holding an initial position of equal liberty. This means that one's conduct in relation to him must be regulated by the principles of justice or, more generally, by the principles which rational and self-interested persons could acknowledge before one another in such a position. This conclusion may be contrasted with two other possible views. It is distinct from classical utilitarianism, which holds that a capacity for pleasure and pain, for joy and sorrow, is sufficient for being a full subject of rights. The conclusion is also distinct from an aristocratic ethic which takes as necessary certain attributes and capacities such as strength, beauty, and superior intelligence, and which would impose the requirement of initial equality only within the same rank and allow original inequalities between superior and lower ranks. Such an aristocratic doctrine can only be maintained, I think, if one assumes a specific obligation on the parties in the original position: namely, the obligation to develop human persons of a certain style and aesthetic grace, or the obligation to the pursuit of knowledge and the cultivation of the arts, or both. I cannot discuss here the propriety of this assumption, or whether if it were accepted it would justify the inequalities commonly associated with aristocracy. It suffices to say that in the analytic construction no such obligation is assumed. The sole constraints imposed are those expressed in the formal elements of the concept of morality, and the only circumstances assumed are those exhibiting the conflicts of claims which give rise to questions of justice. The natural consequence of this construction is that the capacity for the sense of justice is the fundamental aspect of moral personality in the theory of justice.

Legal Obligation and the Duty of Fair Play
(1964)

1. The subject of law and morality suggests many different questions. In particular, it may consider the historical and sociological question as to the way and manner in which moral ideas influence and are influenced by the legal system; or it may involve the question whether moral concepts and principles enter into an adequate definition of law. Again, the topic of law and morality suggests the problem of the legal enforcement of morality and whether the fact that certain conduct is immoral by accepted precepts is sufficient to justify making that conduct a legal offense. Finally, there is the large subject of the study of the rational principles of moral criticism of legal institutions and the moral grounds of our acquiescence in them. I shall be concerned solely with a fragment of this last question: with the grounds for our moral obligation to obey the law, that is, to carry out our legal duties and to fulfill our legal obligations. My thesis is that the moral obligation to obey the law is a special case of the prima facie duty of fair play.

I shall assume, as requiring no argument, that there is, at least in a society such as ours, a moral obligation to obey the law, although it may, of course, be overridden in certain cases by other more stringent obligations. I shall assume also that this obligation must rest on some general moral principle; that is, it must depend on some principle of justice or upon some principle of social utility or the common good, and the like. Now, it may appear to be a truism, and let us suppose it is, that a moral obligation rests on some moral principle. But I mean to exclude the possibility that the obligation to obey the law is based on a special principle of its own. After all, it is not, without further
argument, absurd that there is a moral principle such that when we find ourselves subject to an existing system of rules satisfying the definition of a legal system, we have an obligation to obey the law; and such a principle might be final, and not in need of explanation, in the way in which the principles of justice or of promising and the like are final. I do not know of anyone who has said that there is a special principle of legal obligation in this sense. Given a rough agreement, say, on the possible principles as being those of justice, of social utility, and the like, the question has been on which of one or several is the obligation to obey the law founded, and which, if any, has a special importance. I want to give a special place to the principle defining the duty of fair play.

2. In speaking of one's obligation to obey the law, I am using the term "obligation" in its more limited sense, in which, together with the notion of a duty and of a responsibility, it has a connection with institutional rules. Duties and responsibilities are assigned to certain positions and offices, and obligations are normally the consequence of voluntary acts of persons, and while perhaps most of our obligations are assumed by ourselves, through the making of promises and the accepting of benefits, and so forth, others may put us under obligation to them (as when on some occasion they help us, for example, as children). I should not claim that the moral grounds for our obeying the law is derived from the duty of fair-play except insofar as one is referring to an obligation in this sense. It would be incorrect to say that our duty not to commit any of the legal offenses, specifying crimes of violence, is based on the duty of fair play, at least entirely. These crimes involve wrongs as such, and with such offenses, as with the vices of cruelty and greed, our doing them is wrong independently of there being a legal system the benefits of which we have voluntarily accepted.

