The transformation of the euro: law, contract, solidarity
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1 | The concept of solidarity

1 INTRODUCTION

Thorough analyses of solidarity are rare, especially in comparison to other notions that are central to legal and philosophical thinking, such as 'justice', 'liberty' and 'equality'.[1] This may come as a surprise, given that solidarity features widely in contemporary language, in particular political language. Some say that the reason for this lack of treatises on solidarity lies in the fact that much of ethical and political theory focuses on the individual and the necessity to protect the latter's freedom and rights from unwarranted interferences by the state or other individuals.[2] Solidarity, on the contrary, primarily focuses on the collective and the individual's relation to it. This difference in perspective would make it difficult for scholars to incorporate the notion in their theories, including those focusing on law.

That is not to say that solidarity is unfamiliar to legal scholars, nor to law itself. In fact, it started off as a legal notion. Roman law contained the *obligatio in solidum* according to which 'any of the parties entitled or liable could sue or be sued on the obligation for the whole of what was due'.[3] The notion *in solidum* stemmed from the Latin adjective *solidus*,[4] meaning 'undivided', 'unimpaired', 'whole'. The *obligatio in solidum* inspired the French *Code Civil* of 1804 to use the notion of *solidarité* to similarly indicate entitlement or liability

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1 Kurt Bayertz, 'Four Uses of "Solidarity"' in Kurt Bayertz (ed), *Solidarity* (Kluwer 1999) 3.
2 Bayertz (n 1) 4. See also Véronique Munoz-Dardé, 'Fraternity and Justice' in Kurt Bayertz (ed), *Solidarity* (Kluwer 1999) 83-85.
3 Joseph AC Thomas, *Textbook of Roman Law* (North Holland Publishing Company 1976) 255-256. The institutes of Justinian (3.16.1) stated in this regard: 'Ex huiusmodi obligationibus et stipulantibus *solidum* singulis debetur et promitentes singuli *in solidum* tenentur.' (Where obligations are created in this way each stipulator is owed the whole amount, and each promissor is liable for the whole amount.) Text and translation are obtained from Peter Birks and Grant Mcleod, *Justinian's Institutes* (with the Latin text of Paul Krueger, Duckworth 1987) 108-109 (emphasis added). See also Robin Evans-Jones and Geoffrey MacCormack, 'Obligations' in Ernest Metzger (ed), *A Companion to Justinian's Institutes* (Duckworth 1998) 139-140.
4 Jürgen Schmelter, *Solidarität: Die Entwiklungsgeschichte eines socialethischen Schlüsselbegriffs* (Inaugural dissertation, University of München 1991) 7-8.

for everything owed.[5] Many legal systems, especially those with a civil law tradition, nowadays employ it in their law on obligation.[6]

In Union law, the prologue to this study showed, solidarity has shaken off this private law connotation as it features in a great variety of contexts.[7] Yet, to discover its true potential as a lens for understanding the transformation of the currency union, this study needs to broaden its horizon and first examine how the concept of solidarity is employed *outside* the law.

By the time *solidarité* came to figure in the *Code Civil*, it had already left the legal sphere as a result of the French Revolution that had broken out in 1789. The Revolution had its roots in the financial crisis in which France found itself at the end of the 18th century. The inability of the French government to deal with an ever expending debt pile, caused by a century of warfare, had severely weakened Louis XVI's royal authority and had forced the masses to cry for the improvement of social conditions.[8] What began as a reaction to economic hardship, rapidly developed into a more fundamental state of civil unrest, targeting the *ancien régime* itself and eventually resulting in the overthrow of Louis XVI on 10 August 1792.[9] Shortly after the king's deposition a National Convention assembled to come up with a constitution for the new republic. On 1 April 1793 Georges Danton spoke to the convention and proclaimed:

> '*Nous sommes tous solidaires par l'identité de notre conduite*'. (We are all solidary through the identity of our behaviour)[10]

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5   Art 1197 Code Civil: 'L'obligation est *solidaire* entre plusieurs créanciers lorsque le titre donne expressément à chacun d'eux le droit de demander le paiement du total de la créance, et que le paiement fait à l'un d'eux libère le débiteur' (An obligation is joint and several between several creditors, where the instrument of title expressly gives to each of them the right to demand payment of the whole claim, and payment made to one of them discharges the debtor). Art 1200 Code Civil: 'Il y a *solidarité* de la part des débiteurs, lorsqu'ils sont obligés à une même chose, de manière que chacun puisse être contraint pour la totalité, et que le paiement fait par un seul libère les autres envers le créancier' (There is joint and several liability on the part of debtors where they are bound for a same thing, so that each one may be compelled for the whole, and payment made by one alone discharges the others towards the creditor). The translations have been obtained from <www.legifrance.gouv.fr> accessed 11 May 2017 (emphasis added).

6   Examples are Belgium (Arts 1197 CC ff), Luxembourgh (Arts 1197 CC ff) and Italy (Arts 1292 CC ff).

7   See text to n 116 (prologue).

8   Sylvia Neely, *A Concise History of the French Revolution* (Rowman & Littlefield Publishers 2008) 29ff.

9   Neely (n 8) 155-161.

10   Ferdinand Brunot, *Histoire de la langue française des origines à 1900 – IX: La Révolution et l'Empire* (Librairie Armand Colin 1937) 745. See also Rainer Zoll, *Was ist Solidarität heute?* (Suhrkamp 2000) 20-21; Hauke Brunkhorst, *Solidarity: From Civic Friendship to a Global Legal Community* (The MIT Press 2005) 1 (this translation follows the one of Brunkhorst).

It is one of the first instances in which solidarity clearly takes up a meaning that exceeds the realm of law, where it becomes politicised. Here, solidarity is used to further the ends of the Revolution by appealing to a desire for cohesiveness in a society divided by strife and unrest.

At first, solidarity was not the preferred notion for expressing this desire.[11] Among revolutionaries it lost out to fraternity, which features in the famous 'rallying cry': *egalité, liberté, fraternité*.[12] But during the 19th century, solidarity gained ever greater prominence, pushing fraternity into the background.[13] It came to feature in a broad variety of contexts, making it far from a uniform concept. That does not mean it does not have a common core. In its essence, solidarity is a *mode of group cohesion* as a result of which individual members act in unison.[14] From this essence flow three features which are inalienable to solidarity as employed outside the law, no matter the specific context.[15]

First of all, as Sally Scholz explains, 'solidarity mediates between the community and the individual'.[16] It should therefore not be equated with groups as such. It *ties* individuals to the group, it *underlies* cohesion. This makes it a difficult concept to examine, given that the focus is neither exclusively on the group's constituent elements, the individuals, nor on the group as such. It is 'neither individualism nor communalism'.[17] Solidarity is best located in between the individual and the group. Second, as a result of solidarity, 'unity' is created.[18] Solidarity forges a group out of individuals. It ties them to one another. Not every unity, however, is based on solidarity. Solidarity is *a* mode of group cohesion, but by no means the only one. Groups held together merely through the use of force, for example, form a unity to some degree, but this unity is not solidary in nature. Third, solidarity carries with it 'positive obligations'.[19] It requires individuals to act in support of, and in conformity with, the group.[20] Solidarity therefore differs greatly from concepts like justice and liberty. The point of departure is not that obligations are regarded as 'claims made of the individual' in need of justification,[21] but rather that they are an instrument of cohesion, bridging the collective and the individual.

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11 Brunkhorst (n 10) 1.
12 Brunkhorst (n 10) 1; Andreas Wildt, 'Solidarity: Its History and Contemporary Definition' in Kurt Bayertz (ed), *Solidarity* (Kluwer 1999) 210.
13 Wildt (n 12) 210-211. See also Schmelter (n 4) 9; Brunkhorst (n 10) 1, 59.
14 See text to n 125 (prologue).
15 Sally J Scholz, *Political Solidarity* (The Pennsylvania State University Press 2008) 17-21.
16 Scholz (n 15) 18-19.
17 Scholz (n 15) 18. See also H Tristram Engelhardt, Jr, 'Solidarity: Post-Modern Perspectives' in Kurt Bayertz (ed), *Solidarity* (Kluwer 1999) 295.
18 Scholz (n 15) 19.
19 Bayertz (n 1) 4; Scholz (n 15) 19.
20 Acting, that is, in the broadest meaning possible, given that solidarity can also oblige one to refrain from behaviour that is detrimental to group cohesion.
21 Bayertz (n 1) 4.

