



---

The Obligation to Disobey

Author(s): Michael Walzer

Source: *Ethics*, Vol. 77, No. 3 (Apr., 1967), pp. 163-175

Published by: The University of Chicago Press

Stable URL: <http://www.jstor.org/stable/2379683>

Accessed: 02/11/2008 08:01

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=ucpress>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit organization founded in 1995 to build trusted digital archives for scholarship. We work with the scholarly community to preserve their work and the materials they rely upon, and to build a common research platform that promotes the discovery and use of these resources. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).



The University of Chicago Press is collaborating with JSTOR to digitize, preserve and extend access to *Ethics*.

# ETHICS AN INTERNATIONAL JOURNAL OF SOCIAL, POLITICAL, AND LEGAL PHILOSOPHY

Volume 77

APRIL 1967

Number 3

## THE OBLIGATION TO DISOBEY<sup>1</sup>

MICHAEL WALZER

ACCORDING to liberal political theory, as first formulated by John Locke, any individual citizen, oppressed by the rulers of the state, has a right to disobey their commands, break their laws, even rebel and seek to replace the rulers and change the laws. In fact, however, this is not a right often claimed or acted upon by individuals. Throughout history, when men have disobeyed or rebelled, they have done so, by and large, as members or representatives of groups, and they have claimed, not merely that they are free to disobey, but that they are obligated to do so. Locke says nothing about such obligations, and, despite the fact that Thomas Jefferson claimed on behalf of the American colonists that "it is their right, it is their duty, to throw off [despotism]," the idea that men can be obligated to disobey has not played much part in liberal political theory.

"Here I stand; I can do no other"—Martin Luther's bold defiance—is hardly an assertion of freedom or a claim to rights. It is the acknowledgment of a new but undeniable obligation. Nor is this obligation often asserted, as it was by Luther, in the first-person singular. In a recent article on civil disobedience, Hugo Bedau has denied the validity of

such an assertion, unless it is supplemented by arguments which reach beyond the moral feelings of the individual. "The force of saying, 'I ought to disobey this law' cannot be derived from 'Obeying this law is inconsistent with my moral convictions.'" <sup>2</sup> Perhaps it cannot, and then we must wait upon Luther's further defense before we judge his defiance. But the first sentence is, in practice, rarely derived from the second. Generally it follows from an assertion of a very different sort: "Obeying this law is inconsistent with *our* moral convictions (on behalf of which we have made significant commitments, organized, worked together for so many months or years, etc.)." And it can be argued that, having said this, one can then go on, without offering additional reasons, to say, "Therefore I ought to disobey." This, at any rate, is the form that disobedience most often takes in history, even though additional reasons are usually offered. Men rarely break the law by themselves, or if they do they rarely talk about it. Disobedience, when it is not criminally but morally, religiously, or politically motivated, is almost always a collective act, and it is justified by the values of the collectivity and the mutual engagements of its members. In

this paper I want first to describe the social processes by which men incur, or come to believe that they have incurred, the obligation to commit such acts. And then I want, very tentatively, to say something about the status of the obligations thus incurred.

## I

The process by which obligations are incurred and the process by which they come to be felt are obviously not the same, or not necessarily the same. They are similar, however, in at least one respect: they are both social processes.<sup>3</sup> They occur in groups, and they can both occur simultaneously in different groups of different shapes and sizes. The duty to disobey arises when such processes are more successful (have greater moral and emotional impact) in parties, congregations, sects, movements, unions, or clubs than in states or churches. This happens often in human history, but precisely what is involved when it does needs to be carefully stated.

Obligations can arise in groups of two, between friends, partners, or lovers. But I am chiefly concerned with those which arise in groups of three or more, groups of a more general social, political, or religious nature. These can be obligations to the group as a whole (including oneself), or to the other members, or to the ideal the group stands for or claims to embody. In practice, none of these occur in pure form; obligations are generally, perhaps necessarily, admixtures of the three. But they are often described exclusively in terms of the last. Thus men announce that they are bound by God or the higher law, and bound "in conscience," which commonly means as morally sensitive individuals rather than as members. In fact, however, the very

word "conscience" implies a shared moral knowledge, and it is probably fair to argue not only that the individual's understanding of God or the higher law is always acquired within a group but also that his obligation to either is at the same time an obligation to the group and to its members. "To be 'true to one's principles,'" Robert Paul Wolff has written, "is either a metaphor or else an elliptical way of describing loyalty to other men who share those principles and are relying upon you to observe them."<sup>4</sup> Perhaps this is exaggerated; clearly people feel that their principles embody what is right, and there is nothing odd or metaphorical about saying that one ought to do what is right (though it is not clear whether this "ought" implies an obligation).<sup>5</sup> All I want to suggest is that commitments to principles are simultaneously commitments to other men, from whom or with whom the principles have been learned and by whom they are enforced.

