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Solidarity and Law

Odd Bedfellows?

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In Shakespeare's *The Tempest*,[1] the King of Naples' jester Trinculo, shipwrecked on a strange island, shelters from the eponymous storm under the cloak of Caliban, a malformed son of a late witch. Noticing Caliban's terrible odour, Trinculo says 'misery acquaints a man with strange bed-fellows'. Similarly, solidarity is an apparently odd bedfellow of the law. This oddity is my starting point in this chapter, and I aim to move beyond it.

Solidarity is shrouded in rhetoric in current political and legal discourses. This hampers critical reflection on how, when and why law interacts with solidaristic practices, fuelling increasing mistrust of the many merely persuasive definitions of solidarity and potentially numbing us to the motivational capital conveyed in the notion. Taking its cue from political and legal theory, this chapter argues that we ought not confuse the legal concept of solidarity with solidarity as a social practice. We must appreciate the ways in which they differ in order to conceptualize better how they are related. Such appreciation lays the ground for establishing the circumstances in which this relation is morally justifiable. More specifically, I explore solidarity as a legal concept as distinct from solidarity as a social practice, aiming to show their divergence and interplay. We can better understand the law by reflecting on how it interacts with established and emerging solidaristic practices.

I argue that solidarity and law do not blend well, and stress that solidarity is nonetheless ubiquitous in law. Historically important understandings of solidarity in law have encompassed notions as distinct as the traditional private law understanding of *obligatio in solidum*, the general idea of solidarity as a cohesive force in society, and the conception of social solidarity as generating

[1] William Shakespeare, *The Tempest*, edited by Martin Butler (London: Penguin Classics, 2015), Act 2, Scene 2, lines 14–16.

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duties of behalf of the state. I then show that, despite its ubiquity, solidarity as a legal concept is under-theorized in legal science. Section 1.4 sketches a phenomenological typology of interactions between solidaristic social practice and the law: I list several types of interaction and object to one. Law may not command us to act in solidaristic ways but it may interrupt social practices of solidarity, substitute these or compensate for their failing, recognize and integrate such practices and – albeit indirectly – foster solidarity by its status-generative function.

1.1 ODD BEDFELLOWS?

Law and solidarity are, prima facie, odd bedfellows for several reasons: they differ in definitional clarity, scope, and guiding values; their conceptual pedigrees are in tension; and they involve different forms of obligations.

Firstly, common definitions of law and solidarity differ in levels of clarity. The meaning of law is more certain than the meaning of solidarity. I am not claiming that we know the *contents* of law – lawyers incessantly debate the precise meaning and limits of application of any given law – nor is there an uncontroversial theory of the *nature* of law – legal theorists make a living from this debate. However, there is consensus that 'law' refers to a kind of social practice self-described in this way, that evolved as a system of code around 3000 BC. We agree that it involves some level (and combination) of systematicity and norms of the interpretation of rules, status ascription and imposition of punishment. It is, thus, distinguishable (not separate) from other social practices like art, sport, religion, etiquette, etc. Solidarity enjoys no equivalent consensus. Solidarity can describe radically different objects: emotions, values, virtues, beliefs, social practices, obligations, attributes of certain social groups, attributes of all human societies and, of course, constitutional principles and other legal paraphernalia. Durkheim-related scholarship frequently considers whether the concept of solidarity is descriptive or prescriptive. This is telling: the very fact that there is no agreement on the central ontological matter – whether solidarity is a *social kind* determined by conventions, norms, behaviours, expectations, background circumstances, etc. – makes it different from the social kind called law.[2]

Secondly, law and solidarity have different scopes. Solidarity concerns 'life in associations and within social relationships that extend beyond relations

[2] To make my allegiances clear from the start I assume, in line with Rahel Jaeggi and Andrea Sangiovanni, for example, that solidarity is a social practice.

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among intimates'.[3] Solidarity is expressed at a social meso-level and typically regards associative obligations.[4] Law is typically more all-encompassing, regulating levels stretching from the micro- (individual) to the macro- (state), including the meso-level of social interaction. That solidarity and law differ in scope is also clear for those who concede that solidarity in law, at least in its modern version that calls on the state, might stretch beyond the meso-level.

Thirdly, the practices of solidarity and law aspire to different normative values. Insofar as it aspires to realize a guiding value, law aims for justice. Solidarity goes beyond the requirements of justice: merely doing what justice requires means that you are not unjust, but it does not make you solidaristic. There are moral duties of justice, for example, those due to all human beings, but they do not characterize solidaristic action.

Fourthly, the conceptual pedigrees of law and solidarity are at least somewhat in tension. Consider the Christian tradition, a central historical source of reflection on solidarity. Here, solidarity has a relatively long history: solidarity to aid the suffering depends on identification with fellow human beings with whom we share the divinely created human condition, to whom we have obligations of aid grounded on the idea that humans are created in *imago dei*. Also, the obligation to 'love your enemy' expresses the Christian obligation to see beyond the differences between fellow humans. This tradition – to which the catholic social doctrine is central[5] – greatly emphasizes the Augustinian love of God which foregrounds the need to act in solidarity. Sometimes referred to as humanitarian solidarity,[6] this is often expressed as an essential recognition of another's dignity and personhood.[7] In this tradition, solidarity often approaches, or overlaps with, *caritas*, in opposition (again with Augustine) to *cupiditas*. In the Christian tradition, solidarity is strongly

[3] A. Sangiovanni, *Solidarity: Nature, Grounds, and Value: Andrea Sangiovanni in Dialogue* (Manchester: Manchester University Press, 2023), p. 4.

[4] Dworkin's example of associative obligations are 'the special responsibilities social practice attaches to membership in some biological or social group, like the responsibilities of family or friends or neighbors', R. Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), p. 196.

[5] S. Stjernø, *Solidarity in Europe: The History of an Idea* (Cambridge: Cambridge University Press, 2005).

[6] R. Ter Meulen, 'Solidarity, Justice, and Recognition of the Other' (2016) 37 *Theoretical Medicine and Bioethics* 517–529, at 527. On this topic, D. Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley: University of California Press), 2011.

[7] A. Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: Polity Press, 1995); P. Cobben, *The Paradigm of Recognition: Freedom as Over-coming the Fear of Death* (Boston, MA: Brill, 2012); S. B. Garlington, M. E. Collins and M. R. Durham Bossaller, 'An Ethical Foundation for Social Good: Virtue, Theory and Solidarity' (2020) 30 *Research on Social Work Practice* 196–204, at 199.

