

HANNAH ARENDT ON CIVIL DISOBEDIENCE.

This paper is in response to Hannah Arendt's views on civil disobedience.¹ Assuming the general thesis that civil disobedience can be justified, the paper questions the analysis and justification as has been provided by Hannah Arendt. Her central contention is that civil disobedience is essentially a group action which springs from common opinion rather than common interest.² Arendt believes that civil disobedience is primarily American in origin and substance and that no other language has even a word for it. She further contends that only the American legal system has a chance to cope with the idea of civil disobedience³ notwithstanding the fact that law and its disobedience are usually considered incompatible. The present paper examines both the contentions and concludes that Arendt's analysis is inadequate and her justification incomplete. The inadequacy may be due to the fact that the analysis as well as the justification has been provided while keeping only the American legal system in view.

I. Whenever civil disobedience is justified, says Arendt, it is either construed on the image of a conscientious objector who objects to the immoral content of a law or on the person who wants to test the constitutionality of a statute. The trouble, as pointed out by Arendt, is that the situation of the civil disobedient bears no analogy to either for the simple reason that he never exists as a single individual; he can function and survive only as a member of a group.⁴

Civil disobedience is usually indirect disobedience; citizens may violate those laws which they regard as non-objectionable in themselves (for example, traffic laws) in order to protest against

other unjust laws. According to Arendt, "It is precisely this indirect disobedience which would make no sense whatsoever in the case of the conscientious objector or the man who breaks a specific law to test its constitutionality...."⁵ Hence we must distinguish between conscientious objectors and civil disobedients. She further points out that civil disobedients "... are in fact organised minorities, bound together by common opinion, rather than by common interest....their concerted action springs from an agreement with each other, and it is this agreement that lends credence and conviction to their opinion, no matter how they may originally have arrived at it."⁶ Arendt argues that arguments raised in defence of individual conscience or individual acts are inadequate when applied to civil disobedience.⁷

Consequently, Socrates' case falls outside the context, for his was an individual's protest. The main problem according to Arendt is : Here as elsewhere conscience is unpolitical. It is not primarily interested in the world where the wrong is committed or in the consequences that the wrong will have for the future course of the world".⁸ Further, the counsels of conscience are not only unpolitical; they are always expressed in purely subjective statements. "When Socrates stated that 'it is better to suffer wrong than to do wrong', he clearly meant that it was better for him, just as it was better for him to be in disagreement with multitudes than to be in disagreement with (himself)".⁹ According to Arendt, the validity of the Socratic propositions depends upon the kind of man who utters them and the kind of men to whom they are addressed. "They are self-evident truths for man in so far as he is a thinking being; to those who don't think, who don't have intercourse with themselves, they are not self-evident, nor can they be proved."¹⁰

According to Arendt, the political and legal trouble with such justification is twofold. First, it

can not be generalized; in order to keep its validity it must remain subjective. The second trouble, which is more serious, is that conscience, if it is defined in secular terms, presupposes not only that man possesses the innate faculty of telling right from wrong, but also that man is interested in himself, for the obligation arises from this interest alone. And this kind of self-interest can hardly be taken for granted.¹¹

Arendt, therefore, categorically rejects that civil disobedience can ever be an individual's act. Civil disobedients can be looked upon as pressure groups and should be distinguished both from criminals, for they defy law openly¹² and use peaceful methods, and from revolutionaries, for they accept the legitimacy of the system (and hence accept the punishment willingly) but defy a particular law.¹³ Such a defiance is justified when normal channels of change become ineffective and when government itself insists upon actions whose constitutionality and legality are open to doubt.

As for the problem of justification Arendt treats it in an unusual way, that is, attempting at making compatible the idea of civil disobedience with the concept of law. Now, there is a problem involved here because, *prima facie*, it seems that law can never permit its defiance. In a legal system the violation of one law can not be justified even if it aims at preventing the violation of another law. However, Arendt believes that American legal system can cope with the idea of civil disobedience in the sense that the spirit of the constitution accommodates it. She thinks that Lockean version of contract theory can explain the spirit of the constitution in the most plausible way. Accordingly, "the sense of active support and continuing participation in all

matters of public interest" is the spirit of the constitution.¹⁴ Arendt says that civil disobedients are the latest form of voluntary association and are quite in tune with the oldest tradition of the country.

II. According to Arendt, the greatest fallacy in current discussions of civil disobedience is the assumption that one is dealing with the individuals who put themselves subjectively and conscientiously against the laws of the community.¹⁵ I think Arendt makes the contrary assumption, that is, the involvement of a group sharing common opinion is a necessary condition of civil disobedience. Let us imagine a situation wherein a citizen sincerely believes that a statute or an ordinance is unconstitutional or immoral and affects a large number of persons or a minority group. Suppose, further, the members of the minority group are uneducated and are ignorant of the losses or injustice they are likely to be subjected to as a result of that policy. In such a situation if a citizen raises his voice, acts deliberately against the law, and accepts the punishment willingly and thus protests as a civilian, what will he be called? A criminal? A rebel? A conscientious objector? If none, can he not be called a civil disobedient? What essential factor is missing here that prevents us from labelling him so except that usually no individual defies law in such a manner? Conceptually speaking, the essential element required is a person's defiance of law as a civilian (this is what the term literally means) involving his acceptance of the legitimacy of the system and hence the *prima facie* obligation to obey the law. (Certainly this obligation is not absolute, for it can be overridden by more stringent obligations). A person's association with a group and his sharing an opinion with others only strengthens his case when the practical aspect of the problem is taken into consideration.