This becomes clear, I think, if one examines cases in which ideals are renounced or "sold out." For in all such cases it is individuals or groups of individuals who feel, and can plausibly be said to have been, betrayed. To "sell out" is to renounce heretical ideals for the sake of orthodox ones (but actually, it is generally suggested, for the sake of material gain) or to desert a small non-conformist group and join or rejoin society at large. Most likely, as the common descriptions of this common phenomenon suggest, it is to do both. "An affront to God and an injury to His congregation"—this is the way one's former colleagues describe a conversion to religious orthodoxy. And if God alone can judge the affront, they can rightly weigh the injury, taking into account the kind of commitment which had

been made, the expectations which had been aroused, the ridicule to which they are (or are not) subjected, the possible weakening of their community, and so on.<sup>6</sup> Similarly, but more loosely, an artist who "sells out" by "going commercial" is not merely giving up an ideal; he is giving up an ideal to which others still adhere, and those others are his former colleagues. His offense, in their eyes, is not only his betrayal of Art but also his betrayal of them. He injures the cause of Art, they would claim, both in its ideal form and in its concrete social manifestation.

The individual involved, of course, may be doing or think he is doing no such thing. He may have changed his mind for good reasons. And he may believe (rightly, I think) that there is or ought to be some due process whereby he can announce this change of mind, explain its reasons, and so escape the charge of betraying his former colleagues. But however far his obligations extend, insofar as he is obligated at all it is to other men as well as to ideals. Indeed, to think of the effect of his actions upon the ideal he once espoused, which is surely a necessary part of any due process of renunciation or withdrawal, is also to think of its effect upon those who still hold fast to that ideal.

Obligation, then, begins with membership, but membership in the broadest sense, for there are a great variety of formal and informal ways of living within a particular circle of action and commitment. Membership itself can begin with birth. Then the sense of obligation is acquired simply through socialization; it is the product and most often the intended product of religious or political education, of incessant and unrelenting communal pressure, of elab-

orate rites of passage, periodic ceremonial communions, and so on. One does not acquire any real obligations, however, simply by being born or by submitting to socialization within a particular group. These come only when to the fact of membership there is added the fact of wilful membership. Different groups, of course, define wilfulness in different ways, some in such minimal ways that wilful membership becomes nothing more than continued membership after a certain age, some in such maximal ways that even formal adherence by an adult is inadequate without a public profession of the faith or a period of intensive participation in specified group activities. Sixteenth- and seventeenth-century protests against infant baptism depended upon a maximum definition of individual wilfulness, as did Lenin's attack upon the Menshevik view of party membership. And wilfulness can be carried even further. Elaborate tests of would-be members, frightening initiation ceremonies, solemn oaths: these mechanisms of the secret society and the revolutionary brotherhood raise to the highest level the individual's sense of having made a choice of enormous personal significance and thereby assumed the most profound obligations.<sup>7</sup>

In general, well-established groups, especially those like the state, which claim to be coterminous with society as a whole, are likely to defend the minimum definition, assume the commitment of their members, and punish those who disobey. Radical or non-conformist groups, precisely because they cannot make the assumption or guarantee the punishment, are likely to require that commitments take the form of explicit and public professions or acts. Through such professions and acts

men can and do take on obligations to disobey the rules of the more inclusive group and also accept in advance the risks of their disobedience.