Apart from these three general features, however, solidarity is a multifaceted concept, with differing implications depending on the context in which it features. To understand these implications it is useful to distinguish between three kinds of solidarity: 'social solidarity', 'welfare solidarity', and 'oppositional solidarity'.[22]

Social solidarity primarily pertains to the 'cohesiveness' of a group and can be traced back to Auguste Comte.[23] During the 19th century, the concern for social cohesion embodied in the revolutionary notion of *fraternité* did not remain confined to the political realm, but became an object of academic study. The industrial revolution, migration into cities and the rise of individualism profoundly changed societies and laid bare the 'precariousness of social integration'.[24] Comte was one of the first to study the problem of social integration and to do so in relation to the concept of social solidarity.[25] In his view, solidarity forms a 'mechanism of social cohesion'.[26] One of its engines, he claims, is the 'division of labour'.[27] This is not just a matter of economic concern, but a driver of cohesion as it makes people dependent on one another.[28] Comte's insight that individualism and interdependence do not necessarily lead to a demise of cohesion, but may actually generate and strengthen it, was ground-breaking and has profoundly influenced thinking about modern society.

Welfare solidarity arguably relates most to the use of solidarity in everyday parlance. It is also closely bound up with politics given that it relates to the 'redistribution' of money through the state so as to help those members of society that require it most.[29] At its core, welfare solidarity concerns the idea that due to their membership of the same society people are subject to a mutual duty of assistance in case of need.[30] Some argue that it is just a specific manifestation, a branch, of social solidarity, giving expression to the solidary ties between the members of society.[31] Yet, although the two are certainly related, welfare solidarity differs from social solidarity in that it shifts the focus from

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22   This distinction is inspired by and based on the one made by Sally Scholz. See Scholz (n 15) 21-38. See also Bayertz (n 1) 5ff.

23   Scholz (n 15) 21. See also Bayertz (n 1) 12; Karl H Metz, 'Solidarity and History. Institutions and Social Concepts of Solidarity in 19th Century Western Europe' in Kurt Bayertz (ed), *Solidarity* (Kluwer 1999) 194.

24   Steinar Stjernø, *Solidarity in Europe: The History of an Idea* (CUP 2004) 30-31.

25   Auguste Comte, *System of Positive Polity* (John H Bridges tr, Longmans, Green & Co. 1875).

26   Metz (n 23) 194.

27   Metz (n 23) 194.

28   Metz (n 23) 194; Bayertz (n 1) 12.

29   Bayertz (n 1) 21.

30   Bayertz (n 1) 21.

31   Kees Schuyt, 'The Sharing of Risks and the Risks of Sharing: Solidarity and Social Justice in the Welfare State'(1998) 1 Ethical Theory and Moral Practice 297, 297. See for a discussion of this point Scholz (n 15) 30.

the members of society to the state as the 'institutionalised' vehicle through which welfare support is granted.[32] It is also for this reason that some argue that welfare solidarity has come under strain in recent times.[33] The development and growth of the welfare state has led to an 'anonymisation' and 'professionalisation' of welfare support, putting emphasis on the entitlements to support which one may have against the state, but at the same time losing out of sight the solidary ties between the members of society that have to sustain the system.[34]

Oppositional solidarity results from the need to defend 'common interests'.[35] Individuals rally together in order to fight against a state of domination or to promote a particular cause.[36] Political solidarity is therefore 'target-oriented',[37] making it different from social solidarity.[38] Whereas in the case of the latter group cohesion results from the ties between individuals, there is no such causal link in the case of oppositional solidarity. Such relations may well follow from the solidary cohesion pertaining to the group, but they are not the driving factor behind its coming into existence, which rather lies in its aim.[39] As it is closely related to the notion of 'struggle',[40] oppositional solidarity is 'adversarial' in nature.[41] Fights over rights have to be won, wrongs have to be brought to an end by challenging those in control.[42] In short, the solidary cohesion of the group arises out of opposition against, and conflict with, others.

The classic example of oppositional solidarity can be found in the workers' movement that started in the 19th century.[43] In fact, it developed there into a particular niche, appealing to the Marxist concept of 'class solidarity', built around the idea that once workers became aware of their common state of hardship, they would unite and organise themselves in order to oppose, and transform a capitalist driven society.[44] A more recent example of oppositional solidarity in the workers' movement occurred in the 1980s in Poland. In September 1980 *Solidarność*, the first independent trade union in a Warsaw Pact

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32 Bayertz (n 1) 22.
33 Schuyt (n 31) 300-301; Bayertz (n 1) 22, 24-25.
34 Schuyt (n 31) 299-301, 305-306, 308-311.
35 Bayertz (n 1) 16.
36 Scholz (n 15) 34.
37 Klaus Peter Rippe, 'Diminishing Solidarity' (1998) 1 Ethical Theory and Moral Practice 355, 357. Rippe therefore calls this kind of solidarity 'project-related solidarity'. See also Bayertz (n 1) 16; Scholz (n 15) 34, 37.
38 Rippe (n 37) 357; Scholz (n 15) 34.
39 Rippe (n 37) 357; Scholz (n 15) 36-37.
40 Scholz (n 15) 34.
41 Bayertz (n 1) 17. See also Scholz (n 15) 36-37. Scholz emphasizes the 'oppositional nature' of this kind of solidarity, yet terms it 'political solidarity'.
42 Bayertz (n 1) 17-18.
43 Bayertz (n 1) 16-17.
44 Stjernø (n 24) 42-46. See also Bayertz (n 1) 17-19.

country, was established after heavy strikes in several ports on the Baltic Sea.[45] What started off as a trade union soon developed into a popular movement challenging the Polish communist regime throughout the 1980s.[46] The success of the movement reached its height with the first semi-free elections in 1989, followed by the instalment of a *Solidarność* led government in August that year, and the election of Lech Wałęsa, the movement's leader, as president in December 1990.[47]

The three kinds of solidarity are archetypes. In practice, the boundaries between them are not clear-cut and solidary groups may display elements of more than one kind.[48] Nonetheless, this chapter will focus on social solidarity as it is most central to this study and its understanding of the solidarity that exists between the member states of the Union. It will do so by discussing the ideas of four great minds. Two of them, Émile Durkheim and Talcott Parsons, are social theorists who have explicitly engaged with the concept of solidarity by building on Comte's ideas. Before turning to them, however, this chapter will examine the thoughts of two other, more ancient, thinkers.[49] One of them is Jean-Jacques Rousseau whose social contract theory has greatly contributed to the concept of solidarity as aroused by the French Revolution. But a thorough understanding of solidarity requires us to go even further back in time. For even if solidarity itself is a relatively modern concept, its roots are much older. They go back to antiquity; they go back to Aristotle.

2   ARISTOTELEAN FRIENDSHIP

'Friendship', Aristotle writes, 'seems to keeps cities together, and lawgivers seem to pay more attention to it than to justice'.[50] The phrase provides evidence of the interest of the ancient philosopher in societal cohesion, and how he saw friendship (*philia*) as indispensable in bringing it about. In his ethical treatises *Eudemian Ethics* and *Nicomachean Ethics*, the political work *Politics*, and his treatise on the art of persuasion, the *Rhetoric*, Aristotle explains in detail

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45   Idesbald Goddeeris, 'Solidarność, the Western World and the End of the Cold War'(2008) 16 European Review 55, 56.
46   Goddeeris (n 45) 56; Scholz (n 15) 8-9.
47   For a thorough discussion of the history of *Solidarność* see Timothy Garton Ash, *The Polish Revolution: Solidarity* (YUP 2002).
48   Scholz (n 15) 20, 39-46.
49   This study is not the first to identify the ties between these sociologists and more ancient thinkers. Especially interesting, as well as an important source for this study, is the one by Douglas Challenger which analyses the influence of Aristotle and Rousseau on Durkheim. See Douglas F Challenger, *Durkheim Through the Lens of Aristotle: Durkheimian, Postmodernist, and Communitarian Responses to the Enlightenment* (Rowman & Littlefield Publishers 1994).
50   Aristotle, *Nicomachean Ethics* (Christopher Rowe tr, Sarah Broadie and Christopher Rowe eds, OUP 2002) 209.

how friendship is constitutive of society. His ideas have influenced those of Enlightenment thinkers on the proper form of society and,[51] as such, have contributed to our modern understanding of solidarity.