I shall assume several special features about the nature of the legal order in regard to which a moral obligation arises. In addition to the generally strategic place of its system of rules, as defining and relating the fundamental institutions of society that regulate the pursuit of substantive interests, and to the monopoly of coercive powers, I shall suppose that the legal system in question satisfies the concept of the rule of law (or what one may think of as justice as regularity). By this I mean that its rules are public, that similar cases are treated similarly, that there are no bills of attainder, and the like. These are all features of a legal system insofar as it embodies without deviation the notion of a public system of rules addressed to rational beings for the organization of their conduct in the pursuit of their substantive interests. This concept imposes, by itself, no limits on the content of legal rules, but only on their regular administration. Finally, I shall assume that the legal order is that of a constitutional democracy; that is, I shall suppose that there is a constitution establishing a position of equal citizenship and securing freedom of the person, freedom of thought and liberty of conscience, and such political equality as in suffrage and the right to participate in the political process. Thus I am confining discussion to a legal system of a special kind, but there is no harm in this.

3. The moral grounds of legal obligation may be brought out by considering what at first seem to be two anomalous facts: first, that sometimes we have an obligation to obey what we think, and think correctly, is an unjust law; and second, that sometimes we have an obligation to obey a law even in a situation where more good (thought of as a sum of social advantages) would seem to result from not doing so. If the moral obligation to obey the law is founded on the principle of fair play, how can one become bound to obey an unjust law, and what is there about the principle that explains the grounds for forgoing the greater good?

It is, of course, a familiar situation in a constitutional democracy that a person finds himself morally obligated to obey an unjust law. This will be the case whenever a member of the minority, on some legislative proposal, opposes the majority view for reasons of justice. Perhaps the standard case is where the majority, or a coalition sufficient to constitute a majority, takes advantage of its strength and votes in its own interests. But this feature is not essential. A person belonging to the minority may be advantaged by the majority proposal and still oppose it as unjust, yet when it is enacted he will normally be bound by it.

Some have thought that there is ostensibly a paradox of a special kind when a citizen, who votes in accordance with his moral principles (conception of justice), accepts the majority decision when he is in the minority. Let us suppose the vote is between two bills, A and B, each establishing an income tax procedure, rates of progression, or the like, which are contrary to one another. Suppose further that one thinks of the constitutional procedure for enacting legislation as a sort of machine that yields a result when the votes are fed into it—the result being that a certain bill is enacted. The question arises as to how a citizen can accept the machine's choice, which (assuming that B gets a majority of the votes) involves thinking that B ought to be enacted when, let us suppose, he is of the declared opinion that A ought to be enacted. For some the paradox seems to be that in a constitutional democracy a citizen is often put in a situation of believing that both A and B should be enacted when A and
Bare contraries: that A should be enacted because A is the best policy, and that B should be enacted because B has a majority—and moreover, and this is essential, that this conflict is different from the usual sort of conflict between prima facie duties.

There are a number of things that may be said about this supposed paradox, and there are several ways in which it may be resolved, each of which brings out an aspect of the situation. But I think the simplest thing to say is to deny straightaway that there is anything different in this situation than in any other situation where there is a conflict of prima facie principles. The essential of the matter seems to be as follows: (1) Should A or B be enacted and implemented, that is, administered? Since it is supposed that everyone accepts the outcome of the vote, within limits, it is appropriate to put the enactment and implementation together. (2) Is A or B the best policy? It is assumed that everyone votes according to his political opinion as to which is the best policy and that the decision as to how to vote is not based on personal interest. There is no special conflict in this situation: the citizen who knows that he will find himself in the minority believes that, taking into account only the relative merits of A and B as prospective statutes, and leaving aside how the vote will go, A should be enacted and implemented. Moreover, on his own principles he should vote for what he thinks is the best policy, and leave aside how the vote will go. On the other hand, given that a majority will vote for B, B should be enacted and implemented, and he may know that a majority will vote for B. These judgments are relative to different principles (different arguments). The first is based on the person’s conception of the best social policy; the second is based on the principles on which he accepts the constitution. The real decision, then, is as follows: A person has to decide, in each case where he is in the minority, whether the nature of the statute is such that, given that it will get, or has got, a majority vote, he should oppose its being implemented, engage in civil disobedience, or take equivalent action. In this situation he simply has to balance his obligation to oppose an unjust statute against his obligation to abide by a just constitution. This is, of course, a difficult situation, but not one introducing any deep logical paradox. Normally, it is hoped that the obligation to the constitution is clearly the decisive one.

