Although there are some philosophers who, as a matter of metaphorical hypothesis, if not as a postulate of reality, conceive of man as living in an isolated condition outside society, the evidence of history, the highest tribunal of corroboration, refutes such suggestion.

The imaginary atomic individual can find its place only in the fantasy of the mythology, in the Homeric description of the Cyclops Polyphemus,

"Mootless are they and lawless. On the peaks
Of mountains high they dwell, in hollow caves,
Where each his own law deals to wife and child
In sovereign disregard of all his peers." ¹

Thus the purely individualist self is a mere figment of abstraction. The self can come to its own realization and consciousness only through social intercourse, and not in complete isolation from other selves. Thus in a sense, the individual has a social origin. It rests not on its individual foundations, but on the whole universe. ²

In fact all thinking about the philosophy of law and society has centred round the social co-existence of men. But man alone is not the only social being in nature. On the other hand in all social animals, including man, co-operation and
unity of a group has some foundation in instinct. There may be some animals e.g. corals and other Zoophytes, which, because of their peculiar mode of growth, live together in such an organic connection that their individuality can be hardly felt. But a study of the animals of a higher order, as in the case of ants and bees, in spite of the mechanical and static character of their social life, affords us a picture of the manner in which permanent instincts arise from the modes and needs of life in conformity with the latter. The need for a social existence among the animals may have been for a variety of reasons, e.g. natural increase of the species and its attendant circumstances e.g. attachment of the growing generations to their parents, the necessity of a common defence or of securing collective existence.

But the difference existing between "societies" of insects and human societies are profound. Thus there are communities such as those of bees and ants, where though no continuity of substance exists between the members, yet all work for the whole and not for themselves and each is doomed to death if separated from the society of the rest. Human society on the other hand is based on the willing association of free, autonomous beings, capable of living outside that society, while the exact opposite takes place.
with insects, where individual autonomy is reduced to such a point that certain of them become incapable of feeding themselves and depend for their subsistence on specialised agencies. In fact the societies of insects are societies only in the sense in which the human body is a society of cells and not in the sense of a social group.

No doubt, primitive man must have felt not only the weakness of an isolated existence, but also the dangers menacing him from animals stronger than himself and the difficulties inherent in the struggle against external forces. To this must be added the influence of habit of living in groups, discernible even in the lowest phase of civilisation when men and women living together however so temporarily, developed some sort of social disposition — how far descen- dible attachment of a more permanent nature or when the child, weak and defenceless, lived under the care and protection of his parent. Thus social disposition, descends from generation to generation, all the while ever becoming strengthened and expanded, and the necessity of and capacity for social life are both being simultaneously developed. In fact the spiritual development of man from its tender beginnings is inextricably associated with his social existence, and the colour and character of his sentiments and ideas, his needs and wishes are but the results of his combined co-operation with his fellow beings.
But it should not be thought that this social disposition of man is always actuated by a constant recognition of absolute necessity. The fact of its advantage, being once established, gives it a fresh impetus and results in human activity into a larger sphere and in the greater assertion of the sentiment of solidarity. "If, those spheres of social co-existence which thus correspond with general indefinite aims and interests not clearly defined and fixed, may be called 'Society' in a general sense, that mass of relations, again, which refers to definite aims and to absolute necessity may be distinguished from society in general as belonging to some organic society". The primitive man has alone to face nature in her rough turbulence, and the only feeling he can assert is that of unqualified selfishness; it is only with the growth of civilisation, that a consciousness of the consideration of the interest of others begins to develop and from this tender shoot springs the growth of public sentiment which prompts man to seek his own advantage in harmony only with the promotion of public interest. Thus it would be as false to regard rules and principles of social conduct, slowly elaborated in the collective experience of man, as merely the instruments of the sense of social obligation, as to regard them merely as tools of egoistic interest.
A survey of the growth and development of human
civilisation through its rough and rugged frontiers shows how
the origin of society depends upon some vital interest which
has become predominant and largely remains unsatisfied at a
certain period of social development. At first it exists in a
fluid and inchoate form and embodies itself into a corresponding
ideal as the fancied picture of the condition consequent upon
the assertion of this vital interest. It falls to the lot of
the great pioneers of civilisation to give a definite shape
and organisation which thus forms the
nucleus of the new society. At the
incipient stage of its development,
there develops a sense of discipline
and co-operation consequent upon the
adaptation of the demands of the new society in its struggle
against those interests gratified within the antecedent
dominant society. At this stage, we are told, the new society
presents itself as the state in which form it realises and
maintains the conditions of its existence and development as
compulsory law, on the basis of public consciousness and by
means of public will and force.

But there is no warrant for such a conclusion that the
society having become a state has reached its final stage.
of development. So long as there are turbulent and irreconcilable elements opposed to the newer conditions of life and its law, the state has to employ force, for the purpose of upholding the fabric of society. But when the social organisation will be founded not on compulsion of law but on universal public conviction, some other society of a wider sphere and of a higher order becomes dominant, within which it takes its place merely as an organisation of self-government and ceases to exist as a separate individuality and organisation.

