

The democracy and civil disobedience law constitutional administrative essay

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It is noteworthy that civil disobedience, though an unlawful act, is different from a revolution and conscientious refusal. Firstly, civil disobedience does not seek to overthrow the government but to express their discontentment and resentment towards certain law or situation in an unlawful manner. Secondly, in conscientious refusal, individual demands exemption from a legal obligation considered repugnant to its conscience; and he or she do not need others to follow likewise. So, conscientious refusal is an act of an individual that does not address the majority idea of justice. Therefore, the conception of " political act" of civil disobedience underscores the differences between the three. As a " political act", the justification of civil disobedience is always questioned; I want to show that the functions of civil disobedience of the democracy society in the context of democracy, rule of law, and judicial system can sometime morally justified the act of civil disobedience. The moral justification of civil disobedience should be base more on the intentions and motivations rather than only the act itself.

Democracy and civil disobedience

The term " democracy" originated from Greek, which means " rule of people" or " people power". Democracy in ancient Greek was a direct but restricted democracy. Citizens would participate in decision making personally, but only certain group of citizens (free men) were allowed, that excludes women and slaves. To a certain extent, democracy than did not execute the intentions or connotations of " democracy", it's more of a rudiment of the system. Transiting into the modern era, there are more stipulations or provisions added to the idea of democracy. Democracy are shaped into different forms nowadays, there are direct, representative, constitutional,

presidential, parliament etc. The fundamental contents of modern democracy constitute of rights to life, fair trials, vote, freedom to speech, thought, religion and equality of people etc, no matter which forms of democracy is selected in the democratic country. There are lots of complications in the constitutional of democracy, but most importantly, democracy ensures equality of people, regardless of race, gender, status. Democracy ensures equality of people, and the basic rights of all citizens, but it did not always ensure the justice of the outcome of decision making, as democracy accepts "majority rule" as the method of deciding. Democracy is the essential attribute of the modern state, and civil disobedience, though legally unjustified, help to shapes democracy. Firstly, civil disobedience prevents the democracy from turning into absolute democracy, where the majority will make all the decisions and left the minority's will unheard. This would further prevent future conflicts between the people and the government. Secondly, it helps the government to review and examine the applicability and suitability of the current law. In the true case of civil disobedience, it not only reflects the will of the people, but also reflects the problems of the system. Thirdly, it makes us rethink the values and contents of democracy. The actual execution or the structures of democracy aren't perfect, civil disobedience, to a certain extent helps to "reconstruct democracy" (Power, 1972).

Rule of law and civil disobedience

One of the characteristic of rule of law in democracy society is procedural justice. Procedural justice concerns the impartialness and transparency of the process of decision making, mostly use in trials. Procedural justice judges

the cases in strict accordance with the provisions of the law; the law does not consider the actual consequences of the judgement. Hence, it is possible that as justice and impartial as the trial can be, it contain or produces injustice. It resulted in the questioning of the value of substantive justice within procedural justice, as despite of impartialness practice in procedural justice, there are lots of cases of miscarriages of justice. Here is not to argue that whether procedural justice is more important than substantive justice or vice versa, as both are as vital when we talk about justice. If we only attach importance to the procedure of justice, we will be deprived of real justice in certain situation, which sometime may resulted in miscarriages of justice. On the other hand, if we only focus on the substantive justice, which tend to be objective at times; it is impossible for law to establish a form of authoritativeness and equality in the society. Civil disobedience here constitute as a reminder to the government that we should not only put emphasis on procedural justice if the actual purpose of procedural justice is to establish justice; instead consider and rethink the relation and connections between both procedural and substantive justice and how to strike a balance between them. Civil disobedience here is not trying to diminish the important of procedural justice, but to emphasis on the purpose of procedural justice.

Judicial system and civil disobedience

It is impossible to separate policy, law and morality. Constitutional law and political morality are closely link, constitutional law validate and display the values of political morality. Many who are against civil disobedience argue that if civil disobedience is acquiescence, it will become a frequent issue,

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cause a lawless state. Dworkin counter the perspective, he state that not only will civil disobedience cause minimal harm to the public, but rareMany deem that civil disobedience is advocating a privilege to not abiding to lawThere is no evidence that civil disobedience, even when tolerated by legal officials, leads to an increase in lawlessness (Suber, 1999).