

been in abeyance, one can, in the name of science, awaken rational doubts as to the legitimacy of its negation. One can even by the same method do more, and show how this principle is related to given essential and ever-present conditions of our social organisation and collective mentality; how, in fact, one cannot ignore it without at the same time misunderstanding the conditions by which the collective, and hence the individual, exists. Let us suppose that at a given time the society as a whole tends to lose sight of the sacred rights of the individual. Could we not correct it with authority by reminding it that the rights of the individual are very closely bound to the structure of the great European societies and our whole mentality, and that to deny them, under the pretext of social interests, is to deny the most essential interests of society itself?

It is equally possible that, apart from the present existing order of morality, maintained by the forces of tradition, new tendencies, of a fairly self-conscious kind, are appearing. The science of morals allows us to take up a position between these two divergent moralities, the one now in existence and the one in the process of becoming. It teaches us, for example, that the first is related to an order which has disappeared or is disappearing, while the new ideas, by contrast, are related to recent changes in the conditions of collective existence, and are made necessary by these changes. Our science may help us to render these ideas more precise and to direct them, etc.

We are not then obliged to bow to the force of moral opinion. We are even in certain cases justified in rebelling against it. It may, in fact, happen that, for one of the reasons just indicated, we shall feel it our duty to combat moral ideas that we know to be out of date and nothing more than survivals. The best way of doing this will be to oppose these ideas not only theoretically, but also in action.

SP, pp. 86-8

5. Forms of social solidarity

REPRESSIVE SANCTIONS AND MECHANICAL SOLIDARITY

The link of social solidarity to which repressive law corresponds is one whose break constitutes a crime; we give this name to every act which, in any degree whatever, evokes against its author the characteristic reaction which we term 'punishment'. To seek the nature of this link is thus to ask what is the cause of punishment, or, more precisely what crime essentially consists in...

... an act is criminal when it offends strong and defined states of the *conscience collective*. The statement of this proposition is rarely disputed, but it is ordinarily given a sense very different from that which it ought to have. We take it as if it expressed, not the essential property of crime, but one of its repercussions. We well know that crime violates very general and intense sentiments; but we believe that this generality and intensity derive from the criminal character of the act, which consequently remains to be defined. We do not deny that every delict is universally condemned, but we take as agreed that the condemnation to which it is subjected results from its delinquent character. Then, however, we are hard put to say in what its delinquent character consists. Is it to be found in an especially serious transgression? Perhaps so; but that is simply to restate the question by putting one word in place of another, for it is precisely the problem to understand what this transgression is, and particularly this specific transgression which society reproves by means of organised punishment and which constitutes criminality. It can evidently come only from one or several characteristics common to all criminological types. The only one which satisfies this condition is the very opposition between a crime, whatever it may be, and certain collective sentiments. It is, accordingly, this opposition which forms the crime, rather than being a derivation of crime. In other words, we must not say that an action shocks the *conscience collective* because it is criminal, but rather that it is criminal

because it shocks the *conscience collective*. We do not condemn it because it is a crime, but it is a crime because we condemn it. As for the intrinsic nature of these sentiments, it is impossible to specify them; they have the most diverse objects and cannot be encompassed in a single formula. We cannot say that they relate to the vital interests of society, or to a minimum of justice: all such definitions are inadequate. By this alone can we recognise it: a sentiment, whatever its origin and end, is found in all minds with a certain degree of strength and clarity, and every action which violates it is a crime...

Punishment is, first and foremost, an emotional reaction. This character is especially apparent in less developed societies. Primitive peoples punish for the sake of punishing, making the guilty party suffer solely for the sake of making him suffer and without seeking any advantage for themselves from the suffering which they impose. The proof of this is that they seek neither to strike back justly nor to strike back usefully, but merely to strike back. Thus they punish animals which have committed a wrongdoing and even inanimate objects which were its passive instrument. When punishment is applied only to people, it often extends further than the guilty party and reaches the innocent, his wife, his children, his neighbours, etc. That is because the passion which is the spirit of punishment ceases only when it is exhausted. If, therefore, after it has destroyed the one who immediately called it forth, it still remains strong, it expands in a quite mechanical fashion. Even when it is fairly mild, and relates only to the guilty party, it makes its presence felt by the tendency to surpass in severity the action against which it is reacting. That is the origin of the refinements of suffering added to capital punishment. Even in Rome the thief not only had to return the stolen object, but also pay retribution of double and quadruple the amount. Moreover, is not the very common punishment of the *lex talionis* a mode of satisfying the passion for vengeance?

