

Rights, Responsibility, Law and Order in 21st Century's Civil Disobedience

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Abstract

This article seeks to examine and consider- albeit in outline – the nature of an individual's rights, responsibility and obligation to obey valid law. The fundamental question in this regard lies in the extent to which citizens should be coerced into obedience to unjust laws' for example; if the law in question deprives them of their human rights. The study therefore, attempts to answer the following questions on the chosen subject: Are there an absolute right, responsibility and obligation to obey the law irrespective of the quality of the law? Is the duty only prima facie? Is there a duty to disobey the law in pursuit of a higher ideal or in pursuit of human rights? Each of these vast and timeless philosophical questions underpins the concepts of rights responsibility and the rule of law in 21st century civil disobedience. The study is based on a review of relevant literature and compilation of other available information on the rule of law. Leaning on Professor Dworkin's theory, the study concludes that the appropriate response of the State to act of civil disobedience is a difficult matter because in situations like this it is of paramount importance for the state to take into consideration and to respect the opinion of the citizens and society in general especially where even the contentious issue is unconstitutional.

Keywords: human rights, individual's right, civil disobedience, responsibility, rule of law

1. Introduction

The study of rights, responsibility and the rule of law in the twenty first century represent one of the most challenging concepts of the constitution because according to Aristotle where laws do not rule, there is no constitution. (Note 1) The study of rights, responsibility and the rule of law are concepts, which are capable of different interpretation by different people, and it is this feature, which renders an understanding of the doctrines elusive. Of all constitutional concepts, rights, responsibility and the rule of law are also the most subjective and value laden. The apparent uncertainties in the study of rights, responsibility and the rule of law and their variable nature should not cause concern, although, inevitably, they may cause some insecurity. In the study of rights, responsibility and the rule of law, it is more important to recognise and appreciate the many rich and varied interpretations which have been given to them, and to recognise the potential of rights, responsibility and the rule of law for ensuring limited governmental responsibility, power and protection of individual rights, in other to be able to offer an authoritative, definitive explanation of the concepts. The problem of rights, responsibility and the rule of law has never been more important than it has been in the twenty first century civil disobedience around the world. For example, the Arab Spring and Ukrainian up rising etc are just sample examples of the impact of the importance of the meaning of rights, responsibility and the rule of law in the twenty first century.

Rights, responsibility and the rule of law in twenty first century civil disobedience may be interpreted either as a philosophy or political theory, which lays down fundamental requirements for law. The rule of law in particular may also be seen as a procedural device in which those with power rule under the law. The essence of rights, responsibility and the rule of law are that of the sovereignty or supremacy of law over man and as such should be respected especially by those in authority. The rule of law in particular insists that every person – irrespective of rank and status in society – be subject to the law. For the citizen, the rule of law is both prescriptive – dictating the conduct required by law – and protective of citizens – demanding that government acts be accordance to the law. This central theme recurs whether the doctrine is examined from the perspective of philosophy, or political theory, or from the more pragmatic vantage point of the rule of law as a procedural device. The rule of law

underlies the entire constitution and, in one sense, all constitutional law is concerned with the rule of law. The concept is of great antiquity and continues to exercise legal and political philosophies today.

2. Individual Rights and the Rule of Law in Western Democratic States

Rights, responsibility and the rule of law in twenty first century cannot be viewed in isolation from political society. The emphasis on rights, responsibility and the rule of law as a yardstick for measuring both the extent to which government acts under the law and the extent to which individual rights and responsibility are recognised and protected by law, is inextricably linked with western democratic liberalism. (Note 2) In this respect, it is only meaningful to speak of rights, responsibility and the rule of law in a society, which exhibits the features of a democratically elected, responsible – responsive – government and a separation of powers, which will result in a judiciary, which is independent of government. In liberal democracies, therefore, the concept of the rule of law implies an acceptance that law itself represents a good; that law and its governance is a demonstrable asset to society.

