

CIVIL DISOBEDIENCE IN JOHN RAWLS' PHILOSOPHY VIS-À-VIS ITS ROLE IN A DEMOCRATIC SOCIETY

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Abstract

It is often the case that people tend to react violently against unjust policies of government. Most times the result is anarchy and conflict between the government and the citizenry. These are issues that ordinarily could have been averted if there was a better and a more organized way of dealing with government or law makers should they make unjust laws. It is as a result of issues like these that John Rawls propounded his theory of Civil Disobedience whereby he maintains that civil disobedience is a necessary tool for social change. As it were, this paper is employing analytic method to bring to the fore the theory of Civil Disobedience in John Rawls' Philosophy as a way of fostering good governance in any democratic society. This is a view that instead of violent reaction to unjust policies, the citizens are called upon to adopt a non-violent resistance to such laws. In some places, it is crystal clear that unjust policies and laws are made with utmost impunity so much so that the citizens' fundamental human rights and freedom are trampled upon. This paper concludes that with adequate knowledge of Civil Disobedience as propagated by John Rawls and proper application of it, societies will be better governed.

Keyword: Civil Disobedience.

Introduction

In a democratic society, the masses rule through their elected representatives. Accordingly, it is expected that these representatives should make laws that will guarantee peace and harmony in the state as well as protect the interest and the fundamental human rights of the citizens. However, problem arises when these representatives or authorities make unjust laws. At this point a question comes up as to whether the people are bound to obey such unjust laws? This is in regard to the fact that unjust law either runs against the common good or that it is fashioned for selfish and private ends of the lawmaker or the authority. Such law imposes unjustifiable burden on the citizens and as such does not bind in conscience. Concerning this Stumpf observes thus:

The concept of authority, in particular, has been a matter of constant perplexity. Who has the authority to tell another person what he may or may not do in society? Does the government have the right to override the wishes of a citizen? Is a law, as a command of the government, just or right simply because that law has been officially promulgated? And finally, what should a person do when and if he concludes that a law is unjust - should he obey it or does he have a right to disobey it? (Stumpf: 2003: 337)

Expectedly, it is obvious that the masses may not wish to obey those laws that are detrimental to their life. Hence, they often demand for a change of these laws. But

what strategy will be efficacious to change these unjust laws? Should the strategy be violent or non-violent? After all legal procedures to changing these laws prove abortive, what should the masses do? These constitute the concern of this paper as it seeks to examine the role of John Rawls theory of Civil Disobedience in a democratic society. The emphasis here is on democratic society because in a democratic government, power belongs absolutely to the people. Their representatives are bound to obey the wishes of the masses by the laws they make. Therefore, for there to be good governance, the rights of the masses must be of paramount importance.

Rawls posits that civil disobedience is designed only for and is applicable in a special case in a “nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur.” (Rawls: 1971:363). He further argues that this ‘nearly just’ society is a democratic regime and does not occur to any other form of government. Thus he stated:

Since I assume that a state of near justice requires a democratic regime, the theory concerns the role and the appropriateness of civil disobedience to legitimately established democratic authority. It does not apply to other forms of government nor, except incidentally, to other kind of dissent or resistance. (Rawls: 1971:363).

From the above citation, civil disobedience, for Rawls, is only workable and applicable in a democratic regime. However, he maintains that “the problem of civil disobedience arises only within a more or less just democratic state for those citizens who recognize and accept the legitimacy of the constitution”. (Rawls: 1971:363). Furthermore, he argues that difficulty in such unjust democratic state is one of a conflict of duties. The crucial issue remains: are the masses duty-bound to obey or oppose injustice? He questions thus:

At what point does the duty to comply with laws enacted by a legislative majority (or with executive acts supported by such a majority) cease to be binding in view of the right to defend one’s liberties and the duty to oppose injustices? This question involves the nature and limits of majority rule. For this reason, the problem of civil disobedience is a crucial test case for any theory of the moral basis of democracy. (Rawls: 1971:363).

