



The Application of Durkheimian Theories in the 21st Century

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Abstract

Classical sociological theorists have been criticised for being too vague, incomplete, and ever too conservative and notwithstanding all the efforts and consideration that has been dedicated to linking different parts of Durkheimian thought to the law itself, contemporary sociology and criminology frequently disregard its potential within the current study of law and criminology. This paper, however, will strive to explore and prove, through a Durkheimian lens, how classical sociological frameworks can provide us with a series of diverse aspects to analyse modern values and circumstances.

Keywords: Emile Durkheim, Theoretical Criminology, Sociology

1. Introduction

19th century criminological discourse primarily focused on crime and criminality, which gave rise to the first fields of study for sociology. With the appearance of sociology as an autonomous discipline at the start of the 20th century, a turning point in the consideration of deviance emerged. While remaining on deterministic bases, in contemporary discourse sociology's emphasis is placed on the influence of society as a whole (the 'social body') rather than on the intrinsic characteristics of people. Emile Durkheim, one of the most distinguishable sociologists and often hailed as the 'father of sociology', argued that the origin of deviance lies in anomie, which he describes as the disease of a society deprived of moral and legal rules leading to the disintegration of solidarity. Changes in the model of society, economic crises or the disruption of the family structure would be characteristic of anomie (Carrabine et al. 2009).

In the *Rules of the Sociological Method* (1895), he presented the foundations for what would later become the sociology of crime. In his work, he rejected the plausibility of making an a priori distinction between 'real' crimes and other types of deviant behaviour. He argued that a behaviour which can cause harm, does not necessarily have to be labelled as 'pathological'. Durkheim stipulated that crime is not a pathological phenomenon but a normal one because there are no societies in which criminal behaviour does not exist — regardless of whether the society is archaic, traditional, or contemporary. It is of crucial importance to highlight that he was the first sociologist to consider crime as a simple transgression of a norm: 'an act is criminal when it offends the strong, well-defined states of the collective consciousness' (Durkheim 1984, p. 39). Consequently, he shifts the prospect of criminal anthropology and sociology by affirming: 'We do not condemn it because it is a crime, but it is a crime because we condemn it' (Durkheim 1984, p. 40). The sociologist further explains that the act of punishment is not intended to correct or intimidate the offender but rather to reactivate the 'common conscience', the sense of their collective belonging which manifests itself through the agreement on shared rules (Carrabine et al. 2009).

The development of the sociology of crime at the dawn of the 20th century has thus made it possible to shift the sources of determinism from a moralist and essentialist point of view to a reformist and functionalist position attentive to the links between individuals and the means that are put at their disposal inside the social body (ibid.).

Despite warranted criticism of classic sociological and criminological theories, the latter can still contribute by providing some valuable devices for amending orthodox beliefs about the sociological field's potentials for advising both moral and legal assessment. Cotterrell (2011) argues that it is important to note that even though Emile Durkheim's extensive school of thought on the sociology of morality presents us with the most sources, it has not yet been thoroughly examined. Contemporary sociology and criminology frequently disregard its potential within the current study of law, notwithstanding all the efforts and consideration that has been dedicated to linking different parts of Durkheimian thought to the law itself. The classical sociologist undeniably gives us a compelling and notable template that assists us in analysing and studying some constitutional values, striving to prove how they achieve such depth as they have from their coherence with conditions needed to ensure both the adherence and unification of the society (*ibid.*, p. 4).

Therefore, this paper will present how some classical and fundamental sociological concepts that revolve around a composition of certain values, can still contribute to contemporary criminological research and to the legal studies. It will first analyse the notions of moral individualism, the sacred, and human dignity, followed by the role of punishment in society and will end with the application of some of the theories in more contemporary settings.

