

CONTEMPORARY DEFENSES OF CITIZEN  
VIOLENCE AGAINST POLITICAL  
RULERS

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Bachelor of Arts

Oklahoma State University

Stillwater, Oklahoma

1972

Submitted to the Faculty of the  
Graduate College of the  
Oklahoma State University  
in partial fulfillment of  
the requirements for  
the Degree of  
MASTER OF ARTS  
December, 1978



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## ACKNOWLEDGMENTS

It has been my good fortune to have pursued my studies under the members of the Philosophy Department at Oklahoma State University. They are teachers who are generous with their time and efforts toward students and infinitely patient in dealing with our sometimes clumsy attempts to make sense. I am indebted to them for anything I have accomplished. In particular, I wish to thank Dr. Neil Luebke, my thesis adviser, and Dr. Richard Eggerman and Dr. Walter Scott, the other members of my thesis committee, for their helpful advice and criticism. I also owe a special debt to Dr. Edward Lawry who first posed to me the question for which this thesis is a partial answer.

Finally, I wish to express my thanks to Mrs. Doris Walters for typing this manuscript. Without her contribution none of this would have been possible.

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## CHAPTER I

### INTRODUCTION

When is a citizen morally justified in killing a ruler? A number of contemporary writers have tried to justify various kinds and degrees of citizen violence on quite diverse moral grounds. I have selected from these arguments what I believe to be the most coherent, complete, and interesting of them to examine in this paper. Given their diversity of opinion on the nature of political obligation, the responsibilities of governments to the people, the nature of moral justification, etc., the diversity and range of their justifications is not surprising. My main concern in looking at these arguments is to discover if or how each of them would attempt to justify the act of ruler killing and whether or not one such justification is more satisfactory than another.

In order to give us some common grounds for comparison of these diverse schemes, we need a clearer idea of what constitutes a moral justification, especially as it applies to actions in the political sphere. To this end we will divide the process of moral justification into three functions or requirements which a complete moral justification must fulfill. The first of these is the requirement that the justification connect the action with a positive moral rule having some general force in the ethical system. To be justified as "right" or "good" an action must be shown to be supportive of or in compliance

with a concept or rule which likewise has positive content. The second requirement for a moral justification concerns not the rule which the action supports but those it may violate. It is clear that in many cases, and especially with an act as problematic as ruler killing, simply relating the action to one moral principle is an insufficient justification because of the other moral principles with which it conflicts, the most obvious example being the prohibition against murder. So a sufficient moral justification must include, by way of answering these violations of important moral rules, a way of ordering the claims such that the conflicting rules are either overridden or accounted for in some way. Finally, a moral justification must be generalizable. A justification offered for a particular action in particular circumstances must be applicable to other actions of that type in similar circumstances. Because of this a complete moral justification of ruler killing, or of any problematic action, must specify the circumstances which affect the moral justifiability of the act. If the justification only applies to assassinations in a tyranny and then only to the tyrant himself, then the form of government and the persons attacked are relevant circumstances which must be stated in the justification. It is the clear statement of these objective criteria which allows us to generalize from one isolated instance to a class of related acts. We have concluded then that a complete moral justification should answer these three questions: first, of what moral principle or principles is the action supportive?; second, how can the claims of competing moral principles be answered?; and third, what criteria are relevant for the generalization of the justification to the group of actions denoted by "ruler killing?"<sup>1</sup>

The justifications examined here will be judged on the basis of how well they fulfill the three requirements stated above. We will find that none of the types of arguments, to be distinguished below, seems to have any inherent advantage over the others in terms of coherence of the argument or the degree to which it meets the requirements for a complete moral justification. Rather, the success of a particular justification seems to depend more on its individual characteristics than on its belonging to a certain class of arguments. In addition, we will find that, while it is not without its problems, Richard Brandt's utilitarian scheme for the justification of acts of violence provides the most promising basis for a moral justification of certain instances of ruler killing.

One writer, discussing the problems in trying to sort out the opinions on such questions, says:

There is a certain welter of propositions, arguments, theories and doctrines which comes in between the factual premises about inequality and violence and any final conclusions about the morality of violence. I mean, in saying that these things come in, that they must be considered. All of them are reasons or reasonings, or else they can be improved into reasons or reasonings. All of them obviously, must be made decently clear and explicit before their value is judged.<sup>2</sup>

In addition to making the reasonings "decently clear and explicit" before judging them, it is also helpful to group them along the lines of their basic premises or assumptions. This classification is not intended to be controversial nor especially enlightening in and of itself but should be simply an aid to analyzing and comparing a rather large and unwieldy mass of argument. When the necessary clarification of these contemporary justifications has been accomplished their positions on the question of ruler killing may be clear or, it is

hoped, can be easily derived.

The problem of citizen violence against political rulers is only one of the possible applications within the scope of these somewhat more general arguments. To avoid confusion about the scope of this more specific question we will here define the class of "political rulers" as those persons one might call "heads of government." "Political rulers" thus includes monarchs, dictators, tyrants, presidents, etc., and may include several members of a government in which the function of "ruler" is shared, e.g. in a military junta. Though some of the arguments discussed here might in other circumstances be broadened to include the assassination of any person of considerable political power, for us the term "political rulers" will be restricted to those persons previously described.

The problem of violence against a ruler has a long history in political thought. In the 16th century, the Vindicae Contra Tyrannos (A Defense of Liberty Against Tyrants) argued for the right of resistance against a tyrant.

The officers of the kingdom are the guardians and protector of these covenants and contracts. He who maliciously or wilfully violates these conditions, is questionless a tyrant by practice. And therefore the officers of state may judge him according to the laws, and if he support his tyranny by strong hands, their duty binds them, when by no other means it can be effected by force of arms to suppress him.<sup>3</sup>

Juan de Mariana in De Rege et Regis Institutione (1599), and Francisco Suarez in his Tractatus de Legibus ac Deo Legislatore (1611), defend the right of resistance of the people against a ruler who has broken his covenant with them.<sup>4</sup> In the almost four hundred years since these writings, the circumstances of government have obviously changed. The world powers are no longer "ruled" by absolute monarchs but "governed" by larger groups of people with much less power in any one

person's hands. Whether or not this alteration in the way power is distributed has an effect on the question of violence against the powerful remains to be seen.

Various "people's" revolutions, in Algeria and Cuba for example, the activities of terrorist groups like the IRA in Northern Ireland, the civil rights movement here in the United States, numerous political assassinations, and other recent events give a special urgency to philosophical analysis of all the aspects of violence. Contemporary philosophical literature contains a significant amount of work on violence in general and possible justifications of citizen violence in particular.

All of the arguments to be discussed here are attempts to morally justify violence in certain specified circumstances. These arguments can and should be distinguished from those arguments, also found in the literature, which treat violence in terms of its expedience. The argument from expediency may conclude that violence never in fact accomplishes what was intended by its agents and thus is never justified or it may decide that when violence accomplishes the desired end, which it sometimes does, then it is justified.<sup>5</sup> Neither of these reasonings, however, seems to involve a moral prohibition or justification. Neither is concerned with moral principles or obligations but only with bare rationality, the necessary means to achieve the desired end. It is this kind of justification which Wilfried Ver Eecke seems to have in mind when he says:

It is here that as a philosopher one can only try to understand the painful necessity of violence to force needed change, without being able to approve or condemn this violence.

We cannot approve, because a morally good purpose cannot justify bad means. We cannot condemn either.

We can only deplore it, just as moralists do not condemn a just war but keep deploring it.<sup>6</sup>

For Ver Eecke the ability to "approve or condemn this violence" implies the possibility of moral considerations and justifications which he reasons are impossible in the face of the "necessity of violence to force needed change." The arguments to be discussed here base their justifications not on the expedience or "necessity" of violence but on those moral considerations from which Ver Eecke could derive no satisfactory answer.

These arguments concern themselves generally with the justification for social or political ends of violence by members of a society. They do not confine themselves to the question of violence against the ruler or rulers of a country. This is, however, a class of violent actions which falls within the general scope of their justifications. It is therefore proper to ask how the justifications stand in relation to this question. To accomplish this we will divide the arguments into three groups in order to examine them more carefully. It should be understood at this point that no attempt has been made to include all the justifications of citizen violence to be found in the literature. The arguments included here are both interesting and enlightening individually and also good representatives of a type of argument to be found in the literature. There are certainly others which could be added to these.

The arguments in the first group are direct descendants of those of Mariana, Suarez and others of the 16th and 17th centuries. In these arguments the justification for citizen violence is based on the notion that in order to have an obligation to the government or the law members of the society must have agreed or given their consent either

to the government itself, in some theories, or to the acts and policies of the government, in other theories, or some combination or refinement of these conditions. A sub-category of these arguments, wherein the consent of the people is discussed in more or less legal language, becomes the so-called "contract" theories of government. But not all of the contemporary writers who talk in terms of the consent of the governed would commit themselves to this language of "contracts" and "covenants." So the more general heading of "consent" arguments will be used for this group.

Aquinas' view that God's law is higher than civil or man-made law, that one has no obligation to obey the ruler when he commands what contradicts the higher law, provides a very clear example of the type of justification in the second group.<sup>7</sup> One should qualify this by pointing out that Aquinas did not believe that common citizens had the right to actively resist a ruler who contradicted God's law, the right of resistance was restricted to those in positions of authority under the ruler, but the idea that there are obligations over and above those of maintaining the civil law is the basis for several contemporary defenses of citizen violence.<sup>8</sup> The "higher law" to which man is obligated may be one determining the fulfillment of his own nature or essence; it may be what one might call the continuing evolution of history or liberation of man, a notion especially prevalent in the Marxists; or the higher law may be an overriding moral principle or system of moral obligations. Each of these is used in one of the arguments to be discussed under the heading of "higher law" justifications.

The third group of justifications discussed are quite clearly based on the principle of utility. These are not simply arguments

from expediency, i.e. that whatever is necessary for the desired end is allowable. A basic principle of the arguments is to do that which produces the greatest amount of happiness possible in the society. The careful calculation of the outcome of an action in terms of happiness versus unhappiness and the special concern for the possible future effects of violence distinguish these arguments from those of mere expediency.

Once the various arguments are sufficiently clear with regard to the assumptions on which they rest, the claims they are making, and the reasoning by which they reach them, then they can be applied to our more specific question of violence against rulers and the justification thereof.

## FOOTNOTES

<sup>1</sup>For two other quite similar views on the components of a moral justification, see Richard B. Brandt, Ethical Theory: The Problems of Normative and Critical Ethics (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), p. 250; and Leslie J. MacFarlane, "Justifying Political Disobedience.," Ethics, LXXIX (October 1968), pp. 24-54.

<sup>2</sup>Ted Honderich, Political Violence (Ithaca, New York: Cornell University Press, 1976), pp. 11-12.

<sup>3</sup>A Defense of Liberty Against Tyrants: A Translation of the Vindiciae Contra Tyrannos (Gloucester, Massachusetts: Peter Smith, 1963), p. 212.

<sup>4</sup>John Plamenatz, Man and Society, Vol. 1 (New York: McGraw-Hill Book Company Inc., 1963), pp. 164-165.

<sup>5</sup>As an example of an argument from expediency against violence and one for violence see Mulford Q. Sibley, "Nonviolence and Revolution," The Humanist, XXVIII (November/December 1968), pp. 3-6; and H. L. Nieburg, "The Threat of Violence and Social Change," in Conflict: Violence and Nonviolence, Joan V. Bondurant, ed. (Chicago: Aldine-Atherton, 1971).

<sup>6</sup>Wilfried Ver Eecke, "Law Morality and Society: Reflections on Violence," Ethics, LXXX (January 1970), pp. 143-144.

<sup>7</sup>A. P. D'Entreves, ed., Aquinas: Selected Political Writings, tr. J. G. Dawson (New York: Barnes and Noble, Inc., 1959), pp. 183-185.

<sup>8</sup>Plamenatz, p. 158.

## CHAPTER II

### THE "CONSENT" ARGUMENTS

Of the three arguments to be discussed in this chapter, that by John Rawls is probably the most explicit in grounding its premises in the consent of the people. It is in Rawls' argument, in fact, "the people" who determine the ideal principles of justice and thereby give their consent to them; this is accomplished from the special vantage point of the "original position" about which more will need to be said.

Unlike Rawls whose argument encompasses a large scale theory of social justice, Lisa Perkins Newton is concerned in her paper only to establish the existence of the right of revolution. She argues that it is "the people" who decide on the legitimacy of their government, that is to say, they consent to the rule or the existence of that particular government. Because Newtons' argument is more limited in aim and because it is the more unsatisfactory of the two on the question of ruler killing we will look first at her justification of the right of revolution and then at Rawls' argument and his comments on what he calls "militant resistance."

The third and final argument in this chapter is from Ted Honderich's book Political Violence. In the chapter "Democratic Violence," where we find Honderich's discussion of citizen violence, he does not argue for consent as a basic premise of government so much as assume it. His argument in this chapter is concerned with the

justification of citizen violence in a democracy. The previous chapter in the book contains a detailed criticism of John Rawls' theory of social justice and because of this, because Honderich may have seen his argument as an answer or a corrective to Rawls, we will take up this argument after considering Rawls.

### Ruler Killing as Part of a Right of Revolution

In the article titled "Dimensions of a Right of Revolution," Lisa Perkins Newton intends to show that the right of revolution is a simple consequence of the conditions required for calling a government "good."<sup>1</sup> The right of revolution is therefore justified as being an inevitable consequence of any "good" system of government. Her definition of revolution is this:

. . . an uprising of a part of the population of a nation with the avowed objective of destroying the present government and replacing it with another government. This definition holds regardless of the percentage of the population involved in the revolution . . . regardless of the projected fate of the present governors---death, exile, or simply acquiescence---and regardless of the projected replacement government . . . <sup>2</sup>

The definition explicitly allows ruler killing and thus proposes to justify this act, when a part of a revolution, as a right under all good governments.