Although it is obvious, it may be worthwhile mentioning, since a relevant feature of voting will be brought out, that the result of a vote is that a rule of law is enacted, and although given the fact of its enactment, everyone agrees that it should be implemented, no one is required to believe that the statute enacted represents the best policy. It is consistent to say that another statute would have been better. The vote does not result in a statement to be believed:

namely, that B is superior, on its merits, to A. To get this interpretation one would have to suppose that the principles of the constitution specify a device which gathers information as to what citizens think should be done and that the device is so constructed that it always produces from this information the morally correct opinion as to which is the best policy. If in accepting a constitution it was so interpreted, there would, indeed, be a serious paradox: for a citizen would be torn between believing, on his own principles, that A is the best policy, and believing at the same time that B is the best policy as established by the constitutional device, the principles of the design of which he accepts. This conflict could be made a normal one only if one supposed that a person who made his own judgment on the merits was always prepared to revise it given the opinion constructed by the machine. But it is not possible to determine the best policy in this way, nor is it possible for a person to give such an undertaking. What this misinterpretation of the constitutional procedure shows, I think, is that there is an important difference between voting and spending. The constitutional procedure is not, in an essential respect, the same as the market: Given the usual assumptions of perfect competition of price theory, the actions of private persons spending according to their interests will result in the best situation, as judged by the criterion of Pareto. But in a perfectly just constitutional procedure, people voting their political opinions on the merits of policies may or may not reflect the best policy. What this misinterpretation brings out, then, is that when citizens vote for policies on their merits, the constitutional procedure cannot be viewed as acting as the market does, even under ideal conditions. A constitutional procedure does not reconcile differences of opinion into an opinion to be taken as true—this can only be done by argument and reasoning—but rather it decides whose opinion is to determine legislative policy.

4. Now to turn to the main problem, that of understanding how a person can properly find himself in a position where, by his own principles, he must grant that, given a majority vote, B should be enacted and implemented even though B is unjust. There is, then, the question as to how it can be morally justifiable to acknowledge a constitutional procedure for making legislative enactments when it is certain (for all practical purposes) that laws will be passed that by one’s own principles are unjust. It would be impossible for a person to undertake to change his mind whenever he found himself in the minority; it is not impossible, but entirely reasonable, for him to undertake to abide by the enactments made, whatever they are, provided that they are within certain limits. But what more exactly are the conditions of this undertaking?
First of all, it means, as previously suggested, that the constitutional procedure is misinterpreted as a procedure for making legal rules. It is a process of social decision that does not produce a statement to be believed (that B is the best policy) but a rule to be followed. Such a procedure, say involving some form of majority rule, is necessary because it is certain that there will be disagreement on what is the best policy. This will be true even if we assume, as I shall, that everyone has a similar sense of justice and everyone is able to agree on a certain constitutional procedure as just. There will be disagreement because they will not approach issues with the same stock of information, they will regard different moral features of situations as carrying different weights, and so on. The acceptance of a constitutional procedure is, then, a necessary political device to decide between conflicting legislative proposals. If one thinks of the constitution as a fundamental part of the scheme of social cooperation, then one can say that if the constitution is just, and if one has accepted the benefits of its working and intends to continue doing so, and if the rule enacted is within certain limits, then one has an obligation, based on the principle of fair play, to obey it when it comes one’s turn. In accepting the benefits of a just constitution one becomes bound to it, and in particular one becomes bound to one of its fundamental rules given a majority vote in behalf of a statute, it is to be enacted and properly implemented.

The principle of fair play may be defined as follows. Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally that the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefit by not cooperating. The reason one must abstain from this attempt is that the existence of the benefit is the result of everyone’s effort, and prior to some understanding as to how it is to be shared, if it can be shared at all, it belongs in fairness to no one. (I return to this question below.)

