The Historical Evolution and Philosophical Basis of the Principle of the Rule of Law

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Abstract

The principle of the rule of law is one of the basic legal principles in all legal codes, regardless of the social, political and religious philosophy that governs the legal system of the state. Hence, this study seeks to know the philosophical basis of the principle of the rule of law and trace the evolution of this principle during the different ages. The study used the descriptive analytical method in that. One of the most important findings of the study is that although the concept of the rule of law is flexible, it can be defined as the rule of law in the state; So that the provisions of the law and its rules transcend all the wills of the state (the wills of the rulers and the ruled together). The study also showed that the philosophical basis of the principle of the rule of law consists of two parts, the objective part and the formal part. Moreover, the study showed that the principle of the rule of law is as old as human societies, as it prevailed in Babylonia and Assyria, as it prevailed in ancient Egypt, in Greek society and Roman society, as it prevails in contemporary societies. Therefore, this principle developed over the ages, from antiquity through the Renaissance to the modern era. Moreover, Christianity laid the first nucleus of the principle of state subordination to the law, when it called for freedom of belief and distinguished between the individual as a human being and the individual as a citizen. By that, it removed the individual from the group, and made him independent of it, unlike what was the case in ancient times, which was Dissolve the individual in the group in which he lives.

Key words: the principle of the rule of law; philosophy of law; modern era

Introduction

The principle of the rule of law is one of the basic legal principles in all legal codes, regardless of the social, political and religious philosophy that governs the legal system of the state; It is not related to being a general principle related to a particular system or philosophy, as it is not limited to one system without another; Rather, it is a general principle whose rule applies constantly in every society, and with regard to every authority, whatever its form and basisThe first sparks for the rule of law date back to ancient civilizations and ancient eras. The principle of the rule of law from the point of view of historical account, as Timor Leste says, is not a modern invention, but it has been developed, over the centuries, through the struggle for power SIMON CHESTERMS adds: "Early history has often confused the rule of law with the law itself. The Code of Hammurabi, promulgated by the king of Babylon in 1790 BC was one of the first set of written laws, and its inclusion in stone, and its availability to the public represented a great progress towards Legal system Therefore, the Code of Hammurabi - the sixth king of the ancient queen of Babylon - is considered one of the oldest written laws in human history. It consists of a set of laws, and there are many: Laws similar to Hammurabi's law, which we received from Assyria, including: Collections of laws and legislations include the Code of Ur. Namo, the Shnuna Codex, and the Lipet-Ishtar King of Aysen However, Hammurabi's legislation is the first in history to be considered integrated and comprehensive for all aspects of life in Babylon.It clarifies laws, regulations, and punishments for those who break the law, and it focused on theft, agriculture (or sheep care, and destruction of sheep). property, women's rights, children's rights, slaves' rights, murder, death, and injuries. Punishments vary according to the class from which the violator descends, one of the laws and the victim. A if it occurred. And the legislation of Solon in the sixth century B.C., surveyed the political action in Greece with a democratic tinge. The Roman Law of the Twelve Tablets in 450 BC, in its primitiveness, established the separation of religion from civil issues and protected the basic rights of citizens.

Thanks to Plato and Aristotle, the principle of the rule of law emerged as a powerful tool within the political and legal discourse However, the British writer (Albert Finn Dacey) in the nineteenth century had in fact coined the same phrase in the section of the Constitution Act in 1890 saying: "Every official, starting from the Prime Minister and ending with the policeman or the ordinary tax collector, bears the same responsibility as any other citizen for every work they do. It was carried out without legal justification, and reports are full of cases in which officials were brought before the judiciary and penalties were applied to them in their personal capacity - as a result of an act they performed in their official capacity in which they exceeded their legal powers Therefore, those who make and enforce laws are themselves obliged to abide by them.

