

# A Philosophical Analysis of Civil Disobedience: Beyond Conceptual Absurdity to Good Governance

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**Abstract:** *In getting their voices heard by the government, citizens engage in various conscientious and political actions which have been brought under the conceptual umbrella of 'civil disobedience'. As a result of the successes of public actions in Western democracies in terms of expanding the scope of citizens' participation in governance through communication, evaluation and determination of state policies and the resultant quality of governance, the idea of public action has become popular, desirable and fashionable across the world. Through critical analyses of various theories, debates and thoughts, the paper argues that civil disobedience fails as an appropriate action for individuals or groups to challenge or protest their perceived injustice associated with laws and policies of government because of the inherent ambiguity in the original conception of the idea of civil disobedience; the inability of its proponents to successfully justify the elevation of personal moral conviction (conscience) above State laws and policies and; the failure of the civil disobedients to critically delineate the boundary of civil disobedience and other forms of criminal actions. The paper affirms the important role of consistent citizens' democratic engagement in public affairs and proposes the sovereignty of the rule of law within the civic space as the sustainable means to good governance.*

**Keywords:** civil disobedience, governance, hobbes, law, thoreau, violence

## INTRODUCTION

The increasing awareness and desire of the public to take ownership of their governance or at least fairly represented in government as intended by liberal democracy have opened a new chapter in the political theatre of many nations. With the liberalization of communications channels, citizens' engagements with their governments and the capacity to mobilize mass actions have tremendously increased. As a result of the successes of public actions in Western democracies in terms of

expanding the scope of citizens' participation in governance through communication, evaluation and determination of state policies and the resultant quality of governance, the idea of public action has become popular, desirable and *fashionable* across the world. In getting their voices heard by the government, citizens engage in various conscientious and political actions such as civil disobedience, legal protests, conscientious objections, rule departures, organised forcible resistance, revolutionary action, etc.

However, this paper observed that many activists, politicians, government officials and public analysts or commentators confuse these forms of political actions and sometimes subsume them under a single umbrella of 'Civil Disobedience'. Truly, these political actions share different theoretical affinity and practical semblance with one another. For example, there is a very thin line of difference between civil disobedience and conscientious objections or rule departures such that the boundary could easily be either deliberately or ignorantly blurred. This scenario partly informed the decision to critically investigate and expose the concept of 'civil disobedience' as a philosophical and socio-political idea. The discussion was also considered important in this work because of its implication on the entrenchment of democratic ideals and good governance especially in the developing and underdeveloped countries. For the purpose of advancing the thesis of this paper, two things are essential.

The paper argues that civil disobedience fails as an appropriate action for individuals or groups to challenge or protest their perceived injustice associated with laws and policies of government. This position anchors on the ambiguity in the original conception of the idea of civil disobedience; and the inability of its supporters to successfully justify the elevation of personal moral conviction (conscience) above State laws and policies. Moreover, the proponents fail to critically delineate the boundary of civil disobedience and other forms of illegality.

The next section of this paper (second section) attempted to examine Henry David Thoreau's idea of civil disobedience in order to clearly highlight the classical features and criteria that qualify an act as civil disobedience. In its critical examination, the paper established conceptual inconsistency in the original theorization as the foundation for subsequent confusions and extensions of civil disobedience by some scholars and activists. It is difficult to distinguish civil disobedience from other forms of political actions and criminal acts. If civil disobedience could be justified, other political actions, insurrection and perhaps all crimes could as well be justified.

In the third section, drawing on Thomas Hobbes, the paper examined the origin and dynamics of the individual-state-relationship. The choice of Hobbes which might sound controversial as a theoretical framework for such elucidation, given his reputation as the lead proponent of authoritarian sovereignty of the State; where the will of the sovereign, its authoritative commands should take legal form (Hobbes, 1651) was defended. Given the understanding of the Hobbesian social contract theory, the paper suggested that the idea of 'civil disobedience', in its purest classical and later interpretations suffered internal contradictions, as well as moral burden.

The fourth and concluding section of the paper proposed continuous non-kinetic public dialogue, in a democratic setting as a more acceptable choice for individuals, groups and governments to address and redress injustices, improprieties and contradictions of laws and policies. The paper emphasised the dual roles of the people and their governments to ensure the civility of the Commonwealth which guaranteed peace, security, industry and other outcomes of good governance.

### **David Henry Thoreau on the Idea of Civil Disobedience**

In a lecture at the Concord Lyceum entitled “The Rights and Duties of the Individual in Relation to Government” delivered in 1848, David Henry Thoreau described how and why in 1846 he was imprisoned for refusing to pay six years of overdue poll taxes (Lombard, 2021). It was reported that “for years, Thoreau refused to pay his state poll taxes as a protest against the institution of slavery, the extermination of Native Americans, and the war against Mexico, a situation which led to his imprisonment at Concord, Massachusetts in 1846. Through the lecture, Thoreau publicly justified his refusal to pay tax as a means of withdrawing cooperation with the government and he encouraged his countrymen to act in the same manner.

The lecture was later published as essay in 1849 with the title: “Resistance to Civil Government” in *Elizabeth Peabody’s Aesthetic Papers* for May 1849 indicating Thoreau’s affinities the philosophical movement of American Transcendentalism. In 1854, Thoreau gave a landmark scathing anti-slavery speech entitled “Civil Disobedience”. The final version of his world-famous essay, also titled “Civil Disobedience”, was revised and published posthumously in the collection *A Yankee in Canada*, with *Anti-Slavery and Reform Paper* in 1866 (Lombard, 2021).