Because, she says, anarchism is the viewpoint from which one might most reasonably expect a justification of the right of revolution, Newton begins her argument with a critical discussion of the philosophy of anarchism. She finds two propositions basic to the anarchist position.

P<sub>1</sub> : Each individual has a prima facie right to make his own decisions in matters of conduct.

$P_2$  : It is not the case that any individual, group or institution can have the authority to impose decisions in matters of conduct upon any individual.<sup>3</sup>

Proposition  $P_2$  might be restated as, "There is no legitimate authority," or "There is no such thing as a legitimate government." Since, however, by her definition revolution consists not only of overthrowing one government but of replacing it with another, the right of revolution would seem to be contrary to the second proposition of anarchism.

The right of revolution which we set ourselves to explicate, it should be noted, has two parts: first, the right of the people "to alter or to abolish" the existing government when it becomes destructive of its proper ends (i.e. loses its legitimacy), and second, the right of the people "to institute new government." The first part is admirably covered in the anarchist philosophy, but the second is in direct conflict with  $P_2$  above. Any "new government" instituted would be as illegitimate as the one just overthrown, even if the new government was made up of none but purebred anarchists.<sup>4</sup>

So the right of revolution seems to require the contradictory of the second proposition which would be: "There are (objectively determinable) conditions under which an individual, group, or institution has the authority to impose decisions in matters of conduct upon individuals."<sup>5</sup> This statement Newton calls  $P_2'$ .

But now it looks as though  $P_1$  and  $P_2'$  are incompatible, since  $P_1$  asserts that the individual has a prima facie right to decide his own conduct and  $P_2'$  asserts that an institution or government can have such a right to decide conduct. The incompatibility can be resolved, however, if we notice that the right to determine one's conduct, in  $P_1$ , is only a prima facie right, i.e. it can be overridden by other more important considerations. Though Newton does not deal with this point explicitly, her references to John Locke in this

part of the article give us a clue as to her reasoning.<sup>6</sup> Here she seems to be of the opinion (with Locke) that men give up certain rights which were originally their own (prima facie rights) in order to enjoy the benefits of society. She says, "When the government attempts to confiscate the property of the people, or otherwise oversteps its legal bounds, it actually gives up the power the people gave to it. . . ." <sup>7</sup> Giving up certain rights in favor of the judgment of society is not incompatible with having had those rights in the first place. Though she rejects Locke's account of the right of revolution because it "depends on a fiction, if that is what it is, of a social contract" his thought seems to have influenced her view on the individual's prima facie rights.<sup>8</sup>

But given that some governments do have legitimate authority the question arises as to who decides when the government is legitimate. There are two immediate possibilities: those inside the government (the rulers), or those outside the government (the people). Since a government's declaring itself to be illegitimate is both logically questionable and, practically speaking, unlikely, the judgment is left to the people. This right of judgment of legitimacy Newton specifies in proposition  $P_3$ . Stating the three propositions in order and using the reduced form of  $P_2'$  we have:

$P_1$ : Each individual has a prima facie right to make his own decisions in matters of conduct.

$P_2'$ : There are conditions under which government is legitimate.

$P_3$ : The right to decide whether these conditions exist belongs to the people.

Newton claims, correctly I think, that these three assertions are sufficient to establish the right of revolution in general; she

concedes that the justifiability of any particular revolution is open to challenge. Though she has not established the truth of the assertions, they do seem to entail the right of revolution as she phrases it. But her original claim was that these same propositions are also the grounds for any good government, and if she could show this her assertion of the real existence of a right of revolution would be much more plausible.

"Good government" is defined by Newton as:

First, the existence of some associative form for the making of collective decisions (government), and second, the avoidance on the part of that association of decisions and other instruments which would result in the crushing of the individual.<sup>9</sup>

But besides characterizing "good government," the above definition is claimed to be a direct consequence of assertions  $P_1$  and  $P_1$  above.

This conjunction /the two parts of the definition of good government/, the logical consequence of  $P_1$  and  $P_2$  above, is the logical starting point for Mill's discussion of the limits of authority of society over the individual. (On Liberty, Chapter IV) Having granted the value of government on other grounds, Mill is simply spelling out, in that discussion, what it is for a government to be good.  $P_3$  is both the necessary condition for the persistence in fact of good government, and the collective translation of  $P_1$ .<sup>10</sup>

The definition or requirements for good government are therefore ultimately connected to the same grounds as the right of revolution, and Newton's somewhat stronger claim is that any good government logically requires that the right of revolution exists. As a clarification of this "right of revolution," Newton distinguishes three sets of consequences which follow from it.

The first set relates to assertion  $P_2$ ' above and is concerned with the legitimacy of the new government;

Thus it follows from a right of revolution that the government instituted by the revolutionaries is legitimate, its legitimacy subject, of course, to the same limits as the one they overthrew.<sup>11</sup>

This is an obvious result of the definition given for the right of revolution.

The second set of consequences relates directly to our question about ruler killing. Since, Newton says, we have a general principle which requires that "who wills the end, must also will the necessary means," and since the people have a right to judge and to depose any government they find to be illegitimate, they must have both the necessary means to judge the government intelligently and the means to depose it if it is found wanting.<sup>12</sup> The first of these means are none other than the familiar freedoms contained in our "Bill of Rights."

If the people are to make the correct decision about their government, they must have access to abundant information about it, they must be able to gather together and talk over the issues in public debate or private conversation without interference, they must be able to find out which of any injustices they may discover are remediable without revolution. Thus the freedoms of speech, press, assembly, petition and a general right of privacy are established.<sup>13</sup>

This is a rather novel but nonetheless interesting way to go about the justification of these freedoms. The second kind of means, the means to depose the existing government, is more relevant to our study.

Further, it is highly likely that any revolution will require violence on the part of the revolutionaries; failing an absolute prohibition of violence, which we do not find in the tradition and have no reason to introduce here, violence must be allowed as a means where necessary.<sup>14</sup>

We have then as a consequence of the right of revolution a justification of the use of violence, including the assassination of rulers. Once again, however, this justification is only applicable to violence in

general, the use of violence or assassination in any particular case is very much open to argument.

Although she does not state it explicitly, it may be possible to derive from what Newton has said somewhat more specific circumstances which would justify killing the ruler. The second clause of her definition of "good government" prohibits "decisions and other instruments which would result in the crushing of the individual." By "the crushing of the individual" she presumably means taking his life and/or violating those rights which he has not forfeited to the society. From this, then, we can derive at least one general condition under which the government would become illegitimate, i.e. when it "crushes" the individual, and at which time violence against the ruler would be a possibly justifiable action. But the ruler is himself an individual with the same rights as his citizens. It would seem, therefore, that only in a case in which the ruler cannot be removed from power in any other way is his assassination justifiable. Violent resistance on his part to remain in office, for example, would seem to be one of the only cases in which ruler killing would be justifiable.

Newton devotes considerable attention to the third set of consequences of a right of revolution which arise from questions about how many people make up a revolution, and when does the government have a right to resist. Because we are not concerned in this study with theories of revolution as such we will not follow out in detail the reasoning Newton uses to arrive at her answers to these admittedly important questions. Let it suffice to say that Newton concludes that the support of a bare majority of the active (i.e. capable of governing) citizens is the minimum number sufficient to constitute a

revolution.<sup>15</sup>

But perhaps the next most obvious question to arise here and one to which Newton does not address herself is "What are the objective criteria on which the people judge the legitimacy of the existing government?" Newton, understandably, does not deal with the question because it is beyond the scope of her argument. But the question is relevant for our study because it bears on the justification of particular acts of violence in a revolutionary situation. One could answer that it makes no difference what criteria the people use because once they decide to depose a government the revolution is legitimate anyway; it is always their right to stage a revolution. But on the other hand, morality seems to require that the destruction and death associated with revolution be weighed against the evil in the existing government. Admittedly, this balancing process goes beyond simply establishing the right of revolution to attempting a moral justification of it.

How well does Newton's argument for the right of revolution, which includes ruler killing, satisfy the three requirements we have set up for moral justifications? Political assassination was included by definition in the right of revolution so the justification of this more general action will to some extent also justify the specific acts it includes. In justifying the right of revolution Newton recognizes that this right must also be related to a more general principle in order to justify it. This she attempts to do by deriving the right of revolution from the three principles  $P_1$ ,  $P_2'$ , and  $P_3$ . These principles are themselves fairly reasonable, as Newton demonstrates by comparing them with the alternatives. But the final claim, that these three principles constitute a characterization of any good government,

seems to be altogether too strong. One can understand wanting to establish such a connection since the result would be as Newton says:

"... the same assertions  $\overline{P_1}$ ,  $P_2'$ , and  $\overline{P_3}$  are nothing other than the conditions for good government in general, and therefore revolution may not be condemned in general by those who would advocate good government."<sup>16</sup>

But even given Newton's own definition of "good government," it is not clear that this definition is the "logical outcome" of the three principles stated above. Some additional explanation might have helped but we are given only the reference to Mill. Despite not clearly establishing this final connection the argument as a whole does a reasonable job of relating the act of ruler killing to more general actions and then to moral principles.

On the second point, however, that of accounting for conflicts with other moral principles, Newton has very little to say. In principle  $P_1$  we find that people are to have a prima facie right to decisions about their own conduct but the conditions (referred to in  $P_2'$ ) which justify overriding these prima facie rights are not further specified. We have attempted to derive some explanation from Newton's references to Locke and to her definition of "good government" but these efforts could not take us very far. Such contrary claims might have important practical consequences since, for example, some might consider political stability to be sufficiently important to override autonomy in a majority of cases. Considerations of political stability are also important in relation to principle  $P_3$ . Even though, given the choice between the ruler or the people deciding whether the government is legitimate reason gives this power to the people, reason might also question whether the people's decision that a government is bad

or illegitimate is a sufficient justification for overthrowing it. Newton does not want to argue that because a government is judged illegitimate the people have a duty to overthrow it. She specifically limits her discussion to "rights" rather than "duties."<sup>17</sup> But surely a way of considering the possible effects of a violent revolution as well as a more detailed account of "legitimacy" would be necessary in a complete account of a sufficient justification.

As we have said, it was obviously beyond the scope of Newton's article to include a detailed discussion of the objective characteristics by which the people are to judge the legitimacy of a government, or the characteristics of a justifiable revolution. But if ruler killing is to be justified on the basis of a general right of revolution these conditions of legitimacy would need to be examined and specified more fully.

We seem to find, then, in this first argument the beginnings of what might be developed into a complete justification for ruler killing. The next argument is able to satisfy the second and third requirements for justification much more fully.

#### Citizen Violence and the Two Principles of Justice

At the end of the section titled "The Definition of Civil Disobedience" in his A Theory of Justice, John Rawls says, "Now in certain circumstances militant action and other kinds of resistance are surely justified. I shall not, however, consider these cases."<sup>18</sup> In the sections which follow this statement Rawls gives the qualifying criteria for those acts which, in conjunction with the rest of his

theory of "justice as fairness," constitutes his justification of civil disobedience. It is not necessary to examine his definition of civil disobedience except to note that for Rawls acts of civil disobedience are non-violent and thus are "clearly distinct from militant action and obstruction."<sup>19</sup> We have seen from the quotation above that Rawls thinks some acts of citizen violence are justified. So, following the pattern of his own justification for civil disobedience, it may be possible to apply his contract conception of justice to the problem of citizen violence against a ruler to discover how this act of violence might be justified in his theory.

The basis on which the two principles of justice as fairness rests and therefore the basis of Rawls justification of civil disobedience and our own derivation of his views on citizen violence is what he calls the "original position."

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice. Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This insures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances.<sup>20</sup>

Without tracing his argument in detail it can be said that Rawls asserts that the persons in the original position would arrive at two principles of social justice. Though they are considerably refined in Rawls later examination of them, at their initial appearance they are

stated thus:

. . . the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.<sup>21</sup>

With several important qualifications, Rawls finds civil disobedience to be justified in a well-ordered society when it contributes to a fuller realization of social justice as embodied in the two rules and when the acts are in compliance with the two rules of justice. Its justification is grounded on the fairness of the "original position." In the same way, the derivation for the justification of citizen violence is grounded on the original position through the two principles of justice. And in the same way, only those acts which contribute to a fuller realization of the two rules and are in compliance with them could be justifiable. First we must decide if the act of killing a ruler could meet these two major requirements, then the further qualifications which Rawls makes on acts of civil disobedience can be examined in turn.

When we come to apply Rawls' discussion of civil disobedience to the question of ruler killing there are two cases to be considered. The cases are violence occurring in what Rawls calls a well-ordered society or in a society which is not well-ordered. He describes a well-ordered society this way:

Now let us say that a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles.<sup>22</sup>

The problem of ruler killing will be considered in relation to the two types of societies separately since the distinction between the society that is well-ordered and that which is not is important for our analysis.

In discussing citizen violence we are of course speaking of societies which are not ideal realizations of Rawls' two principles of justice. The non-ideal applications occupy less of Rawls' attention in his book than does the ideal theory itself, but he does discuss some applications of ideal theory to non-ideal circumstances such as those which give rise to civil disobedience and conscientious refusal. On the other hand, the well-ordered society as it is discussed here is not to be thought of as the ideal society, if it were there would be no need for violence. The society is well-ordered in that it has a generally shared conception of justice but it is non-ideal in that there is not always perfect agreement as to how this conception is to be realized. In this way we allow for the possibility of injustice and the need for its rectification even in the well-ordered society.

Rawls' first qualification when considering civil disobedience as a means for social change is that the condition to be protested is one of injustice in the society and not simply an undesirable condition resulting from natural circumstances.

