

Chapter 8 of Alan Macfarlane, **The Making of the Modern World: Visions from West and East** (Palgrave, London, 2002).

MAITLAND AND DURKHEIM

Although they were almost exact contemporaries (Emile Durkheim was born six years after Maitland in 1856), and although they both worked on an almost identical problem, I know of no evidence that Maitland and Durkheim knew of each other. Yet I think it is helpful to set Durkheim alongside Maitland for three reasons. Firstly, Durkheim's work indicates something of the mental climate and set of problems which formed a much wider, European, context for Maitland's investigations towards the end of the nineteenth century. Secondly the deep similarity of the problems they addressed adds force to the argument that Maitland was not just a legal historian, but rather a political theorist, or even a comparative sociologist.

Most importantly, comparing him to Durkheim gives some idea of Maitland's stature. Durkheim is a household name in the social sciences, one of the great triumvirate with Marx and Weber, while even well-read historians and social scientists often know little of Maitland. Durkheim's life's work, as I shall show, was centrally concerned with the problem which Maitland addressed in his last years in relation to corporations and trusts. He exerted all his efforts to solve the question of what held societies together in the modern world. We shall see to what extent he succeeded in a puzzle which, as we have already noted, Maitland made a singularly able attempt to solve. Maitland's work is often effortless and it is easy to forget how difficult the problems he tackled were. By looking at Durkheim's contemporary attempt we can better judge Maitland's achievement.

Durkheim's central problem was that of order: 'the recurring theme in all of Durkheim's writings is the problem of order', for society is fragile and always on the edge of collapse.¹ Sociology as a discipline was the tool which would help one to solve this fundamental question; what is it that unites people in the modern, industrial, world? As he wrote to a colleague, 'the object of sociology as a whole is to determine the conditions for the conservation of societies'.² If traditional societies had been held together by various institutions such as the family, religion, communities, what holds industrial societies together? Basically Durkheim's work is part of the great effort by a number of thinkers from Tocqueville onwards to come to terms with the political revolution in France in 1789, and the industrial revolution in Britain starting around the same date.

Durkheim started in his characteristic way by eliminating alternative ways to create social order. One of these was the family. The loss of unity created by the family in earlier agrarian civilizations was the

¹ Parkin, **Durkheim**, 59

² Quoted in Lukes, **Durkheim**, 139

result of the change in mode of production to industrial, factory, urban civilization.³ Mixed units which combined religion and the family, such as the Indian castes, were also all collapsing.⁴ The family could no longer be relied on to tie humans together, to organize or give meaning to their lives.

Another collapsed source of authority and integration was religion. Durkheim put forward a straightforward evolutionary scheme here. He wrote that 'if there is one truth that history teaches us beyond doubt, it is that religion tends to embrace a smaller and smaller portion of social life. Originally, it pervades everything; everything social is religious... Then, little by little, political, economic, scientific functions free themselves from the religious function... God, who was at first present in all human relations, progressively withdraws from them; he abandons the world to men and their disputes.'⁵ Thus religion, like the family and education cannot help to overcome modern atomization. The total result is that contemporary civilization is in constant crisis, unstable, volatile and composed of egotistic individuals.

In many ways Durkheim's ideas could be aligned with those of earlier thinkers such as Tonnies, Maine and Morgan; from **gemeinschaft** to **gesellschaft** (Community to Association), from status to contract, from sacred to profane (secularization and disenchantment), social atomization. In particular, his thinking on the cumulative effects of all of this on the central problem of egotistical individualism is almost identical to the insights of Tocqueville. Thus he describes the erosive effects of hyper-individualism on any form of social association or community. Like Tocqueville, or like Benjamin Constant who believed that 'when all are isolated by egoism, there is nothing but dust, and at the advent of a storm, nothing but mire', he thought society without anything except individuals would be a monstrosity.⁶