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connected, perhaps even originating, with love. Solidarity would also be necessary for compassion to work towards justice. Expressed through a theological framework, the claim is that solidarity would be 'love with justice' rather than 'love with charity'.[8] Solidarity here exceeds mere charity: it is a form of love. Therefore, solidarity in this tradition differs significantly from law: as shown masterfully by Remo Bodei who takes his cue from Arendt,[9] love is the fundamental opposite of law in the Augustinian tradition. Law is constriction, constraint and limitation; love its opposite. Law is marked by caducity, love is eternal. Primarily, love does not give anyone *his due*: it does not respect proportions. On the contrary, one ought to turn the other cheek. To speak with Bodei, 'love polishes law's harshness' and 'breaks through the bronze armor of the law'.[10] Having opposing historical traditions is no conclusive argument, but it contributes to the picture of the two concepts as odd bedfellows.

The fifth reason is that law and solidarity are hard to conjoin. The concepts rely on different forms of obligations, and law may not command solidaristic action. Superficially, law and solidarity both concern *actions*, at least if one takes the view that solidarity is about a particular type of practice and not, say, a mere emotion or general human virtue.[11] But it is plain that law, as Christian Thomasius (who coined the terms of this distinction) puts it, concerns 'external obligations' while solidarity may also concern 'internal obligations', that is, obligations *in foro interno*, in one's conscience, relating to *decorum* or ethical social relations. The law regulates only what modern natural lawyers claim belongs to the domain of justice (here in opposition to the domain of *decorum*, not injustice), namely the 'external actions' of the body.[12] Solidarity, by contrast, raises moral requirements of 'virtue'. We can concede that the moral requirements of solidarity are not identical to the moral requirements for human beings *qua* human beings (justice in the sense employed by moral theory, i.e. in opposition to injustice). In fact, 'humanitarian aid should be offered to human beings who suffer, no matter who they are

[8] O. Ortega, 'The Gospel of Solidarity' (1994) 46 *The Ecumenical Review* 135–141, at 135.

[9] H. Arendt, *Love and Saint Augustine* (first published 1929) (Chicago: University of Chicago Press, 2014).

[10] R. Bodei, *Ordo Amoris. Conflitti terreni e felicità celeste* (first published 1992) (Bologna: Mulino, 2015), p. 67.

[11] On the other hand, see A. Zijderveld, 'The Legal and Moral Dimensions of Solidarity' (2006) 3 *Netherlands Journal of Legal Philosophy* 306–330, at 316.

[12] This pedigree of the distinction between virtue and justice was first suggested by C. Johann, *Meister in Lehrbuch des Naturrechts* (Frankfurt: Akademische Buchhandlung, 1809), who claims that distinguishing internal and external obligation allows one to distinguish natural law from positive law.

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and what they are doing, whereas solidarity of solidaristic movements is expressed with respect to people ... with whom we share [political] goals.'[13] It remains undisputed that solidarity requires a form of virtuous action, namely fulfilling the moral obligation we might have as a member of some collective engaging in solidaristic action who view that collective's (or its cause's) flourishing as intrinsically linked to our own. This is, in essence, why it is ethically problematic, say, to free ride on your colleagues' collective efforts to strike against a salary cut. This places solidaristic practice squarely within the realm of *decorum* or reign of virtue.

For these reasons, law and solidarity are odd bedfellows. Surprisingly, the literature on solidarity is peppered with (often implicit) suggestions that solidarity is intimately connected to justice, such as Jürgen Habermas' claim that solidarity is *das Andere der Gerechtigkeit*, the other of justice. Surprisingly, solidarity is also a legal concept, present all over the law, even etymologically stemming from law. Yet, as a legal concept, it is extremely under-theorized. There is no reason to assume that extra-legal conceptions of solidarity would dictate the semantic boundaries of solidarity in legal sources. So, what does it mean in the law?

1.2 SOLIDARITY IN LAW

Solidarity pervades law. Consider family law. Relatives are normally expected to support each other and, in many legal systems, maintenance obligations are considered one of the main ways to materialize solidarity between ex-spouses.[14] In private law, the term commonly gives all debtors the same level of responsibility to fulfil a specific obligation. Solidarity can require that a party abstains from exercising some rights, or it can lead to certain elements of the contract being declared invalid (think of an unfair limitation of liability). It can require a judge to interpret a contract in a way that avoids a harsher outcome for the burdened party. Sometimes, it may require a party to perform an obligation that it had not expressly committed to. As known, solidarity appears in many contexts, for example, EU law, international law and beyond.

The use of solidarity as joint liability stems from Roman law where *obligatio in solidum*[15] is opposed to *obligatio pro parte*: solidarity is to give it

[13] R. Jaeggi, 'Solidarity and Indifference', in: R. Ter Meulen, W. Arts and R. Muffels (eds.), *Solidarity in Health and Social Care in Europe*, Philosophy and Medicine (Dordrecht: Springer, 2001), vol. 69, p. 291.

[14] R. Lenoir, 'La solidarité familiale: une question morale?', in S. Paugam (ed.), *Repenser La Solidarité* (Paris: Presses Universitaires de France, 2011), pp. 169–186.

[15] The typical case of cumulative joint liability was in Roman law *obligatio ex delicto*, sanctioned by private criminal actions. The culprit, having injured several people, albeit through the same

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all back.[16] From the Indo-European root *sel* (i.e. that which is solid, stable and resistant), *solidum* stems from *soldo*, a fourth century BC gold coin, which 'explains why it is possible to find the root of the term solidarity in legal contexts linked to levying and payment'[17] and why it later appears in terms like 'soldier' (who would, during the middle ages, perceive *solidum* or money in exchange for military services). The Roman law idea still pervades *solidarité* in the *Encyclopédie* in 1765, and the *Code Napoléon* of 1804. In the late nineteenth century, the joint liability understanding was still widespread. Even though the modern notion of solidarity as mutual aid, assistance, cooperation, etc., had been transliterated in German already in the mid-nineteenth century, the lawyers took little notice (e.g. in the Rhineland, where the Code Napoléon was still in force until 1899, *Solidarität* concerned whether the old French penal norm, according to which accomplices were jointly liable for fines or damages, had been abolished by Prussian civil law).[18]

The solidarity we now discuss is a different, modern, invention.[19] As Sangiovanni argues, 'the language of solidarity emerges as a response to growing anxiety regarding the expansion of commercial society, large-scale industry, and the perceived collapse of traditional communities'.[20] When the normative ideal of the social contract gave way to a non-ideal 'contract society – to use Auguste Comte's, Benjamin Constant's and Herbert Spencer's terminology – the need to foster social cohesion grew, and talk of solidarity gained its modern guises. During the eighteenth century, 'gradually, the word came to be used in a broader meaning of emotionally and normatively motivated readiness for mutual support'.[21]

action, was required to pay the *poena* to each of them. See P. Bonfante, *Obbligazioni comunione e possesso, Scritti giuridici vari* (Turin: Unione Tipografico-Editrice, 1926), p. 220; E. Betti, *La struttura dell'obbligazione romana e il problema della sua genesi* (Milan: Giuffrè, 1955).