Thoreau’s political ideology was largely influenced by Ralph W. Emerson in whom he was drawn to the transcendentalist movement, which introduced the democratic concepts of the “Emersonian universal man”, promoting equal rights for every man and woman (Fuller, 1998). Many passages from “Civil Disobedience” indicated Thoreau’s endorsement of Emersonian self-reliance and Romantic individualism, especially with nonconformism. Hence, individual emancipation and institutional insubordination, as significant components of several of Emerson’s and other transcendentalists’ essays constituted the background of Thoreau’s activist thought in “Civil Disobedience” (Lombard, 2021). Later, Thoreau wrote two other essays in which he further developed his thoughts in “Civil Disobedience” namely: “Slavery in Massachusetts” and “Plea for Captain John Brown” in 1854 and 1860 respectively.

According to Stanly Cavell, Thoreau’s idea of “effective civil disobedience” could be understood as an act with three specific objectives: (1) affirming your opposition to the State; (2) encouraging fellow citizens to no longer blindly trust the government, but to turn first to God and then to themselves, because the State has left them no other option; (3) “identifying” and possibly “educating” the people who are deliberately working for the government (1997).

With respect to the first objective, Thoreau expanded the existentialist “authentic life” (Adekeye, 2019b; Oyeshile, 2005) and Emersonian self-reliance to suggest that the role of government is not to control one’s will.

I heartily accept the motto, “That government is best which governs least”; and I should like to see it acted up to more rapidly and systematically. Carried out, it finally amounts to this, which also I believe- “That government is best which governs not at all”; and when men are prepared for it, that will be the kind of government which they will have. Government is at best but an expedient, but most governments are usually, and all governments are sometimes, inexpedient. (Thoreau 1849)

Having rejected the role of government to control a citizen’s will, it is expected that Thoreau would have mentioned what the role of government should be. Rather, he confessed his belief in a redundant and impotent government. Although Thoreau failed to discuss the basis for the peoples’ initial choice, he contended that government is “only the mode which the people have chosen to execute their will (Thoreau, 1849); it has not the vitality and force of a single man; for a single man can bend it to his will” (Taylor, 2015). According to him, the inexpediency of government as captured above means that government is both “undemocratic and tending to be unjust” (Taylor, 2015).

But a government in which the majority rules in all cases cannot be based on justice, even as far as men understand it. Can there not be a government in which majorities do not virtually decide right and wrong, but conscience? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislation? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. (Thoreau 1849)

The phrase - “men first, and subjects afterward” in the above quotation may not be tenable in the sense that these two categories are mutually inclusive. The existence of man necessarily involves being subject to some laws or institutions (natural, social, political and economic). For instance, man everywhere is determined with respect to the circumstances of his birth. Moreover, “in the [inevitable] development from the state of nature, there comes a time when individuals can no longer maintain themselves in primitive independence; it then becomes necessary to self-preservation that they should unite to form a society” (Russell, 1947).

Thoreau’s civil disobedience, it seems, primarily challenges the formation, legitimacy and authority of government and by extension, any policy or action of government. His disposition suggested an attempt to deconstruct the basis of government as an institution; or at best replace its

authority with autonomous individual opinion and conscience- a semblance of the Hobbesian natural state.

The authority of government, even such as I am willing to submit to... is still an impure one: to be strictly just, it must have the sanction and consent of the governed. It can have no pure right over my person and property but what I concede to it... Even the Chinese philosopher was wise enough to regard the individual the basis of the empire... There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power. (Thoreau, 1849)

His idea of civil disobedience is premised on the belief that individuals have the right and responsibility to challenge and change laws that they perceive as morally unacceptable. Thoreau argued that individuals should not allow governments to overrule their consciences, and that they have a moral obligation to avoid supporting injustice by complying with unjust laws (Thoreau, 1849). Other thinkers and activists have emphasized the importance of individual conscience and the moral duty to resist unjust laws (King, 1991; Gandhi, 1973). The preceding thoughts of Thoreau underscored the foundation of his idea and act of civil disobedience. His subscription to a social paradigm where everyone is subject to his unregulated individual conscience and personal moral convictions was clearly evident and instructive to his readers.

Specifically, about law, Thoreau affirmed that “law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice” (Thoreau, 1849). He believed that respecting the law at all times constitutes the characteristic of the less-human individuals. This assertion seemed to betray his understanding of the nature and primary purpose of the law. The law is established primarily to maintain the social order that guarantees civility by making people including government officials responsible for their actions. It is a double-edged sword in that; the law that forbids citizens simultaneously empowers them. For instance, when the law prohibits a citizen from committing murder, it at the same time protects the same citizen from being murdered arbitrarily by someone else. The law outlines both the obligations as well as the rights of citizens and governments.

