

# Is Autonomy-based Civil Disobedience Possible?

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## 1. Introduction

The purpose of this article is to clarify civil disobedience through the autonomy-based principle (the principle of autonomy). Civil disobedience is a movement in which citizens appeal to justice beyond the law, and it involves disobedience to the law. Examples of this movement include the civil rights movement and anti-war movements in America during the 1950s and 1960s. The core issue of this movement is the defense of the right to freedom, which is threatened when people's autonomy is significantly restricted and their freedom and lives cannot be secured.

However, civil disobedience can be seen as acts that go against the law, but can they be considered acts that go against “the rule of law<sup>1</sup>”? The rule of law aims to eliminate arbitrary domination of state power and to constrain that power through legal means. In other words, it signifies the rejection of the rule of man and requires that all authority and people should obey the order that the law aspires to achieve. Nevertheless, civil disobedience goes against the law. Can it be justified? In this paper, I would like to explain the relationship between civil disobedience and the rule of law from the viewpoint of “autonomy.”

In modern times, the focus of this debate has shifted from the limitations on individual personality to the political ideal of democracy. In Taiwan, there was the “Sunflower Student Movement (太陽花學運)” in 2014 where citizens occupied the Legislative Yuan (立法院) in Taiwan and claimed civil disobedience because of concerns that “Economic Cooperation Framework Agreement (ECFA)” with China was improperly passed by the legislature and that opening up trade with China would threaten the personal freedom and nation information security of Taiwan. However, since restrictions by the government on human rights, regarding freedom, life and autonomy, are the main cause of the threat to democracy, is it possible to justify civil disobedience within the framework of autonomy-based principle? In this sense, I would like to explain the theory of civil disobedience using the concept of autonomy advocated by Joseph Raz, Gerald Dworkin, and Isaiah Berlin, and examine the issues of the theory of civil disobedience while applying the concept of autonomy.

## 2. The Concept of Autonomy

When explaining the concept of autonomy, it's essential to take note of its multifaceted nature.

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<sup>1</sup> The United States Supreme Court often discusses the relationship between the rule of law and civil disobedience. For instance, the decision in the case of *Walker v. City of Birmingham* is an example. *Walker v. City of Birmingham*, 388 U.S. 307, 320–21 (1967).

Gerald Dworkin highlights the diverse usage of the term “autonomy.” According to Dworkin, autonomy is sometimes associated with freedom (for instance, in Berlin's terms, negative freedom and positive freedom), occasionally with self-governance or sovereignty, and at times, it's used to symbolize personal will, dignity, integrity, uniqueness, independence, responsibility, self-awareness, and self-identification. What remains consistent across these usages is that autonomy is a characteristic of a person, a quality deemed valuable<sup>2</sup>. This paper mainly relies on Joseph Raz's theory to explain the concept of autonomy.

The modern concept of autonomy is primarily developed based on Kant's moral theory. According to Kant, autonomy is the highest principle of reason and morality. It involves acting according to universal moral laws while not being constrained by natural desires such as sensual inclinations<sup>3</sup>. This will is not only guided by self-imposed norms but also follows the laws of reason, remaining independent of external influences like God or other authorities. Possessing such autonomy empowers individuals to make moral decisions and act upon them, essentially embodying a deontological perspective.

Raz notes that his personal autonomy differs from Kant's moral autonomy and should not be confused with the concept of moral autonomy, which is only indirectly related<sup>4</sup>. Kantian autonomy demands adherence to categorical imperatives and being commanded by themselves. Categorical imperatives require unconditional choices, in contrast to hypothetical imperatives based on conditional “if-then” statements. Kant's view asserts that all individuals, governed by reason, can find within themselves universally valid laws and deem similar actions as reasonable. Conversely, Raz's conception of personal autonomy centers primarily on choosing a “good life” for oneself.

Raz points out that specific concepts of personal well-being in Western societies are ideals of personal autonomy<sup>5</sup>. This autonomy is significantly determined by our actions and involves the capacity to set lifetime goals and choose interpersonal relationships, making it a critical component of happiness. The underpinning philosophy for personal autonomy suggests that people should create their own lives, emphasizing notions of self-creation and self-choice. In essence, autonomous individuals possess the ability to control their own “good life” through a series of decisions made throughout their lives. He says, “The autonomous person is a (part) author of his own life.”

However, to increase this ideal of personal autonomy, a society must inherently contain a multitude of distinct forms, characterized by diverse and often incompatible value systems. Achieving

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<sup>2</sup> Gerald Dworkin, *The Theory and Practice of Autonomy* (CUP 1988) 5-6. 服部高宏「「自律」概念とパターナリズム——ジェラルド・ドゥオーキンの見解を手がかりに」岡山大学法学会雑誌 49 卷 3・4 号 356 頁。

<sup>3</sup> カント (中山元訳)『道徳形而上学の基礎づけ』(光文社、2012 年) 115 頁。

<sup>4</sup> Joseph Raz, *The Morality of Freedom* (OUP 1986) 370.