As it is pertinent to mention, it should not be assumed that this acceptance of law as a benevolent ruling force is universally accepted. In differing societies, subscribing to very different political philosophy, the insistence on rights, responsibility and the rule of law – in the western liberal sense – has little application. For example, from a Marxist perspective, the law serves not to restrict government and protect individual rights but rather to conceal the injustices inherent in the capitalist system. Accordingly, the concept of rights, responsibility and the rule of law – denoting some form of morality in law – represents no more than a false idealisation of law designed to reinforce the political structure and economic status quo in society. Echoes of this thesis dominate the more moderate socialist conceptions of the rule of law and the critique of liberalism. It can be argued – from the socialist perspective – that liberalism plays too little regard to true equality between persons and too great attention to the protection of property interests. The liberal domain thus becomes one, which, again, masks true social and economic inequality while at the same time proclaiming equality and justice under the rule of law. (Note 3)

3. Rights, Responsibility, and the Rule of Law in Totalitarian State Totalitarianism as a Method of Government

First conceptually developed in 1920's by Italian fascists primarily Giovanni Amendola. Totalitarianism has been present in a variety of movements' throughout history. Initially, the term was spun to be positive and refer to the positive goals of states employing totalitarianism. However, Western civilizations most often did not agree with the concept of totalitarianism as will be seen, a great deal of discourse regarding the topic became prevalent from within governments. Some governments and movements that Westerners have accused of being totalitarian in nature include Nazi Germany, Soviets during communism, and the Stalinist movement in particular. In the modern world, totalitarianism today is common in various countries. This is a system or a country whereby only a single person has total control of the country. Some of the countries include China, North Korea, Colombia and many others. The difference between totalitarianism and authoritarianism is important to note.

An authoritarian power is a political power whereby an authoritarian regime places all of the power into a single dictator or group. Within totalitarian regimes, the leadership controls nearly all aspects of the state from economical to political to social and cultural. Totalitarian regimes control science, education, art and private lives of residents to the degree of dictation proper morality. In this system, the reach of the government is limitless

Rights, responsibility and the rule of law, as understood in liberal democracies have little relevance in a totalitarian State. While it is true that such a State will be closely regulated by law, there will not be government under the law – as adjudicated upon by an independent judiciary – which is insisted upon under the liberal tradition. In traditional Oriental society, the Western preference of law is an alien notion. By way of example, in relation to traditional Chinese society, David and Brierley write:

For the Chinese, legislation was not the normal means of guaranteeing a harmonious and smooth-working society. Laws abstract in nature could not take into account the infinite variety of possible situations. Their strict application was apt to affect man's innate sense of justice. To enact laws was therefore considered a bad policy by traditional Chinese doctrine. The very exactitude, which laws establish in social relations, and the way in which they fix the rights and obligations of each individual, was, considered evils not benefits, according to the Chinese. The idea of 'rights', an inevitable development of the law themselves, ran counter to the natural order. Once individuals think of their 'rights' there is, it was thought, some form of social illness; the only true matter of concern is one's duty to society and to one's fellow men. The enactment of law is an evil, since individuals,

once familiar with them will conclude that they have rights and responsibility and will then be inclined to assert them, thereby abandoning the traditional rules of propriety and morality which should be the only guides to conduct. Legal disputes become numerous, and a trial by reason of its very existence, is a scandalous disturbance of the natural order, which may then lead to further disturbances of the social order to the detriment of all society. (Note 4)

4. Rights and Responsibility and the Rule of Behaviour Case of Japan

In Japan, despite the nineteenth century adoption of codes based on French and German models, law, in the Western sense, remained largely irrelevant to traditional Japanese life: Still essential for the Japanese are the rules of behaviour (*giri-ninjo*) for each type of personal relations established by tradition and founded, at least in appearance, on the feelings of affection (*ninjo*) uniting those in such relationships. A person who does not observe these rules is seeking his own interest rather than obeying the nobler part of his nature; he brings scorn upon himself and his family. Apart from the contracts arising between important but depersonalised business and industrial concerns, one does not attempt to have one's rights enforced in a court of law even though this is permitted by the various codes. (Note 5)

