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Civil Disobedience and Justice: An Appraisal of Hannah Arendt's concept of "Power Lying in the Street"

Aja, Ngozi Chukwuemeka

Abstract

Using the method of textual analysis, this paper articulated the relationship between civil disobedience and justice in appraising Hannah Arendt's concept of "power lying in the street." According to Hannah Arendt, power lying in the street occurs when the existing political authority loses its power due to wantonly disobedience to its laws. . The disobedience causes erosion of authority such that the revolutionist can cease power, thereby ousting the existing political authority. This paper argued that though civil disobedience has legal backing, it can turn violent thereby exhibiting characteristics of criminal disobedience and revolutionary upheavals, thereby occasioning power lying in the street. The situation of power lying in the street bears severe consequences for the polity as it could lead to war and revolution. Hence, preventing it should be the priority of every constituted authority. However, relying on the constitutional restraints on the exercise of the right to civil disobedience may not be effective in preventing power lying in the street. Power lying in the street can only be effectively prevented if civil disobedience itself is prevented. Since the major cause of civil disobedience is injustice, it is recommended that constituted authorities, laws and policies reflect the idea of perceived justice of the society, which if neglected, civil disobedience is justified. Therefore, constituted authorities should avoid measures that can amount to perceived injustice and negotiate with citizens before civil disobedience is contemplated.

Keywords: disobedience, civil disobedience, justice, power

Introduction

The attraction for this paper is the upsurge in civil disobedience witnessed in various parts of the world in recent time. The Black Lives Matter peaceful protests in America, the #EndSARS peaceful protests in Nigeria, and many more, show the extent to which people can exercise the right to civil disobedience. The right to protest itself is anchored on human rights entrenched as fundamental rights in most state constitutions, (Universal Declaration of Human Rights, 1948). With the method of textual analysis, this paper is to articulate the concept of civil disobedience relative to the concept of justice and the situation of power lying in the street, a necessarily results from civil disobedience. Questions to be considered include: What is the nature of civil

disobedience? 'How does the conception of justice aid the understanding of civil disobedience'? What are the consequences of power lying in the street, and how can it be prevented?

Civil Disobedience

Disobedience, generally, is a part of human nature and seems to be as old as humanity itself. Various forms of disobedience exist: children disobey parents; wife disobeys husband and husband disobeys wife; servants disobey masters, and employees disobey employers. Even creatures seem to disobey their creators as is the case with the biblical story of Lucifer (Satan), as well as Adam and Eve. Civil disobedience is an organized form of disobedience reflecting citizen's assessment of the authority of government. The uncertainty concerning the limit of state authority over the individual most often leads to conflict which ultimately results to the individual in one way or the other disobeying the laws of the state. Civil disobedience is one way citizens can withdraw their consent from the state which according to Locke, has fiduciary authority over the individual. (Locke, 1990:36).

Black's Law Dictionary defines civil disobedience as, "A deliberate non-violent act of law breaking to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or morality", (Black, 2010:236). Civil disobedience is therefore, peaceful in nature and is justified on the basis of citizens' doubt about the legitimacy and morality of the law or policy of their state. Civil disobedience can result from citizens' attempt to resist a law or policy seen as illegal, or, believed to be abhorrent to the moral conscience of citizens. Thus, legitimacy and morality form the grounds for justification of civil disobedience. Generally, no law would provide for disobedience because the morality of law derives from the fact of its obedience. Hence, legal obligation is usually seen as absolute, especially, by the legal positivist, (Austin, 1985:198). Therefore, civil disobedience is hardly provided for by positive law. Thus, justification for civil disobedience is usually sought from the natural law theory. However, certain constitutional provisions justify civil disobedience.

