

# IN DEFENCE OF CIVIL DISOBEDIENCE AND THE LEGITIMACY OF PUNISHMENT OF CIVIL DISSENTERS IN CONTEMPORARY SOCIETY

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## Introduction

One of the factors that have constituted a push-back to the advocacy of civil disobedience in the contemporary world is the ironical justification of the penalization of civil dissenters. In order to effectively treat this oxymoron, we shall in this work be attempting to respond to the following interrogatives: What makes a breach of law an act of civil disobedience? What are the assumptions for civil disobedience? When is civil disobedience morally justifiable? How should the law respond to those who engage in the act of civil disobedience? Albeit, I shall give premium to arguments pertaining to the moral justification of civil disobedience and the legitimacy of punishment on civil dissenter. After weighing the *pros* and *cons* for and against these two paradoxes, I shall be acclaiming the assumption that “obligation to the conscience is ultimate and absolute”.

Hence the moral laws of nature are absolute and unconditionally bind every rational being in conscience, and

the disobedience of the same (whether in private or public) bears or attracts automatic grave consequences. Hence, when any law, policies, programmes and actions of government violate the basic precepts of the moral laws of nature '*do good and avoid evil*', and the necessary inalienable and fundamental rights such as equality by birth and the right to life and their corollaries, man does not only have the right to civilly refuse to obey such distortion or corruption of law, but also it is an obligation to one's conscience (which I hold was not surrendered in the social contract), which comes before obedience to civil laws and constituted authorities.

### **On the Definition of Civil Disobedience**

Like other related socio-political or legal concepts, civil disobedience does not have a commonly accepted definition; hence, in the pages of texts on civil disobedience one finds varied definitions. Notwithstanding, civil disobedience could be defined as follows: It is a form of protest in which protesters deliberately violate a law. Classically, they violate a law they are protesting, such as segregation or draft laws. But sometimes, they violate other laws which they find unobjectionable, such as trespass or traffic laws. Civil disobedience is the active, professed refusal to obey certain law, demands, and commands of a government, or an occupying international power.<sup>1</sup> Civil disobedience is commonly, though not always defined as been non-violent resistance; it is one form of civil resistance. In one view (in India known as *Ahimsa* or *Satyagraha*), it could be said that it is compassion in the form of respectful disagreement.<sup>2</sup>

Most activists who perform civil disobedience are scrupulously non-violent, and willingly accept penalties. The purpose of civil disobedience can be to publicize an unjust law or a just cause; to appeal to the consciences of the public, to enforce negotiation with recalcitrant officials; to “clog the machine”; to exculpate oneself, or to put an end to one's personal complexity in the injustice which flows from disobedience to unjust law or combination of these above. LeGrande indicates that, "the formulation of a single all-encompassing definition of the term is extremely difficult, if

not impossible. However, we shall adopt as our working definition John Rawls' delineation of civil disobedience which I considered as a compendium of all the features an ideal civil disobedience must entail. "Civil disobedience is a public, nonviolent, 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."<sup>3</sup> According to Rawls, people engage in conscientious civil disobedience when they perceive infraction on the part of the state of the common shared conception of justice that underlies the political order. And in such case, they are morally justified.

### **On the Features of Civil disobedience**

Certain features of civil disobedience seem vital not to its impact upon societies and governments, but also its status as a potentially justifiable breach of law. Civil disobedience is generally regarded as more moral than other forms of protest such as militant action or coercive violence. Hence, the following are some basic features of an ideal civil disobedience: i. conscientious-; ii. Publicity; and iii. nonviolent.

**Conscientious:** conscientious properly understood means obedience to the conscience; obedience to one's moral sense of right and wrong. The *Concise Oxford Dictionary of Current English* defines conscientious as diligence. This unique, essential and indisputable feature of civil disobedience is highlighted in virtually all accounts of civil disobedience. This definitely is an attestation to the seriousness, sincerity and the intrinsic value of moral conviction with which civil disobedient breach the law. This concept is so central to civil disobedience that apart from been one of its main distinguishing factor, it also serves as the bedrock of its justifications. Because of the conscientious nature of civil disobedience, it makes it a principled outlook and the communication of both condemnation and a desire for change in law or policy

