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# Durkheim's Concept of Justice and its Relationship to Social Solidarity

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*Durkheim's concept of justice is defined and explored in the context of his quest for establishing a "science of moral facts." Justice is supposed to be the basis of moral order in modern societies. Durkheim's criticisms of charity as the basis of social solidarity are explored. His Jewish background is related to his emphasis on justice as well as his scorn for charity as the basis for social solidarity. Implications for social theory are discussed briefly.*

Durkheim's conception of justice has been neglected relative to other aspects of his thought, as is true for Durkheim's political thought in general (Giddens, 1986). To be sure, Durkheim's concern with justice has been addressed, but usually in a narrow context. For example, Sirianni (1984) addresses it only within the confines of Durkheim's *The Division of Labor in Society* ([1893] 1933). Similarly, Lacroix (1981) concludes that there exists a hiatus between Durkheim's political sociology and sociology of religion. A similar hiatus seems to exist regarding the sociologists who have pursued Durkheim's political thought and those who have addressed Durkheim's personal as well as professional interest in religion, such as Bellah (1973), Filloux (1977), and Pickering (1984). In particular, Durkheim's conception of justice has not been analyzed in the context of his Judaic heritage.

Our aim in this essay is to examine the definition, context, and significance of the concept of justice in Durkheim's sociology. We begin by locating it within the context of Durkheim's concern with establishing a "science of moral facts" (see also Hall, 1987). This was a concern shared by many of his contemporaries, but what set Durkheim apart was that he rejected the possibility of establishing morality upon charity, even Christian charity, and opted instead for justice. Next, we turn to his definition of justice and its close connection to the idea of contract. We show that, ultimately, he apprehended the contract as being binding upon the individual *and* society. We suggest that the Durkheimian conceptualization of justice is remarkably similar to Jewish conceptions of covenant and justice. Our conclusions concerning the Judaic influence

upon Durkheim build upon the works of Filloux (1977) and Lacroix (1981), with the difference that we attempt to overcome the apparent hiatus between Durkheim's religious and political thought.

## *THE IMPORTANCE OF DURKHEIM'S JUDAIC BACKGROUND*

Durkheim was descended from eight generations of rabbis. Besnard (1982), Filloux (1977), Greenberg (1976), and Lacroix (1981) address the influence of Durkheim's rabbinical background upon his social thought to a greater extent than Lukes (1972), but differ vastly among themselves with respect to their conclusions.

Filloux's starting point is the representation of Durkheim as the "son of rabbi." Filloux assumes that Durkheim was impregnated at a young age with the Talmud. The result, according to Filloux, is that Durkheim's conception of religion in *The Elementary Forms of the Religious Life* ([1912] 1965) is essentially Talmudic. Like God, society — for Durkheim — is creation, life, paternity, the cradle of civilization, the source of human ideas; it is "presence." Society causes the human being to experience a feeling of perpetual dependence. Filloux argues that Durkheim substituted scientific revelation for religious revelation. Though Durkheim did not have disciples in the role of rabbi, he had disciples in his role as the head of the journal and school he established, *L'Année sociologique* and the Annalistes. Lacroix applies an essentially Freudian analysis to the impact of the death of Durkheim's father in 1896 upon Durkheim. Lacroix suggests that Durkheim's self-reported "discovery" of the importance of religion in 1895 was, in the psychoanalytic sense, an example of doing versus undoing. The religion that Durkheim had rejected in his personal life was now — allegedly — restored in a different form in his professional life. Lacroix argues that prior to 1895 Durkheim was concerned with political phenomena, while after 1895 he was concerned almost exclusively with religious phenomena.

Rather than suggest that Durkheim opposed his father's will, as Filloux and Lacroix imply, Greenberg (1976:628) thinks that Durkheim's

> debt to his Jewish heritage encouraged him to stress the evolutionary ties between modern man and his primitive forebears, rather than to place them in absolute opposition. He could, therefore, praise the rabbis whose subtle juridical skill had stretched the sacred law to its fullest in a futile endeavor to meet the demands of the new age. Nevertheless, Émile Durkheim became a convinced assimilator. "The Jews," he was to claim, "are leaving their ethnic character with extreme rapidity. In two generations it will be an accomplished fact." The needs of the modern world required that the rabbi shed his particularist and archaic robes to emerge as the universal scientist and teacher.

