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Joseph Raz on Legal Obligation- Implication for Minority Struggles in Nigeria

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Abstract
This paper examines the nature and character of legal obligation in the philosophical jurisprudence of Joseph Raz vis-à-vis civil disobedience are conscientious objection. It attempts an exposition of the notion of civil disobedience and its implications for minority struggles in contemporary Nigerian nation-state. It provides a veritable guide for addressing the lingering and looming issues of minority agitations and separatist movements which are prevalent in current democratic dispensation in Nigerian body-politic. It concludes that Raz's prescriptions regarding legal obligation which imposed a duty to obey the law on the citizens and the legal and moral rights to disobey unjust laws have theoretical plausibility. It recommends that the right of the oppressed minority to civil dissent be enshrined or entrenched in the constitution of the federal republic of Nigeria.
Keywords: *Joseph, Raz, legal, obligation, Implications, Minority, Struggles, Nigeria*

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Introduction

The major concern of this paper is to attempt as rational justification of acts of civil disobedience and conscientious objection which find expression in minority agitations, separatist movements or the clamour for self-governance, and other forms of irredentism in a multicultural and pluralistic Nigerian society using the matrix of Raz's understanding of authority and law. Thus, the intellectual task of this inquiry is to show the extent to which his account of legal obligation is consistent with the reality of minority struggles in contemporary Nigerian cultural context or social milieu.

The complexity or perplexity in the determination and juxtaposition of the complex nature of legal obligation and the sanctity of human rights presents a mind0boggling problem. It is a truism that the citizen owes the state a duty to obey its laws i.e. political or obligation while at the same time the citizen has right to disobey draconian or obnoxious laws that debases or flagrantly violate fundamental human rights of the individuals. The pertinent questions is: What makes a breach of law an act of civil disobedience? When is civil disobedience morally justified?

How should the state and its law respond to individually or groups who engage in civil disobedience or conscientious objection? All these questions lie at the heart of Raz's conception of authority and law vis-à-vis legal obligation with particular attention to minority struggles by disadvantaged, oppressed, and marginalized minority groups in a multicultural society.

Historical antecedents to Raz's Concept of Legal Obligation

Adekunle in his text entitled, *Citizenship and Obligation: Civil Disobedience and Civil Dissent* remarks that:

> … the freedom to criticize government and counsel disobedience or revolt is the principal mark of a free society. Where dissident dissenting voices are silenced by

> laws against sedition, amongst others, there can be no valid claim to freedom of speech or real political freedom (83-84).

The import of the above remark is that the protection of freedom of conscience is fundamental to the rule of law. In Adekunle's estimation, legal obligations can be acknowledged as a matter of moral judgement as the rule of law imposes on every citizen the responsibility to judge whether the state's demands merit his obedience. To be sure, the coercion of conscience is evil as it undermines the rule of law and any prohibition on the expression of conscience, i.e., the suppression of dissent, denies the principle of moral responsibility which the rule of law provides. On his own part, Alabi in his text captioned *Conflicts of Law and Morality* observes that, "… conflicts arise between law and morality. Hence, the assumption that the law demands obedience is flawed".(Alabi 62-63) In light of the foregoing, it is manifestly evident that he has no fair knowledge of some traditional theories that have been advanced to justify an obligation to obey law. The presumed justification for an obligation to obey legitimate authority is premised or predicated on the background of social contract, utilitarianism and its consequential reasons for obedience, the fair play or reciprocity argument, and natural law principles or rationale for obedience to law.

More so, Berebon in his book entitled, *Philosophical Foundations of Democratic Disobedience* attempts to establish grounds for civil disobedience and conscientious objection to constituted authority. He seeks to examine whether disobedience can be justified and whether there are possible limits to civil disobedience. In other words, how disobedience ought to be exercised raises quite some perplexing questions to contend with. In effect, he considers some legal doctrines and practices that are discretionally used to excuse the full application of the law and mitigate the harsh effects of certain laws. It is, however, important to note that the notion of disobedience can be better understood against the background of the law, programmes or policies of a democratic government.