Now I want to hold that the obligation to obey the law, as enacted by a constitutional procedure, even when the law seems unjust to us, is a case of the duty of fair play as defined. It is, moreover, an obligation in the more limited sense in that it depends upon our having accepted and our intention to continue accepting the benefits of a just scheme of cooperation that the constitution defines. In this sense it depends on our own voluntary acts. Again, it is an obligation owed to our fellow citizens generally; that is, to those who cooperate with us in the working of the constitution. It is not an obligation owed to public officials, although there may be such obligations. That it is an obligation owed by citizens to one another is shown by the fact that they are entitled to be indignant with one another for failure to comply. Further, an essential condition of the obligation is the justice of the constitution and the general system of law being roughly in accordance with it. Thus the obligation to obey (or not to resist) an unjust law depends strongly on there being a just constitution. Unless one obeys the law enacted under it, the proper equilibrium, or balance, between competing claims defined by the constitution will not be maintained. Finally, while it is true enough to say that the enactment by a majority binds the minority, and that it may be bound by the acts of others, there is no question of their binding them in conscience to certain beliefs as to what is the best policy, and it is a necessary condition of the acts of others binding us that the constitution is just, that we have accepted its benefits, and so forth.

5. Now a few remarks about the principles of a just constitution. Here I shall have to presuppose a number of things about the principles of justice. In particular, I shall assume that there are two principles of justice that properly apply to the fundamental structure of institutions of the social system and, thus, to the constitution. The first of these principles requires that everyone have an equal right to the most extensive liberty compatible with a like liberty for all; the second is that inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone’s advantage and provided that the positions and offices to which they attach or from which they may be gained are open to all. I shall assume that these are the principles that can be derived by imposing the constraints of morality upon rational and mutually self-interested persons when they make conflicting claims on the basic form of their common institutions: that is, when questions of justice arise.

The principle relevant at this point is the first principle, that of equal liberty. I think it may be argued with some plausibility that it requires, where it is possible, the various equal liberties in a constitutional democracy. And once these liberties are established and constitutional procedures exist, one can view legislation as rules enacted that must be ostensibly compatible with both principles. Each citizen must decide as best he can whether a piece of legislation, say the income tax, violates either principle; and this judgment depends
on a wide body of social facts. Even in a society of impartial and rational persons, one cannot agree on these matters.

Now recall that the question is this: How is it possible that a person, in accordance with his own conception of justice, should find himself bound by the acts of another to obey an unjust law (not simply a law contrary to his interests)? Put another way: Why, when I am free and still without my chains, should I accept certain a priori conditions to which any social contract must conform, a priori conditions that rule out all constitutional procedures that would decide in accordance with my judgment of justice against everyone else?

To explain this (Little has remarked), we require two hypotheses: that among the very limited number of procedures that would stand any chance of being established, none would make my decision decisive in this way; and that all such procedures would determine social conditions that I judge to be better than anarchy. Granting the second hypothesis, I want to elaborate on this in the following way: the first step in the explanation is to derive the principles of justice that are to apply to the basic form of the social system and, in particular, to the constitution. Once we have these principles, we see that no just constitutional procedure would make my judgment as to the best policy decisive (would make me a dictator in Arrow's sense). It is not simply that, among the limited number of procedures actually possible as things are, no procedure would give me this authority. The point is that even if such were possible, given some extraordinary social circumstances, it would not be just. (Of course it is not possible for everyone to have this authority.) Once we see this, we see how it is possible that within the framework of a just constitutional procedure to which we are obligated, it may nevertheless happen that we are bound to obey what seems to us to be and is an unjust law. Moreover, the possibility is present even though everyone has the same sense of justice (that is, accepts the same principles of justice) and everyone regards the constitutional procedure itself as just. Even the most efficient constitution cannot prevent the enactment of unjust laws if, from the complexity of the social situation and like conditions, the majority decides to enact them. A just constitutional procedure cannot foresee all injustice; this depends on those who carry out the procedure. A constitutional procedure is not like a market reconciling interests to an optimum result.

6. So far I have been discussing the first mentioned anomaly of legal obligation, namely, that though it is founded on justice, we may be required to obey an unjust law. I should now like to include the second anomaly: that we may have an obligation to obey the law even though more good (thought of as a sum of advantages) may be gained by not doing so. The thesis I wish to argue is that not only is our obligation to obey the law a special case of the principle of fair play, and so dependent upon the justice of the institutions to which we are obligated, but also the principles of justice are absolute with respect to the principle of utility (as the principle to maximize the net sum of advantages). By this I mean two things. First, unjust institutions cannot be justified by an appeal to the principle of utility. A greater balance of net advantages shared by some cannot justify the injustice suffered by others; and where unjust institutions are tolerable it is because a certain degree of injustice sometimes cannot be avoided, that social necessity requires it, there would be greater injustice otherwise, and so on. Second, our obligation to obey the law, which is a special case of the principle of fair play, cannot be overridden by an appeal to utility, though it may be overridden by another duty of justice. These are sweeping propositions and most likely false, but I should like to examine them briefly.

