

Scientific Paper, an Overview on the Status of the Rule of Government and State from the Perspective of Sociology and History of Law

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Abstract

Those who view the common good theory and any other doctrine as guarantor of the collective interest, argue that the common good theory cannot be the guarantor of individual liberties. It is suggested that this idea of individual freedom is maintained only through private interests. This article criticizing how sociological philosophy deals with fundamental rights in short, supporting Middle class of doctrine of "popular sovereignty" led to 17th and 18th-century popular revolutions, in fact against any false pretexts of the divine origin of power which basic aim was resume and survival of their absolute and Authority monarchy. This theory (popular) which finally overcame to divine theory, at the early period, it's basic ideas was founded that foundation of government was at basis of popular dialogues and debates; in other word, government subsequently was a typically social contract which was satisfied by individuals. As regard to the Thomas Hobbs (1) and John Locke (2) had been most THEORISTS of the most influential THEORISTS of these theories which are briefly reviewed through following chapters.

Keywords: Fundamental rights, philosophy of law, sociology of law, political rights, history of law

1 - Theories about the Origin of States

Today, the phenomenon is no doubt an undeniable reality. Now it is better to understand that what this reality is be that as it may and how it emerged and more how different schools and scholars have taken different standpoints on the theoretical explanation of this phenomenon. Political thinkers of past centuries had tried to answer to question of "state of foundation of government (I)

Academic Theories of Sociology of Law:

Plato(4) was a philosopher-scholar whom should be known as idealist philosopher, as being hopeless of Greek political rule and state, Plato going to find best form of government. In surveying of his model of republic many form of government such as democracy government is a form which have not equivalent terms .since as Plato mention it, this form of government

He His rule is this kind of product features Spartan model state (timocracy derived from Greek time sense of glory and honor Greek Time) (5) and oligarchy (6)in which Plato believed in the government' in which wealth is the power source and political; because the scarcity of wealthy people, and in this form of state are in minority paucity, he believed that in oligarchy state tyranny of rich men against poor and Impecunious increasingly grow up. so he espouses that every where jobbery were the motive of political power, subsequently lead to the oppression and pugnacity.

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But his judgment about democratic state was not better than his idea about oligarchy (whatever consider about Plato view's of democracy (7) is that his perspective more direct democratic attitude which dominant over Athenian society, for Athenian government was direct and perfect democracy, perhaps never found in any history of nations civilization. One terms of Plato's critics toward this type of democracy was that society fate trifle rule of caprice of mass so that mass unable to judge accurately politics affairs (8). From point of his view ,the best state is the state that govern by philosopher , so n his belief , statesmen must be philosophers and more f his view is that the best governments are those governed by best people so that sage will be ruler and ruler will be sage, but about tyranny state , Plato see it as one of regime resulting from democracy revocation(degenerate)means that all authorities in hand of one person so surrender as a honestly and good criteria.

B- Aristotle one of premier founder of human thought about government. As mentioned above, Aristotle called human being as an animal; politic and social one, so he believes that human being is socially innate and essence of human being have been formed in society and developed. One feature of human being other than creatures is man's ultimate innate power unreached without society. He cognize human as social creature so as goddess or other creature cannot recognize being in itself beyond civil society. So he need he cognize the government institution as an man's innate and he believe that as fish cannot live without water' human being also cannot live without government . His preference of state is republican popularity .because this sort of government better and more than the other access people to the ultimate aims. Inter-independent thought between individual and government and that government is the natural and essential form of humanity existence. 4 everywhere would be human being 'government was there. Aristotle explains what is wrong and true about any kind of state. his remark about any sort of state, is that if any state consider common good from and incorrect state most important Aristotle's initiatives which have yet influential effect on philosophers and theoreticians(9) wherever there is human community, there, must be eventually a government there .Aristotle explains that “ in case of considering common good and expediency , if a community ruled by single individual , is called “kingship” aristocracy when ruled by a few ; this is perhaps that community 9%) be ruled by the best men (10) , but a state which pursue a common good and common good and civic virtue for own people, there be ruled by multitude is called republic. This three sort of state or regime are sometimes converted to a perverted regime, so then the three state such as kingship and aristocracy and democracy will collapse into their deviant, which the first covert to tyranny , the second transformed to the oligarchy and third changed to the democracy regime(which so that look for just poor people) .

