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Emile Durkheim's social research in the context of human rights activism

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Abstract. This article provides an analysis of the fundamental categories of Emile Durkheim's theory within the framework of his methodology for social research and the phenomenon of human rights activism. It examines categories such as "social fact", "solidarity", "collective consciousness", and "anomie" in the context of human rights activities. A distinctive feature of the article is its interdisciplinary approach, integrating sociological research results into the field of jurisprudence. The article explores a range of works by the French sociologist and philosopher Emile Durkheim, as well as relevant works by other philosophers, along with the contribution of contemporary Russian legal scholars within the aforementioned context. Given the growing demand for works on human rights issues in both Russian and global legal science, the authors conclude that a comprehensive understanding of the nature of individual rights and legal violations facilitates their more effective, profound, and systematic protection, not only in a reactionary sense, but also by enabling a preventive function in human rights activism. In this regard, the acquired sociological and legal knowledge seems pertinent, sought after, and can be utilized in subsequent doctrinal developments.

Key words: human rights phenomenon, methodology of social research, collective consciousness, social facts, solidarity, anomie, Durkheim's categories of sociology

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Социальные исследования Эмиля Дюркгейма в контексте правозащитной деятельности

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Аннотация. Проведен анализ базовых категорий теории Эмиля Дюркгейма, на предложенной им методологии социальных исследований и на феномене правозащитной деятельности. В частности, исследуются такие категории, как «социальный факт», «солидарность», «коллективное сознание», «аномия». Рассмотренные категории анализируются в контексте правозащитной деятельности. Отличительной чертой исследования является междисциплинарный подход, позволяющий интегрировать результаты социологических исследований в юриспруденцию. Проанализирован ряд работ французского социолога и философа Эмиля Дюркгейма, релевантных работ иных философов, а также труды современных российских ученых-юристов в рассматриваемом контексте. В связи с востребованностью в российской и мировой юридической науке работ по правозащитной тематике авторы приходят к выводу, что комплексное понимание природы отдельных прав, правонарушений способствует более качественной, глубокой, системной их защите не только в «реакционном» смысле, но и позволяет реализовать превентивную функцию правозащитной деятельности. В этой связи полученные социолого-юридические знания представляются актуальными, востребованными и могут быть использованы в дальнейших доктринальных разработках.

Ключевые слова: феномен правозащиты, методология социальных исследований, коллективное сознание, социальные факты, солидарность, аномия, категории социологии Дюркгейма

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In the honorable memory of P.A. Kucherenko

Introduction

The first sociologist to attempt to reconcile seemingly incompatible research positions of Durkheim and Weber was Tolcott Parsons (1902–1979), the pioneer of American sociology. The results of his experiments turned out to be inconclusive.

First, Parsons was much more fascinated by Weber than by Durkheim. Second, the prehistory of Parsons' theory of social action should include many different authors, for example, the Italian economist with a “sociological bent” Vilfredo Pareto (1848–1923),

the British mathematician and philosopher Alfred North Whitehead (1861–1947), and the French specialist in British utilitarianism and political history Elie Halévy (1870–1937). Undoubtedly, these interesting thinkers pose challenges in aligning with the stated research topic. Therefore, it may be appropriate to refrain from analyzing Parsons' "synthetic experience".

Shifting the focus back to Durkheim, it is essential to direct our analysis towards three key aspects: (1) the core categories of Durkheim's theory, (2) his social research methodology, and (3) the phenomenon of human rights activism in the context of these categories and methodology. The fundamental categories of Durkheim's sociology encompass the concepts of "social facts" (*les faits sociaux*), "solidarity" (*la solidarité*), "collective consciousness" (*conscience collective*), and "anomie" (*l'anomie*).

This paper will sequentially examine these concepts in relation to general legal approaches and the specific nature of human rights activism.

Social facts as an independent category of Durkheim's sociology

The concept of "social facts" is the central category of Durkheimian sociology and plays a crucial role in his methodology of studying what he termed social reality. Notably, leading Russian sociologists note that "according to Durkheim, the subject of sociology comprises social facts, which together form the fabric of social reality" (Volkov, Dobrenkov, Nechipurenko & Popov, 2004:25). Durkheim's social theory can be characterized as systematic, as each concept in his sociology can be analyzed through the lens of social facts. Moreover, the interrelationship among the concepts within his theory can also be established through the concept of social fact.

