duties are the duty not to inflict unnecessary suffering, the duty of mutual aid, the duty to oppose injustice (TJ 246), and the duty of justice (TJ 114f). The last one explains why citizens are bound to the laws of their society.

I shall briefly consider what the principle of fairness and the duty of justice require, and see why they would be accepted in the original position.

The Principle of Fairness

No moral requirement follows from the existence of an institution alone (TJ 348). One becomes bound to fulfill one's part of the obligation-institution because of the moral principle called The Principle of Fairness (TJ 111). This principle states that

A person is required to carry out her part of the obligation, as defined in the obligation-institution, when two conditions are met:
1) the obligation-institution is just - i.e. it satisfies the two principles of justice; and
2) she has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further her interests.

Rawls holds that it is rational for the parties in the original position to accept the principle of fairness: Public

consensus about this principle makes it possible for members of a society to engage in a greater number of mutually advantageous schemes of cooperation, which will be in the common interest of all citizens. Furthermore, Condition 1 guarantees that this principle will never conflict with the two principles of justice.

Now Rawls claims that the ordinary members of society have no Political Obligation: they are under no obligation to comply with or support the constitution or legislation, because they have not performed any voluntary act tied to an obligation-institution prescribing obedience (TJ 112ff). However, they have a duty to do this which I shall return to. Only the more favored members of society are likely to acquire a political obligation, held towards citizens generally, to uphold the just constitution. The required voluntary binding act is done by taking advantage of the political system, e.g. by holding political office or joining certain associations (TJ 376).

Some authors have held a different view from Rawls here, but I believe their position is a weak one. Socrates and Locke, for instance, claimed that the citizens had in some sense agreed to abide totally with the system of laws of their society. I find it especially difficult to see which voluntary binding act all citizens perform in such cases, and also question the content of the obligation-institution.

Both Locke (1690 I par. 119) and, to some extent, Socrates (in Plato's "Crito") rely on some kind of tacit consent. This consent is expressed by not leaving the society or by having received its benefits - even by walking on the highway. Such claims of implicit agreement by all seem farfetched, especially in societies where there are no options but to accept the benefits imposed. Socrates's view has been contested on this

ground (by M.Cohen 1972 p. 290), and so has Locke's (by Plamenatz 1968 p. 6ff, and M. Cohen 1972 p. 310).

Some notion of tacit consent is surely acceptable, also to Rawls (see e.g. TJ 113). But I still doubt whether any obligation-institution exists which requires total obedience of the participants. Moreover, I doubt that the principle of fairness would apply in these cases, because such an unconditional institution would not be just. A.D. Woozley challenges Socrates's view along these lines (Woozley 1971 pp. 314ff).

In view of these objections I therefore agree with Rawls in rejecting that citizens in general have a political obligation in his sense.

The Duty of Justice

Rawls invokes the Duty of Justice to explain why we should be obedient to just laws under a just regime. I shall show why it would be agreed to in the original position as a principle for individuals which binds regardless of one's acts.

The Duty of Justice (TJ 115) requires that we

- 1) support and comply with just institutions that exist and apply to us; and
- 2) further just arrangements not yet established, when this can be done without incurring too heavy costs to ourselves.

It is clear that the duty of justice will not conflict with the two principles of justice as fairness, because it only requires that we support and further those institutions and arrangements that satisfy these principles.

Why, then, is not this duty rather made conditional upon voluntary acts, and regarded as an obligation? Joel Feinberg points out that this would seem to be more in accordance with the

social contract idea underlying the whole theory of justice (Feinberg 1973 p. 270). I presume that Rawls's reply would be that nothing would be gained for the members of society by doing so. In fact, they would be left worse off:

Nobody could reasonably hope to get a better offer than to join the just arrangements. Even if one should want institutions and practices leaving oneself better off, no such arrangements would be freely agreed to by all involved. The difference principle determining the just arrangements shows that some other citizens would then be worse off (assuming, as Rawls does, "close-knitmess" TJ 80-83). These less-favored members would obviously not agree to the alternative arrangements. All citizens would therefore opt for keeping and supporting the just institutions - even if they were free to choose in a voluntary contract situation.

Also, it is in everybody's interest to stabilize the just institutions as much as possible. If the citizens were required to uphold a just institution only if they had accepted benefits by it or promised to abide, they would not know whether they could rely on each other in general. So it would be better if all knew that everybody had a duty to support and comply with the just institutions, irrespective of their voluntary acts. Then they would be more inclined to enter into the arrangements and do their share. This would stabilize the institutions and make them more rational as means for furthering the interests of all concerned.

In the original position, therefore, the duty of justice could have been agreed to as an "Obligation of Justice", a commitment dependent upon voluntary acts. But since it is to the advantage of everybody that it is an unconditional requirement,

the parties will agree to an unconditional duty of justice.

Accordingly, it is the duty of justice that binds the members of a just society to obey its just laws. The theory of civil disobedience, however, is related to the duty to obey unjust laws in societies that are not completely just. We shall turn to these societies now.

11. THE DUTY TO COMPLY IN NEARLY JUST SOCIETIES

In order to understand the role of civil disobedience it is necessary to determine why a person sometimes has a duty to comply with not only just but also unjust arrangements. The duty of justice does not apply directly to unjust laws. Therefore we must move from ideal theory to an aspect of partial compliance theory. First I explain how a duty to obey unjust laws derives from the duty to obey the just constitution in some societies. Then I point to certain bounds of this duty to comply with unjust laws in these nearly just societies.

The Duty to Comply with Unjust Laws

Among the societies which are not entirely just and well-ordered, some have a just constitution and a democratic regime including some kind of majority rule. Rawls's discussion of a duty to comply with injustice is limited to these societies, which he calls 'Nearly Just Societies' (TJ 354). Since this restriction transfers to his theory of civil disobedience, I shall return to a more thorough discussion of his definition in Section 13.

These questions belong to the partial compliance theory, and Rawls assumes that they are best dealt with from the point of view of the original position after the ideal theory has been worked out (TJ 245f).

The duty of justice does not apply to unjust institutions, including unjust laws, since they do not meet the first condition

of the duty. Still this duty explains the duty a person has to comply with certain unjust laws in nearly just societies, because the duty of justice requires her to support the just constitution. A just constitution involves a principle of majority rule, and this opens for the possibility that some unjust laws might be enacted within the just procedure. As explained in Section 7, no just constitution will guarantee that only just laws will be enacted: just constitutions are parts of imperfect procedures. The laws "produced" are within the limits set by the principle of liberty, but they do not always comply with the second principle of justice as fairness. Rawls calls this a case of quasi-pure procedural justice.

In partial compliance theory the majority procedure involved is even less likely to result in just legislation. In these societies majorities are liable to make mistakes not only from lack of knowledge and judgment, but also because of "narrow and selfinterested views" (TJ 354). Since it is only conduct which is submitted to the authority which makes laws, the members of nearly just societies will often experience discrepancies between their judgments and the requirements laid on their conduct.

So in the original position the parties would agree that the citizens of nearly just societies should comply with some unjust laws for the sake of maintaining an imperfect but still just and workable legislative process:

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 effectuated legislative procedure.

(TJ 355)

Limits to Obedience in Nearly Just Societies

The parties in the original position recognize a duty to obey unjust laws in nearly just societies. But they would also limit the injustice to which the citizens would be required to accept: a majority decision must be within a certain range in order to be accepted as binding on conduct.

Rawls claims that two conditions must be satisfied (TJ 355):

- 1) In the long run the burdens of injustice should be more or less evenly distributed over different groups in society, and the hardships of unjust policies should not weigh too heavily in any particular case.

In connection with this condition, he mentions what I shall later refer to as **The Problem of Permanent Minorities**: "the duty to comply is problematic for permanent minorities that have suffered from injustice for many years" (TJ 355).

Secondly, if a majority decision transgressed the first principle of justice, it would not be within the bounds set by the just constitution stipulating the conditions for when such decisions are binding on conduct. The duty of justice would therefore not apply even indirectly to this majority decision:

- 2) We are not required to acquiesce in the denial of our own and other's 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 rights of the majority in the constitutional convention.

The theory of civil disobedience pertains to how members of nearly just societies are to act when these limits of tolerable injustice are transgressed.

12. CIVIL DISOBEDIENCE AS A STABILIZING DEVICE

Civil disobedience is presented as a way to act when the duties conflict in nearly just societies. This kind of illegal protest is acceptable because it remains within the limits of "fidelity to law" and functions as an extreme stabilizing device.

Civil Disobedience as an Appeal

In the theory of civil disobedience, Rawls seeks to determine what citizens should do when the laws and institutions of a nearly just society exceed the bounds of injustice just mentioned. There seems to be no duty to submit to such laws, although one may still have a duty to obey the constitution by which the laws are enacted. In these situations, the duty to comply with the constitution conflicts with the duty to oppose injustice and with the rights to defend one's liberties (TJ 363). Rawls holds that certain illegal acts may be considered in these cases as extreme protests against such injustice. These acts, undertaken in nearly just societies, he calls 'civil disobedience'. We need here only note that such acts are illegal, since that is what causes problems when justifying them. Chapter III of my essay is devoted to the definition of civil disobedience that Rawls presents.

The law may be protested against on the basis of the two principles of justice as fairness, and in nearly just societies this can be done by appealing to the public conception of justice:

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 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.

(TJ 382f)

Civil Disobedience Accepted in the Original Position

Viewed from the original position, some kinds of illegal acts done in nearly just societies are within certain limits of "fidelity to law" which I shall return to. These acts, which are those Rawls calls acts of civil disobedience, will in some situations be regarded as a final device for maintaining a just constitution. They may serve to prohibit and correct departures from justice in nearly just societies, providing a third way to meet injustice, apart from submitting to it and downright resistance. Submission would not prevent injustice in the future, but rather encourage it, in Rawls's opinion. And "resistance cuts the ties of the community" (TJ 384) - often too high a price to pay for removing occasions of injustice. Under certain circumstances, then, civil disobedience may be the only acceptable way to deal with injustice (TJ 384). Since the participants in the original position will seek to make the just institutions stable, Rawls claims that certain cases of civil disobedience will be accepted there, and thus be justified as ultimate stabilizing devices.

. . . 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 injustice and 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.

(TJ 383)

To express Fidelity to Law

Certain occurrences of illegal acts will be acceptable in the original position, we have seen. As extreme appeals to the common sense of justice, they will correct and hinder injustice. Rawls holds that for such acts to function as appeals at all, it is necessary that they express Fidelity to Law. He never explains

fully what he means by this, but I take him to mean that the protesters must show that they accept and respect most of the Basic Structure even though they act illegally. The "social fabric" is admittedly damaged, but efforts should be made to limit this injury so that it is clear that the social fabric is accepted for the greater part. Thus the protesters should express acceptance of the principles of justice as fairness, the just constitution, the system of laws and policies in general, and of the way the legislation is applied in most cases. The role of civil disobedience in nearly just societies has been found to be an extreme form of protest and appeal, which sometimes functions as a stabilizing device.

13. THE NEARLY JUST SOCIETIES

I now find it necessary to determine how Rawls circumscribes the limits of his theory of civil disobedience. In this section I discuss the characteristics of nearly just societies, and in Section 14 I note two restrictions of the theory. Rawls's theory is confined so as to cover only nearly just societies, hence it is important to find out what characterizes them. In these societies the conception of justice as fairness is publicly recognized. They have just constitutions, a democratic regime and a majority procedure. Beyond this, the principles are complied with to some degree - which is not specified. I shall claim that the present U.S.A. is nearly just in Rawls's sense. Finally, I show that Vinit Haksar is mistaken when he disagrees with this conclusion.

'Nearly Just Societies' and 'States of Near Justice'

Rawls sometimes speaks of 'nearly just societies' and sometimes of 'states of near justice'. I shall regard the two terms as coextensional. I do this because Rawls does not seem to distinguish between two sets of societies by those terms, and to my knowledge no one else has done so either. Besides, to regard the two terms as applying to different sets of societies does not

seem to aid the presentation or justification of his theory of civil disobedience.

"There is a Public Conception of Justice"

In all the societies Rawls chooses to call 'nearly just', there is a publicly recognized common sense of justice (TJ 386). That they ~~share~~ a sense of justice I take to mean that they all hold the same principles of justice. Thus there is a common conception of justice in the society.

This restriction is laid on the set of societies partly because of the role civil disobedience is thought to have as an appeal to the commonly held conception of justice. In societies where such a common basis of understanding is lacking, Rawls questions the wisdom of such appeals (TJ 386f). However, this does not at all mean that illegal acts of protest and appeal cannot be justified in such societies.

"The Principles of Justice as Fairness are Partially Complied with"

Rawls distinguishes between two ways in which institutions may be unjust in societies with generally held conceptions of justice, depending on whether the society is well-ordered or not (TJ 352):

- 1) Current arrangements may depart in varying degrees from publicly accepted standards that are more or less just; or
- 2) the arrangements may conform to a society's conception of justice, or to the views of the dominant class, but this conception itself may be unreasonable, and in many cases clearly unjust.

The injustice in nearly just societies is of the first kind (TJ 352). So Rawls is only concerned with societies with partial compliance to the two principles of justice as fairness. I believe that Rawls excludes societies with the second kind of injustice for the following reason: No elaborate theory is needed

against the principle of equal liberty, even if it might seem to do so at first glance. To have a just constitution only implies that the constitution, if strictly complied with, would yield legislation and other basic institutions according with the principle of equal liberty. The conditional must be added since 'just constitution' was defined within ideal theory, and is now applied outside of that context. The only conclusion we may draw, then, is that transgressions against the principle of equal liberty will be unconstitutional if occurring in nearly just societies: Such injustice will be against the spirit of the constitution - although not necessarily against its words, since "Inevitable loopholes in the rules" (TJ 355) may occur. These loopholes would not be exploited by anyone complying strictly with the two principles, but that may happen in nearly just societies.

"The Societies have Democratic Regimes"

We already know that all just constitutions involve some form of constitutional democracy (TJ 197f). From TJ 363 we learn that the unconstitutionality of the nearly just societies does not extend so far that they have non-democratic regimes. But what does it mean to have a democratic regime? That may be difficult to find out, since the characteristics mentioned on TJ 225 may be said to concern democratic regimes in ideal theory only. At least it is clear, however, that some kind of majority rule is a part of the existing legislative procedure. By demanding this, occasions are provided where unjust laws may be produced and protested:

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 support a just constitution. Given men as they are, there are many occasions when this duty will come into play.
(TJ 354)

"The Society is Well-Ordered for the Most Part"

Up to this point I have determined that injustice against the principle of equal liberty is restricted by the somewhat vague demand that the societies have a democratic regime including some sort of majority rule. What about transgressions against the second principle of justice? No restrictions concerning this principle have been mentioned so far. And we are not left with any guidelines for determining how much the nearly just societies should comply with the second principle of justice. The "amount" of injustice cannot be determined more exactly than stated in TJ 353 and 363: The nearly just societies are well-ordered for the most part, but some serious violations of the principles of justice as fairness may occur.

I would like to point out that this depends on an assumption Rawls makes in connection with his definition of 'just constitutions'. If Rawls were to think that some violations of the second principle are plain and evident, and manifest in the public structure of institutions, some constitutions breaking with the second principle would be excluded from the set of just constitutions. Then some injustice against the second principle would be unconstitutional in the nearly just societies.

Existing Nearly Just Societies

I believe that some existing societies, including the present U.S.A., are nearly just in Rawls's sense. Here I shall give some reasons for this belief, and show how one could determine whether the Norwegian society is nearly just as well. In the next section I will point to weaknesses of the opposite view as held by Vinit Haksar.

We do not know precisely how far the basic structure of the nearly just societies may depart from the two principles of justice as fairness, but we have seen that these societies must have a common conception of justice as fairness, a just constitution and a democratic regime. Are any of the societies that exist today nearly just? Rawls nowhere denies that his theory of civil disobedience is meant to cover some existing societies. Moreover, since the theory is to be tested against our considered judgments, I assume that it should apply to some existing societies.

I find it plausible that Rawls intends to include the present U.S.A. among the nearly just societies for two reasons.

In the first place, Rawls refers to various books which concern the U.S.A. in his discussion of civil disobedience. When mentioning obligations arising by acting civilly disobedient (TJ 376) he refers to a discussion of such obligations by Michael Walzer (Walzer 1976). Walzer is concerned with various minority groups, including the American black people. And when claiming that courts should treat civil disobedience lightly, Rawls refers to a general discussion of this by Ronald Dworkin, concerning the present U.S.A. (Dworkin 1971).

Secondly I see that other writers, notably Brian Barry, takes Rawls to include the U.S.A. and some other societies among the nearly just (Barry 1973 p. 140f).

These two points support my belief that Rawls intends the theory of civil disobedience to apply to some existing societies, including the U.S.A. I want to stress, however, that the fact that the theory applies to these societies does not imply that all acts of civil disobedience are justified in such societies. The point is rather that Rawls's theory aims at setting up

characteristics of acts and justifying conditions which are thought reasonable for these societies only.

If we want to know whether Rawls's theory of civil disobedience applies to the Norwegian society as well, we might compare the Norwegian society with the American. If the Norwegian society turned out to be at least as just as the American, Rawls's theory should apply to the Norwegian society as well.

Corresponding research has been done by William Lafferty in order to compare the "level of democracy" in Norway with the level in the U.S.A. (Lafferty 1981). He bases his research on Peter Singers book on democracy and disobedience (P. Singer 1974). Lafferty finds that the Norwegian society gets a higher score on two standards which he thinks are relevant for Singer's theories: the level of participation in the decision process and the degree of equality in the distribution of "political resources".

In the case of Rawls's theory, the relevant standards must be based on the two principles of justice as fairness. If the members of the Norwegian society were found to share the conception of justice as fairness, the next question would be whether the society has a just constitution and whether its regime is democratic. According to Rawls, all of these questions could be easily settled. The remaining problem, then, would be to determine whether the Norwegian basic structure complies with the second principle of justice as fairness as least as well as the American basic structure does. That is: is fair equality of opportunity achieved at least as much in Norway as in the U.S.A.? And are social and economic resources distributed to the benefit of the least advantaged as least as much in Norway as in the U.S.A.? This I believe is the general direction of the research

necessary for determining whether the Norwegian society is nearly just in Rawls's sense.

On the Claim that No Nearly Just Societies Exist

I just concluded that some existing societies, including the U.S.A., are nearly just. Vinit Haksar does not accept this conclusion, and I shall now present - and reject - his view as stated in his article "Rawls and Gandhi on Civil Disobedience" (1976a). Contrary to his belief, civil disobedience may be punished severely in these societies. Moreover, the channels of communication may be blocked to such an extent that civil disobedience is necessary.

Haksar holds that the nearly just societies Rawls writes about do not exist, since they are too ideal. He further argues that in these societies Rawls's kind of civil disobedience will never be necessary. Rawls's theory is therefore in danger of being redundant. Let us look at his first claim. Haksar thinks that

some of Rawls's arguments will only make sense if he uses 'nearly just societies' in a fairly strict sense where people including the authorities act in a much more high-minded way than they do in any existing liberal democracy.

(Haksar 1976a p. 165)

The argument Haksar seems to have in mind is one concerning the wisdom of undertaking civil disobedience in various kinds of societies:

Rawls is reluctant to commend civil disobedience against basically unjust regimes because he fears that such regimes may, unlike near-just regimes which would behave more humanely, be aroused to 'more repressive measures if the calculation of advantages points in this direction' (Tolp, p. 387).

(ibid. p. 153)

Rawls argues that acts similar to civil disobedience are unwise in societies lacking a common conception of justice, because of the risk of suffering involved. He writes that

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.

(TJ 386f)

In the nearly just societies, however,

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 sanctions. 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.