. . . a restriction of liberty can derive from the natural limitations and accidents of human life, or from historical and social contingencies. The question of the justice of these constraints does not arise. For example, even in a well-ordered society under favorable circumstances, liberty of thought and conscience is subject to reasonable regulations and the principle of participation is restricted in extent. These constraints issue from the more or less permanent conditions of political life; others are adjustments to the natural features of the human situation, as with the lesser liberty of children.<sup>23</sup>

Such undesirable but unavoidable conditions as minor restrictions on freedom of speech or small inequalities in economic or social status are not grounds for violence because they result from the basic facts of association of people in societies.

Rawls' first principle of justice maintains that basic liberties are to be equal for all and are to be as extensive as is compatible with their equality. The "basic" liberties he lists are these:

. . . political liberty (the right to vote and to be eligible for public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.<sup>24</sup>

All other social and economic freedoms or rights (including the distribution of material wealth) are to be handled under the second principle of justice. Rawls specifies that the two principles of justice are to be serially or lexically ordered: the first rule is to be satisfied before the second is considered and in addition, no possible gain in the second rule freedoms can override the claims of the basic liberties in the first rule i.e. equality of liberty and liberty to the greatest extent possible. This lexical ordering is incorporated into what Rawls calls the Priority Rule:

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases: (a) a less extensive liberty must strengthen the total system of liberty shared by all, and (b) a less than equal liberty must be acceptable to those citizens with the lesser liberty.<sup>25</sup>

For example, no degree of economic wealth for the entire society can justify the abridgement of the freedoms of speech, conscience, or

personal property.

In relating this to the problem of citizen violence in the well-ordered society it is evident that as a method of rectifying injustice, the justifiability of ruler killing will depend on the seriousness of the injustice. If the injustice is that of an inequitable distribution of economic wealth or inequality of opportunity it falls under the second principle of justice and if in attempting to rectify it one violated any of the basic liberties under the first principle he would have broken the Priority Rule. Thus it is unjustifiable for citizens to assassinate, kidnap for political demands, or even to abridge freedom of speech or assembly in an attempt to bring about a more equitable arrangement of the second principle liberties.

If, on the other hand, the injustice is one involving the basic liberties of the first principle the outcome is somewhat different. First of all, it seems that a society in which there is serious abridgement of the basic liberties might not be considered well-ordered, since one of the criteria for being a well-ordered society was that it was "designed to advance the good of its members." At the very least this society is on the borderline between those that can be called well-ordered and those that cannot. Though the label itself makes little difference, we will find that for this society and those that are definitely not well-ordered the range of justifiable acts is wider. The injustices in these societies are serious enough that the question of ruler killing arises as a possible moral consideration.

The society that is not designed for the good of its members and where there is no shared conception of justice is one in which we are likely to find gross injustices, possibly systematically perpetuated,

for example on the basis of class distinctions, or on the social conflicts arising from the "might makes right" ethic. In these societies there may be no general recognition of the "basic liberties" of the individual and certainly no conception of justice as detailed as Rawls' two principles. Of course even in this society where they are unrecognized, the two principles of justice (with the Priority Rule) exist as goals to be worked toward and to a certain extent as guides for action in the process of their own realization.

Because physical violence against persons is a very serious violation of the basic liberties, the Priority Rule requires an equally serious injustice to justify its use. In the well-ordered society it was obvious that an unjust distribution of wealth, a liberty under the second rule, could not justify violence to persons, a first rule liberty. The right to life or physical well-being, would seem to be lexically prior to any concern with economic or social status. Only in a society where these basic rights of life or physical well-being were systematically violated by those in power could violence to those persons be justified. Even here, assassination would seem to be the very last resort because it is such a serious breach of the basic liberties the citizen is trying to protect.

It should be emphasized that an important difference between this reasoning about citizen violence and Rawls' own discussion of civil disobedience is that whereas Rawls restricts his discussion to the well-ordered society we found that citizen violence has no justifiable place in such a system and only becomes a moral possibility when the society is seriously unjust and thus no longer well-ordered. In the society which is not well-ordered, even ruler killing becomes a moral

possibility when the lives of the citizens are in danger.

Keeping in mind that this is an extrapolation or derivation from Rawls' actual argument, it seems that a rather impressive justification for citizen violence and even in certain cases for ruler killing can be constructed.

The first requirement we asked of a moral justification was that it showed the act or group of acts in question to be in accord with a more basic moral principle. Our extrapolation of Rawls' argument shows that in certain seriously unjust societies even the most basic liberties might have to be restricted or violated in certain individual cases in order for the society as a whole to enjoy these same basic liberties more fully. The case of killing a murderous tyrant is an obvious illustration. Rawls makes the basic principles to which the problematic acts must be accountable very explicit in his two rules of justice. He spells out the liberties which are to apply under each rule, and he gives considerable space to an argument for the plausibility of the rules as the most desirable arrangement for distributing social goods. Because of the explicitness of each of these steps it is fairly easy to show how an act of citizen violence could in the right circumstances relate to the basic principles of justice, thus satisfying the first requirement of a moral justification.

In terms of the second requirement of justification, Rawls is once again very explicit as to how social goods are to be weighted in the system. In a case of conflict between two goods the more basic as determined by the Priority Rule and the lexical ordering of the two principles is to be given precedence. With regard to the ordering of liberties in a society that is not well-ordered, such as where we

found ruler killing might apply, however, Rawls has an interesting comment:

The case for certain political liberties and the rights of fair equality of opportunity is less compelling. As I noted before, it may be reasonable to forgo part of these freedoms when the long run benefits are great enough to transform a less fortunate society into one where the equal liberties can be fully enjoyed. This is especially true when circumstances are not conducive to the exercise of these rights in any case. Under certain conditions that cannot at present be removed, the value of some liberties may not be so high as to rule out the possibility of compensation to those less fortunate.<sup>26</sup>

Rawls seems to be saying that in a society that is not well-ordered ("less fortunate"), where circumstances would not in any case allow for the full practice of first principle liberties, that it is possible to forgo these in favor of greater second principle social goods (economic wealth, etc.) which would in time bring the society to a place where the first principle political liberties could be realized. Rawls admits elsewhere that even the Priority Rule will not be able to decide all cases of conflict between social goods.<sup>27</sup> The statement above, however, seems to open the door to all kinds of debate and argument about whether or not a particular society is "ready" for the full realization of the two principles and the Priority Rule, or whether primary liberties may still be restricted for the sake of greater secondary social goods.<sup>28</sup> Since our discussion of ruler killing is largely extrapolation from Rawls, and since he nowhere talks specifically about a right to life or the weight such a right would have in any society, the weakness we have discovered in the Priority Rule for just those societies where

this right might be most in danger is a weakness in his argument. Just at the point where we need to know how to weigh the ruler's life against those of his citizens or against their other political rights Rawls says the Priority Rule may not apply. On the point of the second requirement for justification, Rawls' system of weighing social goods goes a considerable distance but not quite far enough to give a firm answer on the question of ruler killing.

The structure of Rawl's argument and the way he himself handles the problem of civil disobedience makes it very clear what factors are relevant to the problems of citizen violence and ruler killing. The objective conditions to be considered, is the society well-ordered or not? What rights or liberties are being violated?, etc., are evident from his discussion of the other problem. Thus, judged on the basis of the three requirements we have set up for a moral justification, Rawls has supplied the grounds for a fairly extensive and consistent justification. Except for the important problem we discovered with the Priority Rule in these extreme circumstances and the fact that Rawls does not discuss the right to life as either an absolute or in terms of the lexical ordering of the Priority Rule, we might have been able to derive a rather impressive justification for certain instances of ruler killing. Without knowing, however, how Rawls views these important factors, it is impossible to state with any confidence whether or not his argument would justify ruler killing.

After an extremely promising beginning, Rawls' argument has led us into a kind of mire of pointless speculation. In the next argument

to be discussed, however, the author has addressed himself specifically to the problem of citizen violence thus, hopefully, putting our discussion on more solid ground.

#### Ruler Killing and "Democratic Violence"

The argument advanced by Ted Honderich in the third essay, "Democratic Violence," of his book Political Violence is not so clearly based on the device of consent of the people so much as it seems to spring from that tradition. In the second essay in the book, "On Two Pieces of Reasoning About an Obligation to Obey the Law," he sides against utilitarianism. Even though he has a considerable amount of criticism for John Rawls' theory of obligation based on his two principles of justice, his opposition to utilitarianism and the importance he gives to democracy in his own argument urges that he be included in this group rather than some other.<sup>29</sup>

One of the possible arguments against citizen violence is that when carried out in a democracy such violence is destructive of democracy itself. If democracy is a desirable form of government, and Honderich argues that it is, then violence is unjustifiable if it tends to destroy this desirable system. In this regard violence is usually seen as breaking the "rules" of democracy, rules to which the people themselves have consented. Honderich's argument consists in showing that not only is violence not necessarily contradictory to democracy but can in some cases be complimentary to democratic aims and ideals.

In order, however, to show that some citizen violence does not contradict democracy, he offers a more precise description of the rules

which define the practice of democracy and which, he claims, are not broken. There are three basic rules: 1) uncoerced choosing and influencing of government; 2) approximate equality of opportunity in the choosing and influencing of government; and 3) effective majority decision by government.<sup>30</sup> The rule of non-coercion applies not only to voters but to candidates for office and to the government after an election and means that none of these are in a strict sense controlled or forced to act in a certain direction, "that their attitudes, wants, demands and choices, both interested and in a way disinterested, are of their own making."<sup>31</sup> Honderich supplies some needed clarification of this concept at a later point. Relative to the rule of approximate equality of influence Honderich says:

. . . we may recall first that democracy gives to each of almost all adults the possibility of one vote in the choice of a government, and the possibility of some part, not wholly out of line with the parts of others, in the influencing of government.<sup>32</sup>

The third rule insures that elected representatives make decisions by majority vote, that no minority has special privileges of veto power, etc., and that the decisions of the representatives be translated into fact. Honderich says these rules constitute his "impression" of the practice he has in mind when speaking of democracy.<sup>33</sup>

Described in terms of the three rules above, Honderich sees democracy as desirable for two related reasons. These he calls the argument of freedom and the argument of equality. On the argument of freedom he says:

It is to be noticed that democracy is not being recommended as denying the mentioned autonomy to an individual or a minority and giving it to ordinary people who make up the society. Such a claim is patently at odds with the facts. Democracy gives to

citizens only something which can best be described briefly in a negative way: a circumstance in which no individual or minority has as much autonomy, with respect to major policies of the society, as have individual or minorities in other political practices. It gives to citizens not any freedom of power but rather a freedom from power.<sup>34</sup>

In addition to the "freedom from power" which democracy secures there are other points in favor of democracy in the argument of freedom.

There are, however, other possible autonomies which are in fact realized in a democracy, or realized to some extent. These are smaller and yet enter importantly into the present fundamental argument for democracy. . . .

Some of these autonomies are integral to the practice, as defined, and are secured by what are known as the political rights. How a man will vote is within his decision, and his satisfaction in its being so is real. Others of these smaller autonomies are consequences rather than integral parts of the democratic practice, although not invariably so, and are in part secured by non-political rights. Here we have freedoms of culture, including religion, and freedom in the use of law.<sup>35</sup>

Closely related to the "argument of freedom" is the "argument of equality."

It is that in a democracy one gets certain approximations to equality. Some of them are greater approximations than in non-democratic societies, others are lesser approximations. These approaches to equality, full realizations of equality in several instances, are to be found in the democratic practice itself and also in its customary consequences.<sup>36</sup>

Though he does not elaborate the arguments in great detail they are simple enough and common enough to make the necessary point in his argument, i.e. that if democracy is desirable then in whatever manner violence conflicts with or destroys democracy it is prima facie unjustified, and if in some ways violence not only does not contradict democracy but could aid a system to be more democratic then on these grounds at least this violence would be prima facie justified.

Honderich makes no more than this very limited claim against the

notion that violence is always contradictory to democracy.

The kind of violence which Honderich has in mind he calls "democratic violence." He gives several ways in which democratic violence avoids breaking the rules he stated for democracy and in fact furthers the ends of democracy. To show how democratic violence avoids breaking the rule of noncoerced choosing and influencing, he divides coercion into two types: coercion of force and coercion of persuasion. One example he gives of coercion of force is giving up one's wallet at the point of a gun.<sup>37</sup> Of all the cases of coercion of this type he says:

They are alike in that they offer but a single possibility and hence that there is no room for effectual reflection and judgement. As a consequence of this, although the fact is of secondary importance to us. I am absolved from a certain responsibility in each case.<sup>38</sup>

In coercion of persuasion, on the other hand, "I am left room for effectual reflection and judgement." He gives as an example, "my giving an unwilling donation to a dubious charity when I believe that the collector will mention a refusal to my employer, who is in favor of the charity."<sup>39</sup> Recognizing that the distinction between the two types of coercion is at this point very crude and leaves many examples of coercion somewhere between the two extremes, Honderich nevertheless claims that coercion of persuasion does not break the rule of democracy concerning "uncoerced choosing and influencing."

The practice of democracy is such that it is possible for minorities and interest groups to exert pressure on the electorate. These pressures sometimes stand in analogy with those persuasions of individuals mentioned above. They sometimes evoke moral responses and sometimes evoke responses of prudence, but not what we may call enforced prudence. It is hardly too much to say that the democratic practice has at its bottom the coercion of persuasion. The electorate is restrained or constrained, but in such a way that it is left room for reflection. The same is true for candidates and governments.<sup>40</sup>

The final step here obviously is the claim that some violence (democratic violence) is not, as it would seem, a case of coercion of force but of coercion of persuasion. By way of example Honderich offers:

Governments, to speak first of them, are left room for effectual reflection and decision in the face of this violence. The American government was not forced, by acts of violence, to enter into a more vigorous policy against racial discrimination and racism. It was certainly not forced by violence, although the point takes us out of the area of our primary concern, to change its policy of war in Vietnam. The British government was not forced to take seriously the demands of the oppressed minority in Ulster . . . . . The case is similar with electorates and with candidates. With few exceptions, they are not forced into their policies by violence or forced into particular political behavior.<sup>41</sup>

While admitting that an act of violence can be coercion of force for an individual, the same act in the broader scope of its effect upon electorates and governments is not force but persuasion, and persuasion is, as he has pointed out, almost fundamental in the workings of democracy.