I do not know how to establish these propositions. They are not established by the sort of argument used above to show that the two principles, previously mentioned, are the two principles of justice, that is, when the subject is the basic structure of the social system. What such an argument might show is that, if certain natural conditions are taken as specifying the concept of justice, then the two principles of justice are the principles logically associated with the concept when the subject is the basic structure of the social system. The argument might prove, if it is correct, that the principles of justice are incompatible with the principle of utility. The argument might establish that our intuitive notions of justice must sometimes conflict with the principle of utility. But it leaves unsettled what the more general notion of right requires when this conflict occurs. To prove that the concept of justice should have an absolute weight with respect to that of utility would require a deeper argument based on an analysis of the concept of right, at least insofar as it relates to the concepts of justice and utility. I have no idea whether such an analysis is possible. What I propose to do instead is to try out the thought that the concept of justice does have an absolute weight, and to see whether this suggestion, in view of our considered moral opinions, leads to conclusions that

1. The metaphor of being free and without one's chains is taken from I. M. D. Little's review of Kenneth Arrow's book Social Choice and Individual Values (New York: John Wiley, 1951), which appeared in Journal of Political Economy, 60 (1952). See p. 431. My argument follows his in all essential respects, the only addition being that I have introduced the concept of justice in accounting for what is, in effect, Arrow's non-dictatorship condition.

2. See Arrow, Social Choice and Individual Values.
we cannot accept. It would seem as if to attribute to justice an absolute weight is to interpret the concept of right as requiring that a special place be given to persons capable of a sense of justice and to the principle of their working out together, from an initial position of equality, the form of their common institutions. To the extent that this idea is attractive, the concept of justice will tend to have an absolute weight with respect to utility.

7. Now to consider the two anomalous cases. First: In the situation where the obligation requires obedience to an unjust law, it seems true to say that the obligation depends on the principle of fair play and, thus, on justice. Suppose it is a matter of a person being required to pay an income tax of a kind that he thinks is unjust, not simply by reference to his interests. He would not want to try to justify the tax on the ground that the net gain to certain groups in society is such as to outweigh the injustice. The natural argument to make is to his obligation to a just constitution.

But in considering a particular issue, a citizen has to make two decisions: how he will vote (and I assume that he votes for what he thinks is the best policy, morally speaking), and, in case he should be in the minority, whether his obligation to support, or not obstruct, the implementation of the law enacted is not overridden by a stronger obligation that may lead to a number of courses including civil disobedience. Now in the sort of case imagined, suppose there is a real question as to whether the tax law should be obeyed. Suppose, for example, that it is framed in such a way that it seems deliberately calculated to undermine unjustly the position of certain social or religious groups. Whether the law should be obeyed or not depends, if one wants to emphasize the notion of justice, on such matters as (1) the justice of the constitution and the real opportunity it allows for reversal; (2) the depth of the injustice of the law enacted; (3) whether the enactment is actually a matter of calculated intent by the majority and warns of further such acts; and (4) whether the political sociology of the situation is such as to allow of hope that the law may be repealed. Certainly, if a social or religious group reasonably (not irrationally) and correctly supposes that a permanent majority, or majority coalition, has deliberately set out to undercut its basis and that there is no chance of successful constitutional resistance, then the obligation to obey that particular law (and perhaps other laws more generally) cases. In such a case a minority may no longer be obligated by the duty of fair play. There may be other reasons, of course, at least for a time, for obeying the law. One might say that disobedience will not improve the justice of their situation or of their descendants' situation; or that it will result in injury and harm to innocent persons (that is, members not belonging to the unjust majority). In this way, one might appeal to the balance of justice, if the principle of not causing injury to the innocent is a question of justice; but, in any case, the appeal is not made to the greater net balance of advantages (irrespective of the moral position of those receiving them). The thesis I want to suggest then, is that in considering whether we are obligated to obey an unjust law, one is led into no absurdity if one simply throws out the principle of utility altogether, except insofar as it is included in the general principle requiring one to establish the most efficient just institutions.