According to Greenberg, Durkheim's assimilation was consistent with the spirit of his times (see also Marrus, 1971; Raphael and Weyl, 1980). Greenberg cites Jules Bauer's (1929) observation that with few exceptions, rabbis in Durkheim's time were not enticed by the prospect of making their children ministers in Judaism because of poverty. Rather, where the fathers had failed, the sons were encouraged to succeed. Thus, Greenberg (1976:630) concludes that

> It was not the father's values or personality that Émile rejected, but his career. Perhaps Émile's father understood this, the impoverished rabbi who had himself once displayed a marked taste for philosophy and the sciences and may have known the dreams of a student in Paris.

Besnard is critical of Lacroix's and Filloux's focus on Durkheim's alleged rabbinical crisis, and is more sympathetic to Greenberg's interpretation. Besnard offers his own version of how Durkheim's personal crises coincided with aspects of his sociological thought. In particular, Besnard offers a cautious, tentative suggestion to the effect that Durkheim's professional interest in anomie, which Besnard dates from 1896 to 1897, coincided with a long period of anomie in Durkheim's personal life. Notwithstanding the quality of these arguments, there is simply not enough data available to assess precisely the impact of Durkheim's Judaic background upon his thought in general nor political thought in particular. (Lukes reports that Durkheim's personal papers were entirely lost in World War II.)

We would propose a somewhat different assessment of the relationship between Durkheim's personal and professional biographies. Durkheim's preoccupation with anomie may be understood not only in relation to his adult reaction to his father's death or adult crises. It may also have been the fulfillment of Durkheim's childhood wishes to become like his father because, after all, Durkheim consistently regarded anomie as the obverse of morality (Meštrović and Brown, 1985). What Durkheim and his father had in common was that they were both moralists. Throughout his career, from the first to the last of his major writings, Durkheim was intent upon establishing a science of morality. Traditionally, science and morality are considered to be poles apart. The fact that Durkheim sought to combine them may be due, in part, to his unconscious reconciliation of the representations that shaped him, representations that urged secularization and assimilation, and also representations that stressed a concern with morality. In other words, Durkheim's moralism may be understood as a refraction of the Durkheim family tradition somewhat independently of his father's death. It could be argued that despite the fact that Durkheim self-consciously rejected Judaism and the role of the rabbi, he still remained a prophet, teacher and moralist of sorts. In any event, we propose to make cautious moves in the direction of reconciling aspects of Durkheim's Judaic background with his conceptualization of justice.

## *DURKHEIM'S QUEST FOR A SCIENCE OF MORAL FACTS*

In *The History of Modern Philosophy in France* Lucien Lévy-Bruhl begins his analysis with Descartes, works his way through illustrious French philosophers, and ends with Durkheim. He portrays Durkheim as a philosopher who transformed Cartesianism and theological concerns with morality into a concern that two of Durkheim's classics should be understood in this manner:

> M. Durkheim, in his *Division du Travail Social* and in his *Régles de la Methode Sociologique*, endeavoured to treat the *facts of moral life* after the method used in the positive sciences — that is, not only to observe them carefully, to describe and classify them, but to find out in what way they are capable of becoming objects of scientific study, and to this end,

> to discover in them some objective element which will admit of exact determination, or if possible, of measurement. If the definition of the "sociological fact" were sufficiently exact, the greatest difficulty would be overcome, and social science could then progress rapidly (Lévy-Bruhl 1899: 464 [emphasis added]).

Indeed in the first sentence of the preface to *The Division of Labor in Society* ([1893] 1933:32) Durkheim writes: "This book is pre-eminently an attempt to treat the facts of the moral life according to the method of the positive sciences." This classic even ends on the note that Durkheim regarded it as an attempt to establish a moral code scientifically. And in the introduction to the *Rules of Sociological Method* he claims that he is merely clarifying, proving and illustrating the project he began in *The Division of Labor in Society* ([1895] 1982:49). Given that Lacroix and other scholars claim to have found significant discontinuities in Durkheim's thought, this is an important theme to pursue. It seems that Durkheim was concerned with establishing a science of moral facts from the beginning to the end of his career (see Hall, 1987). This concern was not a footnote to his other concerns. Rather, Lévy-Bruhl would have us consider the reverse, that Durkheim was concerned with social facts so that he could bring to fruition his plans for a science of morality.