Violence quite obviously breaks in many instances the second rule of democracy, that of approximate equality of influence.

The criterion of democracy that each citizen has one vote is important only because we assume something about the efficacy of the election. It is not unreasonable to conclude, perhaps, that a certain level of violence in a society, since it somewhat reduces the relative efficacy of voting, is in some conflict with the criterion of 'one man, one vote.'<sup>42</sup>

But Honderich also has in mind here by the term 'influence' the power to make one's political attitudes and inclinations felt in government, and in this regard he notes:

Of the individuals who do not engage in violence, as we have noticed, there are some who enjoy very great favourable inequalities of influence. That is, wealth and position give to some considerable number of individuals a far greater influence than is had by almost all of those individuals who are without wealth or position. Let us compare, then, the group of the violent and the group of

the privileged. It is plain enough that the violent may be seen as attempting to secure an equal influence or something like it.<sup>43</sup>

Seen in this way acts of democratic violence not only do not violate the rule of equality of influence but may in fact be an attempt to enforce the rule and thus make the system more democratic than previously.

Even granting that violence at least above a certain limit is in conflict with the third rule of democracy, i.e. effective majority decision, there are still enough similarities and convergences between the practice of democracy and some kinds of violence to warrant consideration of the category "democratic violence." A similarity which Honderich discusses before the others but which is, I think, more plausible after his discussions of coercion and equality of influence is that of the ends of democracy and violence.

It can be said for some political violence that it serves the ends of freedom, or equality, or both. One may argue for, although not necessarily justify, such violence as serving the ends which are also the ends of the practice of democracy, a practice which by definition is non-violent. Thus the fundamental arguments for the practice of democracy may also be used in defense of some political violence.<sup>44</sup>

He sums up his findings thus:

Violence, then, may serve the ends which are fundamental to the democratic practice. Secondly, it may, as coercion share an attribute with procedures that are intrinsic to democratic systems. It cannot be said without dismay and apprehension, but it is to be said that some bombs are like votes. Thirdly, this violence is by one comparison an attempt to gain equality of influence. Fourthly, it is not directed to the ending of democratic systems. It may, finally, lead to their becoming more democratic.<sup>45</sup>

Honderich never claims to have given a sufficient justification for even this special category "democratic violence." He says:

I have said that it seems to me that at least some violence has a moral justification, but I have not done anything like show this. It will be clear, I trust, that I do not suppose that the proposition that some violence has a justification can be derived from the fact alone that it is in the given sense democratic.<sup>46</sup>

Though his argument may not be sufficient as a justification it is an important argument nonetheless. But for the natural reticence to claim to have solved a problem when there are certainly still difficulties in one's argument he might have made his claim somewhat stronger. He does for example seem to view his conclusions as rather important when, in discussing the convergence of ends of violence and democracy, he says:

The fact about ends is a considerable one, partly because the ends in question are not external to the democratic practice but internal to it. They inform the practice and are fundamental to its character. Furthermore, although the question is a large one, it may be argued that it is uniquely the democratic practice that is effectively directed toward both these ends. It is not as if some violence were directed toward ends of democracy, but ends not of its nature, or directed to ends of democracy clearly shared with other practices of government.<sup>47</sup>

In spite of the qualifications on his conclusion, Honderich clearly thinks that the notion of "democratic violence" is an important aid in specifying which acts of political violence are morally justified.

But what would the "rules of democracy" say about our specific problem of violence against a ruler? Could such an act qualify as "democratic violence?" First of all, it would seem that such an act violates the rule of uncoerced choosing and influencing. Violence against the ruler is certainly coercion of force rather than of persuasion when applied directly to the powerful individuals in the government. Killing elected representatives or the president, for example, in a democracy does not persuade but forces the government to take

certain actions. Speaking of violence on this individual level

Honderich says:

A man whose shop is destroyed by a fire or a bomb, or a man who abandons his shop in the face of the direct threat of fire or bomb, is subjected to the coercion of force. Such facts, and also the facts of injury and death, must enter into reflection and count against violence. It remains true that governments are not subjected to the coercion of force by such acts.<sup>48</sup>

But insofar as presidents or elected representatives are the government, violence directed against them as individuals is coercion of force on the government just as the bomb was coercion of force on the shopkeeper. Violence against rulers is not undemocratic coercion of force against the electorate as a whole but against the government itself.

Because of the enormous influence which immediately attaches to those who kill or threaten to kill elected representatives, such acts clearly violate the rule of approximate equality of influence. Even in instances where the violence is an attempt by a seriously disadvantaged or underrepresented group to gain more equal influence in the government the shift of such great power to a small group seems to be obviously contrary to democracy at least in its immediate effects.

In relation to the third rule of democracy also it is difficult to see how such a serious act as killing the ruler could escape a charge of being destructive of democracy. Speaking of violence in relation to this rule of "effective majority decision by government"

Honderich states:

The last criterion of the group is that governmental decisions are effective, and hence that the rule of law prevails. Here, it is even more difficult to judge precisely. The principle difficulty is that of setting an upper limit on violence, beyond which violence is in

substantial conflict with democracy.<sup>49</sup>

The idea of an upper limit to violence is very important here, for it seems that in general for all the rules of democracy this particular act of (ruler killing) surpasses the permissible upper limit and therefore falls outside of Honderich's category "democratic violence."

But a question then arises as to ruler killing in non-democratic systems or systems democratic in name only. Though his focus is on violence in democracies, Honderich does consider in passing acts of violence in systems that do not practice fully the three rules of democracy.

Historically speaking, democratic systems have not always advanced progress toward the ends of freedom and equality. They have sometimes impeded that progress. This has had to do, in part, with permanent minorities, non-accredited groups in pluralist systems, and the failure of democratic governments to respond to the intensity of distress, as distinct from its extent. It is an obvious fact that democracy has not always served progress toward the ends for Blacks in America and Catholics in the province of Ulster. This has been a question of some of the forms of freedom and some of the forms of equality. Also, of course, considerable impediments to progress have been raised by undemocratic means.<sup>50</sup>

Democracies as well as non-democracies have poor records in the realization of the ends which they espouse.

There inevitably is the proposition, then, that precisely the fundamental arguments for the practice of democracy can also be used to support departures from it. The ends which are thought to be served by the rules of democracy are at least sometimes served by the breaking of the rules. . . . It can be argued that in some cases the only infractions which do effectively serve the ends of democracy are acts of political violence. The argument is in part that nothing else will work, or that nothing else will work in a reasonable time.<sup>51</sup>

This answer seems in danger of throwing the whole question of moral justification back to whatever is necessary to realize the ends of freedom and equality. Such an answer is, as we have said previously,

unsatisfactory. It virtually ignores the second and third requirements for moral justification, the ordering of rules and criteria of judgment, and makes too weak a connection between the action and a positive moral rule to satisfy the first requirement. If Honderich wishes to make the justification stronger it is not clear how he would do it. Except for this rather puzzling comment, he limits himself very carefully to discussing citizen violence in terms of democracy.

. . . I have not pointed to similarity between the democratic practice and one kind of political violence, democratic violence, only in order to establish the fact of similarity. Rather it has been my intention to bring into clearer view something that will make less difficult our judgement of political violence. It seems true that in considering problematic behavior, it is a great advantage if we can see clearly its relations to unproblematic behavior. . . .

Some political violence has features that are shared with the practice of democracy, and that practice has a large recommendation. These are facts of which we are morally obliged to take account. We have in them one significant bridge between facts about our societies, the facts of inequality, and substantial conclusions about political violence.<sup>52</sup>

Without claiming to supply answers in all possible circumstances, Honderich shows that some political violence can be in a general sense in accord with democratic practices. It is also clear that in a system patterned on Honderich's rules for democracy and in which his democratic ends (freedom and equality) are to a reasonable extent realized physical violence against elected representatives, the "rulers" in this case, is unjustifiable.

In summary, Honderich's justification does not extend as far as ruler killing in a democracy. In terms of the three requirements for a justification, his defense of citizen violence is strong on the first and third criteria but comparatively weak on the second.

Honderich's argument that citizen violence can in fact make a system of government more democratic and that democracy itself is desirable by the arguments of equality and freedom is his way of satisfying the first requirement, i.e. that the action be shown to be supportive of a moral rule. Within the limited scope of his argument this part of the justification seems to be adequate. The role which violence can play in making a system more democratic is related also to the fulfillment of the third requirement, that of generalizing an action or giving objective criteria for it. The criteria by which we judge violence as justified or not are the three rules of democracy, and though these would certainly not be specific enough in every case we have been able to disallow some acts of violence, e.g. ruler killing, for not satisfying these three rules.

Honderich's justification is weakest, however, in the area of the second criteria, specifying the weight this moral argument is to have when opposed to other moral rules or obligations. Honderich does not attempt to resolve the obvious conflicts between citizen violence and other moral rules. That he recognizes the importance of the conflicts can be seen from this statement:

If some bombs are like votes, they also maim and kill. The deprivation and degradation that call up violence should never be absent from thought and feeling, and not so present in them as to obscure other terrible realities.<sup>53</sup>

It may not be entirely fair to criticize this part of his justification when he quite conscientiously points out the difficulty himself. But in spite of the obvious difficulty of such an ordering of moral principles, it is true nevertheless that a complete justification is not possible without answering the claims of these other principles.

Any attempt at justification is crippled unless one can somehow put the claims in a reasonable order.

We have seen that in general for Honderich ruler killing could not be justified in a democracy. He does not address himself at length to the circumstances of an undemocratic system. Without knowing what weight to give general moral prohibitions against killing, etc., it is impossible to say whether Honderich would regard ruler killing in undemocratic systems as justifiable or not. In these systems the three rules would, of course, not apply, and since it was on the basis of these practices that we disallowed ruler killing in a democracy the question seems to be left open as far as these other systems are concerned.

The three arguments which we have examined in this chapter are somewhat dissimilar in their approaches to the justification problem. Their opinions on the question of ruler killing are also dissimilar. Because of these individual differences we will forego any comparison among them until the last chapter of this paper. In that final chapter we can more profitably compare them individually rather than as a group with the arguments yet to be discussed.

## FOOTNOTES

<sup>1</sup>Lisa Perkins Newton, "Dimensions of a Right of Revolution," The Journal of Value Inquiry, VII (Spring 1973), pp. 17-18.

<sup>2</sup>Ibid., p. 18.

<sup>3</sup>Ibid., p. 19.

<sup>4</sup>Ibid., pp. 19-20.

<sup>5</sup>Ibid., p. 20.

<sup>6</sup>Ibid., pp. 20-21.

<sup>7</sup>Ibid., p. 20.

<sup>8</sup>Ibid., p. 22.

<sup>9</sup>Ibid., p. 23.

<sup>10</sup>Ibid., pp. 23-24.

<sup>11</sup>Ibid., p. 24.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid., p. 25.

<sup>15</sup>Ibid., p. 26.

<sup>16</sup>Ibid., p. 23.

<sup>17</sup>Ibid., p. 18.

<sup>18</sup>John Rawls, A Theory of Justice, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), p. 368.

<sup>19</sup>Ibid., p. 367.

<sup>20</sup>Ibid., p. 12.

<sup>21</sup>Ibid., pp. 14-15.

<sup>22</sup>Ibid., p. 4.

<sup>23</sup>Ibid., p. 244.

<sup>24</sup>Ibid., p. 61.

<sup>25</sup>Ibid., p. 250.

<sup>26</sup>Ibid., p. 247.

<sup>27</sup>Ibid., p. 303.

<sup>28</sup>In section 82 of A Theory of Justice, Rawls gives his general argument for the Priority Rule. Here again, however, he maintains his earlier distinction between the usefulness of the Priority Rule in a well-ordered society and the exception to this general argument which may be presented by the society which is not well-ordered. "It is only when social conditions do not allow the effective establishment of these /first principle/ rights that one can acknowledge their restriction. The denial of equal liberty can be accepted only if it is necessary to enhance the quality of civilization so that in due course the equal freedoms can be enjoyed by all" (p. 542). Because he reaffirms the inapplicability of the Priority Rule in some (unspecified) non-well-ordered societies, his general argument for the existence of the Priority Rule in well-ordered societies does not affect our criticism.

<sup>29</sup>Honderich, p. 79.

<sup>30</sup>Ibid., pp. 92-96.

<sup>31</sup>Ibid., p. 92.

<sup>32</sup>Ibid., p. 94.

<sup>33</sup>Ibid.

<sup>34</sup>Ibid., p. 105

<sup>35</sup>Ibid., pp. 105-106.

<sup>36</sup>Ibid., pp. 106-107.

<sup>37</sup>Ibid., pp. 110-111.

<sup>38</sup>Ibid., p. 111.

<sup>39</sup>Ibid.

<sup>40</sup>Ibid., p. 112.

<sup>41</sup>Ibid., pp. 112-113.

<sup>42</sup>Ibid., p. 100.

<sup>43</sup>Ibid., p. 114.

<sup>44</sup>Ibid., pp. 109-110.

<sup>45</sup>Ibid., p. 115.

<sup>46</sup>Ibid., p. 116.

<sup>47</sup>Ibid., p. 110.

<sup>48</sup>Ibid., p. 113.

<sup>49</sup>Ibid., p. 100.

<sup>50</sup>Ibid., p. 108.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid., pp. 115-116.

<sup>53</sup>Ibid., p. 116.