(TJ 387)

Now Haksar points out, correctly I believe, that in existing societies civilly disobedient protesters are seldom treated with the sympathy Rawls prescribes. But I hold that Haksar is mistaken when he concludes that no existing societies are nearly just because protesters are not treated in this way. Rawls only claims that in nearly just societies the courts should take the civilly disobedient nature of the protest into account. (Of course, the courts ought to do this in the less than nearly just societies as well, but this is not Rawls's concern at this point.) He does not claim that the courts in the nearly just societies in fact do treat these protesters mildly. Rawls refers to Dworkin's essay at this point, which supports Rawls's claim concerning what the courts ought to do. Concerning certain draft offenders in the present U.S., Dworkin writes that

we may be required not to prosecute them, but rather to change our laws or adjust our sentencing procedures to accomodate them.

(Dworkin 1971 p. 130)

So Haksar's view concerning the degree of highmindedness in nearly just societies seems to be erroneous, since the courts in nearly just societies might not treat civil disobedience mildly

in spite of the fact that they ought to. There is obviously a danger of suffering in nearly just societies too. Yet I find that Rawls's claim concerning the wisdom of civil disobedience makes sense, since there is a greater risk of suffering in very unjust societies where no common sense of justice exists.

We should keep in mind, however, that this does not imply that Rawls regards civil disobedience as unjustified in these unjust societies. After all, his theory only concerns the nearly just societies, and in TJ 363 he writes that there is no difficulty about the justification of civil disobedience for overturning corrupt and unjust systems.

The other point of Haksar's article that I want to challenge here, concerns his view of the role of common principles of justice for correcting injustice. He claims that in the nearly just societies,

since the people share common principles of justice, they share 'hot lines' through which they can communicate, non-coercively, with each other and send signals or appeals to each other's sense of justice. Let us grant that sometimes the lines are busy or the sound is inaudible, but this problem could be solved in the Rawlsian model by a system where people got priority bookings and the price of such bookings could be certain penances, such as fasting, that the person performed. So there would be no need to go to jail in order to set up a non-coercive channel of communication with the authorities.

(Ibid. p. 162)

In my opinion, it does not follow from the fact that people share a set of principles of justice that they share "hot lines" for communication. The common conception of justice ensures a common basis of understanding, reference and appeal, but the channels of communication may still be blocked or non-existent. If we knew that political justice were realized, this would imply that such channels exist and function. However, lack of political justice of this kind may well be one of the serious infractions

of justice that occur in the nearly just societies. I therefore find it possible to accept as nearly just the societies that Bertrand Russell and Nils Christie write about: The American and the Norwegian. When justifying certain occurrences of civil disobedience they claim that legal channels of protest are clogged (Russell 1969 p. 157, Christie 1981 p. 96). The society is said to be "hard of hearing", bureaucracy and red tape hinders the communication between citizens and the government, and the mass media, tied to the establishment, are in charge of the contact.

14. LIMITATIONS OF THE THEORY OF CIVIL DISOBEDIENCE

Since the theory of civil disobedience is a part of Rawls's theory of justice, several of the restrictions on the theory of justice are carried over. In this section I shall first consider some of these limitations: That the theories are only concerned with distributive justice, and only discuss such justice within societies. I also discuss briefly two limitations Rawls puts on the theory of civil disobedience; that it only applies to nearly just societies; and that Rawls knowingly ignores any obligations arising by undertaking civil disobedience.

The Theory only deals with Distributive Justice

At the end of Section 3 I noted some restrictions on the scope of Rawls's theory of justice. The two most important ones for the theory of civil disobedience are that only the distributive aspect of justice is considered, and that international affairs are left aside.

By concentrating on distributive justice, the theory of civil disobedience does not apply to many morally based protests. Thus, protests against harmful or useless experiments on animals are not covered by the theory. And many protests on ecological grounds also seem to be beyond the scope of the theory.

Since the theory of civil disobedience ignores international relation it does not attempt to cope with illegal protests against warfare, draft systems or economic exploitation of other countries.

Illegal protests on the grounds just mentioned have often taken place, and they have often been called 'civil disobedience'. I find that these restrictions limit the scope of the theory of civil disobedience in important ways. But it seems to me that some of the critics of Rawls's theory of civil disobedience have failed to observe these restrictions. I shall show that this has caused some misunderstandings. Perhaps Rawls should have stressed that his theory only pertains to civil disobedience on grounds of distributive justice? After all, he does not say that other kinds of illegal protest are never justified in nearly just societies. This is necessary to keep in mind during the following discussions.

The Theory only Applies to Nearly Just Societies

I have already pointed out that Rawls restricts the scope of his theory of civil disobedience to the nearly just societies, and in the last section I tried to determine more precisely what characterized these societies. Rawls seems to recognize lawbreaking as a problem of justice only in this kind of unjust societies. In more unjust societies there will be no duty to comply with a just constitution, and so conflicts will not arise between this duty and one's right to defend one's basic liberties or the duty to oppose injustice. I find this position quite acceptable. A comment is perhaps appropriate, because Rawls might seem to dismiss too hastily the problems tied to disobedience in more unjust societies. For instance, he might be

taken to hold that M. Gandhi's illegal protests in colonial India present no problems at all.

I think it is important to bear in mind that Rawls is only concerned with civil disobedience from the point of view of distributive justice. Religious considerations or other moral principles are not brought into play. He also distinguishes quite clearly between whether an act is justified and whether it is efficient, wise etc. According to Rawls, considerations of efficiency and the like are pertinent only after it has been determined that the act is just (TJ 6, 376). What Rawls claims, then, is that illegal acts of a certain kind are unobjectionable on grounds of distributive justice in less just societies. I find this rather restricted claim reasonable. Thus, that Gandhi's protests were justified in this way can hardly be denied. I believe, however, that other questions are more open for discussion; for instance, whether they were the most efficient method for causing change, whether they need be nonviolent for tactical reasons etc. Now Rawls also claims that it is ~~unwise~~ to act in this way in less just societies, because of the risks of unproportional suffering involved (TJ 387). Obviously he regards suffering as an unreasonable and inefficient part of a protest. This position is not readily acceptable, I believe. Gandhi, for one, held the opposite view:

For according to the science of Satyagraha, the greater the repression and lawlessness on the part of the authority, the greater should be the suffering courted by the victims. Success is the certain result of suffering of the extremist character, voluntarily undergone.

(Gandhi 1961 p. 275)

I think that Rawls's claims concerning the efficiency of various kinds of protest in less just societies are of little importance for evaluating his claims in the theory of civil

disobedience. Challenging his view on the importance of suffering, as Haksar seems to do (Haksar 1976a p. 156) may be right, but this can still not affect our evaluation of Rawls's claims.

I find Rawls's limitation of the scope of his theory acceptable. But this narrow scope makes it quite clear that his theory leads to a quite restricted range of applications. This lessens the importance of the theory as a test of the theory of justice, since there remain few occasions for checking its claims against our considered judgments.

Obligations are Ignored

The second limitation Rawls imposes upon his theory of civil disobedience is that he deliberately ignores possible obligations arising by undertaking civil disobedience. After remarking that such obligations are acquired when engaging in political action, he notes that

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.

(TJ 377)

This decision is independent of Rawls's claim that citizens generally have no obligation to obey the law. I do not believe that this limitation affects Rawls's claims concerning which acts to call acts of civil disobedience, and when these acts are justified.

Michael Walzer discusses some obligations that are entered into by acting civilly disobedient (Walzer 1970 p. 46-73). He claims that the protesters acquire obligations both toward the oppressed and toward those who treat them unjustly. I cannot see that any of Rawls's considerations are challenged. Rather, they are supported by Walzer's two main points.

Walzer holds that the protesters must act so that democratic action is not blocked. Since the protester plans to be united with other citizens in the community, this precludes the use of violence to some extent (Walzer 1970 p. 69). Rawls's definition includes a characteristic D5, which demands that the act must be nonviolent. As we shall see, this limits the use of violence in acts of civil disobedience to a large degree. I do not believe that adding an obligation to refrain from violence would eliminate any acts from the set defined by Rawls. Walzer's other requirement concerns the stability of the society. In a democratic society, the protester puts himself under an obligation not to undermine the society, because by doing so no one would benefit, and future action would be made more difficult (Walzer p. 68). I believe that Rawls incorporates this requirement in his justifying condition J3: that the total amount of civil disobedience must be kept within limits.

I shall briefly return to these two obligations when discussing the defining characteristic and the justifying condition. In my opinion, Rawls's theory of civil disobedience is not impaired when he limits his discussion to the duty of justice alone.

Summary

I have shown that Rawls limits his theory of civil disobedience to nearly just societies, and that he does not take any obligations into account. In nearly just societies, certain illegal acts are called 'acts of civil disobedience'. These acts function as extreme protests against what the protesters consider to be unacceptable injustice. By this protest the protesters appeal to the common sense of justice of the majority and express

acceptance of the basic structure of society for the most part.

In some cases, then, civil disobedience may inhibit and correct departures from injustice which would otherwise lead to revolution or continued injustice. In this way civil disobedience is sometimes justified as a stabilizing device in these nearly just societies. We shall now turn to see which acts Rawls thinks should be called 'acts of civil disobedience'.

CHAPTER III:

THE DEFINITION OF CIVIL DISOBEDIENCE

The aim of this chapter is to present and discuss critically the six characteristics Rawls claims that an act must have in order to be called 'an act of civil disobedience'. Before starting on these examinations two preliminary matters must be dealt with, in Sections 15 and 16.

I shall first argue that Rawls definition of civil disobedience is a condensed explication, and show how this affects the standards for evaluating the definition. Then I present the list of defining characteristics. I stress that Rawls's definition is partial: it only covers those acts of the term's extensions that occur in nearly just societies. I explain why I consider the list of characteristics to be correct, and point out the difference between defining a set of acts and justifying this set. In Chapter III I am only concerned with defining the set.

The characteristics are discussed in Sections 17-23. Six sections treat each of the six characteristics, while Section 22 deals with the application of the demand of nonviolence. This section is not strictly necessary for defending my conclusions. In the three last sections I set forth my evaluation of Rawls's definition. In Section 24 I find that it is reasonably precise. In Section 25 I support my belief that the definition is fruitful, and in Section 26 I point to the main weakness of Rawls's definition: it departs to some degree from ordinary usage.

15. RAWLS'S EXPLICATION OF CIVIL DISOBEDIENCE

In his theory of civil disobedience Rawls states certain characteristics or conditions that determine a set of acts in nearly just societies. All these acts are thought to fill the role of an illegal protest against unjust treatment, involving an appeal to the conception of justice as fairness held in the society. This set of acts he chooses to call 'acts of civil disobedience'. Since he utilizes a term generally used in English, there is a possibility that his definition is in fact a condensed explication and thus a stipulative extensional definition, in the sense which I explained in Section 9. If this is the case we should judge his definition according to the four

requirements laid down by Carnap, rather than trying, for instance, to determine whether his definition is a correct or incorrect report of how the term is generally used, or of the meaning of the concept of civil disobedience. Furthermore, since the term 'civil disobedience' is usually also applied to acts done in less just societies as well, it seems that Rawls only presents a partial definition of the term. He does not specify how the term is to be used for acts in less just societies. In the following I shall present some reasons for accepting the definition of civil disobedience as an explication of the term as generally used, and point to some consequences of this.

At no point does Rawls explain his way of defining 'civil disobedience' by reference to the meaning of the concept, neither as generally used nor as he decides to use it. This supports my belief that his definition is not intensional. Since he does not even attempt analyses of the concept of civil disobedience, I shall refrain from talking of "conceptual characteristics of acts of civil disobedience", and rather speak of characteristics of acts or conditions on the set of acts.

Other writers have referred to other sets of acts by the same term, sometimes depending on conceptual analysis (e.g. Bedau 1961). The characteristics listed have varied, and the term has been used in very inexact ways. Now Rawls notes some discrepancies between his own way of applying the term and the way some others have used it. He claims that the set he defines is a true subset of some of the sets defined by others, and that it is approximately the same as that defined by still others (TI 364 footnote 19). So he does not believe that his definition is stating the normal or "correct" way of applying the term, as would be the case if it was intended as a reportive definition.

Nor does he anywhere claim that his definition is correct or right, which might have lead us to believe that he intended his definition as reportive.

So far I have found support for the claim that Rawls's definition of civil disobedience is a stipulative extensional definition of a previously used but inexacly applied term. I find it reasonable, then, to accept the definition as a condensed explication, subject to Carnap's four requirements. I shall now show that it would be reasonable to apply similar standards even if the definition were not regarded as an explication.

One of the points in Section 8 was that the theory of civil disobedience may be seen as a test of the theory of justice as fairness. The theory of civil disobedience is thought to yield a testable statement similar to this:

BECAUSE OF the principles of justice as fairness,
IN nearly just societies,
IF certain illegal acts called 'acts of civil disobedience'
are done under certain circumstances,
THEN they are justified.

How is the definition of civil disobedience to be evaluated in the light of this claim? The definition should be precise enough to decide for most acts whether they belong to the set of acts of civil disobedience. This is because the statement may have to be tested against people's considered judgments, and it may be necessary to give examples of which acts are referred to and which are not.

Moreover, the definition should in some sense follow from the role such acts are thought to have in the nearly just societies. Rawls's definition determines a set of acts by listing certain necessary and jointly sufficient characteristics. I expect, then, that the choice of these characteristics can be

explained by reference to this role.

These two points concerning the demands we should want to lay on the definition of civil disobedience are very similar to two of the standards Carnap presents for explications. This supports my claim that Rawls's definition is indeed a condensed explication of the term 'civil disobedience'.

In view of this I therefore accept Rawls's definition of civil disobedience as an explication, a stipulative extensional definition, rather than as a reportive or intensional definition. This has a bearing on how criticism against the definition is to be met, and for how the definition should be evaluated. One cannot prove that the definition is true or false by pointing out that it accords with or varies from other usages of the term. Neither can it be found true or false by showing that the defining characteristics are part or not part of the meaning of the concepts of "civil" or "disobedience".

Nevertheless, Rawls's definition can be deemed true or false according to whether the theory of civil disobedience is true or false, partly depending on whether its claims are supported or rejected by comparison with people's considered judgments. And his definition may be claimed to be useful or fruitful, or not so. This is best done by determining the consequences of choosing to limit and name a set of acts in this manner. Carnap's four requirements may be useful as a basis: How well does the definition satisfy these requirements?

1) The explicatum is to be similar to the explicandum. I.e. the new extension ought to coincide approximately with the old. A question which may arise concerns the choice of name for the set of acts: Does Rawls's use of the term 'civil disobedience' depart far from ordinary usage, and does this cause any problems among other people concerned with these issues? I shall show that some misunderstandings arise because Rawls's definition is partial.

2) The characterization of the explicatum is to be given in an exact form.

- Is the definition precise enough to decide for all acts, or at least for all important cases, whether they are acts of civil disobedience? I believe that Rawls's definition satisfies this demand reasonably well. In cases of doubt, he is at least able to point to which considerations that are important for deciding whether an act is civil disobedient in his sense.

3) The explicatum must be fruitful.

- Does the definition single out a group of acts that is particularly interesting in view of justice as fairness? That I believe, since it concerns the limits to obedience to law in democratic societies, and the justification of certain illegal acts. The definition is fruitful to the extent that the elements it defines share other interesting features which may be expressed as universal statements. A more specific question arises: Are all the civilly disobedient acts, and only they, appropriate for filling the role of an ultimate stabilizing device explained in Section 12?

4) The explicatum should be simple.

This requirement has low priority, and it does not seem possible to specify it very much for this case.

The discussions in the rest of this chapter will be of help for answering these questions.

At this point it may be useful to emphasize and elaborate further one observation I made about the scope of Rawls's definition in Section 9: What does it mean that his definition is partial?

The extension of the term 'civil disobedience' as generally used is a set of acts. These acts take place in various societies, some of which are not "nearly just" as described in Section 13. But some of the acts occur in nearly just societies.

In my opinion it is quite clear that Rawls is aware that 'civil disobedience' is used also when speaking about some acts happening in less than nearly just societies. However, his belief is that among all acts often called 'civil disobedience' it is those that take place in nearly just societies that are most interesting. Thus he develops a theory concerning these acts only

- the theory of civil disobedience. His definition is consequently also intended to cover only certain acts in the nearly just societies: All acts undertaken in other kinds of societies are ignored. His definition is therefore partial in the sense that it delimits a true subset of the extension of the term 'civil disobedience'. The subset concerned is that of acts happening in nearly just societies. If an act occurs in a nearly just society, it must have certain characteristics (which I discuss in the remainder of this chapter) in order to be called 'an act of civil disobedience' in Rawls's sense. Acts belonging to the rest of the extension need not satisfy that description. Thus, I hold that Rawls may agree that if an act takes place in a more unjust society it may properly be called 'an act of civil disobedience' even though it does not have all the characteristics about to be discussed.

16. THE SIX DEFINING CHARACTERISTICS OF ACTS OF CIVIL DISOBEDIENCE

The six necessary and jointly sufficient characteristics which yield the set of acts of civil disobedience are presented in this section. My list does not correspond exactly to the definition of civil disobedience set forth by Rawls, and this discrepancy is explained.

Rawls presents and discusses his definition of civil disobedience in Section 55 in TJ.

I shall begin with 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.

(TJ 364)

I believe that the following two passages must also be incorporated in the definition:

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.

(TJ 366, my
underlining)

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.

(TJ 366 footnote
22, my underlining)

In my interpretation, then, I believe that Rawls's partial definition of 'civil disobedience', concerning acts in nearly just societies, can be analyzed into the following six characteristics:

- D1: The act is contrary to law
- D2: The act is conscientious and political
- D3: The act is usually meant to bring about a change in the law or policies of the government
- D4: The act is public
- D5: The act is nonviolent
- D6: The agent accepts the legal consequences of the act

I have listed the characteristics in the order in which they will be discussed. D1 - D5 are found by splitting the definition (- i.e. explication) Rawls gives into separate parts. D6 expresses the demand Rawls makes in the last two quotes.

I believe that this interpretation is correct, in the sense that the texts give support to each of these characteristics. Besides, this interpretation is corroborated by the fact that the only other list to my knowledge claiming to present Rawls's view corresponds roughly to my list. This list is presented by Brian Smart in his article "Defining Civil Disobedience" (1978 pp.

258ff). However, there are some discrepancies between the lists because Smart's list presents Rawls's theory isolated from its context. Some of the restrictions I have found on the theory of justice and the theory of civil disobedience are presented by Smart as features of the acts of civil disobedience. These differing presentations lead Smart and me to somewhat divergent interpretations of the criticism against the features - or corresponding characteristics or restrictions. Smart sometimes claims that Rawls's theory of civil disobedience is refuted, while I only conclude that the theory is limited in scope. I shall return to a comparison of Smart's list of features and my list of characteristics in Section 24.

In the rest of Chapter III some light will be shed on these six characteristics of civilly disobedient acts in nearly just societies, discussing each of them separately. I shall try to discover how well they meet Carnap's standards for evaluating explications. It is necessary to determine where, how and why Rawls's definition departs from ordinary usage. I shall seek to formulate the characteristics in a fairly precise manner. Besides, I will try to determine whether the restrictions imposed by the characteristics are reasonable: Do these acts, and only these, fill the prescribed role of civil disobedience in nearly just societies?

It is important to keep in mind that Rawls is not looking for the set of justified acts of civil disobedience. Here he is concerned with those acts that may function as an extreme kind of protest against unjust treatment in a nearly just society by appealing to the commonly accepted principles of justice as fairness. Under which circumstances such protests are justified is another question. He discusses that in Section 57, and I deal

with it in Chapter IV.