Undoubtedly, the rule of law is among the basic pillars of high-quality democracy, and it is an ideal. Because, as Sayan Majumdar says: The laws and justice systems all over the world are based on the pillars of the rule of

law, which serves as the guiding principle for the government, which must enact legislation, procedures and regulations in conformity with the concept of equality and equal treatment before the eyes of the law, regardless of sect or creed, gender, color, religion, social background, and political and economic status

It is supported. The previous view (Batry R. Weingast) said: "If the state wishes to maintain its existence and its position, it needs the support of its citizens, and then there must be consensus between the state and citizens about the appropriate limits for the actions of the state, to which the principle of the rule of law stands on the cusp of its limits.

Hence, this study seeks to know the historical development of the principle of legal supremacy on the one hand, and its philosophical basis on the other hand. To achieve this goal, the study is divided into the following sections: (I): Introduction. Section (II): Discussion. Section (III): Conclusion.

Discussion

Defining the philosophy of law

Since the beginning of the European nineteenth century, speech and literature began on the philosophy of law. In 1823, the book of the English jurist Austin was issued: "Lectures on the science of law or the philosophy of positive law."

During the second half of the nineteenth century, many books appeared in the "General Theory of Law" and then accumulated works in the "Philosophy of Law". Philosophy of law occupies a prominent place in the curricula of major European universities in Spain, Italy, Germany, Austria, the Netherlands and England, often under the name "science of law."

Interest in the philosophy of law increased significantly after the Second World War. In France, jurists have not been interested in the philosophy of law for a long time and have only dealt with it casually, which prompted one of the senior jurists, "Alphonse Poatel," to announce in his lectures on the philosophy of law, which he published in 1899, that the exclusion of this subject from university curricula is unnatural. For higher education

In any case, the term philosophy of law has been widely used since the beginning of the nineteenth century, especially after the issuance of the principles of the philosophy of law by the German philosopher Hegel, where this term was used for the first time in 1821 and defined the philosophy of law as the philosophy applied to law? This definition was supported by a legalist such as Heiser, who sees that the philosophy of law "…is philosophy within the scope of law.

In any case, the word "philosophy" means rational knowledge, science in the general sense of the word. Philosophy, then, is an in-depth study of a branch of human knowledge, including law. The attempt to comprehend the nature of positive law is a philosophical act, so what does "philosophy" mean other than an attempt to understand reality through thinking. When such thinking or in-depth study is focused on law, it is logical, and it is natural for legal practitioners to do it, so it is from the field of legal studies first and foremost.

The fact that the legal, when it returns to the foundations of law and tries to define its nature, cannot remain in isolation from the main interpretations or "choices" that have been put forward to understand or understand our world, nor can it be ignorant or ignorant of the extent of the influence of these philosophical currents or positions on the ideas and theories that It was raised in the field of legal science, and the legal person is human and therefore we cannot isolate his concept of law from his concept of the world and life. Some legal solutions within the legal system within a single legal system can be the subject of different intellectual positions.

Accordingly, the position of philosophers on law cannot change the character of "philosophy of law." The philosophers who proceeded from a specific "philosophical system" i.e. from an interpretation they presented to the world, tried to introduce law into this "system" in order to complete their "interpretation of life" and tried, based on it, They present concepts and perceptions of law that are consistent with their intellectual systems. Such a position can only distort the study and deepening of law, and we say "philosophy of law" in the strict sense because it gives it a certain "ideological" character that is in harmony with the beliefs and ideas of the philosopher who turned to law and so did, for example, Plato, Aristotle, Thomas Aquinas, Kant, Hegel and even Marx. These philosophers were not interested in knowing the law in itself or in its nature or in the foundations on which it is based, and they did not try to define the legal phenomenon as much as they were interested in just and unjust laws and perceptions of the law without focusing the effort on studying its truth and reality, so in this sense they were "philosophies" about the law

The Importance of the Philosophy of Law

There is no doubt that the philosophy of law highlights its importance from the nature of things. Whatever the legal dealings with legal problems, there are cases in which he must define a position and be able to justify his convictions, whether or not we submit to the law: a question that raises the soul, without a doubt, the problem of the value of the law And the inevitability of confronting the basis and nature of the law.