**Non-Violence:** there has being debates as to whether civil disobedience needs to be nonviolent. As it were, it has been argued that, while both civil rebellion are justified by appeal to

constitutional defects, rebellion is much more destructive; therefore, the defects justifying rebellion is more serious than those justifying disobedience, and if one cannot justify civil rebellion, then one cannot justify civil disobedience use of force and violence and refusal to submit to arrest. Civil disobedient refraining from violence is also said to help preserve society's tolerance of civil disobedience.<sup>4</sup> The point we are making here is that civil disobedience has to be nonviolent less it would not be different from other forms of civil rebellions like: militancy, militia, revolution, terrorism and war. Some scores of scholars are of the school of thought that a non-violent civil disobedience confirms respect to the given political system in general and recognition of others' sense of justice. As a point of emphasis, there is a very strong point here; it is very informative to indicate that while I have a right to protest an infraction on my right or a perceived injustice, I equally have an inescapable corresponding obligation to respect other people's right to peaceful and conducive atmosphere; I should equally know that my right ends where others' begin.

One of the greatest human right activist and advocate of nonviolent civil disobedience in the recent past was Martin Luther King Jr. Until the end of his life, Luther remained opposed to the radicalization and violence advocated by the black power and stresses that:

The riot do nothing, and considers this method as ineffective, even beyond nature opposed riot in his doctrine of non-violence, morality and faith: "if we say power is the ability to change or the ability to achieve its objectives, then this is not the power to engage in an act that does not do this".<sup>5</sup>

For him, a guerrilla war such as Che Guevara is a romantic illusion. He prefers the discipline of civil disobedience which he defines as not only a right but a tribute to democratic untapped energy. The same applies to poverty; he beckons on militants to use all the power of non-violence on the economic problems.<sup>6</sup> A practical question one would ask Luther is, if those in the Niger Delta of Nigeria who have

for a very long time suffered injustice in the hands of the Nigerian government, employed nonviolence instead of their militant action will the federal government have answered them?

But in some peculiar situations when nonviolent civil disobedience actions could not persuade government for a very long time, what happens? To this, McCloskey asserts that if violent, coercive disobedience is more effective, it is other things being equal, more justified than less effective, non-violent disobedience.<sup>7</sup> I do not totally agree with McCloskey, if violence must be use at all it should be as a final resort. Luther, who was full of admiration for Christ as the perfect model of civil disobedience, use his model as an example to posit that violence is not only counter-productive but also leads to a vicious circle of violence, hence quoting him Baldwin Lewis wrote:

Public opinion has turned against him; they said he was an agitator. He used civil disobedience. He refused orders to the law. For Martin Luther then, no-violence is not only a right but necessary as accurate as either the cause of origin. The violent means fail and the circle of vengeance of the law of retaliation, when he defends the ethic of reciprocity: the ultimate weakness of vengeance is that it is a downward spiral, causing the very thing it seeks to destroy. Instead of weakening evil, it multiplies. Using violence you can kill the liar, but you cannot ill the lie, nor establish the truth. Using violence you can kill the hate, but cannot kill hatred. Therefore, hate for hate multiplies hate, adding deeper darkness to a night, without stars. Darkness cannot drive away darkness; only light can do that. Hate cannot drive hate, only love can do that.<sup>8</sup>

While I concede that violence begets violence and that two wrongs cannot make a right, Luther also should be reminded that in every law there must abound exceptions. Even Christ at one time or the other applied some deal of violence; for example, when he went to the temple and saw people turning the temple into a market place, he flogged

them, drove them away and turn over their table and allowed their pigeons to escape. What am alluding is, though civil disobedience should generally be conceived as nonviolent, however, radical situations sometimes should be tackled with a corresponding radicality; especially when it becomes the final resort and the perfect measure for the situation. In this regard, civil disobedience becomes a nonviolent fidelity to law.

**Civil disobedience is an act of the public:** it is usually argued that law-breaking; if it is not done in the public, at least it must be publicly announced in order to constitute civil disobedience. It is addressed to the public; they are performed in the public, openly and fairly. It speaks to the collective conscience of the public; it is an act that is transparent. As a public act, it is address to the ruling majority, they are motivated and justify by political principles; specifically the principle of justice which regulate constitution and social institutions. This another important distinguishing factor of civil disobedience to other civil rebellion or even crimes. Militants and terrorists for instance carry out their attack when no one is watching; even when sometimes they may latter claim responsibility. Because of the *publicness* of civil disobedience; Henry Bergson and Karl Popper call it "the open society" model.