With respect to the second objective: “encouraging fellow citizens to no longer blindly trust the government, but to turn first to God and then to themselves, because the State has left them no other option”, Thoreau argued that the moral duty of any citizen is not only to avoid supporting wrongdoing in any way, but to actively and publicly condemn it in order to protect social justice, which is the “highest virtue of a society” (Adekeye, 2019a; Rawls, 1972). Citizens must “appeal to the people” (Cavell, 1997), but not only by the conventional casting of ballot papers, which Thoreau regarded as a sort of gaming, with a slight moral tinge to it leading individuals to comply with the will of the majority. Rather, cast your whole influence; a minority is powerless when it

conforms to the majority; it is not even a minority then; but it is irresistible when it clogs with its whole weight (Thoreau, 1849). Civil disobedience requires that the law should be broken when a government is being unjust even when the action leads to one's imprisonment.

If others pay the tax which is demanded of me, from a sympathy with the State, they do but what they have already done in their own case, or rather they abet injustice to a greater extent than the State requires. If they pay the tax from a mistaken interest in the individual taxed, to save his property, or prevent his going to jail, it is because they have not considered wisely how far they let their private feelings interfere with the public good. (Thoreau, 1849)

By refusing to pay taxes, and other subtle means, the citizen withdraws his allegiance in such a manner he could afford; an action which Thoreau exemplified. Citing government involvement in slavery and the Mexican war as reasons for his refusal to pay taxes for six years is inadequate for justification. On the one hand, Thoreau failed to consider and account for other services and amenities provided by the government through taxes collected and the consequences of the inability of government to provide these life sustaining services if other citizens had acted in the same manner. On the other hand, his non-payment of taxes made him culpable of illegality and impropriety; the same allegations he brought against the American government at the time. Beyond these subtle actions, it is obvious how Thoreau endorsed and attempted to justify "revolution" as the right of citizens to refuse allegiance to, and resist, the government, when its tyranny or inefficiency are great and unendurable (Thoreau, 1849), even if it will involve shedding of blood. Revolution is a profound and sudden change, often violent, in government and related structures. It can be said to be a rapid, fundamental and violent domestic change in the dominant values and myths of a society, be it in its political institutions, leadership, government activities and policies.

When required, conscientious men have the duty to rebel and revolutionize.

When the subject has refused allegiance, and the officer has resigned his office, then the revolution is accomplished. But even suppose blood should flow. Is there not a sort of blood shed when the conscience is wounded? Through this wound a man's real manhood and immortality flow out, and he bleeds to an everlasting death. (Thoreau, 1849)

From the foregoing, one may infer that Thoreau was only compelled to adopt a form of civil disobedience that could be adjudged non-violent for want of resources to prosecute a full blown revolution. In other words, if he had the military might and other resources to challenge the State army or the government of his time, he would practically exercise his supposed obligation to rebel



or revolutionize. It is therefore unacceptable to consider “non-violence” as a definitive feature or requirement of civil disobedience. That is, its original non-violent expression was neither intended nor desired. Would Thoreau have condemned a bloody revolution or resistance by individuals acting on their moral conscience against his arrest by the government for non-payment of poll tax? With respect to the third objective: “identifying” and possibly “educating” the people who are deliberately working for the government, Thoreau counseled the people not to accept decision-makers’ or office-holders’ claims or utterances, laws and rules sacrosanct, but subject them to critical assessment. He cautioned against being lured by their eloquence which does not communicate any truth or inspire any heroism. One should beware of manipulation, and proceed to pacifist protest or quietly declare war with the State if necessary, namely when the State [does not] recognize the individual as a higher and independent power, from which all power and authority are derived, and treats him accordingly (Lombard, 2021). Thoreau’s comment on the eloquence of the State officials and institutions is quite sarcastic because it was his eloquence and poetic articulation of his thoughts that ensured the widespread of his thoughts in “Civil Disobedience” rather than its logical coherence or analytical rigour.

Although Thoreau did not specifically define civil disobedience, his thoughts and writings are herein considered and accepted as the classical theoretical framework for the definition, understanding and practice of civil disobedience in its purest conception. From his thoughts and actions therefore, we deduced certain critical and fundamental elements of civil disobedience which included (i) deliberate breaking of the law, (ii) public declaration of personal moral or ideological convictions, (iii) universalization of action (disobedience, revolution, rebellion, refusal, etc.), and (iv) acceptance of responsibility for the consequence of action. For any action to be regarded as “civil disobedience” in its original meaning, these four elements are necessary and sufficient.

### **Conceptual Analysis of Civil Disobedience and the Problem of Distinguishing Civil Disobedience from other Forms of Conscientious and Political Actions**

Going by its original meaning which could be inferred from the experience and writings of Henry David Thoreau, who is widely credited with the coining of the term *civil disobedience*, civil disobedience, at its core, is the deliberate refusal to obey certain laws, or demands by government for the purpose of influencing legislation or government policy. It is typically a form of protest, stemming from a moral or ethical stance against perceived injustice. These statements describe the original and foundational features and purpose of civil disobedience.

However, the idea of civil disobedience has evolved from its initial seemingly straightforward and simplistic expressions of resistance and theoretical characterizations to a more complex and complicated social and political phenomenon. This complexity could be partly blamed on Thoreau’s inability to clarify major concepts he introduced while he was preoccupied with the task of justifying his disobedience to the State. Moreso, proliferation of political, social and ethical ideologies; multiplicity of social movements; increased awareness of civil liberties and statesmanship and so on have exacerbated the complications that surround civil disobedience as a

concept or a form of activism. To this end, the concept of civil disobedience had attracted several modifications and must have been enlarged to accommodate diverse opinions and assumptions of scholars and activists. These did not only obscure the purity of its conceptual category but also dangerously eroded the boundary between civil disobedience and other forms of political actions, lawlessness and social disorder.