One of the ways constitutions justify dissent is right of ballot box and the election of officials. Another is the right to make use of the normal channels of speech, press and assembly. Constitutional right to dissent and opposition through the channels mentioned may include participation in demonstrations, parades and picketing. These are forms of protest. Demonstration, if a protest, involves a public, organized meeting, against somebody or something. Parade if in the form of a protest, is a procession showing opposition to somebody or something. Picketing involves the act of standing outside a

particular place to protest about something. These forms of protest are all non-violent. Thus, they are clear examples of acts of civil disobedience. Hanna Arendt, sees civil disobedience as a feature of constitutional democracy. According to her, “civil disobedience arises when a significant number of citizens have become convinced either that the normal channels of change no longer functions or that they no longer function properly” (1972:55). Normal channels of change include the ballot box and the legislative functions of repealing and amending laws. Thus, Arendt sees civil disobedience as the last resort when individuals fear that the normal channels of change fail.

Positive law, by entrenching human rights in state constitutions in the form of fundamental rights, also justifies civil disobedience. The 1999 Constitution, by providing for the civil liberties, especially, the fundamental rights to freedom of expression and freedom of movement, actually justifies civil disobedience, (Sections 39, 40). Most cases decided on the bases of these constitutional provisions such as, *Chike Obi v. DPP* {(1961)1 ANLR 186} and *Arthur Nwankwo v. The State*, {(1985) 6 NCLR 228}, centre on the publication of seditious information and the right in question is the right to freedom of expression as provided by section 36 of the 1979 Constitution of Nigeria and section 39(2) of the 1999 Constitution. No case decided on the basis of these sections of the constitution is strictly on civil disobedience, probably because non-verbal or symbolic expression is not expressly mentioned in these provisions. That does not however, imply that the reading of the sections should have nothing to do with such expression. When the First Amendment to the Bill of Rights of the United States of America was ratified in 1791 its speech and press clauses never expressly provided for non-verbal forms of expression. Two hundred and eight (208) years later, Robert M., O’Neil (1999) noted that:

There have also been extensions of first amendment protection beyond words in any form—especially, to nonverbal or symbolic expression. While we can never be certain such an extension would meet with favour from the fanners, we may assume that a generation quite familiar with the Boston tea party and other acts of symbolic protests would not have wished to confine their charter of liberty to words spoken or written on paper, (p.48).

There are reasons to believe that what O’Neil noted regarding the American Bill of Rights, also applies to the Nigerian Constitution. The American Constitution from which the Bill of Rights emanated and the Nigerian Constitution are designed for a democratic society.

It is imperative to believe that civil disobedience is justified by the con-

stitutional provisions on the fundamental rights to freedom of expression and freedom of movement, for even in incidents of civil disobedience, law enforcement agents such as the police and the civil defence, are urged to protect peaceful protesters, (Police Act 2010, section 10). It is only when the protest turns violent that such agencies are allowed to distort and arrest protesters. However, the constitutional limits to the fundamental rights (section 46 of the Constitution), also applies to civil disobedience. Hence, the civil disobedient remains within the ambit of the law insofar as he does not by the act breach public peace.

Justice

The concept of justice used in this study is what Aristotle (1990), identified as political justice. According to him, “for the politically just depends upon law and applies to people who have a natural capacity for law, that is, people who have the requisite equality in ruling and being ruled” (1134b). He divides political justice into two, natural justice and legal justice. On natural justice Aristotle says that what is by nature just has same force everywhere and does not depend on what we regard or not regard as just (Aristotle 1134d). The natural law has the same validity everywhere unlike conventions. Concerning legal justice, Aristotle writes:

In what is just by convention, on the other hand, it makes originally no difference once it is fixed ... and everything enacted by decree. Now, some people think that everything just exists only by convention, whereas they see that notions of what is just change (1134e).

Legal justice is subject to change. According to Winthrop (1978), a theory of justice presents standards by means of which we can distinguish just from unjust actions. This is first met by human laws and then by natural law, articulating the universal principles underlying every just legal order.