Durkheim's original contribution to all of this fairly standard exposition is to apply the theory, in depth, to one example. His work on **Suicide** is thus the documentation of the dimensions and nature of the malaise. He believed that suicide was the individualistic opposite of social solidarity. His central thesis was that the crucial variable in differential suicide rates was the degree of integration of individuals into society. Where there was high integration, through family, religion or some other means, suicide rates were low. Lukes summarizes his theory as follows: 'that under adverse social conditions, when men's

³ Durkheim, **Division**, 16-7

⁴ Durkheim, **Division**, 22, note

⁵ Durkheim, **Division**, `169

⁶ The quote is in Lukes, **Durkheim**, 197.

social context fails to provide them with the requisite sources of attachment and/or regulation, at the appropriate level of intensity, then their psychological or moral health is impaired, and a certain number of vulnerable, suicide-prone individuals respond by committing suicide.⁷

So what was his solution to the problem of how one could create social solidarity in an industrial civilization? The first thing to do was to eliminate unsatisfactory alternatives, to leave the way clear for his own solution. As we have seen, he eliminated the family, religion and education as solutions. He also rejected Rousseau's totalitarian solution of the State as representing the General Will. So what was left?

The major contender in the field was contract. The particular target for Durkheim was the set of nineteenth century economists and thinkers who believed that individualism could be tamed by contract, especially Herbert Spencer. Of Spencer and others he wrote that 'They suppose original, isolated, and independent individuals who, consequently, enter into relationship only to cooperate, for they have no other reason to clear the space separating them and to associate. But this theory, so widely held, postulates a veritable **creatio ex nihilo**. It consists indeed in deducing society from the individual.'⁸ Durkheim's basic point was that dyadic contracts are too unstable to hold a society together. He writes that where 'interest is the only ruling force each individual finds himself in a state of war with every other since nothing comes to mollify the egos, and any truce would not be of long duration. There is nothing less constant than interest. Today, it unites me to you; tomorrow, it will make me your enemy. Such a cause can only give rise to transient relations and passing associations.'⁹

In fact the paradox of the fact that modern society seemed to be based more and more on contract, yet more and more unified, was because contract was not what it seemed. 'In effect, the contract is, **par excellence**, the juridical expression of co-operation'.¹⁰ There is an underpinning which is necessary, but invisible. 'In sum, a contract is not sufficient unto itself, but is possible only thanks to a regulation of the contract which is originally social.'¹¹ Contract, in fact, 'forces us to assume obligations that we have not contracted for, in the exact sense of the word, since we have not deliberated upon them... Of

⁷ Lukes, **Durkheim**, 217

⁸ Quoted in Nisbet, **Durkheim**, 11

⁹ Durkheim, **Division**, 203-4

¹⁰ Durkheim, **Division**, 123

¹¹ Quoted in Nisbet, **Sociology**, 78

course, the initial act is always contractual, but there are consequences, sometimes immediate, which run over the limits of the contract. We co-operate because we wish to, but our voluntary co-operation creates duties for us that we did not desire.¹²

In a broad way, Durkheim is right. Contracts are indeed only the surface and cannot easily work without a State, without a shared morality, judicial system and so on. Although his historical account is questionable in a number of respects, he does almost stumble onto Maitland's central discovery. This was that the opposition behind 'from status to contract' put forward by Maine is wrong, that in reality most relations are much more mixed.

Durkheim's first major attempt to solve the problem of how to achieve social solidarity in modern civilizations was put forward in **The Division of Labour in Society**. His answer is encapsulated in his well-known distinction between the two forms of solidarity, mechanical and organic. Traditional, pre-industrial, societies were held together by mechanical solidarity. 'If we try to construct intellectually the ideal type of a society whose cohesion was exclusively the result of resemblances, we should have to conceive it as an absolutely homogeneous mass whose parts were not distinguished from one another.'¹³ These are 'segmental societies with a clan-base', so-called 'in order to indicate their formation by the repetition of like aggregates in them, analogous to the rings of an earthworm...'¹⁴ In contrast to this is the form of solidarity in modern societies, organic solidarity, like the 'organs' of a body which are functionally integrated. These are constituted 'by a system of different organs each of which has a special role, and which are themselves formed of differentiated parts.'¹⁵