2. Durkheim on Moral Individualism, the Sacred, and Human Dignity

According to Cotterrell (2011), the process of understanding the concept and role of punishment by following Durkheimian thought requires us to register Durkheim's insights and beliefs on morality, the sacred, and that of human dignity. For Durkheim, 'morality is an infinity of special rules' (Durkheim 1961, p. 25), which are linked to a series of distinct social conditions and historical stipulations, where actions — such as decisions and practices — obtain their own moral significance in particular circumstances. However, in order to properly comprehend the concept of morality and its role in society, it is crucial to evaluate social behaviour empirically. According to Durkheimian thought, sociology's role is not to unveil any moral facts, but to illustrate how 'any criteria governing what is morally appropriate will relate to the sociological character of the particular type of society concerned' (Cotterrell 2011, p. 4).

The purpose of Durkheim's work is thus to show that a moral fact is a social fact. For this, he relies on the idea that an act, which never has as its object the interest of the individual or of other individuals, is never called moral. Morality can only have the objective of the group formed by a plurality of associated individuals. That is to say, society constitutes a personality qualitatively different from the individual personalities that compose it. Moral thought, therefore, begins where attachment to any group also occurs (*ibid.*, p. 5). Cotterrell then further explains that sociology can, nonetheless, examine socialisation objectively as a 'social fact', and only then can it recognise the moral beliefs and traditions that are consistent with substantial social connections in specific societies. Sociology can, thus, be considered as a guide to morality, as it can present some standards in the evaluation and criticism of people's moral beliefs and choices. It could, therefore, be argued that sociology is fit to provide assistance and guidance on what laws and regulations should be implemented. Nevertheless, it is when the sociological field exposes some significant weight of some moral value within some social circumstances, that the issue of whether they should be displayed and supported by the law will then need to be confronted. The aforementioned socio-legal perspective is foreign to the majority of research orientations in the sociological field of law, as law mainly portrays itself as an establishment of power, rather than an illustration of morality (*ibid.*). It is increasingly common for the public to require the law to consider the moral dimensions of a situation (Van Der Burg & Taekema 2004). Sociology can, therefore, assist in providing some legal and moral values that are worth examining and indeed be taken into consideration.

Durkheim was concerned throughout his intellectual career with moral facts as he created this expression precisely to delimit normative behaviour from a sociological point of view. Reforms of criminal law and practice, as well as the emergence of the idea of human rights in the late eighteenth century (Garland 1990b), are an expression of a more profound cultural transformation, through which the human person himself becomes a sacred object. The presence of a sacred moral system supports the expansion of personal sentiments and ardent responses, which also manifest the permanence and strength of 'the sacred moral order' (*ibid.*). Garland further argues that Durkheim intends to demonstrate the sacredness of the individual in modernity, highlighting the profound ambiguity of the term 'individualism'. He explains that we now find ourselves in a position where individuals lack a goal beyond maximising selfish pleasure or economic utility. Rules are perceived as a series of principles which require certain conducts to be

followed. Within this general class of rules, moral facts constitute a subset, because not all rules of conduct are moral (ibid.).

For Durkheim, the opposition between the sacred and the profane is constitutive of all religion and, in a certain sense, of all normative order. It creates a division of reality between two radically different domains, which can only communicate with each other by means of exceptional ceremonies and people. Practical life itself is divided according to this order, which separates ordinary actions from material social reproduction, ritual, and sacred actions. The sacred is what we owe some particular and absolute respect. It must not be violated in any way, because his own character is precisely a superior dignity, which subjects him to all other realities. Beyond everything, common convictions stress the significance and the sacredness of the personal and ‘correlative virtues’, such as autonomy, reason, compassion, diversity, and human dignity. Being part of the very basis of social life, the aforementioned principles are bestowed an innate status and are profoundly nurtured in people’s consciences (ibid., pp. 48-50). The sacred moral order, in the form of the Church, represented a moral community whose purpose was to protect the same sacred interests (e.g. unity) rather than the profane ones (individual concerns) that were perceived as direct attacks to the sacred. In the contemporary world, however, the role of the protector of these sacred values was replaced by some global legal orders, such as the European Union, the United Nations, and associated human rights protections.