According to Aristotle, 'man is a civic being, one whose nature is to live with others'.[52] He has a natural drive to enter into relationships with fellow men to serve his needs and eventually to satisfy his ultimate aim in life, that for which he is meant to live: 'happiness'.[53] In Aristotle's view, happiness is only within reach for those striving for *'virtue'*,[54] those acting 'nobly'.[55] Observing virtue requires that one acts as 'reason' prescribes.[56] Acting in line with reason, in turn, implies that one aims for 'the mean' or 'the middle' in everything one does and undertakes.[57]

In line with man's social drive, Aristotle argues, he requires friends.[58] Friendships are first of all an elementary prerequisite for life.[59] A man living in confinement simply cannot meet all of his needs, he will not manage on his own. Yet, the value of friendship exceeds this level of brutal necessity as it is also indispensable for leading a virtuous life.[60] Only by having friends does man have a chance of achieving that for which he ultimately lives: happiness. For a true friend, Aristotle explains, is 'another self'.[61] Having such friends helps to acquire 'self-knowledge' and thus to act according to reason, essential for a life lived in virtue.[62]

Aristotelean friendship is a much broader notion compared to what contemporary societies perceive it to be.[63] Its reach is not confined to 'ordinary' friends but extends to the ties between family members, trading partners and even citizens. Nonetheless, its essence is uniform and ever-present.[64] 'Let being friendly', Aristotle states, mean 'wanting for someone what one thinks are

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51 Challenger (n 49) 76.
52 Aristotle, *Nichomachean Ethics* (n 50) 236.
53 Challenger (n 49) 35-37.
54 Challenger (n 49) 37-38.
55 Ernest Barker, *The Political Thought of Plato and Aristotle* (Dover Publications 1972) 265-266. See also Challenger (n 49) 38.
56 Challenger (n 49) 37-38.
57 Challenger (n 49) 41-45.
58 Barker (n 55) 236; Challenger (n 49) 62-64, 66-67.
59 Barker (n 55) 265-266; Challenger (n 49) 62-63.
60 Barker (n 55) 236, 266; Challenger (n 49) 62-63, 70.
61 Aristotle, *Nicomachean Ethics* (n 50) 230, 238.
62 John M Cooper, *Reason and Emotion: Essays on Ancient Moral Psychology and Ethical Theory* (Princeton University Press 1999) 338, 340-345. The claim that friendships contribute to self-knowledge is especially true for 'virtue friendships', discussed below.
63 Challenger (n 49) 66; Sibyl A Schwarzenbach, 'On Civic Friendship' (1996) 107 Ethics 97, 99; Cooper (n 62) 312-313.
64 See Cooper (n 62) 313, 316; Schwarzenbach (n 63) 99-100; Eleni Leontsini, 'The Motive of Society: Aristotle on Civic Friendship, Justice and Concord' (2013) 19 Res Publica 21, 25.

good things for him, not what one thinks benefits oneself, and wanting what
is potentially productive of these good things'.[65] 'A friend', he continues, 'is
one who loves and is loved in return'.[66] 'Friendship', therefore, 'is good will
between reciprocating parties'.[67]

Apart from this inalienable core, Aristotle divides friendly relations into
three categories based on what it is that is loved.[68] '[I]t seems that not every-
thing is loved', he argues, 'only what is lovable, and that the lovable is good,
or pleasant, or useful'.[69] Therefore, 'If there is to be friendship, the parties
must have goodwill towards each other' and this needs to be 'brought about
by one of the three things mentioned'.[70] Accordingly, the three kinds of
friendship are 'virtue friendship', 'pleasure friendship' and 'advantage friend-
ship'.[71] Virtue friendship, Aristotle explains, 'exists between good people,
those resembling each other in excellence'.[72] Such friendships are characterised
by the fact that one 'wishes good things for the other in so far as he is good'.[73]
Pleasure friendships are present when people 'feel affection' for one another
'for the pleasure they themselves get from them'.[74] Likewise, in the case of
advantage friendships people like each other 'in so far as some good accrues
to each of them from the other'.[75]

For Aristotle, virtue friendship is the supreme, cardinal form of friend-
ship.[76] In such a friendship someone is loved because of his 'good character',
because of what he is like simply as a person.[77] This bestows the friendship
with considerable permanence given that 'excellence is something lasting'.[78]
Although those who like each other for some pleasure or advantage are
certainly also friends, they are so only 'incidentally'.[79] 'Such friendships',
Aristotle reasons, 'are easily dissolved, if the parties become different; for if
they are no longer pleasant or useful, they cease loving each other. And the
useful is not something that lasts, but varies with the moment'.[80]

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65   Aristotle, *On Rhetoric: A Theory of Civic Discourse* (George A Kennedy tr, OUP 2007) 124.
66   Aristotle, *On Rhetoric* (n 65) 124.
67   Aristotle, *Nicomachean Ethics* (n 50) 210.
68   Aristotle, *Nicomachean Ethics* (n 50) 210: 'There are, then, three kinds of friendship, equal
      in number to the objects of love'. See also Challenger (n 49) 67; Cooper (n 62) 315-317;
      Leontsini (n 64) 24-25.
69   Aristotle, *Nicomachean Ethics* (n 50) 210.
70   Aristotle, *Nicomachean Ethics* (n 50) 210.
71   Challenger (n 49) 67; Cooper (n 62) 315-317; Leontsini (n 64) 25.
72   Aristotle, *Nicomachean Ethics* (n 50) 211.
73   Aristotle, *Nicomachean Ethics* (n 50) 211.
74   Aristotle, *Nicomachean Ethics* (n 50) 211.
75   Aristotle, *Nicomachean Ethics* (n 50) 210-211.
76   Challenger (n 49) 68-70; Cooper (n 62) 325-326; Leontsini (n 64) 25.
77   Cooper (n 62) 325-326.
78   Aristotle, *Nicomachean Ethics* (n 50) 211.
79   Aristotle, *Nicomachean Ethics* (n 50) 211.
80   Aristotle, *Nicomachean Ethics* (n 50) 211.

Aristotelean friendship, then, ties people to one another and thereby enables man, first of all, to see to his needs, and secondly, to lead a virtuous life. However, and in line with Aristotle's statement that it keeps cities together, friendship also links them to the city state (*polis*).

To comprehend this latter function of friendship, it is important to realise that Aristotle employs an '*organic*' understanding of the city state.[81] Citizens are to the city state what different organs are to the physical body. Regarding something as an organic 'whole' or 'unity', Ernest Barker explains, requires two things.[82] First of all, there needs to be a division of function, meaning that each organ contributes in its own way to the success of the whole of which it forms a part. Second, the existence of each of the organs separately should be tied up to that of the whole. Both these elements are present in Aristotle's view on the city state.[83] The element of division of function becomes visible when Aristotle reasons that 'A city state consists not only of a number of people, but of people of different kinds, since a city state does not come from people who are alike',[84] and 'things from which a unity must come differ in kind'.[85] The element of dependency becomes clearly apparent when Aristotle states that the city state 'comes to be for the sake of living'.[86]

Now, at the basis of this organic unity constituting the city state lies friendship.[87] Living in a city, Aristotle thinks, cannot simply be equated with the 'sharing of a common location' nor 'exchanging goods'.[88] If it meant only this, its value would not exceed that of the relation between two *different* city states that trade with each other yet whose citizens are not 'concerned with what sort of people the others should be'.[89] What characterises the *polis*, however, is that the citizens who make it up do have such genuine concern for one another.[90] The city state, in other words, is a community of friends.[91] It is friendship, Aristotle explains, that unites people in 'marriage ... brotherhoods, religious sacrifices, and the leisured pursuits of living together'.[92] The city state is the community that brings all these more limited social environments together: 'All the different kinds of community, then, are evidently parts of the political one; and along with community of each sort will go friendship

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81 Barker (n 55) 231, 234, 276-281 (emphasis added). See also Challenger (n 49) 64.
82 Barker (n 55) 234, 277.
83 Barker (n 55) 232-233, 277; Challenger (n 49) 63, 162-163; Cooper (n 62) 357, 362-363; Ann Ward, 'Friendship and Politics in Aristotle's Nicomachean Ethics' (2011) 10 European Journal of Political Theory 443, 450-452.
84 Aristotle, *Politics* (CDC Reeve tr, Hackett Publishing Company 1998) 27.
85 Aristotle, *Politics* (n 84) 27.
86 Aristotle, *Politics* (n 84) 3.
87 Barker (n 55) 235-236; Cooper (n 62) 368.
88 Aristotle, *Politics* (n 84) 81.
89 Aristotle, *Politics* (n 84) 80.
90 Cooper (n 62) 365-366, 370-371; Ward (n 83) 452-453.
91 Cooper (n 62) 368; Leontsini (n 64) 26.
92 Aristotle, *Politics* (n 84) 81.

of the same sort'.[93] Thus the city state achieves the status of an organic whole, endowed with an 'independence' and 'self-sufficiency' that man needs yet cannot achieve on his own.[94]