5. Rights and Responsibility and the Theory of Justice

As the notion of rights, responsibility and the rule of law are dependent upon the political foundations of a state, so, too, they are dependent – according to the approach adapted to the concepts – upon a nation's economic resources. It may be that law, as a mere regulator of individual behaviour, is perfectly feasible in an impoverished State, and accordingly, a State which confines its responsibility to maintaining law and order, and no more, can conform to a narrow interpretation of the rule of law which insists simply on a citizen's unquestioning compliance with rules of law. On the other hand however, if the rule of law implies more than mere regulation by law and is elevated to a theory of responsibility on the part of the elected government to guaranteeing freedom from hunger and homelessness and entitlement to basic decent standard of life, then economic conditions are of paramount importance to conformity with the notion of rights, responsibility and the rule of law. Such an approach is adopted by the international Commission of Jurists, which in the New Delhi Declaration of 1959 included – alongside traditional civil and political rights- the realisation of social, economic, cultural and educational standards under which the individual could enjoy as a right, a fuller life within the ambit of the rule of law. On the other hand, reasoning such as this is anathema to radical conservatives such as Friedrich von Hayek (Note 6) who viewed the correct role of government as being best confined to establishing clear, fixed rules of law which ensure maximum economic freedom for individuals, unimpeded either by planning controls or ideas of re-distributive justice. (Note 7) From von Hayek's perspective, the rule of law requires no more than the existence of a stable set of minimum rules which are to be applied in a uniformed, non-discretionary manner. A legal system is viewed as just and in conformity with the rule of law if it exhibits both these features and an absence of discretionary rules or practices.

An understanding and appreciation of rights, responsibility and the rule of law are all politically and culturally dependent. Moreover, it is also clear that right, responsibility and the rule of law has more than one meaning, even within the Western liberal tradition. To some theorists, the rule of law represents an inspirational philosophy; to others, it represents no more than a device under which compliance with law good or bad in content is secured. It has been remarked that: It would not be very difficult to show that words such as rights, responsibility and 'the rule of law has become meaningless thanks to ideological abuse and general over-use. (Note 8) Partly as a result of such over use', some writers have refuted the claim that the word rights, responsibility and the rule of law represent anything other than a purely procedural or formalistic device. By way of example, Rax writes that the rule of law:

Says nothing about how the law is to be made: by tyrants, democratic majorities, or any other way. It says nothing about fundamental rights, about equality, or justice. (Note 9)

Other writers have gone further. SA de Smith and R Brazier confine discussion of the rule of law to a few paragraphs and, having acknowledged the past influence of Dicey's ideas (but denied their contemporary relevance). (Note 10)

Contrast such a dismissive view with that expressed in the following statement: The rule of law is a rare and protean principle of our political tradition. Unlike other ideals, it has withstood the ravages of constitutional time and remains a contemporary clarion-call to political justice: apparently transcending partisan concern, it is embraced and venerated by virtually all shades of political opinion. The rule of law's central core comprises the enduring values of regularity and restraint, embodied in the slogan of a government of laws not men. (Note 11) In light of such divergent assessment, it must be recognised that any attempt to align the rule of law with a broad

philosophical doctrine or indeed with any other interpretation – is likely to meet with opposition from some quarters. Notwithstanding such criticisms, the rule of law retains a secure grasp on political and legal thinking it has enduring importance as a central artefact in our legal and political culture. (Note 12)

Opposed to von Hayek and Nozick stands is John Rawls, whose: *A Theory of Justice* (Note 13) provides a detailed exposition of, and justification for, the interventionist State committed to distributive justice. In essence, a society will be just if it is organised according to principles established by all its members in the original position behind a veil of ignorance. Suffice to note here that the original position and veil of ignorance relate to a stage of decision making about constitutional arrangements wherein the participants know nothing of their own personal attributes and wants and little of the society in which they live. They will accordingly choose principles of justice, which are not self-interested but based on maximising the position of those persons (of whom the decision maker may turn out to be but one) who are in the least enviable position in society. The principles, which they will choose, will be, first, the priority of liberty for all, subject to the need to redistribute goods in society in order to improve the lot of the worst off.