We should not forget that other illegal acts may also be justified in nearly just societies. In fact, Rawls defines and justifies certain cases of "conscientious refusal". As for civil disobedience, he notes that

I do not at all mean to say that only this form of dissent is ever justified in a democratic state.

(TJ 364
footnote 19)

17. D1: THE ACT MUST BE CONTRARY TO LAW

By demanding that the act of civil disobedience must be contrary to law, Rawls requires both that the members of society considers the act to be illegal, and that the protester knows that this is the case. I show first why Rawls must require this, and then that the protester herself need not regard her act as illegal. On the other hand, she may admit that she transgresses a constitutionally valid law. This distinguishes civil disobedience from test cases. Another difference is that a civilly disobedient protester need not regard a supreme court decision on constitutionality as conclusive.

The Public Must Regard the Act as Illegal

The theory of civil disobedience applies to protests which require elaborate justification because they are illegal. Thus, if an act is not illegal, the conditions of justification will be different from those which Rawls is seeking. Now, for an act to be illegal in a society I find it reasonable to hold that it must transgress at least one legislative enactment - a law or practice - which is held to be constitutional in the society at that time. Two points deserves comment: Who decides whether the act is illegal? And what happens if the enactment is judged to be unconstitutional later on?

There is sometimes disagreement among members of society as

to whether a certain act is illegal. It is not always clear whether it is contrary to any enactment, and whether this law or policy is constitutional - i.e. enacted according to the prescribed procedure and within the limits set by the constitution. The question of constitutionality must not be confused with the question of whether an enactment is just.

Usually there will be a prescribed method, a court procedure, for deciding questions of constitutionality in a society: If disagreement exists, courts may rule on the question. If the decision of a lower court is challenged, higher courts are appealed to, possibly until a Supreme Court rules on the question. Therefore I take it that when an act is said to be illegal in a society this means that the public or the highest court involved at that time holds that the act transgresses a legislative enactment which itself is constitutional.

Sometimes it happens that a legislative enactment is deemed unconstitutional after the transgression has taken place, possibly because of the transgression. Rawls remarks that "this is merely a complicating element" (TI 365). I take him to mean that it is sufficient to consider how the law is regarded at the time the transgression takes place. This is so because the problems of justification arise for all acts which transgress the enactments of society.

The Protester Must Know the Public's View, but Need not Share It

It seems reasonable to exclude those illegal acts from consideration that are illegal by mistake. In these cases the idea of civil disobedience as an extreme kind of protest is hardly applicable. So the protester must know that the act is considered illegal in the society. But this does not imply that the protester herself must share this view. Neither need the

protester hold that the enactment is unconstitutional, as she must do if it is a test case. This is the main difference between acts of civil disobedience and test cases. Some writers regard test case raising as civil disobedience, but Rawls does not (TJ 367). I shall now discuss the distinction Rawls makes between these two kinds of dissent. But first I must explain the difference between direct and indirect civil disobedience.

Direct and Indirect Civil Disobedience

Many writers acknowledge two groups of acts of civil disobedience: direct and indirect. **Direct civil disobedience** occurs when the enactment broken and the object protested are identical. The act transgresses the very law or policy which is held to be objectionable.

Indirect civil disobedience involves breaking one enactment as a protest against other governmental acts which are unacceptable. The protesters need not believe that the broken enactment itself should be changed or abolished.

Some writers regard all acts of indirect civil disobedience as unjustifiable (e.g. Fortas 1968 p.124). Rawls does not reject such acts outright, but I shall discuss that in greater detail in the next chapter.

Civil Disobedience Vs. Test Case Raising

Since the aim of civil disobedience is to change a government law or policy, I find it reasonable to hold that acts of indirect civil disobedience should trespass enactments which the protesters admit are clearly constitutional. Otherwise the protest may easily be misunderstood as challenging the constitutionality of this enactment rather than as contesting that which is held unjust. In cases of direct civil disobedience,

however, the protester may, but ~~need not~~, believe that her act is contrary to a constitutional enactment. I shall now compare these indirect acts with test case raisings.

Sometimes it is necessary to transgress a law in order to have its constitutionality tested (Fortas 1968 p. 62; Tweed et al. 1964 p. 92). Such illegal protests are called 'test cases'. The protesters do not consider their act illegal, since in their opinion, the law they break is not constitutional. Their aim is restricted to testing the constitutionality of the enactments they transgress. By testing it in this way, they convey that they regard the court procedure as the proper and final method of settling the questions of constitutionality. Thus, a court ruling against these protesters' wish will be complied with. These cases of illegal action are sometimes regarded as more easily justified than acts of civil disobedience. They challenge such laws or policies which they doubt are constitutional. Their aim is therefore more clearly within the limits of law. Rawls's theory of civil disobedience differentiates between these two kinds of action:

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

(TJ 365)

I shall show that the two kinds of protest can be distinguished, but not by reference to whether the protesters consider their act as illegal or not. The protesters's aims are different, and they may disagree on whether the results of the court procedure must be accepted.

One difference between the two groups is this: The raiser of a test case must believe that the law or policy transgressed

is unconstitutional, while a civilly disobedient protester need not hold this view. The civilly disobedient may believe that the enactment is constitutional, and still claim that she is justified in acting as she does. She holds that the law or policy is ~~unjust~~, not necessarily that it is unconstitutional. This could not happen with the test case raiser, who brings a test case to court. She must doubt the validity of the enactment and trespass it in order to have it tested. Her hope is that it will be found unconstitutional. If the highest court deems otherwise, she cannot justify continued illegal action (Fortas 1968 p. 125).

But test cases cannot be distinguished from civil disobedience simply by claiming that in the first case the law is thought to be unconstitutional, while it is accepted as constitutional in the second. The civilly disobedient protester may also believe that the law or policy protested is unconstitutional. Then a first means for getting it changed may be to present a case in court. If this is not sufficient other means may be tried afterwards. In fact, it seems that many occasions of civil disobedience will be of this kind. In the nearly just societies there is a just constitution, protecting the principle of equal liberty. Therefore, any law or policy that is thought to transgress this principle will be regarded as unconstitutional by the protester. A civilly disobedient may hold this view even if the highest court deems otherwise (TJ 390). Thus, she will regard the court procedure as an imperfect procedure, which does not always lead to the right result. This view is not only held by Rawls: it is shared by Ronald Dworkin and others. Dworkin writes that

Sometimes, even after a contrary Supreme Court decision, an individual may still reasonably believe that ~~the law is on his side~~; such cases are rare, but they are most likely to

occur in disputes over constitutional law when civil disobedience is involved. . . .

We cannot assume, in other words, that the Constitution is always what the Supreme Court says it is.

(Dworkin 1971 p. 118,
my underlining)

I have shown that it will not be possible to distinguish between what the test case raisers do and what civilly disobedient protesters do when they present a test case in court. Any difference in their action will only appear if the Supreme Court decides that the legislative enactment is constitutional. The test case raiser will then stop the illegal protest, while the civilly disobedient will not. The civilly disobedient may even hold that the enactment is unconstitutional, contrary to the Supreme Court decision.

I mentioned on p. 86 that it may be easier to justify test case raisings, since these protests limit themselves to challenge the constitutionality of the enactment. As long as the two kinds of acts appear to be indistinguishable, it is reasonable to demand that the test case raisings be explicitly presented as such. If the act is not clearly stated to be a test case, the act must be classified as an act of civil disobedience.

Conclusion

The discussion, mostly in the first part of the section, has not produced any criticism against Rawls's first condition. But I have shown that D1 is not always conclusive for distinguishing civil disobedience from test case raisings. I am now able to rephrase D1 in a somewhat more precise form:

At the time the act takes place, the protester must know that the public, or possibly the highest court involved, holds that the act breaks at least one constitutional enactment. Further, the act is not presented as a test case only.

18. D2: THE ACT MUST BE CONSCIENTIOUS AND POLITICAL

In this section I will explain what the two parts of condition D2 imply. D2 serves to limit the basis of protest to that of the theory of justice. The political requirement excludes protests against transgressions of other principles than those of justice as fairness. Demanding conscientiousness implies that the protester must believe that his act is justified by these principles. This excludes egoistic acting. I explain why these two requirements arise, and end up with a more precise rendering of D2.

The Act is Political

The demand that civilly disobedient acts must be political is briefly discussed by Rawls:

civil disobedience is a political act not only in the sense that it is addressed to the majority that holds political power, but also that 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.

(TJ 365)

Since the theory of civil disobedience holds only for nearly just societies, the political principles of justice involved are the two of justice as fairness. Now, the act need not be justified by these principles in order to be called an act of civil disobedience - the definition would then be of "acts of justified civil disobedience". It seems sufficient that the agent must believe that the act is justified by the political principles. So I presume that an act is political in Rawls's sense iff both

- 1) the act is addressed to the majority that holds political power; and
- 2) the agent believes that the act is justified by the commonly held principles of justice as fairness.

Why must an act of civil disobedience satisfy these two demands?

I shall discuss them separately, and show what they exclude.

1) There is an obvious reason why the act must be addressed to the majority holding political power: civil disobedience is to

function as an extreme form of appeal to this majority (TJ 382).

Brian Smart challenges Rawls on this point. He points out that the minority might want the majority to adopt a conception of justice accepted internationally, for instance a conception held by the international courts (Smart 1978 p. 266). In these cases, other governments or peoples may be addressed and urged to put pressure on one's own government. Now, it seems clear that Smart's example is beyond the scope of Rawls's theory, and not against the theory itself. I find good reasons for not including this kind of protest in the theory of civil disobedience.

a) His example presupposes two conceptions of justice in a society. But Rawls's theory only treats nearly just societies, that is, societies with a shared conception of justice. The discussion in the theory hardly applies to Smart's case: if the majority has a wrong conception of justice, there is no prima facie duty to obey the government or its laws. So the minority need not be so concerned with expressing fidelity to law. And if the minority has a wrong conception of justice, it will be more difficult to justify their protest in nearly just societies. Besides, when the minority and the majority have different conceptions of justice the effects of illegal protests are not very predictable, as Rawls notes on TJ 386ff.

b) In addition, appeals to other governments or peoples may well be made, but such acts are not considered in Rawls's theory. They would seem to belong to a discussion of the justice of international law and of relations between states. This discussion transcends the scope of the theory of justice. Illegal protests of this kind may require a different justification, since they do not directly address the majority who in some sense is responsible for the injustice.

2) Why are only the political principles of justice as fairness accepted as grounds for the acts of civil disobedience? The reason for ignoring religious principles and other moral principles as basis is tied to the justification of civil disobedience as a stabilizing device. This justification is entirely based on the two principles of justice as fairness. The protester believes that there is no *prima facie* duty to obey the unjust law protested, since it is too unjust to be among the laws one has a duty to obey. Conscientious and illegal acts which cannot be justified along these lines may perhaps be justified in other ways. But the conditions of their justification will have to reflect that the duty to obey the law is *overridden*. This requires a justification different from that given for acts of civil disobedience. Thus, Rawls acknowledges that "conscientious refusal" may be justified at times. *Conscientious refusal* is "noncompliance with a more or less direct legal injunction or administrative order" (TJ 368). This refusal may, but need not, be based on political principles. It need not be intended as an appeal (TJ 369).

Peter Singer criticizes this restriction on the invokable principles (Singer 1974 p. 89). He points out that Rawls does not classify protest against cruel treatment of animals as an act of civil disobedience, since cruelty to animals, although perhaps immoral, cannot be objected to on grounds of justice. In my opinion, this criticism only points out that Rawls's concerns, and his use of the term 'civil disobedience', is more restricted than those of other writers. I cannot agree that it follows from Rawls's theory of civil disobedience that Singer's illegal protests are unjustifiable. But both Singer and Smart seem to believe this (P. Singer 1974 p. 90; Smart 1978 p. 265). Rawls's

point can only be that these acts cannot be justified by the principles of justice as fairness alone, while that is the case for the acts he chooses to call 'acts of civil disobedience'. Other illegal acts may still be justified, but then on other grounds. This interpretation is supported by Rawls's remark that:

I do not at all mean to say that only this form of dissent is ever justified in a democratic state.

(TJ 364
footnote 19)

The Act is Conscientious

For an act to be ~~conscientious~~ it must be based on some moral or religious principles held by the agent (TJ 369). Moreover, it must be his carefully considered view that the act is justified by these principles (TJ 367).

Now, all moral principles must satisfy the five formal constraints on ethical principles (TJ 130) which I listed at the end of Section 5. So ~~egoistic~~ acts cannot be conscientious: egoistic principles are either not general, or they do not order conflicting claims (TJ 135f). Thus, purely egoistic acts cannot be classified as acts of civil disobedience.

Since the act is both political and conscientious, it must be based on the political and therefore moral principles of justice as fairness (TJ 512). But why must the act be conscientious? Clearly because it is thought of as an appeal to the common conception of justice. Imagine that this demand is dropped. It would certainly seem strange if someone appealed to the majority to reconsider a certain issue in the light of certain principles, and it turned out that he had not given the matter much thought himself. Why should the majority bother? Nor would the appeal have much force if it was obvious that his

principles were very different from those held by the majority. It would be difficult for the majority to discern his motives, and this would naturally make them hesitate. So if the act was not conscientious, or at least did not seem to be, the impact of the appeal would probably be slight. The intention of the protester might be doubted by the majority, perhaps causing them to look for some egoistic motive of the actor rather than reconsidering the law or enactment. I wish to draw attention here to the point that this danger only arises when the protesters themselves stand to gain by the change. When such illegal protests are undertaken on behalf of others this will not happen. Rawls nowhere excludes such acts from the set of acts of civil disobedience.

It is not easy to check whether the act is conscientious and political in the way described. For this reason it should only be required that the act ~~appears to be~~ conscientious and political. We should therefore expect the protester to explain why he regards the act as justified by the principles invoked. Also, if the protester accuses the government for having broken certain principles, we should expect that he abides by them himself. These two requirements seems to be met if the protest is performed in public and done without violence; that is, if it satisfies characteristics D4 and D5. Thus Rawls remarks that

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.

(TJ 367)

Accordingly, I shall regard parts of the characteristics D4 and D5 as specifizations of D2.

Conclusion

I have presented the reasons for the characteristic D2, and have discussed some of the consequences of this condition. That the act must be political causes the exclusion of acts which do not address the majority, and also excludes those acts that are based on other principles than those of justice. The the act must be conscientious involves two demands: it must be public, in the sense that the reasons for the act must be expressed to the public. And it must be nonviolent, so that the public is convinced that the protester accepts the invoked principles of justice as fairness himself.

In the light of these considerations D2 may be reformulated as follows:

The act must be addressed to the majority that holds political power, appealing to the principles of justice as fairness. Also, the agent must hold these principles, and it should be his carefully considered belief that they justify his doing the act.

19. D3: THE ACT IS USUALLY MEANT TO BRING ABOUT A CHANGE IN THE LAW OR POLICIES OF THE GOVERNMENT

This characteristic has to do with the possible objects of protest which civil disobedience may be directed against. D3 helps to distinguish acts of civil disobedience from acts of conscientious refusal, revolution, riots, and illegal protests which are only aimed at private organizations. First I note why civil disobedience only challenges governmental action, including governmental control of private associations. Then I discuss the range of governmental acts civil disobedience may protest, and how small the intended changes must be.

Challenging Governmental Action Only

I shall first show why 'civil disobedience' only refers to protests against governmental acts. The ultimate aim may still be to remove injustice not done by the government, but then this must be under governmental control.

The theory of justice is only concerned with the basic structure of society. Therefore, the theory of civil disobedience only concerns injustice done by the major social institutions: the political constitution and the principal economic and social arrangements. In nearly just societies, constitutions are just. Revolutionary protests against such constitutions are therefore seldom if ever justified. Civil disobedience, on the other hand, is thought of as a protest against arrangements that are controlled by the government.

Would it be correct to classify a protest as an instance of civil disobedience if it were directed against the enactments of a private organization? I believe so, at least in so far as these organizations are or should be regulated by public law. Profit-making cooperations, labor unions, charitable organizations and the like sometimes have unjust policies, rules, aims etc. Such injustice may sometimes be controlled and prevented by the government to guarantee that the distributive process is fair. In these cases it seems reasonable to accept protests against government action - or lack of it - as civil disobedience. Let me mention one case:

Many social scientists agree that corporate institutions influence the governmental decision process in fundamental and often hidden ways (e.g. Rokkan 1966 pp. 88f). This influence may sometimes be controlled or channeled by the government to ensure a fair consideration of rights and interests. I believe that if some members of the society believe that the control is not sufficient, or that the influence is not channeled correctly, their protest may satisfy condition D3.

So protests directed against governmental policies towards private organizations seems acceptable as acts of civil

disobedience. The aim of civil disobedience may be to make the government restrict the channels of influence accessible to the organization, or to make the government impose other restrictions on the activity of the organizations.

Opposing any Act or Omission of the Government

I believe that civil disobedience may protest any act of the government which is thought to transgress the two principles of justice as fairness.

But the objects of protest mentioned by Smart do not seem acceptable:

The object of protest could mainly be the public's moral sense as it expresses itself outside the scope of law and the main social institutions. Discrimination in social relations or even a devious sense of humour among the general public might be the object of protest, and yet the protesters might share with the general public the belief that this is no matter for a change in either legislation or governmental policy.

(Smart 1978 p. 264)

If the protester does not think that governmental action is required, these protests seem to be clearly beyond the scope of Rawls's theory of justice.

But laws and executive acts may be protested (TJ 363). I take it that this includes various policies on the part of the government, provided that they are considered to be unjust by the protesters. Thus, it seems possible to regard both procedures for preparing laws and the application of laws as policies, and to regard them as unjust in some cases. One example may illustrate this, and also show how the just savings principle may be applied.

There is often a detailed procedure for how a government is to make a decision. One object of this procedure is to ensure that the interests of all concerned are considered. The procedure

itself may be unjust, if the requirements it lays down are insufficient. Thus, in some cases I think it is possible to protest a society's exploitation of its natural resources on these grounds: The decision to "produce" oil or use nuclear energy has not been taken with due consideration of the interests of later generations. If one generation uses too much of non-renewable resources, or use resources that pose a waste deposit problem, this may run counter to the just savings principle (TJ 296). Thus, certain kinds of "ecological" considerations may be the basis of civil disobedience.

The Intended Change must be Small and Well-defined

The act of civil disobedience must be meant to bring about a limited, well-defined change of a few governmental acts or omissions, often only one. This distinguishes civil disobedience from conscientious refusal, revolutions and riots.

According to Rawls, a conscientious refusal need not be intended as an appeal (TJ 368f). The refuser does not primarily aim at changing a law or policy: her aim may be restricted to exempting herself from the governmental order.

One major way in which civil disobedience and revolutions differ is in the amount of change in society they aim at. Revolutionary acts aim at the greater change. Civil disobedience involves an appeal to the shared principles of justice, and does not defy these principles. Nor is the aim to change the political constitution of the society. A revolution, on the other hand, aims at changing either the principles of justice or the political system of the society.

People engage in civil disobedience because they believe that a governmental act or omission, or a constellation of these, is unjust. It seems that according to Rawls, the object of protest must be limited to these few acts. Also, the aim has to

be relatively well defined: it is to have these governmental proceedings changed in certain ways, so that they are rendered more just. This requirement, that the object and aim of protest should be well-defined, contrasts civil disobedience to riots. Riots are sometimes regarded as unpremeditated reactions against a situation which is felt to be unjust. The rioters are not likely to have definite aims, and will therefore seldom be successful. Whether riots ever are justified is clearly a different question than whether acts of civil disobedience are justified.