[16] E. Albertario, *Corso di diritto romano, Le obbligazioni solidali* (Milan: Giuffrè, 1948), p. 11; lsnardi Parenti, *In solidum obligari, Contributo allo studio della solidarietà da atto lecito* (Naples: ESI, 2012).

[17] F. Polacchini, *Doveri costituzionali e principio di solidarietà* (Bologna: Bononia University Press, 2016), p. 8.

[18] RG, judgment of 30 September 1887, Az. II 126/87.

[19] See H. Brunkhorst and J. Flynn, *Solidarity: From Civic Friendship to Global Legal Community* (Cambridge, MA: MIT Press, 2005).

[20] A. Sangiovanni, 'How Does One Choose among Theories of Solidarity?', *Paper Presented at the Workshop 'Solidarity: We Know It When We See It'*, Gothenburg, Sweden, 25 March 2022, p. 2.

[21] A. Laitinen and A. B. Pessi, 'Introduction', in A. Laitinenn and A. B. Pessi (eds.), *Solidarity: Theory and Practice* (Lanham: Lexington Books, 2015), p. XX.

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By the end of the nineteenth century, solidarity was largely coextensive with the (much evanescent) value closing Robespierre's triad: Fraternity.[22] But not much is modern about this. This understanding of solidarity as grounded in membership (of a nation, guild, corporation, etc.) casts solidarity as an agent of community cohesion, the social equivalent of friendship in Aristotle or Cicero,[23] the sentimental glue without which society may not 'hold together'.[24] This idea of solidarity-as-fraternity is still pervasive in Domat's *Lois civiles*,[25] and is common in many other contexts, even beyond law.[26] Its legitimizing force is not that it protects the members, but that it protects the corporations, the societies, the organized groups. Legally speaking, this solidarity is still that of the 'brotherhood' corporations.[27]

A modern conception was on its rise, even in law: 'Between the mid-19th century and the start of the 20th century, another understanding of solidarity [in law] was gaining ground. From a primarily community-organizing principle, a new social, that is protective, meaning started to emerge.'[28] Its legitimizing force is not simply that this new solidarity would protect certain individuals from particular harms. The law has always cared for protection of vulnerable persons: protectiveness is basic in Roman legal concepts such *pietas* and *clementia*. What is new is the allocation of responsibility for this protection. Responsibility does not fall on some unprecise entity, some private

[22] M. Charlot, 'Solidarité', in Ferdinand-Camille Dreyfys, Marcellin Berthelot and Hartwig Derenbourg (eds.), *La Grande encyclopédie* (Paris: Lamirault, 1885–1902), v. 30, p. 222; M.-C. Blais, *La solidarité, histoire d'une idée* (Paris: Gallimard, 2007).

[23] Aristotle, *Nicomachean Ethics* (c.340 BCE) Book IX-4; Cicero, *Laelius de Amicitia* (44 BCE).

[24] It is unnecessary to betray this etymology to explain how solidarity gave rise to the idea of social coercion: besides the golden coin *soldum*, 'the etymological references of the word "solidarity" leads to the latin *solere* (to be stable and whole), *solidum* (solidity, wholeness) [... but also] *sodalites* (friendship)': F. Giuffré, *La solidarietà nell'ordinamento costituzionale* (Milan: Giuffré, 2002), p. 10. Author's translation.

[25] See G. Alpa, 'Solidarietà', in Guido Alpa and Maurizio de Acutis e Paolo Zatti (eds.) *Casi e pareri di diritto privato: La nuova giurisprudenza civile commentate* (Padova: CEDAM, 1995), p. 368.

[26] We find this view in IR theory: solidarity in the English School is presented as a presupposition for a well-functioning collective enforcement of international norms. See e.g. H. Bull, 'The Grotian Conception of International Society', in H. Butterfield and M. Wight (eds.) *Diplomatic Investigations* (Cambridge, MA: Harvard University Press, 1968), in which he opposes a solidarist conception of international relations in favour of a pluralist one.

[27] See the use of *solidarietà* in the Italian civil code of 1942 that explains, *inter alia*, that the ban of abuse of property with *animus nocendi* (*atto emulativo*) is grounded on 'solidarity between private parties'; or art. 1, 2° co. of the Italian Law n. 563/1926, a much-quoted source of the fascist corporativist regime, on the obligation of corporations that, much like the Ancient guilds, had to protect the interests of its members *qua* members.

[28] R. Cippitani, *La solidarietà giuridica tra pubblico e privato* (Perugia: Università degli studi di Perugia, 2010), p. 22. Author's translation.

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law entity,[29] or to the private parties to contract as they wish.[30] It falls on a particular type of collective entity, namely, the state, called to fulfil the protection needs of individuals: the late nineteenth century idea of 'social solidarity' in its *legal* sense is to make the state responsible for protection of vulnerable individuals. This 'solidarity of the moderns'[31] – to use Peces-Barba's variation on a Bobbian theme – is, legally, that which allocates the 'obligatio' on the shoulders of the State (or some of its specific agencies).

This requires a disclaimer. A number of instances in the history of law appear at odds with this reading: familial solidarity imposes duties on family members, sometimes in nascent welfarist regimes. For example, traditional common law imposed no duty of maintenance owed by a husband to his wife or children;[32] only with the 1844 revision of the Poor Laws would it become possible for an unmarried woman to request a form of familiar solidarity from the father of her children, and married women would have to wait until 1878 for similar rights.[33] It is not that traditional forms of membership-based solidarity suddenly disappear from law, but that the birth of the 'État-providence' makes the State newly subject to obligations of social solidarity. One might venture that the innovation of the later twentieth century and early twenty-first century is to create supranational obligation-bearers: be it in the EU[34] or in

[29] Think of Roman Law's *collegia funeraticia*, a private law association that provides assistance with sepulture, the medieval corporations, the late medieval and renaissance 'ospedali' and *companie del divin amore*, the confraternities, the 'misericordie', the 'schools' like San Rocco in Venice, Monti di Pietà, etcetera.