The order of a society largely depends upon the order of the vital interest which has produced it, and not upon the degree of its development and organisation. This vital interest may manifest itself in the lower order as the sum of concrete and fewer, but more pressing and direct wants, but in the higher order it presupposes a greater number of antecedent evolutions, a greater capacity for co-operation and a complicated organisation embracing a larger number of members. Thus the state itself is one of the phases in the course of the life of a society and every state is inevitably only the form of some dominant society, which has to engage itself in struggle against twofold subordinate societies, viz. those whose sphere is more contracted because of their inferior order and those which, being of a higher order than itself, strive to assert but in
part, as yet, their vital interests in opposition to the dominant vital interest. We should not forget that our vital interests cannot be understood in terms of single and isolated human aims, but are connected clusters of interests which assume their peculiar colour and significance from the relative preponderance of one or the other of these elements at a certain period of human civilisation.

An enquiry into the progress of historical development of societies will afford an interesting study illustrating our point. The most primitive period of humanity affords scant materials to warrant any inference regarding the original state mankind or the general law of development of human societies. But, even from the materials we have at our disposal, it is not difficult to infer that humanity at its primitive stage of evolution, could hardly exhibit any trace of intellectual means of intercourse, and of the faculties of the human mind connected with them. Indeed as regards the primitive starting-point of humanity, even anthropologists disagree among themselves, some asserting utter promiscuity to be the primitive social condition, while others denying its universal applicability. The only tie binding such a community is one of consanguinity, arising out of the animal nature of man, which brings about the temporary cohabitation of man and woman, and that of
mothers and children, who must have lived together for a somewhat longer duration. The needs of a primitive society, the necessity of continuous struggle against the wild agencies of nature, of procuring food and shelter and attending to domestic and outdoor labours, of constant readiness for defence must have widened these mutual relations. Thus the basis of the primitive society was kinship, consisting of a group of blood relations, where only one head of the family, the eldest ascendant, ruled over his wives, his progeny, and occasionally over younger relatives of lateral branches.

Consanguineous With the growth of the consanguineous society, there takes place a transformation of the economic character of the activity of its members, their habits and emotions, ideas and morals. During these ceaseless struggles inherent in the precarious mode of life, blind obedience to superiors, discipline, and observance of tradition become more and more firmly rooted, and a feeling of attachment among the members for their own society ripens. Thus the consanguineous society expands into the tribal society which in its beginnings presents itself as a group of families among which merely the tradition of an original kinship of blood survives, but which with the recognition of the interest of local contiguity embraces within its sphere an ethnic race which
is characterised by certain natural features common to all
its members, and leads to the formation
of communal society.

In the consanguineous society, the inferior members
were completely under the subordination of the heads of
families who in their turn were slaves of superstitious beliefs
in supernatural forces and the divinity and the victims of
custom and tradition. The tribal society, on the other hand,
was characterised by an inordinate feeling of the value of
the individual strengthened with the nobles who embarked upon
marital ventures. It is with the growth of communal society,
that the notions of political liberty and equality, and the
institutions embodying these ideals came into existence.
Hence the social order was conceived not in terms of rigid,
natural relations, or of Divine Commands, but of conscious
human contrivances, and the state was regarded as an artificial
structure, the organ for satisfying conscious human wants and
as capable of being constructed and perfected through social
process.

But whenever the sphere of the communal state widens
and its dominion extends to other spheres, which it can on
expansion of communal society
no account receive into its own frame
and the society is founded on the interest
of amassing wealth for consumption, it presents itself in
sharp antagonism to the traditions of the state in the sphere of which it arises, as it endeavours to secure conscious class or private interests and to perpetuate privileges.

Before we proceed to analyse the nature of the growth of the modern sovereign state, it will be pertinent to enquire about the notion of "state" as it has appeared to jurists and philosophers of different ages.

Theoretical definitions, in general, do not develop directly one from another, but seem to be short abstracts from the whole sum of the currents of thought forming around their subjects, which bear the deep impress of the myriad forces operating in social and political life of a given period.

In the definition of the notion of the state, two alternating tendencies can be discerned; while some philosophers have attempted to give special prominence to the individuality of the state as a sort of mysterious personality, there are others who stress upon the combination of its members and its national structure.

But whatever differences of view there may be, the essential characteristics of the state as a ruling society is that it forms always a distinct phase in the process of
association and presents itself as independent, dominant and law-creating and law-maintaining society, state as a law-creating and law-maintaining society capable of asserting its own conditions of life by force. There are some philosophers who do not share the view which looks upon the society of the state and the order created by it as complete and final in themselves, nor do they think that these represent that regulation of absolute value which should accord with the capacities and merits of the totality of the members of the state. In truth, "every state is guided in point of fact in the assertion of its individuality and in the regulation of its activity, only in part by its true and properly recognised interests, while in other respects it is likely to acknowledge the paramount influence of such interests as it erroneously supposes to be vital." But, in such a society law is created by the state in its ruling capacity and adapted to the dominant conception of the proper interest of the state, while in societies which have not yet been consolidated by its organised power, moral and economical agencies have a great influence upon the relations of their members. The state thus itself being a dominant society matured into full individuality, the constituent elements of the spirit or soul of the state, can be found in the conditions of the establishment and assertion of its sovereign power, which find their outward embodiment in the structure of the state, i.e. in the relation of its component parts.
and in the sum of those institutions through which the consciousness and the will of the state are declared and applied. But although the sovereign power is centered in a conspicuous organ, it can neither take form nor stand without the co-ordinated activity of the various organs ramifying through the whole body of the state, but having their distinct functions in conformity with the circumstances of the life of the state. The sovereign power does not work in a vacuum, it is directed towards the realisation of some concrete fundamental principle which at a particular time is regarded as the vital interest and as such accepted as the aim of the community and which thus defines and limits the possible sphere of the state. But whatever social principle it has to subserve, its absolute duty of creating and maintaining the law of the society cannot be disputed.