Conclusion

I have discussed the condition D3 which stipulates one requirement an act must satisfy in order to classify as an act of civil disobedience: The act should be intended to bring about a change in the law or policies of the government. I have discussed three aspects of the aim which such acts of protest must have: whose acts may be protested, what kind of governmental acts may be protested, and which amount of change may be hoped for. I will summarize my conclusions by the following more precise reformulation of D3:

The act must be aimed at a specific change of a few of the government's acts or omissions which are thought to transgress the principles of justice as fairness.

20. D4: THE ACT MUST BE PUBLIC

It is difficult to lay down rules for how a society is to be made aware of the act and of its aim. Two requirements contained in D4 are discussed here, and I conclude that the members of society must be given a fair chance to interpret the act as a protest.

An act of civil disobedience must be public in two ways. In the first place it must be addressed to the public, that is, to the members of society at large. Secondly, it must express an appeal to public principles of justice: that is, principles which are generally acknowledged in a nearly just society. This makes it possible for the citizens to take notice of the act, and to interpret it as a protest against injustice as well. Both of these requirements are implied by D4. They are important in order to set off acts of civil disobedience against other illegal acts, especially the criminal acts.

Common criminal acts are seldom undertaken in public. They are motivated by private or group interest rather than a concern for justice. Here secrecy is needed in order to escape detection.

The Act must be Called to the Public's Attention

If the act is done in total secrecy, it can hardly be said to be a kind of address to the public's sense of justice. So most often there will have to be an audience witnessing the act. But the required publicity could also be gained by notifying the public that the act is to take place, or that it has taken place.

It should not be required that the act in fact reaches the attention of the public, since a blasé public with little interest in the doings of others might not notice minor acts of disobedience. But reasonable efforts should be made to draw the public's attention to the act. It is difficult to state very definite requirements concerning these efforts.

A common way of gaining publicity is to notify government officials, mass media etc. of the intended time and place of the act, and to explain that the act is meant as a protest against some specific injustice. However, detailed announcement in

advance may cause insurmountable difficulties, and does not seem necessary. Such prior warnings are sometimes selfdefeating. This was the case with some of Gandhi's protests: as a consequence of total openness, the would-be protesters were arrested the day before the operation was supposed to take place (Galtung & Næss 1955 p. 191).

The Act must be Presented as a Protest

Not only must the public be made aware of the act, but the reasons for it must also be known. This will increase the possibility that the act is correctly interpreted as a protest against injustice. Besides, the conscientiousness of the act is expressed in this way. Especially in cases of indirect civil disobedience misinterpretations are likely to occur. Such acts must therefore be connected in some way with the injustice protested, and the (symbolic) relationship should be made clear.

In order to meet this demand it may be necessary to notify the members of the society. The protester must try to explain why he regards his act as justified by the principles of justice as fairness. Again, I find it unreasonable to demand that the reasons for acting are understood by the public. One reason is that when mass media inform the public, the aims of the protest seldom come through undistorted. Thus Bertrand Russell noted that

by means of civil disobedience a certain kind of publicity becomes possible. What we do is reported, though as far as possible our reasons for what we do are not mentioned.

(Russell 1963 p. 157)

So it seems too strict to demand that all acts of civil disobedience should be interpreted as protests and appeals by the public. It might be sufficient to require that reasonable efforts are made to communicate the point of the protest.

A declaration made after the act might satisfy this condition of publicity. But in that case there is a considerable danger that the act will be misconstrued as a common criminal act, and that the declared political aim of the act is not accepted. So it seems reasonable to demand that notice and explanations should be given in advance or when the act takes place. But such messages need not give information about all particulars of the case.

Conclusion

My discussion of the public nature of the acts of civil disobedience has not yielded very precise conclusions as to the effects the acts are to have on the members of society. Contrary to common criminal acts, the acts of civil disobedience should appeal to the conception of justice prevalent in society. This consideration leads to the following somewhat more precise restatement of D4:

Reasonable efforts must be made to draw the act to the attention of the members of society, and to ensure that the act is interpreted as a protest against injustice.

21. D5: THE ACT MUST BE NONVIOLENT

There is much disagreement concerning the demand of non-violence. Writers discuss whether nonviolence is a necessary condition for acts of civil disobedience, and if so, which acts are excluded. In this section I shall deal with Rawls's position on the first question, and consider why he demands D5. In Section 22 I go on to determine which acts are excluded because of D5. Rawls gives two reasons for the condition of nonviolence. One stems from the demand of expressing fidelity to law and the condition of conscientiousness. The other is that civil disobedience must be separated from forceful resistance. Although the two reasons are connected to each other, they lead to somewhat different yet overlapping demands. In the conclusion at the end I restate D5 in terms of these two demands.

The Principles of Justice as Fairness must be Acknowledged

The majority must be convinced that the protester really intends to appeal to the conception of justice as fairness. Only then will there be a fair chance that the public reconsiders the law or policy in the light of the principles of justice as fairness. In order to achieve this, the protester must avoid transgressions against others' rights of the person.

The argument for nonviolence I shall discuss here is expressed by Rawls in the passage which I quoted in part in Chapter 16:

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 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.

(TJ 366f)

The act of civil disobedience involves an appeal to the principles of justice as fairness. For the act to be successful it is important that the minority's respect for the principles is recognized by the majority. Otherwise the intention of appeal to the principles might be doubted, and the wanted reconsideration of the governmental act might not follow. Instead, the act of protest and the appeal is in danger of being construed as an act of revolution instead. Such doubts and misinterpretations easily arise when the act of protest involves injury or damage against persons, or threats of this, since these acts seem to ignore other people's Freedom of the Person. This basic liberty is protected by the principle of equal liberty. Furthermore, since the right to hold personal property is included in this freedom, damage or destruction of property might also hinder the attainment of the protest. But it is not clear that such destruction will always give rise to doubts of this

kind. This makes the case against the destruction of property less strong. I believe that this accords well with a remark Rawls makes: civil disobedience

tries to avoid the use of violence, especially against persons, not from the abhorrence 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.

(TJ 366, my
underlining)

I therefore understand this demand to exclude most acts involving transgressions against the freedom of the person. Some destruction of personal property may be accepted, provided there is no doubt about the protester's respect for the principles of justice as fairness. This seems to be a reasonable demand, at least when other means of illegal protest are available. By avoiding such transgressions, especially when injury or damage would be the "easier" or more efficient way of protesting, the protester expresses his fidelity to the principles of justice.

It should be noted that this does not imply that acts that do transgress the two principles are unjustifiable in nearly just societies. The demand only excludes such acts from the set of acts of civil disobedience, since they will not function as appeals. Another kind of justification will be needed for them, perhaps along the lines of acts of revolution or of forceful resistance.

The Government must be left with Freedom of Action

Rawls's second reason for demanding nonviolence of the acts of civil disobedience is that the government's choice of action must not be hindered. Civil disobedience must not coerce. This is related to the idea of civil disobedience as an extreme kind of appeal.

It is clear that civil disobedience as a form of address

must be distinguished from various kinds of forceful resistance. Extending the last quote, we see that in Rawls's opinion civil disobedience

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 hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tend 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.

(TJ 366f)

An important difference between civil disobedience and forceful resistance is their different methods of influencing governmental decisions. Forceful resistance aims directly at a change in governmental proceedings, if necessary contrary to the majority's will. Civil disobedience works more indirectly, by trying to ~~convert~~ the public on some topic in the light of their conception of justice. The conversion will then lead to a corresponding change in governmental acts. This double aim excludes the use of undue pressure on the government: the government must be free to act as the public wants. Although civil disobedience may force the majority to make a choice (TJ 366), it follows from what I have said that it does not force the decision. If the majority considers the governmental act to be just - contrary to the protesters's view - the act called 'civil disobedience' must not force the government to change its ways. Further, the act must not make effectual judgment impossible, since the public and the government should be in a state of mind which allows rational reflection and choice.

A different reason for requiring a voluntary change of

governmental acts may be constructed from the idea of the protesters making an agreement with the majority. Thus, Vinit Haksar holds that this is one reason why Gandhi wanted to make sure that his disobedience movement did not involve the participants in the use of violence. By avoiding this kind of evil means, Gandhi could reach a morally binding agreement with his opponents (Haksar 1976b p. 75). This is an interesting reason for demanding freedom of action for the government, but as I see it, it does not fit in with Rawls's theory of civil disobedience. Admittedly, the idea of an agreement would prohibit the use of force, since the agreement would not be binding before Condition 2 of the principle of fairness was satisfied. This condition requires that both parties voluntarily accept the benefits of the arrangement, which does not happen as long as the government is forced. But the aim of civil disobedience in Rawls's theory is not to reach an agreement, but rather to convert the public. The illegal act is not used as a bargaining point, but to draw attention to the felt injustice.

The demand that the government must be left free to act as it will excludes some acts which exert pressure to make the government change its course. Since all appeals and protests apply some psychological pressure on the addressees a limit on acceptable pressure should be established. I find it useful to develop a distinction Ted Honderich has introduced among threats according to the pressure they apply on other's choice of action (Honderich 1973 p. 209). I shall distinguish between **coercive force** and **persuasive force**.

The term 'coercive force' will be applied to all acts which exclude one or more alternatives of action otherwise open to the opponent by making the alternative(s) physically or

psychologically impossible. The use of coercive force therefore restricts the opponent's freedom, limiting his room for effectual judgment and reflection. He may therefore be forced to act against his will.

'Persuasive force' applies to those acts which although exerting pressure on the opponent, perhaps even changing the consequences of some alternatives, nevertheless leave all alternatives physically and psychologically eligible to the opponent.

On the basis of the previous discussion of this demand I find it reasonable to exclude all acts employing coercive force, and to include acts utilizing persuasive force. No doubt the government's will may express itself in restricted choices where only one or a few alternatives are effectively blocked. Still, it is not consistent with the view of civil disobedience as an appeal to allow the act to restrict the government's choice even that much. Note that this restriction still allows some acts which exert coercive force on single members of society: The government is not necessarily exposed to insurmountable pressure although a few of the citizens are. So the demand discussed here excludes those acts which employ coercive force against the government.

Conclusion

On reflection both of the demands concerning nonviolence serve to ensure that the act expresses fidelity to law in some sense. When the act satisfies the first demand the agent expresses respect for the freedom of every person guaranteed by the first principle of justice as fairness. The second demand - leave the government with freedom of action - makes sure that the protester expresses respect for the political procedure required

by the constitutiton. By letting the government take the final decision the worth of the political liberties of all is acknowledged.

In Section 14 I noted that Rawls does not deal with obligations in his theory of civil disobedience. But I maintained that the obligations likely to arise would not change the theory in any way. Michael Walzer has discussed this kind of obligations, and I believe that some of them are expressed by the two demands I have discussed here.

So long as activists on behalf of the oppressed appeal in fact to other men and find channels available to do so, they incur obligations within the political community that makes the appeal possible. This is what it means, the least that it means, to act within a democratic system; that one is bound to respect the general freedom to act and the lives of all possible actors.

(Walzer 1970 p. 69)

I find that the two obligations stated in the last sentence of the passage support the two demands tied to D5.

The characteristic of nonviolence may be stated more precisely by combining the two demands:

The act must not violate or threaten to violate the freedom of the person or the personal property of anyone concerned. Moreover, the act must not limit the government's choice of action by rendering one or more of the alternatives physically or psychologically unacceptable.

22. APPLYING DEFINING CHARACTERISTIC D5

In the last section I examined how Rawls uses the term 'nonviolence' by showing why he demands that all acts of civil disobedience must be nonviolent. Here I shall discuss the effects of this requirement: Which kinds of illegal acts do not count as nonviolent in Rawls's sense? This application of D5 may be of some practical use for the social scientist and for others who want to apply Rawls's theory to actual cases. Its main value for evaluating Rawls's theory of civil disobedience is that it

illustrates how limited the set of acts are.

The first group of acts I discuss are those which physically injure or destroy persons and their property. No acts which harm persons seem to count as nonviolent. But damage of property may be regarded as nonviolent, at least when the property is public. I then turn to threats of injury or destruction. These are distinguished from warnings, and I show that threats do not qualify as nonviolent. Finally, I discuss various acts that neither damage nor threaten to damage anybody or their property against their will. These acts may still apply coercive force against the government. Thus, even some kinds of self-inflicted suffering is ruled out, e.g. hunger strikes.

Injury of Persons is not Nonviolent

Injury of citizens against their will can not be classified as nonviolent acts. All acts of this type transgress the basic liberties of others. The agent therefore hardly expresses acceptance of the principles of justice as fairness. Also, in major upheavals coercive force is utilized against the government. When engaging in civil wars, revolutions or terrorist actions the protester shows that the will of the majority is not respected.

Destruction of Public Property is Sometimes Nonviolent

The right to hold personal property is among the basic liberties, and these liberties are protected by the principles of justice as fairness. Do protesters who damage such property express fidelity to these principles? That is doubtful. Furthermore, acts which destruct private property stand in danger of being interpreted as revolutionary acts. Therefore it is open to doubt whether such acts are nonviolent in Rawls's sense. One will have to consider whether fidelity to the principles is sufficiently expressed by other means.

Destruction of public property may seem to be a fitting way to protest a governmental act. Are such acts nonviolent? Similar considerations apply as against destruction of private property. But acts of limited public destruction need not transgress any of

the basic liberties. And in some cases the aim of the act can clearly be to convert the public. I therefore find that some destruction of property can be called nonviolent, for instance the limited destruction of military property as a protest against participation in the armament race, the burning of flags or the destruction of "whites only"-benches or empty slum buildings. More extensive destruction, however, is not acceptable. The destruction of missile bases, for instance, or office buildings or railroads will apply coercive force, limiting the government's choice of action. It also counts against such acts that they will generally be regarded as threats by the public or the government.

Threats of Injury or Destruction are not Nonviolent

Rawls makes it quite clear that for an act to be civilly disobedient, it must not be a threat:

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.

(TJ 366)

I believe that 'threat' here refers to an explicit or implicit promise of injury or destruction to come unless certain actions are done. Thus, a threat limits the freedom of the threatened to choose between alternatives otherwise open. For us, the problems arise when the government is threatened in this way. Now, both ~~threats~~ and ~~warnings~~ of forceful resistance may be followed by acts which injure or destroy persons or property. Note that Rawls's condition of nonviolence excludes threats but not warnings. The one who warns does not have the power to prevent the events warned against. The warning does therefore not restrict the alternatives open to the government. Rather, the

warning is intended to make the government aware of undesirable consequences of one or more alternatives.

Why are not threats nonviolent? One reason is that a threat of injury or destruction have much the same effects on the public as an actual case of damage. If persons or private property are threatened, the acts do not express respect for other's basic liberties. Besides, the government is exposed to coercive force. The government is meant to protect everybody's personal freedom. When this basic liberty is threatened, the only morally acceptable way for the government to act may be to acquiesce in the demands of the protesters.

Another reason for excluding threats from the set of acts of civil disobedience is that they may be counterproductive as appeals. Threats can scare the public to such an extent that appeals cannot be made to their sense of justice. Thus Marshall Cohen points out that "the fear of violence (or of sudden death) puts men beyond the reach of rational and moral persuasion" (1972 p. 297). The use of threats, then, makes a conversion of the public impossible.

I find these reasons sufficient to support Rawls's claim that threats of injury or destruction cannot be acts of civil disobedience. Again, exception may be made for acts which threaten with a limited amount of damage, mostly of public property. But then the public must be convinced by other means that the protesters accept the principles of justice as fairness.

Other Acts that are not Nonviolent

So far, I have shown that in general neither acts which injure or destroy persons or property nor acts which threaten with this can be regarded as nonviolent in Rawls's sense. But the two demands subsumed under the characteristic of nonviolence lead to the exclusion of yet more acts that force the government to act against the majority's will, blocking some ways of action.

An area of social behavior which has interested social scientists lately is how political change can be caused in non-institutional ways, still without resorting to injury or destruction or threats of this. Gene Sharp's book The Politics of Nonviolent Action (1973) is an outstanding example of such research. I shall rely on his systematic presentation of various types of action here. Since his use of the term 'nonviolent' deviates from Rawls's use I shall add an asterix when using 'nonviolent' in Sharp's sense. Not only does Sharp present a catalogue of methods of nonviolent* action, but he also gives a thorough account of various nonviolent* strategies. These techniques of political activity go beyond peaceful institutional procedures within the framework of the constitution, but still without causing damage or destruction to persons or property.

In his presentation of the methods of nonviolent* action (p. 68), Sharp distinguishes between three broad classes of acts.

Nonviolent* protest and persuasion uses largely symbolic action intended to change opinions or to express disagreement.

Noncooperation involves the deliberate discontinuance, withholding or defiance of certain existing relationships - social, economic or political - between the actionist and the opponent.

Nonviolent* intervention: the protester takes the initiative by intervening in the objectionable situation. The acts may involve disruption or destruction of established behaviour patterns, policies or institutions, or they may establish new ones.

Most acts of nonviolent* protest and persuasion cause change by persuasive force. Classifying them as nonviolent does not seem to cause any problems. Whether they would be acts of civil disobedience is not obvious, however, since they are for the most part legal in nearly just societies.

When the noncooperation is limited, acts of noncooperation

seem to change the opponent's view rather than force a change. They must be limited in time, in scope or in the number of people refusing to cooperate. Thus, I believe that general revenue refusal and general strike which involves a widespread stop of labor must be excluded. Among the nonviolent acts I find it reasonable to include boycotts of goods or services, single occasions of partial revenue refusals, protest strikes lasting for a preannounced short period involving only certain groups of workers, and boycotts of government employment and departments and of government-supported organizations. Whether these acts also have the other characteristics of acts of civil disobedience is another question which need not concern us now.

Acts of nonviolent* intervention often induce change through the use of coercive force. But some acts of psychological and physical intervention function mainly by convincing the opponent that she ought to change her policy. In these cases the hindrance is not so big that it cannot be overcome physically and psychologically. Various forms of sit-ins, ride-ins etc. may put some pressure on the government without limiting its room for effectual reflection and choice. The same holds for other kinds of intervention, for instance the deliberate overloading of facilities which slows down or paralyzes the operation of an institution. On the other hand, I believe that acts of economic or political intervention employ coercive force against the government: for instance when alternative economic and political institutions are set up.

The acts I have been discussing usually express fidelity to the principles of justice as fairness. But sometimes they apply coercive force against the government: it is not always allowed freedom of action. So these acts are nonviolent in Rawls's sense,

provided that the pressure they exert, if any, is physically and psychologically surmountable for the government.

Voluntary Suffering

Some remarks are required concerning acts that involve voluntary suffering. When acting in this way, the agent deliberately damages or destroys her own property, or injures herself, or expresses willingness to be injured by others.

At an earlier stage I noted that Rawls seems to regard suffering as unwise or inefficient. Other writers and civil disobedients disagree with Rawls on this point, claiming that the impact of the protest increases when the protesters must suffer because of penalties or because of the nature of the act. Whether these acts are wise or effective I leave aside. But do any acts involving voluntary suffering satisfy the two demands of nonviolence? I shall be brief, for many of these acts are not illegal, and therefore cannot be acts of civil disobedience anyway.

Voluntary suffering does not seem incompatible with showing respect of the two principles of justice as fairness: although some of one's own rights are renounced, the acts do not violate anybody's basic liberties. But these acts sometimes violate the other demand, because they apply too much psychological pressure on the government. Suicide, fast and "direct action" requires a brief discussion.

Suicides and attempts at suicide have a large psychological impact. But if unaccompanied by threats of more suicides to come, I believe that the government is left free to act as it chooses. This view is shared by Marshall Cohen. Speaking of a man who burned himself to death in 1965 protesting the Vietnam war, Cohen

writes that

A sacrifice like Norman Morrison's, far from frustrating the purposes of civil disobedience, furthered them in a particularly impressive and moving way. If it inspired fear, it was not the fear of sudden death but the fear of eternal wrath, and that is a fear that often brings men to their moral senses.