For example, consider Durkheim's *Leçons de sociologie: physique des moeurs et du droit*, published in English as *Professional Ethics and Civil Morals*, a compilation of lectures Durkheim gave at Bordeaux from 1890 to 1900 and repeated at the Sorbonne in 1904 and 1912. The subtitle in French makes it clear that this book is about a science of moral facts, which is also how the book begins: "The science of morals and rights should be based on the study of moral and juridical facts" ([1950] 1983:1). *Professional Ethics* combines an intricate discussion of political and economic anomie with a discussion of *homo duplex*, which is the basis of Durkheim's understanding of religion. This work also contains themes that are found in Durkheim's other works on suicide, philosophy, socialism, education, and religion. Most of these other works may be understood as attempts to establish morality on a scientific basis. *The Elementary Forms of the Religious Life*, written in the twilight of Durkheim's career, ends with the claim that "it is not at all true that between science on the one hand, and morals and religion on the other, there exists that sort of antinomy which has so frequently been admitted" ([1912] 1965:494). Apparently, Durkheim was prepared to make explicit this life-long concern with a science of morals when he began his *La Morale* in 1917, but died soon after writing the introduction. Nevertheless, with regard to this new science, he wrote that:

> We shall therefore call it "Science of Morality" or "Science of Moral Facts," understanding thereby that it deals with moral phenomena or moral reality as it can be observed either in the present or in the past, just as physics or physiology deal with the facts that they study (in Traugott, 1978:202).

Logue (1983) locates Durkheim's concern with a science of morality within the philosophical context of the French liberal tradition, and notes that Durkheim's concern resonated with similar moves by distinguished colleagues in his time, among them Wundt, Renouvier, Espinas, Guyau, and Bouglé. In fact, most of these others turn

out to be Durkheim's mentors or followers. But there are two important differences. The first is that Durkheim proposed with more force than the others that justice should be the basis of modern morality. The second is that Durkheim rejected Marxist, Kantian, and utilitarian conceptualizations of justice.

## *THE ADOPTION OF JUSTICE AND THE REJECTION OF CHARITY AS THE BASIS OF MORALITY IN ORGANIC SOLIDARITY*

Clearly one cannot claim that Durkheim's concern with justice was unique to him. There were many others who wrote about justice in his time, particularly in England. But Durkheim's conception of justice is quite different from the others. First, justice is central to Durkheim's conceptualization of the moral order and as such it is central to all of his work — it was a ubiquitous concern for him. It was not central to either St. Simon or Comte, and in fact Durkheim's ([1928] 1958) critique of these two precursors of sociology includes the absence of this concern with justice. Second, Durkheim's concern is different from the English writers whose interest was primarily in the distributive nature of justice (i.e., the allocation of resources), as well as the rejection of the collective element in justice. The English wrote in the utilitarian tradition in which justice is understood primarily in the context of the contract as a personal agreement between individuals. No doubt Durkheim was also somewhat concerned with this utilitarian feature, but in general, he tended to criticize the utilitarians on the same grounds that he criticized other moral systems, for excessive subjectivism. He was concerned primarily with justice as a power relationship between society and the individual. But above all, Durkheim understood justice as the obverse of charity. This move sets him apart from most other writers concerned with justice.

In *Professional Ethics and Civic Morals,* Durkheim posits a fundamental opposition between the duties of justice and the duties of charity: "Between the two [duties], it is agreed there is a kind of hiatus or break in continuity. They seem to derive from ideas and sentiments that have nothing in common" ([1950] 1983:219). Even if one wanted to make charity the basis of morality, Durkheim elaborates, it would be an impractical undertaking in modern societies. This is because, typically, one feels charity for those similar to one's self. Charity is thus appropriate in traditional societies whose solidarity is based on similitudes, but impractical in societies based upon differentiation. Durkheim writes: "We have not yet reached the day when man can love all his fellow-creatures as brothers, whatever their faculties, their intellect or their moral values. . . . This is what makes a complete levelling to equal values impossible today" ([1950] 1983:220). But justice is possible under these conditions of differentiation.