But today, it is said, punishment has changed its character; it is no longer to avenge itself that society punishes, it is to defend itself. The suffering which it inflicts is in its hands no longer anything but a methodical means of protection. It punishes, not because chastisement offers it any intrinsic satisfaction, but so that the fear of punishment may paralyse those who contemplate evil. It is no longer anger, but a well thought-out precaution which determines repression. The preceding observations could not then be generalised; they would refer only to the primitive form of punishment and would not extend to the modern form.

But to justify such a radical distinction between these two sorts of punishment, it is not enough to state that they are employed with different ends in view. The nature of a practice does not necessarily change because the conscious intentions of those who apply it are modified. It might, in fact, still play the same role as before, but without this being perceived. In this case, why should it only become changed in that we are more aware of the effects which it produces? It adapts itself to new conditions of existence without any essential changes. This is the case with punishment. In fact, it is a mistake to believe that vengeance is simply useless cruelty. It is very possible that, in itself, it consists of a mechanical and aimless reaction, an emotional and unthinking action, an irrational need to destroy; but, in reality, it does tend to destroy that which is a threat to us. It consists, then, in a true act of defence, although an instinctive and unreflective one. We avenge ourselves only upon what has harmed us, and what has harmed us is always a threat. The instinct of vengeance is, in sum, only the instinct of conservation heightened by peril. Thus, vengeance is far from having had the negative and sterile role in the history of mankind which is attributed to it. It is a defensive weapon which has a definite value, although it is a crude weapon. Since it is not informed with an awareness of the end it serves, but functions automatically, it cannot, consequently, regulate itself, but responds rather haphazardly to the blind causes which urge it on, without anything moderating its responses. Today, as we understand more clearly the end to be attained, we know better how to utilise the means at our disposal; we protect ourselves more systematically and, accordingly, more efficiently. But this result was also obtained previously, although in a rather imperfect manner. There is no radical division between the punishment of today and yesterday, and consequently it was not necessary for the latter to change its nature in order to accommodate itself to the role that it plays in our civilised societies. The whole difference derives from the fact that it now produces its effects with a heightened awareness of what it does. But, although the individual or social consciousness may not be without influence upon the reality that it clarifies, it has not the power to change its nature. The internal structure of the phenomenon remains the same, whether men be conscious of it or not. We may thus conclude that the essential elements of punishment are the same as of old.

And in fact, punishment has remained, at least in part, a work of vengeance. It is said that we do not make the guilty party suffer

for the sake of suffering; it is nonetheless true that we find it right that he should suffer. Perhaps we are wrong, but that is not the question. We seek, at the moment, to define punishment as it is or has been, not as it ought to be. It is certain that this expression of public prosecution which finds its way again and again into the language of the courts is not a mere expression. In supposing that punishment can really serve to protect us in the future, we think that it must be above all an *expiation* of the past. This is shown by the minute precautions we take to allot punishment as exactly as possible in relation to the severity of the crime; this would be inexplicable if we did not believe that the guilty party ought to suffer because of his wrongdoing, and in the same degree. This gradation is not necessary if punishment is only a means of defence. No doubt, there would be danger for society if the most serious offences were treated as simple transgressions; but it would be greater, in the majority of cases, if the latter were treated in the same way as the former. Against an enemy, we cannot take too much precaution. Shall we say that the authors of the smallest misdeeds have less perverse natures, and that to neutralise their criminal instincts less stringent punishments will suffice? But if their inclinations are less vicious they are not on that account less intense. Robbers are as strongly inclined to rob as murderers are to murder; the resistance offered by the former is not less than that of the latter, and consequently, to control it, we would have recourse to the same means. If, as has been said, it was solely a question of putting down a noxious force by an opposing force, the intensity of the second would be measured solely by the intensity of the first, without the quality of the latter entering into the consideration. The penal scale would then encompass only a small number of gradations. Punishment would vary only as the criminal is more or less hardened, and not according to the nature of the criminal act. An incorrigible robber would be treated in the same way as an incorrigible murderer. But, in fact, if it were shown that a misdoer was completely incurable, we would still not feel bound to punish him excessively. This is proof that we are faithful to the talion principle, although we apply it in a more refined sense than previously. We no longer measure in so material and gross a manner either the extent of the deed or of the punishment; but we still think that there ought to be an equation between the two terms, whether or not we benefit from this balance. Punishment thus remains for us what it was for our forefathers. It is still an act of vengeance since it is an expiation. What we avenge, what the criminal expiates, is the outrage to morality...