There is also a third sort of group, not sufficiently organized to make any precise determinations as to the character of membership. Disobedient citizens sometimes say that they are obligated by their membership in the "human community" or by their "solidarity with the oppressed." These obligations, if they exist at all, must be said to be universal (and men have indeed been punished for "crimes against humanity"). But they are generally cultivated in relatively small groups, often themselves loosely constituted, whose members can plausibly accuse one another, but not everyone else, of selling out when they fail to live up to their commitments. Since the community which is presumably being sold out is not the smaller but the larger group, which does not have any concrete existence and is only an aspiration, it is difficult to see how or whether anyone else can have made a commitment or what his betrayal would involve.<sup>8</sup> It must be said that efforts to enforce such obligations by individuals against their own states, or by groups of states against individuals, are really efforts to create them. Insofar as these efforts win general support, insofar as an entity like "humanity" acquires some "collective conscience" and some legal and institutional structure, real obligations are in fact incurred by membership. Obviously in such an absolutely inclusive community the wilfulness of individuals will play an absolutely minimal part. Humanity can indeed be renounced, but only by becoming a criminal of the very worst sort, by turning oneself into what Locke called a "monster." At the pres-

ent time, since no group exists which can satisfactorily define crimes against humanity, such "monsters" are necessarily punished *ex post facto*, not for betraying humanity, but in the hope of creating a humanity whose members are capable of recognizing treason.

The state itself can sometimes be imagined as an ideal or potential community, obligating its members to oppose those authorities who act legally but (it is thought) immorally in its name. Thus those men who disobey the commands of a collaborationist government after military defeat, or of a satellite government after some less formal capitulation, often claim that their state has been betrayed and that they are obligated by their previous membership and driven by their patriotism to resistance. But they cannot claim that all their fellow citizens are similarly obligated. In the aftermath of such struggles, if the resistance is successful, active collaborators may be punished (the legal basis for such punishment is unclear enough), but nothing can be done to those who merely declined to join the fight.<sup>9</sup> They had never incurred any duty to do so. On the other hand, those who did join and subsequently deserted can rightly be said to have broken tangible and morally significant commitments.<sup>10</sup>

To insist that obligations can only derive from wilful undertakings is to restate the theory of the social contract. This has very interesting consequences given the rough typology of groups and kinds of membership just outlined. For contract theory clearly applies best to those sects, congregations, parties, movements, unions, and clubs in which individual choices are made explicit, acted out in some public fashion. It is most useful in discussing what are com-

monly called secondary associations, less useful (though by no means of no use at all) in discussing larger groups like states and established churches or vague and inclusive entities like humanity. Indeed, if the contract is taken at all seriously, it is difficult to avoid the conclusion that groups in which wilfulness is heightened and maximized can rightfully impose greater obligations upon their members than can those catholic religious and political associations where membership is, for all practical purposes, inherited. Of course, inherited membership is often seconded by voluntary participation; in such cases the sense of obligation, as well as the obligation itself, is probably strongest of all. But even participation is likely to be more active and wilful and so a more satisfactory token of continuing consent in non-conformist than in established and socially orthodox groups. Day-to-day procedures will be less conventionalized, the modes of participation and communion less habitual. In short, it is possible to conclude from contract theory, as Jean Jacques Rousseau did, that small societies are (generally) morally superior to large ones. For is it not the case that obligations incurred within some Protestant sect, derived from an explicit covenant, and sustained by a continual round of activity ought to take precedence over obligations incurred in society at large, derived from a largely mythical "tacit" consent, and sustained by mere residence or occasional, largely passive, participation? I do not want to attempt an answer to that question immediately; perhaps there are good reasons for the negative answer conventionally given. But I do want to make two points: first, that obligations are in fact incurred within groups of these differ-

ent sorts; second, that the conventionally assigned relative weights of these different obligations are not obviously accurate.

The duty to disobey (as well as the possibility of selling out) arises when obligations incurred in some small group come into conflict with obligations incurred in a larger, more inclusive group, generally the state. When the small group is called a secondary association, it is being suggested that there is no point at issue here. Secondary associations ought to yield without argument, conflict, or moral tension to primary ones.<sup>11</sup> This is true only of associations clearly secondary, that is, with purposes or ideals which do not bring them into conflict with the larger society. Rotarians cannot sell out.<sup>12</sup> But there exist in every society groups which may be called "secondary associations with claims to primacy." Serious conflict begins when groups of this sort are formed and their claims announced. But here a crucial distinction must be made: these claims can be of two very different kinds. Some groups announce what are in effect total claims. Their members are obligated, whenever commanded, to challenge the whole established legal system, to overthrow and replace one government with another, to attack the very existence of the larger society. These are revolutionary groups. There are others, however, which make only partial claims. They demand that the larger society recognize their primacy in some particular area of social or political life and so limit its own. They require of their members disobedience at certain moments, not at every moment, the refusal of particular legal commands, not of every legal command.