For him, such disobedience is healthy, and rather than weakening the democratic processes in any democratic state, helps to strengthen the instrumentality and functionality of democratic institutions and agencies of government. In Berebon's parlance:

> … instead of trying to justify disobedience as arising from outside the democratic system… to justify it on the basis that it is a product of democracy, and consequently … proposes a theory of democracy – enhancing disobedience and not democracy - limiting disobedience (61).

The logical interpretation of the above passage is that constructive criticism and healthy opposition are necessary for, and prerequisite to, proper functioning of democratic governance. Civil disobedience enhances or promotes the credibility of government, thereby, making it more accountable. Recall that a democratic government is ultimately based on people-power in the Locke an sense or perspective.

Gberesuu in his book entitled, *Political Legitimacy and the Duty to Obey the Law* straightforwardly avers that:

> (Legitimacy and duty to obey the law, raises the) debate as to the legitimacy of the state vis-à-vis the existence of the obligation to obey law. In other words, can a state be legitimate when there is no obligation to obey its laws. (Emphasis Mine) (51-52).

In point of fact, he posits that states whose inhabitants lack a duty to obey the law cannot claim any of the rights of legitimacy.

Ajodo in his masterpiece entitled, *Legitimate Authority without Political Obligation* comments thus:

> … the notion of how a state can be a legitimate political authority when there is no general obligation to obey its laws is logically flawed and skewed … political authority can still be legitimate, even though there is no general obligation to obey its laws. The problem is that the idea of legitimate political authority has always been tied up with a citizen's duty to obey. This should not be necessarily so (43-44).

He notes that consent is not a necessary condition for the moral justification of obedience to law, and it is incompatible with liberal commitment to moral diversity and pluralism. Akande in his *Multiple Principles of Political Obligation* adumbrates that:

> … resolving the crisis in obligation entails proffering a theory that is based on a number of previously *unsatisfactory* theories for obligation. This is done by combining the principles of fairness, natural duty of justice and common good … the principles combine in three ways: (1) commulation – the services the different principles cover in the state; (2) mutual support - the force of the different principles with regards to the same state services they support; and (3) simple overlap (13-14).

It therefore, follows that the resultant theory is sufficient to justify a moral obligation to obey law. Essien in *The Moral Force of Political Obligations* opines that:

> Both the obligation to obey specific laws and the obligation to obey law generally are products of moral forces. The obligation to obey a specific law is a function of the consequences of the law and there are institutional considerations that support obligations to obey all laws (35-36).

The law, for him, is a seamless web and disobedience to any law undermines the habit of obedience on which the entire legal system is based. Essien is strongly of the view that an individual owes the state a moral duty to obey its law. Hence, political obligation. This presupposes that a citizen is obliged to obey law, no matter the orientation or persuasion, as a dictate of moral reason. This is a manifestation of the role of reason in moral philosophy. It is, however, important to note that there exists a symbiotic relationship between legality and morality in a way. Corroborating the foregoing, Illesa in his article captioned, "On a Moral Right to Civil Disobedience" notes that:

> (I strongly agree) that there is a moral right to civil disobedience, but disagrees that the state was at liberty to punish those who engage in civil disobedient acts. … if there is a moral right to civil disobedience, such a right would include a claim against penalization for the civil disobedience (14-15).

The import of the above point of view is that a citizen has a moral right to embark on civil disobedience when necessary. It is also paramount to note that the state, according to Illesa does not have the right to punish or penalize civil disobedient citizens as that will run counter to the tenets of democratic governance.

The Concept of Legal Obligation

Raz notes that legal obligation or the obligation to obey the law is different from political obligation. While discussing the concepts of authority, political obligation and the obligation to obey the law, he states:

> Political obligation is the broadest of the three notions, signifying the obligations members of a political community have towards it or its institutions and political order, in virtue of their membership. That includes much more and much less than an

> obligation to obey the law. More - because it includes some duties to be a good citizen in ways that have little to do with the law. They will he duties to react to injustice perpetrated by or in the name of the community, to contribute to its proper functioning (e.g., by voting and by being active in various other ways) and more. They require less than obeying the law, for much of the law has nothing to do with the political community (203).

