

FACULTY OF JURIDICAL SCIENCES

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Lecture-14



The Social Contract Theory:

Genesis of the Theory:

The most famous theory with regard to the origin of the state is the social contract theory. The theory goes to tell that the state came into existence out of a contract between the people and the sovereign at some point of time.

According to this theory, there were two divisions in human history – one period is prior to the establishment of the state called the “**state of nature**” and the other period is one subsequent to the foundation of the state called the “**civil society**”. The state of nature was bereft of society, government and political authority. There was no law to regulate the relations of the people in the state of nature.

There were three exponents of this theory. They were Thomas Hobbes, John Locke and Jean-Jacques Rousseau who differed about the life in the state of nature, reason for converting the state of nature to civil society and the terms of the contract. They all, however, agreed that a stage came in the history of man when the state of nature was exchanged with civil society to lead a regulated life under a political authority.

The net result of this changeover was that the people gained security of life and property and social security, but lost the natural liberty which they had been enjoying in the state of nature.

The crux of the social contract theory is that men create government for the purpose of securing their pre-existing natural rights – that the right come first, that the government is created to protect these rights. These ideas were based on the concepts of a state of nature, natural law and natural rights.

According to John Locke, prior to the establishment of society, men lived in a “state of nature”. Thomas Hobbes, an anti-democratic philosopher, emphasised, that in the state of nature there was no government to make and enforce laws, men made war on each other and life was “solitary, poor, nasty, brutish and short”.

Background of Social Contract:

The doctrine of social contract is faintly mentioned in the ancient period by both the western and Indian philosophers. Plato was the first among the western thinkers to use the term. It is also referred to in the Arthashastra of Kautilya.

The ideas of the contractual obligations were mouthed by the anti-monarchical writers like Richard Hooker, Hugo Grotius, John Milton, Sir William Blackstone, Immanuel Kant, Johann G. Fichte and Edmund Burke.

It is admitted at all hands that the two English political thinkers, namely Thomas Hobbes and John Locke as well as the French political thinker Jean-Jacques Rousseau, gave the concrete shape to this theory. This trio is considered as the godfathers of the social contract theory.

The theories of foundation of the state were laid down in the great works on social contract, particularly those of the English philosophers Thomas Hobbes and John Locke in the seventeenth century and the French philosopher Jean-Jacques Rousseau in the eighteenth century. The back ground of their theories 'was the aftermath of the Protestant Reformation which had shaken the fundamental constitution of European Christendom and had broken up the divinely sanctioned contractual relation. Another significant thing was that the Holy Roman Empire was torn apart by the wars of the Reformation.

Nature of Social Contract Theory:

According to the social contract theory the state was the creation of the people living in a state of nature which was a lawless and order-less system. The slate of nature was controlled by unwritten laws prescribed not by men but by nature. The exponents of the theory gave conflicting views about the nature of the state of nature. Some considered it gloomy, while others painted it as bright like paradise.

For some reasons the people did not like the system and terminated it by an agreement to save one man from the rapacity of the other. The nature-made laws were replaced by man-made laws. The originally independent people subordinated themselves to the will of either the whole community or a particular person or a group of persons. The three proponents of the theory interpreted the theory in their own way.

Thomas Hobbes Theory of the Social Contract:

Thomas Hobbes in his book Leviathan delineates very precisely and straightforwardly the creation of the state by an agreement. To begin with, before the state was created, there was a state of nature in which a war was raging. There was no law or justice. Human life was marked by force and deceit. Might was right in that situation. Hobbes gave a gloomy picture of the state of nature in his oft-quoted words "Solitary, poor-nasty, brutish, short".

The people became fed up with the state of nature. In order to get rid of the unbearable condition they entered into an agreement by which they established a government or authority to which they surrendered all their rights. The surrender was unconditional and irrevocable. The authority was a single person or a group of persons endowed with unlimited power. The authority to rule was the result of the contract.

Locke's Theory of Social Contract:

In his book *Treatise on Civil Government* John Locke, justifying the limited monarchy of English type, drew his own state of nature. He did not agree that the state of nature was a gloomy and dismal one as painted by Thomas Hobbes. In contrast, Locke's state of nature was one of peace, reason and goodwill. Yet this semi-paradise could not satisfy the people because they were pining for law and impartial authority.

So they abandoned the state of nature though for a different reason. So in replacing the state of nature the people created the civil society by a contract. That done, they made another contract by which the government in the person of the King was set up. Here the ruler was a party to the contract. The people would obey him so long he would protect their life and property. So in Locke's theory there were two contracts, one for the creation of the civil society and the other for establishment of the government.