As for the social character of this reaction, it comes from the social nature of the offended sentiments. Because they are found in the consciousness of every individual, the infraction which has been committed arouses the same indignation in those who witness it or who learn of its existence. Everybody is attacked; consequently, everybody opposes the attack. Not only is the reaction general, but it is collective, which is not the same thing. It is not produced in an isolated manner in each individual, but is a total, unified response, even if this varies according to the case. In fact, in the same way as contrary sentiments repel each other, similar sentiments attract each other, and they attract as strongly as they themselves are intense. As contradiction is a threat which stirs them, it adds to their force of attraction. Never do we feel the need of the company of our compatriots so greatly as when we are in a foreign country; never does the believer feel so strongly attracted to his fellow believers as during periods of persecution. Of course, we always love the company of those who feel and think as we do, but it is with passion, and no longer solely with pleasure, that we seek it immediately after discussions where our common beliefs have been directly attacked. Crime brings together honest men and concentrates them. We have only to notice what happens, particularly in a small town, when some moral scandal has just occurred. Men stop each other on the street, they visit each other, they seek to come together to talk of the event and to wax indignant in common. From all the similar impressions which are exchanged, and the anger that is expressed, there emerges a unique emotion, more or less determinate according to the circumstances, which emanates from no specific person, but from everyone. This is the public wrath.

Moreover, this is what gives it its functions: the sentiments in question derive all their force from the fact that they are common to everyone. They are strong because they are unquestioned. It is the fact that they are universally respected which gives them the specific respect which they are accorded. Now, crime is possible only if this respect is not truly universal; consequently, it implies that they are not absolutely collective, and thus damages this unanimity which is the source of their authority. If, then, when a crime takes place, the individuals whom it offends do not unite to manifest what they share in common, and to affirm that the case is anomalous, they would be permanently shaken. They must fortify themselves by the mutual assurance that they are still in unison. The only means for this is action in common. In short, since it is the *conscience collective* which is attacked, it must be

that which resists, and accordingly the resistance must be collective...

Thus, the analysis of punishment has confirmed our definition of crime. We began by establishing inductively that crime consisted essentially in an act contrary to strong and defined states of the *conscience collective*. We have just seen that all the qualities of punishment ultimately derive from this nature of crime. That is because the rules that it sanctions express the most essential social likenesses.

Thus we see what type of solidarity penal law symbolises. It is well known, indeed, that there is a form of social cohesion whose cause lies in a certain conformity of all specific individuals to a common type which is none other than the mental type of the society. In these conditions, not only are all the members of the group individually attracted to one-another because they resemble one-another, but also because they are joined to that which is the condition of existence of this collective type: that is to say, to the society that they form by their union. Not only do citizens love each other and seek each other out in preference to strangers but they love their country. They want for it what they want for themselves, and wish it to prosper and endure, because without it, a great part of their psychological life would be hampered in its functioning. Conversely, society demands that they present these fundamental resemblances, because that is a condition of its cohesion. There are in us two forms of consciousness: one contains states which are personal to the character of each of us, while the states which comprise the other are common to the whole society. The first represent only our individual personality and constitute it; the second represent the collective type and, consequently, society, without which it would not exist. When it is one of the elements of this latter which determines our conduct, we do not act in our personal interest; we pursue collective ends. Although distinct, these two forms of consciousness are linked one to the other, since in the end they are only one, having one and the same organic substratum. They are thus interdependent. From this results a solidarity *sui generis*, based upon mutual resemblance, and directly linking individual to society.

DTS, pp. 35, 47-8, 52-6, 70-1 and 73-4

VARIATIONS IN THE CHARACTER OF PENAL SANCTIONS

The variations which punishment has undergone during the course of history are of two sorts: some quantitative, others quali-

tative. The laws which govern these are necessarily different. The law of quantitative variation can be formulated in the following way: 'The intensity of punishment is greater to the degree that a society belongs to a less developed type - and to the degree that the central power has a more absolute character.'

Let us, to begin with, explain the meaning of these expressions. The first stands in no great need of definition. It is relatively easy to recognise whether one social type is more or less-developed than another; we have only to distinguish how simply they are compounded and, if they are of parallel composition, the degree of organisation which they manifest. This hierarchy of social types does not imply, however, that the development of societies forms a single and linear sequence. On the contrary, it is certain that it should rather be portrayed as a tree having many branches which differ in greater or lesser degree. But societies are situated at varying heights on this tree, and at variable distances from the common trunk. On condition of treating them in this way, it is possible to speak of the general evolution of societies.