Human laws or positive laws, establish the principles for legal justice. It has been argued by legal theorists like H. L. A. Hart and Ronald Dworkin, that legal justice, for various reasons, sometimes turn out to be manifest injustice. Hart (1961) argued that the imperfections of human nature, especially, with respect to the use of language, can lead to wrong interpretation of positive laws such that their applications result to injustice. He advocated that where such injustice is perceived, in order to achieve justice, positive law should give room for the application of appropriate moral principles through judicial discretion. The justice Hart refers to, though deriving from moral principles, according to him, is still legal justice. Though the existence of natural justice is yet to be proved, the idea derives from the fact of perceived jus-

tice of members of the society. It is an undeniable fact that people can reach a consensus on what they think justice would be in every particular situation that involves the application of positive law. If the application of positive law fails to achieve the perceived justice, then members of the society see the positive law as perpetrating injustice.

The idea of perceived justice of the society is anchored on the natural law theory. Dworkin, a natural law theorist, argued that every positive law is inherent with perceived injustice. Therefore, he maintained that for any positive law to be applicable, it must pass the test of perceived justice of the society, (Dworkin 1978). With the idea of perceived justice of the society comes such conceptions of justice as: Substantive justice - closely associated with rights, that is, with what individuals can legitimately demand of their Government (e.g. with respect to the protection of liberty or the promotion of equality), irrespective of what positive law provides; and, Distributive justice or social justice- fairness of distribution of resources. It is generally believed that when the idea of perceived justice is undermined, legal justice may result but would be manifest injustice. When this happens, individual members of the society can embark on acts of disobedience against the law, including civil disobedience.

Power Lying in the Street

'Power lying in the street' is a metaphor used to describe a situation of lawlessness depicting the inability of government to maintain law and order in the polity. It was first used by Hannah Arendt to describe a situation inimical to the purpose of civil disobedience, but which results from it turning it into an agent of revolution. She argued that power is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together" (Arendt, 1970:44). The decisive factor here is the degree of weakness of the current government. Arendt believes that revolution is a consequence of the disintegration of power in the state. According to her, when the government does not have enough power, when its power breaks down, revolutions become possible. Thus she argues "But disintegration [of power] often becomes manifest only in direct confrontation; and even then, when power is already in the street, some group of men prepared for such an eventuality is needed to pick it up and assume responsibility" (Arendt, *ibid*, p. 49). Situations that amount to power lying in the street include: the act of civil disobedience itself; criminals hijacking peaceful protests of the civil disobedient thereby making it impossible for the civil disobedient and the law enforcement agents to control the protest; law enforcement agents failing in

their duty to control the peaceful protest (protecting the civil disobedient, joining in the civil disobedience). Anna Arendt argues that:

From the Jurist's viewpoint, the law is violated by the civil, no less than the criminal disobedient, and it is understandable that people, especially if they happen to be lawyers, should suspect that civil disobedience precisely because it is exerted in public, is at the root of the criminal variety all evidence and arguments to the contrary notwithstanding, for evidence "to demonstrate that acts of civil disobedience lead to a propensity toward crime" is not "insufficient" but simply nonexistent (pp.73-74).

The tendency to blame civil disobedience for lawlessness and criminal activities that may accompany certain civil disobedient activities stems from helplessness of the authority and its law enforcement agents. These side effects are never part of civil disobedience for it seeks persuasion as a means of convincing the majority. Civil disobedience differs greatly from criminal disobedience for the former eschews violence, (Nnamdi 2011). Whenever civil disobedience is associated with violence as direct consequence, it loses its flavour. Arendt further observes that:

Moreover, while civil disobedience may be considered an indication of a significant loss of the law's authority (though it can hardly be seen as its cause, criminal disobedience is nothing more than the inevitable consequences of a disastrous erosion of police competence and power, (p.74).

Civil disobedience, unlike criminal disobedience, occurs within the ambit of the law, as the last resort for those wishing to reform the law, when every possible and imaginary channel of reformation seems to have failed.

