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The Moral Justification of Civil Disobedience in a Constitutional Democracy: An Appraisal of Rawls' Notion of Civil Disobedience

Ezedike, Edward Uzoma

Department of Philosophy

University of Port Harcourt

Port Harcourt

Email: uzomaezedike@gmail.com, edward.ezedike@uniport.edu.ng

Phone: 234-803-268-4202

&

Itelimo Morrison

Department of General Studies

School of Education

Isaac Jasper Boro College of Education

Sagbama, Bayelsa State

E-Mail: itelimorrison@gmail.com

Phone: 234-803-774-2087

Abstract

The paper examined the moral implications of civil disobedience in a constitutional democracy, using John Rawls' notion of civil disobedience as a conceptual framework. It deals with the moral problem of justifying a civil revolt against an unjust government in a democratic setting. The paper adopts the method of textual analysis and uses John Rawls seminal work, *A Theory of Justice*, as its primary text. In the sum, Rawlsian theory of justice is a mid-way between the liberal principle and egalitarian principle. To secure the human capacity for free choice and pursuit of common good, Rawls posits that we must accept the first principle of justice, which protects the equal liberties of citizenship as contained in the social contract. Although his ideas have attracted a lot of criticisms from both the right and left of the ideological spectrum, the paper thinks Rawls' position makes a lot of moral sense. The objective of the paper is to defend, on moral grounds, the idea of civil disobedience when those in power become unjust and

oppressive in relation to the social contract. It concluded with the view that the political class hold power and authority on trust and this makes it morally justifiable to resist the abuse of such powers since it contradicts the values of integrity, fairness and justice. Moreover, the equal dignity of human beings as moral persons dictates equal liberty and freedom of action that negates the arrogation of powers by a select State official who are in minority.

Key Words: moral, justification, justice, civil disobedience, democracy

Introduction

John Rawls, a professor of philosophy at Harvard, in 1971, published an influential work entitled *A Theory of Justice*. The book was a radical departure from much of 21st century moral philosophy that has become a technical subject dealing primarily with abstract questions about the meaning of ethical language. The contemporary meta-ethics or analytic ethics have deliberately avoided substantive questions about how we ought to live, the prescriptive aspect of ethics and the practical normative issues of human existence. In contrast, Rawls took it as the essential business of ethics to establish the most fundamental principles that ought to govern a morally decent human society. He attempted to discover and explain the important moral principles that could determine whether societies are just, by working out, in great detail, a contemporary version of the social contract theory (Rachels 1999, p. 290). The summary of his distributive theory of justice is simply 'justice as fairness'. Rawls believes that in a well ordered society, two basic principles will be acceptable, namely; (i) the greatest possible liberty for the individual, compatible with a similar degree of liberty for all; and (ii) the arrangement of social and economic inequalities such that they are to the benefits of the worse off and the promotion of equal opportunities with regards to the securing of offices and positions (Irele 1998, p.104; Thompson 2008, p. 92). These principles form the basis for a fair, just and egalitarian society. Consequently, leaders are under obligation to conform to these principles in administering the State affairs, the absence of which civil disobedience to rectify the wrong can be justified. He believes that "an important test of a theory of justice is how well it introduces order and system into our considered judgments over a wide range of questions" (Rawls 1971, p. ix). From this standpoint, he proceeded to illustrate the content of the principles of natural duty and obligation by sketching a theory of civil disobedience (Rawls 1971, p. 363).

The moral questions we need to address in this paper, in line with the foregoing Rawlsian position, are as follows: should citizens ever disobey the government? If so, when? If not, why not? Is it ever, right to revolt against an unjust government or a tyrant? To these questions, answers have been various. Some people argue that it is always right (political anarchism), others say it is never right (radical patriotism), while some say it is sometimes right if government violates a fundamental and indispensable social, political or religious principle (conditional submissionism). This paper favours the third and last school of thought and attempts to justify it on moral grounds.

Explication of Basic Terms

Civil: The term civil refers to a term that is connected to people, that is, citizens living in a state or country. The term is also used in connection to a state; or in connection to personal and legal matters

Disobedience: This is a term that simply implies a refusal to obey command, laws or policies of anyone higher than oneself. It can also connote a refusal to obey constituted authority.