The second factor which we distinguished must be discussed at greater length. We call governmental power 'absolute' when no other social functions which it relates to are of a kind to balance and to limit it effectively. To be sure, the complete absence of any limitation is never found; one can even say that it is inconceivable. Tradition, and religious beliefs, serve as brakes upon even the strongest of governments. Moreover, there are always a certain number of secondary organs which are capable of resisting and maintaining their autonomy. The subordinate functions which are subject to the supreme regulatory function are never completely deprived of the whole of their individual energy. But it does happen that this limitation is not given by any legal obligation upon the government which experiences it; although it has a certain degree of influence over the exercise of governmental prerogatives, it is not given in written or customary law. In this case, the government wields power which one may call absolute. No doubt if it allows itself to go too far, the social forces which it encroaches upon can join together to react and to curtail it; in anticipation of this possible reaction, it may even curtail itself. But whether self-imposed, or physically imposed from outside, this curtailment is essentially contingent. It does not derive from the normal functioning of institutions. When it is due to governmental initiative, it is presented as a gracious concession, as a voluntary abandonment of legitimate rights; when it is the

product of collective resistance, it has a frankly revolutionary character.

One can characterise absolute government in yet another way. Legal activity centres wholly around two poles: legal relationships are either unilateral, or otherwise, on the contrary, bilateral and reciprocal. These are, at least, two ideal types to which they approximate. The first is comprised exclusively of laws which specify the claims of one entity over another, without the second having any legal rights corresponding to his obligations. In the second, by contrast, the legal tie results from a perfect reciprocity between the rights conferred upon each of the two parties. Material rights, and more particularly property rights, represent the most defined example of the first type; the proprietor has rights over his possession, while it has none over him. Contract, and above all just contract – that is to say, where there is perfect equivalence in the social value of the things or benefits exchanged – is the prototype of reciprocal relations. Now the greater the degree to which the relations between the supreme power and the rest of society are of a unilateral character, or in other words, the more they resemble those which bind the person and his possession, the more absolute is the government. Conversely, the more completely bilateral its relations with other social functions are, the less absolute it is. Thus the most perfect model of absolute sovereignty is the *patria potestas* of the Romans, as it was defined in ancient law, since the son was put on the same level as a possession.

So what makes the central power more or less absolute is the extent to which there is a fundamental lack of any permanent counterweight which is organised with the object of moderating it. One can then foresee that what gives birth to a power of this kind is the more or less complete merging of all the directive functions of society in one and the same hand. In fact, because of their basic significance, they cannot be concentrated under one and the same person without giving him an exceptional dominance over the rest of society; and it is this dominance which constitutes absolutism. The wielder of such authority finds that he possesses a force which frees him from any collective constraint, and which, at least in certain measure, means that he is answerable only to himself, does what he chooses, and can impose his will completely. This hyper-centralisation brings into existence a social force *sui generis* which is so intense that it dominates all others and subordinates them. And this dominance is not exercised only in fact, but also in law. For he who is privileged to possess it is invested with such

prestige that he seems to be superhuman in nature; thus it is even believed that he cannot be made subject to regular obligations as ordinary men are...

The law which we have just set up refers exclusively to the amount or quantity of punishment. That which we shall now turn to relates to its qualitative modalities. It can be expressed as follows: *Punishment involving deprivation of freedom, and of that alone, for periods of time which vary according to the gravity of the crime, tends increasingly to become the normal type of sanction...*

Having determined [in a part of the article not reproduced here] the mode in which punishment has varied over time, we shall seek to find the causes of these variations which we have documented – that is, we shall try to explain the two previously established laws. We shall begin with the second.

As we have already seen, imprisonment first appears in history only as a simple preventive measure. Later it assumes a repressive character, and eventually becomes the very typification of the penal system. In order to account for this evolution, we therefore have to discover what led to the emergence of the prison in its first form, and then, in turn, what determined the changes which it subsequently underwent.

It is easy to understand why the preventive prison is absent from the less developed societies: there is no need which it corresponds to. Responsibility, in fact, is collective; when a crime is committed, punishment or reparation is not simply owed by the guilty party, but also, either together with him or in his place if he defaults, the clan of which he is a member. Later, when the clan has lost its familial character, it is a circle – still a fairly extended one – of relatives. In these conditions, there is no reason to arrest and to hold under surveillance the presumed author of the act; since if, for one reason or another, he is missing, he leaves guarantors. Moreover, the moral and legal independence which such a family group possesses in these circumstances makes it impossible for it to be asked to deliver up in this way one of its members upon a simple suspicion. But to the extent that society becomes more concentrated, and these elementary groups lose their autonomy and become dissolved in the great mass, responsibility becomes an individual matter. From then on, measures are necessary to make sure that the individual concerned does not flee to escape sanction; and as at the same time they are less shocking to public morality, prisons appear...