Civil disobedience, signifying breach of promise in a society of contract, is a sign of loss of power and authority. The civil disobedient, through the exercise of consent in voting and legitimizing the government, exist as stakeholder in the power process. Therefore, in rejecting laws and policies, the civil resister engenders power lying on the street. Hanna Arendt, (1972), rightly notes that:

If history teaches anything about the causes of revolution and history does not teach much, but still teaches—it is that disintegration of political systems precedes revolutions, that the telling symptom of disintegration is a progressive erosion of governmental authority, and that this erosion is caused by the government's inability to function properly, from which spring the citizen's doubts about its legitimacy. This is what the Marxists used to call a "revolutionary situation" which

of course, more often than not does not develop into revolution (pp. 69-70).

Withdrawal of consent means that the authority of government is questioned and the government could be removed. Thus, the situation of power lying on the street is a necessary outcome of civil disobedience. The civil disobedient do not inter alia aim at revolution. In most cases, the civil disobedient do not even comprehend the revolution until it happens. Hence revolution could be against the wish of the civil disobedient, the revolutionist may only take advantage of the situation of power lying on the street, occasioned by the activity of the civil disobedient. A peaceful revolution can result from civil disobedience. However, when law enforcement agents fail in their duty to guide and protect the civil disobedient, common criminals can hijack the situation causing wanton destructions, thereby intensifying power lying on the street. The revolutionist, through violence such as coup d'etat, can forcefully, depose the existing government.

Civil Disobedience and Justice

Conscientiousness, the major characteristic of civil disobedience, signifies the seriousness, sincerity and moral conviction with which the civil disobedient breaches the law. The civil disobedient is usually confident that the breach of law is demanded of him not only by self-respect and moral consistency but also by his perception of the interest of the society. Through the act of civil disobedience, attention is drawn to laws or policies that are believed to require reassessment or rejection (Nnamdi 2011:32). In addressing themselves to the public, civil resisters attempt to express their position that, the principles of justice governing co-operation amongst free and equal citizens, have been disrespected or jettisoned by policy-makers. The civil disobedient recognizes the need for order and respect for the law, but refuses to compromise justice for political expediency. Though a wide range of legitimate values such as transparency, security, stability, privacy, integrity and autonomy, can motivate the civil disobedient, the major cause of civil disobedience is perceived injustice. The activism of Martin Luther King Jr., for instance, was motivated by his religious convictions, his commitments to democracy, equality and justice to undertake protests such as the Montgomery bus boycott (King 1968).

The demand for a theory of justice also indicates that the best, or the good, might be the standard in the light of which laws and conventions should be evaluated. Law, albeit positive law and conventions, points to legal justice which comprises of formal justice and procedural justice. The *Cam-*

bridge Dictionary of Philosophy (1999), lumps formal justice and procedural justice together in its definition of formal justice as “the impartial and consistent application of principles, whether or not the principles themselves are just” (p.395). The provision of Chapter Two of the 1999 Constitution could be used to illustrate the requirement of formal justice. The chapter provides the modalities for administering the Fundamental Objectives and Directive Principles of State Policy, (chapter 2). Most contested of the provisions is the principle of Federal Character, especially in terms of educational and employment opportunities. Based on this principle, states in Nigeria are divided into educationally privileged states and educationally less privileged states. Also based on the principle, in terms of available federal jobs, equal numbers of qualified applicants are to be employed from the federating states. Federal institutions of learning are to observe quota systems in order to cater for the educationally disadvantaged states. Once these provisions of the constitution are strictly applied, justice (legal justice) will obtain.

