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civil disobedience too
restrictive?



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Civil disobedience is a term first coined by American philosopher Henry David Thoreau in the mid 19th century to describe the act of breaking a law as an act of protest against unjust or immoral actions, in his case the refusal to pay taxes in protest of the immoral institution of slavery. The theory of civil disobedience has been the subject of a great level of intrigue in the academic world, with John Rawls's theory of civil disobedience being perhaps the most extensive of the modern interpretations. Rawls's theory of civil disobedience places strict criteria for justifying the use of civil disobedience. These strict criteria have led many commentators to question whether Rawls's theory is in fact too restrictive, as it can be seen to exclude some very worthy cases from being justified, however it can be seen that there is merit in restricting what justifies civil disobedience so as not to divulge society into anarchy.

In order to address the question of whether John Rawls's theory of civil disobedience is too restrictive, an examination of Rawls's theory must first be held. John Rawls starts by defining 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 government" (Rawls, 1971). The conditions that Rawls' places for the use of civil disobedience as well as the criteria for its justification also presents one with the question of whether his theory is in fact too restrictive. The first of these conditions required for the use of the theory of civil disobedience is that it is designed only for a " near just society", requiring a democratic regime (Rawls, 1971).

Although on the surface this appears to support the claim that Rawls's

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theory is too restrictive, as will be discussed later, this condition is based in good practical standing. Tied into this condition is the belief that the theory of civil disobedience can only be applied in a society whose citizens recognises and accepts the legitimacy of the constitution. Rawls theory of civil disobedience is deeply rooted in the concept of justice and assumes that in a reasonably just democratic regime citizens regulated their political affairs to a public conception of justice (Rawls, 1971).

The criteria that Rawls places on justifying civil disobedience leads one to question whether his theory is too restrictive. For Rawls in order to justify the use of civil disobedience there needs to be a violation of the first principle of justice, the principle of equal liberty (Rawls, 1971). The emphasis placed on violations of equal liberty should not come as a surprise to the reader of Rawls. Rawls is a liberal thinker and henceforth his primary emphasis is to be based on the concept of liberty. The problem that arises from this focus on the violation of equal liberties in justifying civil disobedience is that it appears not to justify the use of civil disobedience for other evils, such as environmentalism. There would be very few people who would argue to disagree that environmentalism is not a major issue in today's society, especially in the west where a certain level of equality has been achieved. By only justifying civil disobedience to violations of liberty, it can be argued that Rawls theory is too restrictive and only focuses on issues concerning equality and liberty. This is not to say, that Rawls explicitly excludes civil disobedience being justified in the other protest other issues than just violations of equal liberty. Paul Smith remarks that the reason for Rawls apparent lack of justification for the use of civil disobedience to protest other

issues arises from the fact that Rawls theory is part of a theory of justice rather than a comprehensive moral theory. Smith yields the criticism that Rawls theory of social justice has led to his restriction of justifications of civil disobedience (Smith, 2008). For it can be seen that Rawls theory is too restrictive in that it focuses only on issues of oppression of minority groups in a democracy. For Rawls civil disobedience is justifiable in that it stops the immoral violation of minority groups by the elected majority. Furthermore, this emphasises the role of civil disobedience within a democracy. Without the use of civil disobedience to highlight the grievances suffered by a minority group, who is legitimately dominated in the legislative process by the very institution of democracy, there is a susceptibility of democracies to 'legitimately' act immorally supported by their holding of a majority seat.

Another restriction placed by Rawls on what constitutes civil disobedience that can be seen as flawed is his instance that the act is done in public. This is not to say that the act of civil disobedience should not be done in public, but rather to limit acts of justifiable civil disobedience to exclusively public acts is too restrictive. Conducting the act in public does have benefits. For it can be seen that to engage in a public act can serve to enhance the credibility of the cause one is trying to promote as it creates an image of legitimacy; by not conducting the act in secret one is promoting the view that what is being promoted should be acceptable in society and that one should not have to hide it. Rawls argues that the reason this act should be conducted in public is due to it being a form of address to society's sense of justice. A good example of this use of public acts of disobedience can be seen in the nineteen sixties American civil rights movement against racial

segregation led by Martin Luther King. By protesting in public, King hoped to address America's own ideals of freedom and equality (Smith, 2008). However, although it can be seen that it is perhaps beneficial to conduct these acts of civil disobedience in public it can be seen that to limit civil disobedient acts to just public ones can strip other forms of political disobedience of this title. For example, by a Rawlsian definition the first act to be coined civil disobedience, Thoreau's refusal to pay tax in opposition to funding a war which sought to expand slavery, due to its private nature would not be deemed as an act of civil disobedience (Simmons, 2005). Rawls in-fact would term Thoreau's tax refusal as "conscientious refusal" rather than civil disobedience. However, the extent this argument holds up is questionable for it can be seen that Thoreau would have known of arrests taking place in Concord at the time and that his refusal to pay would not go undetected (Lyons, 1998). Regardless of the validity of the argument whether Thoreau's refusal to pay was in-fact an act of civil disobedience, it can be seen to limit acts of civil disobedience to purely public acts places restrictions on otherwise acceptable and effective forms of political disobedience.