Mr. Primo tells that a young man from the administrative law specialists in Al-Ma'ia told him: "I am waiting for you to prove to me the usefulness of the philosophy of law so that I can believe in it." His answer was that the benefit of the philosophy of law is found in all the pages of the administrative law books he uses. Can the

law worthy of this name be ignorant? That French administrative law has been completely renewed by the objective theories of Dean Dakke, and that the legal concepts used daily by professors of administrative law can only be justified thanks to Dean Dicke's doctrine of law and the state.

In this context, Professor Depiro says that philosophical legal thought, when it focused on studying major theoretical problems, extracting its true principles, had a great impact on the positive development of law and its establishment and application, and obtained more effective results than those attributed to those who adhered to the legal technique only. One of the denials of the influence of the jurisprudential renewal that took place since the beginning of the twentieth century in legislation and the judiciary, as well as in the general guidance of ideas and customs in France For example, Debero put forward one of the contemporary theories that aroused great opposition, which is the theory of Ducky. He hesitates in his writings. The state must be restricted by law.. It is a lot of him that calls for restriction and a lot of what confirms its necessity and exposes the dangers of not restricting the state. The important thing is that we reach, in fact, to stop arbitrary action in essential matters

Defining the Rule of Law

From the beginning of the twentieth century until our time, we can say that the principle of the rule of law has become more legal than the concepts circulating on the scene. Or as STOPHANE BEAULAC says: that the principle of the rule of law is undoubtedly one of the most powerful modern expressions. On the back or on a slap in the face, or in other words, through the cognitive process of the human mind, it has become the language of the rule of law and not only the representation of reality, but it is atoms of a transformed reality, and therefore, the gatherings have contributed to modeling a common awareness of society, including the international community. While the various ideas associated with the expression of the rule of law in force is undoubtedly. as we mentioned earlier. Linked as far back as Plato and Aristotle, the emergence of the rule of law as a powerful tool within political and legal discourses Moreover, the twentieth century witnessed the largest circulation of the intellectual debate about the principle of the rule of law, and the media channels have been talking about this principle through their comic and sometimes serious dialogues. What is agreed upon about the fragmentation differences, is that there is no specific vision and definition of the principle of the rule of law; Because it is an ambiguous term However, it is also agreed that the authoritarian regimes that came in the middle of the twentieth century violated the principle of the rule of law Because the term, as seen by (Paul Horowitz): that the principle of the rule of law is a flexible and unclear term meaning and where is the law in countries that do not have sovereignty and do not own the law? In more precise words, states that do not have their sovereignty in the first place, do not have the ability to formulate their laws In an explanatory phrase, strong states may adhere to the rule of law to force weak states to abide by it, and strong states may not abide by it in case their interests are threatened and act outside international legitimacy, that is, outside the sovereignty of international law. On the domestic level, authoritarian regimes often talk about the rule of law and their commitment to it in the event that this law keeps them in power for longer periods. A slap may be directed at him in Yemen and the North if he threatens their survival in power.

It can be said that the principle of the rule of law is deeply rooted since the establishment of authority in the human society, but its concept has changed in breadth and narrowness from one society to another, due to several political, social, economic and ideological indicators. Constitutions in modern countries have referred to the principle of the rule of law. For example, Article 74 of the new Egyptian Constitution (2012) stipulates that (the rule of law is the basis of governance in the state, and the independence of the judiciary and the immunity of judges are two basic guarantees for the protection of rights and freedoms). The constitutional judiciary has emphasized the need to respect the rule of law and to guarantee the right to litigation.