Durkheim delved into the specificity of social facts in two key works, first in his monograph *On the Division of Social Labor* (Durkheim, 1893), and later in *Rules of Sociological Method* (Durkheim, 1919). In the former, he argues that social facts are manners of acting, thinking, and feeling external to the individual, which are vested with a coercive power by virtue of which they exercise control over him (Durkheim, 1990:413).

In his monograph *Rules of Sociological Method*, Durkheim revisits the definition of social fact, asserting that the general category of "social fact" cannot be defined "from within society" (*à l'intérieur de la société*). This is because a characteristic feature of a social fact is its "external position in relation to individual consciousnesses" (*son extériorité par rapport aux consciences individuelles*). Another inherent characteristic of a social fact is "its coercive effect (*l'action coercive*) on these very individual consciousnesses" (Durkheim, 1919:5).

It should be noted that the two definitions (in both the monograph *On the Division of Social Labor* and in the *Rules of Sociological Method*) are virtually identical. Both definitions carry mystical and magical connotations, prompting critics of Durkheim's concept of social facts to raise related questions: "Who or what makes the social facts enforceable?" (referred to as the counter-mystical argument) and "Who or what and in what way, imposes these facts on particular individuals?" (referred to as the counter-

magical argument). These questions still define the ongoing debate about the relevance and heuristics of Durkheimian sociology.

In the second phase of his work, after his “religious turn”, Durkheim seems to have found the answer to these questions. His realization, or perhaps even “epiphany”, that the genetic source and initial basis of human social nature lies in so-called primitive religion occurred at the end of his scientific career. Durkheim considered the Australian Aboriginals belief system to be an example of such a religion.

According to Durkheim, primitive or “pure” religion, which has not yet “dissolved” into particularistic dogmatics, or the authoritative commentaries of religionists, serves as the source of everything social. Furthermore, all fundamental concepts inevitably trace back to religious consciousness. Consequently, every social fact reveals itself only by “returning to man's social origins” – or, according to Durkheim, to primitive or totemic religion (Durkheim, 1912).

“It is an essential tenet of sociology that a human institution cannot rest upon delusion or deception; otherwise it could not endure (*elle n'aurait pu durer*). It would encounter resistance that it could not overcome if it were not based on the nature of things” (Durkheim, 1912: 3).

In any case, it was important for Durkheim to prove initially, that not every fact occurring in a social environment has a social connotation. For example, a Brahman's meal is not a social fact itself because, according to the canons of Hinduism, the food consumed by a Brahman must be concealed from the possible “defiling” gaze of an untouchable. But when two or three untouchables share a meal, it represents a social fact. Thus, a social fact is irreducible to a purely biological fact.

On the other hand, a social fact is not a purely psychological fact either. For instance, a doctoral student's vague feeling that the thesis submitted for defense is insufficiently argued and therefore requires further elaboration is not a social fact. However, the discussion of this fact with the supervisor is a social fact.

According to Durkheim's theory, a social fact always manifests itself externally, i.e., it requires externalization, or an encounter with something or someone external (Steiner, 2005:29–30). Accordingly, in the *Rules of Sociological Method*, Durkheim employs a metaphorical description, proposing that social facts should be considered as “like things”. This metaphor has been widely debated.

In the preface to the 1919 reprint of the *Rules of Sociological Method*, Durkheim attempts to justify his metaphorical approach to the analysis of social facts. He makes a clear methodological distinction between a thing and an idea. The former is perceived as something external to us, while the latter as something internal. In other words, what is essentially outside of our inner world remains to a certain extent beyond our control, unlike our feelings, our thoughts, and intentions (Durkheim, 1919:X–XI).

In terms of their influence, social phenomena closely resemble objects in the physical world. For example, a driver with a sober mind and a good memory cannot “command” a rock on the side of the road to turn into a haystack the moment his car skids on a bend. Similarly, a prison chaplain who has just received the confession of a prisoner

condemned to death cannot decide to act as executioner instead of a retired inquisitor. Nor can he respond to a warden's request (if there is any) to do so. These instances illustrate that the phenomenon of confession and the phenomenon of execution are two incompatible social facts, as steadfast as object in the physical world – they cannot be “controlled” by individuals or groups.

In Durkheim's sociology, the term “social fact” is a broad concept, essentially serving as an “*umbrella term*” or “collective concept” (German *Sammelbegriff*). Theoretically, at least five types of social facts can be outlined:

1. Social fact as a phenomenon, such as a shared meal among warehouse workers during lunch breaks.

2. Social fact as norms, including rules of propriety and ethics that imply specific social behaviors, for example, a polite handshake when meeting.