Thus what binds people together is their interdependence. 'Mechanical' was used because of 'the cohesion which unites the elements of an inanimate body, as opposed to that which makes a unity out of the elements of a living body.' The paradox was that modern society, as it advanced, became more and more integrated: 'the unity of the organism increases as this individuation of the parts is more marked'.¹⁶ Thus the division of labour produces solidarity, 'not only because it makes each individual an

¹² Durkheim, **Division**, 214

¹³ Durkheim, **Division**, 174

¹⁴ Durkheim, **Division**, 175

¹⁵ Durkheim, **Division**, 181

¹⁶ Durkheim, **Division**, 148, quoting Durkheim

exchangist, as the economists say', but, at a deeper level.¹⁷ It is the division of labour which itself holds people together, just as an arm and a leg and a head are functionally interdependent and need each other.

Now there are some fundamental flaws in this idea. One is that it assumes that the division of labour is spontaneous and voluntary. Durkheim admits that 'the division of labour produces solidarity only if it is spontaneous and in proportion as it is spontaneous.'¹⁸ Of course, in practice, workers and others are forced against their will into such a division of labour. Another weakness is Durkheim's unconvincing answer to the question why people who work in a sphere where there is a high division of labour, for example in a factory conveyor belt production unit in the post-Fordian world, or as a check-out worker in a supermarket, should feel a moral involvement with each other. His solution is that alienation will disappear if the management explain to the workers their important role and place in the total process. Parkin quotes Durkheim to the effect that the worker is 'not therefore a machine who repeats movements the sense of which he does not perceive, but he knows that they are tending in a certain direction, towards a goal that he can conceive of more or less distinctly. He feels that he is of some use' and that 'his actions have a goal beyond themselves.'¹⁹ It is fairly clear that this is very unrealistic.

The goal which comforts the workers is the creation of social solidarity. This is related to Durkheim's argument that integration, rather than economic efficiency, is the true function (i.e. goal) of the division of labour. The 'economic services' which the division of labour provides, are small when 'compared to the moral effect that it produces, and its true function is to create in two or more persons a feeling of solidarity'. It is clear that Durkheim is not talking about manifest and latent function, but goal, for he goes on that 'In whatever manner the result is obtained, its aim is to cause coherence among friends and to stamp them with its seal.'²⁰ It is not self-evident that the owner of a supermarket has social solidarity as his foremost consideration when he places twenty girls in a row at the check-out tills and twenty others filling the shelves. Adam Smith and Tocqueville, who lamented the terrible effects of the division of labour, were much closer to the actual consequences.

Durkheim's failure in his first attempt to solve the question what holds modern societies together is widely recognized by later critics. The failure was clearly recognized by Durkheim himself for he never

¹⁷ Durkheim, **Division**, 406

¹⁸ Durkheim, **Division**, 377

¹⁹ Parkin, **Durkheim**, 65

²⁰ Durkheim, **Division**, 56

referred with any seriousness to the theory of organic solidarity again in his later works.

Another indication of his failure is in Durkheim's main supportive evidence for the supposed cohesive nature of modern societies. This he found in the contrast between two types of legal system. He argued that 'In lower societies, law... is almost exclusively penal; it is likewise almost exclusively very stationary.'²¹ Law in modern societies, on the contrary, is restitutive rather than repressive. As Parkin summarizes the contrast, 'Repressive laws are those which punish the offender by inflicting injury upon him or causing him to suffer some loss or disadvantage.' He quotes Durkheim to the effect that 'Their purpose is to harm him through his fortune, his honour, his life, his liberty, or to deprive him of some object whose possession he enjoys.' 'Restitutive laws, by contrast, do not bring down suffering on the head of the offender. Instead, they aim at "restoring the previous state of affairs"'²² In fact, as almost every anthropologist since Durkheim has pointed out, this is back to front.²³ Many of the simpler societies have a mainly restitutive system, while most modern societies use penal and repressive measures.