However, Steven Eilmann argued that if it is necessary to disobey rules that conflicts with morality, we might asked why disobedience should take the form of public disobedience rather than covert law-breaking. We round up this segment of our discussion with Gandhi's succinct outline of the features of civil disobedience. He advocated that those who would join him in the noble struggle for independence from the British Empire were to express no anger, never retaliate, submit to the opponents orders and assaults, submit to arrest by authorities, surrender personal property when confiscated by the authorities, but should refuse to surrender property held in trust, refrain from saluting the union flag, and protect officials from insult and assaults, even at the risk of the resisters own life.

### **On the Justification of Punishment of Civil Disobedient**

The doctrine of civil disobedience agrees that individual members of the state or groups have every right to disobey laws that in their conscience are unjust or immoral. But it adds quickly that those who are conscientiously disobeying the law of the state should be prepared to face the penalty that goes with disobedience of law. In other words, though it is a legitimate act for one to disobey unjust law, the dissenter would still be treated as one who has performed unlawful act and therefore, punishable by law.<sup>9</sup> Scores of scholars view this doctrine with mixed-feelings. Some say it is ironical to justify both civil disobedience and the punishment which proceeds therefrom at the same time. While some scholars find it appealing it, perhaps to ensure checks and balances for the sake of sanctity of the entire legal system.

On the superficial level, it is absurd and paradoxical to say that one has the legitimate right to disobey an immoral or unjust law yet liable to the consequent penalties. To some it is self-contradictory and implausible to hold this view. One of those who hold this view is Ndubuisi and Nathaniel, who asserted that, instead of providing a remedy for the enforcement of immoral laws, classical civil disobedience doctrine turns to consolidate the power of the state over its citizens. This according to them is so because, the doctrine gives the state absolute authority, and no relief to the person who disobeys an unjust law. By implication, the state has not only the power to enact iniquity into law, but also appears to possess the right to enforce such iniquitous laws with impunity.<sup>10</sup>

But what could have been the salient reason behind the civil disobedience doctrine? Is this doctrine truly out to give an unlimited powers to the state, or is it put forth to limit the powers of the state, or it rather formulated not only to protect the natural rights of the citizens, but also by justifying penalties calling all people of goodwill to appreciate the price of heroism? Could it not be also as some scholars hold that legal sanction of the civil dissenters is for both the interest of the dissenter and the entire public? Luther seems to indicate that it is an act of heroism for a dissenter to be disposed to

accept reproaches from the state. Hence, Explicating on the nobility of willingness to accept wholeheartedly punishment for an act of civil disobedience, he wrote:

One who breaks an unjust law must do openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him that is unjust, and who willingly accepts the penalty of imprisonment or order to arouse the conscience of the community over its injustices, is in reality expressing the highest respect for law.<sup>11</sup>

Commenting on the above assertion, Ndubuisi and Nathaniel explain that, "by the tenor of this argument, a person who breaks an unjust law has done something justifiable by reason, but should show greater nobility by submitting to be punished by the state to arouse the awareness of others to the injustices been questioned. He further stated that the state is at liberty to penalize those who deliberately and in conscience disobey its laws, and that these so called dissenters should not resist to be punished, but regard their punishment as a thing of honour.<sup>12</sup> Just to digress a little, even in the Christian scriptures, Jesus admonished his followers to rejoice when people persecute them for doing what is right; consequently after his resurrection when the apostles were punished on the account that they were bearing witness to the risen Christ, they were rejoicing, praising and thanking God for counting them worth to face persecution on the account of his name. So the willingness of civil dissenters to accept punishment can arouse an uncommon courage from members of the community to join the crusade. The fruit of their persecution became an unprecedented increase of Christianity.