3. Social fact as a value, such as altruism, solidarity, friendship, good neighborliness, etc., which influence the quality of social interaction and social security.

4. Social fact as institution¹, for instance, family, contracts and other social institutions, without which the existence of systems, structure, and social relations would be impossible.

5. Social fact as quasi-objects, such as money, negotiable securities and other items that hold social significance possibly inversely proportional to their physical “tangibility” – where the absence of money is felt more keenly than its presence.

The boundaries between these different types of social facts are not very clear in practice. Moreover, the same social fact can fall within several categories simultaneously, contingent upon the context and circumstances. For example, a social fact labeled as “contract” can be represented within the terminologies and principles of all five types mentioned above: as a phenomenon, it manifests itself during negotiation processes within the framework of pre-contractual relations between future contracting parties; as a social norm, it expects contracting parties to take into account each other's interests; as a social value, it serves as the foundation of stable social relations; as an institution, it is an essential element of the social system – a set of interdependent institutions including family, money, economy and enterprise; and, finally, written as a document, the contract is a quasi-object. Another example of a multivalent social fact is money.

Understanding the nature of social facts is crucial for law in general and human rights activism in particular. Modern researchers heavily rely on social facts to discern the essence of relevant legal relations and to develop methodologies for their legal governance across various spheres of public life. The significance of the category of social facts in relation to law is underscored by various perspectives, as articulated by Kasatkin” (Kasatkin, 2022) who asserts that “the rule of recognition, defined as acceptance of a standard of behavior and assessment by members of the community,

¹ A social institution, such as the family, should not be confused with an institution of law, such as the institution of the will within the law of succession. A social institution is primary to any legal institution and in principle can function outside and without formal law.

constitutes a social fact that distinguishes legal from non-legal issues, thereby shaping the unity and integrity of the legal system.

Examining the interplay between the concepts of “social fact” and “legal fact” warrants a thorough analysis, a point also acknowledged in doctrinal sources such as Chegovadze (Chegovadze, 2023). It is evident that these terms encapsulate distinct forms of legal relations.

For example, in the realm of environmental legal relations, scholars emphasize that the development of environmental legislation is anchored in social facts, traditions, customs, cultural and historical code of the population as expounded by Shpakovsky & Zhavoronkova (Shpakovsky & Zhavoronkova, 2023), when discussing the deliberate trajectory of environmental legal frameworks.

Social facts are often referred to in the context of medical legal relations, and viewed from different perspectives. For example, social facts of a very specific nature are analyzed in relation to human reproductive rights: “...In case of severe incurable reproductive or genetic diseases, procreation by natural means is not possible, and prospective parents require additional “social facts” – positive duties possessed by the state if there is a political and social consensus, or movement towards such a consensus, highlighting the intricate web of factors at play in ensuring these fundamental rights (Posadkova, 2022).

Researchers also consider medical error to be a social fact, which may result from not only clinical misconceptions, but also various other causes, such as a lack of a systematic approach in diagnosis or excessive drug treatment (Stepina & Stepin, 2022).

Therefore, a comprehensive understanding of such phenomenon as a social fact is of great importance for law in general and human rights in particular. In this context, Durkheim's theory of social facts can be viewed as a unique case of reification of ideas. When combining Durkheim's theory of social facts with contemporary concept of the reification of ideas, it is essential to differentiate between positive or integrative reification, aligned with Durkheim's perspective, and negative or destructive reification, as found in Marx's theory of alienation. The juxtaposition of Durkheim's positive reification and Marx's negative reification in the context of human rights work is particularly pertinent and timely.

Human rights defenders must be attuned to all forms of “reification thinking” among those involved in a conflict. The mechanism of human rights protection is triggered only when there is a genuine conflict of interests, at which point the human rights defender engaged in resolving the dispute should foremostly identify and counteract instances of negative reification, drawing from the Marxist concept of alienation.

Moreover, the correlation can be further elucidated within Durkheim's sociological constructs, such as solidarity and collective consciousness.

Solidarity as an independent category of Durkheim's sociology

The term “solidarity”, borrowed by Durkheim from French legal terminology, stems from the Latin word “solidus”, with three basic meanings: (1) “noble, true”², (2) “firm, unshakable” and (3) “whole, integral”. French jurists borrowed the term in its third meaning and, notably used it in the formula “in solidum deberi”³.