On the most widely published accounts, and according to John Rawls, “civil disobedience is a public, non-violent and conscientious breach of law undertaken with the aim of bringing about a change in laws or government policies.” (Rawls, 1999) These scholars and activists argued that nonviolent resistance could expose the inherent injustices in a system, galvanize public opinion, and ultimately lead to social change (Gandhi, 1999; King, 1991). But what happens in a situation where nonviolent resistance does not compel government to change unjust laws or policies? The inclusion of ‘non-violence’, among others, as criterion introduced a disparity between Thoreau’s prescription of civil disobedience and that of many later thinkers - including John Rawls. These scholars might have thought of ‘non-violence’ as a required feature of civil disobedience because to them, Thoreau’s refusal to pay tax was a non-violent mode of disobedience. But it would be too quick to hold that position without a rigorous analysis of what qualifies as violence and nonviolence.

Another departure from the original conceptualization of civil disobedience is the argument that people who engage in civil disobedience operate at the boundary of fidelity to law, have general respect for their regime, and are ‘willing’ to accept the legal consequences of their actions, as evidence of their fidelity to the rule of law. Thoreau believed that the law is one of the instruments the State used to make machines out of humans; suggesting the alternative in his word as “a wise man will only be useful as a man, and will not submit to be “clay,” and “stop a hole to keep the wind away.” (Thoreau, 1849) It is important to note that while Thoreau advocated that citizens should be “ready” to accept imprisonment as a consequence of their breaking the law, he never encouraged their ‘willingness’ to respect the law.

The concept “*civil*” in civil disobedience as it was used by Thoreau was simply a kind of “relationship” that characterised the political relations between civilian subjects and their civil government; meaning the type of disobedience by civilian subjects to civil government. Many other scholars understood it in terms of civility which expresses the required “disposition” for a peaceful group or social life (Rawls, 1999); meaning the kind of disobedience that is socially acceptable with a kind of self-restraint necessary for concord under conditions of pluralism. This kind of socially acceptable self-restraint was neither contained nor implied in Thoreau’s idea of civil disobedience. In fact he was opposed to the verdict of the majorities. According to him, “a wise man will not leave the right to the mercy of chance, nor wish it to prevail through the power of the majority” (Thoreau 1849). Additionally, one could argue that the understanding of “*civil*” in civil disobedience could be extended to the nature or order of the intended social change; meaning the sort of disobedience that yields a public outcome or change; that is, a disobedience whose consequence(s) promote(s) the well-being of humanity.



As the civil disobedience discourse continued to evolve, scholars have considered and written extensively on salient and associated concepts, features and conditions of civil disobedience. In their discussion of ‘civility’ as it pertained to civil disobedience, scholars debated requirements, some of which were not included in Thoreau’s original thoughts such as: (i) communication (Rawls, 1999; Habermas, 1985; Delmas, 2018a), (ii) publicity (Bedau, 1961; Dworkin, 1985; Smart, 1991; Greenawalt, 1987; Brownlee, 2012; Scheuerman, 2014, 2018; Delmas, 2018a), (iii) non-violence (Rawls, 1999; Brownlee, 2012, Smith and Brownlee, 2017; M. Cohen, 1970; Moraro, 2019; Morreall, 1976; Celikates, 2016; Raz, 1979; Regan, 2004; Smith, 2013; Sharp, 2012a; Milligan 2013; Gandhi, 1999; Aitchison, 2018a; Umoja, 2013; Livingston, 2020; Terry, 2018; King, 1991; Atack, 2012), (iv) non-evasion (C. Cohen, 1966; Brownlee, 2012; Tai, 2017; Moraro, 2019; Zinn, 2002; Greenawalt, 1987; Scheuerman, 2018) and (v) decorum (Milligan, 2013; Delmas, 2020; Harcourt, 2012; Zerilli, 2014; Scheuerman, 2019; Çidam, et al, 2020; Pineda, 2021a).

Civil disobedience is understood as a communicative act, that is, a kind of symbolic speech, which aims to convey a message to a certain audience, such as the government and public. Unlike other offenders who have no wish to communicate their actions with the government or society, civil disobedients communicate their actions as a message to call for reform or redress; and their audience is the majority. Civil disobedience was described as a communicative act by which “one addresses the sense of justice of the majority of the community” (Rawls, 1999), as “a plea for reconsideration” (Singer, 1973), and as a ‘symbolic appeal to the capacity for reason and sense of justice of the majority’ (Habermas, 1985). These descriptions of communication provided a very large interpretative scope that accommodated all political actions and other types of principled disobedience. In a sense, every action communicates and conveys a message of some sort. Criminal offenses such as terrorism, banditry and militancy are a kind of symbolic speech as well but they demand much effort to decode because of our initial sentiment against them. In terms of communication, we affirm that civil disobedience only differs in the degree of clarity and simplicity of its messages.