Hence the state is regarded as an independent organism distinct from the society filling up its framework and furnishing its materials. Its absoluteness and independence is an expression of the coercive power of sovereignty which has not been uniformly manifested through the different phases of the state. In primitive communities, where the preservation of peace among the different groups of kinship is the essential function of the state, its absoluteness and
independence is not so bluntly asserted as are noticed in the case of the modern state. Again in the ecclesiastical and feudal societies, where the state performs only a small portion of the duties of government and even the essential functions are entrusted to the subordinate societies within its framework, the attributes of absoluteness and independence is considerably lessened in their effectiveness.

Such an approach might demand an enquiry into the historical origin of the state to explain the exercise of the coercive power of the state through the different stages of its evolution and development.

Apart from its purely scientific interest, such an enquiry into the origin of the state has been very often a hypocritical disguise for concrete political aspirations. Indeed the theory of social contract, like that of natural law in general has served the most divergent political purposes. In particular it has been used to justify absolutism on the one hand and democracy on the other. History can hardly furnish any direct answer to the question of the origin of the state. New states come into existence out of the elements of the antecedent ones and under the influence of existing institutions having the characteristics of state. Hence to draw any inference regarding the conditions of society before the state began its life, from the changes occurring in the life
of the state is to call upon the historians to extend their enquiry backward beyond the existence of the State, viz. that community of life of which history itself is one of the products. Besides, there cannot be a precise moment when the community was transformed into a state invested with self-consciousness and will, since consciousness, in communities, as well as in individuals, cannot be divided into distinct and separate phases, but it is the heightened effect of such agencies which manifest themselves, at lower stages, in sensations, sentiments, and instinctive conduct.

The social contract theories of the origin of the state proceed on the assumption of a supposed state of nature. Some assumed the state of nature to be imperfect and replete with ills; others took it to be contented and happy. The dismal or the cheerful view of the state of nature was taken according as the theorists championed the cause of absolutism, or at all events, that of the overwhelming importance of the sovereign power, or as they assumed the task of vindicating the supremacy of the people.

The essential features, however, of any conception of the state of nature consist in this, that the individuals in a condition of nature are always imagined as independent, free and not connected by any tie with each other except that
of blood, but yet were invariably invested with the same mental qualities which individuals possess as a heritage of historical development. It struck no one as being strange, that the transition from the state of nature to that of society was accounted for by a theory of contractual agreement which was of later growth in the evolution of legal institutions, until the psychological and genetical methods pointed out the hollowness and contradiction involved in such a proposition.

The essential feature of the doctrine of social contract can be reduced to this: From a state of nature, in which there is no law, no order or government, men passed to a state of society, by a contract by which the will of independent individuals possessing equal rights were mutually subjected to each other. (pactum unionis). To this contract was added a second pact almost simultaneously or subsequently by which the people undertook to obey a government which they themselves have created. (pactum subjectionis). Although in its early phase, such a conception of social contract was treated as a historical fact, it came to be used in the hands of philosophers like Kant more as a postulate of reason.

The principle of the theory of social contract could be traced in the writings of numerous Greek writers who regarded...
early traces the consent of men as the foundation of all law. Thus Plato in his Republic wrote: "Therefore when men act unjustly towards one another, and thus experience both the doing and the suffering, those amongst them who are unable to compass the one and escape the other come to this opinion: that it is more profitable that they should mutually agree neither to inflict injustice nor to suffer it. Hence men began to establish laws and covenants with one another, and they called what the law prescribed lawful and just."7

It is interesting to observe how the institutions of the ancient communal republics derived their foundation and efficacy from the consent of the citizens, how the Athenians and Romans cherished their liberty so highly against the absolutism of papal and royal power, how the medieval jurists sought to justify all imperial power as being transferred to the emperor by the people by means of the 'Lex de Imperio'. Thus forms the first, and as it were, the historical nucleus of the theories of social contract which developed during the sixteenth century in contradistinction to the patrimonial and hierarchical doctrines.

It is neither possible nor necessary to discuss the views of different writers who have used the theory of social contract while it was fashionable.
Mariana in his "De Reges Institutione" states although not in a very cogent and legal form, "that pressed by those who were more powerful, men entered into a social bond, and began to look about them for some man, conspicuous for justice and honesty, under whose protection they might hinder internal and external injustice, and might, by the establishment of equity, tie down with an even law the highest as well as the lowest and through them those of the middle class. From this arose for the first time city communities and the regal majesty, which in olden times, could not be obtained through riches and bribing, but only by self restraint, innocence and virtue. Hence arose, from the recognition of the necessity of many things and from the consciousness of infirmity, human rights, by which we are men and civil society." The primary purpose of his theory was to vindicate the subordination of the state to the Church and the right of revolution and tyrannicide. Hooker also in the first-book of his "Ecclesiastical Polity" points out how men by composition and agreement among themselves, ordained some kind of government whom they granted authority to rule or govern so that peace and tranquility may be procured.

Grotius in formulating his theory of the origin of the state and of law was obviously inspired by Cicero. The theory of social contract served for him twofold purpose, internally for justifying the absolute duty of obedience of the people to the government,
internationally for creating a basis for legally binding and stable relations among the states. Starting with sociality as a fundamental attribute of human nature, he puts forward social contract as an actual fact in human history. The state he conceives as a human institution, based upon contract.