Durkheim, in a sense, imbued the originally legal adjective “solidary” (solidaire) with sociological significance for ideological purposes. The concept “solidarity” represents the “integrative” sociologist’s response to the challenge posed by the pioneers of “the sociology of conflict”, particularly Karl Marx and Friedrich Engels, and their renowned slogan “Proletarians of all countries, unite!”

In the French edition of “The Communist Manifesto”, “solidarity” in its literal sense is mentioned twice, specifically in the context of conflicts between different classes, such as the workers and the bourgeoisie. Here, a category such as “solidarity” acquires additional importance (Marx, 1985:13).

From Marx’s view point, the concept of “solidarity” leading to understanding proletarian solidarity within the strict confines of his ideology. Technically, such solidarity could be perceived as a special instance of horizontal solidarity, i.e., solidarity between individuals of the same status. However, Marx restricts the notion of horizontal solidarity exclusively to the proletariat.

In the Marxist perspective, “bourgeois solidarity” either represents the coordinated collaboration among certain bourgeois against other “capitalists”, both domestically and internationally, to the detriment of the artisans, peasants and, above all, the proletarians. Alternatively, “bourgeois solidarity” denotes the betrayal of solidarity by the ruling capitalist oligarchy, sacrificing the so-called national interests in order to preserve their exploitive interests against all (internal) exploited individuals.

A notable historical example that illustrates such betrayal, according to Marx, involves the actions of the “bloody dwarf” Louis Adolphe Thiers (1797–1877), a politically experienced figure, who, from 1830, held significant political positions. On 17 February 1871, Thiers was elected by the French National Assembly as “head of the executive”, and cooperated with Otto Bismarck to violently suppress the Paris Commune. To this day, the French Left views Thiers as a traitor to his nation, while the Right views his contribution favorably, perceiving it as instrumental in overcoming a dangerous national crisis and reinstating bourgeois order (Ignatchenko, 2018:180).

The Marxist interpretation of “solidarity” suffers from at least three flaws from the perspective of Durkheim's integrative approach. Firstly, Marx’s formulated ideology does not accommodate the concept of vertical solidarity, implying a “transclass” solidarity between capitalists and proletarians. In other words, Marx limits the scope of solidarity to horizontal interactions exclusively among proletarians.

² The Russified term “solidnyj” in meaning gravitates towards *this* meaning of “solidus”.

³ Lat. lit. “to owe for everything”, or, in terms of the law of obligations, to be jointly and severally liable with one’s property (for all other partners in the business).

Secondly, according to Durkheim, proletarian solidarity is inherently linked to conflict, a characteristic quite natural for the author of the theory of class struggle. Lastly, according to Durkheim, Marx's perspective omits the possibility of vertical solidarity between individuals of disparate social statuses, for instance, between a professor and his assistant or even between a general and his servant, which forms a "blind spot" within Marxism's optics.

The concept of solidarity, as articulated by Durkheim, appears to hold more weight in relation to the nature of modern understanding of this term. In today's context, "solidarity" is perceived as a mutual sense of cohesion between two or more individuals who, despite their differences, perceive their interests and goals as point, while recognizing the unequal oppression and acknowledging the right of the more oppressed party to receive assistance from the less oppressed.

A key aspect of solidarity is the reversibility of reciprocity. Reversibility, or reciprocity of solidarity as a social behavior, entails that the person providing help today (active solidarist) may find themselves in need of help tomorrow (passive solidarist). Consequently, within the context of social dynamics, solidarity represents an ongoing process of reciprocal acts of support (Sprondel, 2003:305–306).

By separating solidarity from its role in class struggle, especially as weapon of the proletariat against the bourgeoisie (Marx, 1895:13), we can identify a common social context for both types of solidarity – horizontal and vertical.

Horizontal social solidarity among neighbors in a university dormitory, for example, could manifest in one student loaning their old computer to another when the latter's computer breaks down, thus exemplifying a passive act of solidarity.

A case of vertical social solidarity, could involve a professor granting access to their library for their graduate student. In this scenario (involving rare books), the graduate student may not soon be in a position to become a potential active solidarist. Thus, the professor within the framework of the "library context" may not become a potential passive solidarist either. However, this does not prevent the professor from asking this graduate student for courtesy in another (commensurate) scenario, such as preparing a presentation of the professor's paper for an upcoming conference.

Thus, in the contemporary social dynamics, solidarity represents an unceasing stream of reciprocal acts of solidarity stemming from and understanding of the interdependence and relationships between members of society.

