

also at the mercy of a multitude of causes which can make individual nature deviate from its normal direction and create a pathological state. Because this organization is more supple, it is also more delicate and more accessible to change. Doubtless, we are not, from birth, predestined to some special position; but we do have tastes and aptitudes which limit our choice. If no care is taken of them, if they are ceaselessly disturbed by our daily occupations, we shall suffer and seek a way of putting an end to our suffering. But there is no other way out than to change the established order and to set up a new one. For the division of labor to produce solidarity, it is not sufficient, then, that each have his task; it is still necessary that this task be fitting to him.

Now, it is this condition which is not realized in the case we are examining. In effect, if the institution of castes or castes sometimes gives rise to anxiety and pain instead of producing solidarity, this is because the distribution of social functions on which it rests does not respond, or rather no longer responds, to the distribution of natural talents. For, despite the claim,¹ it is not solely because of the spirit of imitation that lower classes are ambitious to elevate themselves to higher classes. Indeed, imitation can by itself explain nothing, since it supposes something other than itself. It is possible only between beings who already resemble each other and only in proportion to their resemblance. It is not produced between different species or different varieties. It is the same with moral contagion as with physical contagion; it manifests itself only on predisposed ground. For needs to flow from one class to another, differences which originally separated these classes must have disappeared or grown less. Through changes produced in society, some must have become apt at functions which were at first beyond them, while the others lost their original superiority. When the plebeians aimed to dispute the right to religious and administrative functions with the patricians, it was not only in imitation of the latter,

¹ Tarde, *Lois de l'imitation*.

CHAPTER TWO
THE FORCED DIVISION OF LABOR

I

It is not sufficient that there be rules, however, for sometimes the rules themselves are the cause of evil. This is what occurs in class-wars. The institution of classes and of castes constitutes an organization of the division of labor, and it is a strictly regulated organization, although it often is a source of dissension. The lower classes not being, or no longer being, satisfied with the role which has devolved upon them from custom or by law aspire to functions which are closed to them and seek to dispossess those who are exercising these functions. Thus civil wars arise which are due to the manner in which labor is distributed.

There is nothing similar to this in the organism. No doubt, during periods of crises, the different tissues war against one another and nourish themselves at the expense of others. But never does one cell or organ seek to usurp a role different from the one which it is filling. The reason for this is that each anatomic element automatically executes its purpose. Its constitution, its place in the organism, determines its vocation; its task is a consequence of its nature. It can badly acquit itself, but it cannot assume another's task unless the latter abandons it, as happens in the rare cases of substitution that we have spoken of. It is not so in societies. Here the possibility is greater. There is a greater distance between the hereditary dispositions of the individual and the social function he will fill. The first do not imply the second with such immediate necessity. This space, open to striving and deliberation, is

but it was also because they had become more intelligent, richer, more numerous, and their tastes and ambitions had in consequence been modified. In accordance with these transformations, the agreement between the aptitudes of individuals and the kind of activity assigned to them is found to be broken in every region of society; constraint alone, more or less violent and more or less direct, links them to their functions. Consequently, only an imperfect and troubled solidarity is possible.

Thus, this result is not a necessary consequence of the division of labor. It comes about only under particular circumstances, that is, when it is an effect of an external force. The case is quite otherwise when it is established in virtue of purely internal spontaneity, without anything coming to disturb the initiative of individuals. In this condition, harmony between individual natures and social functions cannot fail to be realized, at least in the average case. For, if nothing impedes or unduly favors those disputing over tasks, it is inevitable that only those who are most apt at each kind of activity will indulge in it. The only cause determining the manner in which work is divided, then, is the diversity of capacities. In the nature of things, the apportioning is made through aptitudes, since there is no reason for doing otherwise. Thus, the harmony between the constitution of each individual and his condition is realized of itself. It will be said that it is not always sufficient to make men content, that there are some men whose desires go beyond their faculties. This is true, but these are exceptional and, one may say, morbid cases. Normally, man finds happiness in realizing his nature; his needs are in relation to his means. Thus, in the organism, each organ demands only as much food as it requires.