It is worth insisting upon the great

difference between such groups and between the assertions they make, for defenders of state sovereignty often confuse them, arguing that any challenge to constituted authority is implicitly revolutionary and any group which claims to authorize such challenges necessarily subversive. They thus assign the labels "rebel" and "subversive" to all sorts of people who explicitly reject them. When this is done by officials of the state, the labels often turn out to be accurate, since the men who originally chose not to revolt are eventually forced to do so in self-defense. But there is considerable evidence to suggest that the state can live with, even if it chooses not to accommodate, groups with partial claims against itself. The disobedience of the members of such groups will be intermittent and limited; it is unlikely to be conspiratorial in any sense; it does not involve any overt resistance to whatever acts of law enforcement the public authorities feel to be necessary (unless these are radically disproportionate to the "offense"). Such disobedience does not, in fact, challenge the existence of the larger society, only its authority in this or that case or type of case or over persons of this or that sort. It does not seek to replace one sovereign power with another, only to call into question the precise range and incidence of sovereignty. This is not revolution but civil disobedience, which can best be understood, I think, as the acting out of a partial claim.

Limited claims against larger societies can themselves be of two kinds. They can involve assertions that the larger society cannot make demands of a certain sort against *anyone*, or they can involve claims for exemptions for the members (and the future members) of the smaller society. When a man re-

fuses to register for military service, without challenging state authority in any other sphere, he may be saying that the state cannot require anyone to fight on its behalf or to fight this or that particular sort of war, or he may be saying that people like himself cannot be so required. The second statement generally accompanies acts of conscientious objection, which represent only one kind of civil disobedience.

The larger society can always recognize the claims of smaller groups and so relieve their members from the burdens and risks of disobedience. Indeed, the historical basis of liberalism is in large part simply a series of such recognitions. Thus the limited disobedience of religious sectarians was transformed into mere non-conformity when the state decided to tolerate the sects. Tolerance required a limit on the power of the state, a recognition that with regard to religious worship any church or sect could rightfully claim primacy. Contemporary conscientious objectors are also tolerated non-conformists, but here the tolerance is of a different sort. It is a recognition of the claims of a particular type of person (or of particular groups of people) rather than of the claims of any person (or group) in a particular area. There is no necessary logical restriction on either type of toleration: the state could withdraw all its claims from an infinite number of areas, or it could add to every one of its laws a provision specifying that conscientious disobedience cannot be punished.<sup>13</sup> But few states seem likely to move very far in either of these logically possible directions, doubtless for good reasons.

What is the situation of men who join groups with limited claims to primacy in states where such claims are not recognized? It is a situation which

political philosophers have never adequately described—though Rousseau surely understood the possibility of divided allegiance and divided men and bent all his efforts to avoid both. Locke provides a convenient outline of the possibilities more generally thought to be available: (1) A man can be a *citizen*; this involves a full recognition of the primacy of his society and its government. Certain areas are set beyond the reach of the government, but in such a way as to bar any possible obligations against it. There are only rights and ultimately, so far as action goes, only one right, the right of rebellion. Hence, (2) a man can be a *rebel*, seeking to overthrow and replace a particular government and its laws. These are the only two possibilities available to members of the larger society. But Locke suggests two further options for those persons who do not wish to be members: (3) A man can be an *emigrant*, wilfully withdrawing from the larger society and physically leaving its territory. Emigration is the only due process through which social obligations can be renounced, for the rebel is still bound, if not to his government, then to society itself. Finally, (4) a man can be an *alien* who, having left the society of his fathers, fails to commit himself to any other and lives here or there at the discretion of the public authorities. An alien, for Locke, has obligations, for he is afforded protection within some particular society and tacitly consents in return to obey its laws. He presumably has rights, at least in theory, since rights are natural. But he does not possess, as citizens do, the practical right to rebel. It is a curious feature of Locke's thought that this appears to be the single most im-

portant difference between aliens and citizens.

Now the member of a group with partial claims to primacy falls into none of these categories. His loyalties are divided, so he is not in any simple sense a citizen. He refuses to call himself a rebel, and with good reason, for he seeks no total change in the government, no transformation of state or society (though he would surely claim the right to rebel, in Locke's sense, given the conditions under which Locke permits rebellion). He is not an emigrant, since he does not leave, though joining such a group may well constitute a kind of internal emigration. He is not an alien, for while an alien can always leave, he cannot demand to stay on conditions of his own choosing.