As defined by the CRC at the Delhi Conference in January 1959; that: (a set of principles, systems and procedures that, if they do not match, are similar, and which have shown legal experience and traditions in different countries of the world. Both in terms of political structure or economic basis - that they are important to protect the individual from the tyrannical government, which helps him to enjoy human dignity)

The previous definition of the rule of law shows the extent to which it is considered one of the general legal principles that constitute a common heritage among global legal systems, and therefore a strong support for the protection of human rights, regardless of the nature of the political and social philosophy of the state. The main function of the principle of the rule of law is the rule of law between the individual and the state; For the legal relations among individuals are relations between equal parties, while between the state and individuals they are relations between unequal parties; The state is the stronger party with its public power; Hence the importance of the role of the rule of law in the state in protecting the rights and freedoms of individuals from the public authority In any case, the rule of law means the supremacy of the provisions of law in a country; So that the provisions of the law and its rules transcend all the wills of the state (the wills of the rulers and the ruled together).

The Philosophical Basis of the Rule of Law

According to the philosophy of public law, the principle of the rule of law consists of two parts: the first part: the substantive part, and indicates that everything issued by the authorities in the state must be in accordance with the rules in force in the state. The second part: a formal part, and it refers to the need to respect the principle of the gradation of legal rules; So that the minimum rule must be consistent with the higher rule, and so on, meaning: every legal text must respect the legal texts that are stronger than it, so the legal rules must respect the constitutional rules. This principle has been established since the Middle Ages as a constitutional principle in the English system, on the basis that the executive authority must base its actions on the basis of the law, which is the legislation and the judicial law; But this does not mean that ancient societies before the Middle Ages did not know the rule of law

It works with the principle of the rule of law in contemporary legal systems in all its forms; It has been repeated that every legal act or action - whether public or private - must be based on an abstract legal base that precedes the act or action, and that all individuals, in their legal relations with each other, and in their legal relations with the state and its various bodies, are subject to the rule of law; It is not sufficient for individuals alone to be subject to the law; Rather, the governing bodies in the state must be subject to the law, based on the fact that the essence of legality in the state lies in the rule of law between the individual and the state.

The core idea behind the principle of the rule of law is to ensure protection from brute power, and that the law must prevail, and that tyrannical authority should not be exercised against the individual, and this derives from the recognition that the concentration of power is dangerous and that it is desirable to distribute this power, so that there is no dictatorial power. Hence, Aristotle argued that authority is a satiation of the group, and therefore authority belongs to the law, not to the ruler, and that the rule of law is not merely a necessity; Rather, it is the condition of the validity of the system, and accordingly Aristotle calls for the principle of the rule of law, and he believes that it is achieved through the generality and abstraction of the legal base The law, when it is general, expresses the mind abstracted from the lusts.

Evolution of the Rule of Law

Implementation of the principle of the rule of law requires submission to the provisions of the law in the broadest sense, i.e. submission to all legal rules that make up the legal system; Regardless of the source of these rules or their position in a hierarchy of legal rules, or whether they are written or unwritten; The rule of law in general requires respect for all legal rules, and investigation of the rule of law in the state requires the necessity of separation of powers, a clear definition of the powers and competencies of the administration, and the availability of judicial oversight

The old democracies and the Christian and Islamic religious teachings have effectively contributed to adding new dimensions to the principle of the rule of law, in particular religious teachings. The latter focused on freedom of belief, equality between rulers and the ruled, and the supremacy of Sharia against all

The Principle of the Rule of Law in Antiquity

According to Aristotle, authority stems from the group, and therefore authority is for the law, not for the ruler, and that the rule of law is not merely a necessity; Rather, it is the condition of the validity of the system, and accordingly Aristotle calls for the principle of the rule of law, and sees that it is achieved through the character of generality and abstraction in the legal rule.

In general, equality before the law - one of the most important principles of Athenian democracy - presupposes that the rule of law is the rule.

The scholars differed about the existence of the principle of the rule of law in ancient times, and they were divided in this regard into two opinions as follows.