Another important justification for punishment for civil disobedience is to discourage the legitimization of all deviant acts to the law, also, to discourage miscreant from high-jacking the whole legal system. This argument is given a concise explication in Coxi thus:

To treat those defiant with great levity runs the risk of making; deviance of legislative judgements too

easy; to treat them without serenity runs the risk of brutalizing the institutions of punishment and undermining respect for the legal system generally, for few of us can be happy about the impression of severe sanction on a man whose motive we agree are honourable though we may question this judgement. The course is surely to persist in lenient treatment until the social dangers of the disobedience are indubitably obtrusive.<sup>13</sup>

The fundamental implication is simple, if genuine deviants are left to go unpunished, it implied that people should be at liberty to break any law they are not comfortable with, and this in turn would mess up the whole legal system. Pursuant to this, Robin Barrow argues, it should be noted that the fact that civil disobedience is morally justified does not necessarily mean that it should not be legally penalize.<sup>14</sup>

To round up this segment, it suffices to submit that the general posture of civil disobedience is that refusal to obey a law, which is by conscience adjudged immoral, is justified, but at the same time, those who engage in this act of civil disobedience should be prepare to submit to punishment without resistance. From this explication it is clear that this doctrine legitimising punishment of civil disobedience is not in any way against the individuals who engage in civil disobedience, rather it is meant to protect the whole legal system and instil the virtue of bravery on those who in faithfulness to the sacred obligation to their conscience civilly refuse to obey certain laws, policies, programmes and actions of government.

### **On the Objections and Justification of Civil Disobedience**

The nature of civil disobediences is so paradoxical to the point that many have cast doubt on how civil disobedience could be justified in the face of some criticisms levelled against it. Consequently, what follows are some of the main objections against civil disobedience, and some corresponding or counter justifications advanced by exponents of civil disobedience to rebuff or dispute them. The very first to be considered is one that says Civil disobedience cannot be justified in a democracy; that unjust laws made by a

democratic legislature can be changed by a democratic legislature. Therefore, the existence of lawful channels of change makes civil disobedience unnecessary.

In refutation to this spurious argument, it would be valid to rely on the authority of Thoreau. Thoreau asserted that in a democratic government, that in most case the constitution was not the problem; and not the solution. In addition he argued that legal channels can take too long, that he was born to live, not to lobby. Furthermore, he asserts that 'individuals are sovereign, especially in a democracy, and the Government only holds power by delegation from free individuals. Therefore, any individual can elect to stand apart from the domain of law.<sup>15</sup> I add, it is only justifiable when that individual who opts to stand outside of the law does it on account that it violate a common and collective sense of natural justice. The salient point Thoreau makes is that the so-called democratic channels of change are so cumbersome that they inadvertently constitute an obstacle to redress.

Sequel to the latter, Luther, who also performed civil disobedience in a democracy; admonishes that we should look closely at the legal channels of change to ascertain: if they are open in theory, but closed or unfairly obstructed in practice. If yes, then, the system is not democratic in the way needed to make civil disobedience unnecessary. The brute fact stressed here prevails in Nigeria and in most democracies of the world; we see in reality that these governments have become too powerful and as a result they have high-jacked the same processes, ideally put in place to seek redress. Some other civil disobedience activists, have pointed out that if judicial review is one of the features of American democracy which is supposed to make civil disobedience unnecessary, then it ironically subverts this goal; for to obtain standing to bring an unjust statute to court for review, often a plaintiff must be arrested for violating it.<sup>16</sup>

The second objection to civil disobedience in democracy is that, even if civil disobedience is something justified in a democracy, activists must first exhaust the legal channels of change and return to civil disobedience only as last resort. In reply to this argument, exponents of civil disobedience say

legal channels can never be 'exhausted'. Activists can always write another letter to the house of assembly- Senate, House of rep, Delegation or Newspapers. They can always wait for another election and cast their vote. But justice delayed, Luther proclaimed is justice denied. At a point Martin Luther argued that patience in fighting an injustice perpetuates the injustice. At this point it is only instructive to decry the delay and subversion of justice in the Nigerian judiciary. lawyers and judges connive with their corrupt clients to take advantage of the limitations and technicalities of the law to seek interlocutory injunction, they concentrate on the technicalities of the law instead of the substance of the case; thereby prolonging litigations to the point that either one of the litigants dies or becomes tied and withdraws the case. In such situation, I ask, what kind of justice do we expect? Against this backdrop, A. J. Smute argued that to use legal channels to fight unjust laws is to participate in an evil machine, and to disguise dissent as conformity; this in turn corrupts the activists and discourages others by leading them to underestimate the numbers of their congeners.<sup>17</sup> It is germane to observe that it is obvious that apart from the apparent delays of justice, democratic channels for redress are almost unrealistic.