"Notandum est ..........homines.......sponte adductos experimento infirmitatis familiarum segregum adversus violentiam, in societatem civilem coiisse."\(^9\)

The transition from the natural condition to the civil state is effected by a social contract by means of which people chose the form of government considered suitable for themselves. But once the ruler is invested with the right of government, the people forfeit the right to control or punish the ruler, however bad his government.\(^{10}\) Grotius seems to be perplexed by a strange dilemma, for which he could not afford any satisfactory solution. While his sovereign must not be impaired by any fetter or restriction, his own philosophical premises admitted the ruler to be bound by natural law. Gierke has sought to explain this vacillating contradiction by his lingering attachment to the individualism of the school of natural law, while he also tends towards an organic conception of the state.\(^{11}\)
Althusiás in his study of the theory of state and society, starts from a distinction between the contract of alliance, by which a community is formed and the contract of sovereignty, which forms the foundation of public authority and of the coercive nature of law. The people, like every associated group, "universitas," possesses the right to place at its head executives and to confer upon them full authority, while yet limiting it. Thus Althusiás considers people to be the true supreme and authoritative master, while the representative whom the people nominate are merely administrators of the governmental authority.

Hobbes clearly refutes any such idea which invests the subjects with the right to demand the fulfilment of certain obligations by the ruler, His 'social contract' is therefore no true contract, but a logical fiction, a convenient working hypothesis. In his works untitled "De Cive" or "The philosophical elements of a true citizen" and "Leviathan, sive de materia, forma et potestate civitatis," he starts from a state of nature in which "men live without a common Power to keep them all in awe; they are in that condition which is called warre; and such a warre, as is of every man, against every man." In such a state of nature, there cannot be any justice or injustice which "are qualities which relate
to men in society, not in solitude." But natural reason dictates to man the rule of self-preservation, in pursuit of which man tries to escape from this state of permanent insecurity. Hobbes' conception of government and law, unlike Grotius, leaves no place for the reserved rights of the citizen. The state is conceived by him to be an institution for protection and exercises its protective functions as completely as power is concentrated in its hands. Accordingly, Hobbes desires that all privileges and powers must be transferred to the state by contract; for the state must rule absolutely and like the Leviathan encompass all living things. Thus the security is afforded only by the Commonwealth which is defined as "one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves everyone the author, to the end he may use the strength and means of them all, as he shall think expedient for their peace and common defence." Hobbes' sovereign may be one man or an assembly of men, and though born out of the covenant, is absolute, unchangeable and free from all restraints. But the very purpose for which people entered into a covenant would be defeated, if the unfettered authority of the sovereign can compel any member to serve as a soldier, for in that case, it would claim the risk of those very benefits of life, for which the original social contract was entered into.

It may be mentioned here that Hobbesian theory recognises
no society as distinct from the state. Without the state, which is government, there may be only the shapeless and anarchist multitude, for all social and legal authority is concentrated in the sovereign. Thus Hobbes rational view of sovereignty takes a rational and utilitarian view of sovereignty.\textsuperscript{15} It is purely the result of a rational individual self-interest which supersedes the unrational and thus self-destructive lust for power as man pursues it in the state of nature.

Locke gave powerful expression to the attitude and temperament of his time by a combination of ideas from different sources. Although he also starts with the state of nature as his first hypothesis, he derives the condition antecedent to the state from the study of the state as constituted, and eliminated therefrom whatever is presumably the result of the development of the state itself and of the several institutions within the state. According to Locke, the condition of nature is not identical with that of war, but rather one "of Paradise Lost, of peace, goodwill, mutual assistance and preservation", where each individual possesses the judicial and executive power to enforce the law of nature, and the right to punish the transgressors of that law to such a degree as may hinder its violation.\textsuperscript{16} But the desire to bring to an end this state of uncertainty and to acquire regulated security, prompted men
to leave the condition of nature and enter society, where every member is no longer his own judge, but the community becomes the fixed, permanent and impartial judge, and the common judge of all, in conformity with rules equal with regard to everybody. The protection of property which exists prior to and independent of any social contract, forms specially an object of uniting into a state, for without it the maintenance of peace would be impossible. It is to be noted that according to the Lockean theory, the existence of a government is a lesser evil; it is not the ideal good. The ideal good for man is the initial "state of nature" devoid of all government in which the individual has complete independence and absolute, unqualified freedom. According to Lockean philosophy, the modern man does not enter into the state because organic relations with other men enable one to express more fully one's moral, religious and political nature and thereby live a richer, more ideal life as was the case in the medieval concept of the state or as is the case in the present communistic theory of society. Instead, the state is a necessary evil, forcing one to give up part of the ideal good, which is the complete independence and freedom of the individual, in order to preserve one's private property.

Locke uses social contract in its double function. Whenever then, the mass of men, by the consent of every man,
formed the community, it formed at the same time the community into a body possessing the power to act as one body, which means nothing else but the rule of majority. According to Locke a second contract was not at all necessary to establish the state.