[30] Cf. Alpa, 'Solidarietà', 368, who holds that the lack of negotiation and of correspectivity or reciprocity makes it the case that solidarity in law cannot be explained with reference to the form of the contract and that it is therefore better understood as 'quasi-contractual'. Also note the centrality of the notion of the 'quasi-contract', for example, in Léon Bourgeois where 'solidaristic measures' are based on an idea of society as legitimized by a tacit consent-based quasi-contract, in opposition to the modern natural law tradition of grounding public power on hypothetical individual consent.

[31] Gregorio Peces-Barba Martinez, Eusebio Fernández García, Francisco Javier Ansuátegui Roig and José Manuel Rodríguez Uribes, *Historia de los Derechos fundamentales, vol. II Siglio XVII El contexto social y cultural de los derechos. Los rasgos generales de evolución* (Madrid: Editorial Dykinson, 2001), p. 211.

[32] See J. Eekelaar, *Family Law and Social Policy* (London: Weindefeld and Nicolson, 1978), p. 256.

[33] See V. M. Finer and O. R. McGregor, 'The History of the Obligation to Maintain' in the Finer Committee Report of the Committee on One-Parent Families Cmnd 5629, 1974, vol 2, Appendix 5, p. 100 and following, also p. 85, quoted from C. Vigneau, 'Les rapports entre solidarité familiale et solidarité sociale en droit comparé' (1999) 51 *Revue internationale de droit comparé* 51–81, at 55.

[34] See e.g. F. Croci, *Solidarietà tra stati membri dell'Unione Europea e governance economic europea* (Turin: Giappichelli, 2020); D. Schiek, 'Solidarity in the Case Law of the European Court of Justice: Opportunities Missed?', in H. Krunke, H. Petersen and I. Manners (eds.),

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international law.[35] Nonetheless, it is clear enough that solidarity in law, stretched beyond its narrow contractual law meaning, and adopting its modern association with social policy, social insurance, etc., is typically cast as a burden on the state, which is called to fulfil certain duties.

Remember also that these were years when the state strove to gain control of systems – traditionally left to private law groups – which care for the *beneficientia* or *caritas*. In these years the state also came to perceive those in need of 'public assistance' as a public security problem. As Foucault made his name from showing, the state comes into the realm of social policy with the aim to enhance 'ordre publique'.[36] The French movement of *solidarisme* may be said to instantiate this age quite well.[37]

The area of law highlighted by this novel form of legal solidarity is not the private law governing Ancient Roman solidarity, nor some general constitutional afflatus or public law in general, as in the traditional view of solidarity as a form of social friendship, but the newly emerging area of administrative law.[38] Administrative law was called to 'elaborate the instruments for the construction of the first systems of social insurance and other forms of protection'.[39] Recall that French administrative law purportedly stems from the 1872 *Blanco* case, a dispute on jurisdiction between private and public law. The irony of administrative law being called to realize this novel form of solidarity, so dependent on the state as the keyholder to unlock social solidarity, is that, as Denis Baranger says, 'administrative law has done extremely well without a concept of the state' and 'it was not born at the core, but in the penumbra of both private law and, to some extent, constitutional law'.[40]

Transnational Solidarity: Concept, Challenges and Opportunities (Cambridge: Cambridge University Press, 2020).

[35] See Rüdiger Wolfrum, 'Solidarity amongst States: An Emerging Structural Principle of International Law', in Pierre-Marie Dupuy, Bardo Fassbender, Malcolm N. Shaw and Karl-Peter Sommermann (eds.), *Common Calues in International Law: Essays in Honour of Christian Tomuschat* (Kehl: N. P. Engel, 2006), pp. 1087–1100,, p. 1087 et seq.

[36] M. Foucault, *Histoire de la Folie dans l'âge Classique* (Paris: Gallimard, 1972).

[37] See the (critical) outline of George Gurvitch's classic *L'idée du droit social. Notion et système du droit social. Histoire doctrinale depuis le XVIIe siècle jusqu'à la fin du XIXe siècle* (Paris: Libr. du Recueil Sirey, 1932).

[38] The term 'social law' is older and was used by, for example, Georg Beseler and Otto Gierke, but indeed it was not clear whether this *corpus* of norms was to be considered private or public. We had to wait for Hermann Roesler to talk about 'administrative social law' and for Heinrich Rosin to hold a chair in it at the University of Freiburg im Breisgau.

[39] Cippitani, *La solidarietà giuridica tra pubblico e privato*, p. 3. Author's translation.

[40] D. Baranger, 'Uncovering the Foundations of Administrative Law?', in *Foundations of Public Law* (2016) *Jus Politicum* online, available at: www.juspoliticum.com/articles/Uncovering-the-Foundations-of-Administrative-Law (last accessed 15 September 2024). See also S. Cassese, *Il diritto amministrativo: Storia e prospettive* (Paris: Giuffrè, 2010).

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The 'modern' meaning of 'solidarity' originates neither with nationalist writers, nor in the social doctrine of the Catholic Church, but in the philosophical appropriation of a legal term. An early user of this 'modern' term was the proto-socialist Pierre Leroux, who declared in 1840 that 'I am the first who have borrowed the term solidarity from the jurists to be employed in philosophy … I wanted to substitute Christian charity with human solidarity.'[41]

Yet legal science has not reflected upon solidarity as much as other basic legal notions.

1.3 AN UNDER-THEORIZED LEGAL CONCEPT

Notwithstanding its broad use in law, legal scientific theorization and analysis of solidarity as a legal concept is under-developed, even in legal scientific literature that deals with areas of law where it is commonly employed.

In legal theory – contrarily to social, moral and political theory – solidarity is hardly ever analysed. Titles by famous legal theorists that mention solidarity are often about something else.[42] Further back in history, some French-speaking legal theoreticians have gone as far as to claim that solidarity is the 'foundation of society'[43] and the source of legal norms.[44] But such bold claims have had few followers.