Having failed in his first attempt he moved to a new projected work on occupational groups. The subject was first raised in a lecture in 1892 and his last major publication on the subject took place in 1902. It will be remembered that this was exactly the same period when Maitland became especially interested in corporations and trusts. What Durkheim intended to do in the book on the subject which he never wrote can be reconstructed from various sources. In various parts of **Suicide** he laid out the need for moral and political integration through new forms of grouping. In the preface to the second edition of **The Division of Labour** he dealt with this particular problem in relation to a new form of grouping. And in the lectures, originally delivered between 1890 and 1900, and published as **Professional Ethics**, he gave his most detailed outline of what needed to be done. As Nisbet points out, this is not just a wayward side issue in his work but rather 'in these proposals lies the origin and the very essence of his theoretical approach to the problem of authority and power, not merely in modern European society, but in ancient as well as medieval groups, Eastern as well as Western.'²⁴ Let us therefore consider this second theory.

Durkheim's work was a response to what were considered to be the two great revolutions of modern

²¹ Durkheim, **Division**, 78

²² Durkheim, **Division**, 29, quoted in Parkin, **Durkheim**, 27

²³ See for example Lukes, **Durkheim**, 159

²⁴ Nisbet, **Durkheim**, 69

times and their consequences - the political revolution (the French Revolution and democracy) and the industrial revolution (the division of labour, factories, mass society, the loss of community). We can see that these were the two major areas where Durkheim thought his new organizational forms would solve the problem.

In relation to the political revolution, there seem to be two strands to Durkheim's argument. Firstly, in almost identical terms to Montesquieu and Tocqueville, Durkheim realized that in order to prevent the State from becoming over-powerful and despotic, it needed to be balanced by what Montesquieu had called 'intermediary institutions'. His ideas of pluralism and countervailing secondary groups were just like those of Tocqueville. 'It is the nature of every form of association to become despotic unless it is restrained by external forces through their competing claims upon individual allegiance.'²⁵ 'Every society is despotic, at least if nothing from without supervenes to restrain its despotism'.²⁶

In a number of places Durkheim writes about the necessity for there being co-operative and corporate groups between the state and the citizen. 'A society composed of an infinite number of unorganised individuals, that a hypertrophied State is forced to oppress and contain, constitutes a veritable sociological monstrosity... A nation can be maintained only if, between the State and the individual, there is intercalated a whole series of secondary groups near enough to the individuals to attract them strongly in their sphere of action and drag them, in this way, into the general torrent of social life.'²⁷ One needs a multiplication of centres. 'What liberates the individual is not the elimination of a controlling centre, but rather the multiplication of such centres, provided that they are co-ordinated and subordinated one to another.'²⁸ Although the state was essential for liberating individuals in the first place, it also needed to be checked. Unlike Rousseau, Durkheim believed that 'it is out of this conflict of social forces that individual liberties are born.'²⁹

His second theme was that of moral integration. The State could not provide this for it is too far removed from the citizen. Since the state 'is far from them, it can exert only a distant, discontinuous influence over them; which is why this feeling has neither the necessary constancy nor strength... Man

²⁵ Quoted in Nisbet, **Durkheim**, 72

²⁶ Durkheim, **Professional**, 61

²⁷ Durkheim, **Division**, 28

²⁸ Quoted in Lukes, **Durkheim**, 325

²⁹ Durkheim, **Professional Ethics** quoted in Nisbet, **Durkheim**, 73

cannot become attached to higher aims and submit to a rule if he sees nothing above him to which he belongs. ... While the state becomes inflated and hypertrophied in order to obtain a firm enough grip upon individuals, but without succeeding, the latter, without mutual relationships, tumble over one another like so many liquid molecules, encountering no central energy to retain, fix and organize them.³⁰

Durkheim's great fear was of social disintegration, of egotistical and anomic behaviour culminating in such pathological forms as suicide. He believed the new forms he would recommend would check this. These groups would create warmth and break down narrow egotism. An individual 'must feel himself more solidary with a collective existence which precedes him in time, which survives him, and which encompasses him at all points. If this occurs, he will no longer find the only aim of his conduct in himself and, understanding that he is the instrument of a purpose greater than himself, he will see that he is not without significance. Life will resume meaning in his eyes, because it will recover its natural aim and orientation.'³¹ Thus he argued that 'What we especially see in the occupational group is a moral power capable of containing individual egos...'³²