When Hobbes took brief for royal absolutism, England was getting disgusted with the meaningless fights between the King and the parliament during the Stuart period. Locke's timing was related to the period when the King was maintaining a low profile and the parliament was in the ascendance. This would culminate in the Glorious Revolution of 1688.

Rousseau's Theory of Social Contract:

Jean-Jacques Rousseau, the third player of the game of social contract theory, struck a middle course between the two English counterparts. His book *Social Contract* published in 1762 reconciles the authority of the state and liberty of the individual. His state of nature had an overflow of idyllic felicity.

There human lives were free, healthy, honest and happy. But there was debasement and degradation with the increase of population and with the progress of civilization particularly with the emergence of private property in land which destroyed the natural equality among men.

To get out of this menacing position, men entered into an agreement with the pledges- **"Each of us puts his own person and all his powers in common under the supreme direction of the General Will, and in our corporate capacity, we receive each member as an indivisible part of the whole."** Unlike Hobbes and Locke, the

Hobbes on Sovereignty:

Thomas Hobbes' radical rationalism was his main contribution to constitutionalism. Hobbes took the position that individuals came close to each other out of the evils of the state of nature which was plagued by disorder and war. In such a condition their reason convinced them that they could best ensure their self-preservation by giving all powers to a sovereign. That sovereign might be a single person or an assembly of the whole body of citizens.

Whatever may be their forms and variations, the authority to be called sovereign must have all powers concentrated and combined in it. Hobbes called the state the commonwealth. Any decision of that power would destroy the sovereignty and put back the members of the commonwealth to the state of nature where life was “solitary, poor, nasty, brutish and short”.

Locke on Individual’s Natural Right:

John Locke firmly gave assurance of individual’s natural rights by providing separate but cooperative powers to the King and the parliament and by reserving the right to the individuals to resist an unconstitutionally oppressive government. Locke did not use the word sovereignty. In the characteristic English tradition he prevented the concentration of all powers in a single organ of government.

Rousseau’s Theory of General Will:

While Thomas Hobbes established his unitary sovereign through the mechanism of individual and unilateral promises and while John Locke eschewed the excessive concentration of power by requiring the conditions of the different organs of government to fulfill different objectives, Jean-Jacques Rousseau threw all individual citizens into an all-powerful sovereign with the primary purpose of general will.

The expression “general will” cannot be vague or mistaken because when something contrary to the general will is expressed or done, it may at the most be called “will of all”, since it does not emanate from the sovereign, i.e., the general will.

Criticism of Theory:

The social contract theory is strongly denounced on the following grounds. In the first place, the theory is not borne out by any historical record. It is not known to history that any such contract was made. The only historical instance of contractual obligation is said to be the foundation of a state by the early settlers in America by the May Flower Contract of 11 November 1620 and the deposition of King Philip II in 1581 by the Netherlander where the people said- **“The King has broken his contract and the King therefore is dismissed like any other unfaithful servant.”**

But in both the cases the state existed there before it was said to be created or at least the people had some knowledge of the state and the government before these were created, or the contract was made. These examples do not establish that the primitive people who had no knowledge of the state could establish a state by a contract. Similarly, a state of nature antedating a real state is a fiction and has no historical basis.

In the second place, Sir Henry Maine attacked the theory as one of putting the cart before the horse, because contract is not the beginning of the society, but the end of it. The universally accepted view is that the society has moved from status to contract and

not vice versa. With the growth of age, status lost its rigour of fixity and its place was taken by contractual obligations.

The other serious fault with the theory is that it presupposes political consciousness in the state of nature even prior to the establishment of the state. How can one have the idea of the good of a state when he has no experience of the state?

In the third place, there cannot be any right even if it is a natural right without the state. Right follows from the womb of the state. Without an established civil society there cannot be any right. It does not follow from logic that the people had a bundle of rights even before the creation of the state.

In the fourth place, it is a fact in history that the state came into existence as a result of a long process of growth and development. The sociologists have established that the state is created by a long term process of social development. Kinship, force, divine sanction, family and various other known and unknown factors are there behind the growth of the state.

MCQ

1. Which one of the following is not an important factor for having colonial empire?
A. Scientific discoveries
B. Individual advancement
C. Desire to live in peace
D. Need for markets for dumping goods
E. None of the above

2. The basic of oriental empire was:
A. Despotic king
B. Power of religion
C. Fear of God
D. Love for national culture

3. In the city state the king was:
A. Despotic
B. Philosopher
C. Hereditary
D. Deputy of God on earth

4. Henry Maine has supported about origin of state:
A. Patriarchal theory
B. Matriarchal theory
C. Theory of divine origin
D. Evolutionary theory

5. About the origin of the state social contract theory replaced:
A. Force theory
B. Divine origin theory
C. Patriarchal theory
D. Matriarchal theory
E. Evolutionary theory