Anglophone legal dictionaries typically include no entry for solidarity. This includes Law's *A Dictionary of Law* (10th ed.) and Mann's *Australian Law Dictionary* (3rd ed). A search for 'social solidarity' in the Oxford University Press reference tool gives entries in dictionaries of sociology, not law. Not even the *Deutsches Rechtswörterbuch* contains an entry. Doebbler's *Dictionary of Public International Law* and Alland and Rials' *Dictionnaire de culture juridique* are exceptions, entries mostly deal with contractual matters, as is the

[41] P. Leroux, *La grève de Samarez. Poème philosophique* (Paris: Dentu, 1863), vol. 2. See also P. Leroux, *De l'Humanité, de son principe et de son avenir; où se trouve exposée la vraie définition de la religion* (Paris: Perrotin, 1840). Author's tranlation; quote taken from N. Karagiannis, 'Multiple Solidarities. Autonomy and Resistance', originally in N. Karagiannis and P. Wagner (eds.), *Varieties of World-Making: Beyond Globalization* (Liverpool: Liverpool University Press, 2007), reprinted in Swedish translation as 'Mångfaldig solidaritet. Autononomi och motstånd' (2018), 58–59 *Fronesis*, special issue 'Solidaritet' M. Wennerhag and J. Lindgren (eds.), at 109.

[42] For example, H. L. A. Hart's (1967) 'Social Solidarity and the Enforcement of Morality' 35 *University of Chicago Law Review* 1, is about using law to enforce moral beliefs.

[43] F. Gény, *Science et technique en droit privé positif* (Paris: Recueil Sirey, 1915), vol. II, p. 262.

[44] Léon Duguit, *Traité de droit constitutionnel*, 3rd ed. vol. I *La règle du droit – Le problème de l'Etat* (Paris: Ancienne Librairie Fontemoing, 1927), p. 125.

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Max Planck Encyclopedia of Public International Law, with its narrow focus on just one branch of law.

The situation is not better in positive law. In public international law, for example, excepting isolated references like the Inter-American Declaration of Principles on Solidarity and Cooperation of 1936, solidarity is scarcely employed compared with, say, cooperation, collaboration, mutual support, mutual aid, etcetera. The word is absent from the United Nations Charter, to give just one example. Even when present, as in the Charter of the Organization of American States,[45] there is no definition. Despite solidarity's prevalence as a notion in Constitutions worldwide,[46] constitutional scholarship has paid little attention to it,[47] as compared to, for example, equality, fraternity, cohesion, unity and mutual assistance. A 350-year-old passage from Emer de Vattel, sometimes supposed to ground international law on the moral duty of solidarity in disasters, mentions no solidarity, but a duty to assist. *Et pour cause*, since de Vattel would have understood solidarity in Justinian's sense.

Even in EU law, where talk of solidarity has attracted much scholarly attention, 'it remains to be clarified which status the principle [of solidarity] has in EU law as well as in turn which may be its concrete normative impact'.[48] Solidarity in EU law is plurivocal. As an 'objective' of the EU[49], it is unclear whether it creates rights for individuals due to the lack of a direct effect; as a fundamental 'value' in the Nice Charter,[50] certain legal obligations for the member states may follow. This can be due to the fact that compliance of the Member States with common EU values is a fundamental requirement for the Member State to benefit from its rights under EU treatises, as the recent Budget Conditionality cases suggest.[51] But the notion also appears in

[45] Eight references are made between its Preamble and the reference to the region's collective security.

[46] Sangiovanni, *Solidarity*, p. 1: 'consider that 85 polities across the world refer to solidarity in key areas of their constitution, including Colombia, Romania, Albania, Algeria, Angola, Israel, Chile, Colombia, Romania, Bangladesh, Spain, Bhutan, Morocco, Cameroon, and the European Union [EU]'. See www.constituteproject.org for a searchable list of over 200 constitutions across the world. For example, Art. 2 of the Italian Constitution of 1948 prescribes the inderogable obligation of political economic and social solidarity.

[47] T. H. Brandes, 'Solidarity as a Constitutional Value' (2021) 27 *Buffalo Human Rights Law Review* 59–89, at 59.

[48] Croci, *Solidarietà tra stati member dell'Unione Europea*, p. 68. Author's translation.

[49] TEU art 3.2. See also E. A. Marias, 'Solidarity as an Objective of the European Union and the European Community' (1994) 21 *Legal Issues of Economic Integration* 85.

[50] See *inter alia* A. Grimmel and S. My Giang (eds.), *Solidarity in the European Union: A Fundamental Value in Crisis* (Cham: Springer, 2017).

[51] See ECJ Cases C-156/21 and C-157/21.

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legal contexts with reference to such diverse kinds of relations as hold between (a) the peoples of Europe (in the preamble of the Maastricht Treaty), (b) member states, basically amounting to sincere cooperation, (c) generations (TEU art. 3.3.2), (d) individuals,[52] (e) member states and second country nationals,[53] (f) business corporations and producers[54] and (g) the Union and overseas territories (in the preambles of the TFEU and the Maastricht Treaty). After Lisbon, solidarity was inserted *ex novo* in several articles of the treatises and appears in relation to a disparate set of policy areas, including energy policy (TFEU art. 194), anti-terrorism (TFEU art. 222), asylum, immigration and border control (TFEU art. 67 & 80), the Common Foreign and Security Policy, and so on. No wonder solidarity in EU law can mean different things, from loyalty to sincere cooperation, to something less than 'closer relations'.[55] Overarching theorization is, to my knowledge, still unavailable.

This neglect of solidarity as a legal concept leads to a hermeneutic leap of faith: it is regularly claimed that we read this absence as an 'implicit reference to the principle of solidarity', say, in the Charter of the United Nations at Article 55.[56] The insistence on solidarity in law – albeit in a widespread echoing void of theory – may partially explain the interpretative hesitations, false starts (always in Roman law where it means something else), the rhetorical pirouettes often arising from talk about solidarity in law and its confusion with allyship,[57] alliance,[58] coalition, commonality, camaraderie, partisanship, loyalty, sincere cooperation and co-ordination. Solidarity in legal settings is sometimes conflated with good faith, mutuality, reciprocity, equality

[52] C-70/95 *Sodemare*, ECLI:EU:C:1997:55 §29 and comments in F. Costamagna, *I servizi socio-sanitari nel mercato interno europeo: l'applicazione delle norme dell'Unione europea in materia di concorrenza, aiuti di stato e libera circolazione dei servizi* (Naples: Edizioni scientifiche italiane, 2011).