(M. Cohen 1972 p.298)

Threats of suicide, however, often employ coercive force to cause change. The threat, if considered sincere, leaves the government with only one morally acceptable way of action. At least this is the case if the conception of justice as fairness is strong in the society - as it is likely to be in the nearly just societies - and the demands will not involve the death or injury of others. So I find that threats of suicide may not count as nonviolence, although acts of suicide do.

Some fasts function as threats of suicide and must therefore be excluded. The pressure involved depends on the duration of the fast, the number of people involved and how well-known they are. I believe that fasts which are limited in time and which will not cause serious damage to the protester are acceptable as nonviolent acts. Hunger strikes are not, however. Such refusals to eat before the demands are met, possibly until death, seem to lay too much pressure on the public and the government to count as nonviolent.

In some cases the protester uses her own body to interfere with the government's policy. Such acts are sometimes called 'direct action' (Bedau 1961 p. 657), or 'physical intervention' (Sharp 1973 p. 371). Sit-ins, stand-ins and the like belong here. These acts may sometimes lead to injury of the protester, but the readiness to suffer is seldom used to apply insurmountable pressure. However, the hinder is sometimes so large that it cannot be physically overcome even if the protesters were injured

or killed in the process. It is also easier to see the act as one of appeal if the aim is only to ~~postpone~~ the objectionable activity for a limited time: The act involving suffering would involve coercive force only if the interjection persists or is likely to be repeated. If the interjection of bodies can be overcome without injuring the protesters, I think it should be classified as nonviolent. But if it is necessary to injure the protesters in order to proceed the case is less clearcut. Sharp gives an example where women lay on sidewalks and entrances, forcing others to choose whether to tread on them or to stop working (Sharp 1973 p. 383). The psychological pressure on the government in this case seems surmountable, so the act should be accepted as nonviolent. More extreme acts, however, apply too much pressure. In 1958 some people attempted to sail the boat The Golden Rule into a U.S.A. H-bomb testing ground in the central Pacific. By doing so, the protesters attempted to force the U.S. government to stop the tests: if carried out, the tests would have caused the protesters' death (Bigelow 1958). In this case the protesters attempted to use coercive force against the government. This is partly because their aim was to put a definitive stop to the testing regardless of the government's or the public's opinion: They did not intend to move before the tests plans were abandoned.

When serious psychological pressure is applied there is a considerable risk that the public construes such acts as employing coercive force. I find it reasonable to conclude, then, that single occurrences of "direct action" are acceptable as nonviolent acts if it is clear that the hindrance will be of short duration. This holds even if a few members of society are subject to coercive force.

Conclusion

In this section I have shown that no acts that injure other persons or threaten to do so are nonviolent in Rawls's sense. So these acts cannot be called 'acts of civil disobedience' as Rawls uses that term. Acts that destruct or threaten to destruct the property of others must also be excluded unless the public is convinced by some means that the protester still accepts the principles of justice as fairness. Also, the limited destruction of public property and threats of this may satisfy the demands, and qualify as nonviolent. Finally I discussed acts which do not employ or threaten with injury or destruction of other persons or their property. It seems impossible to lay down precise rules for when such acts are nonviolent in Rawls's sense. If any of these are to be excluded, it is because they apply too much pressure on the government, and not because the acts are disrespectful of the principles of justice as fairness.

23. D6: THE AGENT MUST ACCEPT THE LEGAL CONSEQUENCES OF THE ACT

Characteristic D6 describes how the protester must behave after having committed the illegal act of protest: he must accept any penalties imposed on him in court. Two reasons for this requirement are found: The protester must express fidelity to law, and he must show sincerity, so that the impact of the appeal is increased. This demand is necessary but not sufficient for distinguishing civil disobedience from acts of revolution and common criminality. After a discussion of these two reasons I go on to show that it does not follow from D6 that the penalty must be regarded as just. Also, D6 is shown not to be a justifying condition. Rawls thereby avoids criticism against these two positions.

The Agent must express Acceptance of the Constitution and of the System of Laws in General

By accepting any penalties given, the protester expresses respect for the constitution and for the system of laws in general. This is especially important when the act committed is one of indirect civil disobedience, where the protester regards the law broken as just. If the protester refuses to accept the penalty in these cases his respect for the system of laws and the court would undoubtedly be questioned. I find this claim quite reasonable.

D6 will be of some help when distinguishing the civilly disobedient protester from the revolutionary. Rawls claims that the revolutionary

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.

(TJ 367)

I do not agree, however, to the point Rawls makes here. V. Haksar's objections seem plausible (1976a p. 155). He remarks that it is not clear that a revolutionary will be taken to acknowledge the regime's right to exist if he submits to the punishment it inflicts. If the revolutionary supports the existing regime, why would he break the law in the first place? He might be seeking publicity for his cause, just as the civilly disobedient, and therefore go through trials and be punished.

Since it is not obvious that revolutionaries will refuse to accept the penalty, this characteristic is not sufficient for distinguishing civil disobedience from acts with a revolutionary intent. Still it seems to be necessary for drawing that

distinction. I believe that the same holds when setting civilly disobedient protesters off against common criminals.

A common criminal will probably not be able to justify his act by the principles of justice as fairness. But he might accept the penalty simply because he regards it as a "tax" on criminal conduct. I shall return to this opinion, that penalties may justify the breaking of law. This is not the opinion of the civilly disobedient protester.

Thus revolutionaries and common criminals may accept the legal consequences of their acts, but partly for other reasons than the civilly disobedient. So even if it is necessary for him to express his respect for the courts in this way, this is not sufficient to distinguish his act from revolutionary or common criminal acts.

Kai Nielsen has pointed out that D6 requires too much in some cases. An example he gives is where the object of protest is the severe penalty tied to the transgression of a law. Nielsen holds that a protester may violate such a law. After having done this, the protester

could quite consistently with being a civil disobedient fight that penalty. His fighting such a penalty need not evidence any betrayal of the community - though he would need some alternative means to show his fidelity to law.

(Nielsen 1970 pp. 163f)

Thus Nielsen holds that

there are alternative ways for the civil disobedient to show his seriousness and the depth of commitment than by being willing to accept the punishment.

(Ibid. p. 164)

I believe that some remarks can be made concerning these opinions from Rawls's point of view.

Rawls does not require that the protester must accept any

penalties without challenging them: he may bring his case to court. Also, there are other ways of showing one's seriousness and commitment to law than by accepting the penalty: for instance by acting in public and nonviolently. But Rawls insists that acts of civil disobedience should use all these three means. No doubt he believes that all of them are necessary characteristics of acts of civil disobedience in nearly just societies.

And it is possible to protest the kind of laws which Nielsen mentions within Rawls's theory. But Rawls would recommend civil disobedience in such cases:

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.

(TJ 365)

The Agent should Appeal through Court Hearings and Suffering

The impact of the appeal may be increased at two stages during the legal procedure: at the courts, and while suffering the penalty.

I agree with Rawls when he declares that the protester may contest the charge in court and still express fidelity to law (TJ 366 footnote 22). At court the protester is given a chance to explain his motives as grounded on the principles of justice as fairness. This will often be important: acceptance of the penalty may not be sufficient to demonstrate that the protester is acting conscientiously rather than on purely egoistic grounds. Doubts may more easily arise when the protester has an obvious interest in the success of his cause and the protest is not done on behalf of others. (Carl Cohen discusses the problems arising when the protesters benefit - 1971 pp. 137, 159)

Bringing the case to court may motivate the public to scrutinize their laws, and eventually bring about the enforcement, change or annulment of the law objected to. This is most likely to happen in cases of direct civil disobedience, but it may also happen when indirect disobedience is defended: the public may be moved to change the governmental act when they are made aware of the reasons for acting.

If the result nevertheless is that a penalty is inflicted, Rawls seems to believe that the protester's willingness to suffer may help the appeal to come through:

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.

(TJ 367)

But I noted earlier, when discussing the wisdom of suffering, that Rawls would avoid great measures of suffering by the protesters. Also, the courts in the nearly just societies are not expected to inflict heavy penalties on the civilly disobedient protesters (TJ 386f). So the effects on the opponent of accepting the penalty will be limited in the theory of civil disobedience. It is certainly smaller than Gandhi and other advocates of self-suffering thought it would have, even though their views are related to societies which are not even nearly just. So it seems reasonable to conclude that according to Rawls, the impact of the protest is increased to a greater extent by opportunities provided at the trial, and not so much by the suffering of the legal consequences.

The Penalty need not be Regarded as Just

The reasons I have discussed for accepting the penalties do not imply that the protester must regard the penalty as just. Also, Rawls does not claim that submitting to the penalty justifies the illegal act.

To demand that the protester accepts his penalty does not necessarily imply that he must believe that it is right or just. Thus Rawls writes that

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 another matter.

(TJ 366 footnote 22)

I believe that direct and indirect civil disobedience differ in this respect.

In the case of indirect civil disobedience, a legal penalty is prima facie just: it is given because a just law has been broken. But the size of the penalty may be questioned. The protester can claim that the courts should reduce or suspend the sentence because of his motivation (TJ 387).

In cases of direct civil disobedience, however, the protester need not accept the penalty as right or just. Breaking a law which is considered extremely unjust does not rise to an obligation to accept the penalty. So Rawls does not hold that the punishment for transgressions of an unjust law is just. That position has been vehemently refuted by many writers (e.g. Zinn 1968 pp. 27-31; M. Cohen 1972 p. 295; Farrell 1977 and Dworkin 1971). As the quotation showed, Rawls's reasons for D6 do not sustain that position. The two reasons for D6 only support the belief that it will be wise of the protester to accept the punishment, not that he has any moral obligation to do so in these cases of direct civil disobedience.

I would also like to point out that Rawls does not argue

that paying the penalty in any sense justifies the act. That would be to misunderstand Rawls's view on the role of penalties. The theory of justice does not give the citizens the option of engaging in criminal conduct on the condition that they pay a "tax" - the penalty given by the courts if they are detected. Rather, the laws and punishment is introduced to ensure stability:

By enforcing a public system of penalties government removes the grounds for thinking that others are not complying with the rules.

(TJ 240)

the purpose of the criminal law is to uphold basic natural duties, those which forbid us to injure other persons in their life or limb, or to deprive them of their liberty and property, and punishments are to serve this end. They are not simply a scheme of taxes and burdens designed to put a price on certain forms of conduct and in this way to guide men's conduct for mutual advantage. It would be far better if the acts proscribed by penal statutes were never done.

(TJ 314f)

Conclusion

I have discussed the two reasons given by Rawls for insisting that the protester should accept the legal consequences of his act. The protester must express fidelity to the legal system, and also try to convince the public about his conscientiousness. The last reason derives from characteristic D2, that the act must be conscientious and political. Because of this consideration, the protester should bring his case to court. The discussion leads to the following restatement of D6:

The protester may contest the charge in court, but must accept the legal consequences of his act. The penalty need not be regarded as just.

24. "THE DEFINITION IS EXACT"

In the three concluding sections of Chapter III I shall evaluate Rawls's definition of acts of civil disobedience. These three discussions are structured around the first three of Carnap's four requirements of an explication. First I claim that the definition is as exact as can reasonably be required. Secondly, the definition is found to be fruitful. But thirdly, it is not altogether similar to ordinary usage. Therefore I suggest that Rawls should rather have called the acts 'acts of civil disobedience on grounds of distributive justice'.

So far in Chapter III I have presented and discussed Rawls's definition of civil disobedience. In Section 15 I showed that the whole of this definition is a "condensed explication". It states the explicatum of an explication: the term with the new proposed usage. This explicatum - or definition- may be evaluated according to the four standards laid down by Carnap.

In Section 9 I noted that the second and third requirements are most important. I shall begin with number two: the characterization of the explicatum must be given in an exact form.

Is Rawls's definition sufficiently exact? I think so, and I shall make some comments on the set of defining characteristics and the preciseness of each characteristic.

Comparison with Brian Smart's Set of Defining Characteristics

In my opinion it is quite clear that Rawls's explicatum contains the six characteristics I have discussed. Brian Smart appears to hold a different view: he is of the opinion that Rawls's definition of 'civil disobedience' has seven features. He also maintains that none of them are necessary. I shall return to the last statement later on, when I discuss the fruitfulness of Rawls's definition.

According to Smart, Rawls requires that acts of civil disobedience must be

- (1) in violation of a law, and intended to be so;
- (2) nonviolent;
- (3) public and with fair notice given;
- (4) accompanied by willingness to accept the legal consequences;
- (5) usually performed to bring about a change in the law or policies of the government;
- (6) addressed to the majority's sense of justice;
- (7) addressed to a sense of justice that is mainly incorporated in the law and social institutions.

(Smart 1978 p. 258)

When comparing my list of characteristics with Smart's features it is obvious that many of them correspond. That is: most of Smart's features seem to be more specific or more precise renderings of my characteristics or vice versa. I do not hold that each characteristic and corresponding feature expresses the same conditions to be put on the set of acts: Smart and I certainly disagree on some points on how Rawls is to be understood. I think this is because Smart has failed to take the rest of Rawls's theory of civil disobedience and theory of justice into account. But (1) corresponds approximately to D1, (2) to D5, (3) to D4, (4) to D6, (5) to D3. The common basis also includes most of the rest, features (6) and (7), and D2.

The two features (6) and (7) are in part restatements of restrictions put on the theory of justice and the theory of civil disobedience. According to Smart, feature (6) restricts the set of acts of civil disobedience in two major ways: with regard to the invokable principles and regarding the possible addressees (*Ibid.* p. 266) Both of these are criticized. I discussed these restrictions in Section 18. In my opinion they were caused by the restrictions on the theory of justice, and therefore on the theory of civil disobedience. Feature (7) states that an act of civil disobedience must be addressed to a sense of justice that is mainly incorporated in the law and social institutions. Smart

thinks that Rawls thereby restricts civil disobedience to nearly just societies. This follows in my view quite clearly from the restriction on the scope of Rawls's theory which I discussed earlier: Rawls's theory of civil disobedience is only meant to apply to these nearly just societies. His definition only concerns those acts that are done in nearly just societies. How the term is to be applied in other societies is not discussed, but I believe that Rawls may accept that the term is applied in these societies as well.

Concerning my D2 - the act must be conscientious and political - I find that only the second part of this characteristic is covered in Smart's list, by feature (6). Smart fails to mention the demand of conscientiousness. But this demand is partly repeated and specified by the demand that the act must be political. Furthermore, the demand does not itself cause any restrictions on the set of acts. It is a reason for demanding that the act should be public and nonviolent, and it explains why the act may sometimes be taken to court.

So generally the two lists seem to impose the same restrictions on the set of acts Rawls calls 'acts of civil disobedience'. However, note again that some restrictions stated explicitly in Smart's list are consequences of the limits on the scope of the theory of civil disobedience that I have pointed out at other places. This difference helps explain why criticism against features (6) and (7) (or the corresponding restrictions) are treated differently by Smart and me. When Smart challenges these limitations he claims that Rawls's definition of civil disobedience is wrong or false. I, however, can only conclude that the value of Rawls's theory is diminished when the restrictions cause major areas of interest to be ignored. I shall

discuss these restrictions and Rawls's reasons for introducing them later.

The Preciseness of the Defining Characteristics

At various points of the discussions in this part I have noted that the six characteristics are not very precise. The discussion of each characteristic has been summarized by a more precise rendering of the characteristic. In these restatements I have tried to make the reasons for them more explicit. But the definition does not always lay down exact borderlines for the set of acts. For instance, it is not always clear whether an act is "public" enough in Rawls's sense. Still I believe that the theory of civil disobedience points out which considerations that are important for deciding in each case. I find it unreasonable to require more than this of the definition.

25. "THE DEFINITION IS FRUITFUL"

According to Carnap's third requirement the explicatum must be fruitful. I believe that Rawls's definition satisfies this demand: the set of acts of civil disobedience is useful for developing the theory of civil disobedience, which contains some universal statements. I shall show how the definition is useful for formulating statements concerning justified acts. In this connection I note some assumptions Rawls makes when presenting the definition. Finally I point out that Smart's evaluation of Rawls's definition is unsatisfactory.

The theory of civil disobedience is an interesting part of the theory of justice: it shows how the results in ideal theory may be applied and modified to partial compliance theory. And the theory of civil disobedience also points to certain limits to obedience to law, discussing how citizens are to behave in some situations where duties and rights conflict. Its major claim is, as I have noted before, that certain illegal acts are justified

when done under certain circumstances in nearly just societies. Since the definition of 'civil disobedience' is necessary for formulating this statement, I find it useful in Carnap's sense.

The explication of civil disobedience serves to distinguish one "natural kind" of illegal acts from others in nearly just societies:

Civil disobedience has been defined so that it falls between legal protests 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.

(TJ 367)

This is done for the following reason. Rawls holds that these acts are justified under special circumstances, while other kinds of acts are justified under other circumstances. He explains why this is so by referring to their function as ultimate stabilizing devices. Acts which cannot fill the role of extreme protest and appeal within the limits of fidelity to law must therefore be excluded. When Rawls's definition of civil disobedience is to be evaluated I believe it must be on the basis of this claim: that all these acts, and only these, fill this role. I find his definition fruitful in this sense.

The following list shows which acts Rawls excludes. As I understand his defining characteristics,

Legal appeals do not satisfy D1;
Test cases: not D2, D4, D6;
Illegal actions against private organizations: not D2, D3;
Conscientious refusal: not D2, D3;
Revolutionary acts: not D2, D3, D5, D6;
Riots: not D2, D3, D5;
Common criminal acts: not D2, D4, D6.

In the light of my discussion I find it reasonable to hold that these other kinds of acts require different kinds of justification. But I would like to point out certain assumptions

which underly his definition.

One of these assumptions is tied to justice as fairness, and illustrates how the theory of civil disobedience is connected to the rest of Rawls's theory of justice. Rawls holds that the right to hold private property is included in the freedom of the person. This is a basic liberty, and he insists that all basic liberties must be protected. These claims have been challenged by various writers, e.g. H.L.A. Hart (1973 pp. 249ff). If either of these claims are rejected it follows that the destruction of property does not express contempt of the principles of justice held in the society. This kind of destruction may then be accepted as civil disobedience unless it is excluded for other reasons. So by challenging justice as fairness, changes may occur in the theory of civil disobedience. However, such challenges are beyond the scope of my essay.

It is also apparent that Rawls is very eager to distinguish acts of civil disobedience from acts of revolution and common criminality. I am not certain that it is necessary to express fidelity to law to the degree he requires. Fidelity to law is manifest at three stages: The protesters show that they accept and respect

- 1) the principles of justice as fairness, through conditions D2, D4, D5 and D6;
- 2) the just constitution and the government because of D3 and D6;
- 3) the system of laws and policies for the most part - by D3 and D6.

Some conditions might be removed provided that the others were sufficiently well complied with. For instance, could one not allow the penalty not to be accepted if the public still understood the reasons for the act and saw that it was based on

the common conception of justice as fairness? But such rules would certainly complicate the definition. So these borderline cases are probably better dealt with when they occur, and left undiscussed in the theory.

A note on the simplicity of the definition is perhaps appropriate here. In view of the many sets of acts which must be excluded I find that the definition satisfies Carnap's fourth demand: that the explicatum should be simple. It does not seem possible to restrict the set of acts correctly and precisely enough without resorting to at least these six characteristics, including one rather complicated characteristic concerning the aim of the protest.