2 – Divine Command Theory

The oldest theories about the beginning of the origin of government theory are divine command theory According to this theory, this GOD created government. On the basis of this theory, and its idea, any ruler acquires their power from god. At an earliest period of the ancient era, rulers deemed most worthy magnitude as god, and moreover deified themselves at gods rank. Egyptian Pharaohs and Rome emperor had been deified as god or goddess by those nations of these regions. As more for Japanese emperor which concord at this gods emperor ranking(11); Territories from the beginning of Christianity era , the divine command power theory stood in an upheaval process ,and at this new form of this theory , rulers have no further god mode , so in this time had been considered as god's caliph and it's deputy .during this period, Rulers had been god's appointed, but supposed themselves one of human being .over the medieval period , Christian theologians had been impacted by Greek and philosophy, organized their thought and theories. According this view, government had a framework and groundwork of mortal life in which human being stood in progressive trend, but his immortal fate and eternal salvation had handed over (accomplished) by church (12) saint Augustine believe that any form of government based on innate disposition order which divine essence(volition); and since only god has power to distinguish between what is good or deviant and what is allowed and not allowed ,so rules governing mankind must be upon divine source regulations .

And responsible and agent for interpretation for these regulations and rules will be church. Source of these rules must be divine laws .so clergy organization must be preferred to the governmental one. Thereupon, neither emperor could not rely on throne, unless power be passed to him by church authorities' permission. (II) Saint Thomas d'Aquin accepted innate divinity of government theory and he believe that world order upon divinity's will ; lord of the world ; the trustworthy and the righteous .hence when mighty rulers never uphold justice ,so they outrage divine unity intention . Therefore individual human being is born free will and could disobey and refrain from accepting such sovereignty.

3 - Theories of Social Interest

Popular sovereignty" led to 17th and 18th-century popular revolutions (III), in fact against any false pretexts of the divine origin of power which basic aim was resuming and survival of their absolute and Authority monarchy. This theory (popular) which finally overcame to divine theory, at the early period, it's basic ideas was founded that foundation of government was at basis of popular dialogues and debates; in other word, government subsequently was a typically social contract which was satisfied by As regard to the Thomas Hobbs and John Locke had been most THEORISTS of the most influential THEORISTS of these theories which are briefly reviewed through following chapters.

Thomas Hobbs – In Hobbes' view , Nations lives in the worse situation in the earliest era and they had no any natural rights .Hobbs argued that the natural situation for people were unendurable , since , such situation so chaotic that all populations seeking only to meet their needs and whims, even this had detrimental effects on others .impoverished situation altogether with misery and bastardization and brutality created very lousy life for poor people. Hence, need for peace and security were so desirable for humankind which he was ready to neglect all their natural right until to access to their ends. Since these rights after binding convention, citizens submit to rulers who are responsible to establish the security for their citizens. He believes that people have no right t o revolt against their rulers, even though they do not satisfy of rulers' policies and plans, because any insurgency against ruler back the society to the previous chaos.

Similarly to Hobbs, john lock beloved to the state of nature, but in stark contrast lock believed that human being's naturally inclination to a wisdom and ethic in the state of nature , so all mankind perceive any natural law by their inherited wisdom and being directed . However, since there were no any umpirage to settle claims and tacit disputes which relevant to the natural rights , so people upset about those issues , therefore, according typically social contract , decided to create a state which have monopoly law of enforcement . also state must provide protection of their nations' well-being, properties live ,freedom .lock also believed that such a contract , cannot revoke men right which is given by nature unless he take away right of umpirage . Locke believed that rule and consent of majority must be base of the practical form of authority. For, in social and basic principle contract conditioned that it must satisfy majority rule or consensuses principle. Summing up Locke's views is that he believes people have rights of revolution against state and change it.