As to the legal status of this new form of punishment from the

time of its coming into existence, it can be adequately accounted for by combining the preceding considerations with the law relating to the progressive weakening of penal sanctions. Their weakening in effect occurs from top to bottom of the penal scale. In general, it is the harshest forms of punishment which are first affected by this backward movement: that is to say, which are the first to become weakened, and then to disappear. It is the worse types of capital punishment which are the first to become weakened, up to the time at which they are completely suppressed; cases in which capital punishment is applied become more and more restricted. Punishment by mutilation follows the same law. The consequence of this is that the lesser punishments become more important, since they must fill the gaps which this process of regression has left. To the degree that the archaic forms of repression disappear from the field of the penal system, the new forms invade the empty spaces which open up before them. Now these various modes of imprisonment comprise the later forms of punishment to emerge; by origin, they occupy a place right at the bottom of the penal scale, since in the beginning they were not even a type of punishment, properly speaking. They simply constituted the condition of true punishment, and for a long time retained a mixed and ambiguous character. For this very reason the future was reserved for them. They were the natural and necessary substitutes for other sorts of punishment which were disappearing. But, on the other hand, these themselves came to be subject to the same law of weakening intensity. This is why, while they were originally mixed with additional hardships, to which they were sometimes no more than ancillary, they shed these little by little, so as to become reduced to the most simple form, namely deprivation of liberty, not comprising any other gradations than those resulting from differences in the duration of this deprivation.

Thus the qualitative variations in punishment depend partly upon the quantitative changes which it has undergone at the same time. In other words, of the two laws which we have established, the first contributes to the explanation of the second. The time has now come to explain it in its turn...

The collective sentiments which are transgressed and offended by the characteristic criminality of the less developed societies are collective, as it were, in two ways. Not only are they held by the collectivity and thus exist in the consciousness of the majority of individuals, but they also *relate to collective things*. By definition, these things are outside the field of our private interests.

The ends to which we are thus attached infinitely surpass the limited horizon which each of us possesses. It is not us personally whom they concern, but the collective entity. Consequently, the acts which we are obliged to carry out in order to attain them do not derive from the inclinations of our individual nature, but tend rather to violate them, as they consist in a whole variety of sacrifices and privations which man has to impose upon himself in order to please his god, either in order to satisfy custom, or to obey authority. We have no inclination to fast, to subject ourselves to self-mortification, to abstain from such and such meats, to sacrifice our favourite animals upon the altar, to suffer discomfort out of respect for custom, etc. Thus in the same way as sensations come from the external world, such feelings are in, but not of, us; indeed, in a certain degree they are there in spite of ourselves, and they have this character because of the constraint which they exert over us. Hence we are compelled to alienate them, to relate them to some external cause, as we do with sensation. Moreover, we are forced to conceive of it as a power which is not only separate, but also superior to us, since it commands us and we obey. This voice which speaks to us in such an imperative tone, which enjoins us to change our own nature, can only derive from a being which is distinct from ourselves, and which also dominates us. In whatever specific form men have portrayed it (god, ancestors, all kinds of exalted beings), it always possesses, in relation to them, a transcendent or superhuman quality. This is why this aspect of morality is permeated with religiosity. It is because the duties which are prescribed to us call upon us to obey a personality which is infinitely superior to our own; this is the collective personality, such as we conceive of it in purely abstract form, or, as is most commonly the case, with the aid of wholly religious symbols.

But the crimes which violate these sentiments, and which consist in failures to carry out specific obligations, cannot help but appear to us to be directed against transcendent beings, since in reality they do relate to them. It follows from this that they seem to us to be exceptionally offensive; for a transgression is correspondingly more shocking if the offended being is superior in nature and dignity to the transgressor. The more something is held in respect, the more abhorrent is a lack of respect. The same act which, directed against an equal, is merely reprehensible, becomes impure when it concerns a being superior to us; the horror which it inspires can only be assuaged by violent repression. The faithful must normally submit to numerous hardships, simply

in order to please their gods and to keep in regular contact with them. What hardships, then, will they have to undergo when they have angered them! Even when there is a strong feeling of pity for the guilty party, it does not outweigh the indignation aroused by the act of sacrilege. Nor, consequently, does it perceptibly modify the punishment; for the two sentiments are too unequal. The sympathy which men feel for one of their fellows, particularly when he has suffered a shameful lapse, cannot offset the reverential fear in which they hold the divinity. Compared to this power, which is so much higher than himself, the individual appears so small that his sufferings lose their relative significance and become a negligible quantity. What is the importance of individual suffering when there is a god who must be appeased?