Yet the situation of such a man—obligated to obey because of his membership in a larger society, obligated to disobey (sometimes) because of his membership in a smaller one—is, for all its tensions, very common in history and has often been fairly stable over long periods of time. It is the situation of any person who, like Sophocles' Antigone, retains strong tribal or clan loyalties while becoming a member of some (almost any) political order.<sup>14</sup> It is virtually institutionalized in feudal systems.<sup>15</sup> It was lived through with extraordinary intensity by early modern Protestants and has been lived through since with greater or lesser intensity by a considerable variety of religious groups (including Roman Catholics, for Rousseau the visible embodiments of double obligation and moral division)—even in liberal societies, which have recognized some but not all the claims of pious brethren of this or that persuasion. It was the situation of European socialists during the period

when their parties and movements had ceased to be revolutionary but had not yet accepted the status of secondary associations. (Otto Kirchheimer describes German Social-Democracy as a "loyalty-absorbing counterorganization."<sup>16</sup>) It is often the situation of trade unionists, especially when their country is at war. It is the situation today of all those persons who object to military service on other than the permitted religious grounds. It is, despite considerable confusion, increasingly the situation of many members of the American civil-rights movement.

What all these oddly assorted people have in common is this: none of them admits without qualification the political sovereignty or moral supremacy of the larger society of which they are members. None of them absolutely denies that sovereignty or supremacy. They are, then, partial members; they are simultaneously partial emigrants, partial aliens, partial rebels. The very existence of such people—even more, their obvious moral seriousness—ought to call into question the conventional definition of citizenship as involving an absolute commitment (it is sometimes said, "under God") to obey the laws. Surely such a commitment will never be found among every one of those persons who consider themselves, with reason, citizens of the state. For the processes through which men incur obligations are unavoidably pluralistic. Even in a liberal society, which allows considerable room for divergent groups and recognizes many of their claims, what might be called the incidence of obligation is bound to be uneven, the obligations themselves at least sometimes contradictory. Unless the state deliberately inhibits the normal processes of group formation, and does so with

greater success than has ever yet been achieved, it will always be confronted by citizens who believe themselves to be, and may actually be, obligated to disobey. As J. N. Figgis wrote: "The theory of sovereignty . . . is in reality no more than a venerable superstition. . . . As a fact it is as a series of groups that our social life presents itself, all having some of the qualities of public law and most of them showing clear signs of a life of their own."<sup>17</sup>

## II

Many political philosophers have insisted that there exists a prima facie obligation to obey the laws of the most inclusive organized society of which one is a member, that is, for most men, the state.<sup>18</sup> This is not unreasonable, so long as the state provides equally to all its members certain essential services. It is not unreasonable even though the state maintains a monopoly of such services and tolerates no competition, for it may be that the monopoly is itself essential to the provision of the services. But the existence of a prima facie obligation to obey means no more than that disobedience must always be justified. First explanations are owed to those of one's fellow citizens who do not join in, who remain obedient. I think it can be argued that membership (i.e., morally serious membership) in groups with partial claims to primacy is always a possible explanation.

But I want to attempt a stronger argument than this, loosely derived from the preceding discussion of the uneven incidence of obligation in any larger society. I want to suggest that men have a prima facie obligation to honor the engagements they have explicitly made, to defend the groups and

uphold the ideals to which they have committed themselves, even against the state, so long as their disobedience of laws or legally authorized commands does not threaten the very existence of the larger society or endanger the lives of its citizens. It is obedience to the state, when one has a duty to disobey, that must be justified. First explanations are owed to one's brethren, colleagues, or comrades. Their usual form is an argument that personal security or public health or some other such necessity of the common life—which the smaller groups cannot supply, which is actually supplied by the state—is being threatened or is likely to be threatened by particular acts of disobedience, however limited their scope. This, of course, is precisely what is asserted (usually by an official of the state) in every case of disobedience, but it is not necessarily asserted rightly. Indeed, there is very little evidence which suggests that carefully limited, morally serious civil disobedience undermines the legal system or endangers personal security.<sup>19</sup> One can imagine situations in which the acting out of partial claims might encourage or inspire the acting out of total claims. But the two sorts of action remain distinct. It may be necessary for a man contemplating civil disobedience to worry about the possibilities of revolutionary violence, but only if such possibilities actually exist. It is by no means necessary for him to reflect upon the purely theoretical possibility that his action might be universalized, that all men might break the laws or claim exemptions from them. For his action implies nothing more than that those men ought to do so who have acquired obligations to do so. And the acquiring of such obligations is a serious, long-term business which

if undertaken by everybody would simply obviate the necessity for disobedience: if all men joined the sect, it would become the church; if all men joined the movement, there would be no state to resist; if all men joined different sects and movements, tolerance would not be the claim of this or that group but a common necessity.