Jean-Jacques Rousseau is a known for social contract theory in 1762. Like Hobbs he beloved that state of nature is completely intolerable, so in this case a social contract on a basis of individual agreement to form a community lead to establish a real state through rational style. He like Hobbs demands citizen to obey absolute obedience to the ruler, because in his view, universal will “ is just all-mighty , unmistakable god ,so any enacting law must not limit the popular will.(14)

4 – Autocracy Totalitarian Theory

This theory is based on the formation of the government by force and coercion. So earlier authors have often insisted that the government was created based on injustice, is necessarily evil.

Thus the stronger individuals without regard to the rights of poor people impose their aspirations and desires on people and have tried to legitimate their action. Early Christians 'concept of regime was such in this way and authors of medieval churches either pointed use of force or coercion of starting rulers whom had been unsatisfied with. On eighteen century, namely, at the beginning of new revolutionary, the absolute authorities had been fallen to the use of force and coercion regime

At present, from scientific approach, government is the result of societal evolution. But, evolution in practice and from legal processing, government founded at the outset of pastoral economy and creation of ownership which later on, for the reason of "HABITANCY" of humankind in any definite territory and subsequently because of agricultural development, government created in term of territorial definition, one thing that surveyed and traced the evolution process up to now (15)

5 – Islamic Concept of Government Theory

Government from the Islamic perspective is differing from others' view well known schools. As we know, to form a political organizational society, there require to at least three element of nation, territory and political power. In contrast, and instead of insisting on common feature of race, history, culture and psychic function, Islam insisted on ummah concept which paid only to the ideological aspect. And from this point, it has distinctive feature of nation concept. subsequently and according to this ummah concept, what form the demarcation line between nation, is not geographical border, but it is ummah border line which determine the ideological and religious borders(16). Within ummah perception, member of this society are who believe to god and his prophet prophecy (rasoul) and obey Quran sharia law and Sunnah. Therefore factors such race, culture, color skin language and others such qualifications have no effect on this society. Thus with respect to the Islamic feature of society within a framework of god's power and authority, in addition the existence of ummah and refusing any geographical borders, government within Islamic point of view have beyond national and ultra borderline identity. here it will be mentioned that after passing away of (hazrat Muhammad (god peace upon him) there had indeed occurred such events in Islamic world which had extraordinary effect on quality of thoughts and reflections of Islamic theologians and manner of explaining the ideas. During the "khulfa-e-rashideen" (four rightly guided successors) and later on at the times, bani Umeiah (Sons of Umayyah), there had stricken issues which had great influences on of politic and social identities in Islamic society. With tremendous expanding of Islamic geographic territories, and indexing former great emperors such Iranian and Rome imperial lands, and so on Egyptian and others territories of north African zones Y; all of these new domination manifested the significance of sophisticated administrative I constitutions to officiate these great zones.

Unavoidably changing of simple and unadorned of an early administrate of Muslim society and transforming the main style of ruling and caliph to the imperial concept and domain during bani umeiah and bani Abbas, moreover the qualification of relations between this emergent emperor with kingdom and local rulers led to change their views about dictating of given affairs. Although some thinkers and philosophers had attempted to preserve their profound sectoral and religious ideologies, but inevitably and under the influences of circumstances, explained theories sin which it can be perceived the effects of circumstance of the time being so in this case in any study of works of thinkers must be considered their condition for the time being.

Achievements:

In Persian literature, Terms of government significantly used as following meanings:

- 1 - Government namely: property, wealth, asset, gifts.
- 2 - Government means prosperity, auspicious, grace, fortuity.
- 3 - government as, tranquilizing from state to other state circulation of happiness and properties from one hand to another in hand of person to of person and property and wins

4 - Government means government, rulers and powers.