Various accounts have suggested the condition of publicity as a requirement for civil disobedience. Publicity comprised of various features categorised broadly as publicity-as-visibility and publicity-as-appeal. The former category included (i) the openness of the act, (ii) non-anonymity of the agent, (iii) advanced warning of planned action, and (iv) responsibility-taking for action. The latter basically involved an appeal based on publicly shared principles of justice. Publicity-as-appeal is integral to the definition of civil disobedience as a “political act, an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally” (Rawls, 1999). In defence of all the features of publicity-as-visibility, Rawls and Bedau argued that civil disobedience could never be covert or secretive but could only ever be committed in public, openly and with advance warning to authorities and that it involved taking of responsibility. In other words, if the audience is public, if the purpose is to effect a public (social) change, then, its *modus operandi* should be open or public.

The requirement to give advance warning as a defining criterion of civil disobedience was not included in the idea of civil disobedience as taught by Thoreau. There was nowhere in any of his writings where Thoreau reported that he gave advance warning to the State of Massachusetts of his refusal to pay the poll tax, yet he regarded his action as civil disobedience. In fact all that was known about his non-payment of tax was after the event of his one night imprisonment. Moreover, critiques have rejected this requirement; they argued that if a people publicize their intention to breach the law, by giving advance notice about it, then they provide legal authorities with the opportunity to abort their action (Dworkin, 1985; Smart, 1991). If Thoreau's action could be accepted as civil disobedience despite his failure to give an advance warning to the authorities, then, one could conclude that the features of the publicity requirement were neither necessary nor sufficient for the definition and practice of civil disobedience.

Some thinkers have denied the necessity of acting openly and non-anonymity; they argued that publicity is compatible with covert and anonymous actions, so long as agents claim responsibility for their action after the fact (Greenawalt, 1987; Brownlee, 2012; Scheuerman, 2018). As long as the agents, they claimed, take self-identifying responsibility for their actions after the fact, that action qualified as civil disobedience. The proponents of this position must have explored the path of Thoreau whose civil disobedient action did not satisfy some of the new features probably infused by later scholars to regulate or streamline political actions in order to prevent abuse and ensure the perpetuity of social and political order.

On the one hand, some theorists held that violence is incompatible with the communicativeness of a civilly disobedient act. They insisted, "to engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address... any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act" (Rawls, 1999). Non-violence is an essential requirement for civil disobedience and could define the boundary between civility and anarchy. On the other hand, critics insisted that depending on the form and targets, violence does not necessarily impede the communicative quality of civil disobedience (M. Cohen, 1970; Brownlee, 2012; Moraro, 2019). Self-directed violent civil disobedient act such as self-immolation may convey "an eloquent statement of both the dissenter's frustration and the importance of the issues he addresses" (Brownlee, 2012).

Also, John Morreall considered a person's physical assault on another person in order to protest injustice as a case of "justifiable violent civil disobedience" (1976). Violence, threats of violence, covert acts of sabotage, blackmail, and even assault are means that civil disobedients can justifiably use to obstruct and frustrate injustice (Welchman, 2001). This position disregarded the essential association between civil disobedience and non-violence; it called to question the civility of civil disobedience in the sense of required "disposition" for a peaceful social life and blurred the line between civil disobedience and "jungle justice". Civil disobedience is supposed to be directed at the unacceptable laws and unjust policies of government not personal affairs of other individuals as no one except the State, has jurisdiction over the private affairs of fellow citizens.

Again this is one of the implications of the ambiguity of Thoreau's conceptualization of civil disobedience as contained in his writings.

Although it could be difficult to specify the appropriate notions of "violence" and "non-violence" because of the high political stakes of government, civil disobedients and the majority of people, it is necessary and expedient to collectively specify in details, the categories of violence and non-violence in order to avoid politically motivated misrepresentation and disingenuous uses of the these categories (Celikates, 2016). Arguably, it is in the best interest of the civil disobedients to specify these categories in order to exercise caution based on the knowledge of the full implications and consequences of their civilly disobedient actions as well as being protected from the attacks by overzealous government officials.

One could conceive 'violence' as the use of physical force causing or likely to cause injury (Rawls, 1999), or any act whose consequence is intended to cause harm (Raz, 1979). Violence could be physical or psychological. The implication for civil disobedience is that the requirement of non-violence as a condition for civility forbids the use of tactics likely to inflict physical and psychological violence on the opponent. Violence so conceived, includes any damage to public or private property (Fortas, 1968; Smith, 2013; Smith and Brownlee, 2017; Regan, 2004) and self-violence under some circumstances. However, it is important to avoid generalizing all instances of property destruction and self-violence by drawing evaluative distinctions among different cases, methods, targets and aims.

Further in their analyses of the civility of civil disobedience, scholars examined 'non-evasion' as a requirement. Simply put, non-evasion, in the context of civil disobedience, is taking responsibility for, and accepting legal consequences of law-breaking. The willingness of the civil disobedients to accept punishment is expected to demonstrate their endorsement of the legal system's legitimacy and their intense concern over the issue at hand (C. Cohen, 1966; Tai, 2017). Some scholars have gone extreme in their statements of the requirement of non-evasion; some of which contended with the basic principles of justice and legal proceedings. The summary of the positions of the non-evasion theorists is that the civil disobedient must (i) willingly submit to arrest and prosecution, (ii) plead guilty in court, (iii) not try to defend his/her crime, and/or (iv) not complain about the punishment received. None of these requirements was contemplated in original conceptualization and act of civil disobedience. The requirement for non-evasion does not account for a situation where the "main issue at hand" or the contention bothers on the legal system itself. Also, it is within the purview of law and justice that anyone that is alleged of any crime or breach of law has the fundamental right to legally defend himself and to appeal any judgement of the court to a reasonable extent permitted by law. All of these rights apply to civil disobedients. Based on the above, some critics have argued from diverse perspectives to contest some of the specifications of the non-evasion requirement (Moraro, 2019; Zinn, 2002; Greenawalt, 1987; Scheuerman, 2018).