The ideological and cognitive triumph of Durkheim's "solidarism" largely stems from his development of a coherent theory of solidarity expounded in his monograph *On the Division of Social Labor*. The theory's fundamental problem is articulated by Durkheim as follows: "How did it happen that the individual as he becomes more autonomous becomes more dependent on society? How can he simultaneously become more individual and more solidary? For it cannot be denied that these two processes, however contradictory they may seem, develop in parallel" (Durkheim, 1893:IX).

Methodologically, the theory of solidarity is intriguing because Durkheim's line of argumentation is based on the synthesis of historical and logical methods. He employs the historical method utilizing an evolutionary approach, characteristic of 19th-century social sciences, in his examination of the social division of labor – the general context of social evolution according to Durkheim. This method is central to his study, serving as an initial approximation to the true subject of the monograph, i.e., solidarity, and later aligning with evolutionary perspective on the emergence and progression on the social division of labor. But this phenomenon in itself does not interest Durkheim; he takes it as a function of something else. In Hegel's terms, it is the social otherness of the social division of labor. Durkheim captures this otherness in terms of social solidarity.

The historical method used by Durkheim to study the social division of labor is primarily procedural, serving as an initial approximation to the actual subject of the monograph, namely, solidarity.

For Durkheim, the historical method aligns with an evolutionary approach regarding the emergence and progression of the social division of labor. However, in the course of research, the evolutionary approach overtakes the historical method (in its strict sense), combining it with the teleological approach, which raises the question of the ultimate goal of the evolution of the phenomenon under study. This, by the way, is the Achilles' heel of any evolutionist, since it clashes with the idea of “the end of history” proposed by Francis Fukuyama (Fukuyama, 1992).

Durkheim ingeniously addresses this methodological trap by integrating a logical method into the evolutionary approach, allowing for a broader perspective that is not confined to specific spaces or historical chronologies. This strategic shift in the scientific paradigm enables the researcher to prevent certain developments. Although this transition moves the scientist away from the role of a historian, the focus remains on related processes and logical analyses of abstract concept.

This transformation may be viewed as methodological discreteness or eclecticism: however, these labels do not apply to Durkheim's methodology. His methodological consistence is evident, as every segment of the historical analysis he presents can be examined from a logical, inductive perspective, i.e., a gradual progression from specific phenomena to intermediate generalizations.

Moreover, every stage of the material presentation that is explicitly linked to the historical method is implicitly tied to Durkheim's fundamental research hypothesis, according to which the historical development of the social division of labor is superimposed and subordinated to the logical task of defining and classifying the phenomenon of social solidarity. This historical-logical method is characteristic of Durkheim's creative style, suggesting that the division of social labor is a specific social function, intricately related to the degree and nature of social solidarity. This conveys the inevitable application of deduction, i.e., moving from the general to the specific. Although the subject of the social division of labor is subject to the historical method, it can always be reinterpreted and treated as an inductive, i.e., logical, method.

The monograph *On the Division of Social Labor* follows a logical rather than a historical outline. This structure can be illustrated by the sequence: “mechanical solidarity – social division of labor – organic solidarity” (Durkheim, 1990:417). This juxtaposition of three abstract concepts also implies an evolutionist interpretation: all human interactions are based on the principle of mechanical solidarity. With the rapid division of social labor during the capitalist era, the dynamics of interactions underwent a transformation. Consequently, interactions now manifest an organic solidarity, as described by Durkheim, which fosters horizontal relationships between individuals and vertical between individuals and “society”.

It is crucial to acknowledge that the formation and functionality of social groups rely on solidarity in various forms. This is evident in the basic unit of the family, even in extreme survival conditions. While the “Robinson phenomenon” may seem to challenge this notion, Durkheim does not categorize this example due to his view that social solidarity principles are fundamental and universal.

Hence, it becomes pertinent to explore the relationship between social solidarity and what Durkheim terms as social facts, conceptualized as “things” or, more precisely, “like things” or “rebus sui generis”⁴. In this sense, Durkheim proposes viewing social solidarity through the nominative signs, such as words.

Essentially, “social solidarity” can be interpreted as a term-index that signifies a collection of “social solidarity facts”, transcending the actual phenomena, including social solidarity, as opposed to the phenomenon of suicide (Durkheim, 1897). According to Durkheim's theory, social solidarity can only be indirectly grasped, through the lens of “collective consciousness”.

It is proposed to correlate “collective consciousness” with the nature of the state, sociology and law (which seems not only reasonable but also necessary), emphasizing P. Bourdieu's notion that the state emerges from the “objectification of social perceptions mirrored in institutions of power. These institutional frameworks are the result of collective consciousness, but once they have emerged, they limit socio-political and other manifestations of human activity” (Aznagulova & Pashentsev:2023).