Smart's Evaluation of Rawls's Definition

Brian Smart regards civil disobedience as a non-linguistic form of communication. What distinguishes acts of civil disobedience is that they have an "infrastructure of protest" (Smart 1978 p. 256). This means that the act must involve an utterer, an addressee, an object of protest and some principles invoked, appealed to or cited (*Ibid.* pp. 254, 256). From this point of view Smart criticizes all the conditions Rawls lays on the set of acts of civil disobedience. In Smart's opinion

In fact none of these conditions (in the way Rawls understands them) seem to be definitionally necessary.

(Smart 1978 p. 258)

- not necessary for the act to have such an infrastructure of appeal, that is. But Rawls's aim is not to delimit the set of all illegal acts with an infrastructure of protest. He wants to single out a subclass of them that have some particularly interesting ethical features. These he calls 'acts of civil disobedience'.

Other writers have also failed to see Rawls's definition as a condensed explication within his theory of civil disobedience. I have mentioned various points of misplaced criticism earlier, and I shall return to them in the next section. There I will discuss whether Rawls's definition is similar to ordinary usage of the term 'civil disobedience'.

My conclusion concerning the fruitfulness of Rawls's definition is, then, that it is useful. It is a necessary part of the theory of civil disobedience, used in stating an interesting consequence of justice as fairness.

26. "THE DEFINITION IS NOT SIMILAR TO ORDINARY USAGE"

I shall now discuss one more of Carnap's four standards for explicatums: that it should be similar to the previous way of usage. Rawls's definition does not satisfy this requirement so well. His definition restricts the set of acts considerably, and therefore departs from ordinary usage. I mention various restrictions laid on the set of acts. I also comment on some misunderstandings: Rawls may consider Gandhi's illegal protests as acts of civil disobedience, and he is only concerned with a proper subset of all illegal acts that may be justified in nearly just societies.

It is quite clear that Rawls's partial definition of 'civil disobedience' departs to a considerable degree from the usages of that term by others. This affects the evaluation of the definition according to Carnap's first requirement, that the explicatum must be similar to the explicandum. But this standard is less important for the total evaluation of an explication than the two I have discussed so far. Also, the term 'civil disobedience' has been used in somewhat inexact and inconsistent ways by various writers and protesters. So any attempt at a definition will receive a low score on this standard.

Rawls himself notes that his definition is more narrow than those made by others. The reason for this is that he believes that all these acts and only these are justified under certain circumstances in nearly just societies. It is important to bear in mind that his definition of the term 'civil disobedience' is partial, only covering these societies. As I see it he is still free to call M. Gandhi's illegal protest in colonial India 'civil disobedience' as well, even though these acts were revolutionary in intent. Acts in that society are beyond the scope of Rawls's definition. He may claim that the U.S. was not nearly just in the 1840s, when Henry David Thoreau protested against the Mexican war and slave-holding in the U.S.A. (Thoreau 1866). Thoreau's protests have been called 'a paradigm of civil disobedience' (Bedau (ed.) 1969 pp. 18). Similarly, I believe that B. Smart is not challenging Rawls's views at all when he claims that

it is just not true that civil disobedience need have no practical role, let alone no conceptual recognition, in a far less than just society.

(Smart 1978 p. 266)

Rawls's definition is partial, and he has left open the question of how to fix the extension of the term in these less just societies.

Having noted this, let us then turn to some of the restrictions on Rawls's definition of civil disobedience in nearly just societies. I shall comment on some of these in the sequence they are layed down by the six characteristics.

First, Rawls excludes test case raisings from the set of civilly disobedient acts. This is contrary to Abe Fortas's view, but accords with other writers (Fortas 1968 p. 67, 124; M. Cohen 1972 p. 300; Wyzanski, Jr. 1968 p. 195). So Rawls's exclusion cannot be said to deviate from normal usage here.

Rawls makes it clear that he does not regard conscientious refusal as an act of civil disobedience (TJ 368). By excluding this kind of acts, he clearly departs from ordinary usage of the term.

Also, Rawls is only concerned with acts grounded on principles of distributive justice. Protests on other moral grounds are not included, because they will require a different kind of justification. This restriction deviates from normal usage. For instance, Rawls cannot call protests against cruelty to animals 'civil disobedience'. This is contrary to Peter Singer's application of the term in his book Democracy and Disobedience (1974).

In addition, international protests are not included in the set of acts of civil disobedience, nor are most protests against warfare. They go beyond the scope of the theory of justice, which only applies to single societies taken in isolation. This limits the set more narrowly than what is usual: many illegal protests against the Vietnam war, for instance, have been called acts of civil disobedience (e.g. Dworkin 1968 p. 112; Murphy 1971 p. 65). However, protests against warfare on grounds of distributive justice may still be called 'civil disobedience'. Two considerations may urge such protests. The protesters can claim that the use of resources for weapons etc. leave the least favored in society even worse off. This would be the case if the benefits of being prepared to fight do not outweigh the losses of primary social goods of the least favored citizen. Also, I believe that the "just savings principle" could be appealed to. The protesters could argue that certain kinds of weapons increase the risk of total obliteration or widespread genetic damage. This risk may be unacceptable in light of the rights of future

generations.

Rawls also excludes acts which injure people and destroy property. There is much disagreement on whether acts of civil disobedience must be nonviolent, variously defined. For instance, Smart holds that civil disobedience need not be nonviolent in Rawls's sense (1978 pp. 260ff). Howard Zinn defines 'civil disobedience' so that violent actions may be included (1968 pp. 103ff). But many other writers agree with Rawls that violent acts should not be accepted as acts of civil disobedience: e.g. H.A. Bedau (1961 p. 656), Marshall Cohen (1972 pp. 297f) and Martin Luther King Jr. (1963 p.82). So I do not believe that Rawls's definition deviates from ordinary usage on this point.

This is also the case when Rawls requires that a civilly disobedient protester must accept the penalty. Some writers disagree, e.g. Kai Nielsen (1970 pp. 163f) and Brian Smart (1978 p. 264). But again, other writers side with Rawls, for instance Marshall Cohen (1972 pp. 296ff). So there is no common usage for Rawls to depart from at this point.

I have noted various restrictions that Rawls puts on the set of acts of civil disobedience. There is not general agreement on all characteristics. In those cases it has turned out that Rawls holds the most restrictive position, but also that his view on each point is shared by some others. So for the most part his definition does not depart from ordinary usage of the term. But he does not accept conscientious refusal as acts of civil disobedience, and he restricts the scope of grounds of protest severely.

These restrictions on the set of acts of civil disobedience are important. Still I believe that some writers have placed too much emphasis on these restrictions. I shall end this section by

drawing attention to some mistakes that have been made. They are tied to Rawls's distinction between defining 'civil disobedience' and justifying the acts of civil disobedience.

By now it should be clear that Rawls does not hold that the acts of civil disobedience are the only illegal acts that are sometimes justified in nearly just societies: he notes that other acts may be justified (TJ 364 footnote 19). Thus he also defines and discusses the justifying conditions for conscientious refusal, in Sections 56 and 58 of TJ. Furthermore, Rawls does not assert that the acts of civil disobedience are always justified: in Section 57 he discusses the conditions for when such acts are justified. So Rawls must maintain that the set of justified illegal acts and the set of acts of civil disobedience are partially overlapping: neither set is a proper subset of the other. Therefore, Rawls is not saying that all acts of civil disobedience, and only these, are always justified in any kind of society. He only contends that in the nearly just societies, acts of civil disobedience are sometimes justified solely on grounds of distributive justice, i.e. by the principles of justice as fairness.

Several writers fail to notice this. Peter Singer, for one, misunderstands Rawls when he alleges that

[Rawls] says that the justification of disobedience must be in terms of justice, and not in terms of 'principles of personal morality or religious doctrine'. . . . Rawls is committed to holding that no amount of cruelty to animals can justify civil disobedience.

(Singer 1974 p.89,
my underlining)

I cannot agree that Rawls is committed to that view. Rawls can only be taken to declare that whenever illegal protests of cruelty to animals are to be justified, one has to appeal to something more than the principles of justice. And if such

protests are justified, they are justified under other circumstances than those justifying civil disobedience on grounds of justice as fairness.

Brian Smart and Bernt Hagtvet (1981 pp. 38f) have followed Singer and have failed to observe that Rawls only discusses ~~some~~ of the illegal acts that may be justified in the nearly just societies. This mistake is perhaps due partly to Rawls's distinction between whether an act is an act of civil disobedience, and whether this act is justified. This distinction is not common although some writers employ and discuss it (e.g. Bedau 1969 (ed.) pp. 16ff; M. Cohen 1972 pp. 293 ff). The disagreements concerning some of the characteristics of acts of civil disobedience are no doubt also due partly to the conflation of these two issues. I find it quite reasonable and well-founded to distinguish, as Rawls does, between the question of description or classification and the moral or normative judgment. But Rawls should take care to make his position clear, since these two questions are often mixed. I take it that Rawls holds the following views:

- 1) Many illegal acts may be justified in more unjust societies. Rawls is not concerned with these acts.
- 2) Other illegal acts than those he considers may be justified in nearly just societies.
- 3) The acts Rawls discusses are not always justified in the nearly just societies.

The last point has not been misunderstood by any critics, perhaps because Rawls discusses the justifying conditions in a separate section, Section 57. I have shown, however, that the first and second points have not been noted by all of Rawls's critics. I believe that some misunderstandings concerning the second point could have been avoided if Rawls had called the set of acts 'acts

of civil disobedience on grounds of distributive justice'. This would make his position clearer: that other illegal acts may also be justified in nearly just societies.

Conclusion

My conclusion is that Rawls's definition or condensed explication of 'civil disobedience' satisfies Carnap's four demands fairly well, except the demand of conformity to previous usage. The definition is reasonably exact, and is fruitful for developing the theory of civil disobedience. When considering its function, it also seems simple enough. But the definition does depart from ordinary usage. This is partly because 'civil disobedience' is ordinarily used in varying and inexact ways. But it is also due to some severe restrictions on the theory of civil disobedience which apply to the definition. If he had called the set of acts 'acts of civil disobedience on grounds of distributive justice' this discrepancy would have been diminished. In that case some of the criticism based on misunderstandings might have been avoided.

CHAPTER IV:

THE JUSTIFYING CONDITIONS FOR ACTS OF CIVIL DISOBEDIENCE

In Section 57 of TJ Rawls discusses the circumstances under which civil disobedience is justified in nearly just societies. He presents three conditions rather thoroughly, mentions a fourth, and makes some remarks on the wisdom of civil disobedience.

The four conditions which must be satisfied in order that an act of civil disobedience is justified on grounds of justice as fairness will be discussed under the following headings:

J1: The injustice protested must be a clear violation of the principles of justice as fairness

J2: Normal appeals should have been made in good faith and have failed

J3: The total amount of civil disobedience in the society must be kept within limits

J4: Injury of the innocent must be avoided

As I understand Rawls, an act of civil disobedience may be justified under other circumstances as well. But then the justification is not based on grounds of justice as fairness alone. Rawls notes that these conditions are presumptions only:

No doubt there will be situations when they do not hold, and other arguments could be given for civil disobedience.

(TJ 371)

I take Rawls to hold that the four justifying conditions are necessary and jointly sufficient only when acts of civil disobedience are to be justified as extreme protests against injustices. Thus I believe that other sets of justifying conditions must be satisfied when some of these illegal acts serve other functions, e.g. as protests against cruel treatment

of animals.

I shall look at each condition, and try to note any assumptions that Rawls makes. It will become clear that much of his argument relies on assumptions concerning the nearly just societies. This illustrates the point I made in Section 8: that the theory of civil disobedience is a poor test of justice as fairness, because the theory of civil disobedience depends on many important "auxiliary assumptions".

At times I will refer to opposing views, and discuss the consequences of holding other assumptions. Disagreement is found concerning all the conditions, but most of the challenges can be dismissed by reference to the limited scope of the theory of civil disobedience. However, this does not hold for criticism against Rawls's reading of condition J1. Some objections against Rawls's view on this condition seems to be correct, and his specification of the condition does not seem valid.

27. J1: THE INJUSTICE PROTESTED MUST BE A CLEAR VIOLATION OF THE PRINCIPLES OF JUSTICE AS FAIRNESS

In this section I present and criticize Rawls's first condition for when acts of civil disobedience are justified. The condition consists of a restriction and a priority rule: the injustice must be substantial and clear, and preferably block the removal of other injustice. I discuss each part separately, and conclude that they are acceptable. However, Rawls's specifications of the demand and the priority rule may be challenged. Therefore I stress the assumptions he makes when he claims that only transgressions of the principle of liberty may be protested. Having established Rawls's views, I then criticize them. With his specification of J1 the theory of civil disobedience is unable to cope with the problem of permanent minorities. So I challenge the assumptions he makes. Some plausible changes in these assumptions lead to a specification of J1 which allows civil disobedience against transgressions of the difference principle too. This increases the value of civil disobedience as a stabilizing device.

The condition for justifying civil disobedience which Rawls

discusses first, on TJ 371-373, deals with the kinds of wrongs civil disobedience may protest. He subsumes two demands under the justifying condition J1:

- J1.1: Civil disobedience must protest substantial and clear injustice
- J1.2: Civil disobedience should preferably protest such injustice which blocks the removal of other injustice

I find both of these demands acceptable, but I disagree with the way Rawls specifies them.

J1.1: Civil Disobedience Must Protest Substantial and Clear Injustice

Civil disobedience can only be justified - on grounds of justice - if it is against transgressions of the two principles of justice as fairness. Moreover, there must be general agreement among the public that the governmental act is unjust when it is challenged. Since it is not always clear whether a law or policy is unjust, the civilly disobedient protest must be restricted to such injustice that is substantial and clear. Otherwise, no changes are likely to occur. I find this demand quite reasonable. Vinit Haksar does not agree, and I shall show why his position is weak before turning to Rawls's application of the demand.

Vinit Haksar believes that Rawls's kind of civil disobedience is in danger of being redundant. He is of the opinion that in a nearly just society the ~~courts~~ will correct those clear and obvious instances of injustice that take place. In these societies, therefore, civil disobedience will only be necessary against less clear and obvious injustice. This argument is based on Haksar's thoughts about the kinds of injustice occurring in these societies:

But if the courts allow clear and obvious infractions of principles of justice to survive, then they are conniving with injustice perpetrated by another branch of the State, and can that happen in a near-just society?

(Haksar 1976a p. 169)

I believe that the courts will not hinder all clear and substantial injustice in the nearly just societies. So civil disobedience is sometimes necessary.

With my reading of "nearly just society" it seems possible that the courts could be so "corrupt" as Haksar claims. The degree of corruption need not be great: "Subtle distortions of prejudice and bias may discriminate against certain groups in the judicial process" (TJ 235). Also, it is sometimes necessary in nearly just societies to break a law in order to have its constitutionality tested:

In fact, under our judicial system [in the U.S.A.], it is frequently necessary to violate the law to vindicate one's legal rights. If the person challenging a law as unconstitutional cannot show that he has violated it, the courts may say that the case is a hypothetical one which is not ripe for decision.

(Taylor 1965 p. 99)

This mainly concerns test cases, but also applies to civil disobedience which tests the validity of a law.

A final point against Haksar's view is that the courts - at least in the U.S.A. - may refuse to decide cases. The courts may rely on the "Political Question Doctrine", and claim that certain questions are "political in the sense that, rather than being purely legal or constitutional, they are properly to be decided by some other branch of the government" (Murphy 1971 p. 70).

In general, then, it is not clear that civil disobedience will be redundant in nearly just societies even when courts exist to hinder clear and obvious injustice. The courts may be biased and prejudiced, the constitution may require that a law is broken

before a court decides whether it is constitutional, and the courts may refuse to decide on political questions.

Rawls's Specification of J1.1

From the demand that the disobedience must protest substantial and clear injustice Rawls draws the following conclusion: Civil disobedience is only justified when protesting transgressions of the principle of equal liberty or the principle of fair equality of opportunity (TJ 372). Two assumptions underly this conclusion. I shall show how they support Rawls's reading of J1.1.

Assumption 1:

No examination of structural effects is necessary for detecting transgressions against the principle of equal liberty or against the principle of fair equality of opportunity.

To illuminate this first assumption, we should note that the principle of equal liberty and the principle of fair equality of opportunity

impose certain strict requirements that must be visibly expressed in institutions . . . The establishment of these wrongs does not presuppose an informed examination of institutional effects.

(TJ 372)

Rawls illustrates this assumption by some examples:

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.

(TJ 372)

Transgressions of these kinds thus satisfy the requirement J1.1: They are substantial and clear. On the other hand, transgressions against the difference principle are not accepted as grounds for civil disobedience. This is because Rawls holds that it is more

difficult to ascertain when such injustice actually takes place. The appeal to the conception of justice will therefore not be sufficiently clear in these cases.

Assumption 2:

So much rational disagreement is possible concerning whether the difference principle is satisfied that transgressions against it cannot count as substantial and clear injustice

One instance of Rawls's application of Assumption 2 concerns the choice between various economic and social institutions and policies. This choice

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.

(TJ 372)

So it is often unclear, or at least open to disagreement, whether the requirements laid down by this principle are met.

J1.2: Civil Disobedience should Preferably Protest such Injustice Which Blocks the Removal of Other Injustices

Rawls maintains that one should preferably employ civil disobedience against injustice that blocks the removal of other injustice (TJ 372). Thereby the protest will achieve as much change for the better as possible. I find no reason to object to this priority rule as long as it is not specified further.

Rawls's Specification of J1.2

Rawls holds that J1.2 supports his claim that civil disobedience must normally be directed against violations of the principle of equal liberty. He must make an assumption concerning this principle.

Assumption 3:

When the principle of equal liberty is fully honored other injustices will not get out of hand.

He must also assume that transgressions of the principle of equal liberty may maintain other injustices. Such transgressions are therefore the appropriate objects of protest. If such transgressions are removed, other kinds of injustice may more easily be endured or dealt with by the political process:

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 public order. When it is fully honored the presumption is that other injustices, while possibly persistent and significant, will not get out of hand.

(TJ 373)

Rawls's specifications of J1.1 and J1.2 lead to the conclusion that in nearly just societies, civil disobedience is justified only where the requirements of the principle of equal liberty are not met. So Rawls restricts the justified use of civil disobedience quite much. But I do not believe that Rawls is as strict as Joel Feinberg suggests. Feinberg points to various cases of civil disobedience which he believes will not be justified in Rawls's theory. According to Feinberg Rawls holds that civil disobedience

should be limited to the protest of wrongs that are "instances of substantial and clear injustice", in effect to "serious infringements of the principle of equal liberty" (373), that is to say, to denials of the basic political rights of citizenship. (It is worth noting in passing that this condition is not satisfied by civilly disobedient protests against cutting down cycamore trees to widen a city road, against busing pupils, over-severe marijuana laws, failure to install a traffic light at an intersection that is unsafe for children, or excessive air pollution. The weight Rawls assigns to the presumption for obedience is not easily outbalanced.)

(Feinberg 1973 p. 271)

Feinberg seems to misunderstand Rawls. The principle of equal

liberty ensures the fair value of the political rights of all persons, but also protects their civil rights. So it may be justified to protest, by means of civil disobedience, both the lack of traffic lights if children's lives are in danger and the lack of measures against air pollution causing damage to the body. These governmental acts or failures to acts transgress the basic liberties of citizens. The bussing or non-bussing of pupils may also be an acceptable object of protest. Provided that the principle of equal liberty is satisfied, transgressions of the principle of fair equality of opportunity may be protested. One of the requirements following from this principle is that equal opportunities for education must be maintained. So if civil disobedience for bussing is done on these grounds it may be justified.

The Problem of Permanent Minorities

I shall now show that Rawls's reading of J1 is unsatisfactory since it does not deal with the problem of permanent minorities.