Thus according to Locke, a majority agreement is identical with an act of the whole society, as the consent by which each person agrees to join a body politic obliges him to submit to the majority. No doubt, men by agreeing to become members of the state, yield up the equality, liberty and executive power which they enjoyed in a state of nature and place them into the hands of society so that it can be exercised for the good of the society, but such power can never extend further than the common weal. Government according to Locke, should hold their power in trust. Hence, whoever is invested with the sovereign power of the state is bound to rule in accordance with fixed and permanent laws, which being declared and known to the people, must be administered through an impartial and upright judiciary. Unlike Hobbes' theory, Locke's theory may be styled as a theory of limited insurance, and thus anticipates the English constitutional state.
It seems that Locke identifies the sovereign power with its depository, the ruler, and finding it reasonable that the power of the latter should be limited, looks upon the sovereign power itself as limited and thus confounds the limits of the rights of the supreme power with the conditions of the expediency of asserting it.

But in spite of many logical flaws in Locke's theory, its influence upon the thoughts of 18th century and 19th century had been deep and profound. It gave, as Dr. Friedmann has summed up, theoretical form to the reaction against absolutism, and to the struggle of the rising middle class for giving its acquisitive aims the solid legal sanction of natural law, and thus paved the way for parliamentary democracy. "Locke's argument," writes George Trevelian, "that toleration was not merely politically expedient, but positively just and right, became generally accepted as the eighteenth century went on."

In fact the so-called democratic countries of the contemporary world are still led by the Lockean, Humean, Jevonian philosophy interspersed with Church of England or Roman Catholic, Aristotelian philosophical assumptions, which underlies the traditional French and Anglo-American Democracies.
Rousseau's social contract which is more a hypothetical postulate than a historical reality seeks to justify the people's sovereignty, the "volonté générale," Rousseau on the one hand, and the original and inalienable freedom and equality of men existent in the primitive communities, but lost in modern civilisation. His social contract consists in this that each individual subjects his person and his operations to the superior control of the common will, "volonté générale," and in so far each becomes an indissoluble member of the whole. Such an association replaces the individual contracting party by a legal corporate personality, "corps moral et collectif," and the sovereign, as a political power, "quand il est actif," and authority, "puissance," with reference to the subjects, "en le comparant à ses semblables." The subjects of the state collectively are called the people. From this social contract arises the sovereign power, or the sum of the whole, in which every one has, so to say, covenanted with himself, and is therefore bound in two directions, namely, as a member of the sovereign power with regard to the particular individuals, and as a member of the state with regard to the sovereign power. But Rousseau's sovereign as such, cannot, under any circumstances, be bound with regard to any one. Thus what is important to consider is the contract calling the general public will into existence and the government is but an organ of the supreme power and derives
Its authority from a simple commission revocable at pleasure. "But although the supreme power was revocable at any moment and those who administered were regarded only as provisional instruments, yet as long as the sovereign power itself was invested with the attributes of unity, indivisibility and infallibility, and presented itself as the expression of the unanimous opinion of the society, every deviation from its views, every opposition to its ideas, must have necessarily appeared as an attack upon the foundations of society and as the greatest wickedness. Liberty, on the one hand is considered as inalienable, and the social order, on the other, as a sacred right upon which every other right is founded. It has been said that while Hobbes recognises only a 'pactum subjectioinis', Locke both the 'pactum unionis and subjectionis'. Rousseau knows only a 'pactum unionis'.

Rousseau's theory corresponds more to what German jurisprudence calls a "koerperschaftlieher Gesamakt", a corporative collective act creating a new mystic entity, than a contract of individuals with mutually dependent obligations.

But instep of the inherent contradictions of his teachings which show the incompatibility of any organic conception of society with the notion of social contract based on an atomistic and individualistic conception, his doctrine of sovereignty of
the people became attractive, not because it could be satisfactorily proved, but because he replaced the notion of the state, a notion which almost identified the state with the ruler, by the notion of the nation, and put greater emphasis upon the absoluteness of the aim of the state as being the public aim.

It is true that his doctrine was so vague that it can hardly be said to point in any specific direction. But the practical and immediate effect and importance of ideas depend not so much upon their truth, as upon their aptitude for being able to express the felt necessities of the time.

It may be pointed out in this connection that this confusion of the sovereign power with the ruler is not without practical significance. As soon as government comes into existence, some men may have more power than others. Very soon although primitive impulses towards social cooperation still exist, they are immensely re-inforced by the power of the government to punish those who disobey it. Soon only a minority at the top of the social scale need any psychological mechanism towards social cohesion: the rest, the majority, the mass merely obey.

Kant embodied and developed in a comprehensive system the result of the centuries of philosophical thought and gave
It a direction which has served as the basis and cornerstone of all atomistic conceptions of law and state. Indeed never has a system of thought so dominated an epoch as the philosophy of Kant did during the nineteenth century. Perhaps Kant is the last person to be read on Kant; as he speaks through clouds but without any illumination of the lightning-flash.

Kant recognises struggle as the indispensable accompaniment of progress. Hence he finds in that strife of each against all which had so shocked Hobbes, nature's method of developing the hidden capacities of life. This unsociableness, this alloy of individualism and competition is not altogether an evil, but makes the human species survive and grow and does not allow man to degenerate into an Arcadian shepherd life, where his talents remain hidden in their germ. Hence is the origin and development of civil society to restrict within certain limits by rules, customs and laws, this struggle for existence, this insatiable desire for possession and power, this envious jealousy and vanity.

Kant deprived the theory of social contract of all claim to experimental reality. To him the social contract was more an abstract notion, an idea of the reason than a necessary fact. "The act by which a people forms itself into a state, or rather, properly speaking, the mere idea of the act, by means of which alone its legality can be conceived,
is the social contract, according to which people collectively and singly give up their external liberty, to resume it at once as members of a common being, viz. of the people regarded in the light of the state." 