Some theorists argued that being civil entailed that civil disobedients behaved in a dignified and respectful way by adhering to the social conventions that spelt out expressions of dignity and means of showing respect in their society. To them, civility is understood as respect for minimal civil norms; it is an additional, implicit requirement of civility in line with manifestations of self-restraint (Milligan, 2013; Delmas in Çidam, et al. 2020). The danger of this requirement is that it is often being deployed to silence activists (Harcourt, 2012; Zerilli, 2014). Hence, critics considered expressions of anger and offensive outburst as compatible with civility (Scheuerman, 2019; Çidam, et al. 2020) and insisted on dissociating the politics of respectability from civil disobedience (Pineda 2021).

Can civil disobedience be punished? Civil disobedience is not the breaking of the law, but it involves the breaking of the law. In other words, the law does not recognise civil disobedience as a crime. In democracies, civil disobedience is not a crime as such, so no one is punished for civil disobedience. The person who engages in civil disobedience would be punished by the law only for the recognised offenses he commits, such as refusal to pay tax, picketing, trespassing, disturbing the peace, arson, vandalism etc. When civil disobedients directly break the law or policy that they oppose such as violating a government order for the sake of its inherent injustice, they engage in direct civil disobedience. But when civil disobedients break a law, which other things being equal, they do not oppose, for the purpose of demonstrating their protest against another law or policy, they engage in indirect civil disobedience. While the direct civil disobedience was preferred to its indirect counterpart because it is the most clearly legible act of protest against the law breached (C. Cohen 1966), many analysts insisted on the acceptability of indirect disobedience given that most laws and policies can only be protested by indirect disobedience (M. Cohen, 1970; Rawls, 1999; Brownlee, 2012).

Scholars seem to be unanimous in holding that for civil disobedience to be distinguishable from ordinary criminal offenses, the act of lawbreaking must be deliberate, principled and conscientious. Included in the distinctive features of civil disobedience is the motive that underlies the disobedience. The intention must be to protest laws, policies, institutions, or practices that the civil disobedients believe are unjust, on the basis of their moral and political commitments even when they are not correct or entirely reasonable about their convictions but they hold them sincerely. The issue with this position is that it tends to objectify subjective categories such as motives and intentionality. Civil disobedience theorists failed to clarify how the motives of an individual could be objectively confirmed as either principled disobedience or criminal activity.

Until the defense or justification that David Henry Thoreau put forward in his two writings – “The Rights and Duties of the Individual in Relation to Government” and “Resistance to Civil Government”, his refusal to pay tax to the State was incontrovertibly illegal and criminal. While focusing on his main objective which was to justify his action, Thoreau made little or no attempt to critically develop his ideas thereby creating conceptual ambiguity. Many scholars such as have been mentioned earlier, have therefore, embarked on reconstructive theorizations by attempting to represent the idea of civil disobedience as a conscientious political action that differs essentially

from other political and criminal acts. These scholars presented rigorous conceptual analyses and critical elucidation of the idea and explored it from normative and analytical perspectives. These thinkers have attempted to redefine and moderate the legal boundaries of civil disobedience in order to prevent civil disobedients from slipping into anarchy and authorities from frustrating and silencing civil protests against injustice and bad governance.

Given the assumption that people have a moral obligation to obey the law and the concern that civil disobedience could potentially destabilize the society, the following conditions were recommended for its justified use: (i) to target serious and long-standing injustice and at the same time appeal to widely acceptable principles of justice (Dworkin, 1978; Habermas, 1985 and Rawls, 1999), (ii) to be undertaken as the last resort (Raz, 1979 and Rawls, 1999) and (iii) to be done in coordination with other minority groups with similar grievances (Rawls, 1999). Critics have rejected these justificatory conditions because they exclude progressive but not widely shared conceptions of justice and appeals to other principles of morality besides justice (Walzer, 1982; Goodin, 1987; Smith, 2013; Milligan, 2013 and Cooke, 2016); do not consider the situation where the target of civil disobedience is the legal system itself; and the inability of minority groups to cooperate should not affect the ultimate defensibility of a person's or group's resort to civil disobedience.

The fears of the two sides are evident. While the former group of scholars was concerned about the destabilizing potential and proliferation of the practice of civil disobedience, the latter group was concerned about the systemic restriction and repression of all dissenting forces by the government or majority. These scholars have explored and expanded Thoreau's idea of civil disobedience which justified any action- including revolution- as long as such action is validated by the agent's moral principle with the aim of causing social change.

We argue on the contrary that the freedom to engage in civil disobedience cannot be absolutized; it must be done within the margins of "formal and recognised limits to the treatment of others" (O'Sullivan, 2021). Short of this condition, it will be difficult to prevent civil disobedience from degenerating into anarchy or it will be difficult to differentiate violent civil disobedience from anarchy. Civil disobedience would be counterproductive if it is treated as acts without any form of ethical or legal liability as suggested by some scholars and activists. Most times, civil disobedients are angry, frustrated and impatient with continuation of any perceived abnormality or injustice in the system. But "we know not to what length enthusiasm, or other extraordinary movements of the human mind, may transport men, to the neglect of all order and public good" (Hume, 1994). Therefore, it is important to impose certain regulations by the State to avert the consequences of unguarded mass actions.