Thus, for him, political obligation refers to the obligations members of a political community owe to the community, especially to its institutions and political order. These duties may or may not depend on the individual's membership of the political community. The duty to uphold and support just institutions, wherever the just institutions may be, identified by John Rawls in *A Theory of Justice*, is an example of a political obligation that goes beyond membership of a political community.

For him, political obligation is more than legal obligation and also less than legal obligation. More, in the sense that it includes duties that are not created by law, and less, in the sense that a number of legal requirements have little or nothing to do with the political community. Legal obligation may not depend on legitimacy, but political obligation depends on the legitimacy of the government or institutions.

Raz notes that the existence of an obligation to obey the law means that there is a reason to do what is required by the law, but a reason to do what is required by the law does not mean that there is an obligation to obey law. There are many reasons to do what is required by law, which in themselves do not have anything to do with the obligation to obey the law. Individuals may have reasons to refrain from murder, stealing, rape and other conduct condemned by the law, and the reasons such individuals refrain from murder, stealing, rape or other such conduct may have no connection with the law.

Furthermore, in some cases, the reason that the law requires the performance of a particular action is the reason for individuals to perform the action. An individual may obey the law to avoid being expelled from school or fired from his employment if rumours of his disobedience to law were to reach his teachers or employers. Also, such an individual may obey the law to avoid a situation where the news of his disobedience to law may annoy his parents or his spouse. Raz notes that such considerations do not show an obligation to obey the law. This is because the fact that the law requires the performance of an action is not the reason for its performance. It is merely an incidental reason for a particular individual, under certain conditions, to perform the act required by the law.

For Raz, the obligation to obey the law is a general obligation, which applies to all the individuals, subject to the law, and to all laws, and all the situations to which the laws apply. To search for an obligation to obey the law in any given country, is tantamount to searching for reasons, which would make individuals want to always do what is required by the law. It is an inquiry into whether a set of true premises exist that justify the conclusion that everyone, possibly every citizen or every resident, ought always to do what is required by the law.

In *Authority and Consent*, Raz describes the obligation to obey the law and its absence as follows:

> To deny that there is an obligation to obey the law is not, of course, to claim that one should disobey the law, nor even that it does not matter whether one obeys or disobeys. It is to deny that there is a. sound general argument establishing as its conclusion that, f the law of a reasonably just state requires a citizen of that state to behave in a certain way, then he has an obligation so to behave What is denied is that the fact that something is a law creates such an obligation (207).

It means that to deny the existence of an obligation to obey the law is to maintain that an argument which is sound, i.e., both valid and made up of true propositions, establishing the conclusion that individuals have a duty to affirmatively respond to the demands of law, exists. Such denial does not necessarily imply that an individual should disobey the law, nor does it imply that it is immaterial whether an individual obeys or disobeys the law.

Raz on Civil Disobedience

The term 'civil disobedience' was coined by Henry David Thoreau in his 1848 essay to describe his refusal to pay the state poll tax implemented by the American government to prosecute a war in Mexico and to enforce the Fugitive Slave Law. In his essay, Thoreau observes that only a very few people – heroes, martyrs, patriots, reformers in the best sense – serve their society with their consciences, and so necessarily resist society for the most part, and are commonly treated by it as enemies. Thoreau, for his part, spent time in jail for his protest. Many after him have proudly identified their protests as acts of civil disobedience and have been treated by their societies – sometimes temporarily, sometimes indefinitely – as its enemies.

Throughout history, acts of civil disobedience famously have helped to force a reassessment of society's moral parameters. The Boston Tea Party, the suffragette movement, the resistance to British rule in India led by Gandhi, the US civil rights movement led by Martin Luther King Jr., Rosa Parks and others, the resistance to apartheid in South Africa, student sit-ins against the Vietnam War, the democracy movement in Myanmar / Burma led by Aung San Suu Kyi, to name a few, are all instances where civil disobedience proved to be an important mechanism for social change. The ultimate impact of more recent acts of civil disobedience – anti abortion trespass demonstrations or acts of disobedience taken as part of the environmental movement and animal rights movement – remains to be seen.