Rights, responsibility and the rule of law, according to John Rawls, are obviously closely related to liberty. (Note 14) Rawls calls for the regular and impartial administration of public rules, which is the essence of a just legal system, characterised by the legitimate expectations of the people. Several requirements must be met: rules of law must only command action which is possible; those who enact laws must do so in good faith; like cases must be treated alike. Echoing Dicey, Rawls states that there is no offence without a law, and this requirement in turn demands that laws be known, that they be general, and that penal laws should not be retroactive to the disadvantage of those to whom they apply. Finally, the legal system must respect the dictates of natural justices. An alternative perception of the rule of law may be labelled the law and order model. (Note 15) This view emphasises the peaceful settlement of disputes without recourse to violence, armed force or terrorism as we have seen in the twenty first century civil disobedience especially during the Arab Spring and the Ukrainian uprising.

6. Positivist Theory, Individual's Rights and Obedience to the Law

In legal philosophy, the idea of absolute obedience to law is compatible with the analytical, positivist school of thought, which dominated much of the jurisprudential thought from the nineteenth century until after the Second World War. Positivism is the antithesis of natural law. The primary quest for positivism is to separate legal and moral issues to distinguish between the 'is' (that which exists as fact) and the ought (that which is desirable). The positivist theory is primarily concerned to explain law, as it exists in fact- where valid law exists that is to say law, which is accorded validity under the fundamental constitutional rule in a State. Under the positivist theory, there is an obligation and responsibility on each citizen to obey the law. Hans Kelsen and other legal positivists regard the duty to obey validly created norms as absolute. (Note 16)

Taken to its logical conclusion, however, the 'law and order view can lead to the repression of freedom. By way of illustration, it is a common cry of politicians that a demonstration by, for example, trades union members or students, contravenes the 'rule of law'. In a strict sense, any action, which involves protest, will almost inevitably violate some legal rule – whether it is the rule protested against or otherwise. (Note 17) Public protest, for example, will often involve breach of rules against obstruction of the high way, the police in the execution of their duty, trespass, or criminal damage, even though those laws are not the objects of the protest. It becomes necessary, therefore, to consider- albeit in outline – the nature of an individual's rights, responsibility and obligation to obey valid law. The fundamental question in this regard lies in the extent to which citizens should be coerced into obedience to unjust laws' for example, if the law in question deprives them of their human rights. Is there an absolute responsibility and obligation to obey the law irrespective of the quality of the law? Is the duty only prima facie? Is there a duty to disobey the law in pursuit of a higher ideal or in pursuit of human rights? Each of these vast and timeless philosophical questions underpins the concepts rights responsibility and the rule of law.

To be balanced against the arguments for absolute obedience to law is the legitimacy of protest within society. Since the time of Aristotle, it has been argued that the law must be tempered with equity, which dictates the standards of justice and rightness in society. Law derives its authority from the obedience of the people. (Note 18) Laws must be directed to the good, not only to comply with the dictates of morality, but also for the more pragmatic reason of ensuring voluntary compliance with law. At this juncture, can it be reasonable to argue that nowadays in a responsive, democratic State, any dispute as to the rights of individuals and grievances against government action should be dealt with through the provided channels of complaint, for example through the individual's Member of Parliament or through an investigation by the commissioners for Administration. Alternatively, it may be argued that if many citizens are commonly aggrieved, the media can be employed to

influence government and that, ultimately, at least once every five years, (Note 19) the electorate can express its views through the ballot box. None of these avenues however, may yield the desired result, particularly if the aggrieved individual or group is a minority without popular support.