Civil Disobedience: This refers to refusal by a large group of people to obey particular laws or pay taxes usually as a form of peaceful political protest (Hornby, 2000, p.196). It is conceived as non-institutionalized political tool used by citizens to show their disapproval of the decisions of the majority in a democratic society (Velasco, 2016, p.112). He further revealed that civil disobedience denotes widespread protest employed by the minorities to make their voices heard and shape public opinion in a democratic society. Nnamdi (2011, p. 69) defined the concept as a systematic and organized protest embarked by citizens to express displeasure over a law or policy considered to be unjust in a non-compliance manner. Rawls (1999) conceived the term as a public, non-violent and conscientious breach of law undertaken by citizens of a society with the aim of bringing about a change in laws or government policies (p. 363). Arendt (1972) clarified the concept to mean protest by citizens of a democratic society against acts and actions of government considered to be unconstitutional and illegal. This implies that civil disobedience connotes protests by a cross section of citizens over a particular law, policy or action of government construed not to be in the interests of the citizens.

Democracy: Etymologically, democracy derives from two Greek words ‘Demo’ meaning rule and ‘Kratos’ meaning people. Therefore, in its root meaning, democracy implies peoples’ rule or rule by the people. Udeh (2017) described democracy as a system of government revolving around the mandate of the citizens (people) where the people renew the mandate through periodic election. Arowolo and Aluko (2012) defined democracy as the governmental system which confers the opportunity to participate in governance and decision-making on all (p.798). Gwunireama (2008, p.207) conceived the term as a governmental system which entails rule of the people since power derives from the people and channelled through the people for realizing the common good. Dibia (2003, p.15) asserted that democracy refers to a form of government in which the people exercise their governing power either directly or through representatives periodically elected by them. This goes to show that democracy provides functional institutions for the expression and the supremacy of the people or popular will on basic issues bordering on social and policy-making.

From the above, we can categorically affirm that democracy connotes an interactive system of governance that enables the people to interface with the government in matters of national interests. This further suggests that democracy denotes a government of all citizens, that is, a government where all govern and where nobody is above the law. It is this concept of popular participation that is fundamental to the practice of true democracy.

Rawls’ Concept of Civil Disobedience

In his article, “The Justification of Civil Disobedience”, Rawls states the condition under “which we may, by civil disobedience, properly oppose legally established democratic authority” (1969, p. 1). His thought is that in a reasonably just (though not perfectly just) democratic government civil disobedience, when it is reasonable justified, is to be understood as a political action which helps to address the sense of justice of the majority so as to urge those in power to reconsider the issues protested. It is also embarked upon to warn that in the firm opinion of the dissenters the conditions of social cooperation are not being honoured.

Rawls in *A Theory of Justice*, defines civil disobedience as “a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (1971, p. 364). By engaging in this act dissenters address the sense of justice of the majority of the citizens and declares that in their own considered opinion

the principles of social cooperation among free and equal men are not being honoured or respected. Civil disobedience, by definition falls between legal protest and the raising of test cases on the one side, and conscientious refusal and the various forms of resistance on the other. Hence, in this range of possibilities it stands for that form of dissent at the boundary of fidelity to law. Our understanding of civil disobedience, from Rawls standpoint, shows that it is clearly distinguishable from militant action and obstruction. The meaning of the concept is far removed from organized mob action or forcible resistance.

Rawls stated that his theory of civil disobedience is meant only for the “special case of a nearly just society, one that is well-ordered for the most part but in which some serious violations of injustice nevertheless do occur” (1971, p. 363). Since, he assumed that a democratic government can guarantee a state of near justice, his theory concerns the role and appropriateness of civil disobedience to legitimately establish democratic authority. In other words, the theory does not apply to the other forms of government, nor, except incidentally, to other kinds of dissent and resistance which could be applied to transform or overturn an unjust and corrupt system. According to him, if any means to actualize this purpose is justified, then, we can equally justify a nonviolent opposition through civil disobedience. The problem of civil disobedience is that of conflict of interest, he posits, arises only within a more or less just democratic society for those citizens who recognize and accept the legitimacy of the constitution. The difficulty here is at what point does the duty to comply with laws made by a legislative majority (with support from the executive arm) cease to be binding in view of the right to defend one’s freedom and the duty to oppose injustice? Obviously, this borders on the nature and limits of majority rule (in a democratic setting). Consequently, Rawls stated that “the problem of civil disobedience is a crucial test case for any theory of the moral basis of democracy” (1971, p. 363).

Rawls stated that a constitutional theory of civil disobedience has three parts. First, the theory defines this kind of dissent and separates it from other types of opposition to democratic authority. Second, the theory sets out the grounds of civil disobedience and the conditions under which such action or inaction is justified in a more or less democratic government. Three, the theory explains the role of civil disobedience within a constitutional democratic system and justifies its appropriateness in a free society (1971, pp. 363-364). Rawls, however, cautioned that we should not expect too much of a theory of civil disobedience, even one designed for special situations.