<sup>5</sup> Ibid 369.

the ideal of personal autonomy necessitates a range of choices. The existence of various value systems, i.e., notions of the “good,” is crucial for actualizing an autonomous life. Consequently, a standpoint of “value pluralism” must be assumed before delving into discussions about autonomy. This leads to an explanation of value pluralism.

## 2.1. Value Pluralism

Value pluralism contrasts with the traditionally supported monism in Western societies. According to Berlin, monism derives from longstanding faith and aims to ultimately resolve all contradictions within that faith. Monism, as the single criterion resolving multiple contradictions, compels individuals to pursue the most significant “monistic” value<sup>6</sup>. On the other hand, value pluralism acknowledges the existence of incommensurable values that are diverse and might conflict with each other<sup>7</sup>.

Raz's standpoint appears to be influenced by Isaiah Berlin<sup>8</sup>. According to Raz, value pluralism establishes the value of tolerance by recognizing all forms of human life, even those that are incompatible, through tolerance<sup>9</sup>. This value of tolerance derives from Kant's concept of personal respect, valuing others' lives and treating their humanity as an end in itself<sup>10</sup>. In essence, a “plural” society that embraces personal uniqueness without denying it and practices tolerance toward diverse personalities is a moral virtue that Raz finds desirable. In order to uphold personal autonomy in all forms of life, it's necessary to restrain conflicting attitudes in human behavior and values through a perspective rooted in tolerance. A society based on the values of tolerance, or value pluralism, allows individuals to create and secure diverse autonomous lives.

However, among the chosen values, intolerance often emerges toward other moral virtues or pursuits. Intolerance arises when one does not tolerate individuals possessing moral virtues they lack and may persecute or harass them. Tolerance involves not generating aversion or hostility toward others' ways of living and is a unique moral virtue. Suppressing tendencies to generate aversion or hostility toward others' ways of living has moral value in itself. Raz views the “use of coercion” by political theorists as a potential manifestation of intolerance<sup>11</sup>.

To respect personal autonomy, it's necessary to tolerate bad or evil actions within certain bounds.

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<sup>6</sup> 濱真一郎『バーリンの自由論：多元論的リベラリズムの系譜』（勁草書房、2008年）45-46頁。

<sup>7</sup> Ibid 47-48.

<sup>8</sup> 濱真一郎「アイザイア・バーリンの価値多元論：現代正義論におけるその可能性」同志社法学 51 卷 4 号 3 頁。

<sup>9</sup> Raz (n 4) 401.

<sup>10</sup> Joseph Raz, *Value, Respect, and Attachment* (CUP 2001) 130-138.

<sup>11</sup> Raz (n 4) 403.

Tolerance restrains tendencies toward intolerance in accepting and pursuing morally acceptable preferences of others. Clashes of values between people generate intolerant emotions. To resolve such conflicts, a stance of tolerating others is essential. Raz terms this competitive pluralism, which offers a relationship with tolerance and a posture of respecting autonomy. Therefore, the principle of toleration is derived. Finally, tolerance and intolerance can coexist<sup>12</sup>.

In a society based in value pluralism, various forms of life that lack compatibility are morally<sup>13</sup> permissible. This is because each way of life possesses its unique virtues, allowing individuals to obtain their excellence through pursuing them. For example, the extroverted and socially inclined person versus the introverted and reserved individual cannot be deemed inherently wrong in their chosen forms of life. Instead, they likely possess differing character traits and aspire to distinct ideals of life. Regardless of the pursued form of life, pursuing a form that entails alternative and incompatible modes yields its virtues. Thus, value pluralism affirms the diverse forms of life individuals have and the belief in respecting each form within a society that seeks to maximize them.

However, pursuing a specific life form also implies relinquishing other virtues. As mentioned earlier, since all values are incompatible with one another, selecting one value implies not pursuing others. Simultaneously possessing all values is impossible. For instance, a Christian believer cannot worship a Buddha statue, and a Buddhist cannot read the Christian Bible.

Various types of goods have distinct forms, and different values must be held to achieve autonomy. However, the diversity of these goods showcases the impossibility of simultaneously possessing all virtues and thus the incommensurability of values. Autonomy, understood as the capacity to select and engage with a multitude of values based on value pluralism's interdependent assumption, inherently possesses value<sup>14</sup>.

As discussed in the upcoming “autonomy-based principle,” autonomy demands a sufficient range of choices. This range goes beyond mere quantity, necessitating the creation of a spectrum of diverse virtues that are mutually incompatible. Without the presence of value pluralism representing incompatible virtues, we would be unable to create diverse forms of autonomous lives. Hence, autonomy necessitates value pluralism.