How are citizens to behave when their basic liberties are protected, but the value of these liberties is minimal because of limited social and economic means? Rawls's specification of J1 seems to lay unreasonable restrictions on the occasions of justified civil disobedience for minorities who have suffered injustice for years. Michael Walzer describes a minority group of this kind:

Their votes are honestly counted, let us assume, but as it turns out they never win. They are free to organize, but they face a thousand petty difficulties and their attempts to sustain large-scale organizations regularly fail. Patterns of social and economic discrimination reinforce their minority political status (and their political weakness reinforce the social and economic patterns - it hardly matters which way the causal connections are worked). The pressure they can bring to bear within the political

system is limited. Their day-to-day lives offer them little hope. They are trapped in a moral and political ghetto - in a country that is still in some serious sense open and democratic. Obviously the situation I am sketching is something like that of the American black people, though the sketch is formal in character and hardly suggests their long years of humiliation and outrage.

(Walzer 1970 pp. 48f)

These minorities are formally considered to be citizens, but they are denied a fair share of income and wealth. It is not clear what Rawls thinks that such minorities should do:

the duty to comply is problematic for permanent minorities that have suffered from injustice for many years.

(TJ 355)

He might hold that societies with such permanent minorities are not nearly just. In that case there is no duty for the minority to restrict its illegal protests to civil disobedience. Acts of revolution, at least nonviolent ones, may be justified. H.J. McCloskey claims that this is Rawls's position (1980 p. 547). But if we accept that the American black people is a permanent minority in this sense, this does not fit with Rawls's view that the present U.S.A. is nearly just. I therefore believe that Rawls must admit that societies with such minorities can be nearly just.

With his specification of J1, Rawls must hold that such minorities are justified in using civil disobedience in only a few cases: when the fair value of their political liberties is hindered. Unfortunately, Rawls does not indicate how large the inequalities must be before they hinder political justice. But these kinds of injustice transgress the demands of the principle of equal liberty. These extremely unjust distributions of property and wealth will be unconstitutional in the nearly just societies, since all just constitutions ensure political justice. So these limits are specified in the U.S. constitution.

But what about less extreme economic or social injustice? According to Rawls, transgressions of the difference principle alone may not be protested by means of civil disobedience. But the total impact of such injustices may be still be severe even when these distributions are not unconstitutional in the nearly just societies. Rawls does not discuss the problems of the victims of these distributions.

I believe that citizens who are not getting their fair social and economic share may protest this by civil disobedience even when the injustice is not unconstitutional. Civil disobedience may be justified against more cases of social and economic injustice than Rawls permits. With some small changes the theory of civil disobedience is able to cope with the problem of permanent minorities. I believe that these changes are acceptable in the original position, because they increase the scope where civil disobedience functions as a stabilizing device. By acting civilly disobedient the permanent minority may refrain from revolutions without simply submitting to the injustice.

The required modification of the theory is made by changing the assumptions Rawls makes. These changes are also urged by various points of criticism raised against them.

On Assumption 1

There is some disagreement concerning the three assumptions Rawls makes in connection with J1, and Rawls nowhere gives reasons for his assumptions. The first two assumptions are tied to J1.1, that civil disobedience must protest substantial and clear injustice. Rawls concludes that transgressions of the difference principle may not be protested by civil disobedience. I shall show that the distinctions he makes between this kind of injustice and the other kinds is not acceptable, or at least open to reasonable doubt.

Assumption 1 holds that

No examination of structural effects is necessary for detecting transgressions against the principle of equal liberty or against the principle of fair equality of opportunity.

Contrary to this assumption Haksar gives some examples of transgressions against the principle of equal liberty which requires examination of structural effects:

Sometimes the claims of a particular liberty will have to be balanced against claims of another liberty, and sometimes they may have to be balanced against other values such as security. Such balancing will involve 'shrewd judgment and plain hunch'.

(Haksar 1976a p. 167)

No doubt Haksar has a point here: certainly some transgressions against the principle of equal liberty are not clear and obvious. The first priority rule - the priority of liberty - allows restrictions on liberties for the sake of other liberties, so that a less extensive system of liberties strengthens the total system of liberty shared by all. It is certainly not so obvious when such restrictions are just and when they are not. Furthermore, certain rules of order may increase the value of various liberties. For instance, some procedures of inquiry and debate are necessary to prevent that freedom of speech loses its value completely (TJ 203). It is not at all clear that there will be general agreement on how the freedom of speech is to be restricted in order to increase the value of this freedom.

The same is the case with the principle of fair equality of opportunity. A plausible case can be made for the view that structural effects must be examined in order to determine whether this principle is transgressed by the major social institutions. For instance: maintaining equal opportunities of education for all is one requirement following from this principle. It seems

necessary indeed to examine the effects of the educational system in order to determine whether it satisfies this principle as understood by Rawls:

Chances to acquire cultural knowledge and skills should not depend upon one's class position, and so the school system, whether public or private, should be designed to even out class barriers.

(TJ 73)

So there are reasons for challenging Rawls's first assumption. Such injustice, although substantial, will not always be clear.

On Assumption 2

Rawls believes that the appeal to the conception of justice will be difficult to make in cases of injustice against the difference principle:

Assumption 2:

So much rational disagreement is possible concerning whether the difference principle is satisfied that transgressions against it cannot count as substantial and clear injustice

Rawls does not attempt to justify this assumption, and some objections against this assumption may be made.

Accepting that rational disagreement within limits may take place, it is still possible to hold that injustice beyond these limits can justify civil disobedience. There is a range of "at least not clearly unjust laws" (TJ 199). But there are also some social and economic policies that are clearly unjust, although "this state of affairs is comparatively rare with social and economic policies regulated by the difference principle" (TJ 199). It seems that there may be general and rational agreement that certain distributions are unjust, but not so extreme that they are prohibited by the principle of equal liberty.

So far I have criticized Rawls's specification of J1.1. Doubts have been cast concerning his two requirements: that

transgressions of the principle of equal liberty and the principle of fair opportunity are clear and substantial, and that transgressions of the difference principle are not. I find it possible that some transgressions of the difference principle alone may justify civil disobedience, provided that such injustice blocks the way to the removal of other injustice. That I shall show may be the case.

On Assumption 3

Rawls claims that civil disobedience should preferably be used against transgressions of the principle of equal liberty because such injustice blocks the removal of other injustice:

Assumption 3:

When the principle of equal liberty is fully honored other injustices will not get out of hand.

Haksar disagrees, or at least claims to do so. He points out that violations of the difference principle, causing unjust distributions of wealth and income, indeed may hinder the removal of other cases of injustice:

the extent to which a minority can, even in the long run, protect and promote its legitimate interests depends not just upon its possessing the civil and political liberties, but also upon such factors as the amount of wealth at its disposal and the size of the minority.

(Haksar 1976a p. 173)

Rawls acknowledges this, at least partially. Some extreme distributions of wealth will transgress the principle of equal liberty, and may therefore be protested against by civil disobedience. These distributions will be unconstitutional. But I believe that also less unjust distributions may block the removal of other injustice. I agree with Norman Daniels, who holds that unjust distributions of wealth may have such effects and still

not be unconstitutional:

If one thought that the mechanisms through which unequal wealth operates to destroy equal liberty were simple and insoluble, then perhaps constitutional provisions could be devised to solve the problem. . . . But there is little reason to believe that the mechanisms are so simple and that such safeguards would work. . . . From what we do know about cases of class divided societies, the process of political control by the dominant economic class is highly complicated, and, much more than the direct 'buying' of influence, it involves the combined effects of vast economic powers and control over ideological institutions.

(Daniels 1975 p. 257)

I believe that Assumption 3 may be changed so that transgressions of the difference principle are acknowledged to hinder the removal of other injustice.

By changing all three assumptions civil disobedience may be justified against clearly unjust social or economic inequalities even when they are not unconstitutional. Since Rawls holds the three assumptions he cannot accept civil disobedience in these cases. Thus he cannot recommend permanent minorities that have suffered such injustice for years to protest by civil disobedience. Note, however, that these three assumptions are independent of justice as fairness: they concern nearly just societies in partial compliance theory, and not well-ordered societies in ideal theory. I find it quite compatible with justice as fairness to hold that in nearly just societies one must fall back to the general conception of justice as fairness, and not rely on the two principles with their priority rules. So these assumptions may be changed without challenging justice as fairness.

28. J2: NORMAL APPEALS SHOULD HAVE BEEN MADE AND HAVE FAILED

In this section I shall deal quite briefly with the demand that legal means must normally have been tried before resorting to civil disobedience. I give the reason for this justifying condition, and point to some consequences of it. I then contrast Rawls with some other writers, and correct a misunderstanding: J2 does not require that legal means must have been exhausted, but only that they normally have been tried and have failed.

Since civil disobedience involves the breaking of law with a risk of damaging the "fabric of society", less extreme means of protest must normally have been employed before resorting to appeals of this kind. This condition is strengthened by considering the general demand that civilly disobedient protesters must express fidelity to law, including showing respect for the constitution and the legal means of change.

Rawls points out that the injustice may be such that this condition need not be satisfied: outrageous violations of the principle of equal liberty might make civil disobedience justified without attempting normal changes first (TJ 373). Such violations may for instance include forbidding certain religious views, or transgressions of the freedom of speech which destroy the possibilities for protest later. may also take so long time to follow legal procedures that the unacceptable injustice will take place before changes are made. But in most cases it will be required that normal appeals to the political majority have been made, and that they have failed. This will often mean that

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.

(TJ 373)

But Rawls remarks that the legal means need not have been exhausted: if the minority has good reason for believing that

further legal protests will not have any effect, they may move on to civil disobedience:

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 [i.e. J2] is met.

(TJ 373)

Some writers claim that civil disobedience may not be used as long as legal channels exist. This position has been defended by J.G. Gorton, among others:

As to inciting people to break the law, I think there can be no excuse whatsoever for those in a community where the opportunity exists to change the law through the ballot box.

(Gorton 1970 p. 1)

However, it is not clear why the formal existence of such channels excludes civil disobedience, or even whether such channels alone give rise to the duty of justice. Others have pointed out that the worth of the right to vote may be rather small, in some political systems. Peter Singer, for one, subscribes to this view (1973 pp. 117ff, where he also refers to various writers who agree with him).

A less restrictive view is that civil disobedience may not be used until after legal channels are exhausted. This is claimed by Hook (1967 p. 58) as well as by Brian Barry and Vinit Haksar. Both Barry and Haksar seem to misread Rawls when they claim that he requires legal means to be exhausted:

The second and third conditions are difficult to quarrel with, as stated by Rawls. The second says that legal means of redress should normally have been exhausted (page 373).

(Barry 1973 p. 15,
my underlining)

we could endorse a good deal of the caution with which Rawls accompanies his advice to those contemplating civil disobedience, e.g. that they should exhaust the normal political channels,

(Haksar 1976a p. 173,
my underlining)

This view is more restrictive than Rawls's. He allows civil disobedience also when the protesters do not pursue legal means to the end, when they have good reason to believe that legal attempts will not be of any use or will take too long time.

Some might challenge Rawls on his own grounds here, saying that it is only when complying with all legal means first that the protesters fully express their respect for the legal procedures and the constitution. However, for some existing societies this is hard to accept: pursuing cases through all legal channels may require very much time, economic resources, effort and insight - far more than one can reasonably expect ordinary members of society to have at their disposal. The exceptions Rawls makes seem reasonable: if time is limited, or if previous attempts to follow similar cases through the legal channels have failed then J2 need not be satisfied.

Two consequences of J2 may be noted:

i) The more favored members of society will generally be in a position with better access to legal channels for changing unjust laws and policies: they "find it easier to take advantage of the political system" (TJ 376). Thus, their cases will less easily satisfy J2, since they must attempt more legal means than required of less favored groups.

ii) Civil disobedience is less easily justified in societies where there are many and normally effective channels of protest than in societies where channels do not exist or are blocked. In the first kind of societies civil disobedience should be a later

recourse, and it may not be required as often as in the other kind of societies.

Conclusion

This presentation of J2 has not revealed weaknesses which may give rise to important changes in Rawls's theory. By demanding that legal channels must have been pursued he follows the general trend of writers in this field. The only point which might yield is his acceptance of civil disobedience before all legal means have been carried out to the end. He is there more permissive than other writers. So I conclude that Rawls's rendering of J2 is acceptable:

Legal attempts to have the injustice removed must normally have been made before attempting civil disobedience. This is not necessary if the normal ways of change takes so long time that they cannot hinder the injustice. Nor need the normal channels to have been exhausted if the protesters have good reason for believing that these means will be fruitless.

29. J3: THE TOTAL AMOUNT OF CIVIL DISOBEDIENCE IN THE SOCIETY MUST BE KEPT WITHIN LIMITS

The third justifying condition deals with how groups are to act when they are all justified - so far - in protesting injustice by means of civil disobedience. J3 prohibits actions which will have unacceptable consequences when done by all groups entitled to this kind of dissent. In these situations Rawls prescribes cooperation between the protesting groups. I find the condition and its underlying assumptions unobjectionable. The first discussion is of the formal constraint of Universality. J3 seems to be specifically aimed at satisfying this demand. I then discuss the various assumptions Rawls makes, and finally comment on one special feature of J3: the condition refers to the conduct of others for determining whether an act is justified.

The Formal Constraint of Universality

One constraint on ethical principles to be selected in the original position is that it must be possible to universalize

them: they must hold for everyone in virtue of their being moral persons, and

a principle is ruled out if it would be self-contradictory, or selfdefeating, for everyone to act upon it. . . . Principles are to be chosen in view of the consequences of everyone's complying with them.

(TJ 132)

This formal constraint applies not only to the principles of justice, but to all principles agreed to in the original position - also to the conditions for when civil disobedience is justified in nearly just societies. An act is not justified - i.e. not acceptable from the point of view of the original position - if it would be self-contradictory or self-defeating for everyone in a similar position to act in a similar way.

Rawls's demand of universality seems on first glance to exclude more than Kant's similar demand (stated in Kant 1788 p. 55). Nevertheless, I believe that Rawls and Kant may be taken to agree.

Kant's explicit requirement is only that the universal acting on the maxim under similar circumstances should not be ~~selfcontradictory~~. Kant's examples of acts to be excluded have been criticized: the universal acting according to the maxims of some of these acts (discussed in Kant 1785 pp. 422f) will not really render the acts self-contradictory, but only cause people to stop acting that way. For instance: if the giving of false promises was universalized (and the principle made public), the institution of promise-giving would cease. It may be claimed that this would in itself not be self-contradictory, at least not in a strictly logical sense. However, it has been pointed out that for Kant the aim of the agent is crucial (e.g. in Storheim 1980 p. 69). Thus Kant's constraint also excludes acts when the universal acting on the principle behind them would make their aim

unattainable. Therefore, if it is claimed that false promises are not self-contradictory, they may still not satisfy Kant's demand: they would not be of help for reaching one's goal if such promises were made by everyone under the same circumstances. I believe that Rawls includes "self-defeating" in his formulation to avoid these minor problems that Kant's demand has encountered.

The Condition J3 and Assumptions Behind It

Rawls's constraint of universality seems to be satisfied by explicitly requiring J3. J3 states that if many groups are entitled to civil disobedience, such actions must be avoided which leads to breakdown in the respect for the law and the constitution or which weakens the public's ability to handle the dissent (TJ 373f). These consequences would be unacceptable both in the original position and in the light of the aim of civil disobedience, and such acts are therefore prohibited.

When Rawls presents J3 he makes two explicit assumptions. He assumes that there is an upper limit on how much dissent from the law there can be made before the respect for the law and the constitution is weakened. Considering the protesters's duty to uphold the just constitution, this limit must not be transgressed.

He also acknowledges that the public is only capable of reflecting and acting on a limited amount of protest. Civil disobedience is undertaken in order to cause change through an appeal to the public. Therefore this assumption restricts the total amount of disobedience to happen in a society at the same time.

I see no reason to object to these assumptions concerning the limits of civil disobedience. Problems and disagreement will

certainly arise when it comes to deciding ~~where~~ these limits are. Some may hold that a certain level of dissent is intolerable, while others may believe that this amount of protest is within acceptable bounds. This appears to be an area open to rational disagreement, based on differing theoretical beliefs and empirical facts. More specific guidelines are difficult to lay down.

One further assumption underlying the whole theory of civil disobedience may be mentioned here. The nearly just societies must be able to handle at least some civil disobedience. That is, Rawls must assume that a single case of civil disobedience will not have disastrous consequences for the society in which it takes place. Empirical support for this assumption is not difficult to find: There are indeed alternatives between total obedience - strict compliance - and chaos, especially when disobedience is punished. Lawbreaking occurs in nearly just societies, and the societies are able to withstand this. But are there relevant differences between common criminality and civil disobedience at this point? Some believe so.

Louis Waldman seems to hold that civil disobedience is less easily justified than common criminality:

The open violation of law is an open invitation to others to join in such violation. Disobedience to law is bad enough when done secretly, but it is far worse when done openly, especially when accompanied by clothing such acts in the mantle of virtue and organizing well-advertised and financed plans to carry out such violations.

(Waldman 1965 p. 109)

If civil disobedience promotes common criminal acts, this must surely count against civil disobedience. However, this effect seems unlikely as long as the aim of the protest is made public and efforts are made to express conscientiousness. I find it

reasonable that a nearly just society is stable enough to withstand a single act of civil disobedience.

Applying J3

Even though one occurrence of civil disobedience will not destroy the society, the effects would in some cases be disastrous if everybody acted similarly. J3 refers to what others do or are believed to do by restricting the use of civil disobedience when too many others would be equally justified in acting civilly disobedient as well. So whether other people act in certain ways become part of the justifying conditions of civil disobedience. Marcus G. Singer argues that such references cannot be made in the justifying conditions of acts, because they will involve an "infinite regress" (M.G. Singer 1961 pp. 149f). Singer seems to think along the following line:

When I am to decide whether to act in a certain way, the decision might hinge upon whether I am justified in acting like that. If the expected acts of others are involved in the justifying conditions of my act, a special situation might occur: I would act only if I knew that no others would act in that way. They on their side could be in a similar position, basing their decision on the expected actions of others, including myself. So whether I will act depends in part on whether others will act, which in turn depends on whether I will act.

However, this type of situation, with decisions to be made with none or only partial information, has long been discussed in game theory. There is mutual dependency between the prospective agents, but that need not block their decisions. I intend to act, but will refrain from doing so if anybody else acts in that way. If I have reason to expect others to act, I will either have to refrain from acting or inform them of my intention to act and

ascertain whether they intend to act. In both cases everybody will be able to decide whether to act or not. The "infinite regress" does not give rise to unsolvable problems. Any fears of "infinite regresses" should be further calmed by considering that J3 does not ~~prohibit~~ civil disobedience at any time: J3 only requires that when certain situations arise, cooperation and restricted exercise of the right to protest is necessary. When the expected courses of action of others' are not known for certain, communication will be required for coordination.

Rawls notes that the necessary coordination of action may be difficult to attain. It will often require insight in what is happening in the society and a political awareness seldom held by minority groups. But he claims that perceptive leadership will make such alliances possible (TJ 375). So he assumes that the leaders of such groups will have more political resources than the ordinary members of the groups. This assumption is supported by recent research in Norway (Olsen and Sætren 1980 pp. 79-97).

This does not necessarily conflict with the claim that the minority is "politically poor". Nils Christie for instance, remarks

That the interests of weak groups are at stake, does not mean that the spokesmen must be weak. It is seldom the case that the spokesmen of weak groups are weak themselves.

(Christie 1981 p. 94,
my translation)

If such leadership is not available and the coordination of protest is impossible it follows that civil disobedience is not justified when undertaken by so many groups that the stability of the society is endangered.