It is different with collective sentiments whose object is the individual; for each of us is one. That which concerns man concerns all of us; for we are all men. Those sentiments relating to the protection of human dignity touch us personally. Of course, I do not want to say that we respect the life and property of our fellows only because of utilitarian calculation, in order to obtain a fair exchange from them. If we condemn acts which are deficient in this way, it is because they transgress feelings of sympathy which we hold for man in general, and these feelings are disinterested because they have a general object. This is the great difference which separates the moral individualism of Kant from that of the utilitarians. Both make the development of the individual, in a sense, the objective of moral conduct. But, for the latter, the 'individual' concerned here is the tangible, empirical individual, such as he is grasped in each specific mind; for Kant, on the other hand, it is the human being, humanity in general, in abstraction from the diverse concrete forms in which it manifests itself. Nevertheless, however universal it may be, such an objective is directly in line with that towards which our egoistic inclinations move us. Between man in general, and the man which each of us is, there is not the same difference as exists between a man and a god. The character of this ideal only differs from our own in a matter of degree; it is simply the model of which each of us is a different instance. The sentiments whereby we are attached to it are thus, in part, only an extension of those which attach us to ourselves. This is expressed in the popular saying: 'Do unto others as you would unto yourself.'

Since, therefore, as we develop, crime becomes progressively reduced to offences against persons alone, while religious forms of criminality decline, it is inevitable that the average strength of

punishment should become weaker. This weakening does not stem from the fact that morals become less harsh, but from the fact that religiosity, which penal law and the sentiments underlying it were originally pervaded with, steadily declines. No doubt sentiments of human sympathy become stronger at the same time; but their increasing strength cannot explain this progressive reduction in punishment since, by itself, this would tend rather to make us more severe towards every crime in which a man is the victim, and would thus increase the punishment for such crimes. The true reason is that the compassion which is felt for the condemned man is no longer obviated by opposite sentiments which do not allow it to make itself felt.

AS, 1900, pp. 65-8, 77-8, 80-1, 84-5, 87-9 and 90-1

RESTITUTIVE SANCTIONS AND THE RELATIONSHIP BETWEEN MECHANICAL AND ORGANIC SOLIDARITY

What distinguishes [the restitutive] sanction is that it is not expiatory but consists of a simple return in state. The person who violates or disregards the law is not made to suffer in relation to his wrongdoing; he is simply sentenced to comply. If certain things have already been done, the judge reinstates them as they should have been. He speaks of law; he says nothing of punishment. Damage payments have no penal character; they are only a means of reviewing the past in order to reinstate it, as far as possible, in its normal form...

Neglect of these rules is not even punished diffusely. The defendant who has lost in litigation is not disgraced, his honour is not smirched. We can even imagine these rules differing from how they are now without any feeling of distaste. The idea of tolerating murder makes us indignant, but we quite easily accept modification of the law of inheritance, and can even conceive of its possible abolition. It is at least a question which we do not refuse to discuss. In the same way, we readily accept that the law of easements or that of usufructs may be organised differently, that the obligations of vendor and purchaser may be determined in another way, or that administrative functions may be distributed according to different principles. As these prescriptions do not correspond to any sentiment in us, and as we generally do not know scientifically the reasons for their existence, since this science does not exist, they have no roots in the majority of us. Of course, there are exceptions. We do not tolerate the idea that a contract, contrary to custom or obtained either through force or

fraud, can bind the contracting parties. Thus, when public opinion finds itself in the presence of a case of this sort, it shows itself less indifferent than we have previously said, and it increases the legal sanction by its censure. The different domains of moral life are not radically separated one from another; on the contrary, they are continuous, and accordingly they contain marginal regions where these different characteristics are found at the same time. However, the preceding proposition remains true in the great majority of cases. It is proof that rules with a restitutive sanction either do not at all derive from the *conscience collective*, or are only feeble states of it. Repressive law corresponds to the heart, the centre of the common conscience; purely moral rules are already a less central part; finally, restitutive law originates in very marginal regions, spreading well beyond. The more it becomes truly itself, the more removed it becomes.

This characteristic is, moreover, manifest in the manner of its functioning. While repressive law tends to remain diffuse within society, restitutive law creates organs which are increasingly specialised: commercial courts, councils of arbitration, administrative courts of many kinds. Even in its most general part, that which pertains to civil law, it is exercised only through particular functionaries: magistrates, lawyers, etc., who are able to fill this role in virtue of very specialised training.