Another argument put forward to rebuff the use of civil disobedience in democracy states: we must obey the law under a contract with other members of our society. We have tacitly consented to laws by residing in the state and enjoying its benefits. Obviously this objection can be evaded by everyone, who denies the social contract theory. But surprisingly, many disobedient activists affirm that theory, thereby making this, another objection they must answer. Socrates made this same objection to Crito who was encouraging him to disobey the laws by escaping from prison before he was executed. Just it is conventionally agreed that everyone surrendered his or her rights in the social contract with the state; however, pact did not allow and as a matter of fact and forbade the state to do anything that is detrimental to the lives and inalienable rights (equality by birth and right to live).

In reaction to this objection, Thoreau argued that consent to join a society, obey its laws must always be express, and never tacit. Tacit here used means-understood or implied without being stated. What Thoreau is saying is that the consent to obey laws of the state should be expressed and not implied. Moreover, Locke whose 'Social Contract' theory introduces the term 'tacit consent' permits disobedience, even revolution, if the state breaches its side of the contract. Locke's argument is plausible, tacit consent to obey laws of the state cannot be extended to inhuman and iniquitous laws. Consequently, a justification based on the natural law was advanced by Martin Luther. Relying on the authority of Augustine of Hippo and Thomas Aquinas, he asserted that an unjust law is not even a law, but a pervasion of law. Hence, consent to obey laws does not extend to unjust law. It should be argued that no reasonable and intelligent man would agree to enter into any contract with the state permitting the latter to enact laws that are obnoxious and repugnant and repulsive to good conscience. Based on this, this objection is morally defective and unsubstantial, and therefore cannot repudiate the practice of civil disobedience.

### **Evaluation**

My evaluation of this ironical and paradoxical concept 'civil disobedience' is centred on the moral justification of it, and the justification of those who conscientiously engage in civil disobedience. The ultimate justification of civil disobedience lies in the basic belief or assumption that law as it 'ought to be' is unconditional and demands an unconditional obedience from all men; and that the breach of the law of nature means death. It comes with obvious unspeakable and inexorable consequences. The natural law imprinted in the nature of man as a rational animal, and this properly understood is man's rational participation on the Divine law. The natural law ought to be under all circumstances the archetype, the blueprint, the ideal, the substance, ultimate universal norm, and in legal term the ground norm on which every human positive law ought to be patterned or drawn from, before it can at the first instance be considered a law.

Hence, any law that runs fowl or contrary to the basic precepts of natural law ought not to be at all. And the disobedience of the same I considered as not only legitimate but also noble. Nature has given every man a conscience so that by the proper use of the same, he would remain abreast or in harmony with nature, because failure to do this, have unavoidable grave implications. Hence obedience to one's conscience is ultimate and absolute; it must come before obedience to any civil or human laws.

I consider as moral, under any form of government, disobedience of any law (laws) that is repugnant to good conscience as not only moral and just but also an inalienable right and obligation to one's conscience. Nduibisi and Nathaniel affirmed this position. The capacity to declare a particular law unjust or immoral shows that man is naturally able to transcend law, and we know that this ability to transcend law as made by authority is a metaphysical attitude. There is always an extra legal reason for the disobedience of law, which entails going beyond law as it is, to the domain of law as it ought to be. This as a matter of fact is the kernel of the justification of civil disobedience doctrine.

Consequently, Aquinas made what I would consider a flaw when he advocated that for the sake of peace and to forestall public scandal, that one should accept a law that is repugnant to good conscience. If I may ask, which peace, is of greater value? Is it an outward peace or inward peace? Does he place premium on artificial peace in the human society over the real peace that proceed inwardly from being in harmony with nature (one's essence). Further, I consider obedience of immoral laws for avoidance of scandal as absurd. Is it justify for one to obey laws that allows one to have canal relations with the infirm, minors, animals, commit abortion indiscriminately, obey laws that permit one marrying same sex just to avoid scandal. Should the sake of peace and the avoidance of scandal be supreme to the ethical values of law? Equally important here, is this maxim from the natural law: you may not do evil for good to ensue. So the duty to do Good (obey one's conscience) is absolute and also is the obligation to avoid evil. We should not in the name of avoiding scandal

obey iniquitous laws, for we know that no matter what, the end cannot justify the means. It is never permissible to do evil or obey a law which is antithetical to the precepts of natural law in the hope of producing a good effect; it is rather ridiculous and absurd to do so.