The first opinion: the existence of the principle of the rule of law in the ancient world: the opinion of some of them that the principle of the rule of law is an old principle that dates back to much before the emergence of the state of the individual sect. , by virtue of its stability and characteristic in general and the stripping of guarantees, and in application of this, it can be said: The rule of law finds its source in the struggle of individual freedom in the face of power.

On the other hand, the birth of the principle of the rule of law goes back to the time when the generality and abstraction of the legal base was achieved, and this was achieved only when the ancient world knew codification; As the rules governing society have transformed from mere non-specific customary rules to general and abstract rules, thus achieving security and stability for individuals; As each person knows in advance what is permissible, so he comes to it without penalty, and abstains from what is forbidden to ward off punishment. Knowledge of the law and its application was the preserve of the two aforementioned classes, who put it as a means in their hands to control the members of society according to their will and interests.

Codification led to the achievement of the generality of knowledge of the law, which made the application of the law universal, and kept it away from being a privilege of one class over another. It gave rise to the need for codification, and at the same time gave rise to the principle of the rule of law in the ancient world. The Dacons

of Athens, the Code of Hammurabi in Mesopotamia, and the Code of the Twelve Tablets in Rome are, in fact, an attempt towards asserting the principle of the rule of law. in their communities.

However, despite this, the essence of the legitimacy achieved by the principle of the rule of law in its first premises is still far from its contemporary concept. Since the rulers were exercising personal power, their absolute powers allowed them to change the legal rules and disavow them, which made the conflict between power and freedom resolved in the interest of power in most cases over freedom, and from here the principle of the rule of law existed; However, it was subjected to many setbacks, but we should not forget that the guarantees of the rulers' commitment to the law existed, although most of them were guarantees of religious and customary reference. For example, in Pharaonic Egypt, we find that the pharaoh could not violate an existing law, even if he could amend it.

Accordingly, the ancient societies knew legitimacy, even if this legitimacy was a primitive one; Because with the codification of custom and the prevalence of knowledge of the law among the common classes, the ruling authorities, the chief priests and the nobles no longer have to deal with them except in accordance with what is required by the legal rules established in advance on the basis of generality, abstraction and consistency.

In spite of this, the principle of legality remained in antiquity without the limit that affirmed the subordination of the ruling authorities to external legal constraints imposed on them and binding on them; In view of the crude class that led to the expulsion of the slaves - a view because they were not addressed by the legal rule - from the implementation of the principle. On the other hand, the comprehensiveness of the political systems in the old cities was constantly affirming - even in the face of the free class - that the collective existence is the basis, and that the citizen is subordinate to the group in everything, where the focus is on the political and social existence of man more than on his individual existence as a value in itself. And it only ended under the influence of religion.

Second opinion: There is no rule of law in the ancient world, but there are those who hold that antiquity did not know the rule of law; It did not know the idea of subjecting the ruler to rules that transcend him, or placing limits on his powers; The ruler was considered a god, or at least the executor of the divine will; Thus, he was not subject to a higher authority than him, and consequently the ruler enjoyed absolute powers; While individuals have been deprived of every right to confront it and accordingly, the people have been deprived of every guarantee of their freedoms and rights in the face of the ruler, and therefore the rule of law does not exist. In any case, it can be said that the first opinion is preferable to the first; Since the principle of the rule of law has been known in all societies in human history; Because it is closely related to the political community. This confirms what some have decided: that the principle of the rule of law is as old as human societies. It prevailed in Babylonia and Assyria, as it prevailed in ancient Egypt, Greek society, and Roman society, as it prevails in contemporary societies; There is no state without law and no law without society, and the absence of the rule of law means the dissolution of civil society.