But, although these rules are to some degree outside the *conscience collective*, they do not refer only to individuals. If this were so, restitutive law would have nothing in common with social solidarity, for the relations that it regulates would bind individuals to one-another without binding them to society. These would simply be happenings in private life, as friendly relations are. But it is necessarily the case that society is far from being absent in this sphere of legal life. It is true that, generally, it does not intervene directly and actively; it must be solicited by the interested parties. But in being called forth, its intervention is nonetheless the essential cog in the machine, since it alone makes it function. It propounds the law through the organ of its representatives.

It has been contended, however, that this role has nothing properly social about it, but reduces itself to that of a conciliator of private interests; that, consequently, any individual can fill it, and that, if society is in charge of it, it is only for reasons of convenience. But nothing is more incorrect than to consider society as a sort of third-party arbitrator. When it is led to intervene, it is not to rectify individual interests. It does not seek

to discover what may be the most advantageous solution for the adversaries and does not propose a compromise for them. Rather it applies to the particular case which is submitted to its general and traditional rules of law. Now law is, above all, a social thing, the objective of which is something other than the interest of the litigants. The judge who examines a request for divorce is not concerned with knowing whether this separation is truly desirable for the married parties, but rather whether the causes which are adduced come under one of the categories embodied in the law...

Since rules with restitutive sanctions are foreign to the *conscience collective*, the ties that they determine are not those which relate indiscriminately to everyone. That is to say, they are established, not between the individual and society, but between restricted, specific parts of society, whom they link to one-another. But, on the other hand, since society is not absent, it must be more or less directly interested, and it must feel the repercussions. Thus, according to the force with which society feels them, it intervenes more or less directly and actively, through the intermediary of special organs charged with representing it. These relations are, then, quite different from those which repressive law regulates, for the latter attach the particular individual to the *conscience collective* directly and without mediation: that is, the individual to society...

To sum up: the relations governed by co-operative law with restitutive sanctions, and the solidarity which they express, result from the division of social labour. We have explained, moreover, that, in general, co-operative relations do not convey other sanctions. In fact, it is in the nature of specialised tasks to escape the action of the *conscience collective*, for, in order for a thing to be the object of common sentiments, it must necessarily be shared: that is to say, it must be present in all minds such that everyone can represent it in one and the same manner. To be sure, in so far as functions have a certain generality, everybody can have some idea of them. But the more specialised they are, the more restricted the number of individuals who know each of them; consequently, the more marginal they are to the *conscience collective*. The rules which determine them cannot have that dominating force and transcendent authority which, when offended, demands expiation. It is also from public opinion that their authority derives, as with penal rules, but from such opinion localised in restricted regions of society.

Moreover, even in the special circles where they apply and where, consequently, they are represented in men's minds, they

do not correspond to very active sentiments, nor even very often to any type of emotional state. For, as they fix the manner in which the different functions ought to concur in diverse combinations of circumstances which can arise, the objects to which they are connected are not always present in consciousness. We are not constantly called upon to administer guardianship, trusteeship, or exercise the rights of creditor or buyer, etc., or, more important, to exercise them in such and such a situation. Now, states of consciousness are strong only in so far as they are permanent. The violation of these rules reaches neither the common spirit of society, nor even, generally speaking, that of special groups, and consequently it can stimulate only a very moderate reaction. All that is necessary is that the functions concur in a regular manner. If this regularity is disrupted, it is sufficient for us to re-establish it. Assuredly, this is not to say that the development of the division of labour cannot influence penal law. There are, as we already know, administrative and governmental functions in which certain relations are regulated by repressive law, because of the particular character of this agency of the *conscience collective* and everything connected with it. In still other cases, the links of solidarity which unite certain social functions can be such that their breach stimulates repercussions which are sufficiently extensive to provoke a penal reaction. But, for the reason we have given, these reactions are exceptional... [thus] we recognise only two kinds of positive solidarity, which are distinguishable by the following qualities:

1. The first ties the individual directly to society without any intermediary. In the second, he depends upon society, because he depends upon the parts which compose it.

2. Society is not seen in the same aspect in the two cases. In the first, what we call 'society' is a more or less closely organised totality of beliefs and sentiments common to all the members of the group: it is the collective type. By contrast, the society to which we are bound in the second instance is a system of differentiated and specialised functions which are united in definite relationships. These two societies really make up only one. They are two aspects of one and the same reality, but nonetheless they must be distinguished.