I strongly advocate that those who conscientiously engage in civil disobedience should equally be prepared to generously accept punishment for two reasons: (a) to forestall anarchy and (b) to encourage bravery. When dissenters are not punished, it would make rubbish of the whole legal system. Some people will take liberty to disobey whatever law they are not positively disposed to in the guise that it violates their conscience. Even those who engage in criminal acts and yet others who are bent in destabilizing the government would take undue advantage of civil disobedience. For instant, cultists may stage a protest that anti-cultist laws should be repealed on the allegation that it infringes on their right of free association. Further, some students may deliberately and openly transgress laws prohibiting examination mal-practice on the pretence that it is repugnant to their conscience, that their conscience would torment them should they fail to engage in mal-practice to pass. So if genuine conscientious civil disobedience are not punished, imagine what sort of system we would have. The wicked (the examples just given) will always want to take advantage of it to spread vices. Therefore, civil disobedience should be punished to preserve the good laws, discourage aberration and the high-jack of the system, and to preserve the sanctity of the whole community.

Consequently, it was, it is, and would always be a sign of heroism for individuals and peoples to die individually and collectively for what they belief in. Punishing civil disobedient should not be seen at all as a deterrent , rather it should be seen as a positive mechanism to separate the men from the boys. The ability for one under all odds to take responsibility for his or her actions is not only a sign of maturity, but also a sign of heroism and nobility. As a result, instead of weakening civil disobedience, it strengthens it. For instance, in a seminal on African philosophy of technology presented in Ekiti state University, I argued that one of the

bane of African's backwardness, is that we lack courageous men and women. Those who will be bold to sacrifice themselves for a just and altruistic course. We prefer to die in silence than take a bold step. People are ready to give bribe to police either on the road or in the stations, even when they are right, than be unlawfully delayed even for only five minutes. You can imagine that! Students are ready to give in to the sexual harassment or demand for money from some lecturers, rather than take legal actions against them, because of, maybe, some perceived inconveniences they may suffer in the cause of fighting for justice. Timidity is increasingly becoming the supreme norm of man. What will I gain? Instead of, does it conform to my conscience? Is increasingly becoming the norm of actions.

Although it is paradoxical, yet punishment of civil dissenters is legitimate and it is compatible with the doctrine of civil disobedience. Posterity has come to honour, revere, respect and worship those who were steadfast to the obligation to their conscience and suffered excruciating pains, even to the point of laying down their lives to violent death for the sake of their beliefs. A vivid example is in the US a day is set aside to commemorate Martin Luther King Jr. for his astute and uncompromising commitment to the fight for the rights of the Black Americans through civil disobedience. Civil disobedience is worth whatever price, it is noble, it is holy, it is sacred it is sacrosanct; it is a fundamental obligation one owes the conscience. As a result, one should be courageous, zealous, bold and resolute and above all one should willingly and generously accept whatever punishment that may be imposed. It is self-evident that evil cannot be overthrown by the good without the crusaders suffering some measure of violence.

Furthermore, I do not believe that in engaging in acts of civil refusal to obey a particular law, government policies and programmes, that I have breached the social contract between I and the civil society. For instance; it wasn't part of the terms of the social contract that government should make laws, by-laws, policies, decrees and edicts that violate my right to live and equity of all men, laws legitimising abortion, same sex

unions, soldiers having carnal relations with animals, scientist treating man as an object, politicians receiving unjustifiable salaries to the detriment of our common wealth and common good, imposition of unprecedented tax on the people and laws that frustrates both natural and civil rights. In fact if any government whether military or democratic does any, or all of the above, it is such government that breaches the terms of the social contract. This position is given a positive affirmation in John Rawls who believes that, citizens submit their conduct to democratic authority only to the extent necessary to the equity in the inevitable imperfections of a constitutional system. This means that there are limits beyond which compliance to the authorities formed on the basis of majority rule may lead to injustices. When the latter becomes the case, civil refusal is inevitable and morally justified. For instance; what do you make of president Goodluck Jonathan's initial resolve to remove oil subsidy to further impoverish the teeming Nigeria populations already wallowing in abject poverty. Albeit, Rawls asserts that the concept of civil disobedience gives the individuals an opportunity to resist injustice in adherence to the law; in this light he sees the concept as complementary to constitutional democracy. In this understanding, it becomes clear and convincing that it is not true that when one indulges in civil disobedience he contradicts the social contract. Hence he opines that civil disobedience is justified in democracy when the principles of social cooperation among free and equal men are not being respected.