The state can thus be described as a purely external limit on group action, but it must be added that the precise point at which the limit becomes effective cannot be left for state officials to decide. For them, the law must be the limit. At the same time, it must be the claim of the disobedient members that the law is overextended, that its sphere ought to be restricted in some fashion, that this activity or this type of person should be exempted, at this particular moment or for all time. There can be no possible judge of this disagreement. All that can be said is that the moral seriousness of the disobedient members is evidenced in part by their respect for those genuine goods the state provides not only to themselves but to everyone. To argue that the state does not provide such goods at all, or that it denies them entirely to particular sections of the population, is to justify unlimited and uncivil disobedience. Revolution always requires (and generally gets) some such special justification.

There are two other ways of describing the state which appear to argue against the claim that disobedience can ever be a *prima facie* obligation. The first is to insist that the state is itself a group, that its members too are wilful members who have incurred obligations of the most serious kind. It was the original purpose of social-contract theory to uphold just this conception of

the state. But there are serious problems here. Since for most men there is no real alternative to state membership, the wilfulness of that membership does not seem to have even the most minimal moral significance.<sup>20</sup> A theory like Locke's requires the argument that one can always leave the state; therefore, mere residence can meaningfully be described as a choice. Whatever the value of that description in Locke's time, it has very little today. But there is, I think, another way of describing the wilfulness of state membership: this is to take very seriously the possibility of joining secondary associations with limited claims to primacy. Such engagements represent, as has already been suggested, a kind of internal emigration or partial alienation, and as long as the processes of group formation are not controlled or repressed, they offer real alternatives to full state membership. Thus, the possibility of becoming a conscientious objector establishes the possibility of incurring an obligation to military service. One incurs such an obligation by *not* becoming an objector (though perhaps the alternative must bulk somewhat larger in our common life than conscientious objection presently does if it is to have this effect). The obligation is real even if it is incurred for no other reason than that conscientious objection involves penalties, though this is not so if the penalties are unlimited or without proportion or if the state interferes in any way with the groups within which the duty to object is both learned and incurred. The state can only be regarded as a choice, then, if the possible legitimacy of counter groups of a limited sort is admitted.

But the obligations of citizens to the state can be derived in yet another

way: not from their wilfulness but from its value. "If all communities aim at some good," wrote Aristotle, "the state or political community, which is the highest of all, and which embraces all the rest aims, and in a greater degree than any other, at the highest good."<sup>21</sup> Obviously, groups which aim at the highest good take priority over groups which seek lower or partial goods. There are two major difficulties, however, with Aristotle's description. First of all, it is not the case that the state necessarily embraces all other communities. A state with an established church and no legal provision for religious toleration obviously excludes a dissenting sect. Groups with universalist or international pretensions, like the Catholic church or any early twentieth-century socialist party, necessarily exclude themselves. Political or religious communities which oppose war are in no simple sense "embraced" by states which fight wars. It is precisely the nature of secondary associations with claims to primacy that they cannot and do not exist wholly within the established political or legal frame. Second, while the state may well provide or seek to provide goods for all its members, it is not clear that these add up to or include the highest good. Perhaps they are goods of the lowest common denominator and only for this reason available to all, for it may be that the highest good can be pursued only in small groups—in pietist sects or utopian settlements, for example, or, as Aristotle himself suggested, in philosophic dialogue. In any case, men do not agree as to the nature of the highest good, and this fact is enormously significant for the processes of group formation. Groups are formed for a great variety of reasons, but one of the chief

reasons is to advocate or act out ("without tarrying for the magistrate," as a late sixteenth-century Puritan minister wrote) a new conception of the highest good, a conception at which the state does not aim, and perhaps cannot. To form such a group or to join one is to reject Aristotle's argument and renounce whatever obligation is implied by it. I fail to see any reason why this is not an option available to any morally serious man.