This distinction between justice and charity seems to have informed a subtle, implicit theme in Durkheim's *The Division of Labor in Society.* It is the movement from charity as the basis of morality in mechanical solidarity to justice as the basis of morality in organic solidarity. Over and over again, Durkheim treats justice as an emergent, evolving, modern phenomenon. He locates present conceptions of justice as yet incomplete and imperfect. But he treats the more widely accepted notion of charity, particularly Christian charity, with considerable scorn. According to Durkheim, mechanical solidarity does not even perform its function of producing social cohesion effectively:

"Mechanical solidarity does not link men with the same force as the division of labor, and . . . moreover, it leaves outside its scope the major part of phenomena actually social" ([1893] 1933:173). Primitive societies, though they stress sentiments seemingly derived from charity, are actually unstable and lack social harmony. Durkheim claims that "social harmony comes essentially from the division of labor" ([1893] 1933:200).

For Durkheim, solidarity "is perhaps the very source of morality" ([1893] 1933:415), but only if it is based on justice ([1893] 1933:375). And genuine solidarity does not necessarily connote normative consensus for Durkheim. Rather, "the more solidary the members of a society are, the more they sustain diverse relations, one with another, or with the group taken collectively" ([1893] 1933:64). In this way one can understand Durkheim's concern with the decline of the collective conscience and the rise of individualism that accompanies the movement from mechanical to organic solidaraity. Individualism, the state, and justice develop in parallel, not in opposition or conflict (discussed in Giddens, 1986). Justice becomes the new basis of morality in societies characterized by organic solidarity. As Durkheim ([1893] 1933:388) put it: "The task of the most advanced societies is, then, a work of justice. . . . Just as ancient peoples needed, above all, a common faith to live by, so we need justice."

Durkheim brings together many of these diverse strands in the ponderous closing paragraphs of *The Division of Labor in Society* ([1893] 1933:407-409):

> But it is not enough that there be rules; *they must be just*, and for that it is necessary for the external conditions of competition to be equal. If, moreover, we remember that the collective conscience is becoming more and more a cult of the individual, we shall see that what characterizes the morality of organized societies, compared to that of segmental societies, is that there is something more human, therefore more rational about them.

This morality is not utilitarian or objectivist; rather, according to Durkheim, "It only asks that we be thoughtful to our fellows and *that we be just*, that we fulfill our duty, that we work at the function we can best execute, and receive the *just reward* for our services." Durkheim realized that

> This is far from being on the verge of realization. We know only too well what a laborious work it is to erect this society where each individual will have the place he merits, will be rewarded as he deserves, where everybody, accordingly, will spontaneously work for the good of all and of each.

He added that present-day societies are caught between the old morality of charity and the newly emergent morality of "justice which has grown more ardent in our hearts," and this disorganization may be understood as anomie. Thus, according to Durkheim, "What we must do to relieve this anomy is to discover the means for . . . introducing . . . *more justice* by more and more extenuating the external inequalities which are the source of the evil."

In the introduction to the first edition of *The Division of Labor in Society*, dropped in subsequent editions, Durkheim outlines the project for a science of morals that became the basis for most of his other works. He wants to set up an ethics based on moral laws whose criteria shall be not metaphysical invention but incontestable scientific truth ([1893] 1933:411). He admits that there are so many moral doctrines

that he cannot consider them all. Nevertheless, he claims that most of them are "manufactured from subjective points of view" ([1893] 1933:418). In this context, Durkheim attacks Kant precisely with regard to the connection between charity and modern morality. Durkheim writes ([1893] 1933:412):

> Vainly Kant has tried to deduce from his categorical imperative that group of duties, surely badly defined, but universally recognized, called the duties of charity. His method of argument is reduced to a game of concepts; and can be summarized as follows. . . . Charity is . . . a general duty of humanity, since egotism is irrational.

The antinomy between charity and egotism can be solved otherwise, according to Durkheim: "The egotistical maxim is no more stubborn than the other in assuming a universal form; it can be practiced with all its implied consequences." This is a somewhat abstract criticism. Durkheim apparently thinks that Kant is illogical in deriving charity from the categorical imperative. But Durkheim does not let up in his critique. He considers Kant's discussion of charity in other passages, and concludes "the proof is no more probing." He goes so far as to call Kant's reasoning "pathetic." The gist is that Durkheim is highly critical of the notion that charity should serve as a general formula for morality because he thinks it is overly subjective.