The question, which then arises, is whether the individual or individuals has a right to disobey the law? A government true to democratic precepts of representativeness and fairness must be sensitive to demands for change. If it fails in that regard, it is at least arguable that demands for change, while entailing technical breaches of the law, should be accommodated within the constitutional framework. For example, in the nineteenth century, Henry Thoreau refused to pay taxes to support the slavery laws and declared that: the place for a just man in such a community is in jail. (Note 20) In the same century, the suffragette movement resorted to unlawful behaviour in the ultimately successful pursuit of the right and responsibility to enfranchisement - the right to vote. (Note 21) Mahatma Gandhi's peaceful civil disobedience campaign led to the independence of India in 1947. The Civil Rights movement in the United States in the 1950s, led by Martin Luther King, resulted in reforms of the law concerning racial segregation. (Note 22) The tide of protest over American involvement in the Vietnam War had a direct impact on government policy and further raised legal and political interest in civil disobedience. As we have seen in the twenty first century civil disobedience starting from the Arab Spring up to the Ukrainian uprising, major social changes of such magnitude would have been impossible without recognition that under certain limited conditions there exists a right of legitimate protest, however inconvenient and uncomfortable this is for governments around the world. The law and order model of the rule of law would fail to respect any such 'right', and the reaction may be one of repression as in Tiananmen Square in China (1989), Egypt in (2011) and Ukrainian uprising (2014). Was diverse movements of demonstrations matches plaza occupations, riots, non violent civil resistance, acts of civil disobedience and labour strikes which took place following a popular uprising that began on twenty fifth January two thousand and eleven. (Note 23) However, it is not necessary to look to such major societal changes brought about by defiance of law in order to refute the 'law and order model and proclaim some entitlement to dissent.

John Rawls concedes a right to be disobedience in pursuit of changing a society's 'sense of justice', but confines civil disobedience to peaceful protest. (Note 24) Rawls' thesis is founded on the theory of social contract. That concept involves the mutual recognition, inter alia, of the rights of man and the rights of the State. The extent to which man participates in the law making process is critical to an understanding of the extent to which there exists an obligation to obey the law. Participation in the democratic process may, however, be used as a means to deny any right to disobey. That is to say, it may be argued that democratic participation implies the individual's acceptance of all laws within the State. Here it must be considered what is it that citizens consent to when electing a government. It seems implausible to argue that we each consent to every action of government throughout a possible five-year term of office, irrespective of its merits. However, should we agree with Professor Plamenatz because Professor Plamenatz states that when a vote is cast: you put yourself by your vote under an obligation to obey whatever government comes legally to power under the system, and this can properly be called giving consent because the purpose of an election is to give authority to the people who win it and if you vote, knowing what you are doing and without being compelled to do it, you voluntarily take part in the process, which gives authority, rights and responsibility to those people. (Note 25) This argument surely is contentious and represents a very limited view of the requirement that a government should have moral authority to govern. This is because Richard Wasserstrom, on the other hand, argues that, by the participatory democratic process, a prima facie obligation to obey law is imposed, but this prima facie duty can be overridden by the demands of conscience. (Note 26)

At the same time, Professor JM Finnis offers a contemporary natural law thesis. (Note 27) On the relationship between authority, law and the duty to obey, Finnis writes: the ruler has, very strictly speaking, no right to be obeyed; but he has the authority to give directions and make laws that are morally obligatory and he has the right and responsibility of enforcing it. He has this authority for the sake of the common good... Therefore, if he uses his authority to make stipulations against the common good or against any of the basic principles of practical reasonableness, those stipulations altogether lack the authority they would otherwise have by virtue of being his. More precisely, stipulations made for partisan advantage, or without emergency justifications in excess of legally defined authority, or imposing inequitable burdens on their subjects, or directing the doing of things that should never be done, simply fail, of themselves, to create any moral right and obligation whatever. (Note 28)

Finnis, however, equivocal about the duty to obey unjust laws and silent as to the dilemma such laws pose for judges and other officials. There is an obligation to obey the law - not for the sake of being law abiding but, rather, in order to - and to the extent to which obedience will - ensure that the 'just parts of the legal system will not be rendered ineffective. (Note 29) Such an approach follows closely that of St Thomas Aquinas who argued

that bad laws do not bind the conscience of man, but that in considering whether or not to obey such laws, the citizens must weigh up the consequences of his actions for laws as a whole. If, in the act of disobeying immoral law, the citizen undermines the legal system as a whole - which is not morally bad- then the act of civil disobedience itself would be morally culpable. (Note 30)