[53] See Title IV, *Solidarity* of the EU Charter of fundamental rights, and comments in K. Lenaerts, 'La solidarité ou Le chapitre IV de la Charte des droits fondamentaux de l'Union Européenne', in *Revue trimestrielle des droits de l'homme*, 2010, pp. 271 ff. See the case law in e.g. C-184/99 *Grzelczyk* ECLI:EU:C:2001:458, C-209/03 *Bidar* ECLI:EU:C:2005:169, C-158/07 *Förster* ECLI:EU:C:2008:630.

[54] For an overview of the case law and comments, see P. Menghozzi, 'Note sul principio di solidarietà nel diritto communitario', in *Il Diritto dell'Unione europea*, 2020, pp. 100 ss.

[55] See Croci, *Solidarietà tra stati member dell'Unione Europea*, p. 46.

[56] For such a claim, see e.g. Annaliese Aberg Scalzo, Nura Alawia and Dea Rodiqi, *International Solidarity in International Human Rights Law* (Vienna: Ludwig Boltzmann Institute of Fundamental and Human Rights, December 2021).

[57] See L. von Samson, *Allyship vs. Solidarity* (unpublished manuscript) presented at the 2021 MANCEPT workshop *The Uses of Solidarity*.

[58] R. Jaeggi, *Transforming Solidarities* (unpublished manuscript) presented at the IRCEP workshop, Milan, 2021.

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and similar notions. Sometimes it appears so encompassing as to be synonymous with primacy of collective interest.[59]

Some argue that altruism would better capture what some call solidarity, at least in contractual relations.[60] I am willing to concede that this may be due to the unhappy recurrence of the 'Rosa Luxemburg conception of solidarity' that Sangiovanni outlines as being 'disposed to act in a prosocial or altruistic manner with those with whom we identify' something that would be possible to conduct by ourselves, entirely privately, in silence.[61] Solidarity is also often conflated with some (imprecise) notion of (distributive) justice according to the *brocard* that the broadest shoulders should carry the heaviest burden. As Hartzén, Iossa and Karageorgiou convincingly argued, the crisis of solidarity has even become a generalized mode of political rhetoric referring to a number of shortcomings of contemporary governance or crises.[62] Even conceding that solidarity has become a 'keyword of the contemporary political-legal vocabulary',[63] the confession is needed: 'solidarity' in law is – pace Justinian's lawyers and their contemporary contract-focused epigones – pretty vague. This might explain why lawyers' attempts to pin down the constitutional aspects of solidarity and its general legal workings eventually reach the anti-climactic conclusion that 'solidarity, in fact, before being a legal principle, is a moral and ethical value'.[64] It is always worrying when jurists are satisfied to attribute extra-legal meaning to legal terms. Similar accounts of

[59] For Alain Supiot, 'toutes les institutions qui reposent sur la solidarité font … prévaloir l'intérêt collectif sur l'intérêt individuel': A. Supiot (ed.), *La Solidarité: Enquête sur un principe Juridique* (Paris: Odile Jacob, 2015), p. 15. Similarly, Loïc Azoulai, speaking of EU common interest, 'à coté de l'action unilatérale ou conjointe des Etats membres, audessus d'elle, se trouve une communauté d'interest et de solidarité': L. Azoulai, 'Appartenir à l'Union. Liens institutionnels et liens de confiance dans les relations entre Etat member', in Frédérique Berrod, Jörg Gerkrath, Christian Mestre, Valérie Michel, Stéphane Pierré-Caps, Robert Kovar, Denys Simon and Dominique Ritleng (eds.), *Europe(s), Droit(s), européen(s). Une passion d'universitaire. Liber amicorum l'honneur du professeur Vlad Constantinesco* (Bruxelles: Bruylant 2015), p. 32.

[60] C. Leone, 'What Solidarity?' (2021) 2 *Netherlands Journal of Legal Philosophy* 239.

[61] A. Sangiovanni, 'How Does One Choose among Theories of Solidarity?', *Paper presented at the Workshop 'Solidarity: We Know It When We See It'*, Gothenburg, Sweden, 25 March 2022, p. 1. Rosa Luxemburg refused as a girl to eat sugar for weeks 'in solidarity' with workers at the front who had no sugar. See also A. Sangiovanni, *Solidarity: Nature, Grounds, and Value: Andrea Sangiovanni in Dialogue* (Manchester: Manchester University Press, 2023).

[62] A.-C. Hartzén, A. Iossa and E. Karageorgiou, 'Introduction', in *Law, Solidarity and the Limits of Social Europe* (Cheltenham: Edward Elgar, 2022), p. xv.

[63] S. Giubboni, 'Solidarietà' (2012) 4 *Politica del Diritto* 525–554, at 525.

[64] B. Bertarini, *Il principio di solidarietà tra diritto ed economia. Un nuovo ruolo dell'impresa per uno sviluppo economico inclusivo e sostenibile* (Turin: Giappichelli, 2020), p. 3. Author's translation. See also Croci, *Solidarietà tra stati member dell'Unione Europea*, p. 17: 'uno dei tratti più salienti del principio di solidarietà tra stati membri … [è] la discrasia – molto spesso

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legal concepts like ownership, personhood or contract would strike most jurists as inadmissible. One might object that solidarity seems hard to depict fully because the concept is embodied in its actual legal instantiations, making the absence of a general definition simply an effect of solidarity's context-dependence. Although solidarity may be context-dependent, this would mean we could not say beforehand what ought to count as solidarity in law, only register *ex post facto* what has counted, reducing the action-guiding capacity that is desirable in legal concepts. Therefore, the issue is to give not a mere account of a legal term that encompasses the breadth of legal materials at hand (a challenge in itself), but a way of determining which instantiations of the concept we should accept and which we should reject as negligent uses of the legal concept, and on which grounds we should justify such rejection.

Hence, solidarity is an under-theorized legal concept. The very coupling of law and solidarity raises various questions: can solidarity be commanded? Must it be presupposed in international law? Is it a principle of international law?[65] Is solidarity a necessary complement to a rights-based concept of justice?[66] Are human rights and solidarity 'two sides of the same coin'?[67] Is it a model of federalism, somehow akin to the principle of cooperation?[68] Does familiar solidarity trump social solidarity in positive law, in many European states at least?[69] And many more. Solidarity in general is not always easy to handle, but this is *especially* true in law, where we need greater conceptual clarity given the grave consequences of erring in the dark.