## 2.2. Autonomy-Based Principle

Raz advocates value pluralism and derives the “principle of tolerance,” which promotes respecting each other's autonomy by recognizing incomparable and valuable forms of life. Tolerance is one facet of respecting autonomy. In light of the above, it's possible to derive an “autonomy-based

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<sup>12</sup> Ibid 406-407.

<sup>13</sup> In this context, Raz distinguishes value pluralism from moral pluralism, arguing that morality encompasses a broad spectrum of perspectives, including diverse notions of a good life. Ibid 397.

<sup>14</sup> Raz (n 10) 157-158.

principle” as a concrete instantiation of value pluralism and the principle of tolerance.

According to Raz, personal autonomy emphasizes the state where people possess certain capacities. To enable individuals to lead autonomous lives, they must fulfill three obligations, or “conditions of autonomy,” as the basis for autonomy. There are three conditions of autonomy below: (1) independence from coercion and manipulation, (2) appropriate mental abilities, and (3) an adequate range of options<sup>15</sup>.

(1) The obligation of independence involves refraining from treating people as objects for coercion or manipulation, thereby respecting their independence. Coercion and manipulation lower one person's will to another's, infringing upon human autonomy. J.S. Mill's harm principle demands non-interference with actions as long as they do not cause harm to others. Assuming the absence of harm, this obligation essentially requires not interfering in human actions.

(2) Creating appropriate mental abilities required for leading an autonomous life. These capacities include mental, cognitive, and inferential abilities, as well as elements related to emotions, health, and physical capabilities. This concept is often discussed as paternalism. For instance, Mill's harm principle has limitations. Mill assumes that the harm principle applies only to mature individuals, excluding infants, minors, adults needing care, or those in undeveloped societies<sup>16</sup>. Thus, autonomy is thought to be possessed by those with the ability to make judgments and utilize internal capacities.

(3) Creating an adequate range of options for people. The appropriateness criteria for available options should consider individuals, time, and space. For example, not only must fairness between long-term, far-reaching choices and short-term, less impactful choices be ensured (e.g., university admissions or job opportunities), but also a diversity of options rather than just quantity must be addressed. To pursue autonomy and autonomous lives, individuals need a diverse range of options to engage in self-exploration and self-realization activities. These activities not only involve choosing which abilities to enhance but also which abilities not to develop.

Hama(濱) advocates that Isaiah Berlin's distinction between “negative freedom” and “positive freedom” is useful in understanding the autonomy-based principle<sup>17</sup>. Negative freedom, or freedom from coercion, corresponds to the demand of (1) independence from coercion and manipulation. As Raz pointed out, securing and facilitating autonomy through the obligations of (2) appropriate mental abilities and (3) an adequate range of options equates to positive freedom<sup>18</sup>. According to the autonomy-based principle, if people cannot make sure that negative freedom is secured, then achieving positive freedom would also become impossible.

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<sup>15</sup> Raz (n 4) 372; *ibid* 407-408.

<sup>16</sup> JS Mill, *On Liberty* (Batoche Books 2001) 14.

<sup>17</sup> 濱真一郎「ジョセフ・ラズにおけるリベラリズムの哲学的基礎づけ」同志社法学 47 卷 2 号 (1995 年) 139-140 頁。

<sup>18</sup> Raz (n 4) 408-409.

Raz believes that the autonomy-based principle can be integrated with Mill's harm principle. The harm principle asserts that the only justified reason for forcibly interfering with a person is to prevent them from causing harm to others. However, forceful actions justified by the autonomy-based duty cannot occur unless harm is present. Thus, Raz defines harm as actions that infringe upon a person's autonomy and negatively impact their future and potential. Basically, violating upon or adversely affecting an individual's autonomy denies the autonomy-based duty.

### 2.3. Relationship with Civil Disobedience

Civil disobedience refers to the public and open violation of certain laws or policies believed to be morally wrong, based on one's conscience and a conviction that one's actions are just. In this context, morally wrong actions would significantly limit personal autonomy, implying actions against laws that compromise personal autonomy. Raz introduces the concept of autonomy to assert that not improving the conditions of autonomy is considered “harm”, leading to the imposition of “autonomy-based duties” on the government to ensure conditions that enhance autonomy. The government has an obligation to secure these conditions for individuals lacking them, and this obligation goes beyond preventing the loss of autonomy. The government must respect and provide various conditions that promote autonomy. Without these conditions, individuals' ability to establish autonomy is hindered, resulting in a violation of autonomy.