In turn, the category of “collective consciousness” is pivotal in understanding the nature of the state, the interplay between the individual and the state, specifically pertaining to human rights activism. Legal discourse underscores the issue of so-called “reactive” human rights protection, addressing violations and advocating for further comprehensive legal, social, political and economic research in human rights protection (Chechelnitsky, 2023). It is imperative that such studies encompass a holistic approach considering the multidimensional aspects of human rights advocacy.

Considering social solidarity in the context of human rights work, it is noteworthy that according to Durkheim, “human collectives live and survive not because of social conflicts, but because of structures of social solidarity” (Kucherenko, 2011).

⁴ Lat. “things in their own kind,” i.e., not falling under the “genus” of ordinary things.

These perspectives shed light on emerging trends in human rights activism. Formally, human rights defenders predominantly focused on individuals; however, recent studies emphasize the importance of collective entities as rights bearers in the context of human rights activism (Lunev, 2023). Legal discourse is actively debating the interplay between individual and collective rights in corporate setting and their inherent nature (Gear, 2010; Isiksel, 2019; Kulick, 2021).

Given this context, exploring collective consciousness as an autonomous category of Durkheim's sociology holds significance within the context of this paper.

Collective consciousness as an independent category of Durkheim's sociology

The term “consciousness” has a lengthy lineage, closely related to such concepts as “thinking” or “sense”. From a philosophical standpoint, “consciousness” is a cross-cutting theme within any philosophical tradition. However, the question of whether consciousness can be “collective” is relevant in the context of social philosophy, albeit it lies outside the scope of this study.

In France, Jean-Jacques Rousseau can be viewed as a pioneer of this topic in a certain sense, as he formulated the concept of the “general will” (*la volonté générale*) within a broader theory of nationhood. Rousseau distinguished the “general will” from the “will of all” (*la volonté de tous*). The aggregate will of “all Frenchmen”, as a sum of individual wills, is heterogeneous and contradictory, thereby not allowing for “generalization”. Conversely, according to Rousseau, any decision made by the delegates of the Convent should be interpreted as a single will, i.e., as the “will of the nation”, or even the “will of France”.

Consequently, the “general will” emerges as a distinct (metaphysical) reality that supersedes the individual will of any Frenchman.

Subsequently, Gabriel Tarde sought to challenge the Rousseauist paradigm of social life and to reinstate the methodological precedence of the individual over the collective. He postulated: “In society, all similarities of social origin are the direct or indirect product of various forms of imitation: custom-imitation, fashion-imitation, obedience-imitation, instruction- or education-imitation, and so on”. (Tarde, 1903:14).

By establishing the ubiquity of the “laws of imitation” across all “living matter”, Tarde foreshadowed the emergence of what is now known as “social psychology”. One of its progenitors in France was Gustave Le Bon, who posed the pertinent question of whether a collective composed of individuals can have its own “soul”, distinct from the individual psyche of its constituent elements.

Le Bon identified as a fundamental characteristic of the nineteenth century the phenomenon where the unconscious conduct of the crowd could subdue the rational actions of individuals (Le Bon, 1985: I). This implies that a crowd under certain circumstances may be “criminogenic”, while another in different circumstances, could exhibit “altruistic” behavior. Hence, individuals with positive heredity and upbringing in the former crowd would be subject to its criminogenic “soul”, whereas those with the inferior heredity and deficient socialization in the latter

would involuntarily become instruments of the commendable conduct of the “altruistic crowd”.

In his conception of collective consciousness, Durkheim endeavored to reevaluate and, to some extent, amalgamate the concept of the general will in Rousseau’s work, Tarde’s notion of the universal law of imitation governing the “mechanism” of all living entities, and Le Bon’s concept of the emotional autonomy of collectives. For Durkheim, “collective consciousness” primarily represents an organized and structured collection of beliefs and sentiments shared by the members of a given collective.

Collective consciousness is thus a repository for the shared values of a particular group, marking the unique contribution of Durkheim’s concept. Strictly speaking, for Rousseau the “common will”, in essence, functions more as an instrument of the nation’s “self-expression” than a standard value. While it may reflect values like liberty and democracy, it is not an independent value in itself.

Similarly, for Tarde, the law of imitation is an objective mechanism governing the reproduction of all living entities. This objective law persists regardless of individual preferences, operating as an impersonal imitation mechanism. Le Bon’s “crowd psychology” marginally incorporates the aspect of value, particularly in scenarios of potential altruistic group behavior, rather than criminogenic tendencies.