An Appraisal of Rawls Concept of Civil Disobedience

In general, the Rawlsian theory of justice is a mid-way between the liberal principle and egalitarian principle. To secure the human capacity for free choice and pursuit of common good, Rawls posited that we must accept the first principle of justice, which protects the equal liberties of citizenship as contained in the social contract. Although his ideas on distributive justice have attracted a lot of criticisms from both the right and left of the ideological spectrum, the paper thinks Rawls’ theory of civil disobedience and its justification makes a lot of moral sense. Since our focus is on his notion of civil disobedience, the scope of this paper will not permit discussions on his theory of distributive justice.

It must be noted that one of the greatest merits of Rawls’ notion of civil disobedience, as encapsulated in his *A Theory of Justice*, is that it gives a very clear definition of civil disobedience with an explanation of its intents, purposes and justifications. His work answers

the question of what any worthwhile theory of justice must be asked. These questions are: why should one accept the idea of civil disobedience and what makes the idea a conception of justice? According to Rawls, what commends the idea to us is that the principles and practice of civil disobedience would be acceptable to any rational person in pursuit of justice without necessarily involving the use of violent protests or militancy. His notion of civil disobedience is not in consonance with absolute and unqualified obedience to authorities which is associated with radical patriotism that often turns a blind eye on gross violation of the constitution. However, the major shortcoming of Rawls concept of civil disobedience is that it is limited to established democratic regimes. He did not provide a clear direction to those who live under the tyranny of dictatorial and autocratic regimes in terms of conscientious resistance. According to Rawls' "My thought is ... (limited to) ... a reasonably just (though of course not perfectly just) democratic regime (1969, p.1). In this regard, civil disobedience, for him, can only be meaningful in a constitutional democratic society. This has far reaching implications for Nigeria.

The Principles of Constitutional Democracy

Democracy has been applauded as the best form of government owing to the fact that it promotes the rule of law, popular participation and guarantees the protection of individual liberties. It is also preferred because it affords the citizens the right to freely elect those that would represent them in governance. Therefore, it is not surprising that many countries of the world lay claim to the fact that they are democratic, when in actual fact they are not. Thus, it becomes imperative that we adopt a criterion for establishing nations that are truly democratic, and this cannot be achieved without a distinct understanding of what democracy denotes and the salient principles underlying it. Going by the famous definition by Abraham Lincoln that the concept implies "government of the people by the people and for the people". It follows, therefore, that a democratic government is one where all sane citizens govern, that is, a government of all reasonable adult citizens treated equally with mutual respect and human dignity. Throwing more light, Udeh (2017, p. 147) articulated that the attraction of democracy as the best form of government consists in the fact that government exists to serve the people and the people (citizens) elect those that enact as well as implement the law. He further asserted that vital ingredients of a democracy that is participatory and representative include rule of law, accountability, transparency, popular participation, good governance, equality, and justice.

From the above, we can infer that democracy connotes an interactive and participatory system of government that promotes political inclusivity, freedom of expression and conscience. This further suggested that democracy implies a government of all citizens, a government where all govern and where nobody is above the law or rather where all are equal before the law. Going by this perspective of true and participatory democracy, it is evident that even most of the nations of so-called advanced democracies of the West or Europe are not sufficiently democratic. The situation in Nigeria is such that democracy has been reduced, as it appears, to periodic election rituals whereby citizens are called out to come and vote once in about four years after which the citizens have little or no say on how the nation is run. In fact, we have a system of government called 'democracy' in Nigeria where the majority have their say and the minority have their way. Worse still, key ingredients such as transparency, equity, and respect for the rule of law, good governance and justice are lacking. Hence, the pertinent questions are: How can true and participatory democracy where the citizens can always have their 'say' and 'way' unhindered be guaranteed? How can citizens truly participate in their own governance to

make it truly democratic since all cannot be practically involved in governance at the same time? How can the citizens be made to feel that they count in the scheme of things and events of wider or broad national interests? These questions border largely on citizens' participation, willy-nilly, in the democratic process, the absence of which can generate resentment, opposition and subtle disobedience.

In view of the foregoing, the paper reaffirms that civil disobedience constitutes a veritable instrument of gauging the pulse and desires of the citizens in a true democracy. It is a significant channel through which the citizens can register their disapproval of certain obnoxious policies, actions and laws of the government. Through civil disobedience, the citizens give their voices to matters of grave national interests in a non-violent, non-militant manner. It provides opportunity for interface between the government and the governed on pressing national issues that impact on the generality of citizens. Suffice it to say that dissenters in this context are individuals eager to uphold the best interests of the State. They are patriots and nationalists who are not out to overthrow the government that be, but rather find certain government policy, action or law repugnant and obnoxious in line with the shared ideals or ideals of constitutional democracy and seeks its abrogation. They are patriots committed to preserving the integrity and ideals of democratic government.