The forced division of labor is, then, the second abnormal type that we meet. But the sense of the word "forced" must not be misunderstood. Constraint is not every kind of regulation, since, as we have just seen, the division of labor cannot do without regulation. Even when functions are divided in

accordance with pre-established rules, this apportioning is not necessarily the result of constraint. This is what takes place even under the rule of castes, in so far as that is founded in the nature of the society. This institution is never arbitrary throughout, but when it functions in a society in regular fashion without resistance, it expresses, at least in the large, the immutable manner in which occupational aptitudes distribute themselves. That is why, although tasks are, in certain measure, divided by law, each organ executes its own automatically. Constraint only begins when regulation, no longer corresponding to the true nature of things, and, accordingly, no longer having any basis in customs, can only be validated through force.

Inversely, we may say that the division of labor produces solidarity only if it is spontaneous and in proportion as it is spontaneous. But by spontaneity we must understand not simply the absence of all express violence, but also of everything that can even indirectly shackle the free unfolding of the social force that each carries in himself. It supposes, not only that individuals are not relegated to determinate functions by force, but also that no obstacle, of whatever nature, prevents them from occupying the place in the social framework which is compatible with their faculties. In short, labor is divided spontaneously only if society is constituted in such a way that social inequalities exactly express natural inequalities. But, for that, it is necessary and sufficient that the latter be neither enhanced nor lowered by some external cause. Perfect spontaneity is, then, only a consequence and another form of this other fact, — absolute equality in the external conditions of the conflict. It consists, not in a state of anarchy which would permit men freely to satisfy all their good or bad tendencies, but in a subtle organization in which each social value, being neither overestimated nor underestimated by anything foreign to it, would be judged at its true worth. It will be objected that, even under these conditions, there will still be conflict between the conquerors and the conquered, and that the latter will never

accept defeat except when forced to do so. But this constraint does not resemble the other; they have only their name in common. What really constitutes constraint is the making of conflict itself impossible and refusing to admit the right of combat.

It is true that this perfect spontaneity is never met with anywhere as a realized fact. There is no society where it is unadulterated. If the institution of castes corresponds to the natural apportionment of capacities, it is, however, only in a very proximate and rough and ready manner. Heredity never acts with such precision that, even where it meets with most favorable conditions for its purpose, children can be identical with their parents. There are always exceptions to this rule, and, consequently, cases where the individual is not in harmony with the functions which are attributed to him. These discrepancies become more numerous as society develops, until, one day, the framework becomes too narrow and breaks down. When the regime of castes has lost juridical force, it survives by itself in customs, and, thanks to the persistence of certain prejudices, a certain distinction is attached to some individuals, a certain lack of distinction attached to others, independent of their merits. Finally, even where there remains no vestige of the past, hereditary transmission of wealth is enough to make the external conditions under which the conflict takes place very unequal, for it gives advantages to some which are not necessarily in keeping with their personal worth. Even today among the most cultivated peoples, there are careers which are either totally closed to or very difficult to be entered into by those who are bereft of fortune. It would thus seem that we have not the right to consider as normal a character which the division of labor never purely presents if it is noted that the more we advance on the social scale the more the segmental type disappears into the organized type, and the more these inequalities tend to become completely level.

The progressive decline of castes, beginning from the moment the division of labor is established, is an historical law, for,

as they are linked to the politico-familial organization, they necessarily regress along with this organization. The prejudices to which they have given rise and which they leave behind do not survive them indefinitely, but slowly become obliterated. Public office is more and more freely open to everybody with no question as to wealth. Finally, even this last inequality, which comes about through birth, though not completely disappearing, is at least somewhat attenuated. Society is forced to reduce this disparity as far as possible by assisting in various ways those who find themselves in a disadvantageous position and by aiding them to overcome it. It thus shows that it feels obliged to leave free space for all merits and that it regards as unjust any inferiority which is not personally merited. But what manifests this tendency even more is the belief, so widespread today, that equality among citizens becomes ever greater and that it is just that this be so. A sentiment so general cannot be a pure illusion, but must express, in confused fashion, some aspect of reality. But as the progress of the division of labor implies, on the contrary, an ever growing inequality, the equality which public conscience thus affirms can only be the one of which we are speaking, that is, equality in the external conditions of conflict.

It is, moreover, easy to understand what makes this leveling process necessary. We have just seen that all external inequality compromises organic solidarity. There is nothing vexatious in this for lower societies where solidarity is assured pre-eminently by the community of beliefs and sentiments. However strained the ties which come from the division of labor, nevertheless, since they are not the ones which most strongly attach the individual to society, social cohesion is not menaced. The uneasiness which results from contrary aspirations is not enough to turn those who harbor them against the social order which is their cause, for they cling to this social order, not because they find in it the necessary field for the development of their occupational activity, but because it contains a multitude of beliefs and practices by which they live. They cling

to it because their whole internal life is linked with it, because all their convictions presuppose it, because, serving as a basis for the moral and religious order, it appears to them as sacred. Private disturbances of a temporal nature are evidently too slight to upset states of conscience which derive such an exceptional force from such an origin. Moreover, as occupational life is but little developed, these disturbances are only intermittent. For all these reasons, they are weakly felt. They occur without trouble ensuing. Men even find inequalities not only tolerable but natural.