In *Socialism and Saint-Simon*, Durkheim criticizes Saint-Simon, Marx, communism, and socialism on the basis that they were emotional, not scientific, responses to the injustices generated by classical capitalist theory. He understands these various thinkers and systems as a "cry of pain" that evokes pity and sympathy but faults them for not offering scientific remedies ([1928] 1978:27). For example, Durkheim writes that "communism is nothing other than charity raised to a fundamental principle of all social legislation," a sort of "compulsory fraternity" ([1928] 1958:53). Durkheim argues that charity is not a desirable condition because charity merely maintains the conditions which made charity necessary in the first place. Instead, Durkheim writes, "What is needed if social order is to reign is that the mass of men be content with their lot. But what is needed for them to be content, is not that they have more or less but that they be convinced they have no right to more." He adds that "A moral power is required . . . which cries out 'You must go no further' " with regard to individual desires — this is justice ([1928] 1958:200). This is similar to his claim in the section of *Suicide* devoted to anomie that society must "set the point beyond which the passions must not go" ([1897] 1951:249).

In *Moral Education*, too, Durkheim takes up the concept of charity as a possible basis for morality, and rejects it: "Charity, in the ordinary and popular sense of the word, the charity of person to person, has no moral value in itself and cannot by itself constitute the normal end of moral conduct" ([1925] 1961:82). Durkheim argues that society, instead of promoting charity, should be engaged in promoting "an access of justice, to a higher morality, to organizing itself in such a way that there is always a closer correspondence between the merit of its citizens and their conditions of life with the end of *reducing or preventing individual suffering*" ([1925] 1961:77, emphasis added). The implication seems to be that a moral code based on justice, not charity, has the potential for bringing about sustained happiness.

In general, Durkheim continually criticizes charity, and he portrays charity as the opposite of justice. This is because, as he puts it, "Charity requires us to do good to those who are suffering, and that, up to a certain point, regardless of their possible merit" (in Giddens, 1986:189). The question must be asked: Why was he arguing for justice and not for Christian charity? After all, many of his contemporaries, such as Tönnies ([1887] 1963), were lamenting the loss of kinship, community and the breakdown of concern for fellow humans in capitalist societies. And Tönnies, an admirer of Marx, was expressing the dominant sentiment of that age. Against this backdrop, it is an unusual move for Durkheim to insist that the society of diversity should be bound by duty, not love.

## *DURKHEIM'S CRITIQUE OF MARX AND THE RELATIONSHIP OF JUSTICE TO CONTRACT*

Taken out of context, Durkheim's definitions of justice, such as this one in *Socialism and Saint-Simon*, are not entirely helpful: "Social justice . . . is the belief that the position of citizens in societies and the remuneration of their services should very *exactly* with their social value" ([1928] 1958:52, emphasis added). Sirianni (1984:453) focuses on statements like the one above and grants that Durkheim defines justice as the opportunity to develop one's capacities to the fullest. But she faults him for not wanting to change society if these opportunities do not exist, even if that requires violence. She feels that Durkheim's conceptualization of justice is inferior to Marx's, allegedly because Durkheim seeks a fit between social positions and natural aptitudes, not a restructuring of the division of labor. But this understanding of Durkheim, accurate only in a narrow sense, ignores the context of Durkheim's remarks on justice.

Durkheim's reasons for not aligning himself with the Marxist position were ponderous. According to him, "value cannot, as Marx would wish, be expressed as a function of the duration of work and of that alone" because one must also consider "the difficulty of the work" as well as competition ([1897] 1986:123). When one considers these additional factors one necessarily invokes juridical regulation of contracts meant to insure justice. "Yet in order to accomplish these results it is not necessary to overthrow the present economic organization" ([1897] 1986:125). The question is how to incorporate the ideal of justice into any existing social system. In general, according to Durkheim,

> In order to introduce into our societies more . . . justice, and to make the individual more free, there is no need to upset from top to bottom the entire system of property, production and exchange. Whatever one might do, private property can never be abolished, for in property there is something inherently personal, and the individual nature of property likewise entails that of production. Also, there can be no reason why the private enterprise system cannot be modified so as to make exchanges sufficiently equitable (in Giddens, 1986:140).

