

### C. The Responsibility of the Minority

Locke, in his *Second Treatise of Civil Government*, points out that the decision to form a political community is and must be unanimous, but that it would be totally unrealistic to expect that all decisions subsequently made by that community would be unanimous. Because of the impossibility of continuing unanimity, the laws must be made by the majority.<sup>22</sup> Inherent in rule by majority is the opposition of a minority. Civil disobedience and its advocacy are a direct challenge to the basic democratic principle that the minority must accept the will of the majority once its recourse to legal procedures has been exhausted.<sup>23</sup> Virtually every citizen in a democracy at some time finds himself in the minority, believing that one or more of the majority's decisions—whether executive, legislative, or judicial—is unjust. He may find himself in deep and conscientious disagreement with decisions on war and peace, integration, busing, "reverse discrimination," abortion, or tax burdens. If every citizen exercised what advocates of civil disobedience call his responsibility, with or without a willingness to accept the penalty, and disregarded laws he believed to be unjust, or other laws, to demonstrate that belief, the result would be violence, chaos, or civil war—a total breakdown of the rule of law.<sup>24</sup>

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22. LOCKE, *supra* note 14, at § 96. Locke argues that the community is constituted by the consent of the individuals in it. Because it is necessary that the community as one body move in one direction or another, and because it must choose between conflicting policies, "it is necessary the Body should move that way whither the greater force carries it, which is the *consent of the majority*." *Id.* (emphasis in original).

23. *Id.* Locke argues that because no democratic society can exist without the power to punish the offenses and to preserve the property of those in that society, democratic society exists only when each of its members has given over to the community the natural powers he had in the state of nature. "And thus all private judgement of every particular Member being excluded, the Community comes to be umpire by settled standing Rules . . . and . . . decides all the differences that may happen between any members of that society, concerning any matter of right . . ." *Id.* at § 87 (emphasis added). Thus, for Locke, civil disobedience in a democratic society is not only impractical but also destroys the basis of the regime.

24. "[W]herever and whenever a principled democrat accepts the political system of democracy, he must accept the binding authority of legislative decisions, reached after the free give-and-take of debate and discussion as binding upon him, whether he is a member of the majority or minority. Otherwise the consequence is incipient or overt anarchy or civil war, the usual preface to despotism . . ." S. Hook, *How Democratic Is America? A Response to Howard Zinn*, in *HOW DEMOCRATIC IS AMERICA?* 67 (R. Goldwin ed. 1969) [hereinafter cited as Hook]. The recent violent difficulties, including riots, in Boston, Massachusetts and Louisville, Kentucky resulted in substantial part from the resistance of many whites to court-ordered busing for the purpose of achieving racial balance. *TIME*, Sept. 22, 1975, at 7-11.

The industrial strikes of the late 1800's and early 1900's, many of them illegal, and