The Principle of the Rule of Law in the Renaissance

The beginning of the tenth century AD was the scene of political conflicts, and with the beginning of this historical stage, Europe, especially France, entered a turbulent historical stage characterized by extreme chaos and crowding of events that created political data, and this stage is described - historically as the feudal era and what distinguished this historical and political stage was the fragmentation of political life And the emergence of conflicts over power, and in this context, French society before its revolution (1789) was alone in being subject to a complex political pluralism that appeared on the real and legal levels. This resulted in the emergence of legal systems according to the established social class and hierarchy, and this diversity in legal systems - in turn - entailed the emergence of preferences and privileges for some social groups and not others, which led to the emergence of a society of privileges, as (Garrisson F) put it.

Proceeding from the French political reality - during the Middle Ages - the French population element became distributed or subordinated to the various active and dominant forces in society, which were fighting among themselves to subject this element to its domination. The French monarchy as a weak central authority.

Historians stress that the disintegration and explosion of the vast Shaleman Empire caused the fragmentation of political life in France, and in this context, that empire was divided according to the provisions of the Treaty concluded in Verdin in 843 CE among the three sons of Shaleman.

Out of this great political event - in French political life - the first feudal units were formed, which became political units, each claiming superiority over the other units, that is, "sovereignty".

This political division and scattering of the empire and its division into many units initially made France a theater for political conflicts between the various forces competing to occupy the top of the authoritarian pyramid in society. Geo-politics, as a start to be the nucleus of sovereignty (as an expression of the distinction and strength of feudalism), and in this climate emerged the feeling of feudal units of self-distinct from the French monarchy, a feeling that is the first indication of the emergence of the idea of sovereignty in the concept of independence.

One of the most important features of the Renaissance is the control of the feudal system and the church on life in general. So, to understand the roots of the idea of sovereignty as a synonym for power and control during the Renaissance, it should be emphasized and pointed out that the land - during this age - was a primary source of wealth, which at the same time makes its owner - a real power and authority in society. This created in them a feeling of independence and control at the same time on the one hand, and a sense of the possibility of facing other similar units on the other hand, and even the central authority, which began to feel weak in the face of the growing power and authority of the feudal lords, which led to the legal independence of the feudal units. And refused to submit to the controls of the French monarchy.

From the foregoing, we find that the emergence of the feudal system in France is an essential element in the revolution that occurred within the political and legal life of the Middle Ages, which led to the emergence of institutions (feudals) that laid the rules and foundations of the local authorities exercised by the large landlords who became realistic providers of real public authorities, Which enabled them to influence the various fields of life and made their influence stronger than the central authority, whose relationship with the feudal lords became an equal bilateral relationship, and as a result of the growing role of these feudal lords, the territories subject to their powers became a state within a state. His fiefdom, and on this basis, the authority of the feudal lords (their sovereignty) was defined by a gradation expressed in the size and height of the domes of their towers. Thus, the idea of sovereignty - since its initial inception - was based on material force, when this force was embodied in the land as an important element in the quota economic system, and as a result, the owner of the vast land became the sovereign subject to his authority (will) the owners of the less important land and so forth, in other words The origin of sovereignty in the Western concept is always connected to the phenomenon of power, control and oppression.

The reality is that the sphere of feudal power developed into hegemony and then the complete and absolute sovereignty of the king, as he became in control of the feudal territories, which made him an absolute master over the lands that came under his physical control. In this context, John Bodin played an important role in upholding the absolute authority of the king by formulating - for the first time - the theory of sovereignty as a political and legal concept.

As for the role of the Church during this era in shaping the principle of sovereignty, it can be said that during this era, Europe was subject to the influence of the Church, as Christianity shaped the lives of people in society, but The church, as a religious institution, in turn was subjected to the influence of the feudal system, especially in the structuring of its institutions and organization, and in this context the church appeared structured with the same structure known to the feudal system. (Priest, knowing that these two officials possess vast lands similar to the feudal lords). The property of the Church expanded, especially after the privileges granted by emperors to the clergy, and through these measures the vast lands came under the authority and influence of bishops and priests, which made the men of Christianity practice the same.

The powers enjoyed by the secular feudal lords, which made the units and provinces subject to the church a competitor to the central authority embodied in the French king, and each one claimed independence from the central authority, and this is an outward manifestation of modern sovereignty.