The appropriate response of the State to act of civil disobedience is a difficult matter. Professor Ronald Dworkin, for example, argues for official tolerance in the face of dissent and law breaking which is undertaken in pursuit of rights- even where violence is employed. (Note 31) In *Taking Rights Seriously*, Dworkin argues that the State should act with caution in prosecuting civilly disobedient acts. First, the State should respect the stand taken in the defence of rights, even if that stand should prove misguided when the matter ultimately comes before the Supreme Court for a ruling on the validity of the contentious legislation. The decision to prosecute should be decided on the basis of utilitarianism. The doctrine which assesses the justification for a particular action (by the state is determined by the overall benefit to the society as whole As Dworkin states:

Utilitarianism may be a poor general theory of justice, but it states an excellent necessary condition for just punishment. Nobody should ever be punished unless punishing him will do some good on the whole in the long run all things considered. (Note 32)

By prosecuting disobedience to law, the State upholds the positive law and reinforces it, on the other hand, in prosecuting, the State may reveal the defects in the law and may be seen to be enforcing that for which there exists little or no popular support. By way of example, see the acquittal of Clive Ponting who was charged by the State for breaching section 2 of the Official Secrets Act of 1911. (Note 33) This case is illustrative: because in this case the jury refusing to convict despite a clear ruling by the judge as to the illegality of Ponting's conduct. It may also be argued that by rigid enforcement the State enhances the moral claim advanced by the civilly disobedient. In part, this was the view adopted by Socrates in submitting to his fate. He drank the hemlock to show respect to the law and constitution of Athens, although he must have known that in so doing he would bring the positive law of the State into disrepute. What he could not foresee was the timeless example that Athens, in executing Socrates, set for humanity. (Note 34)

The converse position must also be considered: if there is a duty to disobey the law if a State violates the requirements of the rule of law, to what extent is it the duty of citizens to disobey the law? Furthermore, what justification, if any, is there for another State or the international community taking action against the 'guilty State? The Nazi regime in Germany provides the most obvious – but not unique – example. On individual's right, responsibility and duty, Professor Lon Fuller maintained that the citizen is under no obligation to obey unjust law: A mere respect for constituted authority must not be confused with fidelity to law. Fuller goes further and asserts that an evil regime, which grossly violates the basic precepts of morality, is incapable of creating law at all. (Note 35) In HLA Hart's view, this represents confused thinking on Fuller's part. His preferred approach is to recognise the validity of Nazi Laws – however abhorrent in moral terms- but also to recognise that moral obligations can outweigh the legal obligation to obey. (Note 36) In addition to facilitating clarity about law, this approach enables the regime to be held to account for its actions. Simply to deny- as does Professor Fuller- that there was no law during Nazi rule is to remove the basis for international legal sanctions.

7. Conclusion

In conclusion the right and responsibility debate is a contentious issue which will never have winners nor looser. But in the twenty first century civil disobedience is John Rowels' right in recommending protest to be in accordance to the law? This means that the protesters should only result to non-violent protests. The answer to this question is yes because Rowels' thesis is founded on the theory of social contract. That concept involves the mutual recognition, inter alia, of the rights of man and the rights of the State. The extent to which man participates in the law making process is critical to an understanding of the extent to which there exists an obligation to obey the law. Participation in the democratic process may, however, be used as a means to deny any right to disobey or to demonstrate against any elected government. That is to say, it may be argued that democratic participation implies the individual's acceptance of all laws within the State. Here it must be considered what is it that citizens consent to when electing a government. However, it seems implausible to argue that we each consent to every action of government throughout a possible five-year term of office, irrespective of its merits. However, should we agree with Professor Plamenatz because Professor Plamenatz states that when a vote is cast: you put yourself by your vote under an obligation to obey whatever government comes legally to power under the system, and this can properly be called giving consent because the purpose of an election is to give authority to the people who win it and if you vote, knowing what you are doing and without being compelled to do it, you voluntarily take part in the process, which gives authority, rights and responsibility

to those in power. This argument surely is contentious and represents a very limited view of the requirement that a government should have moral authority to govern. This is because Richard Wasserstrom, on the other hand, argues that, by the participatory democratic process, a prima facie obligation to obey law is imposed, but this prima facie duty can be overridden by the demands of conscience. Just as it has been stated above the issue of human rights and the principle of social contract theory are not complimentary.