Furthermore, he notes that civil disobedience may be designed to be effective or expressive. According to him:

> Civil disobedience can be aimed to be effective or expressive (Or both,). It is designed to be effective if it is justified as part of a plan of action which is likely to lead to a change in law or public policy. But civil disobedience includes also breaches of law the perpetrators of which know to be ineffective, provided they are justified as expressions of protest against or a public disavowal of a law or a public policy (61).

Thus, the aim of civil disobedience may not only be to effective, that is, to effect a change of a law or a policy of government, it may also be expressive, that is, to express one's protest against the law or policy of the government, or indicate one's dissociation from the said law or policy of the government.

On the second element, the element of an act of civil disobedience being a conscientious and political act, Raz agrees that an act of civil disobedience must be a conscientious and political act. Raz's definition of civil disobedience refers to civil disobedience as a "politically motivated breach." It must also be noted that Raz sees civil disobedience as one of the forms of morally motivated disobedience, and for him, "Revolutionary acts and civil disobedience are cases of political action, they are essentially public actions designed to have a political effect." Thus, civil disobedience is both morally and politically motivated, and as such it can be seen as a conscientious and political act.

Raz on Conscientious Objection

Raz notes that conscientious objection like civil disobedience and revolutionary disobedience is one of the types of disobedience to law that is accompanied with a moral or political claim that the

disobedient person is justified in his disobedience. He also notes the important differences between civil disobedience and conscientious objection. For him, civil disobedience is a politically motivated breach of law that is done with the intention of directly causing a change of a law or public policy, or with the intention of expressing ones protest against a law or public policy, while conscientious objection is a "breach of law for the reason that the agent is morally prohibited to obey it, either because of its general character (e.g. as with absolute pacifists and conscription) or because it extends to certain cases which should not be covered by it (e.g. conscription and selective objectors and murder and euthanasia)"

On the difference between civil disobedience and conscientious objection, he agrees with the view that civil disobedience is a public act while conscientious objection is a private act. He states that:

> Revolutionary acts and civil disobedience are cases of political action, they are essentially public actions designed to have a political effect. Conscientious objection is not. It is essentially a private action by a person who wishes to avoid committing moral wrong by obeying a (totally or partially) morally bad law. Civil disobedience is a political act, an attempt by the agent to change public policies. Conscientious objection is a private act, designed to protect the agent from interference by public authority. The two classes of action overlap, but their justification is bound to take different routes; an individual entering the public arena in the name of his right to participate in making collective decisions in the one case as against an individual asserting his immunity from public interference in matters which he regards as private to himself (61).

Thus, he accepts the view that that acts of civil disobedience are basically public acts while acts of conscientious objection are private acts, which do not belong to the public realm.

Furthermore, Raz gets involved in the debate as to whether there is a right to conscientious objection. Coming from the liberal perspective, he agrees that such a right exists. For him, "a state is liberal only if it includes laws to the effect that no man shall be liable for breach of duty if his breach is committed because he thinks that it is morally wrong for him to obey the law on the ground that it is morally bad or wrong totally or in part". Also, an appropriate explanation of humanism implies a *prima facie* right not to have one's conscience coerced by law.

Granted that the right to conscientious objection exists, Raz is not sure that the state should recognize the right. For him there are a number of pitfalls that would arise if the state recognizes the right to conscientious objection. We shall attempt to discuss these pitfalls.

One of the reasons is that conscientious objection is based on what the agent considers to be his moral duty, and the agent could be wrong as to what his moral duty is. Where the agent is wrong, he would invariably be claiming a right to do what is wrong. Thus, Raz says, "Here lies the main difficulty in justifying conscientious objection. It involves showing that a person is entitled not to do what it would otherwise be his moral duty to do simply because he wrongly believes that it is wrong for him to do so". Furthermore, conscientious objection "concerns people with formed moral views and it claims their right to be faithful to them even if they are misguided".

