8
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. First, 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. Second, 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

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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’. 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 result of the change in mode of production to industrial, factory, urban civilization. Mixed units which combined religion and the family, such as the Indian castes, were also all collapsing. 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.’ 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 Tönnies, 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 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