Basically the terms of government is used in the following cases:

- (a) government define as distinctive totality feature and an independent character and so set of more public international law and public domestic law. The existence of distinct and distinguish character s of combination elements. When it is said that “ Iranian government and Syria government contracted friendship and amity treaty “ or Algerian government is the member of united nation “ it means and intend the inspiration of universal and distinguishable individuals and solitaires; which is unmistakable with authority constitution and also with individuals in charge and responsible persons or representatives(congressmen)
- (b) Government namely as elites dominant group (establishment) and rulers toward subordinate and obedient. in this concept, government entail agents and government system which govern a nation or people , for example” cooperate with people” or “ should government system improved” in this cases consider institutions which are beyond obedient and subordinates .then concept of government here against concept of nation and people.

C: government as political layer f the state executive power, or in other words the high and upper political category such as the Prime Minister and Council of Ministers and Cabinet Ministers specifically. When you say "government shall take responsibility before national assembly " or "the government decided to increase its revenue sources" here namely a branch of executive power is on head of highly decision-making. Government and its nature

1 - Defining the Government:

In fact, government is the highest portrayal of power form. Here, we survey and study the institution and government as highest form of political power. It should be aware that there had been given different definition of government which less include variety sort of government,

But nearly, all definitions of government given, are compilation four elements ort factors; which consist of population, territory, political power and sovereignty or independent. Given definition above mentioned presented here with considering compilation of mentioned element.

When a Human group forms a political society within definitive geographical framework, in which superior power rules uncompetitive above all its members , and subsequently in order to preserve social order, unavoidably equip system to a social forces , so the result of this process lead to create government. Summing of studying of forming a government include as follow:

2 – Elements or Components of a Government

I. Population

Undoubtedly, one of terms of constituting of any government, is the existence of vast mass of humanity which constitute politics demography .so to explain that every government composed of communities of people is so explicit definition. But it be mentioned that to form a government is not necessarily to have definitely numbers of population, since, today, there are countries which consist of low population densities and to be allocated as special countries. According to the principle of “ determination of nations’ destiny by themselves” (in regard to it , each distinct nation must enjoy the right of having competent authority and have right to form independent government and far from foreign infiltration) as less Kuwaiti population density have a proper right of forming government as vast massive population density of U.S.A or Indian have right. But in relation to that issue, this question rise that how will be the relation between the quality and quantity of these political demography in one hand and government power on the other hand. The first question is that what will be relation between number of population and a government power?

Does it have more population induce to more increasing power in domestic and international arenas? or doesn't? In answering to that question, it should be noted that in past centuries, political power of government has more close relation with number of population, for having large quantities of troops, had been one significant factor of victory and induce to increase and rise the political power and government conquest in international arena. But, after accessing to the determinant and qualified scientific and technologic development, the qualification base substituted for quantification one another considerable challenges in which such vast massive population as India, Egypt and Pakistan and so on, are to be faced, that is providing needs of vast population live in geographical defendant framework. In the past, to surmount any difficulties of obtaining ordinance, countries invaded to their neighbors' territories in order to access natural resources, but, today, they are going to get prescribed birth control and receive development countries' assistance. It should be noted that other factors such as individual characteristics, literacy and education rate, and their skills, equality of people and many similar factors, all in all are prerequisites that have effect in determining of government power criteria in domestic and international arena.

Subsequently, it should be aware that to measuring the quality of country development, it is better to measure the quality of population, not quantity of population. Since in Pakistan, population density per one per square kilometer, live 125 person, then they must be more strong and more development than American and former Soviet in which population density equal with per one square kilometer, live 12 person. To justify that any determinant human group live within a geographical framework create the essence of government, it may represent the objection that the first proviso (population) not only find it in government. But also in others social figures and all human communities. In answering to this question that, if it is considered to the evolution trends, it will be obvious that governments, unlike city-state or tribal rule and so on, could compile large group of human communities within one community, but I told about rejection of related issue (vast population) that is not comprehensive issue for decision making, because, today, there are very small number of government and also very large one that both have parallel and equal rights at international level. Then we must find other criteria in this field in order to take discrepancy between government and others communities. Perhaps, to find any qualification of groups and the manner of social relations between individual lead us better understanding those fields. Regarding later issue which above we mentioned it, we take redefine nation concerning itself characteristic which can be substantive of trained and upheaval human groups so that we can distinguish those crystallized community of city-state (government), with others communities.