For Durkheim one of the most essential and correlative virtues was human dignity, which even though it has been labelled as an ineffective and fatally vague in more traditional legal frameworks (Macklin 2003, p. 1420), which is sought in the modern field of law. Some writers, such as Mauntner (2008), believe that human dignity is the foundation of human rights. According to Schachter (1983, p. 851), it incorporates the perception of personal individualism, which indicates a personal ‘autonomy and responsibility’, which in its turn is part of a more significant social group (Cotterrell 2011, p. 8).

Several scholars (Lee & George 2008, p. 174) have argued in their works that a subjective perception of dignity differs from an objective one. More specifically, even if someone's dignity might have been objectively harmed, that does not mean it has been harmed from a subjective perspective, and the same applies vice-versa. Society can, therefore, determine whether someone's dignity is violated, notwithstanding what the individual thinks (Dworkin 1994, pp. 167–168).

Thus, examining human dignity from a legal aspect does not suggest freedom from all restraints, but to ‘individual's right to personality and the flourishing not the deterioration of the personality’ (Cotterrell 2011, p.9).

According to Cotterrell (2011), Durkheim believed that for an individual's complete participation in society, one must believe in having complete control of their life conditions, and in being free from society's oppression in matters of personal choices, external powers, and from the exploitation that would threaten their identity — for instance, the violation of privacy by publicising personal information about an individual without asking for their permission. It could, therefore, be argued, that the loss of one's dignity and autonomy results in the ‘loss of personal control over one's conditions of existence’ (ibid., p.10). The objective perspective of both dignity and sovereignty is, particularly though the law, connected to the control of these conditions, as it represents human value as perpetual and ‘human dignity as non-alienable by the individual’ (ibid.).

The reason behind the lasting significance and relevance of theories such as moral individualism is that their importance grows as societies become more complex and differentiated. Therefore, these notions of general humanity, are both sociologically, and consequently also in the criminological field, essential in contemporary societies. They are required to support ‘society-wide’ interpersonal and social interactions, financial assurance and planning, social incorporation and commitment, as well as tolerance towards diversity. These are some sociological values that encourage the state to thrive, and they could never cross the ‘necessarily extensive state regulation of ever more complex social and economic life’ (ibid., p. 11).

3. Sociology of Punishment

Sociology of punishment represents the collection of thoughts that examines the relationship between punishment and society, by trying to comprehend penal punishment as a sociological event and therefore tries to track its purpose in social life. It is of crucial importance to highlight that sociology of punishment has not always been in the centre of attention within the sociological realm. Consequently, up until recently, there were only a few works that tackled the issue of punishment, and Durkheim was the only one to make an impactful contribution to the field. Despite the weight of punishment as a subject of analysis, contemporary sociology has not tried to include penal systems as a centre of their researches or as the foundation of sociological observations (Garland 1990a). The field of punitive justice has not attracted specialist from various

fields, such as philosophers, literary scholars, and criminologists, as they try to explore the insights that this realm can contribute to our 'social world'. Consequently, this area of study has finally been able to prove its potential as both an intellectual and inspiring sphere of thought that tackles issues not only on punitive strategies but also the operation of society as a whole (ibid.)

Contrary to common thought, the concept of punishment in sociology is not only restricted to the discipline of criminals and delinquents, nor can it be reduced to a specialised tool whose aim is to reduce the crime index. Classical approaches in the field of the sociology of crime and punishment, such as Hobbes, Foucault, and Durkheim, although from different perspectives, try to grasp punishment's true meaning and role in society, by going beyond places of confinement or the courtrooms, but recognise it as a social institution, which consists of whole political, historical, and even symbolic processes that shape societies from their core (Garland 1990b).