The autonomy-based duty is a moral obligation that applies to everyone. All members of society, including voters, have a duty to respect the autonomy of others. This respect for autonomy encompasses the “value pluralism” and “tolerance” that Raz highlighted. This is required to exercise rights centered around individuals in the modern constitutional order. The notion of value here does not include distinctions between high and low values. While mainstream values may be adopted by the government to achieve certain goals (equality, justice, etc.), non-mainstream values are not necessarily insignificant. They relate to individual religious beliefs or party affiliations and should not be constrained unless they cause harm that violates the harm principle. In all other cases, tolerance for other values is required, respecting individuals who hold these values and facilitating their development in society. In this sense, personal autonomy is respected. Conversely, persecuting these individuals would normalize societal values and lead to a loss of personal autonomy.

In other words, the government has a moral obligation to respect citizens' autonomy. When the government enacts laws or policies that deny citizens' autonomy and result in their harm, citizens have the right to resist such harm. This establishes a rational criterion for civil disobedience, as it involves actions that demand “respect for the autonomy.”

However, the government must adhere to the principle of “rule of law” based on democratic principles and eliminate arbitrary power of governments. According to Raz, the virtue of the rule of

law is that “if the law is to be obeyed it must be capable of guiding the behavior of its subjects<sup>19</sup>.” This concept is opposed to the rule of man and implies that the rule of law means complying with and adhering to the law. The rule of law itself needs to fulfill two roles: (1) avoiding arbitrary power and (2) achieving the protection of individual liberties<sup>20</sup>. Respecting human dignity involves treating individuals as autonomous entities, acknowledging their autonomy and the freedom to control and plan their own lives and futures. Conversely, disrespecting human dignity involves ignoring personal autonomy and resorting to coercion, manipulation, and control. Failing to comply with the rule of law would undoubtedly lead to actions that violate individual dignity.

Hence, the most important value of the rule of law is the protection of personal autonomy. Civil disobedience supports the rule of law and pursues the goal of respecting and safeguarding personal autonomy. Any arbitrary actions that violate personal autonomy are not civil disobedience but mere violations of the legal order.

It's important to note that not all actions that violate the duty to respect citizens' autonomy can justify civil disobedience. Finally, it is required to back to democratic principles and the establishment of rational rights protection.

### 3. Conclusion

In this paper, through Raz's autonomy-based principle, the relationship between value pluralism, tolerance, and autonomy has been clarified, reaffirming the concept of autonomy. In a society with various incomparable values, it is the mutual respect and tolerance among individuals that enable the creation of diverse autonomous lives. If citizens' circumstances prevent the realization of autonomy, the government bears the duty to improve those conditions.

Indeed, autonomous individuals can shape their own lives by adopting ideals associated with their values. Therefore, the definition of autonomy is characterized by the ability to make choices about one's own life. Personal autonomy entails setting goals for oneself and exercising actions of one's choosing, which inherently carries value.

The ability to choose one's purpose in life emphasizes the capacity for individuals to respect each other as autonomous agents. This emphasizes the capacity for rational options and gives rise to a moral obligation to respect autonomy. This obligation is applicable to all members of society, including the government, and results in a duty to respect for autonomy. Additionally, the obligation to respect for autonomy is based on the harm principle, meaning that the use of coercion is only permissible if it prevents harm to others. Harm refers to actions that do not fulfill the three conditions of autonomy: (1) independence from coercion and manipulation, (2) appropriate mental abilities, and (3) an adequate range of options. Harm is defined as actions that do not meet these conditions, constituting a violation

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<sup>19</sup> Joseph Raz, *The Authority of Law: Essays on Law and Morality* (2nd edn, OUP 2009) 212-214.

<sup>20</sup> *Ibid* 219-221.

of autonomy.

Raz's autonomy-based principle, relying on the harm principle, empowers the imposition of a duty on the government to make citizens autonomous. When the government fails to ensure personal autonomy and unduly restricts it, causing harm, it contradicts the duty to respect citizens' autonomy. Citizens have the justification to eliminate unjust restrictions imposed by the government, which stems from the principles of democracy. This notion emphasizes citizens' sovereignty and suggests that the principles of democracy assert citizens' autonomy as they hold the authority and the government should adhere to the rule of law. Thus, justifying civil disobedience as an act to demand autonomy when citizens' autonomy is undermined and the government deviates from true democratic governance.

In this paper, I attempted to establish a simple criterion for the possibility of autonomy-based civil disobedience. However, I did not dig into Raz's theories, such as his ideas on perfectionism, paternalism, civil disobedience, and the reasons to obey the law. These topics were beyond the scope of my discussion, which focused on different aspects. While I may agree with some of Raz's theories, I may not align with others. Consequently, I will try to explore Raz's perfectionism more comprehensively, and clarify my situation regarding Raz's perfectionism I agree and disagree with for my upcoming work.