## CHAPTER III

### THE "HIGHER LAW" ARGUMENTS

In none of the arguments in this chapter do we find an explicit statement of a "higher law" as the ultimate principle on which the argument is grounded. What we have instead are justifications grounded on the importance of a certain concept or idea like "human rights." My assumption in calling these "higher law" arguments is that the regard in which the concept is held can be characterized by combining the concept and its importance for the argument in an ethical statement like, "Human rights are to be protected." Even though, as I said, none of the writers discussed here frames his basic concept in quite this way, such a transformation does not affect the structure or substance of the argument, and it makes clear the connection these arguments bear to numerous historical and contemporary defenses of political disobedience.

#### Citizen Violence and Human Rights

Henry David Aiken's justification of citizen violence rests on the notion of "human rights." In his discussion of the political philosophy he calls "liberalism proper" he distinguishes three interlocking classes of rights: 1) "the rights of enlightenment" he describes as those pertaining to the development and exercise of a sense of human responsibility" including rights to moral education, the formation of

independent judgment, free inquiry, thought, speech, etc.; 2) "material rights," to life, to the liberty required to protect it, and to the economic conditions to sustain it; and 3) "rights pertaining to the inner life," to religious and artistic self-development and expression.<sup>1</sup> These rights are the higher law to which problematic acts like citizen violence must be referred in order to discover their justifiability. The classes of rights are interlocking in the sense that the infringement of one right or class of rights is apt to affect the practice of rights in the other classes. At this point Aiken also states that no single right has absolute value in the face of the others; no fixed order of priority can be established.<sup>2</sup>

Violence is thus understood as an infringement of human rights. But violence may also be used as a means to secure these rights:

According to liberalism proper, violence as injury is to be understood in the first instance as a function of exercises of force that involve violations of human rights. . . . On the other side . . . the exercise of force is in general justifiable only in order to insure or extend human rights. When the rights of any person or group of persons are infringed, they are entitled to redress on the part of those who infringe such rights. And when argument fails to secure appropriate forms of redress they are entitled, other things equal, to use force in order to secure redress.<sup>3</sup>

In the last part of this article Aiken goes on to discuss the "liberal" conception of the rule of law and in this connection gives some "principles of justice" which, to be moral, the rule of law must incorporate. Most of these do not bear on the question of citizen violence and ruler killing. Where his "principles of justice" do concern violence it is merely as a reiteration of the previous statement about force as a means to secure redress of the infringement of human rights.

Aiken does not specifically mention violence against the ruler as a means of securing basic rights for a disadvantaged group. Though the right to life is included in the second group of basic rights, Aiken very specifically says that no single right is to have absolute priority over the others. Consequently, the ruler's right to life may presumably be forfeited in the face of some unspecified condition of ensuring or extending this right or other rights to other persons. But having shown that ruler killing is not explicitly prohibited in Aiken's argument, we must discover if the argument can provide us with a justification of ruler killing such as we have outlined in the three requirements for justification.

Aiken's argument clearly addresses itself to the first requirement. His basic human rights are certainly meant to have the same function as a basic moral principle in a moral justification. Since violence is only justifiable for Aiken when it is used to preserve or extend these rights the connection is firmly established between justifiable violence and the basic moral values in Aiken's justification.

The second and third requirements for moral justification, which entail a way of ordering competing moral claims and specifying any relevant objective criteria to be considered, are left unanswered purposely it appears from Aiken's statements in this regard. In addition to the previously cited statement about the absolute priority among the basic rights we find:

From the point of view of liberalism proper, no human right takes absolute priority over all others. The infringement of a material right may be more serious in particular circumstances than an infringement of a spiritual right or a right pertaining to enlightenment. Nor, when conflicts occur, is there any set formula for

deciding in all cases which right should be given priority.  
 . . . Accordingly, no hard rule can be provided for settling  
 issues of the sort here in view.<sup>4</sup>

Not only does this position rule out the use of a Priority Rule (such as we found in Rawls) to order the competing moral claims, but it seems to prevent Aiken from being able to give any qualifying criteria for justifiable acts of violence.

Because we are given no guidelines as to which acts of citizen violence would be justified, other than to say they must involve the securing of human rights, it is impossible to say with certainty whether or not ruler killing is justifiable. We can see that it is not prima facie prohibited by Aiken's argument but the argument can take us no further toward a positive justification of ruler killing. Indeed, an attempt to specify circumstances justifying any infringement of rights is impossible on the basis of Aiken's argument because of the lack of a priority principle.

#### Citizen Violence and Freedom

An interesting argument with the same general structure as Aiken's is one made by Jesse McDade in his article "The Ethicality of Revolution." Borrowing the concept of "freedom" as man's essence from Sartre, McDade has it serve the same function in this argument as "human rights" performed in Aiken's argument.

Freedom is a prerequisite for moral autonomy and existential integrity---it therefore cannot be justifiably abridged. The negation of freedom is justifiable only if it serves the interests of freedom.<sup>5</sup>

The person who argues for the ethicality of revolution does not have to deny that if such an action is avoidable, that is, if freedom can be realized without the loss of life, this is desirable. But we would hold that if oppressors must die in order to eradicate oppression

this action, thus, while laden with some negativity, is preferable to the continuation of oppression. The failure to act works to the detriment of man, while action enhances the possibility of man.<sup>6</sup>

Though the argument is hampered by a lack of specific detail about how this essential freedom manifests itself in the world and thus how it becomes involved in political realities, McDade is somewhat more specific than Aiken in discussing the balancing of other moral claims against the claims of freedom.

The struggle for freedom in revolution also has its norms. Simply to issue a declaration against injustice, oppression, etc., does not permit one to use any means necessary. If one takes his ends seriously he must assess his means reverently, for it is possible to negate the ends in the exercise of the means. By this I mean that one cannot be logically consistent nor ethically coherent if his humanistic rhetoric bears no relation to his revolutionary tactics of wanton destruction. There must be an appropriate rationale and ethical restraints to govern one's mode of conduct. Such restraint is indispensable for one's ends (the realization of one's humanity) is also present in the means (the possibility of conducting oneself humanely).<sup>7</sup>

The first requirement of justification is therefore fulfilled to about the same extent in McDade as in Aiken. The second, thought to be incapable of a general answer by Aiken, is discussed in the above quotation but in such vague terms, "appropriate rational," "ethical restraints," as to be of little help in resolving the obvious conflicts among competing moral rules.

With regard to the objective criteria of the third requirement, McDade concentrates on the calculation of the possible success of the revolutionary action.

But one cannot leave the ethicality of revolution here; there is more to be said. If a revolution is to be an ethical act it must include a calculation of its possible success and the realization of its objectives. In a word, the revolution must have a reasonable hope of success, and reasonableness means more than wishful thinking. One's assessment must be realistic. . . .

To miscalculate is disastrous for it will result in the slaughter of the revolutionary or a wave of increased repression and terror. Without survivors action is impossible. But equally as alarming would be the plights of the survivors of an abortive revolution. Not only would they continue to languish in a context of 'unfreedom,' but that freedom would be radically curtailed. A realistic assessment is crucial, for the justification of the sacrifices made can only take on legitimacy if the sacrifice results in a better way of life for the survivors and their posterity.<sup>8</sup>

We will encounter this demand for a "reasonable hope of success" again in other arguments. Its function as a criterion in justification here appears to be something like an admonition that serious acts of violence are not be undertaken without considerable thought as to their consequences. In this argument, it is not at all clear what is involved in the "calculation of its possible success," nor is it clear that this criterion is really a moral consideration at all. The chances of one's succeeding might influence one's attempting or not attempting an act, but it is not clear that the chances for success are a part of the justification of the act. We will have occasion to examine this point again when it is used as a criterion in other arguments. With McDade at least, the argument is not specific enough in any area to allow us to understand the function of an act's chances of success in its moral justification. Surely some almost hopeless attempts are morally justified and this McDade seems to want to deny.

Though McDade does not talk about "ruler" killing specifically, he does include killing of the "oppressors" as a possible action in the revolutionary activity he intends to justify; the connection between the two terms is obvious.

We have seen that McDade's argument bears a close resemblance to that of Henry Aiken, 'freedom' merely replacing 'human rights' as the

object of the higher law. Besides borrowing the concept of 'freedom' from Sartre, however, McDade makes frequent use of quotes from Franz Fanon and Herbert Marcuse. Thus we can move quite easily from discussing 'freedom' in McDade's argument to Marcuse's own justification of citizen violence based on the "evolution" or "progress" of human freedom and happiness.

### Violence and the Progress of Happiness

Herbert Marcuse, in his essay "Ethics and Revolution," poses the following question:

Can a revolution be justified as right, as good, perhaps even as necessary, and justified not merely in political terms (as expedient for certain interests) but in ethical terms, that is to say, justified with respect to the human condition as such, to the potential of man in a given historical situation?<sup>9</sup>

This question is, he says, the guiding one in his discussion of the relation between ethics and revolution. Though our own interest is not in the justification of revolution per se, Marcuse's topic includes the justification of citizen violence against rulers, since revolutionary activity is directed against the government in power (the rulers) and it is violent activity that is in need of justification as, "Peaceful revolutions, if there are such things, if there can be such things, do not present any problems of justification."<sup>10</sup> In the considerations which make up Marcuse's "historical calculus" we will find that the ruler killing is certainly not excluded as a revolutionary tactic.

Marcuse bases his justification for revolutionary violence on the values of "freedom" and "happiness:"

Under this hypothesis, "good" and "right" would mean serving to establish, to promote, or to extend human

freedom and happiness in a commonwealth, regardless of the form of government. This preliminary definition combines individual and personal, private and public welfare. It tries to recapture a basic concept of classical political philosophy which has been all too often repressed, namely, that the end of government is not only the greatest possible freedom but also the greatest possible happiness of man, that is to say, a life without fear and misery, and a life in peace.<sup>11</sup>

Combining these values with the question at the beginning of the essay he finds that:

We can therefore reformulate the initial question by asking: Is the revolutionary use of violence justifiable as a means for establishing or promoting human freedom and happiness? The question implies a very important assumption, namely, that there are rational criteria for determining the possibilities of human freedom and happiness available to a society in a specific historical situation. If there are no such rational criteria, it would be impossible to evaluate a political movement in terms of its chances to attain a greater extent or a higher degree of freedom and happiness in society.<sup>12</sup>

The "rational criteria" which would allow one to evaluate a political movement's chances in extending freedom and happiness in a society are Marcuse's primary concern in the rest of his argument. Having given the values (freedom and happiness) on which his justification is based, rational criteria of action in pursuit of these values would if sufficiently elaborated, perhaps be all that were necessary for a complete justification.

. . . to claim an ethical and moral right, a revolutionary movement must be able to give rational grounds for its chances to grasp real possibilities of human freedom and happiness, and it must be able to demonstrate the adequacy of its means for obtaining this end.<sup>13</sup>

One of Marcuse's first specifications about criteria is that they be "historical criteria." Of this "historical calculus" he says:

. . . namely, calculation of the chances of a future society as against the chances of the existing society with respect to human progress, that is to say, technical

and material progress used in such a way that it increases individual freedom and happiness.<sup>14</sup>

There are several factors which the "historical calculus" must take into account and which constitute its "historical" nature. On the side of the existing society, the status quo, must be weighted the sacrifices made for it, "the number of victims made in defense of this society in war and peace, in the struggle for existence, individual and national."<sup>15</sup> Also on this side must be placed the capacity of the existing society for using the intellectual and material resources available to it to satisfy human needs and "pacify the struggle for existence." Against these considerations on the side of the revolutionary movement, must be counted the chances of improving the society, "whether the revolutionary plan or program demonstrates the technical, material, and mental possibility of reducing the sacrifices and the number of victims."<sup>16</sup>

Lest it be objected that his historical calculus ignores the claims of morality in favor of simple expedience, Marcuse argues that morality too is to be placed, where it always in fact belonged, in the historical situation.

The ethics of revolution, if there is such a thing, will therefore be in accordance not with absolute, but with historical standards. They do not cancel the validity of those general norms which formulate requirements for the progress of mankind toward humanity. . . . However, within the historical continuum, revolutions establish a moral and ethical code of their own and in this way become the origin, the fountainhead and source of new general norms and values.<sup>17</sup>

In his insistence on the historical situation as the determining factor in conventional morality, Marcuse shows the influence of Marxism.<sup>18</sup> Despite the fact that Sydney Hook labels Marcuse a "Leninist" and not

a Marxist because of Marcuse's "élitism and unabashed justification of forcible repression of ideas, persons, or institutions," in this matter of the historical evolution of morality, at least, he is indebted to Marx.<sup>19</sup>

Marcuse makes some comments on applying the historical calculus to the revolutionary situation or the situation with revolutionary potential.

Can the intended new society, the society intended by the revolution, offer better chances for progress in freedom than the existing society? In the historical continuum, these chances can only be measured by going beyond the given state of affairs, going beyond it not simply into an abstract vacuum of speculation, but going beyond it by calculating the resources, intellectual as well as material, scientific as well as technical, available to a given society, and projecting the most rational ways of utilizing these resources.<sup>20</sup>

Nor I submit that, while the historical function of a revolution becomes identifiable only after the fact, its prospective direction, progressive or regressive is, with the certainty of a reasonable chance, demonstrable before the fact---to the same degree to which the historical conditions of progress are demonstrable.<sup>21</sup>

But these do not provide much help in explaining or elaborating his basic argument. They seem instead to be merely restating what he has already said.

. . . on the basis of this quantifiable material the question can be asked whether the available resources and capabilities are utilized most rationally, that is to say, with a view to the best possible satisfaction of needs under the priority of vital needs and with a minimum of toil, misery and injustice. If the analysis of a specific historical situation suggests a negative answer, if conditions exist in which technological rationality is impeded or even superseded by repressive political and social interests which define the general welfare, then the reversal of such conditions in favor of a more rational and human use of the available resources would also be a maximalization of the chance of progress in freedom.<sup>22</sup>

There is nothing, in this article at least, to suggest what Marcuse

means by "the priority of vital needs" or to suggest what would constitute a "more rational and human use of the available resources." He does, however, mention some of the factors which would figure in the historical calculus.