The growing social and economic importance of the class of bishops and priests made them occupy a position either - not only as representatives of the Christian religion - but as a result of their acquisition of increasing political powers. They have the right to issue orders and have the authority to command. It seems - clear - that one of the most important features of the Renaissance is that Europe was characterized by political fragmentation and the emergence of various competing forces (feudal lords and churchmen...), each of which claims superiority and dominance, which generated a feeling of subjectivity, and even independence from other units and this phenomenon (Independence) in turn encouraged the emergence of local authorities parallel to the central authority in France.

This political division, and the emergence of decision-making authorities and centers - as a logical result - led to the fact that every force - in the arena - (feudal lords, ecclesiastics and the French king) claimed to be the undisputed owner of command and prohibition, and these claims resulted in conflicts that formed the birthplace of the idea of positive sovereignty This is confirmed by Jelnik's famous formula: "Sovereignty is a dialectical concept" (La souverainete est une on polemique).

The conflicts between the French king and the feudal lords on the one hand, and between him and the churchmen on the other hand, ended in favor of the French king, who regained his authority over all the territories he wrested from the influence of feudal lords and ecclesiastical, which made him a great feudal lord who subjected everyone to his actual authority. In fact, this physical territorial control needs a legal justification that consecrates the king's authority as a supreme will in society. From this new reality, the stage of forming the theory of sovereignty began at the hands of Jean Boudin.

In general, it can be said that the most important contributions of the Renaissance era correctly presented the problem of the foundation of the state, which resulted in the need for the state to adhere to the law; Because the Renaissance made the state a human industry, raising the value of the individual, the highest individual freedom, restricting public authority, and making sovereignty for the group and not for the ruler. All the great

philosophical ideas of the Renaissance were confirmed, the most important of which is the idea of restricting the ruler to an authority higher than his authority, and the emergence of individual freedoms. And do not forget the role of natural law theories and the theory of the social contract - as we know it. in establishing the principle of the rule of law. In general, there is no state today that does not believe in the principle of the rule of law. It can also be said that Christianity laid the first nucleus - as it was said - for the principle of state subordination to the law, when it called for freedom of belief and distinguished between the individual as a human being and the individual as a citizen. In ancient times, that dissolved the individual in the group in which he lived.

The Principle of the Rule of Law in the Modern Era

The follower of global thought is aware of the existence of a tangible development that has occurred in the principle of the rule of law, and this development is represented in the shift from individual legitimacy to social objective legitimacy, which in some countries has taken the form of sectarianism; While others are still in the process of objectivity only.

A distinction must be made between formal individual legitimacy and between objective and doctrinal legality, if the basis of the mandatory law and the basis of legality is a personal basis and depends on the individual will, then we are in front of formal individual legitimacy, and it is recognized that the principle of legality in the form of individual formalism was the product of free doctrine and philosophy Individualism, and after the French Revolution, this principle became preoccupied in the minds and writings of jurists; However, several factors emerged that were the reason for the transformation of thought from the image of formal individual legitimacy to other new forms of legality, namely, objective legality and doctrinal legitimacy, as the rule of law has tended with the erosion of legal formalism, which was referred to by the legal position towards objectivity instead of formalism (Which was enumerating the value and legal force of legal narration on a formal basis, represented in the position of the authority that issued it and its status in the legal structure of the state regardless of the subject and content of the text). However, if the basis for the legality of the law and the basis for legality in every act of the state is an objective basis that depends on the existence of an objective social goal that the law seeks to achieve; In this case, we are facing objective legality, and if adherence to the objective social goal reaches the point of public belief and popular belief, then we will be in front of doctrinal legitimacy in this case.