The prevalent era of punishment until the Enlightenment was characterised and portrayed in Thomas Hobbes's *Leviathan* (1651), where he argued that the sovereign has the right to punish its people for their crimes. According to Hobbes, the state of nature of societies is a state of war, and in order to avoid this state, people enter a social contract and accept a sovereign monarch. This monarch gains its normative powers and legitimacy not through religion or ideology, but through the theoretical conception of the social contract. In this contract, the public is expected to follow certain rules and make some sacrifices for the state, so that the state in return can ensure their rights, which incorporates the punishment of the deviants 'with corporal or pecuniary punishment, or with ignominy, every subject according to the law he hath formerly made' (Hobbes 1997, p. 111). In such societies, the criminal is perceived as an enemy of the state, as his crime is an act against the society and sovereignty itself. More specifically, the crime insults the people who are following the social rules, and in the process, it also demeans the sovereign's power and authority (ibid.).

Michel Foucault (1975), however, argued that under absolute monarchy, 'judicial torture' must be interpreted as a political ritual. The law represents the conscious power of the sovereign, and crimes are perceived as assaults to the monarchy itself. The right to punish the offenders, therefore, falls into its hands. Harmed sovereignty is restored by public punitive rituals that symbolise its power. Hence the importance of this liturgy of torture testifies the triumph of the law. More specifically, he argues that an essential element of sustaining social order as a monarch

is that of securing the present power dynamics and structure (Foucault 1995, pp. 47-48). It could be argued that the purpose of punishment, in these societies, was not that of bringing justice, but that of demonstrating sovereign power in public for the purpose of securing social order.

Foucault (*ibid.*) reports that throughout the 18th and 19th centuries, the punitive system underwent some radical changes. He witnessed two significant changes in the punitive system. Firstly, the public display of punishment lost its ceremonial function and gradually faded, and ‘it survived only as a new legal or administrative practice’ (*ibid.*, p. 8). Instead, criminals were detained in prisons, and in certain countries, such as Switzerland and Austria, community service and probation was the primary imposition. The purpose of punishment shifted, and rather than targeting and harming the criminal’s body, it started aiming for their souls and minds through discipline (Garland 1986, p. 850). This new era of penal punishment indicated the closure of ‘monarchical sovereignty’, which up until then, had demonstrated its supreme power and authority through classified ‘inquisitorial trials, torture of defendants, and the political ritual of public execution’ (Gibson 2011, p. 1042).

Even though this transformation of punishment had been already discussed by some scholars and historians, Foucault scrutinises them for characterising the advocates of this enlightened transformation as ‘philanthropists nobly seeking less cruelty, less pain, more kindness, more respect, more humanity’ for the underprivileged and feeble offenders (Gibson 2011, p. 1042). However, the French philosopher claims that that was not the real rationale for advocacy and that the legal theories of punishment that are supposedly derived from classical liberal thoughts are but constitutional fiction (Paternek, 1987). It is suggested that it was the upper class who were interested in reform not because of some philanthropic dignity, but because of the desire to redirect penal law towards categories of crimes - like theft - that damages their class interests, and to overthrow absolute monarchy (Gibson 2011, p. 1042). Consequently, as state and punitive power did not come from a pivotal jurisdiction, as it did in absolute monarchies, it got scattered amidst numerous institutions whose role became to control the working class through observation and discipline. Prisoners were under severe disciplinary measures that did not derive from corporal punishment but from the gaze of the unceasing observance by the prison warders. It is further argued that Foucault reprimanded the disciplinary system of modern punitive institutions, as he

claimed that not only were they not less oppressive than the premodern measures, but their purpose of physical punishment for disciplining the mind, was even more deceptive (ibid.).