Accompanied with conducting the act of civil disobedience in public is the acceptance of the punishment that may result. Rawls remarks that this acceptance of punishment expresses fidelity to law. What is meant by this remark is to emphasise that the act is purely political, an opposition to a specific law not to the institution of law itself (Rawls, 1971). By accepting the punishments, the civil disobedient actors are emphasising to the majority that they are not in contempt of law enforcement itself instead favouring

anarchy, but rather wish to emphasise the immoral nature of one law in comparison to another. For it can be seen that Rawls distinguishes between indirect and direct civil disobedience. The law that is being broken does not have to be directly connected to the law that is being opposed. Furthermore, by accepting the punishment Kent Greenawalt argues that it may also serve as beneficial to the cause that is being promoted as it emphasises the depth of conviction the proponent feels towards promoting this issue and may serve to help convince others of its severity. If one is willing to go to jail for the cause it must be a cause worth fighting for (Greenawalt, 1991). However, it can be seen that there are some clear limitations to the acceptance of legal punishment. By accepting punishment, whether this be incarceration or not, the cause one is fighting for is being considerably slowed down. For it can be seen that by accepting punishment, the strength and momentum built up by the movement could be damaged. Furthermore it can be seen that by accepting the punishments, the government can effectively weaken the movements by incarcerating its leaders and slowing funding.

However, this is not to say that there are no benefits on having restrictions to what constitutes civil disobedience. For it can be seen that there is great merit behind a lot of the criteria proposed by Rawls. The argument proposed by Rawls that civil disobedience is to be taken up only after all legal forms of protest have been expired is important in ensuring that the institutions of society are upheld so that it does not lead to a total breakdown of the respect for law and the constitution (Rawls, 1971). Rawls argues rightfully that civil disobedience is the last option in attempting to pursue change. It can be seen that if no such limitations were placed, anarchy would pursue

with many non-political disobediences using the shelter of civil disobedience to justify their otherwise illegal non-political activities. Furthermore, there is undoubtedly merit in the promotion of non-violent means, for it can be seen that to justify the use of violence to pursue political change would be reminiscent of the barbaric pre-civilised society whereby change was instituted by fighting battles and a return to a society whereby the strongest strive. Although there may appear to be some credit in the utilitarian standpoint that the end justifies the means, as proposed by Peter Singer (Singer, 1993), in practice this would ultimately lead to a breakdown in the institutions of the modern society upon which we have become so dependent on.

Although, as has been presented throughout the essay, there are undoubtedly shortfalls to placing such extensive restrictions and criteria on what constitutes a justifiable civil disobedient act, in theory the criteria allows for an insurance that what is being done is morally acceptable and within the restrictions of a civilised society. For civil disobedience should not be viewed as the primary way of bringing about change but instead provides a means for enacting change where democracy fails.

In conclusion, it can be seen that to argue that Rawls's theory of civil disobedience is too restrictive is not entirely valid. Although in some cases it may appear that the criteria placed seem excessive and counterproductive to the achievement of a movement's end, they place restrictions to ensure that anarchy does not ensue and that the institutions that uphold society are maintained.

Bibliography

1. K. Greenawalt, ' Justifying Nonviolent Disobedience' in H. Bedau (ed.) *Civil Disobedience: in focus* (London: Routledge, 1991)
2. D. Lyons, ' Moral Judgement, Historical Reality, and Civil Disobedience' in *Philosophy and Public Affairs* , vol. 27 (no. 1) (1998) pp. 31-49
3. J. Rawls, ' Definitions and Justification of Civil Disobedience' in H. Bedau (ed.), *Civil Disobedience: in focus*. (London: Routledge, 1991)
4. P. Smith, *Moral and Political Philosophy: Key Issues, Concepts and Theories*. (London: Pelgrave Macmillan, 2008)
5. P. Singer, *Practical Ethics* , 2nd ed. (Cambridge: Cambridge University Press, 1993)
6. A. J. Simmons, ' Civil Disobedience and the Duty to Obey the Law' in R. J. Frey and C. H. Wellman (eds.), *The Blackwell Companion to Applied Ethics*. (Oxford: Blackwell Publishing, 2005)