

RESEARCH ESSAY

Law and Social Solidarity

Ritul Aryan

LL.M. Student

Chanakya National Law University

Patna

ritularyan@gmail.com

Introduction

Durkheim's Law and Social Solidarity

Emile Durkheim's view of society was in the form of a unique and holistic entity. According to him, society is like the elements of a human body which come together to constitute life. The unification of social facts (customs, law and morality) is termed as social solidarity. It links individuals to each other and to society as a whole. For Durkheim, society precedes the individual in contrast with the theory of Marx, where individual has been given prime importance. Durkheim proposed different theories to answer one single question: "How society holds itself together in spite of the fact that we all have different interests?" Social facts are the scientific solution to the question.

Social solidarity is the way in which individuals feel connected and united with each other and with society. For Durkheim, social solidarity is primarily based on two things i.e., "social regulation" and "social integration". Social regulation is based on three components: (1) number of rules which includes social, cultural and legal rules that people in society should obey; (2) application of the rules meaning thereby that to what extent these rules are strictly enforced by society; (3) predictability of life which is related to the second component of social regulation. Individuals should think how severely they will be punished for breaking the rules and how they will be rewarded for following the rules. Emile Durkheim believed that social regulation was important for the strength of society and the health of people living in a society.

Now, the 2nd component that is social integration is based on two components: (1) how people associated with the society and others feel; (2) how often an individual interacts with others in the society.

Durkheim said, “Since law reproduces the principal forms of social solidarity, we have only to classify the different types of law to find therefrom the different types of social solidarity which correspond to it.” (Durkheim, 1933)

Through the above statement, Durkheim wanted to emphasize that to social solidarity, different systems of law need to be traced. Durkheim in the above quote says that law constitutes such an index since it “reproduces the principal forms of solidarity.” Thus, from this, Durkheim started developing a proof of division of labor as the basis for different forms of solidarity. After explaining this much in his theory, Durkheim went on to analyze the nature of society, how it changed over time, and how this has resulted in the shift from mechanical to organic solidarity.

Social Solidarity: Organic and Mechanical

Durkheim defines Solidarity as “a social cohesion based upon the dependence which individuals have on each other in more advanced societies”. Social solidarity encompasses a very different meaning to itself with respect to different types of societies. Durkheim identified this and in order to give recognition to his terminology, he defined the distinction between two structural principles of social integration: mechanical and organic solidarity. He introduced these terms as a part of his theory of the development of societies (Durkheim, *The Division of Labour in Society*, 1933).

MECHANICAL SOLIDARITY: Mechanical Solidarity relies on the societies of pre- industrial era and its members are characterized by possessing some common core beliefs, values, educational background as well as lead similar lives. Earlier societies tend to be small scale, localized into villages, or rural areas having very low division of labor either on basis of sex or age. Solidarity of this kind is characterized with a greater degree of homogeneity between the members, without which there could not exist any strong social unification. Durkheim believed that mechanical solidarity follows that an individual’s conscience in this society is dependent upon the collective types and follows all

its movements. This notion believes that differences in conscience are disadvantageous to the solidarity of the society as a whole. Societies with mechanical solidarity tend to be small with a high degree of social commitment. This society indicates a low division of labor. It is not a very complex society and is based on shared sentiments and responsibilities.

ORGANIC SOLIDARITY: In contrast, a modern western society, which is viewed as more complex can be characterized as organic solidarity. Individuals are characterized as heterogenous in such solidarities but are still interlinked with each other through mutual reliance. Division of labor is the reason for existence of such reliance i.e., the specialization of individuals in different fields is something which causes increasing number of reliance over each other to fulfill the needs. Organic solidarity has a notion of collective conscience within which society has to interact individually with specialized individuals. These individual interactions are linked to the large fabric of interest of society as a whole. Thus, it can be said that society of organic solidarity is more secular and individualistic due to high division of labor.

For Durkheim, modern the system of law tends to be more restitutive in nature which are primarily characterized by judgements that require the offending party to restore the situation to the original state, e.g., paying restitution for theft to victims. For Durkheim, this kind of law is simply concerned with a 'return of state'. In fact, the presence of restitutive law, presupposes the prevalence of a differentiated division of labour as it covers the rights of individuals either over private property, or over other individuals being at different social position. As the division of labour develops, people do not remain with same consciousness and accordingly the system of law is also required to be changed.