The conceptual imprecision affecting solidarity in law clearly demands better theorization. Also, we should resist thinking that the concept of solidarity must obey the same semantics in law as in other settings. Legal language is known to stray quite far from ordinary language. Consider, for instance, how the term citizenship is employed in law compared with political parlance or

ravvisabile – tra l'affermazione a livello astratto della centralità di tale principio e la sua effettiva incidenza in concreto'.

[65] K. Gorobets, 'Solidarity as a Practical Reason: Grounding the Authority of International Law' (2022) 69 *Netherlands International Law Review* 3.

[66] Ter Meulen argues, for instance, that 'solidarity is not an alternative to a right-based concept of justice, but must be considered as a necessary complement to it' in 'Solidarity, Justice, and Recognition of the Other', p. 517.

[67] M. J. Clarke, *The Vision of Catholic Social Thought: The Virtue of Solidarity and the Praxis of Human Rights* (Minneapolis: Fortress Press, 2014), p. 129.

[68] E. Arban, 'Italy: The Principle of Solidarity as a Principle of Equality', in Eva Maria Belser, Thea Bächler, Sandra Egli and Lawrence Zünd (eds.), *The Principle of Equality in Diverse States* (Leiden: Brill, 2021), pp. 101–129.

[69] Vigneau, 'Les rapports entre solidarité familiale et solidarité sociale en droit comparé'.

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social scientific discourse.[70] For instance, solidarity between member states in the EU refers to sincere cooperation, not, say, joint action to overcome significant adversity or characterized by attitudes rooted in common identification based on a shared cause, role or condition, as with solidarity *as a social practice*. This explains the low threshold: for example, selling citizenship, regardless of how objectionable it might be, is not a behaviour of EU member states falling below the standard. When I refrain from abusing property, for example, erecting a disproportionately high party wall simply to remove light and air from my neighbour's property, I do not 'act in solidarity' with my neighbour, even though it could be said that I engage in a form of sincere cooperation. Lawyers must be aware that, while a number of conversations feature 'solidarity', we cannot presume it has a consistent meaning. We should strive to articulate why we employ the concept in the first place. As a step towards more – hopefully better – theorization of solidarity, let me sketch a phenomenology of possible relations between law and solidarity, not as a legal concept but as a social practice.

1.4 LAW AND SOLIDARITY AS BEDFELLOWS

Let us start by listing five types of interaction and investigating whether law engages in any of these in relation to the social practice of solidarity intended as joint action triggered by identification with others on the basis of, say, a shared cause, role, way of life, condition or set of experiences.

Firstly, consider the relation of rule or command. May we say that *law commands us to act in solidaristic ways*? Prima facie, this seems plausible. The law might command me to partake in social insurance schemes, to socialize risk in other ways, to materially aid my family members and others. As in Italian family law, the law might impose a sanction for not telling my partner of my infertility diagnosis or oblige me to seek to educate my children in a way to which the other parent has no objection. Law commonly imposes this kind of 'solidarity'. But, to be clear, this is not solidarity but merely a behaviour that is externally akin to solidaristic action. The very fact that, for example, the co-parent resorts to a court to impose a solidaristic framework for the education of the offspring proves the absence of commitments, intentions and attitudes typically associated with solidarity as joint action. Law imposes the obligation to mimic actions that, freely performed, appear infused by solidarity. In a nutshell, law cannot impose solidarity, only pay lip-service to it.

[70] An analysis can be found in Patricia Mindus, *Hacía una teoría funcionalista de la ciudadanía* (Madrid: Marcial Pons, 2019).

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As already stated, we may say that, while the law regulates external behaviour, solidarity goes further: it requires the *intention* to act in a solidaristic way. Solidarity cannot be commanded because it relies on intimate and often unarticulated personal reasons for identifying with a social group. Conceptually, as Sangiovanni explains, identification is an essential component of solidarity:[71] Solidarity requires *identification with* one another on the basis of a shared role, cause, condition or similar. I must see myself as a member of the group I am solidaristic with. It is this identification *in foro interno* that triggers the commitments, intentions and attitudes associated with solidarity as joint action. This 'attitude is *de dicto* … I identify with you on the basis of an indefinite description that we both satisfy, that defines a socially salient group, and that significantly structures our self-conception'.[72] Identification here is the kind of private and intimate matter that falls beyond the reach of the law. Law is not able to command that any particular attachment is felt. Law may impose (e.g. an obligation to recite an oath of loyalty to naturalize), but it is simply unable to command citizens to love their fatherland. Similarly, it is beyond the reach of lawmakers to rule *the foro interno* of their subjects. Law cannot make you perceive some role or condition as important for your self-conception or flourishing. The importance of the attitudinal component of *identifying with* for the practice of solidarity illustrates why solidarity and law are strange bedfellows.

But there are other ways in which we may consider this relationship: when does law intervene in a solidaristic social practice? Thus, a second way to understand the relation of the law and solidarity is to view *law as a potent tool for disrupting social practices of solidarity*.

There is a plausible sense in which members of the mafia or a terrorist cell act in solidarity, in that they believe they have reasons to identify with one another in overcoming some significant adversity (say, the police), hence engaging in cooperative reciprocal activity characteristic of solidarity. The law typically combats these forms of solidaristic actions because it does not recognize the end pursued by the mob or terrorists as being compatible with the 'order of the state': these groups act in antisocial ways.

In order to determine conditions under which the law may legitimately break down social practices of solidarity, we need to know the objectives of these practices. The

> non-instrumental value of the trusting, cooperative you-and-me reciprocal activity constitutive of solidarity is … *conditional* on the value of the ends it

[71] Sangiovanni, *Solidarity: Nature, Grounds, and Value*, p. 11 ff.
[72] Ibid.

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> promotes. If the ends have no value – as we are assuming the wicked ends of the mafiosi do not – then the solidarity enacted to realize them lacks value as well. This goes for all forms of solidarity bent to wicked ends: racist groups, terrorist cells, xenophobic nationalists, and so on. While they count as forms of solidarity if all our conditions are met . . ., their solidarity has no value.[73]

The law is ill-equipped to make judgments concerning the goodness of ends, a moral-political matter. This suggests that the law may just as well disrupt solidaristic social practices that do have value in the aforementioned sense. One may imagine a community practicing solidaristic care of the land in a pre-colonial setting being disrupted by a colonial power's legal impositions to cease this activity, by imposing a market, for instance, where there were none, declaring the common land private property, spreading competition and a sense of *agon* among the former solidaristic members of the collective. Other examples include disruption of solidaristic practice among members of anarchic collectives, religious sects or masonic lodges.