Basic Features or Characteristics of Democracy

Democracy has important features which sets it apart from other forms and systems of government. These distinguishing features include; political liberty, freedom of speech, independent judiciary, separation of powers, supremacy of the constitution, periodic elections, sovereignty of the people, etc. These characteristics are explicated below for a clearer and easier understanding.

Political Liberty: This is one of the basic features of democracy which stipulates that all citizens have equal rights. Dibia (2003, p. 16) shed more light on this basic tenet by articulating that it implies equality of all adult and sane citizens to vie for elections as political candidates and also to exercise their franchise during elections.

Sovereignty of the People: This basic characteristic of democracy reveals that power belongs to the people and is exercised by them directly or indirectly through their elected representatives. This further implies that government owes its existence to the people and as a result, must ensure that the programmes and policies it enact reflects, to a large extent, the wishes and aspirations of the people. Yves (1992) captured this view succinctly by asserting that democracy makes government the servant to the people since it is elected by the people and delegated to act on behalf of the people.

Periodic Elections: This is unarguably viewed as the hallmark of democracy in that it offers a channel for transferring power from one government to another. Udeh (2017) maintained that elections provide the people with a veritable platform for renewing the mandate of those elected by the people to represent their affairs in government. It is through elections that the legitimacy and authority of government is said to be derived from the consent of the governed. This means that if the government duly and truly represents the interests of the people, then such a government is returned back by the people in a climate where free, fair, credible and transparent election is practiced.

Independent Judiciary: The independence of the judiciary remains an essential feature of democracy. This means that the judiciary should be able to dispense justice without fear or favour and must ensure that its place as the hope of the common man is sustained. To this end, the judiciary must be separated from other arms of government such as the Executive and Legislative.

Rule of Law: This basic principle of democracy stipulates that everyone is equal before the law in a democracy. This, further reveals that no-one is above the law, hence, there should be no sacred cow as the law applicable to A is equally applicable to B.

Supremacy of the Constitution: The Constitution is supreme and placed above any consideration in a democratic system. This means that the constitution is the ground norm in that its provisions overrides any other and remains final. Other important characteristics of democracy are, free press, universal adult suffrage, existence of political parties, guaranteeing of fundamental human rights, impartial and non-partisan electoral umpire, etc.

The Place of Civil Disobedience in a Constitutional Democracy

Civil disobedience is a political act justified by moral principles which define a conception of civil society and the public good. It rests, therefore, on political conviction as opposed to a search for self or group interest. In a constitutional democracy, we may construe that this conviction involves the conception of justice as expressed in the social contract which underlies the constitution itself. This is to say that in a viable democratic setting, there is a common idea of justice by reference to which its citizens regulate their political affairs, interpret the constitution and attempt to bring about a change in policies or laws of the government of that contradicts the conceived fundamental democratic principles. Thus, civil disobedience is believed to be helpful in addressing the sense of justice of the majority as means of urging a reconsideration of the measures (unjust laws, policies, and practices) protested against (Rawls 1969, p. 7).

The nonviolent nature of civil disobedience implies that it is intended to address the sense of justice of the majority who are not directly involved in governance. On this note, it is a form of speech, an expression of conviction in nonviolent manner. The idea of people engaging in violent and hurtful activities to force government to change its policies or position on some sensitive national issues is not same with civil disobedience in a constitutional democratic setting.

Moral Justifications of Civil Disobedience in a Democratic Society

The moral justifications of civil disobedience in a democratic society can be gleaned from the fact that it is an appeal to the moral basis of public life. Consequently, political office holders have a moral burden to discharge their functions in accordance with the provisions of the Constitution which they have sworn to uphold. The constitution is referred to as the *grund* 'norm' which sets the normative standard for both the government and governed. Thus, obedience to government is not unqualified. While it is true that the law demands obedience from the citizens, this obedience is not without some limitations. Whenever, human authorities make evil policies or unjust laws that violate our fundamental human rights, moral sensibilities, good conscience, and convictions about the right and wrong as enshrined in the constitution, we have a moral justification to disobey such laws. For example, an unqualified submission to a law on same sex marriage may not be possible for a dissent. The power of government is not

absolute, therefore, in a constitutional democracy, the law is king; the king is not the law (Giesler 2008, p. 242). Schafer argued that “the law is king, and if the king and the government disobey the law, they are to be disobeyed...citizens have a moral obligation to resist unjust and tyrannical government” (1981, pp. 99, 105).