It is quite the contrary which is produced when organic solidarity becomes predominant, for, then, whatever undermines it attacks the social tie in its vital part. First of all, since under these conditions special activities are pursued in a somewhat continuous manner, they cannot be opposed without resulting in continuous suffering. Then, as the collective conscience becomes weak, the anxieties which are thus produced can no longer be as completely neutralized. Common sentiments no longer have the same force to keep the individual attached to the group under any circumstances. Subversive tendencies, no longer having the same consequences, occur more frequently. More and more losing the transcendent character which placed it in a sphere higher than human interests, social organization no longer has the same force of resistance while it is breaking down. A work wholly human, it can no longer so well oppose human demands. When the flood becomes very violent, the dam which holds it in is broken down. It thus becomes more dangerous. That is why, in organized societies, it is indispensable that the division of labor be more and more in harmony with this ideal of spontaneity that we have just defined. If they bend all their efforts, and must so bend them, to doing away with external inequalities as far as possible, that is not only because enterprise is good, but because their very existence is involved in the problem. For they can maintain themselves only if all the parts of which they are formed are solidary, and solidarity is possible only

under this condition. Hence, it can be seen that this work of justice will become ever more complete, as the organized type develops. No matter how important the progress already realized in this direction, it gives, in all likelihood, only a small idea of what will be realized in the future.

II

Equality in the external conditions of conflict is not only necessary to attach each individual to his function, but also to link functions to one another.

Contractual relations necessarily develop with the division of labor, since the latter is not possible without exchange, and the contract is the juridical form of exchange. In other words, one of the important varieties of organic solidarity is what one might call contractual solidarity. Of course, to believe that all social relations come under the heading of contracts is false, because a contract supposes something other than itself. They are, however, special links which have their origin in the will of individuals. There is a consensus of a certain kind which is expressed in contracts and which, in higher species, represents an important factor in general consensus. It is thus necessary that, in these same societies, contractual solidarity be, as far as possible, protected from all that can disturb it. For if, in less advanced societies, it can be unstable without great inconvenience (for the reasons we have given), where it is one of the eminent forms of social solidarity it cannot be threatened without threatening the unity of the social body at the same time. Conflicts arising from contracts become more serious as contract itself assumes greater importance in general life. Thus, whereas primitive societies do not even intervene in their resolution,² the contractual law of civilized peoples becomes ever more voluminous. But it has no other object than to assure the regular concurrence of functions which enter into relations in this manner.

² See Strabo, p. 702. Even in the *Pentateuch* no regulation of contracts is found.

For this result to be attained, however, it is not enough for public authority to desire that engagements contracted for be kept; it is still necessary, at least in the great majority of cases, that they be spontaneously kept. If contracts were observed only by force or through fear of force, contractual solidarity would be very precarious. A wholly external order would badly cover disturbances too general to be indefinitely controlled. But, it is said, to alleviate this fear it is sufficient that contracts be freely consented to. That is true, but the difficulty is not resolved by that; for what constitutes free consent? Verbal or written acquiescence is not sufficient proof; one may acquiesce only through force. It is then necessary that all constraint be absent. But where does constraint begin? It does not consist solely in the direct use of violence, for indirect violence suppresses liberty quite as well. If the engagement which I have extorted by threatening someone with death is morally and legally void, why should it be valid if, to obtain it, I profited from some situation which I did not cause but which put someone else under the necessity of yielding to me or dying?

In a given society each object of exchange has, at each moment, a determined value which we might call its social value. It represents the quantity of useful labor which it contains. By that must be understood, not the integral labor which it might have cost, but that part of the energy capable of producing useful social effects, that is, effects which reply to normal needs. Although this magnitude cannot be mathematically calculated, it is none the less real. It is very easy to perceive the principal conditions in relation to which it varies. They are, above all, the sum of efforts necessary to produce the object, the intensity of the needs which it satisfies, and finally the extent of the satisfaction it brings. In fact, it is around this point that average value oscillates. It deviates from it only under the influence of abnormal factors, and, in that case, public conscience generally has a somewhat lively sentiment of this deviation. It finds unjust every exchange

where the price of the object bears no relation to the trouble it cost and the services it renders.