At this juncture it is pertinent to point out that Rawls posits that his theory of civil disobedience has three parts; firstly, it defines civil disobedience and separates it from other forms of oppositions to democratic authority. Secondly, it sets out the grounds of civil disobedience and the conditions under which such action is justified in a democratic regime. Finally, a theory should explain the role of civil disobedience within a constitutional system and account for the appropriateness of

this mode of protest within a free society. All these and more are explicated in the subsequent sections.

Civil Disobedience

The Cambridge Dictionary of Philosophy defines civil disobedience as “a deliberate violation of the law, committed in order to draw attention or rectify perceived injustices in the law or policies of a state”.¹² Hence, it “involves a public and nonviolent breach of law that is committed in order to change a law or policy and in order to better a society” (Audi: 1995: 124). According to John Rawls, civil disobedience is “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of government” (Rawls: 1971: 364). On his own part, Howard Zinn defines civil disobedience as “the deliberate and discriminate violation of law for a vital social purpose”. (Zinn: 1998:119). Martin Luther King Jr. regarded civil disobedience to be a display and practice of reverence for law; for as “any man who breaks a law that conscience tells him is unjust and willingly accepts the penalty by staying in jail in order to arouse the conscience of the community on the injustices of the law is at that moment expressing the very highest respect for law”. (Bedau: 1991: 84).

Features of Civil Disobedience in John Rawls

In expatiating on his philosophy of civil disobedience, John Rawls' reeled out what are regarded as the features or characteristics of civil disobedience. These include that:

- it is a public act
- it is a nonviolent act
- it is a conscientious act it is political act
- it is an act aimed at changing the law

It is a Public Act

Civil disobedience is a public act which can be likened to a public speech, and been a form of address, it takes place in the public forum. Thus in his own words;

Not only is it addressed to public principles, it is done in public. It is engaged in openly with fair notice; it is not covert or secretive. One may compare it to a public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum. (Rawls: 1971:366).

Injustice is not battled in secrets. It must be laid bare, hence, Hugo Bedau adds that usually it is essential to the dissenter's purpose that both the government and the public know what he intends to do. This implies that “if a person publicizes her intention to breach the law, then he provides both political opponents and legal authorities with the opportunity to abort her efforts to communicate”. (Bedau:1991:206). This is to say that civil disobedience is more often than not public act and for Rawls, it is one of the essential features.

It is a Nonviolent Act

Akin to the fact that civil disobedience is a public act, Rawls maintains that it is a nonviolent act. Hence, he says:

It tries to avoid the use of violence, especially against persons, not from the abhorrence of the use of force in principle, but because it is a final expression of one's case. To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. (Rawls: 1971:366).

Civil disobedience involves nonviolent resistance to unjust laws. Rawls maintains that civil disobedience “expresses disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof.”(Rawls: 1971:366). Rawls gave no room for violence in his civil disobedience. Yet civil disobedience is giving voice to conscientious and deeply held convictions; while it may warn and admonish, it is not itself a threat.

It is a Conscientious Act

Civil disobedience is not undertaken out of selfish interest. It must be done for the common good and out of sincere moral motivation with the best interest of the society and law at heart. Thus he argues:

The law is broken, but the fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct. This fidelity to law helps to establish to the majority that the act is indeed politically conscientious and sincere, and that it is intended to address the public's sense of justice.²

It is a Political Act

Civil disobedience is a political act not only in the sense that it is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally. It does not appeal to personal morality or religious doctrines, though these may coincide with and support one's claim. However, civil disobedience cannot be grounded solely on group or self interest, rather, “one invokes the commonly shared conception of justice that underlines political order” (Rawls: 1971:366).

It is aimed at Changing the Law

Civil disobedience is a practical tool which aims at elimination of the unjust laws and the restoration of justice. Hence, Rawls states:

In a reasonable just democratic regime, there is a public conception of justice by reference to which citizens regulate their political affairs and interpret constitution. The persistent and deliberate violation of the basic principles of this conception over any extended period of time, especially the infringement of the fundamental equal

liberties, invites either submission or resistance. (Rawls: 1971:366).