### **Who determines when disobedience is civil? Who formulates the conditions or criteria for the 'civility' or otherwise of disobedience?**

This paper focuses on civil disobedience as an idea that involves individual and State (government) relationship because civil disobedience practices bother on contentions between the beliefs of the individual(s) and the policies or laws of the State (government). The aim of this section of the



paper is to briefly examine the origin and dynamics of the individual-state relationship, drawing on Thomas Hobbes social contract theory. The choice of Hobbes might sound controversial as a source of such elucidation, given his reputation as the lead proponent of authoritarian sovereignty of the State; but Hobbes's priority was the replacement of the anarchic violence of the state of nature with a community of rules (O'Sullivan, 2021) where the will of the sovereign, its authoritative commands should take legal form (Hobbes, 1651). The critics of Hobbes have argued against his political theory generally and his social contract but none has been able to propose an alternative theory that is as well devoid of some sort of theoretical limitations. None of his critics was able to proffer a satisfactory argument for an alternative theory for addressing anarchy in social and political systems.

Hobbes held that all men are naturally equal. In a state of nature, ever before there was any government, every man desired to preserve his own liberty and to acquire dominion over others; both of which were dictated by the impulse to self-preservation. "From their conflict arises a war of all against all, which makes life nasty, brutish, and short (Popkin and Stroll., 1981). In a state of nature, there is no property, no justice or injustice; there is only war, and force and fraud are, in war the two cardinal virtues" (Russell, 1947).

Hobbes explained that social contract is a pact by which men avoided the state of nature and entered civil society by conferring all their powers and strengths upon one man or an assembly of men, to bear their persons, to reduce all their will into one and to end the universal war. It is a real unity of them all in one and the same person, made by covenant of every man with every man, in such a way, as if every man should say to every man "I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him and authorize all his actions in like manner" (Nwoko, 1988). This social contract does not necessarily imply a definite historical event, rather, "it is explanatory myth, used to explain why men submit, and should submit, to the limitations on personal freedom entailed in submission to authority" (Russell, 1947). The purpose of this self-imposed restraint is self-preservation from the universal war resulting from man's love of liberty for himself and of dominion over others.

The social contract as theorized by Hobbes has a democratic foundation in that the covenant is not between the people and the ruling power, but made by the citizens with each other to obey such ruling power as the majority shall appoint. Citizens have made the contract with each other to give up their natural right to do as they please, and have invested a sovereign person or assembly with unlimited authority to make laws to regulate their actions. By this contract, citizens are obliged to obey the law both because they have promised to do so, and because the alternative to such a politically organised society is the state of nature in which every man goes around in fear of his life. The social contract combines moral with prudential obligations. Moral obligation commands obedience because of the implicit promise to do so; thus, promise keeping is a morally acceptable act. Whereas, prudential obligation commands obedience because the alternative is chaos and anarchy, meaning that however restrictive and imperfect the state laws [policies] may be, any form



of order is preferable to the chaos that results from the breakdown of the State (Russell, 1947; Raphael, 1976).

Social contract is the pact, which men freely consented to, in order to enter into a politic society to avoid the inconveniences of the state of nature (Nwoko, 1988) which were antithetical to self-preservation. In the context of the contemporary reality, the Sovereign is the government with its unbridled capacity to preserve the lives and to direct public and private affairs of the people within its jurisdiction. On the basis of this fundamental purpose of the Sovereign, Hobbes admitted the singular limitation on the duty of the people to submit to sovereigns or governments. “The right of self-preservation is absolute, and subjects have the right of self-defence, even against monarchs” (Russell, 1947) or whatever government.

The immediate implication of this thinking is that resistance in defence of another is always culpable. The main challenge with this egoistic ethic is that it is difficult to aggregate all possible actions that are motivated by self-defence or self-preservation. While some actions could immediately and directly manifest as being motivated by self-defence, others may have long-term and indirect implications on self-preservation and defence. For instance, the maxim “injury to one is injury to all” may inspire and justify resistance against the government in defence of the right of another person. It is therefore instructive to consider replacing this egoistic ethic with ‘constitutional sovereignty’, where resistance is justified only in defence of constitutional or legal codes of the society.

Under this socio-political arrangement, disobedience to the law does not only constitute an attack on the sovereign authority of the State but also ridicule to self-affirmation. Included in the social contract and the enthronement of the Sovereign is the mechanism for addressing policies and legal issues within the polity. The life and operations of the Sovereign are compatible with the Lockean doctrine of division of powers, and of checks and balances if the ‘Sovereign’ is interpreted as the personification of the contemporary ‘Government’ where divisions of powers and checks and balances are the expressions of the Sovereign in its self-regulation. Citizens for instance could challenge the policies and programmes of governments at the courts. Citizens could approach the courts for interpretation of the laws made by governments. In other words, the Sovereign, or government so conceived has internal capacity to accommodate and address all real and imaginary fears of tyranny, injustice and difference if and when properly engaged. The law defines the context and scope of what is permissible and acceptable within the confines of its jurisdiction. Hence, civil disobedience – so called, remains a controversial social and political phenomenon whose validity or legality differs from one politico-legal system to another. Therefore, this paper posits that debate on the requirement and features of civil disobedience would remain unresolved as long as scholars in the debate continue to universalize and absolutize the features and requirement of civil disobedience.