Conclusion

In this discussion of the justifying condition J3 I have not accepted any objections against it or the assumptions tied to it. That upper bounds on the amount of tolerable and understandable dissent exist is obvious: what remains unspecified is where the limits are to be set. Another necessary assumption is that the nearly just societies are able to handle some civil disobedience at all. If this assumption is challenged the need for the theory of civil disobedience dissolves. But this assumption also seems well founded. Finally I considered a special feature of J3: that it involves reference to the behavior of others.

In Section 14 I remarked that Rawls ignores obligations arising when acting civilly disobedient. I concluded that any obligations invoked do not restrict further Rawls's set of acts or their justifying conditions. Walzer discusses such obligations and asserts that the protester puts himself under an obligation to uphold the society:

The protester must frequently move far beyond the range of actions normally sanctioned by democratic rules in order to extend their application to the whole of the oppressed group. He may move far beyond the normal range, accepting whatever risks this involves. Yet if he acts to undermine the rules themselves, he benefits no one; he makes future action more difficult. Then he breaks faith simultaneously with the oppressed and with his (and their) fellow citizens.

(Walzer 1970 p. 68)

I believe that these requirements are expressed through Rawls's justifying condition J3. My attempts at making it more precise yields the following reading:

If many groups are entitled to engage in civil disobedience, their right must not be exercised in such ways that
1) the respect for the law and the constitution breaks down;
or 2) the public is unable to handle the dissent

30. J4: INJURY OF THE INNOCENT MUST BE AVOIDED

The last justifying condition is only mentioned in passing by Rawls, and he does not discuss it at all. He states that the injury of innocent members of society must be avoided. Of course, the injury taking place is limited in any case, since all acts of civil disobedience are nonviolent. I shall only present one point which must be considered when judging some acts of civil disobedience: indirect civil disobedience may frustrate the legitimate expectations of others to such a degree that the protest is unacceptable.

Rawls clearly holds that there are members of society who have little or no responsibility for the injustice taking place. The rights of these citizens must be taken into account when acting civilly disobedient:

These conditions [J1, J2 and J3] are not exhaustive; some allowance still has to be made for the possibility of injury to third parties, to the innocent, so to speak.

(TJ 375)

It is not obvious what kind of "allowances" Rawls has in mind - this is the sole reference he makes to a fourth justifying condition. Nor is it clear who are innocent. I shall here show one application of this condition.

I find it reasonable to distinguish between the innocent and those who are not innocent according to how much influence they have on the decision process. It seems appropriate to count as innocent those who are responsible for the injustice only insofar they have the political rights guaranteed all citizens in the nearly just societies. Those who are not innocent are those who have political power beyond these basic political rights - i.e. government officials and others who have assumed favored offices and positions. These two groups are the same as those produced by the distinction Rawls makes between those who are bound to the laws and the constitution by the duty of justice alone and on the other hand those who also have an obligation to

comply.

Conflicts sometimes arise between the right to protest injustice and the duties owed to all persons. These duties include

the duty not to harm or injure another, and the duty not to inflict unnecessary suffering.

(TJ 114)

Such conflicts may involve protest acts which transgress the basic liberties of others. Since civil disobedience is nonviolent, these protest acts will seldom violate the basic liberties of others. The conflicts I shall treat here are less serious: they occur when civil disobedience frustrates the expectations of others. To what extent are acts of civil disobedience justified when they cause harm of this sort?

If he who is harmed is partially responsible for the injustice which is protested I believe that any such problems can be dealt with quite easily. It seems reasonable that the expectations of these citizens need not count very much: in some sense these citizens forfeit the right to have their expectations met.

The problems are greater when the expectations of the innocent are at stake, however. How should acts of civil disobedience be evaluated when they frustrate the expectations of the innocent without transgressing their basic liberties? Examples of such acts may be the temporary blocking of access to property or the hindrance of traffic. The impact of civil disobedience on the general public depends in part on the inconvenience the act causes. So I find it unreasonable to reject all occasions of frustration from the set of justified acts of civil disobedience. It is necessary to distinguish between direct

and indirect civil disobedience here. Some occasions of indirect civil disobedience are not respectful enough of the innocent: their legitimate expectations may be broken to an unacceptable degree.

The expectations of ordinary members of society will often be frustrated by direct civil disobedience. For instance, blocking streets thought hazardous for children may cause traffic jams, especially if specific warnings have not been given. Now these expectations may often be broken without much hesitation when they are not legitimate. They may be based on unjust laws or policies or laws which are contrary to the common sense of justice. If the civil disobedience is justified according to J1, the injustice is clear and substantial. Elaborate justification for frustrating expectations made on such unjust grounds does not seem necessary - at least not when the protest is not prolonged.

Joel Feinberg is concerned with a somewhat related point in his review of TJ (Feinberg 1973). Feinberg discusses the problems tied to changing unjust institutions, possibly as a result of civilly disobedient action. He points out that the requirements of justice are in both scales of the balance when deciding whether to change an unjust institution: every reform of an imperfect practice or law is likely to be unfair to someone or other.

To change the rules in the middle of the game, even when those rules were not altogether fair, will disappoint the honest expectations of those whose prior commitments and life plans were made in genuine reliance on the continuance of the old rules. The propriety of changing the rules in a given case depends upon (*inter alia*) the degree of unfairness of old rules and the extent and degree of the reliance placed upon them.

(Feinberg 1973 p. 269)

This point, which Rawls also notes (on TJ 59), does not affect the justification of acts of direct civil disobedience to an important degree. Moreover, it need not be important when

removing the injustice protested. The legitimacy of the expectations may be questioned when they are based on so unjust governmental acts as we are concerned with. It is at least doubtful whether those who made these commitments could make a case for preserving unjust laws or policies when the injustice is made apparent. This is even more so when judging the act of civil disobedience itself: normally, the expectations and commitments are only frustrated for a limited period of time, and to a limited degree. So direct civil disobedience seems justified even if it involves the temporary frustration of innocent people's expectations - provided that their basic liberties are not transgressed.

Cases of indirect civil disobedience are not so clear-cut, however. The expectations held by the people concerned are probably fair in these cases. Innocent persons may then correctly feel unjustly treated if the protest hinders them in their legitimate proceedings, even if only for a short period of time. On the other hand, the impact of civilly disobedient protest depends in part on the inconvenience caused to ordinary members of society. So the duties toward innocent people may conflict with the right to act civilly disobedient when this is done indirectly. No exact rules are obvious. But since the protester may choose among several kinds of indirect action, he must be required to weigh conscientiously the gain in attention and public support against the *prima facie* unjustified losses brought upon the innocent and the public's reaction to this.

Conclusion

In this brief discussion of J4 I have only mentioned one consideration which must be given weight when evaluating an act of indirect civil disobedience. Indirect civil disobedience which involves frustrating the legitimate expectations of citizens is only acceptable if the expected gains in publicity in some sense "outweighs" the discomfort imposed on the innocent, at least when compared with alternative ways of action.

31. IRRELEVANT CIRCUMSTANCES

In this last section of Chapter IV I deal with three circumstances that are ~~not~~ among Rawls's justifying conditions. That the act must be nonviolent is a defining characteristic, and not a justifying condition as some claim. Moreover, civil disobedience need not be done by those suffering the injustice. And both direct and indirect protests may be justified - although indirect protests must be done with greater care. I end this section with a brief conclusion of Chapter IV.

"The Act must be Nonviolent"

Some writers claim that it would be better to place the condition of nonviolence among the criteria for justification than in the list of defining characteristics, as Rawls has done. Jeffrie G. Murphy (1971 p. 2) and Robert T. Hall (1971 pp. 16f) believe that by regarding nonviolence as a defining characteristic all acts of civil disobedience are made more likely to be justified than they deserve to be. Against this argument I would like to point out that all of the defining characteristics are features which "tend to" make the acts acceptable as extreme and illegal protests serving a stabilizing function in nearly just societies. All of the defining characteristics are therefore also "justifying characteristics" in this sense. Rawls chooses to regard the condition of

nonviolence as being part of the description of acts, rather than as belonging to the circumstances in which acts take place. This choice seems reasonable.

"Only Those Suffering the Injustice Themselves may act by Civil Disobedience"

Some writers on civil disobedience have maintained that such acts are only justified when done by those suffering the injustice. This seems to be the view propounded by U.S. federal judge Charles E. Wyzanski, Jr. when writing "On Civil Disobedience and Draft Resistance" (1968 p. 199). In my opinion Rawls would disagree. His view would probably be this: Anybody has a right to protest injustice by civil disobedience, provided that J1-J4 are satisfied. Civil disobedience may be equally justified when undertaken by those only aware of the injustice as by those suffering directly under it. This claim is supported by a passage from TJ with some bearing on this issue, as well as by some practical considerations on the role of civil disobedience.

In Section 35 of TJ Rawls discusses problems tied to tolerating the intolerant. He propounds the duty to oppose injustice in an interesting manner:

Let us suppose, then, that an intolerant sect has no title to complain of intolerance. We still cannot say that tolerant sects have a right to suppress them. For one thing, others may have a right to complain. They may have this right not as a right to complain on behalf of the intolerant, but simply as a right to object whenever a principle of justice is violated.

(TJ 218, my
underlining)

Applying the same idea to the theory of civil disobedience, I find that all members of society may have a right to engage in civil disobedience to protest injustice exerted against others.

I have mentioned some practical considerations for civil disobedience done when the rights of others are at stake. The

public might doubt the motives of one who personally benefits if the protest is needed. An appeal on grounds of the principles of justice as fairness may be rejected if the public believes that the protest is based on egoistic motives. (Whether the private gain amounts to very much in any case can of course be doubted, as Carl Cohen does - 1971 p. 139). By allowing civil disobedience on behalf of others these dangers are diminished. Marshall Cohen makes this point clear when he states that

A show of support by those who have no substantial interest in the matter may carry special weight with a confused, and even actively sceptical , majority. The majority simply cannot dismiss those over thirty-five as draft dodgers, or those who earn over thirty-five thousand dollars a year as boondogglers. It may therefore consider the issues at stake, and this is the first objective of the civil disobedient.

(M. Cohen 1972 p. 285)

"Must Civil Disobedience be Direct?"

The view that indirect civil disobedience is never justified is held by Abe Fortas, among others (1968 p. 67). But he does not defend this position. Rawls, as I have shown, does not reject indirect civil disobedience outright. But practical considerations in light of the theory of civil disobedience show that direct civil disobedience must generally be preferred. The link between the law broken and the injustice protested must be obvious, so that the act is interpreted as an appeal and the aim of the protest is understood. This is more easily done by direct disobedience. Furthermore, the innocent must be protected to a larger extent when acting indirectly than when acting directly.

By accepting indirect civil disobedience the scope of objects of protest is broadened. I have mentioned some such areas earlier. The lack of laws must be protested indirectly, and unacceptably harsh penalties should also be protested by indirect

civil disobedience. Also, if laws which do not require or prohibit action are to be protested by civil disobedience, this must be done in indirect ways. Wasserstrom points out that there are many laws of this kind (1980 p. 88).

Conclusion

The discussions in Chapter IV that I consider to be most important are those which cast doubt upon Rawls's specification of J1 and the assumptions tied to it. I found that the problems facing permanent minorities are not solved by the theory of civil disobedience, since unjust social and economic arrangements may seldom be protested by civil disobedience. By changing some auxiliary assumptions in Rawls's arguments this restriction on acceptable objects of protest may be somewhat relaxed.

I have accepted the other justifying conditions, J2, J3 and J4, approximately as they are stated by Rawls. Their presumptive nature is obvious, and Rawls's forecast is correct:

We should not expect too much of a theory of civil disobedience. Precise principles that straightway decide actual cases are clearly out of the question.

(TJ 364)

CONCLUSION

The remaining two short sections contain the conclusions of this essay. Most of them have been mentioned before; here I try to bring them together. Section 32 repeats my conclusions concerning Rawls's definition of civil disobedience and the justifying conditions. In Section 33 I present some evaluations of the theory of civil disobedience as a whole seen as a test of justice as fairness.

32. ON RAWLS'S DEFINITION AND JUSTIFICATION OF CIVIL DISOBEDIENCE

Here I recapitulate the main points of my discussions in Chapter III and Chapter IV. Rawls's definition of civil disobedience is a condensed explication which satisfies Carnap's requirements reasonably well. The set of acts it determines is very limited compared to the set defined by other writers. The set of justifying condition is accepted for the most part, but one of Rawls's specifications is challenged.

In Section 15 I have shown that Rawls's definition of 'civil disobedience' is a condensed explication of that term. According to the discussion in Section 9, the definition is therefore a stipulative extensional definition of a previously used term. The partial definition only covers those acts of the term's extension that occur in nearly just societies. The definition can therefore not be criticized on the ground that Gandhi's illegal protests are excluded from the set of acts of civil disobedience. In fact, since the definition is not reportive, its extension need not closely resemble the extension ordinary correlated to the term. But as long as the term has been used by others before, its extension should not be changed too much.

In Chapter III I have shown how Rawls limits the set of acts of civil disobedience in nearly just societies. The four standards Carnap lays down for evaluating explications were applied. I found that the definition satisfies these standards reasonably well. It is as exact as can be expected, and it is fruitful in view of the function it has in the theory of civil disobedience. No important conclusions concerning its simplicity

were found. The only weak point is that Rawls's definition departs from ordinary usage to some degree - although many of his defining characteristics are held by other writers too. However, this deviation need not count heavily against the partial definition. The requirement of similarity is less important than the two concerning exactness and fruitfulness. Also, 'civil disobedience' is used in widely varying and imprecise ways by others.

The resulting set of acts is very small. This is due to the place of the definition in the theory of civil disobedience and the theory of justice. Rawls is only interested in when and why certain illegal acts are justified in "nearly just societies", and he is only concerned with what one may call 'civil disobedience on grounds of distributive justice'.

On the Justifying Conditions

In Chapter IV I have discussed the set of circumstances which Rawls holds to be justifying conditions for civil disobedience. In view of Rawls's concern with distributive justice I found the conditions acceptable. But I noted that Rawls's specification of J1 may be challenged. The theory treats the problem of permanent minorities more satisfactory when some assumptions are changed.

Rawls notes that civil disobedience may be justified under other circumstances as well. This may be taken to show how Rawls is aware of his limited point of view. The set of justifying conditions must be satisfied if the acts are to be justified as stabilizing devices on grounds of distributive justice alone. But other ways of justifying such illegal protests are not excluded, and different grounds of justification may lead to other sets of justifying conditions.

33. ON THE THEORY OF CIVIL DISOBEDIENCE

In this section I evaluate the theory of civil disobedience from two points of view: as a test of justice as fairness and as a guide to our judgments and actions. As a test, the theory is not very conclusive. But the criticism presented by other writers need not cause changes in justice as fairness, since much of this criticism does not hit the target. The theory of civil disobedience presents a coherent view of civil disobedience as an extreme protest with a stabilizing function. So it supports justice as fairness in some sense. And by interpreting civil disobedience as having this role the theory is of some help when we seek guidance.

On Evaluating the Theory of Civil Disobedience

I find it valuable that Rawls is able to acknowledge and discuss problems of civil disobedience in connection with justice as fairness. Justice as fairness is supported - in some weak sense - when its theoretical framework is compatible with a treatment of civil disobedience. From this point of view the limited scope of the theory of civil disobedience is a plus: Rawls is able to define and justify certain illegal acts by considerations of distributive justice alone. So some illegal protests may be acceptable regardless of the religious or personal moral views held in the nearly just societies.

Are the claims of the theory of civil disobedience to be accepted or rejected? In Section 8 I noted that the claim could be tested against people's considered judgments. Empirical investigations are beyond the scope of this essay, but at times I have noted the opinions of several other writers on Rawls's views. Although many of the philosophers have been negative, this is not sufficient to reject the theory of civil disobedience. This is because much of the criticism has been beside the point. In my opinion, the points Rawls makes have often not been addressed at all. So from a philosophical point of view I have found little reason to reject the main claims of the theory of

civil disobedience. In this sense my essay has been a defence of Rawls's view against the critics, by showing that they have not criticized Rawls's position.

On the Limited Value of the Theory of Civil Disobedience as a Test

I believe, however, that whether the theory of civil disobedience is supported or rejected is of little importance for the evaluation of justice as fairness.

If the theory of civil disobedience is tested and the result is negative, how does this affect justice as fairness? Let us first consider how a testing of the theory can turn out negative.

I have found that Rawls makes the following main claim in the theory of civil disobedience:

BECAUSE OF justice as fairness and some auxiliary assumptions,
IN nearly just societies,
IF acts with characteristics D1-D6 are done under circumstances satisfying J1-J4,
THEN they are justified

The theory of civil disobedience can "fail" a test only if its claim is not true. For this to happen, it must turn out that acts of civil disobedience are not regarded as justified when done in the justifying circumstances in nearly just societies.

This negative result can be explained in at least two ways: 1) parts of justice as fairness are wrong, or 2) one or more of the auxiliary assumptions are wrong. So if the claim of the theory is disputed this will force a change in justice as fairness only if the relevant auxiliary assumptions are accepted. I have shown that auxiliary assumptions are important in Rawls's theory of civil disobedience. And some of these assumptions have been challenged - for instance some pertaining to the defining

characteristic of nonviolence (D5) and to the justifying condition J1. They are certainly open to doubt.

So if the claims of the theory of civil disobedience are rejected this may well be due to some important assumptions being wrong and not because justice as fairness is wrong.

But some of the assumptions are closely connected to justice as fairness. Thus I find that the discussion of J1 shows that Rawls gives too much priority to the basic liberties compared with the individual's ability to make use of them. Also, it is open to doubt whether transgressions of the principle of equal liberty are much more easily detected than the transgressions of the difference principle.

On the other hand, what if the claim of the theory of civil disobedience is supported? That is, if it turns out that acts of civil disobedience are regarded as justified in nearly just societies? This may be taken to support justice as fairness. But as I noted in Section 10, the support a test gives is proportional to the scope of the claims tested. And in this case, the scope of the claim is rather limited. The set of acts of civil disobedience is very small, and Rawls does not say anything about other acts than these. For instance, he does not say that other illegal acts are unacceptable. Neither does he claim that if the acts of civil disobedience are justified at all, they must be justified on grounds of distributive justice. Nor does he consider societies that are more unjust - although he seems to hold that civil disobedience is justified there as well, and certainly when J1-J4 are satisfied.

Moreover, the support a test gives to the theory depends on whether other contesting theories predict the same outcome. Now Peter Singer defends civil disobedience on utilitarian grounds.

As long as his theory has not been examined it is difficult to say whether his claims are the same as or even go beyond Rawls's claims. But if both Rawls's and Singer's theories are compatible with the results of tests it is clear that these results cannot be taken to support justice as fairness against utilitarianism.

So favorable empirical testing of the theory of civil disobedience will provide quite little support to justice as fairness.

On the Use of the Theory as a Guide

The limited scope of Rawls's theory of civil disobedience also limits its value as a guide to our judgments and actions. My discussion has shown that the theory only applies to nearly just societies, but this restriction is not important if the societies we live in are of this kind. Other limits are more important: for instance that international affairs are not considered and that the theory ignores other grounds of protest than distributive justice between moral persons.

I have also noted that the theory of civil disobedience is closely connected to justice as fairness. But this does not mean that the theory of civil disobedience must be rejected if justice as fairness is found unacceptable. Rather, the main ideas of the theory of civil disobedience are useful taken in isolation. The role of civil disobedience that Rawls sketches is interesting: as an extreme protest against unjust treatment, having a stabilizing function in nearly just societies. This provides a framework for aiding our judgments, regardless of whether the two principles of justice as fairness are accepted.

By pointing to certain considerations and explaining why they are important theories of civil disobedience may serve to guide our judgments and actions. Such theoretical underpinning

and guidance has been lacking. Rawls's theory of civil disobedience is an interesting and valuable contribution to this field.

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