The friendship existing between people within the city state, which Aristotle calls 'civic' or 'political' friendship, is an 'advantage friendship'.[95] In line with the reasoning that the city state is made up of people different in kind, each performing a distinct role within the unity to which they all belong, it is advantage that first brings them together:

> 'For people make their way together on the basis that they will get some advantage from it, and so as to provide themselves with some necessity of life; and the political community too seems both to have come together in the beginning and to remain in place for the sake of advantage ... and people say that what is for the common advantage is just.'[96]

Yet, as this statement shows, civic friendship is a special kind of advantage friendship. The advantage obtained through it is not, or not only, reducible to distinct advantages enjoyed by each citizen separately.[97] It is a 'common advantage', a '*common good*', linked to the city state as such and from which all citizens profit through their membership of the *polis*.[98]

As a result of this link with the common good, the strength and persistence of the friendship that underlies the city state exceeds that of ordinary friendships based on advantage, which lack stability due to their incidental nature.[99] Indeed, Aristotle's statement, cited above, that the city state comes into being 'for the sake of living', is followed by the addition that 'it remains for the sake of living well'.[100] Ultimately, he thinks, 'political communities must be taken to exist for the sake of noble actions'.[101] Part of what it means to act nobly is 'that citizens share judgements about what is advantageous, reach the same decisions, and do what has seemed to them jointly to be best',[102] thereby supporting the common good.[103]

Creating the conditions for a virtuous life, the city state is thus inherently linked to man's nature.[104] Socially driven, man has to share his life with

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93 Aristotle, *Nicomachean Ethics* (n 50) 219.
94 Barker (n 55) 233-234, 265, 269-270.
95 Schwarzenbach (n 63) 105; Cooper (n 62) 333, 370; Ward (n 83) 450; Leontsini (n 64) 25-26.
96 Aristotle, *Nicomachean Ethics* (n 50) 218. See also Leontsini (n 64) 26.
97 Cooper (n 62) 372
98 Cooper (n 62) 372 (emphasis added). See also Barker (n 55) 236.
99 Ward (n 83) 452-453. See also Barker (n 55) 268.
100 Aristotle, *Politics* (n 84) 3.
101 Aristotle, *Politics* (n 84) 81.
102 Aristotle, *Nicomachean Ethics* (n 50) 232.
103 Cooper (n 62) 375 Leontsini (n 64) 31-32.
104 Barker (n 55) 236, 265, 268-270; Challenger (n 49) 66-67, 73-74.

others so as to secure his needs and achieve happiness. The city state, as the community of all communities, provides the ultimate context in which this goal can be achieved. Man thus truly is a civic being.

Aristotle, then, presents the city state as an organic unity in which people are dependent on each other and on the state itself in order to live, but above all to live well. It is friendship that creates and sustains this unity by tying people to one another and eventually to the city state. To Aristotle, it is therefore only logical to state that it is reciprocity, belonging to the unalienable core of friendship,[105] 'that preserves cities'.[106] Yet, in the unity created in this way, man's own being and existence are not thrown by the wayside. The city state is not created at the expense of the latter.[107] To the contrary, it is through the city state that man can live a virtuous life and attain happiness. Friendship thus functions as a mediating mechanism between man and state, between the individual and the collective.

Nonetheless, Aristotle's organic conception of society is a qualified one.[108] '[N]ot everyone without whom there would not be a city state is to be regarded as a citizen', he argues.[109] Indeed, 'a city-state is a community of free people'.[110] The unfree (i.e. 'slaves'), and in some communities also 'vulgar craftsmen' and 'hired labourers', lack the opportunity 'to engage in virtuous pursuits' and are therefore excluded from the common good which the city state aims at.[111] Aristotle consequently employs a distinction between those elements of the organic unity which fully partake in the city state, 'the integral parts', and those which do sustain it, 'the contributory parts', yet do not reap its benefits.[112] As a result, there is an inherent inequality to civic friendship.

Aristotle's organic conception of society resonates in Jean-Jacques Rousseau's thoughts on the social contract.[113] Contrary to Aristotle, however, Rousseau carries the organic conception of society all the way through by making all people participate equally in it. It was this vision of society as a unity of equal and free people that gained great favour during the French Revolution and it was solidarity that would come to operate as the instrument sustaining it.

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105 See also Cooper (n 62) 317; Brunkhorst (n 10) 14.
106 Aristotle, *Politics* (n 84) 27. See also Leontsini (n 64) 23.
107 Barker (n 55) 232, 234, 280-281; Challenger (n 49) 65-66.
108 See Barker (n 55) 279-280; Cooper (n 62) 364-365.
109 Aristotle, *Politics* (n 84) 74.
110 Aristotle, *Politics* (n 84) 77.
111 Aristotle, *Politics* (n 84) 74. See also Barker (n 55) 279-280; Cooper (n 62) 365.
112 Barker (n 55) 279-280.
113 This is not to say that the modern understanding of solidarity has not been informed by concepts other than Aristotelean friendship or Rousseau's social contract. Hauke Brunkhorst, for example, shows how it has also been informed by the Christian notion of 'brotherliness'. See Brunkhorst (n 10) 23-54.

3   ROUSSEAU'S SOCIAL CONTRACT

Rousseau's ideas on society can only be understood by placing them in the political environment of 18th century France before the Revolution. The state was controlled by the *ancien régime*, characterised by the absolute power of the king which arguably reached its height with Louis XIV who supposedly declared: '*L'état c'est moi*' (I am the state).[114] Given the absolute position of the king, it was for him to decide on and articulate the general interest of the nation.[115]

Over the course of the 18th century, and as a result of the Enlightenment, political philosophers came to criticize this state of affairs. They challenged the idea of a single, absolute monarch with the capacity to ensure the state's interests and looked for better options.[116] So too Rousseau. He condemned the idea that the 'sovereign will' could be located in a single person only, and searched for an alternative in which it is exercised by all those making up society under conditions of freedom and equality.[117] In his treatise *Du Contrat Social* (On the Social Contract) he formulated this quest as follows:

> 'To find a form of association that will defend and protect the person and goods of each associate with the full common force, and by means of which each, uniting with all, nevertheless obeys only himself and remains as free as before.'[118]

The key to this, Rousseau argued, is the social contract.

Just like Aristotle, Rousseau takes the view that man is socially driven. Contrary to Aristotle, he believes this is not a character trait that man has possessed from the very start, but one he has developed over the course of time.[119] In the *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (Discourse on the Origin and the Foundations of Inequality Among Men) Rousseau explains how in the 'state of nature' in which man originally found himself, his existence was one of 'self-sufficiency', characterised by the fact that he did not have to rely on others to see to his needs.[120] He imagines 'savage man' as 'satisfying his hunger under an oak tree, quenching his thirst at the first stream, finding his bed at the foot of the same tree that supplied his meal;

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114 Neely (n 8) 2.
115 Jeremy Jennings, 'Rousseau, social contract and the modern Leviathan' in David Boucher and Paul Kelly (eds), *The Social Contract From Hobbes to Rawls* (Routledge 1994) 116.
116 Jennings (n 115) 116-117.
117 Jennings (n 115) 116-117.
118 Jean-Jacques Rousseau, 'Of the Social Contract or Principles of Political Right' in Victor Gourevitch (ed), *The Social Contract and Other Later Political Writings* (CUP 1997) 49-50.
119 Challenger (n 49) 110, 114-115, 119.
120 Challenger (n 49) 113-115. See also David James, 'Rousseau on Dependence and the Formation of Political Society' (2011) 21 European Journal of Philosophy 343, 348.

and thus all his needs are satisfied'.[121] Man thereby knew 'neither good nor evil, and had neither vices nor virtues',[122] as he was 'left by nature to instinct alone'.[123]

Man's wants being extremely basic, not extending 'beyond his physical needs',[124] 'the products of the earth provided him with all the help he needed'.[125] The relation between savage man and his surroundings was therefore one of 'harmony',[126] as a result of which he experienced 'happiness'.[127] Man's 'imagination depicts nothing to him; his heart asks nothing of him', Rousseau reasons.[128] 'His soul, agitated by nothing, is given over to the single feeling of his own present existence'.[129] Man, in other words, possessed 'natural freedom'.[130]

Over time, Rousseau argues, this harmony somehow became distorted,[131] making it necessary for man to 'count on the assistance of his fellow man'.[132] With this he means that men came to rely on one another and had to cooperate in order to adapt to this new reality and support themselves.[133] Gradually, man evolved into a social and moral being with emotions, cravings and the capability to reason.[134] Once having left the state of nature, the tide could no longer be turned and the bond between men became ever more intense.[135]

The shift from the state of nature to the 'civil state' is problematic,[136] however, as the harmonious 'balance' characteristic of the former is not a given in the latter.[137] Rousseau illustrates this problem by distinguishing between 'dependence on *things*' and 'dependence on *men*'.[138] At the very beginning

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121 Jean-Jacques Rousseau, 'Discourse on the Origin and Foundations of Inequality Among Men' in Donald A Cress (ed), *Basic Political Writings of Jean-Jacques Rousseau* (first published 1755, Donald A Cress tr, Hackett Publishing Company 1987) 40.