The criterion of disciplinary measures, from Foucault's perspective, is Bentham's Panopticon, which constitutes the prototype of modern prisons (Paternek 1987, p. 107). A concept that derives from the idea of focal surveillance and observation, which situates a tower in the middle of the prison grounds. In that way, the guards have a constant and holistic view of the penitentiary and its prisoners. The convicts, however, don't know when and whether they are, in fact, being monitored (ibid.). Foucault characterises Bentham's system as 'a marvellous machine which, whatever use one may wish to put it to, produces homogenous effects of power' (Foucault 1972, p. 202). As Gibson (2011) discusses, the French philosopher claims that this power of surveillance, is both restrictive and creative, as it provides an insight on the subdued people. More specifically, the power (*pouvoir*) and knowledge (*savoir*) portray modernity as an integral idea, and they are perceived as two entities and authorities that restrain and discipline the criminals. Thenceforth, all the knowledge acquired from the insight from the penitentiaries, are used in the advancement of some scientific fields, such as 'criminology, medicine, and psychiatry', which evaluate all the data, and in their turn contribute in the development of new approaches that strive to make these institutions more productive and effective, in their process of constructing 'docile bodies' (ibid., p. 1043)

Emile Durkheim's remarkable contribution in the field of the sociology of punishment, which differs from Foucault's, is important in two regards. First, through his work, *The Division of Labour in Society* (1984) and in *Moral Education* (1961), he made the concept of punishment a primary objective of analysis in sociology. Second, he argued that the essential component of criminality and criminal activity is neither the criminal nor the control of violence, but society as a whole (Garland 1990b). Despite revealing the importance of the question of the social meanings constituting the penal institution, the sociology of punishment reduces the latter to the meaning it obtains for a theoretical, economic or political system and suggests the simplicity of the scheme functionalist where the same forces acting on the same objects must produce the same sequences of effects (ibid.). To what extent, however, can a theoretical concept or system predetermine the meaning of punishment?

Following Durkheim's ideas, the fundamental symbolic representation of penal punishment is immediately reduced to a precise function: that of guaranteeing a definite cohesion, balance, or social adjustment at the level of manners and sensibilities. In other words, punishment expresses both a ritualistic and expressive dimension (Smith 2008, p. 339). In *The Division of Labour in Society*, Durkheim explains that '[t]he totality of beliefs and sentiments common to the average members of a society forms a determinate system with a life of its own. It can be termed the collective or common consciousness' (Durkheim 1984, p. 38). Garland (1990b) further explains, that all these beliefs and sentiments merge and form a system that represents a 'proper life', more specifically, it is an 'objectified', which is an existence that reflects socialisation thanks to the very authority that this system gives its sacredness to. A society would, therefore, only exist by the image it creates of itself and this very image is that of a consistent 'collective consciousness' whose only purpose is to maintain and sustain social institutions. Within this frame of reference, the penal institution is thus interpreted as a means of communication that transcends the twofold relationship between the court and the punishment of the criminal. Durkheim (1984, p. 176) further argues that the punishment is the sole tangible symbol from 'which an inner state is represented; it is a notation, a language through which either the general social conscience or that of the teacher expresses the feeling inspired by the disapproved behaviour'. It, hence, aims to demonstrate the authority of an order made real by putting into practice its image of sanctity (Garland 1990b).

One of Durkheim's most remarkable arguments regarding the penal system is that of constraining the brutality of punishments and substituting them with moral education.

He argued that there is a prominent contradiction in avenging the victim's harmed human dignity by stripping away that of the offender. His theory of moral individualism supports that the act of punishment should not be imposed upon someone's body. Even when dealing with serious offences, Durkheim maintained punishment should be limited to imprisonment. Physical forms of discipline should be rejected as they directly harm human dignity (Cotterrell 2011, p. 11). The value order of the aforementioned theory is verified in sociology as it supports the integration and participation in society (ibid.).

Durkheim sees punishment as a compromise which can present itself to be uneasy as it is a procedure that hurts the criminal's human dignity and autonomy but in a rigidly restrained and calculated way. It follows the assumption that the damage done to these values is not irreparable.

As previously discussed, human dignity is one of the main principles that one must hold onto for his or her complete integration in society (ibid., p. 12).

Following the same chain of thought, in his work *Moral Education* (1961), he presents a developed and precise theory on the significance of moral education within the penal system. In the same way that contemporary education must generate a secular and objective morality and use it to attain the best means of promoting the ‘collective conscience’, the punitive measures should also exploit moral education within places of confinement as a means of promoting social morality.