The disruptive capacity of law vis-a-vis solidaristic social action can adopt many guises. Given that the recognition of the right to strike is 'one of the principal means by which workers and their associations may legitimately promote and defend their economic and social interests',[74] banning strikes would qualify as law disrupting a solidaristic practice among workers. Another example is the contemporary forms of criminalization of solidarity towards refugees that evidently disrupt solidaristic practices between citizens, non-nationals and a variety of civil society organizations.[75] Occasionally, omitting to recognize some particular existing form of solidarity may be disruptive. Consider the lack of legal recognition of *more uxorio* partnership or unmarried couples living together, which may lead to partners abandoning solidaristic patterns of behaviour they would have stuck to, had their relationship been sanctioned by law.

Thirdly, besides disrupting solidarity, the *law can substitute solidaristic practices or compensate for their failing*. Typically, only where solidarity – as non-instrumentally valuable joint action of mutual aid in the face of adversity – is lacking or deficient, does the law intervene. In this sense, law does not regard solidarity as the ensemble of dispositions of thought and behaviour that coordinates us, but such an ensemble offers the *ideal standard* against which

[73] Ibid., p. 106.

[74] ILO, 1996d, paras. 473475.

[75] See e.g. Chiara Maria Ricci, 'Criminalising Solidarity? Smugglers, Migrants and Rescuers in the Reform of the 'Facilitators' Package', in V. Mitsilegas, V. Moreno-Lax and N. Vavoula (eds.), *Securitising Asylum Flows: Deflection, Criminalisation and Challenges for Human Rights, Immigration and Asylum Law and Policy in Europe*, Volume 46 (Leiden: Brill, 2020).

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the law will evaluate a given behaviour; only once we fail to meet the standard will the law be triggered. If the law holds you to a solidaristic standard (e.g. in the role of a spouse) a lack of solidaristic action will trigger legal intervention. Dissipating your salary playing poker instead of paying alimony to your ex-wife could be such a trigger in domestic family law. In such cases, the law is present only in absence of solidaristic social practice and its presence serves the purpose of *substituting or compensating for the failing of solidaristic practices*.

A fourth relation between law and solidaristic social practice is when law *integrates social practices of solidarity* (e.g. by stabilizing social expectations). The law may recognize existing forms of solidarity by noting the social existence of solidaristic relations *ex post facto*. Legal registration of trade unions may work this way. Integrating social practices of solidarity through law may operate through recognizing existing solidarities. For instance, in cases involving same sex marriage or adoption, the legal recognition of de facto solidarities stabilizes the partners', parents' and children's respective social expectations on the others' behaviour. The integration of social practices of solidarity through law may also operate through the jus-generative function of the law: the law may positivize expectations perceived to be legitimate by turning these into rights. Such a transformation of social expectations into legal rights – perhaps most emblematically in the proclamation of social and economic rights – allows the law to integrate existing forms of solidarity. Clearly, the right to healthcare or primary education does not *generate* the solidaristic action of carers. Nurses and teachers existed well before these rights were turned into law. But turning social expectations into legal rights may allow *stabilization* and possibly strengthening of such behaviour. If the law is to integrate social practices of solidarity, these must, however, already be present.

This is not so with the fifth modality of law's interaction with solidarity. Contrarily to the third and fourth type of ways in which law relates to solidaristic social practice, that do not generate new forms or stabilized forms of solidarity, the fifth modality of law's interaction with solidarity may generate new social practices of solidarity. In fact, law's status-generative function may also play a role in promoting or hindering social solidarity. The status-generative function is constituted by the use of constitutive rules in the law, and the primary way constitutive rules work in law is by defining various forms of statuses. Indirectly, law may foster (or hinder) the development of solidarity by how it designs various statuses. Take, for example, the constitutive rule in virtue of which an individual in the Third Reich was ascribed the status as Jew. The ascription of the status in itself has nothing to do with solidarity. Yet, in

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this particular social context, it may constitute *a ground for motivating solidaristic action*, on behalf of others towards the status-bearer, but also within the status-bearer him/herself, who hereby becomes exposed to a perspective on her own interests that he/she may previously have disregarded. Jurisprudents have, as I understand, reflected too little on this status-generative ability of law and its implication for making or breaking solidarities. In its design of legal statuses, the law enables individuals to form ways of life, experience certain things, engage in different roles; all these facts qualify as potential grounds for solidaristic practice. The status-generative function of the law may allow individuals to perceive – with greater or lesser ease – the common fate they share with fellow status-holders. Consider how the design of the citizenship status can foster or hinder solidarity with one's co-nationals. The law has an important function to play in obstructing or highlighting the common lot we share with others.

Jaeggi insists that a common lot is constructed, not given, recalling that it took a long time before the women's liberation movement could raise the 'collective consciousness' of women: 'The fact of being associated . . . has to be actualised as a willingness to identify with a certain situation (a "common lot"). . . . The "we" of the solidaristic group must first constitute itself in order to be.'[76] The law does not command attachments and willingness to identify with others, but it does shape a variety of 'we' and by designing statuses it may render identification mechanisms easier or harder. We can accept that law, in its status-ascribing function, fosters or obstructs *grounds* of solidarity, without needing to concede that law engenders solidaristic practices by command.

1.5 CONCLUSIONS

Despite its legal ubiquity, solidarity as a legal concept is under-theorized. I showed that the legal concept of solidarity diverges from solidarity as a social practice. I listed five types of relationship we find between solidaristic practice and the law and found that, although solidarity may not be commanded by law, law may still foster or hinder it. The law may: disrupt practices of solidarity; substitute and compensate for the failing of practices of solidarity; and stress or obstruct grounds for the social practice of solidarity. Being ascribed a status may constitute grounds for motivating solidaristic action. My hope is that jurists pay greater attention to solidarity in law and its relationships to solidarity as a social practice. It is valuable for our understanding of the law to reflect on how, when and why law is able to interact with already existing and emerging solidaristic practices.

[76] Jaeggi, *Transforming Solidarities*, p. 13.

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