122 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 52.

123 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 45.

124 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 46.

125 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 60.

126 Émile Durkheim, *Montesquieu and Rousseau: Forerunners of Sociology* Ralph Manheim tr, The University of Michigan Press 1960) 88. See also Challenger (n 49) 113-114.

127 Challenger (n 49) 113-114.

128 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 46.

129 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 46.

130 James (n 120) 345.

131 Durkheim, *Montesquieu and Rousseau* (n 126) 79-81; Challenger (n 49) 115.

132 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 61.

133 Durkheim, *Montesquieu and Rousseau* (n 126) 81; Challenger (n 49) 115.

134 Durkheim, *Montesquieu and Rousseau* (n 126) 80-81; Challenger (n 49) 114-115; James (n 120) 350.

135 Durkheim, *Montesquieu and Rousseau* (n 126) 80-81; Challenger (n 49) 115.

136 Indeed, Rousseau regards his *Discours* as an attempt to discover 'the forgotten and lost routes that must have led man from the *natural state* to the *civil state*'. See Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 80 (emphasis added).

137 Durkheim, *Montesquieu and Rousseau* (n 126) 88. See also Challenger (n 49) 115.

138 Durkheim, *Montesquieu and Rousseau* (n 126) 88 (emphasis added). See also Challenger (n 49) 115; James (n 120) 343, 348.

of his existence, man had to rely solely on things.[139] All his needs could be met through the products and materials provided by nature, whereas man had the capacity to utilise them by himself. Consequently, he had to submit only to the 'laws of nature', to 'natural necessity'.[140] For Rousseau, this goes to show that freedom implies 'restraint'.[141] In the state of nature, man lived in freedom and happiness because nature acted as a 'superior force' controlling him.[142]

In the civil state man can no longer manage on his own but has to rely on others. Yet, the constraint which this dependence exercises on man is not as solid and fixed as that emanating from nature.[143] Consequently, it brings on 'inequality' and 'vice', both of which are 'fatal to happiness and inno-cence'.[144] In so doing, the civil state 'destroyed natural liberty, established forever the law of property and of inequality ... and for the profit of a few ambitious men henceforth subjected the entire human race to labor, servitude and misery'.[145] It is for this reason that Rousseau explicitly rejects Aristotle's perception of slavery and inequality as natural phenomena. Aristotle was certainly right in observing these phenomena, Rousseau reasons, 'but he mistook the effect for the cause'.[146] Inequality is not inherent in nature, but springs from the civil state and dependence on men.

However, man is not sentenced to a life characterised by inequality and a lack of freedom. Instead, the challenge is to mould the civil state such that man comes to stand to society in a similar fashion as he had done to nature at the very beginning of his existence.[147] This can be done, Rousseau argues, by devising a force in the civil state that benefits from an 'impersonality' and solidity corresponding to those that used to characterise the force emanating from nature.[148] And 'since men cannot engender new forces, but only unite and direct those that exist', they have 'to form by aggregation, a sum of forces', 'set them in motion by a single impetus', and 'make them act in concert'.[149] Men have to conclude a *social contract*.

The social contract is 'the act of association',[150] whose substance 'may never have been formally stated' yet is 'everywhere tacitly admitted and recog-

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139 James (n 120) 348.
140 James (n 120) 348.
141 Challenger (n 49) 115-116.
142 Durkheim, *Montesquieu and Rousseau* (n 126) 88. See also Challenger (n 49) 115-116.
143 Durkheim, *Montesquieu and Rousseau* (n 126) 88; Challenger (n 49) 116.
144 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 64.
145 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 70.
146 Rousseau, 'Of the Social Contract' (n 118) 43.
147 Durkheim, *Montesquieu and Rousseau* (n 126) 93; Challenger (n 49) 117.
148 Durkheim, *Montesquieu and Rousseau* (n 126) 94. See also Challenger (n 49) 117-118, 121; James (n 120) 344.
149 Rousseau, 'Of the Social Contract' (n 118) 49.
150 Rousseau, 'Of the Social Contract' (n 118) 51.

nized', whereby 'each ... puts his person and his full power in common under the supreme direction of the general will'.[151] The general will stems from each distinct 'will' of those who have concluded the contract, those who make up society.[152] Yet, it also exceeds them, constituting 'a moral and collective body',[153] to act as the supreme, impersonal force that used to restrain man in the earliest days of his existence.[154]

This supreme force that constitutes the general will makes people support 'the common good'.[155] As such it is bound up closely with reason. 'In instinct alone, man had everything he needed in order to live in the state of nature', Rousseau argues, 'in a cultivated reason, he has only what he needs to live in society'.[156] In other words, just like man relied on *instinct* in the state of nature he has to act upon *reason* in the civil state.[157] The general will achieves precisely this by making man feel 'the voice of duty' to 'consult his reason before listening to his inclinations'.[158] In so doing, the social contract restores the harmony between man and his surroundings as a result of which he again experiences freedom.[159] And whereas in the state of nature this freedom was characterised by the fact that man could get by on his own, in the civil state it shows itself in the fact he possesses 'the freedom to want the good'.[160]

With his social contract, then, Rousseau, as Aristotle had done before him, yet in his own way, portrays society as an 'organic' entity.[161] By concluding the social contract men convert their distinct wills into a 'whole'.[162] And this whole, in turn, does not simply form an 'aggregation' of these various wills,[163] but becomes a collective body with 'a will of its own, "the general

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151 Rousseau, 'Of the Social Contract' (n 118) 50.
152 Durkheim, *Montesquieu and Rousseau* (n 126) 98. See also Challenger (n 49) 123.
153 Rousseau, 'Of the Social Contract' (n 118) 50.
154 Durkheim, *Montesquieu and Rousseau* (n 126) 98-99, 101, 103; Challenger (n 49) 118-119, 123-124.
155 Rousseau, 'Of the Social Contract' (n 118) 57 (stating that 'the general will alone can direct the forces of the State according to the end of its institution, which is the common good'). See also Stanley Hoffmann, 'The Social Contract, or the mirage of the general will' in Christie McDonald and Stanley Hoffmann (eds), *Rousseau and Freedom* (CUP 2010) 118-119, 123-124.
156 Rousseau, 'Discourse on the Origin and Foundations of Inequality' (n 121) 52.
157 Challenger (n 49) 114, 121. See also Durkheim, *Montesquieu and Rousseau* (n 126) 74, 95-96; Hoffmann (n 155) 118-119.
158 Rousseau, 'Of the Social Contract' (n 118) 53. See also Hoffmann (n 155) 118.
159 Durkheim, *Montesquieu and Rousseau* (n 126) 99-101; Challenger (n 49) 121-122, 125.
160 Hoffmann (n 155) 119.
161 Durkheim, *Montesquieu and Rousseau* (n 126) 84-85, 97; George H Sabine and Thomas L Thorson, *A History of Political Theory* (4th edn, The Dryden Press 1973) 537, 541; Challenger (n 49) 108-109, 128-130.
162 Durkheim, *Montesquieu and Rousseau* (n 126) 98. See also Challenger (n 49) 123-124; Hoffmann (n 155) 119-120.
163 Sabine and Thorson (n 161) 539-540. See also Durkheim, *Montesquieu and Rousseau* (n 126) 82-83; Challenger (n 49) 123; Hoffmann (n 155) 120.

will"'.[164] The organic entity so created safeguards the common good. Or as Rousseau puts it:

> 'As soon as this multitude is thus united in one body, one cannot injure one of the members without attacking the body, and still less can one injure the body without the members being affected. Thus duty and interest alike obligate the contracting parties to help one another, and the same men must strive to combine in this two-fold relation all the advantages attendant on it.'[165]

The organic society that results from the social contract is not created at the expense of the individual.[166] To the contrary. It stems from the individual, as he is the one that concludes the contract, and it promotes the individual, given that it provides the social context in which man can experience freedom.