Lessons for Nigeria

In the historical trajectory of post-independence Nigeria, we have had to grapple with the challenges of ethnic minority conflicts and governance in Nigeria; ethnic minority problems and oil politics; managing multiple minority problems; ethnic nationalism and the Nigerian democratic experience; ethnic identity; contesting exclusion in a multi-ethnic state; resurgent ethno-nationalism and the renewed demand for Biafra in South-East Nigeria; amongst others.

More than ever before, minority agitations and ethnic nationalism have become a national question in Nigerian federalism. Different ethnic nationalities are championing their courses by way of peaceful protest and acts of civil disobedience or conscientious objection. Prominent among them are the Ijaw National Congress (INC); Movement for the Survival of the Ogoni People (MOSOP); Odua People's Congress (OPC); Movement for the Actualization of the Sovereign State of Biafra (MASSOB); Indigenous People of Biafra (IPOB); etc.

It is, however, important to note with dismay that the undemocratic nature of the Nigerian state has further suppressed and submerged the trends and dynamics of civil disobedience or conscientious objection in Nigeria. This, no doubt, is an evident demonstration that Nigeria is a dictatorial or tyrannical state.

Conclusion

We have argued in this paper that individuals are free to act on their own judgement as against the demands of the law. The authority of law is nearly a reason for action, and not an absolute reason for action. When individuals obey the dictates of the law, it is not because the law so commands, but because in the circumstance, what the law commands is the best. In conclusion, oppressed minority groups in Nigeria have rights to dissent or disobey contested or unfavorable state laws or policies that are made by the major ethnic groups to their own advantage.

WORKS CITED

Adango, Zaccheus A. (2017). *Law, Ethics and Good Governance: The Quest for Social Order.* Aba: Rex Publishers Ltd.

Aguda, Thompson .A *The Crisis of Justice in Nigeria.* Akure: Eresa Hills Publishers. 2013.

Akande, Emmanuel E. *Multiple Principles of Political Obligation.* Illorin: Bukola Press, 2012.

Alabi, Yekini S. *Conflicts of Law and Morality.* Abeokuta: Farm Press. 2015.

Arendt, Hannah. *Civil Disobedience*. New York: Harcourt, 1972.

Bedau, Hamza A. "On Civil Disobedience". *The Journal of Philosophy*, 58 (21) 1961. 653-661.

Berebon, Joe. *Philosophical Foundations of Democratic Disobedience.* Bori: Fredsbarry Press. 2015.

Essien, Edwin E.. *The Moral Force of Political Obligations*. Abak: Ametext Press, 2016.

Girigiri, Gideon K.. *Understanding Legal Theory: Perspective in Philosophy of Law.* Bori: Trumpet Publishers Ltd., 2018.

Illesa, David. "On a Moral Right to Civil Disobedience" in A.O. Odewale (ed.) *Philosophy of Law and Politics.*. Ado-Ekiti: Twoways Publishers, 2014.

Nwikpasi, Nyegianu. T. *Issues in Politics of Nationalism. Port Harcourt*: Nissi Publishing Company Ltd, 2015.

Rawls. John.. *A Theory of Justice.* Cambridge: Harvard University Press, 1971.

Raz, Joseph. *Ethics in the Public Domain: Essays in the Morality of Law and Politics.* Oxford: Clarendon Press, 1979.

_____ .*The Authority of Law: Essays on Law and Morality*. Oxford University Press, 1979.

_____. *The concept of a Legal System: An Introduction to the Theory of Legal System.* Oxford: Clarendon Press, 1970.

_____. *The Morality of Freedom.* Oxford University Press, 1986.

_____..*Law, Morality, and Society: Essays in Honour of H. L. A. Hart.* Oxford: Clarendon Press, 1977.

_____. *On Violence. New York*: Harcourt, 1972.

Thoreau, David H.. "Civil Disobedience" in *Civil Disobedience in Focus*. Hugo A. Bedau (ed.). London: Routledge, 1991.

Unegbe, Basil .N. "Philosophical Obligation and Civil Disobedience in Hannah Arendth: A Politico-Philosophical Perspective". Rome: Unpublished Doctoral Thesis, Department of Philosophy, Pontifical Urban University, 1944.