By engaging in civil disobedience, a minority forces the majority to consider whether it wishes to have its actions construed or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority. This, nonetheless, leads to changes in the law.

Justification of Civil Disobedience

By way of justifying civil disobedience, John Rawls mapped out some reasonable conditions for engaging in it and maintains that these conditions should be taken as presumptions. That is why he says “no doubt there will be situations when they do not hold, and other arguments could be given for civil disobedience.” (Rawls: 1971:366). These conditions include:

- Objects of civil disobedience
- Last resort
- Political alliance.

Objects of Civil Disobedience

Rawls considers the kinds of wrongs that are appropriate objects of civil disobedience. He maintains that civil disobedience is a political act aimed at removing injustice in a ‘near just society’ or a free society, thereby addressing the sense of justice within the society. He asserts that these objects of civil disobedience are serious infringements of the principle of equal liberty and violations of the principle of fair equality of opportunity. He states that: “for this reason there is a presumption in favor of restricting civil disobedience to serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity.” (Rawls: 1971:372).

Furthermore, Rawls maintains that when the minority is denied certain rights, such as, to vote or to hold to own property and to move from place to place, or when certain religious groups are repressed and others denied various opportunities, then these injustices may be obvious to all. Moreover, since the violation of the principle of equal liberty appeals to political order, “the violation of the principle of equal liberty is, then, the more appropriate object of civil disobedience”.(Rawls: 1971:373). This is as a result of the fact that “this principle defines the common status of equal citizenship in a constitutional regime and lies at the base of the political order.” (Rawls: 1971:373). Evidently speaking, when this is fully honored, Rawls maintains that “the presumption is that other injustices, while possibly persistent and significant, will not get out of hand.” (Rawls: 1971:373).

Last resort

According to Rawls this is the second condition for justifying civil disobedience. He postulates that if all appeals have been made to the political majority in good faith and that they have failed, the legal means of redress have been exhausted, yet the government still remains immovable and apathetic, and further attempts may be thought to be fruitless, then civil disobedience is a necessary last resort. He therefore submits thus:

We may suppose that the normal appeals to the political majority have already been made in good faith and that they have failed. The legal means of redress have proved of no avail...Attempts to have the laws repealed have been ignored and legal protests and demonstrations have had no success. Since civil disobedience is a last resort, we should be sure that it is necessary. (Rawls: 1971:373)

From the above citation, it can be seen that civil disobedience is a tool for social change and serves as a last resort for eliminating the unjust laws in the state. Nonetheless, Rawls acknowledges that this condition may in some extreme cases be too mild and hence is presumptuous.

Political Alliance

Rawls maintains that a minority having fulfilled the above two conditions is justified to engage in civilly disobedient act. Moreover, he insists that prudence must be applied in one's pursuit of justice. For instance, assuming two or more groups have fulfilled all conditions to engage in a civilly disobedient act, and that they are all oppressed differently and are all willing to fight injustice, what will then be the situation in that state? Rawls argues that there will be serious disorder and anarchy in the state. This serious disorder in the state goes contrary to the justice they are clamoring for. What procedure should now be undertaken? It is in the event like this that Rawls advocates "for a cooperative political alliance of the minorities to regulate the overall level of dissent." (Rawls: 1971: 373). Political alliance calls for political understanding among the minorities suffering from different injustices. It calls for cooperation among the different groups to avoid anarchy in the state. Hence, he argues that "they can meet their duty to democratic institutions by coordinating their actions so that while each has the opportunity to exercise their rights, the limits on the degree of civil disobedience are not exceeded." (Rawls: 1971:375). However, Rawls admits that "an alliance of this sort is difficult to arrange; but with perceptive leadership, it does not appear impossible."(Rawls:1971:375).

Roles of Civil Disobedience in a Democratic Society

According to Rawls, the third aim of a theory of civil disobedience is to explain its role within a constitutional system and to account for its connection with a democratic polity. He still maintains that the society in which civil disobedience accounts for is a 'near just' one and which by implication has some form of democratic government, under which serious injustices may nevertheless exist. In such government, the principles of justice are for the most part publicly recognized as the fundamental terms of willing cooperation among free and equal persons. However, Rawls did not give explicit roles of civil disobedience, but from his discussion on it, the roles of civil disobedience can be outlined. These roles include the following:

- It addresses the sense of justice.
- It is a stabilizing agent.
- It maintains and strengthens just institutions.