At its core, therefore, and just like Aristotle's civic friendship, the social contract forms an act of *'reciprocity'*.[167] The only reason, Rousseau explains, why man is obliged to act in the interest of the common good is that:

> 'The commitments which bind us to the social body … are mutual, and their nature is such that in fulfilling them one cannot work for others without also working for oneself.'[168]

Yet, contrary to Aristotle, whose civic friendship was not attainable for all those living in the city state, Rousseau opens up this reciprocal act to all.[169] Only when everyone participates in the contract is a free and equal society possible, because only under this circumstance a man who acts upon the general will, which stems from all distinct wills, in the end is acting upon his own 'law of reason'.[170] Consequently, as long as they are 'subjected only to conventions such as these, they obey no one, but only their own will'.[171]

Rousseau's conception of society came to enjoy prominence during the French Revolution as it placed the position of the government into a different perspective.[172] The latter has no 'vested right' in and of itself.[173] There is no sovereignty to government as such. Instead, the people is sovereign. The government

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164 Sabine and Thorson (n 161) 541.
165 Rousseau, 'Of the Social Contract' (n 118) 52.
166 Hoffmann (n 155) 120 (describing Rousseau's 'ideal state' as one in which 'neither the state nor the individual dominates').
167 Hoffmann (n 155) 123-124 (emphasis added).
168 Rousseau, 'Of the Social Contract' (n 118) 61.
169 Brunkhorst (n 10) 2-3, 60-61.
170 Rousseau, 'Of the Social Contract' (n 118) 61. See also Challenger (n 49) 122; Hoffmann (n 155) 118.
171 Rousseau, 'Of the Social Contract' (n 118) 63.
172 Sabine and Thorson (n 161) 544; Challenger (n 49) 127.
173 Sabine and Thorson (n 161) 544.

is only 'the agent which unites and puts it to work in accordance with the directives of the general will'.[174] It only possesses powers attributed to it by the people, 'of which it is merely the minister'.[175]

The idea of a society based on a social contract particularly resonates in the revolutionary slogan: *égalité, liberté, fraternité*. The third notion, fraternity, was used to express each and everyone's attachment to, and responsibility for, the societal association within which equality and freedom could be realised.[176] As such, it can be seen as the egalitarian form of civic friendship, maintaining the latter's cohesive force, but doing away with its unequal nature.[177]

Upon this basis, solidarity started as a 'colloquial version' of fraternity, eventually replacing it over the course of the 19th century.[178] It then gradually branched off into several kinds, one of them being social solidarity. And if it was Comte who introduced this solidarity to the realm of sociology, the one who developed the first fully fledged, and arguably most well-known, account of it is Durkheim.[179]

4   DURKHEIM'S MECHANICAL AND ORGANIC SOLIDARITY

In the 19th century the quest for social cohesion started to attract the interest of academics following the rise of individualism during the age of Enlightenment.[180] Durkheim can be seen as the primary exponent of this development. As Ritzer writes, 'In the less than 100 years between the French Revolution and Durkheim's maturity, France went through three monarchies, two empires, and three republics. These regimes produced fourteen constitutions'.[181] Much of Durkheim's work focuses on defining the interaction between the individual and society and explaining how the latter retains its cohesion in times of modernity.[182] Although primarily descriptive, it had an important normative dimension as well. Durkheim not only wanted to describe the forces behind societal cohesion, but also to develop a theory that

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174 Rousseau, 'Of the Social Contract' (n 118) 82.

175 Rousseau, 'Of the Social Contract' (n 118) 82.

176 Brunkhorst (n 10) 59.

177 Brunkhorst (n 10) 61 (stating that 'The moment of freedom within the old civic association was *preserved*, its unequal distribution was *canceled*').

178 Wildt (n 12) 210. See also Schmelter (n 4) 9; Brunkhorst (n 10) 1, 59.

179 See also Arto Laitinen and Anne Birgitta Pessi, 'Solidarity: Theory and Practice. An Introduction' in Arto Laitinen and Anne Birgitta Pessi (eds), *Solidarity: Theory and Practice* (Lexington Books 2015) 3.

180 Challenger (n 49) 157, 190-191,199; George Ritzer, *Sociological Theory* (McGraw-Hill 2008) 82. See also text to n 23 (ch 1).

181 Ritzer (n 180) 82.

182 Ritzer (n 180) 82-83.

could provide guidance on how to maintain and strengthen it.[183] And in so doing, he was inspired by previous thinkers of cohesion, not least Aristotle and Rousseau.

In line with these two predecessors, Durkheim takes the view that man is socially driven.[184] 'Collective life is not born from individual life', he argues, 'it is, on the contrary the second which is born from the first'.[185] With this he means that society cannot be seen as a 'utilitarian' construct consisting of 'autonomous individuals' who merely seek to further their own interests.[186] Such an understanding of man and his surroundings denies the fact that the individual and society are inherently connected. Society arises out of man's natural drive to establish ties with others; it is rooted in such ties.[187] At the same time, however, it cannot be put on a par with the individuals who make it up.[188] On the contrary, it forms a 'reality *sui generis*' which provides the social and moral setting within which man operates.[189] Central to this vision of society is the notion of 'social fact'. A social fact, according to Durkheim, is:

> '[E]very way of acting, fixed or not, capable of exercising on the individual an external constraint; or again, every way of acting which is general throughout a given society, while at the same time existing in its own right independent of its individual manifestations.'[190]

Social facts, then, are 'the social structures and cultural norms and values that are external to, and coercive of, actors'.[191] Being 'general' in nature, they cannot be equated with the individuals from which they stem.[192] This generality also entails that they should be approached as 'things' whose existence and meaning can be discovered through empirical research.[193] In fact, for Durkheim it is this feature that lends sociology its right of existence as a separate discipline.[194]

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183 Challenger (n 49) 191; Ritzer (n 180) 103-104;
184 Challenger (n 49) 148-149, 177.
185 Émile Durkheim, *The Division of Labor in Society* (George Simpson tr, The Free Press 1933) 279.
186 Challenger (n 49) 145-146, 176-177.
187 Challenger (n 49) 145-147, 176.
188 Challenger (n 49) 145-147, 161-162.
189 Challenger (n 49) 145-147, 149, 161-162, 168-169.
190 Émile Durkheim, *The Rules of Sociological Method* (Sarah A Solovay and John H Mueller trs, The Free Press of Glencoe 1962) 13 (without emphasis).
191 Ritzer (n 180) 75.
192 Ritzer (n 180) 75-76.
193 Challenger (n 49) 140-142, 150-152. See also Ritzer (n 180) 75
194 Challenger (n 49) 145-146, 152; Ritzer (n 180) 76.

One of the most elementary social facts in Durkheim's view is 'morality' as it is inherently connected to society itself.[195] Through his ties with others, man becomes subject to a coercive 'force' that 'naturally arises' from them.[196] This supreme force is crucial for achieving 'happiness' as it prevents men from chasing their own interests and preferences without end.[197] And only by being tempered in this way does man have any chance at happiness, for happiness resides 'in the *golden mean*'.[198] Like Aristotle, then, Durkheim argues that man has no possibility to live happily other than through society.[199] And similar to Rousseau, he believes that it is the supreme force that emanates from society which brings this about by having man act in the interest of a higher purpose shared with fellow members, the '*common good*' so to say.[200]

In his work *De la division du travail social* (The Division of Labor in Society) Durkheim aims to show how in times of modernity society does not necessarily lose its morality, and by consequence its cohesion, but rather changes in nature. In the first chapter of his work he resorts to Aristotle's discussion of friendship in order to illustrate the dynamic nature of societal cohesion:

> 'The Greeks had long ago posed this problem. 'Friendship,' says Aristotle, 'causes much discussion. According to some people, it consists in a certain resemblance, and we like those who resemble us: whence the proverbs "birds of a feather flock together" and "like seeks like," and other such phrases ... Heraclitus, again, maintains that 'contrariety is expedient, and that the best agreement arises from things differing, and that all things come into being in the way of the principle of antagonism'.'[201]

This distinction between 'resemblance' and 'divergence', between 'similarity' and 'difference', lies at the basis of Durkheim's distinction between *mechanical* and *organic* solidarity.[202]

Mechanical solidarity is characteristic of rudimentary, basic societies. The cohesion of such societies results from the 'likeness' of its participants.[203] They resemble each other in that they subscribe to a great extent to the same

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195 Challenger (n 49) 168 (clarifying that later in his career Durkheim even 'defined the nature of morality….as synonymous with the social'). See also Ritzer (n 180) 78.
196 Challenger (n 49) 184, 187.
197 Challenger (n 49) 165-167, 177, 180-181, 183-184, 187.
198 Durkheim, *The Division of Labor in Society* (n 185) 237.
199 Challenger (n 49) 165-167, 177.
200 Challenger (n 49) 165, 168-169, 184, 187 (emphasis added).
201 Durkheim, *The Division of Labor in Society* (n 185) 54-55.
202 Challenger (n 49) 68-69, 162-163.
203 Durkheim, *The Division of Labor in Society* (n 185) 70 (speaking about 'mechanical solidarity through likeness').