The forgoing view is clearly buttressed by Franck (2018) who asserted that civil disobedience curbs abuse of power by elected representatives of the people in a democratic society. Using Rawls as a reference, he maintains that Rawls theory of civil disobedience is very remarkable in that it sets out to promote an effective and efficient constitutional government where the rights of the citizens are well protected and government acts in conformity with the dictates of the constitution. This assertion by Franck clearly brings to the fore the ethico-legal implications of civil disobedience in a democratic society through ensuring that actions and policies of government are shown to be ethical and in conformity with the mandates of the Constitution.

Civil disobedience also enables issues of rights violations, injustice, segregation, racism and arbitrary rule to be overcome in a democratic society. This purgative power of civil disobedience goes to show its socio-ethical implications in a democratic society. Costa (2017) adumbrated that civil disobedience is ethical and legal in the sense that it aims at providing a direction of how citizens of a constitutional democratic society will react to issues of rights violation, segregation, arbitrary rule, racism and other forms of injustice (Costa, 2017, p. 455). This means that civil disobedience ensures that the peoples’ representatives portrays actions whose legality cannot be questioned; else such actions will propel the people to protest. Arendt (1972) alluded to the above when she reiterated: “civil disobedience can be tuned to necessary and desirable change, preservation or restoration of the status-quo-the preservation of rights guaranteed under the First Amendment, or the restoration of the proper balance of power in the government, which is jeopardized by the executive” (p. 75). For Arendt, the moral implication of civil disobedience in a democratic society entails government acting in line with the mandate given to it in the constitution, that is, government acting within the confines of powers arrogated to it in the Constitution.

John Rawls also maintained that civil disobedience is carried out in a democratic society with the aim of ensuring just and fair institutions. Rawls is optimistic that civil disobedience helps to restore balance in a democratic polity where it has been established that the principles of social cooperation have been violated by government. This position by Rawls sheds more light on the moral implications of civil disobedience. Rawls made it clear that civil disobedience is carried out by the people to appeal to the majority’s shared understanding of justice in order to show why a particular law or policy of the government need to be repealed. Justifying the use of civil disobedience to overturn obnoxious law and policy, as well as to make government perfect in a democratic society, Rawls asserted:

Civil disobedience is intended to overturn injustices internal to a given democratic polity. This means that its role is to curtail serious violation of the principle of equal liberty and principle of fair equality of opportunity...It represents one of the stabilizing devices of a constitutional system and also to maintain and strengthen just institutions (1971, p. 367).

From the standpoint of Rawls, we can infer that civil disobedience helps to promote fidelity to law when dissenting in a democratic society. This means that civil disobedience as Rawls sees

it, makes it possible for the enthronement of a constitutional, egalitarian and democratic political order founded on the tenets of equity, fairness and justice.

Finally, civil disobedience makes it possible for promoting participatory democracy in a society. Velasco (2016) justified this position clearly by positing that “in exercising civil disobedience, citizens can assert their public autonomy when faced with serious decisions that, from their perspective, undermine the values on which society is based. This form of political dissidence, is thus a highly valuable device in order to revitalize the participatory fundamentals of representative democracy” (p. 111). This means that the minorities use civil disobedience to rejuvenate the fundamental principles of participatory and representative democracy. Thus, civil disobedience constitutes a veritable tool for promoting the integrity of government and making the government perfect in a democratic society.

Conclusion

The paper examined the moral justifications of civil disobedience in a constitutional democratic society. Civil disobedience aims at changing a particular law, policy or action of government that is considered inimical to the well-being and welfare of the generality of the citizens. Civil disobedience helps to minimize serious infractions against the law by government and its officials by ensuring that they act within the confines of the constitutions. This means that civil disobedience prevents the tyranny of political leaders and is invoked by the citizens to appeal to the shared understanding of the majority’s sense of justice. Prominent figures like Martin Luther King, John Rawls, Hannah Arendt and Gandhi have employed civil disobedience as a means for foisting a liberal and constitutional democratic polity anchored on individual freedom, equity, fairness and justice. The study concludes that civil disobedience appeals to the moral basis of public life and forces political office holders to fulfil their moral obligation of discharging their duties in accordance with the provisions of the Constitution. In all, civil disobedience represents a veritable instrument for promoting good governance, resisting unjust laws and policies, and non-violently challenging arbitrary or dictatorial tendencies in a constitutional democratic society.

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