Durkheim also objects to Marx's one-sided sympathy with the proleteriat. "The malaise from which we are suffering is not rooted in any particular class," Durkheim writes, and continues,

> It is general over the whole of society. It attacks employers as well as workers, although it manifests itself in different forms in both: as a disturbing, painful agitation for the capitalist, as discontent and irritation for the proleteriat. . . . [One should] address, not those feelings of anger that the less-favoured class harbours against the other, but feelings of pity for society, which is suffering in all classes and in all its organs (in Giddens, 1986:143).

Durkheim's position, above, is consistent with this more generalized belief that anomie afflicts all of society, not just a portion of it, and that it has psychological and physiological consequences for the individual in the form of pain and suffering (Meštrović and Brown, 1985). It is a "total" social phenomenon (Mauss, [1950] 1979).

In addition to Durkheim's specific comments on Marx, one finds the most elaborate discussion of the context for justice in Durkheim's neglected *Professional Ethics and Civic Morals* which, to repeat, informed Durkheim's argument concerning justice in *The Division of Labor in Society* and elsewhere. One gains the impression that Durkheim was arguing against Marxism in most of his writings, even when he does not mention Marx by name. This is probably because he objected to the idea of equality regardless of merit, an idea he regarded as a variation of charity. There will always be differential merit. In essence, Durkheim argues that the concept of justice presupposes the idea of contract. This may be why he devotes so many pages of *The Division of Labor in Society* to the development of contract. In any event, the argument in *Professional Ethics and Civic Morals* is his most succinct statement on this matter: "A just contract is not simply any contract that is freely consented to, that is, without explicit coercion; it is a contract by which things and services are exchanged at the true and normal value, in short, at the just value" ([1950] 1983:211).

Granted, Sirianni (1984) is correct to note that Durkheim never specifies how these true and just values should be attained. But this is because Durkheim claims that contemporary societies are only on the frontier of specifying the just remuneration for individual labor objectively. He assumes that such values could be evaluated objectively in the future, that they too are social facts:

> How this scale of values is arrived at is not for the moment our concern. . . . It remains true — and this alone matters to us for the time being — that this scale is certainly a real one, and that it is the touchstone by which the equity of the exchanges is to be judged. This normal price, of course . . . varies according to circumstances; there is no official price-list to apply to every individual case. It is only a fixed point, around which there must inevitably be many fluctuations; but these cannot go beyond a certain range in any direction without seeming abnormal. We might even say that the more that societies evolve the more too does this structure of values become stable and regulated and unaffected by any local conditions or special circumstances, so that they come to assume an objective form. . . . We are becoming increasingly used to the idea that the true price of things exchanged should be fixed previous to the contract and be in no way governed by it ([1950] 1983:210).

The important point here is that in assessing contracts, Durkheim insists that one should ignore the motives of the individual actors, their utilitarian calculation: "Now, it is only the objective consequences of the undertakings contracted that have a bearing on their worth" ([1950] 1983:207).

Moreover, in organic solidarity, it is not always necessary that contracts be enacted in a ritual manner. Rather, the division of labor itself is an implicit contract between individuals and society. Thus, according to Durkheim,

> The fundamental duty of the State is laid down in this very fact: it is to persevere in calling the individual to a moral way of life. I say fundamental duty, for . . . if the cult of the human person is to be the only one destined to survive, as it seems, it must be observed by the State as by the individual equally ([1950] 1983:69).

In his other political writings, Durkheim insisted that "the State is the civil organ of justice" and that "the progress of justice is measured by the degree of respect accorded to the rights of the individual, because to be just is to grant to everyone what he has the right to demand" (in Giddens, 1986:49).

Durkheim could have made his position on the relationship between contract and justice, and his definition of justice, more explicit. His explosive second preface to *The Division of Labor in Society* is in line with our analysis above, and may be understood as a response to the misunderstandings that he felt the reception of his book generated. In this preface, he rages against anomie and the fact that instead of the law of justice, the "law of the strongest prevails" ([1893] 1933:3). Perhaps he had planned to clarify himself in the unfinished *La Morale*. In any case, we feel that his argument consists essentially of the propositions that justice, not charity, should be the basis of morality in modern societies; that justice presupposes the idea of contract between the individual and society that is binding on both; and that justice is an objective, not a subjective phenomenon — a social fact — though he never specified how it can be ascertained objectively.