However, nothing in the provisions of the constitution raises such questions as: ‘if federal institutions should observe quota systems, what happens to numerous qualified candidates from the so-called educationally advantaged states, who, due to quota systems are denied admission into institutions of their choice’? Likewise, ‘if equal numbers of qualified applicants for federal jobs are employed from the states, what is the plight of numerous qualified applicants from the educationally advantaged states, who, having obtained quality education that can guarantee employment, are neglected in favour of even less qualified applicants from the so-called disadvantaged states’? That these questions are not contemplated by the provisions of the constitution, shows that legal justice cannot determine how just the law itself is. It is pertinent to note that the question of how just the law itself is, is the bases of civil disobedience. Using the exemplary case, people from the educationally advantaged states, denied admissions because of quota systems, citizens who are qualified for job opportunities but are not allowed because others from other states who may even be less qualified, have to be considered, will see the law itself as unjust. Such people are most likely to embark on civil unrest aimed at reforming or changing the law. The idea of justice this group of people share is no longer legal or formal justice but natural justice (substantive justice, social justice). It could be argued that the constitutional provision on federal character is based on the idea of social justice because it appears a realization of the requirements of affirmative action. Yet, strict application of that constitutional provision necessarily results to injustice. Not only the group involved, but all members of the society will possibly see as injustice a situation where less qualified citizens will be employed while

more qualified citizens will be rooming the streets. It is in like manner that people see as perceived injustice, exploitations of all kinds. No positive law will expressly provide for such perceived injustice, however, the apprehension of the injustice moves people to seek for reformation of the law through various means, including civil disobedience.

John Rawls in his theory of justice integrates civil disobedience into the liberal-contractarian philosophy of justice. He grounds justice in the two principles namely: those of equal basic liberty of the citizens and those of equality of opportunity, (Rawls 1972). However, a society built on these principles, is not a perfectly just society but only a nearly just society. Although it is a well-ordered society, serious violation of justice can and do occur in it. This imperfect character of the justice in the liberal society places the citizens in a moral quandary. There is, on the one hand, the obligation to obey law enacted by a legitimate government; yet, there is the duty to oppose the injustices of particular laws and the right to defend the basic liberty of citizens, (Nnamdi 2011:38). That is to say the obligation to obey the law in a liberal society is relative, not absolute because one has the prior right to defend one's basic liberty and the duty to oppose injustice. Hence Rawls 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. By acting in this way one addresses the sense of justice of the majority of the community and declares that in one's considered opinion is the principle of social co-operation among free and equal men are not being respected, (Rawls 1972:364).

Civil disobedience affords the citizens opportunity to disobey an unjust law, but only within the bounds of fidelity to the constitutional order. Thus, the civil disobedient does not aim at ousting the political institutions that derive legality and legitimacy from the existing constitution.

Preventing the Situation of Power Lying in the Street

The fact that once civil disobedience occurs, a fraction of stakeholders in the power process withdraws its allegiance to the government makes the act a potential weapon for eroding state authority. With civil disobedience taking place, power is already lying in the street. It then depends on how that power is managed. If eventually, civil disobedience act is hijacked by criminal disobedient, the ability of the civil disobedient to remain within the bounds of the constitutional order will be weakened. When this happens, power can no longer be tamed and it may be difficult to return to status quo.

The situation of power lying in the street presents undesirable consequences for both the civil disobedient and the entire public. However, it seems to affect mostly, the constituted authority. Disobedience, whether civil or criminal, is always unsettling and creates the sense of insecurity in the polity. In civil disobedience, legal obligation is eroded and law enforcement agents appear helpless before crimes and criminals of all sorts. This is the time that power lies on the street and whoever summons courage picks it up and a revolution ensues. Every state guards against such situation and that is why there are restrictions to the extent citizens can exercise the fundamental rights (1999 Constitution of Nigeria S.46). Despite such restrictions, civil disobedience continues to result to situations that amount to power lying on the street. Though, most often, the situation of power lying on the street rarely germinates into full-fledged revolution, it nevertheless carries with it certain undesirable consequences. It is in such situation that lives are lost, properties looted or destroyed. Therefore, it behoves every political organization to prevent such situation. The mistake of political actors is the belief that the restrictions on fundamental rights, which are informed by legal justice, can dictate for the civil disobedient.