It is not proper to say that the individual for a purpose has sacrificed to the state a part of his inherent liberty, but that he has abandoned a crude lawless freedom, in order again to resume it unimpaired in a law-abiding dependence, in a legal condition.

The philosophy of Kant, as Dr. Berolzheimer truly points out, presents a transition from the period of "natural law" to that of modern legal philosophy. His theory represented more specially the concluding moment, the last great uprising of nationalism in general philosophy, and of the doctrine of "natural law" in legal philosophy. The theory of contract became, in his hands, a metaphysical abstraction, and represented the only foundation of the formation, and as the original form, of not only the state, but of every other human institution as well, thus reducing to contract not alone the sovereign power, but also property, the family and inheritance.

It is true that the idea of authority has not appeared in the same form at all times. In its earliest form, it has
appeared as belief in a divinely ordained or divinely dictated body of rules such as we find in Hammurabi's code or in the Mosaic law or the laws of Manu. In its idea of authority appearing in different forms. latest form it appears as a dogma that law is a body of commands of the sovereign power in a politically organised society, no matter whatever be the basis behind the capacity of that sovereign. But in any of these forms it puts a single ultimate unchallengeable author behind the legal order as the source of every legal precept.

The conception of covenant is no doubt a fiction; but it is a fiction which occurs to people at a very early age almost in every political society. It will be interesting to note how the same theory of political organisation is found in the Vedic literature among the Hindus too. Although it is no easy task to construct the history and development of Hindu Legal philosophy for these ancient days shrouded in obscurity, yet, as Max Müller pointed out, there is much to be learnt by the historian and the philosopher from these ancient guesses at the perennial problems troubling mankind ever since his social existence. In the Aitareya Brahmana Chap IV, Kh, VII, we are told that the Devas (Gods) feared that taking advantage of their mutual discord, the Asuras would go stronger. Hence they formed themselves into a body and made Varuna their king and conferred all their powers on him. The covenant thus entered into was made irrevocable.
When we come to Satapatha Brahmana, we find how the Devas being separated into four different parties unwilling to yield to each others excellence, fell a prey to their enemies, the Asura Rakshasas. Hence they came to an agreement and yielded to the excellence of one of them.

Thus each individual finds that war of all against all is weakness for all. Consequently the desire of each to strengthen himself leads to combination, it being discovered that "homini nihil homine utilius." It may be pointed out...
here that according to these Rishis will, not force, is the basis of the state. The ground of obligation to the sovereign authority is will. Sovereignty is founded upon "volonte générale" and not upon force.

It will not be out of place to examine in this connection the theory that has been placed in the mouth of Bhismra in the Mahabharata.

Bhismra says:

"Originally there was no kingdom, no king, no punishment, no punisher. People then protected each other by law and law alone. Men thus preserving each other by law ultimately got tired and delusion occupied them. O, Prince of Men, these men being thus overpowered by Delusion, delusion destroyed Discrimination and Dharma. Thus, with the destruction of..."
Discrimination and being under the sway of Delusion, all became subject to Avarice. Them, who thus became subject to Avarice, Lust overpowered, and O, Yudhisthira, heedless to the propriety of acts, they became attached to them."

According to Bhisma, order had to be established and it was established through some superior intervention. A ruler was thus necessary; for in an anarchical state, people would devour each other even as the fish in water do, the stronger eating up the weaker:

Thus Bhisma does not conceive of human nature as essentially bad. Originally and essentially it was good; but it became bad in course of time, through external influences. It seems, he attempted a reconciliation of the two conflicting views.
In the primitive period, men living in an anarchical state of nature destroyed one another, the stronger doing unto the weaker, just as fishes do in water. To bring to an end such a state of nature, they entered into a covenant to set up a republican form of government.

(Mahavarta: Santiparvam. Ch. 65, Verse 19)

Conscious as they were that such a covenant would fail to produce any permanent result, they approached the creator:

Being thus approached, the Creator gave them a king and asked Manu to rule over them. But Manu was very much hesitant in accepting such a responsible office.

He however agreed only when the people assured:
Thus we find even among the early sages and philosophers the conception of a social order based on conscious human contrivances. The state they regarded as an artificial structure, an organ for satisfying conscious human wants and capable of being constructed and perfected.

Our analysis of the theories of social contract will serve our purpose if it demonstrates how the thought of the sovereignty of the state closely resembles that natural law thought of the sovereign individual human being who brings his pre-state right of man with him into the state and claims to form the state in accordance with that right of man. It has been long recognised that man does not as a subject of law enter the state but is elevated to a subject of law by the state only. In the attempts to think of the sovereign state as nevertheless subject to the law of nations there is repeated move by move, the futile endeavour of the individualistic theory of law to get at the state from the sovereign individual human being with his inalienable rights of man. In both cases, the
solution was sought in the thought of self-obligation - by founding the state upon the social contract and the law of nations upon the consensus of states. But the very appearance of self-obligation could arise only from substituting for the concrete individuality the abstract individual consistently guided by his true interest alone. From the concrete individuality the path leads not to the social contract but to anarchy. So too, from the starting point of the concrete individuality of the state, consistent reasoning leads not to the law of nations but to the anarchy of states.

