

Even of society and
government as given
by



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Even before the publication of Rousseau's Social Contract, Hume, the English philosopher, declared that contract as the basis of relations between the governors and the governed was incompatible with the facts of history.

Jeremy Bentham said, " I bid adieu to the original contract, and I leave it to those to amuse themselves with the rattle who could think they need it."

Bluntschli characterised it " in the highest degree dangerous, since it makes the State and its institutions the product of individual caprice." Sir Henry Maine maintained that nothing could be " more worthless" than such an account of the origin of society and government as given by Hobbes.

As an explanation of the origin of the State the theory is now entirely discredited. The following points of criticism may be noted:— Historically, the theory is a mere fiction. There is nothing in the whole range of history to show that the State has ever been deliberately created as a result of voluntary agreement. Nor can we suppose that man could ever think of governing himself when he lived under conditions of extreme simplicity, ignorance and even brutality by which the state of nature is characterized. The fact of the matter is that man can live only if he lives in society, and that he can live in society only if he accepts certain restraints on his freedom of action. These restraints are government in the germ. Society and State are natural institutions.

It is man's social need which gives them existence and they continue to exist because of this need. The example of the Mayflower compact of 1620 is very often cited in support of the theory of Social Contract. The Puritan emigrants to America, while they were still on board the ship Mayflower, drew up and signed a document which declared: " We do, by these presents, solemnly

and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body-politic, for our better ordering and preservation." But this is not a correct example; nor can any other similar example be cited to hold a parallel to the formation of the State by men living in the state of nature. The Puritans immigrating to new lands were not ignorant of political institutions. They were born and had lived in the State and when they went out of it they were fully familiar with the nature of their political governance, and the rights and duties of a citizen in a politically organised society. What the Mayflower compact really meant was "merely the transplanting to new lands of political institutions by men already subjected to political authority.

"And the covenant they concluded did not mark the origin of a new State. They remained subjects of England even after setting up their body-politic. When the United States of America came into being by virtue of a solemn compact (the Articles of Confederation), the State had been familiar to them both as an idea as well as a fact.

The theory of Social Contract is, indeed, remote from actualities and completely oblivious of facts. Nothing like the state of nature had ever existed and even Hobbes himself, after discussing the state of nature, admitted that "it was never generally so." The most primitive peoples that the Anthropologists have described lived under a regulative system of some sort and conformed to rigid customary modes of behaviour.

It is quite unhistorical to suppose that such men would resort to a contract. The very idea of a contract belongs to a later stage of social development

than the hypothesis demands. Primitive man did not possess that maturity of outlook which the making of a social contract presupposes. Moreover, the conditions of a contract also presuppose a system of law to support it. The advocates of the Contract Theory hold individuals as making a contract for their personal safety and the security of property.

But history tells us just the other way. Early law was more communal than individual and the unit of society was not the individual but the family. "The family was the unit, property was held in common. Custom formed law and each man was born into his status in society. Society has thus moved from status to contract and not from contract to status, as it has been maintained by the Contractualists. Contract is not the beginning, according to Sir Henry Maine, but the end of society. In the primitive society birth determined the position of every man; it was not a matter of choice or voluntary arrangement.

"He who is born a slave, let him remain a slave; the artisan, an artisan; the priest, a priest." This is the command of status and we cannot imagine a slave having free choice to contract. If he has a free choice to contract, then he no longer remains a slave. Even if it be granted that the State is the result of contract, commonsense will tell us that there are always two parties to the contract. There cannot be a one-sided contract, as was conceived by Hobbes.

Moreover, every contract lapses after the death of one of the contracting parties. It cannot be made legally binding on the descendants of the original parties to the contract. Bentham remarks, "I am bound to obey not because

my great-grandfather may be regarded as having made a bargain which he did not really make with the great-grandfather of George III, but simply because rebellion does more harm than good.

” It is assumed by the Contractualists that men are equal in the state of nature. This assumption is incorrect. If status determined the position of man in the primitive society, then the natural inference is that inequality, rather than equality, existed in the state of nature. Nor can we accept human nature as it has been portrayed by the exponents of the Contract theory.

The life of man may justly be described as a life lived in groups. And while living with others he is neither as bad as Hobbes, thinks, nor is he as good as Rousseau considers him to be. Both Hobbes and Rousseau have allowed their intellect to be carried away by their imaginations.

The conception of natural rights and natural liberty, as is said to have existed in the state of nature, is illogical and fallacious. Liberty cannot exist in the state of nature. Law is the condition of liberty. Without restraint liberty is nothing short of licence and a condition of licence is anarchy, pure and simple. The state of nature being pre-political and even pre-social, it was subject to no civil law. Rights, too, arise in a society and every right is accompanied by a corresponding obligation.

If there is no society, we cannot think of rights. No rights existed before the State arose. Finally, there can be no rights without a consciousness of common interest on the part of the members of a society and common consciousness was conspicuous by its absence in the state of nature. “ Without common consciousness,” writes Green, “ there might be certain

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powers on the part of individuals, but no recognition of these powers by others as powers of which they do not allow the exercise nor any claim to such recognition; and without this recognition or claim to recognition there can be no right." Even on a rational analysis, the theory of Social Contract can no longer be upheld. The relationship between the individual and the State is not voluntary. Each one of us must compulsorily belong to a State and the ties which bind men together are permanent. Each of us is born into the State; we are part of the State; and the State is part of us.

Burke has aptly said that the State "ought not be considered as nothing better than a partnership agreement on a trade of pepper and coffee, calico or tobacco or some other such low concern, to be taken up for a little temporary interest and to be dissolved by the fancy of the parties. It is to be looked on with reverence. It is a partnership in all science, a partnership in all art, a partnership in every virtue and in all-perfection. As the end of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living but between those who are dead and those who are to be born." If the theory of Social Contract is accepted as the true origin of the State, it will make the State purely the handiwork of man, an artificial contrivance. But the State is neither the handiwork of man, nor the creation of God; nor the result of force. It is the product of growth and evolution and many factors enter into the process of its development.

Finally, the authors of the Contract Theory had no mind to trace the origin of the State. Their primary object was to establish the basis of political authority. Determined to prove certain results, they wove a web of their own

and in a manner which suited their purpose and, thus, a contradictory theory has been presented as the origin of the State.