This definition set forth, we shall say that a contract is fully consented to only if the services exchanged have an equivalent social value. Under these conditions each receives in effect the thing he desires and delivers what he gives in return so that each has a value for the other. This equilibrium of wills which a contract establishes and consecrates is, thus, produced and maintained of itself, since it is only a consequence and another form of the very equilibrium of things. It is truly spontaneous. To be sure, we sometimes desire more for our product than it is worth; our ambitions are limitless and, consequently, are moderated only because they are restrained by those of others. But this constraint which prevents us from satisfying our unchecked desires without measure must not be confused with that which deprives us of the means of obtaining the just remuneration for our work. For the reasonable man the first kind of constraint does not exist. The second alone deserves to be called by this name; by itself, it alters the conditions of consent. But it does not exist in the case we have just spoken of. If, on the contrary, the values exchanged are not balanced, they can be put into equilibrium only if some external force has been thrown into the balance. Suppose there had been injury done from one side to the other; the wills could not be put in accord without one of them being submitted to direct or indirect pressure, and this pressure constitutes violence. In short, for the obligatory force of a contract to be complete, it is not sufficient that it be the object of an expressed assent. It is still necessary for it to be just, and it is not just by virtue of mere verbal consent. A simple state of the subject cannot bestow upon the contract this power of linking which is inherent in conventions. At least, for consent to have this virtue it must rest upon an objective foundation.

In order that this equivalence be the rule for contracts it is necessary that the contracting parties be placed in conditions externally equal. Since the appreciation of things cannot

be determined *a priori*, but comes out of exchanges themselves, the individuals who are exchanging must have no other force than that which comes from their social worth if their labor is to be properly evaluated. In this way, the values of things exactly correspond to the services that they render and the trouble that they cost, for every other factor capable of making them vary is, by hypothesis, eliminated. To be sure, the unequal merit of men will always bring them into unequal situations in society, but these inequalities are external only in appearance, for they are only the external manifestations of internal inequalities. They have no other influence over the determination of values except to establish a gradation among the latter parallel to the hierarchy of social functions. The situation is no longer the same if some receive supplementary energy from some other source, for that necessarily results in displacing the point of equilibrium, and it is clear that this displacement is independent of the social value of things. All superiority has its effect on the manner in which contracts are made. If, then, it does not derive from the persons of the individuals, from their social services, it falsifies the moral conditions of exchange. If one class of society is obliged, in order to live, to take any price for its services, while another can abstain from such action thanks to resources at its disposal which, however, are not necessarily due to any social superiority, the second has an unjust advantage over the first at law. In other words, there cannot be rich and poor at birth without there being unjust contracts. This was still more the case when social status itself was hereditary and law sanctioned all sorts of inequalities.

These injustices are not strongly felt, however, as long as contractual relations are but little developed and the collective conscience is strong. Because of the rarity of contracts, there are fewer occasions for them, and, then, common beliefs neutralize their effects. Society does not suffer from this situation since it is not endangered by it. But, as labor becomes more divided and social faith grows weak, these same injustices

become more insupportable, since the circumstances which give rise to them reappear very often and also because the sentiments which they evoke can no longer be as completely tempered by contrary sentiments. This is shown in the history of contract-law, which tends more and more to detract all value from conventions where the contracting parties are found in situations that are too unequal.

Originally, every contract, drawn up as formally prescribed, had obligatory force, no matter how it was obtained. Assent was not even the chief factor. The accord of wills was not sufficient to link them, and the links formed did not directly result from this accord. For a contract to exist, it was necessary, and it was sufficient, for certain ceremonies to be accomplished, such as the pronouncing of certain words, and the nature of the engagement was determined, not by the intent of the parties, but by the formulas employed.³ The contract of consent appears only in a relatively recent epoch.⁴ It is the first progress made in the system of justice. But, for a long time, the consent which sufficed to validate compacts was very imperfect, that is, extorted by force or by fraud. It was at a much later date that the Roman praetor accorded to victims of fraud and violence the action *de dolo* and the action *quod metus causa*;⁵ still violence had legal existence only if there had been the threat of death or corporal punishment. Our law has become more exacting on this point. At the same time, injury, duly established, was put among the causes which could, in certain cases, annul contracts.⁶ Is this not the reason why civilized peoples refuse to recognize an usurious contract? It is because the usurious contract

³ See the contract *verbis, litteris, et re* in Roman law. Cf. Esmein, *Études sur les contrats dans le très ancien droit français*, Paris, 1883.