CAUSES OF ORGANIC SOLIDARITY: Durkheim is very critical of economists' ideas of the development of division of labor because they merely examined it through the technical point of view and ignored how society plays a very large and important role in developing it and how societal conditions are necessary to maintain it further.

Durkheim considers the development of division of labor to be associated with increasing number of contacts among people. It is the greater density of contact which leads to specialization among people. It is

the emergence of division of labor in different ways which has led to development of a different type of solidarity.

Leon Duguit's Theory of Social Solidarity

INTRODUCTION: Duguit contributed significantly to the theory of sociological jurisprudence in the early 20th century. He was against the traditional concepts of state, sovereignty and law, and went with a new approach towards those matters from the angle of society. Social solidarity is the spirit of oneness; it represents the strength, cohesiveness, mutual consciousness, and viability of the society.

He focused on duties of an individual towards the society rather than their rights. He analyzed as to how solidarity is crucially important in society rather than the government or the state per se. He believed that individuals are interdependent on each other. He observed, "The only right which a man can possess is the right always to do his duty". It means that if one follows all their duties properly, s/he is actually fulfilling their first and foremost right. The importance given to the duties by Duguit is what makes him different from other sociologists who time and again only gave importance to the rights of an individual in the society.

According to Duguit, the outstanding fact of society is the interdependence of people which has increased in modern times due to increasing knowledge possessed by humans and their greater mastery over the physical world. Humans cannot live in isolation; each individual cannot procure the necessities of life by themselves. Hence, the law should be such that it will focus on every person of the society rather than on an individual. He pointed out that law is a rule which humans obey not by virtue of any higher principle but because they have to as members of society. Law will have no other justification than that gained from maintaining the conditions to complete life in the associated state. He said that a law which does not promote social solidarity is a bad law.

Duguit rejected the traditional notions encompassing state, sovereign, public or private law etc. for they were just unreal in the true sense and he contested so because these notions were not related to social solidarity. He strived for mutual cooperation and interdependence between the individuals, groups and societies in accordance with the principle

of division of labor to maintain social cohesion. According to him, the state cannot claim any special provision or privilege because all the human activities are to be judged on the basis of how they contribute to the social solidarity. He considers that state is merely one of the organizations which is required to protect the principle of social solidarity.

He said, “Man must so act that he does nothing which may injure the social solidarity upon which it depends, and more positively, he must do all which tends to promote social solidarity.” (Mirow, 2019)

Furthermore, he considers justice as social reality which recognizes its roots from the society itself. Hence, law must always seek to promote social solidarity. The most important contribution of Duguit is that he rejected the omnipotence of state which has led to despotism and totalitarian rule. He rejected the notion of natural rights of men which made individual hostile to longer interest of society. Duguit used law as an instrument to promote social justice. The action of the state should be judged on the basis of whether it promotes social solidarity or not.

Criticism

There were many criticisms to Duguit’s theory. He ignored the metaphysical elements according to some of his critics. He also did not take into consideration what would happen in the context of conflicts.

Conclusion

Social solidarity is the way in which individuals feel connected and united with each other and with society. For Durkheim, social solidarity is primarily based on two things i.e., “social regulation” and “social integration”. Emile Durkheim believed that social regulation was important for the strength of society and the health of people living in a society.

Durkheim defines Solidarity as “a social cohesion based upon the dependence which individuals have on each other in more advanced societies”. Social solidarity encompasses a very different meaning to itself with respect to different types of societies. Durkheim identified this and in order to give recognition to his terminology, he defined the distinction between two structural principles of social integration: mechanical and organic solidarity. He introduced these terms as a part

of his theory of the development of societies in the division of labor in *Society*, 1893. He said that traditional societies are held together by the help of mechanical solidarity and modern societies are held together by the help of organic solidarity.

The importance given to the duties by Duguit is what makes him different from the other sociologist who time and again only give importance to the rights of an individual in the society.

References

- Durkheim, E. (1933). *The Division of Labour in Society*. (G. Simpson, Trans.) Illinois: The Free Press of Glencoe.
- Mirow, M. C. (2019). Léon Duguit: (1859–1928). In O. Descamps & R. Domingo (Eds.), *Great Christian Jurists in French History* (pp. 358–371). chapter, Cambridge: Cambridge University Press.