II Nation:

One of lawyers defines meaning of nation from point of legal and politics views as follow:

A group of human being who members feel that they tied dependently together by material and spiritual links, but they differ from other human grouping and constitutive founder individuals. Therefore those individuals who belong themselves to the universal community or distinctive political community in order to knot their destiny to the other members of such society, so those prominent individual could be organizer of a nation. Thus, such a nation might be realized with emotional dependency. However, nation is a set which form on base of two criterions.

- 1- Objective criterion: like cultural factor (language, religion, customs and mores)
- 2- Subjective criterion: like collective imaginations about common value and collective intention exist.

Soil (territory)

Territory considered one of basic factor for existence of government. in other word , territory is the geographical framework in which power and authority of government is exerted, and more of it, territory is a part of this soil sphere in which government is existed and functionally operated legally survey point of territory it should be noted that it is not only to consider surface of mentioned territory , but also regards any underground territorial aspect in one hand, and overhead and air space in another equation, moreover the scale of territorial sheet is considered . in addition ,its' territorial seas water and shelf , and also international environmental law due to treaties between governments considered as government modules , as mentioned above, it is undoubtedly that territory is one of objective condition to establish government . but in spite of some beliefs , such a claim that consider territory as necessarily structure factor of government , it means that if we eliminate concept of territory , in fact we divest the existence of government . , While bearing witness history, there had been government which established out of their next establishment, so they proved their emersion, afterward Longtime campaign achieved their noteworthy and come back to their home.

Tangible example is free France government in exile which during world war two. The first question which is representing here is that a government must have unified and coherence and integrated or not? Studying concept of government and observe the situation of country, firstly, it seems that it is Necessary to cohere and unify this environment. While it is not always normative rule, an obvious example is Pakistan which before 1971 and separating Bangladesh: composed of two wholly separable part which intervened some hundred kilometer between western zone , on the one side , and eastern zone on the other side. Another example is Indonesia which composed of several islands apart which each island is far reaching miles distance to the other island. But it should be concerned that although territorial integrity is not the basic an adequate condition, but it is an undoubted that to obtain convenient of ruling and preserve territorial sovereignty, the defense condition of government is undeniable. Another question is about territorial expansion, it means that at what scope does the expansion territorial expansion encompasses in order to government could survive itself?

Answering to these questions is that according to international law in all independent countries, regarding to the right and status of country, and regardless to any existence different either in expansion or demographic density, all people have equal rights to each other. Then it is considered that from the point of view of international law, scale and territorial expansion cannot overture on independency of country. In the modern world, we encounter with governments which are independent state, but they have different territorial expansion. This expansion encompasses former Soviet Union 'expansion of Former soviet was one-sixth of earth land surface' to the small scale expansion like logra. But, perhaps it is forgotten that at recent centuries, small countries found themselves at perilous risk, so in order to survive themselves, gain support from big countries . Hence, it should be said that , although small countries officially and legally have the right of rule on their own destiny , but they cannot continue to survive themselves without big countries assistances.

Another issue win relation with territorial expansion of a government, is the issue of accessing to the natural recourses . Since, territorial resources, undoubtedly is more significant subject. Countries such England and Germany, for having their own industrial development, they have big strong power which due to the coherency of their rich resources , more over their industries depend on these resources. in addition , they posses proper climate which must count it as natural resources harvest Mild climate to get with enough rainy lead to bounteous harvest . Basically, people of these mild zones are healthier and more active than other zones' inhabitants. In relation to territory and government, geographical factor namely territorial conditions very effective factor on development and survival of government and their world position.

Therefore, factor such positioning a government within island, or peninsula, and or in complete continent, accessibility or inaccessibility to the natural sunken and vacant borders (such as oceans, sea , river, globe , desert) have strong and offensive neighbor, and so much similar consideration on how to adopt policy , economy and military manners procedures which have undeniable effects. Government like England and Japan created tremendous naval forces, while the continental powers like former soviet moved to strengthen their ground and naval forces. Peninsula countries trended more to foreign trade, and moreover to preserve themselves, inevitably created naval forces. Dominance of American naval forces to it's the ground force is due for two long coasts and remote island far away from center.