Hence, theoretically, Socrates' case needs reexamining before one declares it irrelevant or out of context solely on the ground that it was an individual's protest. Here, the idea of conscientious objector itself needs clarification. It is necessary to observe the difference between the two situations : (1) where a person who violates a law as his conscience dictates without accepting even a *prima facie* obligation towards the legal system of which he is a member as if he is only a free individual and not a person who has to share the responsibilities of a citizen, and (2) where a person who accepts the obligation to obey the law but feels that in certain circumstances he has to fulfil overriding obligations that his conscience dictates and hence defies it. The possibility of the latter case makes it sensible to suppose that a conscientious objector too can be a civil disobedient and the two are not necessarily incompatible as Arendt assumes. To treat them incompatible is to make the assumption that conscience and reason can never coexist. The assumption needs to be examined; Socrates' own case calls for it.

If someone asks whether a conscientious objector is right, using the word 'right' in an objective sense, the answer is 'No'. But, then, one is going to get the same answer in Arendt's own framework if the question is whether a group's defiance is right - in an objective sense of the term 'right'. And it is so because of her too formalistic approach to the problem. She writes that "their (civil disobedients) concerted action springs from an agreement with each other, and it is this agreement that lends credence and conviction to their opinion, no matter how they may have originally arrived at it". If in the case of a group's opinion it is not necessary to know how the members of the group have arrived at it, in the case of an individual too it is not necessary to know whence he has got his moral obligations or

whether there is any such thing as conscience. Surprisingly, Arendt, accepting Puner's view, writes that "Unanimous agreements that 'X' is an evil.... adds credence to the belief that 'X' is an evil".¹⁶ Credence to a belief and its righteousness are two different things. That unanimity on a decision is always sufficient to believe in its righteousness is itself a belief that Arendt seems to share with democrats. Though she writes that here we are dealing with organized minorities that are too important, not merely in numbers, but in quality of opinion, she nowhere lays down any criteria to judge the quality of an opinion.

Arendt finds it problematic to accept an individual's protest as a case of civil disobedience, for she finds the generalizability factor which is essential in any act of civil disobedience missing here. Again, it seems that Arendt assumes that an opinion held by an individual is non-generalizable in principle and she equates the generalizability of an opinion (as righteousness of an opinion) with the fact of its being shared by a number of persons. But the generalizability of an opinion that is evaluative has nothing whatsoever to do with its being accepted by an individual or a group; an evaluative judgement is generalizable, else it ceases to be so. Therefore, it would be wrong to say that when Socrates said that it was better to suffer wrong than to do wrong he meant that it was better for him only; so far as Socrates is concerned, he would have considered it better for every rational person. But since Socrates' was a conscientious objector's case, Arendt finds it more problematic. Conscience is no doubt subjective, but that the content of its imperatives too must necessarily remain subjective seems a dubious proposition which, I think, Arendt implicitly makes.

So far our discussion amounts to saying that the involvement of a group as a necessary condition for any act of civil disobedience is unsound. The objection that an individual's disobedience suffers from the

inadequacy of its being ungeneralizable and subjective is untenable.

Now regarding the justification of civil disobedience, Arendt believes that the spirit of the constitution itself justifies it. Arendt, like many other defenders of civil disobedience, relies upon Lockean version of contract theory. Locke is often thought to have asserted that people have the right to disobey all those laws that violate their natural rights. But firstly, Locke justifies revolution on this ground. Secondly, for him consent to be in a society means consent to be bound by a majority decision of the society. Consequently, the status of an individual's or a group's right to civil disobedience when not supported by the majority has a dubious position in Locke. Atleast, he is not explicitly in favour of civil disobedience.

Even if one concedes the right to disobey the law, firstly, it is a moral right and, secondly, it is necessarily in conflict with the legal system, for in all such cases the moral obligation, which itself is independent of the legal system, claims its superiority over the legal obligation. That means that civil disobedience can never be seen as compatible with law as such. Arendt herself suggests that civil disobedience is compatible with the spirit of law. But, then, the spirit of law is not law itself unless one defines law in this way (as all natural law philosophers in fact do). But Arendt does not do that for she herself realizes that "...the difficulty of incorporating it into the American legal system and justifying it on purely legal grounds seem to be prohibitive."¹⁷ Since the right to resist is a moral right, conceptually speaking, this right can always be conceded to rational person in any legal system whatsoever. (In fact, the problem of compatibility of civil disobedience with a particular legal system becomes irrelevant here). It is not a speciality of American legal system that grants this right; any

conception of a rational social order grants it.

The crucial thing in any justification of civil disobedience is to spell out the criteria which will help one decide whether a situation is of a nature that makes disobedience justifiable. The problem of generalizability, then, turns out to be the problem of finding out whether a particular opinion fulfils those criteria. The impression one gathers from Arendt's entire discussion is that she would like to restrict the practice of civil disobedience to the cases when a first order constitutional crisis is present.¹⁸ But whether civil disobedience is justified when the constitution itself allows neglect of fundamental rights or minimum demands of justice remains a point to be considered. It is accidental that in America civil disobedience has arisen for very important issues of wide interest and the country has active political consciousness, with the result that a number of persons get involved in a movement. But that neither justifies a formal treatment of the problem nor proves that a group's involvement is a necessary condition. Civil disobedience may be American in origin, but now it has become a world-wide phenomenon. The phenomenon is to be understood even if it occurs in a legal system whose language does not have a word for it.

Moreover, it does not seem desirable to see a conceptual problem in such a limited context. In general, all philosophical problems are global and are to be specified when the specification becomes theoretically necessary. But, then, it is the task of the philosopher to show that the problem under consideration is of that nature.

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