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Notes

Note 1. For the critical account of the liberal tradition See Lustgarten , L. 'Socialism and the rule of law' 15 *Journal of Law and Society* (1988), 25.

Note 2. David, R and Brierley, J. E. B. *Major legal Systems*, 1st edn., London: Stevens, (1966) at 442 and see 3rd edn. (1985), London: Sweet & Maxwell, Title III. Chapter 1 for the persistence of traditional ideas.

- Note 3. David, R and Brierley, J. E. B. *Major legal Systems*, 1st edn London: Stevens, (1966) at 458 and see 3rd edn. (1985), London: Sweet & Maxwell, Title III. Chapter 2 for the persistence of traditional ideas.
- Note 4. Von Hayek, F.: *The Road to Serfdom* (Routledge and Kegan Paul: London, 1994), see also Von Hayek, F. *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960).
- Note 5. John Rawls. *A theory of justice*, (Oxford University Press: Oxford, 1973).
- Note 6. Shklar, J. N. 'Political Theory and The Rule of Law' in Hutchinson, A.P. and Monahan, P. (eds), *The Rule of Law: Ideal or Ideology* (Carswell: Toronto, 1987), fn 2 at 1.
- Note 7. Raz J. 'The rule of law and its virtue' 93 *Law of Quarter Review* (1977) 195 and *The Authority of Law* (Oxford University Press: Oxford, 1979) at 210.
- Note 8. de Smith, S. A. and Brazier R. *Constitutional and Administrative Law*, 6th edn. (Penguin: London, 1989) at 18 (see also 8th edn. 1998).
- Note 9. Hutchinson A. P. and Monahan P. (eds.), *The Rule of Law: Ideal or Ideology*, (Carswell: Toronto, 1987) at ix.
- Note 10. Raz, *The authority of law*. Oxford University Press: Oxford, 1979) fn 12 at xiii.
- Note 11. Rawls J: *A theory of Justice* (Oxford University Press: Oxford) at 10.
- Note 12 . Ibid. at 235.
- Note 13. Wade, E. C. S. and Bradley, A. W. *Constitutional and Administrative Law*, 11th edn. (Longman: Harlow, 1993) Chapter 6 (see also, Bradley, A. W. and Edwing, K.D., *Constitutional and Administrative Law*, 12th edn, (Longman: Harlow, 1977).
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- Note 15. Direct and indirect civil disobedience, Rawls, J. *The Law of the Peoples* (Harvard University Press, 1999), fn 10 Chapter 10.
- Note 16. Kelsen, H. *The General Theory of Law and State*, (Russell: New York, 1961),; Kelsen, H, *The Pure Theory of Law*, (California University Press: Berkeley, California, 1967).
- Note 17. The United Kingdom Act 1911, which states that the maximum life of a Parliament is five years.
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- Note 25. Finnis J. M. *Natural Law and Natural Rights*. (Oxford Clarendon, 1980),
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- Note 28. Aquinas, T. (St), *Law Summa Theologian Fathers of English Dominican Province* (trans), (BURNS & OATES: London, 1947-1948). 27, I-II, at 96.
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Note 32. Plato, Socrates' defence and Crito', Hamilton and Cairns fn 12.

Note 33. Fuller L. Positivism and Fidelity to law – a reply to Professor Hart (1958) 11 *Harvard law Review* 630.

Note 34. Kelsen, H. *The General Theory of Law and State*, (Russell: New York, 1961) at 593 – a view echoing that of St Thomas Aquinas.

Note 35. Fuller L. Positivism and Fidelity to law – a reply to Professor Hart (1958) 11 *Harvard law Review* 630.

Note 36. Kelsen, H. *The General Theory of Law and State* (Russell: New York, 1961) at p593 – a view echoing that of St Thomas Aquinas.

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