Durkheim posits the instrumental and functional essence of collective consciousness in its role in individual socialization. Through established rules and procedures, collective consciousness molds individuals towards socially-oriented behavior. The prominent manifestation of collective consciousness embodies both a form of existence and a mechanism for social cohesion. It is through socialization that individuals become accustomed to socially oriented behavior. In other words, the social norms of the collective in which individuals live lead them to conform to these norms for fear of undesirable social sanctions.

At the same time, Durkheim posits that the value and functional character of collective consciousness lies in the prominence of its manifestation in the national legal order. Through legal consciousness, collective consciousness is both a form of existence, and an instrument for fostering social solidarity. Durkheim argues that “law (order – P.K. and F.N.) reproduces the basic forms of social solidarity” (Durkheim, 1983:71). He distinctly differentiates repressive law from restitutive law, associating repressive law with national criminal law in the context of organic solidarity, and restitutive law with civil law.

Significantly, Durkheim notes that the nation’s collective consciousness centers around the repressive legal system, which affects everyone. In contrast, restitutive law mainly pertains to “special groups” such as entrepreneurs, falling outside the realm of collective consciousness in its strict sense. Durkheim maintains that societies characterized by mechanical solidarity demonstrate a monolithic and “uniform” collective consciousness, lacking individual or task specialization.

Conversely, societies with organic solidarity have a more differentiated structure, where individuals focus on specialized tasks. This increased specialization allows for greater individual autonomy within the collective, indicating a shift toward restitutive thinking. Instead of imposing a single imperative, diverse contractual agreements gain prominence (Steiner, 2005:19-20).

It is within this framework that safeguarding of collective rights, such as corporate rights, should be interpreted. From a legal perspective, the relationship between individual and collective rights may vary; yet from a human rights standpoint, a sociological dimension is crucial. In the example given earlier about the nature of corporate rights, they can be seen as special corporate rights of an individual, or as the rights of a company (and/or as collective rights of a particular group of individuals). To a greater extent, this matters from a legal point of view. Here, the entities authorized to resolve the relevant issues (legislator, law enforcer) should take into account specific state legal systems, the existing legislative and law enforcement practices and other aspects.

However, from a human rights perspective, such an approach is not sufficient. A “sociological dimension” must be incorporated, ensuring that these rights are protected in both legal and conceptual frameworks in terms of the nature of restitutive thinking. Any further in-depth research on human rights work in legal and non-legal communities should be based on a comprehensive understanding of human rights activism.

Anomie as an independent category of Durkheim’s sociology

As demonstrated above, Durkheim can be viewed as a systematist where each category in his sociology corresponds to a “social fact”. Within this framework, the concept of “anomie” introduced by Durkheim can be seen as a response to the challenges posed by Marxism, particularly in relation to the concept of “solidarity”.

The discussion here delved into the interplay between Durkheim’s notion of anomie and the Marxist concept of alienation, both of which emerged in light of the rapid modernization and development of European capitalism in the early nineteenth century. In Marxist theory, “alienation” carries a distinct socio-economic connotation – an alienated individual is not simply alienated from their human essence but has become commodified, reduced to a mere object amongst others.

This alienation is evident not only among the proletarians who trade in their labor power, thereby relinquishing their vitality and abilities but also among capitalists, who immerse themselves solely in the pursuit of capital accumulation, forsaking their humanity. In Marx’s analysis, alienation is a unifying force that transcends class boundaries, affecting all individuals within the capitalist system.

Durkheim’s concept of “anomie” carries socio-legal significance, and is interpreted almost literally as “lawlessness”. However, rather than suggesting an absence of order or anarchy, Durkheim emphasizes the idea of shortfall or breakdown in the regulatory function in the society. In all these (anomalous) cases, “if the division of labor does not produce solidarity, it is because the relations of the organs (of social interaction) are not regulated. Rather they are in a state of anomie” (Durkheim,

1893: 412). Further on, he argues that wherever the originally spontaneous relations between social functions acquire a definite form of a body of rules, it can be asserted a priori that “the state of anomie is impossible” (Durkheim, 1893:412). This interpretation underscores Durkheim’s concern with the erosion of social norms and values, leading to a state of normlessness and moral ambiguity within industrial societies.