III. Rule (sovereignty)

On studying factors of government constituent, it should be mentioned that no one of three components; such as population, territory and political power, could not be accurate criteria and distinguishable aspect for this remarkable political' that is government apart from the other human taxonomies. Since at the lower level. It be considered typically these component in another communities, so since above mentioned criteria, doesn't explain any essential differences of government with others communities , therefore we should find the other criteria in this field. This criteria or principle have been attracted to layers. Aside from VARIETY of definitions which represented by specialists or used in constitutions of countries, as whole it could be define that the regime include supreme power commander or exert its influence and super discretion beyond the other will. when it is said that government ruled, this mean that in its area of authority ,has self driven force which no other have such force to be driven ,also there is no force to challenges against such force above mentioned, moreover that force admit no authority to exert its animus and does not follow any power . So any capacitate derive from it. Its capacitate rise of self existence. In fact, two concept of government and state conjugate. That is to say without any state there will be no existed any government and without any government, there will be no state come to exist. Namely, negation of negation. As above mentioned characteristics features, regime should have two aspects; externally and internally (ruling government) and internally or inward (sovereign state).

External state is a kind of state that demonstrates in relation between governments and eternal ruling implicate negation any adherence and dependent toward other government. Government that posses external sovereignty which have equal and parity in international relations degrees with other countries, and as an independent and equal legal entity, confront with other countries. but internal sovereignty namely that has a supreme and superior authority toward citizen members and posses (habitant) generally individual , group, class, concerning with territorial divisions ; such as county, province, state and etc ,in addition, he has an input into those final decisions and his determinant dominant over ultimate imperceptible determinant (Sovereignty in government).

These two natures of sovereignty appear with two faces. But in final analysis, two sides of the same coin. Each side has a unique truth this means that demonstrate power which there are no super power above it. Regarding what explained above, subject to fundamental rights could be briefly counted as legally framework of political phenomena. According to Morris view, two terms of fundamental rights, in fact are the same terms which it be named as political rights. In other words, that is same legal course which surveying governmental public organizations, its regime, Sovereignty Structures, parliamentary, ministerial and presidential. such an explanation and interpretation , it is fundamental rights have been adjunct with politics science , so there is close relation between to understand accurate and its entire dimension with scientifically recognition of politics phenomena all which election. The study should d be noted that the constituent elements, the three factors of population , territory and political power ultimately cannot distinguish the effects of this phenomenon an accurate measure of the state of supreme political factions of humans.

The criterion or principle that has attracted legal opinion "rule "is; Neglected by scholars of different definitions of the fan or the constitutions of these words have been used. They rule sets can be defined as " the rule of the supreme commander of the Will Wills Almighty is another possibility ," When it is said that the government means that authority blowing with the force of spontaneous Other force that the other power regimes he will not be able to fold . The imposition and enforcement authority will not accept restraint and abide by any other power. Any of his competencies, He qualified his existence implies " In fact, " two concepts governing the demand not exist without state sovereignty and state sovereignty, there is no denying one another rejection would follow . Attributes are considered to be two aspects to the outer or external sovereignty (sovereignty) and domestic or internal (state sovereignty) , he said. Its external sovereign authority that manifests the relationship between government and external governance requires that any subordination or dependency is the negation of the other states .these two species are the rule , with two figures appear, but in the last analysis , are considered two of the same coin . Both the units represent reality, i.e. the sum of the above things there are power display. Fundamental rights according to what has been described briefly can be frame of political Phenomenon's rights. Morris believed that the basic rights of two so in fact that it can be called political rights, i.e. the study of Law, public organizations, government regime making selected rule, Parliament and President Rule explored. With such a definition, interpretation and constitutional law side by side with science policy and scientific knowledge, comprehensive and correct understanding of the policy process is associated.

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