Calculable are the material and intellectual resources available, calculable are productive and distributive facilities in a society, and the extent of unsatisfied vital needs and of satisfied nonvital needs. Quantifiable and calculable are the quantity and size of the labor force and of the population as a whole. That is the empirical material at the disposal of the historical calculus.<sup>23</sup>

Because these are the only "hard" realities which we have at our disposal, these, rather than outmoded ethical rules or concepts, must be the foundation of our reasoning through the historical calculus.

"History," says Marcuse, "is per se amoral and immoral."<sup>24</sup>

It is clear that the foundation for the entire argument is what we might call the "higher law" of progress toward human happiness and freedom. In its role as primary moral consideration this higher law functions to fulfill the first requirement of justification. Marcuse's explanation in this article of what he means by "progress" or "happiness and freedom" is certainly not sufficient for us to be able to judge the adequacy of this "higher law" as the foundation of an ethical system. Because of the limited nature of any argument of article length, a comparison between Marcuse's defense (or lack of defense) of his higher law and, for example Rawls' detailed arguments for his two principles of justice in his book A Theory of Justice, would be somewhat unfair.

It is possible as we said above that the progress toward freedom and happiness is not just a "higher law" than the ordinary

considerations of political stability, but that it is the "highest law," the only moral consideration which stands outside of the historical situation. Though the form the progress takes would certainly change with the evolution of humanity, the law of progress itself could not change. This is one way in which Marcuse's argument handles the second requirement for justification, i.e. the balancing of other moral claims. Since one is, in promoting the progress of freedom, obeying the highest moral law, all other historically determined moral rules take a secondary place.

Of course this emphasis on progress is to be balanced by the considerations of rationality introduced in the "historical calculus." To this Marcuse also adds a prohibition against some kinds of action which cannot be justified:

No matter how rationally one may justify revolutionary means in terms of the demonstrable chance of obtaining freedom and happiness for future generations, and thereby justify violating existing rights and liberties and life itself, there are forms of violence and suppression which no revolutionary situation can justify because they negate the very end for which the revolution is a means. Such are arbitrary violence, cruelty, and indiscriminate terror.<sup>25</sup>

This prohibition, easy though it is to agree with, seems an integral part of neither the "highest law" of progress nor of the historical calculus. The claim that these acts negate the end being sought does not prevent the feeling that the prohibition itself is somewhat "tacked on" to the argument.

Thus, while competing moral claims would be subordinate for the most part to demands of progress as an immutable "law," the objective criteria for action demanded by the third requirement for justification are contained in the historical calculus. In this article at least, the historical calculus is not given enough detail to allow any kind

of decision about the "rationality" of violence in a particular setting. It is not as if Marcuse were just asking us to reason about the effects of violence on the future, certain writers would claim that using this as a criterion for justification becomes an impossible guessing game in itself; but we are simply not given enough information about what to consider and how to weigh the different factors in the historical calculus to show us how such an important reasoning process is to proceed.<sup>26</sup>

Even with these faults, however, of the three "higher law" arguments discussed in this chapter Marcuse's is certainly the most complete. He does, in his own way, recognize the three requirements for a moral justification and speak in a part of his argument to each of them. One gathers from his article that he feels he has given a rational justification for revolutionary violence; our examination of his argument shows his justification to be still incomplete. When we have finished our exposition with an examination of the utilitarian arguments on citizen violence we will be in a position to compare Marcuse with the best arguments of both the consent theorists and the utilitarians.

## FOOTNOTES

<sup>1</sup>Henry David Aiken, "Violence and the Two Liberalisms," Social Theory and Practice, II (Spring 1972), p. 56.

<sup>2</sup>Ibid., p. 57.

<sup>3</sup>Ibid., p. 62.

<sup>4</sup>Ibid., p. 63.

<sup>5</sup>Jesse McDade, "The Ethicality of Revolution," Praxis, I (1973), pp. 294-295.

<sup>6</sup>Ibid., p. 296.

<sup>7</sup>Ibid., p. 297.

<sup>8</sup>Ibid., p. 296.

<sup>9</sup>Herbert Marcuse, "Ethics and Revolution," in Ethics in Society, Richard T. DeGeorge, ed. (Garden City, New York: Doubleday & Company, 1966), p. 133.

<sup>10</sup>Ibid., p. 135.

<sup>11</sup>Ibid., pp. 133-134.

<sup>12</sup>Ibid., p. 135.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid., p. 140.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid., pp. 140-141.

<sup>18</sup>See, for example, Karl Marx, "The German Ideology," in The Marx - Engels Reader, Robert C. Tucker, ed. (New York: W. W. Norton and Company Inc., 1972), pp. 118-119.

<sup>19</sup>Sidney Hook, "Myth and Fact in the Marxist Theory of Revolution and Violence," in Violence and Aggression in the History of Ideas,

Phillip P. Wiener and John Fisher, eds. (New Brunswick, New Jersey: Rutgers University Press, 1974), p. 270.

<sup>20</sup>Marcuse, p. 143.

<sup>21</sup>Ibid., p. 144.

<sup>22</sup>Ibid., p. 145.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid., p. 144.

<sup>25</sup>Ibid., pp. 140-141.

<sup>26</sup>See Sidney Hook, Revolution, Reform and Social Justice (New York: New York University Press, 1975), pp. 235-237; and Denis Goulet, "The Troubled Conscience of the Revolutionary," The Center Magazine, II (May 1969), p. 43.

## CHAPTER IV

### THE "UTILITARIAN" ARGUMENTS

The first of the three arguments in this chapter refers to the morality which forms its foundation as "teleological (which does not necessarily imply utilitarian)." We will find, however, in our discussion of this argument that its somewhat confusing attempt at justification and the only partial success it therefore achieves in satisfying our requirements for a complete justification serve as a good introduction to the more fully developed arguments which follow it. Clyde Frazier does in fact present the first justification as a sort of example of the ordinary moral reasoning which the citizen, possessed of the aforementioned teleological morality, must carry out in assessing the justifiability of an act of citizen violence. In discussing the arguments of Howard Zinn and Richard Brandt we will find that their somewhat more clearly defined moral foundations (more obviously utilitarian than in Frazier's argument) seem to allow a more highly developed justification both in relation to the balancing of conflicting moral claims and the specification of criteria which a justifiable act must satisfy.

#### Justification on the Basis of a Teleological Morality

Clyde Frazier's main interest in his article "Between Obedience

Revolution" is in defining and justifying the range of acts between (what he feels to be) overly restricted non-violent civil disobedience and overtly revolutionary activity. This continuum would include acts of civil disobedience of lesser to greater violence up to the stated limit of those acts aimed at overthrowing the government.<sup>1</sup> At that point, presumably, Frazier sees other factors entering into consideration which would place revolutionary violence outside the bounds of the justification he offers.

In his argument for justification Frazier first clears away what he considers to be misconceptions about arriving at general standards for justified and unjustified protest.

In one sense, at least, the notion of justifying acts of resistance to the state presents grave problems. It is clear that one cannot hope to justify such resistance in a sense of reaching commonly agreed upon criteria to distinguish justified from unjustified instances. The very recourse to disobedience in the first place seems to indicate that such common standards have broken down. There is no rule or principle one can look to as a justification for disobedience that might not itself be subject to controversy. . . . This does not mean, of course, that acts of resistance are never justified. Many are (although many are not), and as actors in the political system we are constantly called on to make decisions about the justification of such acts and to behave accordingly. It does mean, however, that we cannot hope to find publicly agreed upon standards on which to base our judgments.<sup>2</sup>

His position seems to rule out the kinds of agreement that Rawls and Honderich, for example, hoped to achieve in their justifications based on the general Principles of Justice in the former case and the Rules for Democracy in the latter.

As a way around the controversy over basic principles in the "consent" arguments and of avoiding at the same time any explicit statement of a controversial "higher law" on which to base the

justification, Frazier offers instead an argument from an unspecified "teleological morality."

If the citizen's moral system is teleological (which does not necessarily imply utilitarian), he will attempt to determine his moral duty by weighing the consequences of the various courses of action open to him. Since I feel that such teleological morality is predominant in our society, I would like to turn finally to an examination of some of the problems involved in an attempt to balance these conflicting moral claims from the standpoint of a teleological moral system.<sup>3</sup>

Although Frazier says the system within which he is working is not necessarily utilitarian his reasoning fits within the general framework of this type of moral system.

The argument itself is quite simple. Based as it is on a teleological morality, the rightness or wrongness of an act is dependant on the desirability or undesirability of the effects of the act.

. . . the disobedient will have to balance this danger ~~to~~ to the state against the good he proposes to achieve by his act. He will have to estimate the relative weights of these factors in terms of his own system of values, but whatever system he uses it seems safe to say that the greater the good he aims at, or the greater the evil he seeks to eliminate, the easier it will be to justify an act of resistance. A disobedient must weigh not only the magnitude of the good he desires but also the chance he has of achieving it. Numerous practical considerations affecting the probability of success or failure will thus be relevant to the decision to disobey.<sup>4</sup>

The above quotation introduces two other factors which must be taken into account. The citizen must weigh the possibility of destroying the existing political system against the benefits to be won by his act.

To the extent that he is an enthusiastic supporter of the existing regime, his estimation of the damage his act will do will tend to dissuade him from disobedience. To the extent that he places a very low value on the

existing system generally, he will be less concerned about the adverse consequences of his act for the stability of the state. He may feel that he has not much to lose by an act of disobedience even if it backfires, and thus he will not be so easily dissuaded by the fact that he may endanger social stability.<sup>5</sup>

Not only the value he places on the existing system but also the threat which the particular kind of act he is considering poses to the system must be estimated, since some acts of citizen violence or resistance, e.g. bombing unoccupied buildings, are less dangerous to the state than others, like kidnapping or murdering political leaders.

Another factor which Frazier says must enter into the justification of such acts is the chance of success of the act. The "probability of success or failure" in achieving the desired end is, just as in Marcuse's argument, a matter of the calculation of numerous practical considerations and is, Frazier thinks, an important element of the justification of the act. But it is no more clear here than it was in Marcuse's argument how this element of the probability of success of the action is to be integrated into the justification. Not until we discuss Richard Brandt's utilitarian method of justification will we encounter an argument which allows for the systematic inclusion of this element of probability into the justification itself. Here Frazier merely states it as a consideration without giving us any idea as to how it is to be weighted against other claims. For example, the quantity of the harm being suffered must somehow be balanced against the probable success of the violent act in relieving the suffering. But whether a great amount of suffering would justify attempting a remedy with only a small chance of success (as would seem reasonable

in the absence of alternatives), Frazier does not say.

Examining this argument for insights into our specific question concerning the justification of ruler killing we find two things. First, it must be recalled that Frazier's argument is not intended to justify revolutionary acts. Ruler killing would in most cases do serious damage to the stability of the state. "Acts of violence directed against persons, such as murder and kidnapping, are intrinsically repulsive as well as posing a very radical threat to the state's authority."<sup>6</sup> Because of the danger it poses to the state, ruler killing as a revolutionary act would probably be excluded from justification by this argument. The second point from the same quotation is that ruler killing is also excluded from justification because it would be "intrinsically repulsive." "Certain acts, notably acts of violence against persons, have immediate consequences which are so repulsive that most disobedients will rule them out regardless of their effectiveness."<sup>7</sup> Frazier does not explain the "immediate consequences" which make violence against persons repulsive. It is clear, however, that from this second qualification alone ruler killing would be unjustifiable by this argument. But because of the arbitrary and unsupported form of Frazier's statement against violence toward persons combined with the possibility of some acts of ruler killing being non-revolutionary, and thus within the scope of his justification, one feels that though Frazier would deny the justifiability of ruler killing he has not here presented a sufficient reason for this denial.

On none of the three requirements for a complete justification is Frazier's argument specific enough or detailed enough to be completely satisfactory. As a moral rule on which to ground acts of citizen

violence he gives only an unspecified "teleological morality" wherein "the consequences of the various courses of action" are weighed to determine one's moral duty. Having no specific rule on which to base the problematic acts of citizen violence we are at a loss as to how to regard the contrary claims of other moral rules. This second requirement of a justification, that it answer the claims made against it by other moral rules, provides the impulse for Frazier's discussion of the value of the existing state and his prohibition of violence against persons as "intrinsically repulsive." But the realization that other moral considerations must be weighed against acts of resistance or violence should have been carried through into some kind of systematic thought on the relative values of the claims. In addition to the unspecified "practical considerations affecting the probability of success or failure" of the act, Frazier mentions one other objective criterion which would relate to the third requirement for justification.

Not only must he weigh against the good he desires to accomplish the evil his act may bring about, but he must also weigh against it the likelihood that he can achieve the same end through normal political channels.<sup>8</sup>

This criterion would assure us that any serious or destructive action to be undertaken would be uniquely suited to bring about the desired end.

It may be rather misleading to expect Frazier's argument to provide a justification for acts of violence such as political assassinations. His stated aim is to discuss the range of possible justifiable action between passive non-violent civil disobedience and revolutionary violence. Political assassination may be too closely

tied to revolutionary violence to fall within the stated limits of the argument. What we have seen by examining this argument is that a teleological morality might provide a satisfactory justification for active resistance and even for citizen violence if the system were sufficiently worked out. Frazier's argument is for this purpose much too general, but it points the way to the more specifically utilitarian justifications that follow.

#### Ruler Killing and "Act Utilitarianism"

One of the problems we found with Frazier's argument was that he did not say enough about his basic assumptions, the teleological morality on which he grounded his justification of resistance. Howard Zinn, in the two articles from which we are drawing his argument, has somewhat the same intention as did Frazier in his article. He is defending citizen violence against the charge that because it is intentionally destructive it is in no way related to "civil disobedience," which the critics of citizen violence have defined as strictly non-violent. But Zinn discusses in more detail than Frazier the basic premises of his morality and spends some time on the general process by which one makes moral decisions in this system. Unfortunately, Zinn's argument is also incomplete as a justification for citizen violence, as we will see.