In very early societies, he believed, this integration had been provided by the family, but the new groups would take over from this. 'Up to now, it was the family which, either through collective property or descent, assured the continuity of economic life, by the possession and exploitation of goods held intact...But if domestic society cannot play this role any longer, there must be another social organ to replace its exercise of this necessary function... a group, perpetual as the family, must possess goods and exploit them itself...'³³ In the medieval period 'the occupational guild was the basis of social solidarity', creating genuine moral communities.³⁴ His new forms would provide the same function in a modern, industrial, society. But what, exactly, was to be set up? If the family, religion, education and the State could not provide a model, what could? And what could one learn from previous civilizations about how such entities work?

Durkheim provides a potted history of occupational associations and their history in France. This is a narrow account, for he does not deal with all the other important earlier corporations, in particular

³⁰ Durkheim, **Suicide**, quoted in Nisbet, **Durkheim**, 68-9

³¹ Durkheim, **Suicide**, quoted in Nisbet, **Durkheim**, 66

³² Durkheim, **Division**, 10

³³ Durkheim, **Division**, 30-1

³⁴ Parkin, **Durkheim**, 77-9

towns and cities, universities, religious orders and so on. This weakens the argument. He describes the rise of the medieval occupational guilds in the eleventh and twelfth centuries and their quasi-religious character.³⁵ He then notes their destruction, which he mainly dates to the eighteenth century and the French revolution. This is again a distortion, since, as Montesquieu and Tocqueville had shown, the process had started much earlier. He notes Rousseau's hatred of all intermediary institutions and sides with him in that context. 'Since the eighteenth century **rightfully** suppressed the old corporations...',³⁶ there has been nothing to replace them. His studies showed the French Revolution levelling all the intermediary institutions. The effects of modernity 'is to have swept away cleanly all the older forms of social organization. One after another they have disappeared either through the slow erosion of time or through great disturbances.' 'Only one collective form survived the tempest: the State.'³⁷ Indeed such was the force of the Revolution that it was only in 1901, after much of Durkheim's work on the subject was formulated, that the Law of Congregations allowed freedom of association for all secular purposes in France.

Durkheim clearly felt that the medieval corporations were rightly brushed away. Not only were they selfish, with their conservative mysteries and craft traditions, but they were not adapted to modern industrial conditions.³⁸ His animus against the medieval guild was the same as his dismissal of the trade unions. They were retrograde, putting their members' interests above the common good. So what was to be set up? For 'it remains to study the form the corporative bodies should have if they are to be in harmony with present-day conditions of our collective existence.... The problem is not an easy one.'³⁹

Basically the new entities, like the medieval guilds, would be based on the professions. They were to be the craft and artisan guilds restored in a new way. What Durkheim 'wished for was a type of guild that had a natural compatibility with modern industrialism.'⁴⁰ But what precisely would they do? One of the most detailed descriptions was as follows. 'To them, therefore, falls the duty of presiding over

³⁵ See Durkheim, **Division**, 9,11 and **Professional Ethics**, 33

³⁶ Durkheim, **Division**, 5 - Durkheim's emphasis.

³⁷ Both quotations from Nisbet, **Sociology**, 135

³⁸ Durkheim, **Professional**, 35

³⁹ Durkheim, **Professional**, 31

⁴⁰ Parkin, **Durkheim**, 77

companies of insurance, benevolent aid and pensions...! They would also allocate rewards to their members. 'Whenever excited appetites tended to exceed all limits, the corporations would have to decide the share that should equitably revert to each of the cooperative parts. Standing above its own members, it would have all necessary authority to demand indispensable sacrifices and concessions and impose order upon them.'⁴¹ They would be property-owning, perpetual corporations. Thus they would act as a kind of surrogate family, village community and caste group rolled into one.