In the argument thus far, a great deal of weight has been attached to the phrase "morally serious." Obviously, the term is not easy to define, nor the quality easy to measure. Yet frivolous or criminal disobedience cannot be justified by membership in a group. There are obligations among thieves, but not *prima facie* obligations against the state. This is true, first of all, because the activities of thieves endanger the security of us all. But it is also true because a robbers' gang does not make claims to primacy. Thieves do not seek to limit the authority of the sovereign state; they seek to evade it. But there is nothing evasive about civil disobedience: a public claim against the state is publicly acted out. This willingness to act in public and to offer explanations to other people suggests also a willingness to reflect upon and worry about the possible consequences of the action for the public as a whole. Neither of these by themselves legitimates the action; but they do signal the moral seriousness of the group commitment which legitimates it.<sup>22</sup>

Frivolous disobedience can also never be a duty, and so groups that do not encourage an awareness in their members of the purposes and actions to which they may become committed cannot commit them. Awareness of this

sort would appear to be required by social-contract theory; even the notion of tacit consent implies that there exists some knowledge of the duties being incurred. Nor, it seems to me, are the requirements of the theory entirely satisfied if such knowledge is but glimpsed at one brief moment in time. Continued awareness, a kind of shared self-consciousness, is necessary before the consent and participation of individuals carry sufficient moral weight to establish obligations—or, at any rate, to establish such obligations as I am trying to defend. A morally serious member of a group with partial claims may, then, be described as follows: he joins the group voluntarily, knowing what membership involves; he devotes time and energy to its inner life, sharing in the making of decisions; he acts publicly in its name or in the name of its ideals. Such a person—not any person—is obligated to act as he does, unless he is given good reasons why he ought not to do so.

### III

The problem of civil disobedience needs to be placed squarely in the context of group formation, growth, tension, and conflict. There is a sociology of disobedience, which has greater relevance for philosophy than has generally been thought; it helps establish the proper units of analysis. Now these units doubtless have their limits, for it is true that there come moments when individuals must make choices or sustain actions alone—or rather, and this is not at all the same thing, when they must endure the anguish of loneliness. The state always seeks to isolate its disobedient citizens, because it is far more likely to bend their wills to its own if it can break the cohesion

of the group which initially planned the disobedience and convince its members that they are members no longer. But this only suggests that the men who run prisons are always very much aware of the sociology of disobedience. Surely philosophers should be no less so.

The heroic encounter between sovereign individual and sovereign state, if it ever took place, would be terrifyingly unequal. If disobedience depended upon a conscience really private, it might always be justified and yet never occur. Locke understood this very well, for even while he proclaimed the right of individuals to rebel, he recognized that "the right to do so will not easily engage them in a contest, wherein they are sure to perish."<sup>23</sup> Rebellion, he thought, is only possible when it engages "the whole body" of the people. But clearly, rebellion and, even more, civil disobedience are most often the work of groups of much more limited extent. Clearly, too, it is not the mere individual right to rebel, unchanged in groups large or small, which sustains the enterprise but, rather, the mutual undertakings of the participants. Without this mutuality, very few men would ever join the "contest"—not because of the fear of being killed but

because of the greater fear of being alone. "This is what is most difficult," wrote Jean Le Meur, the young French army officer who was imprisoned for refusing to fight in Algeria, "being cut off from the fraternity, being locked up in a monologue, being incomprehensible." And then: "Do tell the others that this is not a time to let me down."<sup>24</sup>

All this is not to suggest that there is anything unreal about individual responsibility. But this is always responsibility *to someone else* and it is always learned *with someone else*. An individual whose moral experiences never reached beyond "monologue" would know nothing at all about responsibility and would have none. Such a man might well have rights, including the right to rebel, but his possession of the right to rebel would be purely theoretical; he would never become a rebel. No political theory which does not move beyond rights to duties, beyond monologue to fraternal discussion, debate, and resolution, can ever explain what men actually do when they disobey or rebel, or why they do so. Nor can it help us very much to weigh the rightness or wrongness of what they do.

HARVARD UNIVERSITY

#### NOTES

1. This essay was first read as a paper before the American Political Science Association's 1966 convention in New York City. It will be published later this year in a book of essays edited by David Spitz for Atherton Press.

2. Hugo Bedau, "On Civil Disobedience," *Journal of Philosophy*, LVII (October 12, 1961), 663.

3. The best description of these processes is probably still Émile Durkheim's *L'Éducation morale* (Paris, 1925).

4. R. P. Wolff, "An Analysis of the Concept of Political Loyalty," in Wolff (ed.), *Political Man and Social Man* (New York, 1966), p. 224.