There are in the two articles several statements which point to the teleological nature of the author's system of morality.

Last month, in Atlanta, an eighteen-year-old boy was shot and killed while running away from the scene of a vending-machine robbery that had netted him \$3.84. The policeman who shot him was not firing at a human being, but at a symbol: a thief, an enemy of society. The policeman

was defending another symbol: private property. As symbols, abstracted from flesh and blood, the solution is simple: private property must be protected. As reality, it looks different: the life of an eighteen-year-old boy against the loss of \$3.84.<sup>9</sup>

Zinn is objecting here to the abstracting from reality and the rule making and rule enforcing which causes moral decisions to be made without any consideration of the effects in terms of happiness and unhappiness. He goes on:

In capital punishment, too, we are not weighing how much justice will be accomplished by the act of judicial murder. If we did, the answer would be obvious: execution of a human being--no matter how foul his deed--cannot bring more happiness, more justice, into the world.<sup>10</sup>

It is clear that Zinn feels moral decisions are most reasonably made on the basis of their effects and that the deciding factor is happiness or unhappiness to be realized. Though he does not label it as such, Zinn's moral system is a form of utilitarianism, and on the basis of the examples he gives he seems to mistrust rules and favor instead judging each act separately. Thus, if a label is needed, we seem to be dealing with a variety of "act utilitarianism." And on the basis of these statements, in addition to the way he develops his argument further on, it is clear that when Zinn defends acts of violence his defense is based on the idea of producing the greatest amount of happiness from the situation. In this way he fulfills, much more fully than Frazier, the first requirement we have set for a complete justification.

If we are, in Zinn's argument, working in a primarily act utilitarian system then our second requirement, that a justification should take account of the moral claims to be made against citizen violence, can be treated somewhat differently than in the previous arguments.

These contrary claims, usually couched in the language of rules, would have weight here only in proportion to the net gain in happiness resulting from whatever contrary course of action they might urge.

It is not true, as some say, that bad means always corrupt the ends. If the amount of evil embodied in the means is tiny and amount of good created by the end is huge, then the end is not corrupted--either objectively in the result or subjectively in the conscience of the doer.<sup>11</sup>

A moral rule such as "bad means always corrupt the ends" must be translated into the quantities of good and evil or happiness and unhappiness that it represents in terms of the particular act in question. The rule that violence is always to be avoided is treated in the same way.

The Freedom Riders behaved nonviolently. But their action did bring violence against themselves, and against others. Nonviolence theorists will insist that the responsibility for the violence rests with those who committed it. But this dodges the question; the fact is that there was more violence in the world after the Freedom Riders began their rides than before. And for this there is only one justification: that the amount of violence was insignificant compared to the amount of justice won.<sup>12</sup>

The amount of violence resulting from the action does count against it, but the final verdict in this balancing of claims is based on the amount of happiness to be gained overall.<sup>13</sup> He continues:

In a world of great injustice, we need social change. Social change requires action. Action may result, either by design or by accident, in violence. The fact must be faced. And violence is an evil, along with injustice. The only way, then, to decide upon a course of action is to weigh the damage of violence against the damage of social injustice. . . Our values are multiple; they sometimes clash; and we need to weigh, weigh, weigh.<sup>14</sup>

The consideration of contrary moral claims is thus integrated into the general process of making a moral decision or in this case justifying a particular problematic act. The ultimate justification in this system is always that the action results in more happiness than would

be realized without it.

Zinn does not introduce any special qualifying criteria that acts of violence must satisfy in order to be justified. Since any such considerations would be important only in the way they affected the net product of happiness versus unhappiness they pose no special problems for the process of justification. The only extra demand that Zinn makes which could be thought of as relating especially to the third requirement for justification concerns the relationship between nonviolence and violence.

Still it is terribly important to understand that our starting point should be pacifism, that the burden of proof should be placed on the arguer for violence. Just as a man should be considered innocent until proved guilty, a policy should be automatically nonviolent until the weight of reason, undistorted by symbolism, argues otherwise.<sup>15</sup>

Nonviolence is the standard from which we depart only for the sake of a reasonably certain increase in happiness or social good.

As to how far we may depart from this standard, Zinn places no set limits. One of the reasons for examining his argument in particular is that Zinn recognizes the justifiability of political assassinations in some certain circumstances.

Violence might be justifiable as it approaches the focusing and control of surgery. Self-defense is by its nature focused, because it is counterviolence directed only at a perpetrator of violence. . . . Planned acts of violence in an enormously important cause (the Resistance against Hitler may be an example) could be justifiable. Revolutionary warfare, the more it is aimed carefully at either foreign controlling power, or a local tyrannical elite, may be morally defensible.<sup>16</sup>

The "moral defense" in this case would be based on the greater social good to be obtained by the admitted evil of violence.

For violence seen as absolute pacifism is only one of a

pair of linked values which humanitarian people share-- peace and social justice. The desirability of the one must constantly be weighed against the need for the other. Also, the problem is subject to internal contradiction: sometimes the failure to use a measure of violence may make inevitable a far greater violence. Would it have been wrong to assassinate Hitler at that moment in the war when this might have brought a halt to general hostilities and the extermination of the Jews?<sup>17</sup>

We suspect that because a great deal of pain or unhappiness is inherent in the act of killing anyone (both for victim and killers) the circumstances which could justify such an act would necessarily be very serious indeed.

Thus in Zinn's argument we get a somewhat clearer idea of the possibilities for the justification of ruler killing in a utilitarian moral system than what we were able to discover in Frazier's argument. Rather than limiting his proposed justification to a small group of problematic actions, as Frazier does, Zinn offers a more general method for justifying a wider range of actions. This more general method not only admits the possible justifiability of ruler killing in certain instances but also goes further than Frazier's argument toward satisfying the three requirements for a justification. We will find in the final argument by Richard Brandt a further development both in general applicability and in specific detail of this utilitarian justification.

#### Ruler Killing and "Rule Utilitarianism"

In a piece called "Comment on MacCallum" which, judging from the title, we would expect to be merely some critical remarks on the previous article in the journal, Richard B. Brandt advances what is surely one of the shortest and at the same time most complete arguments in the literature for the justification of citizen violence and ruler

killing. Brandt states his intention quite clearly thus:

In what circumstances is it morally permissible to use violence, that is, cause or seriously risk damage, personal or otherwise, in order to bring about a better or more just state of society? Or, more briefly, when is violence justified by the objective of a better society? This is what I want to discuss.<sup>18</sup>

Brandt's "discussion" of the problem takes the principle of utility as its first principle.

Brandt approaches the problem of justification from the standpoint of the agent faced with the "real" alternative of violence in particular "real" circumstances.

I think it is useful to apply an outcome analysis to this problem. That is, let us consider the damage (or disutility) that may be done as a result of the use of the means, and multiply the several possible pieces of damage (or disutility) by a fraction representing the probability that the loss will occur if the act is performed. Let us call the sum of these products the expectable disutility of the act. Then let us consider all the good that might occur, and multiply the values of the several parts of this by the probability that each of them will occur if the act is performed; this sum of products is the expectable utility of the action.<sup>19</sup>

This "outcome analysis" gives the agent some idea of the effects, both good and bad, of the contemplated action. Brandt's method has the added advantage of including the probability of occurrence of the expected effects in this one operation. A quasi-mathematical method such as this for determining the utility of an action would be reassuring in this area of uncertain cause and effect.

In connection with this first operation of determining the expected utility of the action, Brandt cautions against allowing the "sincere belief" in the good effects of an action to constitute a moral justification for doing it.

In the first place, let me observe that there is

agreement, I think, that sincere belief is no defense against criticism, if one could have got better information. If one is going to injure other people, one at least has an obligation to get one's facts straight; if one does not bother to do this, one cannot claim the sanctity of any excuse other than that of sheer stupidity. . . . Is there a moral obligation to do what will surely injure others, if one sincerely believes that so doing will produce much good, before one has made any serious inquiry whether it will do good? I should think not; in the circumstances the first obligation is to get the facts straight.<sup>20</sup>

Sincere belief, or one might say "good intentions," are to be in a sense replaced or at least de-emphasized as elements in justification by the more objective process of the outcome analysis.

Given the results of the outcome analysis in terms of expected utility and disutility the question then arises as to what difference between these two values would justify our carrying out an act of violence like assassination. Brandt puts the question this way:

But exactly when are we justified in causing or risking damage to others for the sake of social advance? Let us assume we have been careful with our outcome analysis, and we are sure that there is a net expectable gain from the use of violence. Now, whatever the act utilitarian may say, it seems to me clear that one has no right to cause or risk serious expectable injury to others when the net expectable gain (over the loss) is very small.<sup>21</sup>

As political assassination certainly causes serious injury to persons it is clear that a small expectable difference in utility over disutility is not sufficient to justify this act. But Brandt goes on to consider other circumstances:

I venture the following as a principle I think we might stand on. First, if the positive outcome is highly probable or certain, and the net gain, if it is achieved, is very large, then one is justified in risking or even causing serious damage, and probably morally obligated to do so. On the other hand, if the net gain, if it is achieved, is fairly small, or the probability of it is slight, then one is not justified in causing or risking serious damage.<sup>22</sup>

Having discussed the two extreme cases in which the difference between expectable utility and disutility is either very large or very small, the probability of success increasing the difference in the former case and diminishing it in the latter, he must now deal with the cases which fall between these two extremes.

I think that if one is contemplating violence in one of the middle cases, one has to face the fact that the morality of the action is not obviously in the clear. One has to ask one's self whether in the long run it would be beneficial for society if everyone felt obligated, or were taught to feel obligated, to risk the welfare of other persons, when the chances that their welfare will be harmed are what they are in the present case, and when the extent of the probable harm is what it is in the present case, for the sake of a better society, when the chances of its really being made better, and the extent to which it will be made better, are what they are in the present case.<sup>23</sup>

The answer, then, in considering one of these middle cases is to be found by elevating one's action to the status of a rule. If society would be improved by everyone's acting in this way when faced with the given difference between utility and disutility, then one is "morally in the clear," as Brandt says. About ruler killing one must ask himself if society would be improved if everyone considered ruler killing obligatory given the same circumstances of risk and probability of gain that we face. By thinking in terms of the utility of rules, rather than of isolated acts, it seems that Brandt intends to avoid justifying political assassinations which have only what we might call "marginal utility." If the risk is too great or the degree of happiness to be realized is too small, then, Brandt thinks, the danger to society will be evident when the proposed actions are generalized into rules.

Brandt's process of justifying individual acts is itself justified by the same principle of utility.

You might ask, How do I justify these principles? The answer is: In the long run society will be better off if people are taught these moral principles, than if they are taught some other substantially different moral principles.<sup>24</sup>

In other words, if people are taught to act only in ways which would be justified by the process he has outlined (outcome analysis, high or low difference in utility versus disutility, etc.) then society would be benefitted to the greatest extent possible. The principle of utility thus permeates and in a sense anchors the argument from top to bottom.

Because this argument is basically very simple in design and yet at the same time quite cohesive in thought, it is rather difficult to draw out into separate strands the ways in which it meets the requirements for justification. The first requirement is quite clearly satisfied by grounding each stage of the argument on the principle of utility. This principle is both the ultimate justification for the act of violence and the guiding principle in the more immediate process of separating justified from unjustified acts. The outcome analysis, which is the first step in this process, is the point at which any moral claims against the act are taken into account by translating them into a quantity of disutility which is then integrated into the weighting process. The answering of contrary moral claims, which constitutes the second requirement for justification, is thus accomplished in a manner seemingly quite unique to such utilitarian arguments. The only incidental consideration, or what we have called elsewhere "objective criterion," that Brandt mentions is the obligation to "get the facts straight." Special emphasis is put here because if the facts pertaining to the expectable utilities and disutilities are incomplete

or incorrect then the outcome analysis is worthless, and the whole justification process collapses. One might well call the entire analysis outcome process an objective criterion, thus using it to satisfy the third requirement for justification; but we have seen that this same process serves to satisfy the second requirement as well.

Thus in our examination of this final argument we find the same integration of requirements and functional features that we found in cruder form in the first two arguments in this chapter. Brandt solidifies the somewhat diffuse reasoning of the first two utilitarian arguments in a quite concise and one might almost say "elegant" argument for the justification of citizen violence.

## FOOTNOTES

<sup>1</sup>Clyde Frazier. "Between Obedience and Revolution," Philosophy and Public Affairs. I (Spring 1972) pp. 323-324.

<sup>2</sup>Ibid., p. 330.

<sup>3</sup>Ibid., p. 331.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid., p. 332.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid., p. 334.

<sup>9</sup>Howard Zinn. "The Force of Nonviolence," in Violence in America. Thomas Rose, ed. (New York: Random House, 1969) pp. 20-21.

<sup>10</sup>Ibid., p. 21

<sup>11</sup>Ibid., p. 18.

<sup>12</sup>Ibid.

<sup>13</sup>Zinn says "justice" here instead of "happiness." He is apparently not using the word in any technical sense which would distinguish it from the more general "happiness." At the risk of putting words into his mouth and for the sake of explanation I have used the more general term.

<sup>14</sup>Zinn. "The Force of Nonviolence," pp. 18-19.

<sup>15</sup>Ibid., p. 20.

<sup>16</sup>Howard Zinn. "A Fallacy on Law and Order: That Civil Disobedience Must be Absolutely Nonviolent," in Civil Disobedience and Violence. Jeffrie G. Murphy, ed. (Belmont, California: Wadsworth Publishing Co., 1971) p. 109.

<sup>17</sup>Zinn. "The Force of Nonviolence," p. 18.