3. From this second difference there arises another which helps us to characterise and name the two kinds of solidarity.

The first can be strong only to the degree that the ideas and tendencies common to all the members of the society are greater in number and intensity than those which pertain to each indi-

vidual member. Its strength is determined by the degree to which this is the case. But what makes our personality is how many particular characteristics we possess which distinguish us from others. This solidarity thus can grow only in inverse ratio to personality. There are in each of us, as we have said, two forms of consciousness: one which is common to our group as a whole, which, consequently, is not *ourselves*, but society living and acting within us; the other, on the other hand, represents that in us which is personal and distinct, that which makes us an individual. Solidarity which comes from resemblance is at its *maximum* when the *conscience collective* completely envelops our whole consciousness and coincides in all points with it. But, at that moment, our individuality is nil. It can develop only if the community takes a lesser part of us. There are, here, two contrary forces, one centripetal, the other centrifugal, which cannot flourish at the same time. We cannot, at one and the same time, develop ourselves in two opposite senses. If we have a strong inclination to think and act for ourselves, we cannot be as strongly inclined to think and act as others do. If our ideal is to present a unique and personal appearance, we cannot resemble everybody else. Moreover, at the moment when this latter solidarity exercises its force, our personality vanishes, by definition, one might say, for we are no longer ourselves, but the collective being.

The social molecules which cohere in this way can act together only in so far as they have no action of their own, as with the molecules of inorganic bodies. That is why we propose to call this form of solidarity 'mechanical'. The term does not signify that it is produced by mechanical and artificial means. We call it that only by analogy to the cohesion which unites the elements of an inorganic body, as contrasted to that which forms a unity out of the elements of a living body. What finally justifies this term is that the link which thus unites the individual to society is wholly comparable to that which attaches a thing to a person. The individual consciousness, considered in this light, is a simple appendage of the collective type and follows all of its actions, as the possessed object follows those of its owner. In societies where this type of solidarity is highly developed, the individual is not his own master, as we shall see later; solidarity is, literally something which the society possesses. Thus, in these types of society, personal rights are not yet distinguished from real rights.

It is quite different with the solidarity which the division of labour produces. Whereas the previous type implies that individuals resemble each other, this latter presumes that they differ.

The former is possible only in so far as the individual personality is absorbed into the collective personality; the latter is possible only if each one has a sphere of action which is peculiar to him – that is, if he possesses a personality. It is necessary, then, that the *conscience collective* leave open a part of the individual consciousness in order that special functions may be established there, functions which it cannot regulate. The more this region is extended, the stronger is the cohesion which results from this solidarity. In fact, on the one hand, every individual depends more directly on society as labour becomes more divided; and, on the other, the activity of every individual becomes more personalised to the degree that it is more specialised. No doubt, as circumscribed as it is, it is never completely original; even in the exercise of our occupation, we conform to conventions and practices which are common to our whole occupational group. But, in this instance, the yoke that we submit to is much less heavy than when society completely controls us, and it leaves much more place open for the free play of our initiative. Here, then, the individuality of all grows at the same time as that of its parts. Society becomes more capable of collective action, at the same time that each of its elements has more freedom of action. This solidarity resembles that which we observe among the higher animals. Each organ, in effect, has its special character and autonomy; and yet the unity of the organism is as great as the individuation of the parts is more marked. Because of this analogy, we propose to call the solidarity which is due to the division of labour, 'organic'.

DTS, pp. 79, 80–2, 83, 96–101

6. The division of labour and social differentiation

THE GROWTH OF STRUCTURAL DIFFERENTIATION IN SOCIAL DEVELOPMENT

Thus, it is an historical law that mechanical solidarity, which first stands alone, or nearly so, progressively loses ground, and that organic solidarity gradually becomes preponderant. But when the mode of solidarity becomes changed, the structure of societies cannot but change. The form of a body is necessarily transformed when the molecular relationships are no longer the same. Consequently, if the preceding proposition is correct, there must be two social types which correspond to these two types of solidarity.

If we try to construct hypothetically the ideal type of a society whose cohesion were exclusively the result of resemblance, we should have to conceive it as an absolutely homogeneous mass whose parts were not distinguished from one another, and which consequently had no structure. In short, it would be devoid of all definite form and all organisation. It would be the actual social protoplasm, the germ out of which all social types would develop. We propose to call the aggregate thus characterised, a *horde*.

It is true that we have not yet, in any completely authenticated fashion, observed societies which complied in all respects with this definition. What gives us the right to postulate their existence, however, is that the lower societies, those which are closest to this primitive stage, are formed by a simple repetition of aggregates of this kind. We find an almost perfectly pure example of this social organisation among the Indians of North America. Each Iroquois tribe, for example, is composed of a certain number of partial societies (the largest ones comprise eight) which present all the characteristics we have just mentioned. The adults of both sexes are equal to each other. The *sachems* and chiefs, who are at the head of each of these groups and by whose council the common affairs of the tribe are administered, do not enjoy any superiority. Kinship itself is not organised, for we cannot give this