Those who believe that the legal apparatus in democratic government are enough to redress any unjust laws or programmes, actions and policies of government, do so in obvious error. Given the fact, in principle, the judiciary, or the members of the legislature are true representatives of the people and that the judiciary is independent and as such the last hope of the people. Contrary to that, in practice prevailing circumstances in Nigeria shows that both the legislature and the judiciary are dependent on the executive arm of government. The same government who indiscriminately perpetuated evil, the same government controls the judiciary, how on earth, do any right thinking Nigerian expect the law to

be a veritable channel to repeal an unjust law. This accounts for the reason why politicians after stealing billions of the tax payers' money, goes to the court engage in plea bargain or pays a token and walks away. That same law would jail another politician who commit the same offence or even lesser, perhaps because the latter is of the opposition party. How can such discriminating legal system be a veritable means to address social or legal maladies?

In the letter from Birmingham jail written on 16<sup>th</sup> April 1963 when he was arrested for nonviolent demonstration, Martin Luther meets eight white priest from Alabama who had written four days earlier in a letter entitled, "A call for Unity" while conceding to the existence of social injustice; they expressed the belief that the battle against racial segregation should take place in the courts not in the streets. Martin Luther replied that without direct and powerful effort like those he undertook, civil rights would never be achieved. He asserted that civil disobedience is justified not only to deal with unjust laws; but that everyone has a moral responsibility to disobey unjust laws.<sup>18</sup> The letter includes the following famous quote: An injustice whenever it is, is a threat to justice everywhere. He also repeated the words of Thurgood Marshall; A justice too long delayed, is justice denied.

### **Conclusion**

Civil disobedience is a mechanism for working democracy, a significant social instrument of resistance to some partial laws and state decisions that contradicts the social contract between individuals and the state, and ultimately contravene the precepts of morality. The ultimate aim of civil disobedience is to refrain from evil and do good, to make governments accountable and faithful to the terms of the social contract pact. To put pressure on the state to the privilege interests of the civilly disobedients minority over the majority. The fundamental justification of civil disobedience is the universal assumption that human law ought to be a reflection of the rational moral laws of nature; and that any law repugnant to good conscience ought to be starkly and bluntly resisted. Justifying civil disobedience do not appeal to

principles of personal morality or personal doctrines; though this may coincide or support one's claims; and it goes without saying that civil disobedience cannot be grounded solely on group or self-interest, instead one invokes the commonly shared conception of justice that underlies the political order.<sup>19</sup>

Hence, in order to discourage civil disobedience, the law must try to be a reflection of what the society deems morally correct; it must be an articulation of the significant or meaningful objective of the people. It must promote, protect and respect the inalienable rights and liberties of the citizens, it must ensure justice and equity in the political order. Therefore, when laws, policies, programmes and actions of government conflicts with the conscience of the public; why would one not break it? What possible virtue is there in obedience for the sake of peace or to forestall scandal? I subscribe to the school of thought that holds the theory that while civil disobedience may be helpful, any great amount of it undermines the law by encouraging general disobedience which is neither conscientious nor of social benefit. Conscientious lawbreakers should not be oblivious or wary of the fact that moderation is virtue. Therefore conscientious lawbreakers must be punished.

## ENDNOTES

- <sup>1</sup> P. Ling, *Martin Luther King Junior*. London: Routledge. 2002, p. 157.
- <sup>2</sup> Morreal, cited in C. N Ogunleye, *The Law, Human Rights And Justice*, New York: University Press, pp. 35-47
- <sup>3</sup> J. Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, 1971, p. 363
- <sup>4</sup> Brown, cited in W. Y, Ogunbare, *Philosophical Jurisprudence*, Lagos: Lienel Publishers, 2009, p. 58
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