'understandings, norms and beliefs'.[204] Durkheim terms this commonality of norms and beliefs *conscience collective* ('collective conscience') and describes it as follows:

> 'The totality of beliefs and sentiments common to average citizens of the same society forms a determinate system which has its own life; one may call it the *collective* or *common conscience* … it has specific characteristics which make it a distinct reality. It is, in effect, independent of the particular conditions in which individuals are placed; they pass on and it remains…. It is, thus, an entirely different thing from particular consciences, although it can be realized only through them.'[205]

The collective conscience, echoing Rousseau's idea of the general will, thus functions as a moral 'force' that results from individuals, yet is external from them, and which makes them act in support of societal cohesion.[206]

Durkheim argues that over time, as societies grow more 'voluminous and denser',[207] a shift occurs from mechanical to organic solidarity.[208] The latter kind of cohesion does not flow from similarity but, instead, from difference.[209] With the rise of modernity and individualism, societies become more intricate and sophisticated. In particular, the division of labour increases due to specialisation of functions and a rise in demand for a multitude of services.[210] In fact, according to Durkheim it 'varies in direct ratio with the volume and density of societies'.[211] Due to this division of labour the flourishing of society and its members hinges on the latter's interconnectedness and the different tasks they carry out.[212] It is for this reason that Durkheim, in furtherance of Aristotle and Rousseau who had already resorted to the organic metaphor, terms this kind of cohesion organic solidarity. Just like the physical body is dependent on its different organs and vice-versa, so too society in its entirety and the individuals of which it is made up are inherently linked.[213] It is foolish, Durkheim argues, to depict the members of sophisticated societies as secluded individuals as each stands to society as 'an organ or part of an organ having its determined function, but which cannot, without risking dissolution, separate itself from the rest of the organism'.[214]

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204 Ritzer (n 180) 79.
205 Durkheim, *The Division of Labor in Society* (n 185) 79-80.
206 Challenger (n 49) 109, 147, 167.
207 Durkheim, *The Division of Labor in Society* (n 185) 266.
208 Challenger (n 49) 163, 170-171.
209 Ritzer (n 180) 83.
210 Challenger (n 49) 170-173.
211 Durkheim, *The Division of Labor in Society* (n 185) 262 (without emphasis).
212 Challenger (n 49) 163.
213 Challenger (n 49) 129, 162-164, 172, 176, 178, 188-189.
214 Durkheim, *The Division of Labor in Society* (n 185) 280.

Although Durkheim considers that mechanical solidarity never becomes entirely irrelevant, as 'social similitudes' always play a role in society to some extent,[215] the equilibrium between the two kinds of solidarity definitely evolves with the passing of time. Yet, this shift towards organic solidarity does not mean that society ceases to be moral or cohesive.[216] On the contrary, mature, sophisticated societies are moral too:

> '[I]t is wrong to oppose a society which comes from a community of beliefs to one which has a co-operative basis, according only to the first a moral character, and seeing in the later only an economic grouping. In reality, co-operation also has its intrinsic morality.'[217]

Although modern societies are more dense and intricate and characterised by the rising importance of the individual, this does not mean that they merely form enterprises based on self-interest in which each is solely out for profit and ruthlessly pursues what is best for himself.[218] 'Every society is a moral society',[219] Durkheim explains, for 'if interest relates men, it is never for more than some few moments'.[220] In fact, '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'.[221] '[A] contract', Durkheim consequently reasons, is 'not sufficient unto itself, but is possible only thanks to a regulation of the contract which is originally social'.[222]

In the case of organic solidarity, then, the interdependence between those making up society becomes moral itself.[223] 'Men cannot live together without acknowledging, and, consequently, making mutual sacrifices, without tying

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215 Durkheim, *The Division of Labor in Society* (n 185) 229. See also Challenger (n 49) 167-168.
216 Challenger (n 49) 163-164.
217 Durkheim, *The Division of Labor in Society* (n 185) 228.
218 Challenger (n 49) 163-164, 175-180.
219 Durkheim, *The Division of Labor in Society* (n 185) 228.
220 Durkheim, *The Division of Labor in Society* (n 185) 203.
221 Durkheim, *The Division of Labor in Society* (n 185) 204.
222 Durkheim, *The Division of Labor in Society* (n 185) 215.
223 As Douglas Challenger explains, in Durkheim's view 'the social situation of interdependency….in highly developed societies included a complementary morality that the individual is not sufficient unto himself'. He also indicates that later in his career Durkheim would change and sharpen his views by arguing that 'the religion of humanity' and 'the cult of the individual' had become 'collective ideals' around which individuals could coalesce: 'the *conscience collective* had taken a new form in advanced societies – it enshrined the sacredness of the person'. See Challenger (n 49) 164, 174-175.

themselves to one another with strong, durable bonds'.[224] In other words, *reciprocity* as such gets bestowed with a moral, normative dimension.[225]

5   PARSONS' NORMATIVE SOLIDARITY

What Parsons teaches is that societal progression is not necessarily accompanied by an emergence of organic solidarity and a decline of the mechanical one, as Durkheim argued. Instead, in any society both kinds of solidarity can be present at the same time, each with its own function in light of societal cohesion. This argument is closely connected to Parsons' general theory about society. Without analysing this theory in great detail, one can say that its characteristic feature is that it approaches society as a 'social system' consisting of 'interaction' between individuals.[226] Similar to Durkheim, Parsons argues that due to this interaction the social system becomes a 'reality *sui generis*' which cannot be reduced to the individuals who belong to it, but instead constitutes an entity in its own right.[227]

Typical of the system is that it is built of four 'structural components': 'values', 'norms', 'collectivities' and 'roles'.[228] Values and norms relate to the system's 'normative order'.[229] Of these two, values rank highest as they legitimate and inform specific norms that serve to maintain cohesion.[230] Collectivities and roles serve to organise the individuals making up the system.[231] Society itself forms one great collectivity which in turn consists of many smaller ones that each pursue certain aims (e.g. companies, religious institutions etc.).[232] Within a collectivity individuals occupy positions in the context of which they are bestowed with a 'status' requiring them to perform certain 'roles'.[233] As a result, '*reciprocal* expectations' exist between individuals of how each of them, in line with their role, will act.[234]

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224 Durkheim, *The Division of Labor in Society* (n 185) 228.
225 Alvin W Gouldner, 'The Norm of Reciprocity: A Preliminary Statement' (1960) 25 American Sociological Review 161, 167, 170; Frank Adloff and Steffen Mau, 'Giving Social Ties, Reciprocity in Modern Society' (2006) 47 European Journal of Sociology 93, 103.
226 Talcott Parsons, *The System of Modern Societies* (Prentice-Hall 1971) 7. See also Heine Andersen, 'Functionalism' in Heine Andersen and Lars B Kaspersen (eds), *Classical and Modern Social Theory* (Blackwell Publishers 2000) 222.
227 Parsons, *The System of Modern Societies* (n 226) 7.
228 Talcott Parsons, *Societies: Evolutionary and Comparative Perspectives* (Prentice Hall 1966) 18.
229 Parsons, *Societies: Evolutionary and Comparative Perspectives* (n 228) 18 (without emphasis).
230 Parsons, *Societies: Evolutionary and Comparative Perspectives* (n 228) 11, 16-18; Parsons, *The System of Modern Societies* (n 226) 7-9, 13-15.
231 Parsons, *Societies: Evolutionary and Comparative Perspectives* (n 228) 18.
232 Parsons, *Societies: Evolutionary and Comparative Perspectives* (n 228) 16-18; Parsons, *The System of Modern Societies* (n 226) 7, 10-12. See also Ritzer (n 180) 245.
233 Parsons, *The System of Modern Societies* (n 226) 7. See also Ritzer (n 180) 243.
234 Parsons, *The System of Modern Societies* (n 226) 7 (emphasis added). See also Andersen (n 226) 222.