In a sense, the social contract theorists start from an erroneous hypothesis. Both Rousseau and Hobbes, the two chief protagonists of the theory fail to understand the ambiguous character of social equilibrium without the interference of government. Rousseau sees only the element of harmony within it and Hobbes only the element of conflict and anarchy within it. Rousseau sees only the principle of domination in government and Hobbes only the principle of order.

But the development of the social contract theory at the hands of different social and political philosophers, however inadequate it may be as an explanation of the state, contains some elements of truth. It has served two useful purposes by furnishing an historical account of the origin of government, or of the state, or of society itself and by providing a theory of political obligation.
explaining the nature and limits of the duty of allegiance owed by subjects to the state, and of the right on the part of the state or its government to control the lives of its citizens, and thus offers a guarantee of justice and a safe-guard against oppression. 31

No doubt, the danger of such a theory may be implicit in the fact that it may, as in Herbert Spencer, be associated with an extreme individualism which seeks to reduce the claims of the state to a minimum. But Nettleship rightly rejects such an extremely individualistic interpretation. He proceeds from a basic fact that every civilised community, perhaps any real community, requires, in order that it may exist at all, a mutual recognition of rights on the part of its members, which implies a tacit contract. 32 Thus although the conception of an original contract is a fictitious historical account, its influence is felt in the reflexion of an idea into the past to give it apparent solidity and concreteness.

In a sense, Nettleship's idea of "mutual recognition of rights" comes closely to the view of T.H. Green that "will, not force, is the basis of the state." 33 According to Green there can be no rights apart from society and rights can be created only by such recognition within the fabric of the society. Thus Green, though perhaps unconsciously, recognises a contractual element in so far as he regards rights as depending for their existence on recognition by society.
In any discussion explaining the coercive power of the state, the determination of proper place which the individual should occupy in the social organism becomes a pertinent enquiry. No doubt the society in process of civilisation articulates itself through the individual place of the individual in social organism — different views whether the individual human beings or the society 'belongs' to the society 'belongs' to the individuals has troubled mankind ever since the dawn of man's social life on earth. One view regards the individual as a reality capable of existing and of being apprehended by itself, while the society is looked upon as nothing but an aggregate of atomic and autonomous individuals who bring societies into existence by coming together and dissolve them by parting company again. The other view considers the society as a perfect and intelligible whole, while the individual is only a part of this whole. Perhaps the truth lies in neither of these views alone.

On the other hand, the conception of society as a super-organism, where the individual human beings are organically connected so that the living substance of one is continuous with that of all is hardly adequate to express the relation in which the growing civilizations stand to the individual human beings.
A human society, Dr. Toynbee thinks, is in itself a relation; a particular kind of relation between human beings who are not only individuals, but are also social animals in the sense that they could not exist humanly without being in this social relation with one another.

No doubt the very conception of 'relations' between 'things' or 'beings' involves the logical contradiction that something which is 'ex hypothesi' separate and self-contained and individual and exclusive has also to be conceived as somehow overlapping with other entities of the same order.

But perhaps the suggestion of Smuts J.C., the South-African philosopher-statesman might offer us certain guidance in this respect. "Round every luminous point in experience there is a penumbra, a gradual shading off into haziness and obscurity. A "concept" is not merely its clear luminous centre but embraces a surrounding sphere of meaning or influence of smaller or larger dimensions, in which the luminosity tails off and grows fainter until it disappears. Similarly a "thing" is not merely that which presents itself as such in clearest definite outline, but this central area is surrounded by a zone of vague sense-data and influences which shades off into the region of the indefinite. The hard and abrupt contours of our ordinary conceptual system do not apply to
reality inexplicable, not only in the case of causation, but in all cases of relations between things, qualities and ideas. Conceive of a cause as a centre with a zone of activity or influence surrounding it and shading gradually off into indefiniteness. Next conceive of an effect as similarly surrounded. It is easy in that way to understand their interaction, and to see that cause and effect are not at arm's length but interlocked, and embrace and influence each other through the interpenetration of their two fields. In fact, the conception of fields of force which has become customary in Electro-magnetism is only a special case of a phenomenon which is quite universal in the realms of thought and reality alike. Every "thing" has its field, like itself, only more attenuated; every concept has likewise its field. It is in these fields and these fields only that things really happen. It is the intermingling of fields which is creative or causal in Nature as well as in Life. The hard secluded thing is barren because abstract, and but for its field it could never come into real contact or into active or creative relations with any other thing or concept. Things, ideas, animals, plants, persons: all these, like physical forces, have their fields, and but for their fields they would be unintelligible, their activities would be impossible, and their relations barren and sterile."
The substance this simile might have in it lies in the fact that society being a relation between individuals, this relation of theirs consists in the coincidence of their individual fields of action and this coincidence combines the individual fields into a common ground which we call society. Societies are thus the common ground between the respective fields of activity of a number of individual human beings who are themselves living organisms but who cannot conjure up a giant in their own image out of the intersection of their own shadows and then breathe into this unsubstantial body the breath of their own life. "In as much as an individual's field of action is a part or aspect of the individual himself, each single individual is in a sense co-extensive and indeed identical with the whole of the society in which he is a shareholder or in which he has a vested interest."  