They would also bridge the gap between the individual citizen and the State by 'becoming the elementary division of the State, the fundamental political unity'. Thus 'Society, instead of remaining what it is today, an aggregate of juxtaposed territorial districts, would become a vast system of national corporations.'⁴² These associations 'will be units of society - recognized equally by the state, its members and their families.'⁴³ They would become 'the true electoral unit'.⁴⁴

This is what they would do, but how exactly? Here all is obscure. As Parkin comments, 'Durkheim is characteristically vague when it comes to the organizational structure of the guilds.'⁴⁵ A thousand questions crowd into one's mind. Why should the State allow these rivals to political allegiance to emerge at all? Why should they be more altruistic than the medieval guilds or trades unions? Indeed, what is the structural difference? What would the role of women, and especially women working in the home, be in these new guilds? What of the many people who had professions which were highly mobile (sailors, travelling salesmen), low status (rubbish collectors), semi-legal (prostitutes), scattered (lighthouse keepers), part-time (shelf fillers) and so on? How would other corporations - universities, clubs, sects and so on - fit in?

There are innumerable problems with his ideas and it is not surprising that he never got beyond a very vague blue-print. What is more surprising is that Durkheim never paid any attention (unlike Montesquieu and Tocqueville) to the very extensive associational and corporative groups which would have provided him with working models of what he hoped to set up, and which were flourishing in America and had flourished for many centuries in England. Yet there is an even graver problem than the fact that the

⁴¹ Durkheim, **Suicide**, quoted in Nisbet, **Durkheim**, 67

⁴² Durkheim, **Division**, 27

⁴³ Nisbet, **Durkheim**, 69

⁴⁴ Durkheim, **Professional**, 103

⁴⁵ Parkin, **Durkheim**, 78

solution he proposes is so unformed and so filled with practical difficulties. This lies in the nature of what he proposed, namely State-dependent corporations.

Durkheim was frightened of the power of secondary groups and approved of their destruction in the eighteenth century. He tells us that in a properly constituted political state 'there must be no forming of any secondary groups that enjoy enough autonomy to allow of each becoming in a way a small society within the greater.'⁴⁶ This explains why he basically saw the professional groups as extensions of the State, holding delegated powers, on licence or by charter. The State must control all the sub-groups: it 'must even permeate all those secondary groups of family, trade and professional association, Church, regional areas and so on... which tend, as we have seen, to absorb the personality of their members. It must do this, in order to prevent this absorption and free these individuals, and so as to remind these partial societies that they are not alone... The State must therefore enter into their lives, it must supervise and keep a check on the way they operate and to do this it must spread its roots in all directions.'⁴⁷

Indeed the State needed to think on their behalf. As Parkin summarizes his view, 'civil society needs the state to think on its behalf because the common consciousness is not up to the job.' Indeed, in an echo of so many totalitarian thinkers from Hobbes onwards. Parkin suggests that Durkheim believed that the 'state saves civil society from itself'.⁴⁸ This is because the State has a higher intelligence. Thus the growth of the State automatically expands the individual, for 'liberty is the fruit of regulation'.⁴⁹

It is in this context that we can understand why he foresaw no conflict between the State and Civil Society. The State allows Civil Society to exist, and indeed, at a deeper level, there is really no civil society in the full sense. What happens is that the State sets up sub-units, corporations, which it can manipulate, close, alter at will. It thinks for them, and permeates them. It can save them from themselves. And we can also understand the extraordinary footnote in which Durkheim said it did not really matter whether corporations were set up by the State or not. 'All we say of the situation of the corporations entirely leaves aside the controversial question as to whether, originally, the State intervened in their formation. Even if they had been under State control from the very beginning (which does not appear likely) it still is true that they did not affect the political structure. That is what is

⁴⁶ Quoted in Nisbet, **Sociology**, 148

⁴⁷ Durkheim, **Professional**, 65

⁴⁸ Parkin, **Durkheim**, 75

⁴⁹ Durkheim quoted in Lukes, **Durkheim**, 285

important for us.⁵⁰ As Maitland brilliantly showed, corporations are always set up by the State, that is their essence. They can have no other source of authority. Durkheim does not seem to have grasped this most elementary point, nor its consequences, so well spelt out by Maitland, that is to say the totalitarian tendency which he only vaguely glimpses.