5. See Alexander Sesonske, *Value and Obligation* (New York, 1964), pp. 20 ff. and *passim*.

6. Where such judgments cannot be made at all, there is no obligation. And this means that obligations are always shared among men, who must judge one another. "The only obligation which I have a right to assume," wrote Thoreau, "is to do at any time what I think right." But when, in jail, he greeted the visiting Emerson with the famous question, "What are you doing out there?" he clearly implied the existence of a common obligation. Common to whom? Common at least to New England philosophers, one of whom was failing to meet it. Emerson believed the same thing when he spoke in his lecture on the Fugitive Slave Law of the "disastrous defection of the men of letters" from the cause of freedom (*The Complete Essays*

and *Other Writings of Ralph Waldo Emerson* [New York, 1940], p. 867).

7. Eric Hobsbawm, *Primitive Rebels* (New York, 1963), chap. ix; for some examples of secret oaths, see Appendix 13.

8. Sesonkske, *op. cit.*, p. 107.

9. Henry L. Mason, *The Purge of Dutch Quislings* (The Hague, 1952), chap. ii.

10. See Guillaïn de Benouville's defense of capital punishment in the French Resistance: "in the Maquis each man had chosen his own lot, fashioned his destiny with his own hands, picked his own name. Everyone had accepted in advance and without question all possible risks" (*The Unknown Warriors* [New York, 1949], p. 220).

11. S. I. Benn and R. S. Peters, *The Principles of Political Thought* (New York, 1965), chap. xii.

12. People who accuse trade-union leaders of selling out are, in effect, accusing them of acting like leaders of secondary associations, the implication of their accusation being that the union (or the labor movement generally) is something more than secondary.

13. Bedau, *op. cit.*, p. 655.

14. The conflict in Sophocles' play is, of course, between primary groups. In general, conflicts between groups of relatives or friends and the state take forms similar to those described above, especially in modern times when such alliances tend increasingly to be voluntary. E. M. Forster's statement that "if I had to choose between betraying my country and betraying my friend, I hope I should have the guts to betray my country" is roughly analogous to the sorts of assertions sometimes made on behalf of groups. But it is an extreme statement and has reference to exceptional cases. Most often, the choice is between betraying one's friend (or colleagues) and *disobeying the laws* of one's country. Antigone's act is not treason, on any usual interpretation of that tricky term (Forster, *Two Cheers for Democracy* [New York, 1951], p. 78).

15. See Marc Bloch, *Feudal Society* (Chicago, 1961), chaps. ix-xvii.

16. Kircheimer, *Political Justice* (Princeton, N.J., 1961), p. 9.

17. Figgis, *Churches in the Modern State* (London, 1914), p. 224. See also G. D. H. Cole, "Conflicting Social Obligations" and "Loyalties," *Proceedings of the Aristotelian Society*, Vols. XV (1915) and XXVI (1926), N.S.

18. See, e.g., W. D. Ross, *The Right and the Good* (Oxford, 1930), pp. 27-28; and discussion in Richard Wasserstrom, "Disobeying the Law," *Journal of Philosophy*, LVII (October 12, 1961), 647.

19. It is often enough said that disobedience even of bad laws undermines the habit of law abidance and so endangers that fundamental order upon which civilized life depends. But I have never seen this argued with careful attention to some particular body of evidence. In the absence of such an argument, I would be inclined to agree with David Spitz that there are clearly *some* laws obedience to which is not required for the maintenance of social order. Even more important, perhaps, there are many laws which can be disobeyed by *some men*, without prejudice to social order (Spitz, "Democracy and the Problem of Civil Disobedience," *Essays in the Liberal Idea of Freedom* [Tucson, Ariz., 1964], pp. 74-75).

20. Wolff, *op. cit.*, pp. 227-28.

21. Aristotle *Politics* I. 1; see discussion in Benn and Peters, *op. cit.*, pp. 315 ff.

22. Secret societies, if they are not criminal, are implicitly revolutionary; the moral seriousness of their members must be signaled differently.

23. Locke, *The Second Treatise of Government*, par. 208.

24. Jean Le Meur, "The Story of a Responsible Act," in R. P. Wolff (ed.), *Political Man and Social Man* (New York, 1966), pp. 204, 205.