Second: Now the other sort of anomaly arises when the law is just and we have a duty of fair play to follow it, but a greater net balance of advantages could be gained from not doing so. Again, the income tax will serve to illustrate this familiar point: The social consequences of any one person (perhaps even many people) not paying his tax are unnoticeable, and let us suppose zero in value, but there is a noticeable private gain for the person himself, or for another to whom he chooses to give it (the institution of the income tax is subject to the first kind of instability). The duty of fair play binds us to pay our tax, nevertheless, since we have accepted, and intend to continue doing so, the benefits of the fiscal system to which the income tax belongs. Why is this reasonable and not a blind following of a rule, when a greater net sum of advantages is possible?—because the system of cooperation consistently followed by everyone else itself produces the advantages generally enjoyed, and in the case of a practice such as the income tax there is no reason to give exemptions to anyone so that they might enjoy the possible benefit. (An analogous case is the moral obligation to vote and so to work the constitutional procedure from which one has benefited. This obligation cannot be overridden by the fact that our vote never makes a difference in the outcome of an election; it may be overridden, however, by a number of other considerations, such as a person being disenfranchised with all parties, being excusably uninformed, and the like.)

There are cases, on the other hand, where a certain number of exemptions can be arranged for in a just or fair way; and if so, the practice, including the exemptions, is more efficient, and when possible it should be adopted (waiving problems of transition) in accordance with the principle of establishing the most efficient just practice. For example, in the familiar instance of the regulation to conserve water in a drought, it might be ascertained that there would be no harm in a certain extra use of water over and above the use for drinking. In this case some rotation scheme can be adopted that allotting exemptions in a fair way, such as houses on opposite sides of the street being given exemptions.
on alternate days. The details are not significant here. The main idea is simply that if the greater sum of advantages can effectively and fairly be distributed among those whose cooperation makes these advantages possible, then this should be done. It would indeed be irrational to prefer a lesser to a more efficient just scheme of cooperation; but this fact is not to be confused with justifying an unjust scheme by its greater efficiency or excusing ourselves from a duty of fair play by an appeal to utility. If there is no reason to distribute the possible benefit, as in the case of the income tax, or in the case of voting, or if there is no way to do so that does not involve such problems as excessive costs, then the benefit should be forgone. One may disagree with this view, but it is not irrational, not a matter of rule worship: it is, rather, an appeal to the duty of fair play, which requires one to abstain from an advantage that cannot be distributed fairly to those whose efforts have made it possible. That those who make the efforts and undergo the restrictions of their liberty should share in the benefits produced is a consequence of the assumption of an initial position of equality, and it falls under the second principle. But the question of distributive justice is too involved to go into here. Moreover, it is unlikely that there is any substantial social benefit for the distribution of which some fair arrangement cannot be made.

8. To summarize, I have suggested that the following propositions may be true:

First, that our moral obligation to obey the law is a special case of the duty of fair play. This means that the legal order is construed as a system of social cooperation to which we become bound because: first, the scheme is just (that is, it satisfies the two principles of justice), and no just scheme can ensure against our ever being in the minority in a vote; and second, we have accepted, and intend to continue to accept, its benefits. If we failed to obey the law, to act on our duty of fair play, the equilibrium between conflicting claims, as defined by the concept of justice, would be upset. The duty of fair play is not, of course, intended to account for its being wrong for us to commit crimes of violence, but it is intended to account, in part, for the obligation to pay our income tax, to vote, and so on.

Second, I then suggested that the concept of justice has an absolute weight with respect to the principle of utility (not necessarily with respect to other moral concepts). By that I meant that the union of the two concepts of justice and utility must take the form of the principle of establishing the most efficient just institution. This means that an unjust institution or law cannot be justified by an appeal to a greater net sum of advantages, and that the duty of fair play

cannot be analogously overridden. An unjust institution or law or the overriding of the duty of fair play can be justified only by a greater balance of justice. I know of no way to prove this proposition. It is not proved by the analytic argument to show that the principles of justice are indeed the principles of justice. But I think it may be shown that the principle to establish the most efficient just institutions does not lead to conclusions counter to our intuitive judgments and that it is not in any way irrational. It is, moreover, something of a theoretical simplification, in that one does not have to balance justice against utility. But this simplification is no doubt not a real one, since it is as difficult to ascertain the balance of justice as anything else.