Now a number of writers on Durkheim have pointed to his unrealistic view of the benevolence of States and state bureaucracies.⁵¹ But this is really only a very small part of the problem. The whole point of civil society is that it arises spontaneously outside the State. Montesquieu, Tocqueville and Maitland had all realized this and documented it. Durkheim does not seem to have understood this basic fact or else, in his fear of disorder, had ignored it. Siding with the destroyers of intermediate institutions in the eighteenth century, and showing a very impoverished idea of what medieval corporations had been, he was not well placed to develop a robust theory of civil society. The greater threat, he believed, were the insubordinate associations. The State should think for them, regulate them and crush them 'for the greater good' when it deemed it was necessary.

Durkheim's assumption undermines his whole endeavour. The professional associations, if they had ever been set up along lines sketched out by Durkheim, would never have worked as a protection for the individual. Nor would it have led to the affective warmth and moral integration he hoped to produce if the professional associations were merely cells of the central Party. His weakness also reflects a deeper lack of perception.

Unlike Tocqueville or Maitland, Durkheim paid no attention, as we have seen, to the rich history of civil society in the West. He did not show any interest in the development of those numerous associational mechanism which had developed alongside the trade guilds. Nor did he show any interest in examining how they worked in other parts of Europe (e.g. Germany or England) or the world (e.g. America) in his day. If he had done so he might have begun to understand the very curious blend of status and contract which gave them their special character. He might have seen how they generated emotion, long-term commitment, loyalty and trust. He might have seen how they really solved exactly his problem, combining the flexibility needed in modern society, with the warmth needed in human relations. It would not have been easy for him to understand. As Maitland explains, the greatest of German thinkers, like Gierke, who had devoted their whole lives to the subject, coming from a corporative tradition based on Roman Law, found it almost impossible to understand it. But Montesquieu and Tocqueville had gone a long way. Durkheim hardly made a start. Despite this being his largest question - solidarity in an industrial age - and despite feeling that groups of some kind were the answer, his answer is unsatisfactory.

⁵⁰ Durkheim, **Division**, 19, note 24

⁵¹ For example, Parkin, **Durkheim**, 76

His second effort had failed. He may have sensed this also, since he lost interest in this topic as well. He turned away to the study of what he considered to be the origins and function of religion in the simplest societies in his **Elementary Forms of the Religious Life**. He never returned to a sustained discussion of the unsolved problem of cohesion in modern society.

Durkheim's life's work had been a failure. He had specified the problem, namely what could create solidarity and democratic civilization. He had examined the effects of loss of integration in relation to suicide. But as far as providing an understanding of his own times as a remedy for rootlessness, his solutions were hardly helpful. We may compare this to the work of Maitland who was working at exactly the same period, the 1890's and first few years of the twentieth century, on the same problem.

What Maitland had done was to answer this fundamental question of integration by solving a whole set of questions left open by previous thinkers. He had shown how the peculiar relation of economics and politics worked, how feudalism mixed status and contract, how liberty fed back into a strengthened civil society, hence increasing political and economic power. He showed how civil society and the strength of intermediary powers had emerged in England and how this was related to a powerful middle class. He explained how the English property system worked and evolved, and the role of private property. He showed how modern atomistic individualism was matched by the social glue of associations.⁵² He explained how Tocqueville's balance between centralization and de-centralization worked and avoided the tendency to bureaucratic centralization. He explained that the evolution from 'Community' to 'Individual' was a gross over-simplification and how a system without birth-given statuses, either of rank or family, had long been present in England. And throughout this he delicately showed the role of legal institutions in preserving the balances and contradictions which are the essence of the modern condition. All this profound sociological and philosophical analysis was covered over with a veneer of technical legal history which has deceived subsequent historians into thinking of him just as a historian or legal historian.

⁵² It has been pointed out to me, rightly, that neither Maitland nor I have mentioned class solidarity and class consciousness. Some there has been, but, as Marx famously lamented, not enough to make it relevant to this argument.