- It is a part of democratic process.
- It is an awareness strategy.
- It is an instrument for change.

It Addresses the Sense of Justice

The primary role of civil disobedience is to address the sense of justice. Its aim is the elimination of injustices and promotion of justice in a free society. In line with this Rawls explained that:

By engaging in civil disobedience, one intends, then, to address the sense of justice of the majority and to serve fair notice that in one's sincere and considered opinion the conditions of free cooperation are being violated. We are appealing to others to reconsider, to put themselves in our position, and to recognize that they cannot expect us to acquiesce indefinitely in the terms they impose upon us. (Rawls: 1971:383).

The implication of the above is that the masses need not submit to injustice. Civil disobedience is an effective tool to curb injustice and reinstate justice in a democratic society.

It is a Stabilizing Device

Rawls maintains that civil disobedience is one of the stabilizing devices of a constitutional society, although by definition an illegal one. If there are no checks and balances by the masses in a democratic society, then oppression of the minority will be on the increase. To some extent, civil disobedience does these checks and balances. Rawls states that "a general disposition to engage in justified civil disobedience introduces stability into a well-ordered society, or one that is nearly just." (Rawls: 1971:383)

It Maintains and Strengthens Just Institutions

Rawls posits that along with such things as free and regular elections and an independence of the judiciary empowered to interpret constitution, "civil disobedience used with due restraint and sound judgment helps to maintain and strengthen just institutions." (Rawls: 1971:383). Due to the knowledge of civil disobedience on the part of the law makers, they tend to make laws that are in tandem with the fundamental human right. By doing so, civil disobedience maintains a just institution.

It is a Democratic Process

There is no doubt that civil disobedience is an integral part of democratic expression. It is equally a way of enhancing democracy. To this effect Rawls maintains that: "Civil disobedience as defined does not require a sectarian foundation but is derived from the public conception of justice that characterizes a democratic society. So understood a conception of civil disobedience as part of the theory of free government. (Rawls: 1971:385). From this one can see that civil

disobedience is simply a democratic process to change and correct bad government policies. That implies that it occurs only in a democratic government and not any form of government.

It is an Awareness Strategy

Civil disobedience not only thrives to eliminate injustices but also creates awareness to the uninformed masses concerning the unfair and unjust situation in the state. Rawls states that in civil disobedience, “we are appealing to others to reconsider, to put themselves in our position”. (Rawls: 1971: 383)

It is an Instrument for Change

One of the features of civil disobedience states that it aims at changing the law. It is therefore a vehicle for effective change. In a democratic government, unjust laws are not to be tolerated. Laws that are detrimental to the fundamental human rights should not be obeyed. It is the duty of the masses to make these changes. If all necessary procedures have been taken and the government seems adamant; then the masses have no other option than to engage in a civilly disobedient act in order to achieve the desired change. Rawls posits that “the final court of appeal is not the court, nor the executive, nor the legislature, but the electorate as a whole.” (Rawls: 1971:390).

Conclusion

This paper has tried to elucidate the tenets of John Rawls’ theory of Civil Disobedience and its application in a democratic society. However, it is worthy of note that John Rawls is not alone in this endeavour. This explains why Civil Disobedience should be given wide acceptance. Some of those other advocators of civil disobedience include Mahatma Gandhi, Martin Luther King Jnr., David Thoreau, etc. From the point of view of John Rawls, one can see that he gave a moderate view on civil disobedience. This is so because for him, Civil disobedience is a last resort in a democratic regime; it is applied where the legal means of redress have all failed. Thus, this paper postulates Civil disobedience is not disobedience in a strict sense of it; it is a moral weapon to fight injustice so that with a proper application and practice of Civil Disobedience, democratic societies will be better governed.

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