Indeed without society, as Miraglia, the Italian jurist points out, there can be only the beginning and elements of an ethical being. But this being develops into man, acquiring freedom from the dominion of the senses only through knowledge and education, which presupposes a society. Trendelenberg also thinks that an individual without the ethical whole or society is an impossible conception. Community thus is an individual as well as social necessity, for the individual can realise himself only in intimate relation with his fellowmen, only through the dynamic interpenetration of the
Thus all systems, rules and laws governing social relations are the servants and instruments of the essential spirit of communal life in so far as they extend the sense of obligation (1) from an immediately felt obligation, prompted by obvious need, to a continued obligation, expressed in fixed principles of mutual support (2) from a simple relation between a self and one other to the complex relations of the self and others, and (3) finally from the obligations, discerned by the individual self, to the wider obligations which the community defines from its more impartial perspective.

Indeed the chief problem to which the legal thinkers in all ages had to address themselves is how to reconcile the conflicting demands of the need of stability and of the need of change. However stable law is, it cannot stand still. It has to be overhauled continually and to accommodate itself to the fluidity of life which it is to govern. Thus as Dean Pound has pointed out, two needs have determined all philosophical thinking about law throughout the different ages. The paramount social interest in the general security has led men to seek for a firm and stable social order which would ensure an absolute ordering of human action. On the other hand, the infinite pressure of less immediate social
Interests and the need of reconciling them with the exigencies of the general security and thus of making new compromises has called for continual scrutiny and readjustment of the details of the social order. 38

But, law, which is the sum of the conditions of social co-existence with regard to the activity of the community and of the individual, did not always, in its concrete form, present itself as the will of the sovereign state. The conception of the sovereign state as the ultimate source of law is itself a recent development in the history of man's social evolution, to meet a special exigency, brought about by the need for national unification under monarchical governments which destroyed the vestiges of feudal localism. It thus stands as the symbol for concentrated power.

But man's desire and struggle for a law which is to be impartial and objective is as old as man's social life on earth, although instances are not wanting when those who from time to time hold the power, are inclined to use law as an instrument of domination.

Indeed there never existed any organisation of human society, any tribe or nation however rude, any aggregate of men however savage, that has not been under the control of some coercive power of law. Whether we accept the theory of
evolution that would develop civilisation from barbarism, barbarism from savagery, and the evolution of savage men from a simian ancestry, or whether we adopt the theory that barbarism and savagery are merely lapses from primordial civilisation, man, at all times and under all circumstances lived not in complete isolation from other human beings, but as member of a society. This social existence of man has always brought about the need for a directing and regulating agency, for some rules of law, more or less fixed and binding upon him.

Thus the very existence of human society is dependent upon law which has always been ascribed to the coercive authority of some superior power. It is true that all true philosophy recognises that society exists for the individual, and the ultimate finite existence is that of the individual, yet it cannot be ignored that the individual is intended to exist in society, and he must have to subordinate his own will to that of society. Thus society cannot exist without law and hence it can be reasonably urged that the existence of the coercive power of law is co-equal with that of the human race.

This explains the perennial importance of power in any social organisation, however much they might have appeared as revolting to a sensitive conscience. Perhaps, it is the result of the force of human sin. There is that persistent
tendency in man to regard ourselves as more important than any one else and to view a common problem from the standpoint of our own interest. This perhaps is somewhat anti-social and necessitates social restraints. To face this force, social restraints hitherto had to be armed with all available resources. Indeed all social life represents a field of vitality, expressed in different forms, which are related to each other in terms of both mutual support and of potential conflict. Hence it becomes a task of conscious political contrivance to seek for an organising centre which will exercise a conscious control over and manipulation of the various equilibria which exist within a given field of social vitalities.

Thus the history of social control through law furnishes a record of continually more efficacious social engineering, by recognising and satisfying human wants and interests and by effectively securing social interests and thereby eliminating waste and friction.

But the difficulty of such an enquiry into the origin of the state seems to arise from the fact that in our zeal to identify the state with a certain absolute and established level of governmental activity, we lose sight of the various
structures of state which are adequate to the nature of the
society supplying its materials, during its different periods
of development.

Physical force, moral superiority, readiness and
opportunity of leadership, the process of natural selection,
the habits of obedience among the
conquered people, the growth of custom
and tradition, all these factors in
varying degrees have contributed to the
establishment of authority at the early
stages of social development. In fact the state itself is
being continually reconstructed to meet the changes that are
taking place in the elements of society. Brute force might
have well served as the source of power in a society whose
most primitive interest was of a most immediate and for the
most part of a material character, but with the growth of
conscious conviction among the members and the differentia-
tion of functions, such coercive means can hardly serve its
purpose and must give place to moral agencies more and more,
to secure the conditions of social co-existence. In fact
there may be an endless variety of types and combinations of
power in social life, from that of pure reason to that of
pure physical force. Whatever part pure physical force might
have played in the primitive society to determine individual
relations, all civilized relations are governed more by
spiritual than by physical facets of power. Thus our historical levels of existence are determined and conditioned by the given equilibrium or disproportion within each type of power and by the balance of various types of power in a given community. Hence with the emergence of every new social principle, the power of the state is given a fresh basis and form which again are continually overhauled and refitted continually to the changes in the ends and aims of the society.

But whatever may be the need in society for a coercive authority, it will be profitable to recognise that the exclusive possession of this supreme coercive authority, the monopoly of the sovereign power by the state, a phase in the process of historical evolution. sovereign power by the State has been effected through a process of historical evolution and hence demands a sifting scrutiny. It may be that such a quest might shed light which may resemble more the sheet lighting of a sombre evening than the bright rays of a cloudless sunrise, yet such a purifying historical process might not be entirely fruitless if it can point out the limits and possibilities of our communal existence.