Now, when it comes to solidarity Parsons builds on Durkheim's thoughts but also argues that he unnecessarily juxtaposed mechanical and organic solidarity.[235] Both kinds, Parsons thinks, coexist in any social system. The key to this coexistence lies in Durkheim's notion of the *conscience collective*, the totality of beliefs and sentiments shared by the members of a society. Durkheim himself connected mechanical solidarity with the common conscience, arguing that it is through the latter that mechanical solidarity is brought about, yet he did not relate it clearly to organic solidarity. Parsons, however, argues that the common conscience consists of the values characteristic of society and that mechanical and organic solidarity serve to 'institutionalise' these values in different segments of the system.[236] Mechanical solidarity relates to governmental organisation and translates a society's values into norms that have to be followed by individuals acting in roles with a functional significance for this organisation.[237] Organic solidarity does the same in relation to a society's economy.[238]

For Parsons, then, solidarity – mechanical and organic – ultimately concerns an individual's obligation, one in furtherance of Durkheim he terms 'moral', to act for the sake of the 'integrity' of the collective.[239] He illustrates its significance by using the dichotomy between 'self'- and 'collectivity-orientation'.[240] When an individual, performing his role in the social system, is confronted with several options, but the choice for either one of them is not perceived as bearing on the integrity of the system, he can be said to be acting in light of self-orientation.[241] Yet, when the system's integrity is seen as being at risk, and there is an obligation to support it, he faces the choice between self- and collectivity-orientation. Parsons explains that:

> 'It is only when an action system involves *solidarity* in this sense that its members define certain actions as required in the interest of the integrity of the system itself, and others as incompatible with that integrity.'[242]

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235 Talcott Parsons, 'Durkheim on Organic Solidarity' in Leon H Mayhew (ed), *Talcott Parsons on Institutions and Social Evolution* (The University of Chicago Press 1982) 208.

236 Parsons, 'Durkheim on Organic Solidarity' (n 235) 206-207. Parsons therefore argues that both kinds of solidarity flow from a more basic kind of solidarity, 'diffuse solidarity', which is present in a society prior to the development of specialized segments relating to areas such as politics and the economy. See Parsons, 'Durkheim on Organic Solidarity' (n 235) 208-209.

237 Parsons, 'Durkheim on Organic Solidarity' (n 235) 206-208.

238 Parsons, 'Durkheim on Organic Solidarity' (n 235) 206-208.

239 Talcott Parsons, *The Social System* (Routledge 1991) 97-98. Note that the next chapter will present an account of solidarity between the member states that also encompasses obligations. They concern political obligations and do not necessarily have a 'moral nature'. See text to n 64 and n 98 (ch 2).

240 Parsons, *The Social System* (n 239) 97. See also Andersen (n 226) 223-224.

241 Parsons, *The Social System* (n 239) 97.

242 Parsons, *The Social System* (n 239) 97.

In these situations the individual *has* to act in the interest of the collective because he is obligated to do so on the basis of his role in it.[243] When he complies with his 'solidarity obligations',[244] he is 'taking *responsibility* as a member of the collectivity'.[245] If not, he disregards it.

6   CONCLUSION

This chapter has served to explore the concept of solidarity. Even though at first solidarity was a purely legal concept, rooted in the Roman law of obliga-tions, the chapter has primarily examined its conceptual existence outside the law as knowledge thereof is crucial to understand the solidarity that exists between the member states of the Union. And outside the law, the concept of solidarity is much younger. It stems from the French Revolution where it started off as an alternative to fraternity, appealing to the ideal of a cohesive society characterised by freedom and equality. Gradually, it then developed into a multi-faceted concept. Its core, however, is inalienable and consists of three features. First, solidarity mediates between the individual and the group. Second, as a result of this mediation, unity is created. Third, solidarity carries with it positive obligations as it requires individuals to act in support of, and in conformity with, the group.

Beyond this unalienable core, however, solidarity can be best understood by looking at the context in which it features. This chapter has done so by distinguishing between three solidary archetypes: social solidarity, welfare solidarity and oppositional solidarity. It has focused on social solidarity and has shown that even though the concept is relatively modern, it can only be fully understood by acknowledging its roots in the ideas of more ancient thinkers like Aristotle and Rousseau. Indeed, one can discern a fascinating evolution in the thinking about this cohesion, starting with Aristotle's friend-ship and culminating in Parson's theory of solidarity as a normative obligation. Characteristic of this evolution is the search for a mechanism that ties the individual to the collective, yet without sacrificing the former for the sake of the latter; the search is for a mechanism *mediating* between the collective and the individual.

For Aristotle this mechanism is *philia*, friendship. It is friendship that ties people to one another, and eventually to the *polis*. Moreover, by portraying the city state as an organic entity that arises from, and is held together by, its people performing different functions, Aristotle's friendship becomes a truly mediating mechanism. The city state can only exist through the individuals

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243 Parsons, *The Social System* (n 239) 98.
244 Parsons, *The Social System* (n 239) 98.
245 Parsons, *The Social System* (n 239) 99 (emphasis added).

as its constituent parts. But the individual equally needs the city state, not only to live, but also to live well.

What friendship is to Aristotle, the social contract is to Rousseau. By concluding the contract men undertake to respect the general will. This general will, in turn, does not simply aggregate men's distinct wills, but becomes a superior force with its own existence, an entity *sui generis*, which makes man act upon reason by aiming for the common good. Rousseau too then, in his own way, resorts to the organic metaphor to reconcile the individual with the collective. For the general will to exist individuals have to merge their good wills into one whole. At the same time, it is through the general will that the individual can experience freedom. Given that the general will stems from a social contract in which all those making up society participate, a man guided by the general will is in fact guided by his own reason.

Durkheim's dual account of solidarity builds upon the ideas of Aristotle and Rousseau in several ways. His mechanical solidarity is much inspired by Rousseau's idea of the general will. Similar to this will, Durkheim depicts the *conscience collective*, the totality of common societal beliefs and sentiments, as an entity *sui generis* which stems from individuals but also rises above them. The mechanical solidarity that results from the common conscience forms a bridge between the individual and the collective by having man act in support of societal cohesion. Durkheim's organic solidarity, on the other hand, is much influenced by Aristotle's organic account of the *polis* as arising from people who differ in kind. Indeed, it is the interdependence resulting from the division of labour which lies at the basis of societal cohesion.

Parsons completes the exercise by showing how both of Durkheim's mediating mechanisms, mechanical and organic solidarity, can co-exist at the same time in his 'social system'. Solidarity in his view occurs when one is obliged to act for the sake of the integrity of the collective. Mechanical solidarity and organic solidarity each contribute differently to this obligation as they serve to translate common values into norms that have to be followed by individuals in roles in relation to different segments of the social system. Mechanical solidarity performs this function in the area of government and politics, organic solidarity in the economy.

Aristotle, Rousseau, Durkheim and Parsons not only find each other in their search for a mechanism mediating between the individual and the collective. In this search each of them also resorts to two concepts that are closely related to these mechanisms themselves: reciprocity and the common good.

For Aristotle reciprocity belongs to the core of friendship as the latter consists of goodwill between reciprocating parties. He therefore reaches the conclusion that reciprocity preserves cities; that it sustains cohesion. Rousseau even bestows reciprocity with a normative force. Man is bound by the social contract because its commitments are mutual, as a result of which he not only acts for others when he acts upon the general will, but also for himself. Obliga-

tion and interest both accompany the social contract. Similar to Rousseau, Durkheim postulates reciprocity as a social norm. Although he does not say so explicitly, by reasoning that the interdependence created through the division of labour has an intrinsic morality, he lifts the reciprocal inter-dependence to the level of a social norm. Parsons too, resorts to reciprocity in his system theory. Given their roles in the social system, reciprocal expecta-tions exist between individuals of how each of them, in line with their role, will act. To breach the obligation to act in accordance with one's role, is to violate the reciprocal solidarity underlying the system.

As far as the common good is concerned, Aristotle links it closely to civic friendship. Indeed, it is through the city state based on friendship that people can live a virtuous life and part of such a life is that they support the common good. Rousseau similarly attributes considerable importance to the common good. By 'signing' the social contract man agrees to act upon the general will, and by acting upon the general will man is not following his own inclinations but is supporting the common good. What the social contract achieves in Rousseau's theory, mechanical and organic solidarity achieve in Durkheim's. Both kinds of solidarity tie the individual to society. And for Durkheim society is bound up with morality as it makes us act not for the sake of self-interest but in the interest of a higher end, the common good. Finally, Parsons links the common good to solidarity by placing the latter in light of the dichotomy between self- and collective-orientation. When an actor defines actions as being required in the interest of the integrity of the social system, the common good, he is confronted with a solidary obligation.

Let us now see how this exploration of solidarity may serve to conceptualise the ties between the member states of the Union and thereby enrich our understanding of its legal set-up and the transformation it experienced during the crisis.