It is worth noting that the rule of law - as understood by the individual doctrine - is represented in the belief in the existence of a natural system that includes the individual and the state, and on the other hand, the existence of a set of natural rights and freedoms for individuals, and the state exists for their protection and preservation, and that these rights are inherent in human nature and the state may not touching her. On the other hand, the need for an authority to protect the community, provided that it is a legitimate authority. It is noted that the three concepts formed the concept of human rights in the individual sect.

As for the objective concept of the principle of the rule of law, it is represented in the legislator's adherence to a kind of ideals, which are based on idealistic ideas such as the idea of natural law. Its application has disadvantages, on the other hand, in the emergence of socialist and solidarity ideas and movements in the Western country, which greatly influenced the philosophy of law and politics.

Conclusion

The principle of the rule of law raises many problems related to the existence of confusion between the text and the application of the law in its general sense, or with all its meanings. One of the problems that stand before the principle of the rule of law is the policy of double standards in the application of the law, as well as the corruption of the entire judicial system - beginning and ending. Hence, respecting the principle of the rule of law is the responsibility of the people along with the responsibility of the state.

There is no doubt that the principle of the rule of law is one of the most powerful modern expressions. It is one of the powerful meanings. Rather, it has become an activity in itself, and a social mental phenomenon that exists within human consciousness and independent actions within the material social reality, and it has become on the back or a slap in the face. Hence, if the state desires to preserve its existence and its position, it needs the support of its citizens, and then there must be consensus between the state and the citizens about the appropriate limits for the state's actions - for which the principle of the rule of law stands on the threshold of its borders - if the state violates those borders, then withdraw Citizens support the state, with which the state loses power.

One of the most important findings of the study is that although the concept of the rule of law is flexible, it can be defined as the rule of law in the state; So that the provisions of the law and its rules transcend all the wills of the state (the wills of the rulers and the ruled together). The study also showed that the philosophical basis for the principle of the rule of law consists of two parts: The first part: the objective part, and it indicates that everything issued by the authorities in the state must be consistent with the rules in force in the state. The second part: a formal part, and it refers to the need to respect the principle of the gradation of legal rules; So that the minimum rule must be consistent with the higher rule, and so on, meaning: that every legal text must respect the legal texts that are stronger than it, so the legal rules must respect the constitutional rules.

Moreover, the study showed that the principle of the rule of law is as old as human societies, as it prevailed in Babylonia and Assyria, as it prevailed in ancient Egypt and in Greek and Roman society, as it prevails in contemporary societies; As there is no state without law and no law without society, and the absence of the rule of law means the dissolution of civil society. And this principle has developed over the ages from ancient times through the Renaissance, which is one of the most important contributions to correctly posing the problem of the foundation of the state, so that this proposition resulted in the necessity of state compliance with the law; Because the Renaissance made the state a human industry, ending with the modern era, in which a tangible event occurred on the principle of the rule of law. This development is represented in the shift from individual legitimacy to social objective legitimacy, which in some countries took the form of sectarianism; While in others it is still in the process of objectivity only. Moreover, Christianity laid the first nucleus of the principle of state subordination to the law, when it called for freedom of belief and distinguished between the individual as a human being and the individual as a citizen. By that, it removed the individual from the group, and made him independent of it, unlike what was the case in ancient times, which was Dissolve the individual in the group in which he lives.

Since the rule of law is of particular importance in the context of its daily life, the study recommends that the principle of the rule of law should adhere to good governance, a principle in which all persons, institutions and public and private entities, including the state itself, are accountable to laws that are publicly issued and applied to everyone. Equally, it is governed by an independent judiciary, and it is consistent with international rules and standards for human rights. This principle also requires taking measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability before the law, justice in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of abuse, and procedural and legal transparency. Therefore, it is necessary to provide assistance to institutions of the rule of law and support them with a strategy and dialogue in the field of public policies based on principles. While the reform of central institutions is critical to the advancement of state responsibility, the approaches taken at the community level should be complementary to the importance of achieving good governance from the top down. Too often neglected is the importance of public support for the rule of law and civil society's need for justice and security.

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