In his work “Suicide”, Durkheim broadened the concept of “anomie” by including the notions of individual and group integration alongside social regulation (Durkheim, 1897:304). Through his examination of anomie, Durkheim posited that the term is multifaceted, encompassing both a specific designation of deficiencies in social regulation and a broader interpretation of deviating from moral and social norms, indicating individual pathologies.

The concept of “anomie” can be viewed as a catalyst for the interplay between the individual integration theory and the social regulation theory. However, Durkheim faced challenges in developing a robust theory of regulation compared to his work on integration, leading to issues in logically connecting the wealth of elements in integration theory with the scarcity of elements in regulation theory due to fragmentation.

Durkheim outlined that well-integrated group of individuals exhibits shared consciousness, mutual beliefs, interactions, and common objectives (Besnard, 2005: 164). Conversely, a lack of these features amplifies social anomalies, culminating in extreme forms, such as suicide (Durkheim, 1897:222).

According to Durkheim, anomic suicide manifests itself when individuals lose their ethical and social orientation in the vacuum of social regulation, evident during societal crises or rapid socio-economic crisis transformations. Durkheim contrasts anomic suicide with fatalistic suicide, citing instances like the numerous suicides of slaves (Durkheim, 1897:311). He attributes phenomena like suicide to the absence of individual integration highlighting the limitations of social regulation in the conditions of capitalist society. He echoes Marxist principles advocating for the realization of socialist ideals as crucial for humanity’s future (Steiner, 2005:9).

Conclusion

The theory of social facts as presented by Durkheim allows for an interpretation that casts these facts as mystical and magical forces beyond human comprehension and control. Durkheim’s assertion that social facts are as “stubborn” as physical objects in the external world introduces the concept of reification. This suggests that people begin to view the ideas and metaphors they create as external entities that are somewhat “unmanageable”. Reified ideas may start exerting dominance over their creators. Interestingly, the Marxist concept of man’s alienation from his essence aligns with the theme of reification of social ideas.

Durkheim’s theory of social facts can be seen as a unique case of the reification of ideas; however, it is essential to note that the modern term “reification” carries a negative,

critical connotation, and is closely related to linguistics, particularly grammar. Reification is usually understood as substantivization of adjectives and formation of verbal nouns, which if they become ideological instruments of social control and political power, can be detrimental.

When combining Durkheim's theory of social facts with the contemporary concept of idea reification, differentiation between positive, or integrative reification in the spirit of Durkheim, and negative, or destructive reification, in the spirit of Marx's theory of alienation, is crucial. Durkheim's theory rooted in social solidarity emphasizes constructive social interaction arising from the division of labor. In this sense, the very word "solidarity" as a substantiated adjective can be seen as an example of useful reification. In contrast, within the Marxist base-superstructure theory, reification serves the interests of the ruling class acting as an instrument of ideological domination.

Exploring Durkheim's concept of positive reification alongside Marx's negative reification in the context of human rights is thought-provoking. Human rights activism aligns with Durkheimian positive reification, seeking to restore social solidarity functions. Human rights defenders, when addressing conflicts, must neutralize negative reification to prevent ideological distortions in the spirit of the Marxist concept of alienation

Sensitivity to reification thinking among conflict participants is crucial for promoting understanding and autonomy. A human rights defender must be sensitive to all manifestations of the "reification mindset" in a conflict. Such phrases as "friendship between us has never been and will never be" should never be ignored. If friendship is a "stubborn thing" and does not want to deal with us, then there is no logical obstacle to assume that "in the absence of friendship, hatred has settled in our cooperative: it has taken hold of my neighbor, and I am forced to respond to his acts of hatred in a similar and proportionate way". Lamenting the absence of a positive reification called "friendship" easily allows for the emergence of a negative reification of "hate". The task of the human rights defender is to plant the idea in the minds of the conflict participants that one of the likely "triggers" of the conflict may provoke the reification thinking of the other party. The human rights defender should try to restore a sense of personal autonomy and personal dignity to the participants in the conflict: there is no friendship as such, just as there is no hatred as a "stubborn thing". There are only people who commit either solidarity or unfriendly acts. By deconstructing reified concepts like "friendship" and "hatred", human rights activism as a social institution aims to foster positive orientations and mitigate conflicts.

In the context of human rights, examining social facts like contracts through Durkheim's theory elucidates their multifaceted nature as phenomena, norms, values, institutions, and quasi-belongings.

Emphasizing comprehensive studies that encompass organizational, legal, and sociological aspects of human right activism is vital for a systematic and profound understanding of individual rights and violations, ultimately enhancing rights protection.

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