⁴ Ulpian looks at contracts of consent as being *juris gentium*. But the whole *jus gentium* is certainly of later origin than civil law. See Voigt, *Jus gentium*.
⁵ The action *quod metus causa* which is slightly earlier than the action *de dolo* is later than the dictatorship of Sulla. The date is put at 674.

⁶ Dioletian decided that a contract could be rescinded if the price was lower than one half of the real value. Our law permits rescindment because of fraud only in the case of real property.

presupposes that one of the contracting parties is too much at the mercy of the other. Finally, common morality very severely condemns every kind of leonine contract wherein one of the parties is exploited by the other because he is too weak to receive the just reward for his services. Public conscience demands, in an ever more pressing manner, an exact reciprocity in the services exchanged, but it recognizes only one obligatory form highly curtailed through conventions which do not fulfill this fundamental condition of all justice. It shows itself much more indulgent than law towards those who violate them.

Credit is due the economists for first having seen the spontaneous character of social life, and having shown that constraint could only make it deviate from its natural direction and that, normally, it results, not in arrangements which are external and imposed, but in a free internal elaboration. In this regard, they have rendered an important service to the science of morality. They have, however, been mistaken as to the nature of this liberty. Since they see it as a constitutive attribute of man, since they logically deduce it from the concept of the individual in itself, it seems to them to be entirely a state of nature, leaving aside all of society. Social action, according to them, has nothing to add to it; all that it can and must do is to regulate the external functioning in such a way that the competing liberties do not harm one another. And, if it is not strictly confined within these limits, it encroaches on the legitimate domain of the individual and diminishes it.

But, besides the fact that it is false to believe that all regulation is the product of constraint, it happens that liberty itself is the product of regulation. Far from being antagonistic to social action, it results from social action. It is far from being an inherent property of the state of nature. On the contrary, it is a conquest of society over nature. Naturally, men are unequal in physical force; naturally, they are placed

under external conditions unequally advantageous; domestic life itself, with the heredity of goods that it implies and the inequalities which come from that, is, of all the forms of social life, that which depends most strictly on natural causes, and we have just seen that these inequalities are the very negation of liberty. In short, liberty is the subordination of external forces to social forces, for it is only in this condition that the latter can freely develop themselves. But this subordination is rather the reverse of the natural order.⁷ It can, then, realize itself progressively only in so far as man raises himself above things and makes law for them, thus depriving them of their fortuitous, absurd, amoral character; that is, in so far as he becomes a social being. For he can escape nature only by creating another world where he dominates nature. That world is society.⁸

The task of the most advanced societies is, then, a work of justice. That they, in fact, feel the necessity of orienting themselves in this direction is what we have already shown and what every-day experience proves to us. Just as the ideal of lower societies was to create or maintain as intense a common life as possible, in which the individual was absorbed, so our ideal is to make social relations always more equitable, so as to assure the free development of all our socially useful forces. When one remembers, however, that for centuries men have been content with a much less perfect justice, one may ask if these aspirations might not perhaps be due to unreasonable impatience; if they do not represent a deviation from the normal state rather than an anticipation of the coming normal state; if, in short, the means for curing the evil whose existence these aspirations reveal is through their satisfaction or elimination. The propositions established in the preceding

⁷ We do not mean that society is outside of nature, if one understands by that the totality of phenomena which obey the law of causality. By natural order, we mean only that which is produced in what is called the state of nature, that is, under the exclusive influence of physical and organic-psychic forces.

⁸ See Book II, ch. v. — Once more it is seen that free contract is not in itself sufficient, since it is possible only through a very complex social organization.

books permit us to reply to this question with precision. There are no needs more firmly entrenched than these tendencies, for they are a necessary consequence of changes which have occurred in the structure of societies. Because the segmental type is effaced and the organized type develops, because organic solidarity is slowly substituted for that which comes from resemblances, it is indispensable that external conditions become level. The harmony of functions and, accordingly, of existence, is at stake. Just as ancient peoples needed, above all, a common faith to live by, so we need justice, and we can be sure that this need will become ever more exacting if, as every fact presages, the conditions dominating social evolution remain the same.