One of the reasons for civil disobedience is government's inability to satisfy the needs of the governed. Take the provision of the Nigerian constitution as explained above, the Fundamental Objectives and Directive Principles of State Policy require that all organs of government and, all persons or governmental authorities are constitutionally obliged to conform to the provisions. However, no right is conferred on the individual to demand for the securing of the amenities specified. B.O. Nwabueze (1993) laments that:

Regrettably... the constitution provides no machinery for ensuring such compliance, and expressly excludes the use of courts for the purpose, even to the limited extent of a mere declaration by a court that the government is or is not complying with the principles (p. 157).

The government's attitude in not complying with the directives spurs civil disobedience. Since citizens cannot rely on the law to bring government to adhere to these principles, civil disobedience may turn out to be the only option available to them.

Another cause of civil disobedience is perceived injustice. Many civil disobedient individuals have given this as a reason for embarking on the act. As Nwabueze further observes:

An unjust society cannot maintain its unity and cohesion, because it cannot arouse in its members a strong enough feeling of loyalty and

allegiance, injustice not only alienates the individual's loyalty, what is worse, it also arouses him to disaffection, (p.140).

The feeling of dissatisfaction in the way and manner in which the law is administered could lead to civil disobedience. Some of the protest marches observed around the world today are based on accusations of favouritism and injustices of the law. The protests being organized by the Members for the Indigenous People of Biafra, Niger Delta Militants, and even EndSARS that rocked Nigeria in October 2020, are founded on allegations of injustice. Injustices alleged include marginalization by the government, insensitivity to the plight of unemployed youths, and brutality of law enforcement agents. The third cause of civil disobedience is the enactment of unjust laws. People are usually sensitive to laws that they perceive to be unjust, whether according to their religious beliefs or to their expectations from the government. Hart has pointed out that the certification of something as law is not conclusive of its obedience (Hart, 1961:263. This implies that an unjust law necessarily attracts disobedience from those expected to obey it.

The various causes of civil disobedience highlighted above, portray potent means of preventing power lying on the street as, preventing civil disobedience from occurring in the first place. Natural law and human rights (not as fundamental rights with restraints entrenched in constitutions), make the right to civil disobedience absolute. Thus, restraints contemplated by constitutional provisions cannot stop it from ensuing at any point in time. The demand that prospective civil disobedient obtain police permit before engaging in the act, is even laughable because civil disobedience is usually a spontaneous act. Tackling perceived injustices before the sufferers get fed up seems the only viable way to prevent civil disobedience as well as to prevent the situation of power lying on the street.

Conclusion

Civil disobedience, a tool with which citizens can confront injustice and oppression often perpetuated by the government, is never upheld by the government. Consequently, government often seeks ways to term it an act of illegality, thereby declaring civil disobedient as criminals, charlatans, hoodlums, and even pronouncing penalties on them. Even in democratic societies, government continues to treat resisters as those fostering illegality. This is not unconnected with the fact of power lying in the street, a necessary outcome of civil disobedience. The constitutional limit to civil disobedience may be a way of guiding power to prevent it lying in the street. However, the existence of other grounds for justifying civil disobedience may undermine the

constitutional restraints. To prevent the situation of power lying in the street, therefore, all stakeholders in the power process should not only rely on the constitutional provisions for civil disobedience but consider the ultimate justification of civil disobedience in relation with the concept of justice.

The analysis on the relationship between civil disobedience and justice portrays adhering to perceived justice of the society as a way of wadding off conflicts between the individual and the state. Where perceived justice of the society is respected, even the Rawlsian sense of justice as fairness can minimize conflicts. The attitude of waiting for civil disobedience to begin, then law enforcement agents clamping down on the protesters will never prevent power lying in the street. The best thing a government should do to prevent the situation of power lying in the street, and any revolutionary upheavals is to ensure that injustices of the law do not occur in the society it governs.

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