Although the main reason for Hobbes’ support of the Sovereign State is that it is the only alternative to anarchy, there could be grounds for resisting the State or allowing temporary anarchy

when it bothers on the violation of the fundamental purpose of the social contract or established covenants as enshrined in the laws of the civil society. Hobbes position is clear and logical; it is intelligible and does not involve use of absurd concepts. A proper understanding of the Hobbesian notion of civility and politic society underscores the absurdity of the concept of civil disobedience. It exposes the inherent contradiction of the concepts and affirms further that all attempts by scholars and activists to differentiate civil disobedience from other acts of lawbreaking are ill-conceived. In the 'civil state', as against the 'state of nature', every disobedience to the law is civil. Laws presuppose a civil society of human beings, and wherever, there is a law to be obeyed or complied with, there is automatically a law to be disobeyed or breached. Obedience and disobedience are possible responses directed at the same object. A law is either obeyed or disobeyed; it could be a law stipulating what must be done (positive) or a law stipulating what must not be done (negative). Consider the following examples: (i) "every citizen who earns income through continuous employment must pay income tax" (ii) "no citizen is allowed to act in a way that disrupts public peace".

The above examples are direct laws whose violations are clearly noticeable because qualified citizens in the case of the first example and all citizens in the case of second example have been constrained to either comply with or violate the laws. Obedience could be expressed by compliance, and acceptance of the commands of the law, while disobedience could be expressed by violation, rejection, and withdrawal of cooperation with government. Every breaking of any portion of the law or insubordination to government in the civil state is disobedience as well as civil and there are consequences for both obedience and disobedience to the law. Therefore, 'civil disobedience' is a coinage that lacks concrete legal substance; hence does not deserve any serious attention. Violations against the law without legal consequences are only possible in the natural state or state of anarchy because there are no laws to be disobeyed or violated.

## CONCLUSION

### **Resistance, Sovereignty and Democratic Dialogue for Good Governance**

The only alternative to civility and social order which are made possible by the sovereignty of the State is anarchy. By social order, the paper refers to the harmonious existence and proper functioning of the state institutions and social structures that ensure protection of lives and properties as well as guarantee the social liberties of the people. But citizens may feel compelled to prefer temporary anarchy to continuity of an insensitive and illegitimate State that has failed in its fundamental responsibilities as in France and Russia in 1789 and 1917 respectively. The tendency of government towards tyranny can be checked when governments have some fear of rebellion (Russell, 1947). Situations where governments try to perpetuate themselves against the rule of law; where they try to enrich themselves, families and their friends by violating property laws and; arbitrarily suppress knowledge and discovery that seems to question their power provide grounds for contemplating the risk of anarchy and the danger of the injustice that is bound up with absolutism of government. This underscores how resistance on the part of citizens and the fear of possible rebellion could impact on the character of government and governance.

As much as government fears possible recession into anarchy, citizens also know that it is not in their overall interest to recede into the brutish, nasty and cruel state of nature. Therefore, the process of maintaining a continuous civil state requires the collective decision and unrelenting efforts of citizens and governments to continually operate within the ambit of the rule of law. In other words, all forms of political actions and governance must be kept within the limits of the sovereignty of the law. Protests should be articulated and communicated in a dialogical engagement with government. Government should foster and encourage a non-kinetic communicative social and political space for democratic and inclusive dialogue. As we mentioned earlier in the exposition of Hobbes' political theory, the civil state has a democratic foundation because it is a creation of the people by the people for their collective purpose. The society is not an accidental and arbitrary entity; it is consciously worked out, and in the same manner sustained. It stands to reason then, to hold that the survival and sustainability of the civil state depends largely on democratic experience.

Democracy requires more than institutional guarantees of rights but demands a consistent belief in the possibility of resolving disputes and managing differences through rational deliberation (Adekeye, 2019a). Undistorted communication is vital in a democratic setting in which there is a cooperative undertaking (Irele, 1998), instead of having a dominant group suppress the other through either subtle or evident violence or through intimidation. However, it should be noted that there is a link between language and violence (O'Sullivan, 2021), the manner in which parties with divergent views talk to one another is extremely important. The willingness to show restraint by observing decorum can mean the difference between success and failure in defusing disagreement (Hobbes, 1651). Democracy relies on the dialogical process as the source of authority and the means of choosing among competing alternatives.

Hence, there is a nexus between democracy and a vibrant public sphere where there is a deliberation on all issues of social relevance in which the citizens can participate. According to Durkheim, quoted by Adekeye, "democracy lays emphasis on submitting a greater number of things to collective debate and strives as well to achieve a critical consciousness of itself" (2019a). This includes the citizens' role in scrutinizing government activities, and debating current events in the public sphere. Democratic dialogue is highly relevant and important in civil states because it brings about the proper management of diversity and a synthesis of differences in opinion, beliefs, convictions and ideals. Democracy and civilization constitute the socio-political paradigms that could ensure the social order necessary for good governance in every society. Here, civilization is construed as the existence of formal and recognized limits to the treatment of others as well as the day-to-day interactions with one another which are not covered by the rules (O'Sullivan, 2021).

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