<sup>18</sup>Richard B. Brandt. "Comment on MacCallum," Inquiry. XIV (1971)

p. 314.

<sup>19</sup>Ibid., p. 315.

<sup>20</sup>Ibid., pp. 315-316.

<sup>21</sup>Ibid., p. 316.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid., p. 317.

<sup>24</sup>Ibid.

## CHAPTER V

### COMPARISONS AND CONCLUSION

Having completed a detailed examination of the arguments and having given some thought to the ways that each of them functions or fails to function as a justification for ruler killing we are now in a position to compare the major features of the arguments. Through this comparison we will find that none of the arguments discussed is more fully worked out than Richard Brandt's utilitarian justification. In spite of at least one important problem with this justification it would seem that of the arguments discussed here it is the most generally satisfactory account of a possible moral justification for ruler killing. Comparison of the arguments will also show that the ways in which they fail as complete justifications are not unique to each argument but are common to other arguments as well. In this chapter, then, we will attempt to group the arguments in terms of their most characteristic problem or most serious fault and thus to summarize the characteristic difficulties of moral justification of this particular problem.

First of all, our detailed examination of the arguments revealed that two of the arguments would exclude ruler killing from their justifications. We might call this a problem of scope, however, in that these arguments tended to prohibit ruler killing within the range of the argument but left the question open as a more general

possibility. The most obvious of these is in Frazier's justification of citizen violence based on a "teleological morality." Although he leaves open the possibility of ruler killing in a revolutionary situation, simply because it is outside the range of his argument, Frazier insists that his argument does not intend to justify murder and that such acts of violence against persons are "intrinsically repulsive" and "most disobedients will rule them out regardless of their effectiveness."

Though Ted Honderich's argument also denies the justifiability of ruler killing within the chosen scope of the argument (in this case within a democracy), the prohibition here is derived more directly from the argument than it was in Frazier's case. Like Frazier's argument, however, Honderich's does not rule out the possible justification of ruler killing in a non-democratic system. But Honderich does not discuss such a possibility in any detail and his particular argument for "democratic violence" does not apply in the circumstances of a non-democratic system. Both of these arguments then, Frazier's and Honderich's, are unsuitable as justifications for ruler killing because of their limited scopes. Honderich's argument is, especially interesting nonetheless because of its careful construction and the unusual point it makes about violence in a democracy.

Two other arguments must be eliminated from serious consideration as justifications because they do not mention ruler killing or political assassination at all. We thus have no way of knowing whether or in what circumstances ruler killing is justifiable. Both of these arguments are conspicuously deficient in the area of the second requirement for justification, the ordering of contrary moral claims.

We might say, then, that these arguments are characterized by "priority problems." Of these two, the argument by Henry David Aiken has the added disadvantage of being relatively vague on a number of other important points. We found in our analysis that it does not go very far in satisfying either the second or the third requirements for justification and without these we have no way of even speculating on its position toward ruler killing.

The other argument which must be eliminated at this point, however, does satisfy fairly well the other requirements for justification. The argument is Rawls' admirable edifice built on the foundation of the Two Principles of Justice. The argument is quite satisfactory in its justification of the class of actions that it was designed to accommodate, i.e. nonviolent civil disobedience. But when we attempted to insert ruler killing into the same framework we encountered problems such as the one with the Priority Rule. Since Rawls does not talk about a "right to life" in relation to the first principle liberties it is impossible to know whether a violation of these liberties could justify killing the ruler. As we pointed out earlier this is basically a problem of the ordering of moral claims against the problematic act of ruler killing. Rawls confines his own discussion primarily to disobedience in a nearly just society where this difficulty with the second requirement for justification does not arise as a major problem. When we press Rawls' argument for a justification of ruler killing the small omission from the original argument becomes important enough to prevent the argument from providing a clear justification.

The next three arguments that must be eliminated as

unsatisfactory did, however, explicitly mention ruler killing in the group of actions they intended to justify. The common fault of the arguments of Newton, McDade, and Zinn is that they are simply too vague or lacking in detail to be convincing justifications. A characteristic problem with these arguments was their inability to provide concrete objective specifications for a justifiable act of ruler killing. Viewed from the perspective of the three requirements for justification, these arguments failed primarily at the level of the third. Newton's argument is typical in this way. Grounded on the three principles which she claimed both established the right of revolution and characterized any good government, the argument did a fair job of satisfying the first requirement; and, with her references to John Locke, we were able to fill out the argument so that it also satisfied to a fair degree the second requirement for justification. But on the third requirement, where much of the detailed working out of a justification must take place, we have almost nothing. Establishing a *prima facie* right to revolution, one of Newton's intentions, does not justify any particular instance of revolution, as she herself recognizes. One is not given any idea from this argument, how to proceed in attempting a justification of a particular act on its basis. The argument is, in a sense, truncated.

In the argument by Jesse McDade we found some elements that would apply to each of the three requirements but none of them in enough detail to be entirely satisfactory. Furthermore, the argument was conspicuously lacking in objective criteria by which to determine the justifiability of an act of ruler killing. In examining his argument we found that he makes two specifications: one, that the

violence be unavoidable to secure the freedom, and two, that the action have a "reasonable hope of success." But from our discussion of this second specification we saw that it is too vague, as it stands, to provide much help as an objective criterion. Without a more detailed treatment of specific criteria for recognizing justifiable instances of citizen violence any attempt to work out a justification for ruler killing based on the argument is impossible.

The argument advanced by Howard Zinn has much in common with the one by Richard Brandt. Both are utilitarian justifications, though Zinn's seems to be of the "act" variety while Brandt's relies more on "rules" as the basic unit of moral decision making. Despite the resemblance, however, Zinn's argument is much more loosely constructed than Brandt's and is similar to the two previously discussed arguments in its lack of necessary detail. Zinn specifically says that there are surely some circumstances in which ruler killing is justified. He cites the obvious example of Adolf Hitler. But, given the risks involved in an assassination and the possibly bad effects that may accompany the good ones, Zinn offers no criteria, such as Brandt suggests, by which to separate those acts which are justifiable from those which are not before the acts are carried out. On this same point Zinn gives no mechanism in his formal justification by which to prohibit serious acts of violence which have only marginal utility, though by the tone of his discussion and the examples he cites (e.g. protecting property by killing looters), we surmise that he opposes such actions. While he does present a somewhat more carefully constructed and complete justification than either Newton or McDade, Zinn's argument is deficient at several important points.

We have saved Herbert Marcuse's justification of revolutionary violence until this point because of the many features it shares with Brandt's justification. Of course instead of the principle of utility, Marcuse has as his first principle the law of human progress toward freedom and happiness. But his treatment of this principle points up the most characteristic problem in Marcuse's argument, i.e. his use of unusual concepts. The principle itself is not explained by Marcuse nor is it defended in any way that clarified its meaning. Though Brandt also declines to defend his first principle, the principle of utility does not contain such confusing concepts as "progress."

Another area of some confusion in Marcuse's argument is his insistence that the proposed action must be placed in its "historical context." As we discovered in our analysis, this is apparently a way of dealing with the possible moral claims brought against the violent act. Such claims might be ignored if they prove to be the product of a mutable "historical morality," and are overridden by the superior claim of the "law of progress." But once again we are given no idea as to what kind of morality is "historically" determined, and what falls instead under the "law of progress." Marcuse's prohibition of arbitrary violence and indiscriminate terror may be an attempt to clarify the distinction, but it is certainly not sufficient.

Related to this difficulty with the "historical moral context" is Marcuse's concept of the "historical calculus." Though it seems to be intended to serve somewhat the same function as Brandt's "outcome analysis," Marcuse's concept is not nearly as well defined. The historical calculus is to tell us the chances for "progress" under the

system which would arise after the revolution. But we are told almost nothing about the factors in the society which are to make up the calculus or what the "calculation" itself involves. Marcuse's entire argument, then, suffers because of its vague language and lack of detail. It is this vagueness that makes it unacceptable as a justification for ruler killing.

Richard Brandt does not mention ruler killing specifically in his justification. It is evident, however, that this general scheme for the justification of citizen violence could include ruler killing as a morally justifiable act in certain circumstances. Brandt's argument is thus much more valuable for our purposes than those, like Honderich's, in which ruler killing is left outside the scope of the argument and where we can only guess at its justifiability.

Because of the nature of Brandt's argument it does not fall easily into three parts, each one corresponding to one of the three requirements for justification. John Rawls' argument, for example, is much more clearly segmented in this way, but Rawls' argument has other problems, as we have seen. Brandt's process of justification is so constructed as to be able to fulfill these requirements without violating the basic unity and simplicity of the argument. The most obvious example of this is the way in which conflicting moral claims are integrated into the outcome analysis of the proposed act by quantifying the unhappiness they involve. The argument thus does not address itself specifically to this second requirement for justification but is nonetheless able to perform the required function. Unity and simplicity in an ethical argument are not necessarily virtues, however, if they are purchased at the expense of ignoring

important aspects of the problem or slighting necessary details. In general, Brandt has done neither of these. Besides the unique way in which he would take account of the moral claims against citizen violence, his objective criteria for justifiability, high utility/low risk, etc., surpass in useful concrete detail all of the other arguments we have discussed, including Zinn's "act utilitarian" argument.

Brandt's argument is not without fault, however. Utilitarian ethical systems are sometimes criticized because they ask us to give numerical values (or something like them) to states of being or psychological experiences, in order that we can compare them in terms of quantities of happiness and unhappiness and decide on the one with greatest utility.<sup>1</sup> Brandt seems to require this when he sketches what he calls the "outcome analysis" of the act. As long as the act is fairly obvious in its overall utility or disutility we can simply estimate the quantities involved without being especially uneasy about having to assign numbers to such things.<sup>2</sup> The problem only becomes important in the cases where the outcome is really in doubt. In Brandt's argument, the outcome analysis of the act of ruler killing in some particular situation would certainly involve, as we have said, estimating the effects on society of our violating moral injunctions such as that against murder. But it is not clear how this is to be accomplished. It is not simply a problem of "getting the facts straight," though that in itself would be difficult enough considering the complexity of the effects which would result from an act of ruler killing. If Brandt agrees that moral rules, like that against murder, have a place in ethical thought (he himself cites the effects of rules as one of the criteria for deciding justifiability) then the

argument must be able to take account of them. Though it still appears to be a good way of handling contrary moral claims, the actual process of quantifying the disutility of these claims confounds us. We have no systematic way to arrive at the necessary quantities in these difficult cases.

Even with this difficulty, however, Brandt's scheme of justification is the most satisfactory of those we have discussed. None of them presents a system that could perfectly separate the justifiable acts from the unjustifiable and on the basis of which we could build the complete defense of an act of ruler killing. In light of the fact, however, that the criticism we have made of Brandt's argument is a common one for utilitarian systems and considering that it involves a necessary step in the justification process in Brandt's argument, the difficulty may present an insurmountable obstacle to the actual utilization of this justification.

Part of the attraction of utilitarian systems is their simplicity and the quality they have of seeming completely self-evident. Compared to the varieties of utilitarianism, systems of justice like that offered by John Rawls are complicated and unconvincing, at least on first viewing. But this system showed no such basic problem with justification as we have discovered in Brandt. As it stands, Rawls' argument is not as complete as that of Brandt, but there seems to be no reason why it could not be carried out far enough (or further generalized) to include the act of ruler killing within its scope. We were not able to do this because of unclear areas or confusions at the edges of the argument, but if Rawls cleared up this confusion such an extension of scope might be possible. Of course we might then find

that Rawls' argument clearly prohibits ruler killing in any circumstances; but if not, the argument presents an interesting possibility for a justification as complete as Brandt's.

Among the writers who have struggled with the justifiability of ruler killing and citizen violence in general are many who have despaired at one time or other of ever being able to finally decide such difficult issues. In his own examination of terrorist activity Merleau-Ponty writes:

But the past and what is distant have been and are still lived by men who had and still have only one life to live and the screams of a single man condemned to death are unforgettable.

The anti-Communist refuses to see that violence is universal while the exalted sympathizer refuses to see that no one can look violence in the face.<sup>3</sup>

The reasonable man recoils at the thought of murder for whatever reason, "No one can look violence in the face." But this repulsion itself spurs us to find a rational justification for what seems at times to be the only method of preventing great harm. One of the most famous seekers for such a rational justification was Albert Camus, In the end he concluded that no reasonable justification was possible.

But if man were capable of introducing unity into the world entirely on his own, if he could establish the reign, by his own decree, of sincerity, innocence, and justice, he would be God Himself. Equally, if he could accomplish all this, there would be no more reasons for rebellion. If rebellion exists, it is because falsehood, injustice, and violence are part of the rebel's condition. He cannot, therefore, absolutely claim not to kill or lie, without renouncing his rebellion and accepting, once and for all, evil and murder. But no more can he agree to kill and lie, since the inverse reasoning which would justify murder and violence would also destroy the reasons for his insurrection. Thus the rebel can never find peace. He knows what is good and, despite himself, does evil.

The value that supports him is never given to him once and for all; he must fight to uphold it, unceasingly.<sup>4</sup>

But despite the contradictions that Camus finds in the position of the rebel who must murder to end murder, we still search for a rational solution to the problem. The nine authors we have examined attempt such a rational justification. The justification of ruler killing lies at a perilous boundary between morality and the most terrible immorality.

#### FOOTNOTES

<sup>1</sup>See, for example, D. M. MacKinnon, A Study in Ethical Theory (London: Adam & Charles Black, 1957), p. 29.

<sup>2</sup>Jan Narveson, Morality and Utility (Baltimore: The Johns Hopkins Press, 1967), p. 43.

<sup>3</sup>Maurice Merleau-Ponty, Humanism and Terror: An Essay on the Communist Problem (Boston: Beacon Press, 1969), p. 2.

<sup>4</sup>Albert Camus, The Rebel: An Essay on Man in Revolt (New York: Vintage Books, 1956), p. 285.

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