It is of critical importance to highlight that not only is punishment incapable of imposing moral jurisdiction by itself, but it suggests that the authority has already been put in place. The establishment of that jurisdiction and function of the sacred is, in other words, a sort of moral instruction and influence that initiates from home continues to school and then stretches out throughout the whole society (Garland 1990b, pp. 55-56). ‘Punishment does not give [moral] discipline its authority, but it prevents discipline from losing its authority, which infractions if they went unpunished, would progressively erode’ (Durkheim 1961, p. 167). We, therefore, ought to renounce the idea of punishment being a practical tool, but recognise its pure form: that of an ‘expressive form of moral action’. In reality, punishment is a method of conveying a moral message, and of indicating the strength of expression which lies within it, for proper integration in society once the offender is released (Garland 1990b, p. 58). However, in the contemporary world, the power structure between the *punisher* and the *punished* changed. The sender of the moral message is no longer purely the sovereign. Instead the new sacred moral order and human rights protect and promote global human values, such as dignity (*Universal Declaration of Human Rights* 1948, art. 1).

Durkheim’s theory on penal punishment provided a series of very innovative thoughts into the field of sociology and criminology that still remain relevant today. In comparison to primitive societies, contemporary ones have become a lot more lenient towards their punishment methods, so ruthless practices of punishments, such as torture, gradually become less common (Garland 1990b). Nevertheless, penal institutions and places of confinement are far from perfect. Several countries such as the United States (U.S. Department of Justice 2017) and the United Kingdom that are facing grave problems of mass incarceration. In 2017, the American National Institute of Justice announced that over three-quarters of released convicts are ‘re-incarcerated within five

years of discharge from prison'. The significant number of re-offending rates is owed to the fact that most prisons in the U.S are focusing their penal institutions on punishing the inmates instead of centering their attention on their rehabilitation for a successful integration in society (Reich 2017). Despite there being some individuals that have claimed that prison rehabilitation does not lessen re-incarnation (Taylor 2019), numerous studies have proven the contrary (Millard 2019; U.S. Department of Justice 2017). But this trend is not uniquely American. Prison population in the UK has seen a remarkable increase in the last decades (Sturge 2019). This is even more problematic when overcrowding and poor considerations on dignity and human rights is a global phenomenon (World Prison Brief 2018).

Hence, it could be argued that Durkheim's theories regarding punishment and correctional methods, do provide us with a very solid framework that could be applied in contemporary punitive and correctional establishments.

4. Conclusion

In conclusion, Durkheim's sociological framework provides us with a series of diverse aspects to analyse modern values and circumstances. His theories have justly been criticised for being too vague, incomplete, and ever too conservative (Garland 1990b). Even his notion of social solidarity could reasonably be criticised as it mainly centres its ideas on the functional regulation and reliance, while it lacks consideration of other groundworks of solidarity within emotional connections and engagements. Notwithstanding the shortcomings in his findings and works, his discussion on the sociological frameworks of values within the legal realm, merit some earnest attention and reflection, primarily due to their unmistakable sophistication, extensive reach, and compelling relevance to both modern sociology and criminology. He undeniably raises myriad questions and arguments worth investigating, that very often circumvent the frame of the philosophy of law and morality. One of Durkheim's most significant discussions is that the justification and rationalisation of constitutional values, by addressing the singular nature of the justice system as an interpretation of conditions for robust social interactions. (Cotterrell 2011, p. 17).

After examining several theories and their application in contemporary settings, it is safe to assume that twenty-first century criminologists should still be paying attention to 'classical' theories. Notions and values of human dignity, authority, and their implication in modern life, remain undeniably relevant. It could, therefore, be argued, that by underrating and by-passing classical theorists such as Durkheim, and by turning his insights and theories as second nature (Smith 2008), the legal field of sociology has unmistakably missed on some opportunities of extension (Garland 1990b).

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