## *THE SIGNIFICANCE OF OPPOSING LOVE TO JUSTICE*

It seems that Durkheim's sociology favors the value of justice over the value of charity. It is interesting that Jewish tradition also values justice over charity, while Christian tradition perhaps tends to overrate charity. A word of caution here. In our attempt to illustrate the importance of the opposition between love and justice in Durkheim's thought, we will use Judaism and Christianity as ideal constructs. Obviously, differences in commitment to these values exist among both Jews and Christians. And both systems involve love and justice to some degree. But that is not our concern in this paper. Judaism definitely interprets the relationship of charity to justice differently from Christianity (Donin, 1972). Our intention is to show how a *Weltanschauung* that emphasizes justice over charity may help to explain how Durkheim might have understood his quest for establishing a science of morality within sociology.

Judaism places primary emphasis on the teachings of the Old Testament with its accentuation on justice and contractual relations with the deity. Christianity, on the other hand, has tended to stress the New Covenant and its affirmation of charity. To repeat, this is not to imply that charity as a value is absent from Judaism nor justice from Christianity. Rather, if we examine the various components of the Christian and Jewish value systems, we shall find that charity supercedes all other values in Christianity as justice does in Judaism. Charity is the essence of Christianity. St. Paul

called it the greatest of virtues. St. John wrote, "for God so loved the world, that he gave his only begotten Son . . ." (John 3:16). By contrast, the Old Testament tends to emphasize the covenant between Yahweh and his chosen people.

Our concern, however, is not with charity *per se* but with its effects: we are not seeking a definition or description of charity, but will focus our attention on the behavior which is prescribed as the natural consequence of charity. In Matthew 26:35-6 we find: "For I was hungered, and ye gave me meat; I was thirsty and ye gave me drink; I was a stranger and ye took me in; Naked, and ye clothed me; I was sick, and ye visited me; I was in prison, and ye came unto me." This passage, and other New Testament passages like it, suggest that charity is manifested through ministry. Through charity one is able to commiserate, empathize, and thus respond to the needs of others. Precisely because of this developed sense of empathy and concern, primary emphasis is placed on treating affected individuals rather than upon preventing problems in the first place. The most common activities of Christian missionaries, for instance, are feeding and healing.

From Durkheim's perspective, it must have seemed that help given to others for the sake of love is overly subjective and lacks dependability. It is capricious because any help given on the basis of charity must come as a "free will offering." One should desire to help because one "feels for" the other human being, rather than because such help is specified as a moral injunction. For example, the Good Samaritan was moved by pity, but is not depicted as having felt that charity was a duty (Luke 10:30-35). Moreover, since charity is not bestowed equally but differentially, depending upon the donor's decision as to who merits it, the help that is allocated is particularistic. In other words, charity leads us to judge each individual on his or her merits and then to minister only to those whom we select. Because it leads us to be concerned with the individual and his problem, such charity simultaneously detracts our attention from the social system as a whole, as well as from the concern for preventing problems, particulary if the solution to the problem lies in changing the social system. In sum, such an orientation develops a concern for helping, but only after a problem has arisen and been defined as acute, and is less concerned with changing the conditions which may have caused the problems in the first place. Durkheim was too committed to the notion of duty to base modern social solidarity on something as subjective as charity.

The distinction between charity and justice may also explain a feature of Durkheim's personality that some commentators have found perplexing, his sympathy with socialism but his absolute refusal to participate actively in it (discussed in Besnard, 1982). The gist of Durkheim's argument is *Le Socialisme* is a refraction of our comments above. He understood socialism as a misguided response to social problems, not a solution that would prevent their recurrence. As Durkheim remarked, charity "organizes nothing; it maintains the *status quo*; it can attenuate the individual suffering that this [economic system's] lack of organization engenders" ([1928] 1958:58). His proposed solution, in this work as well as in other discussions of anomie, was to use science to find a way to re-arrange the social structure in order to prevent in the future the suffering that anomie entails.

In Judaism we find that justice dominates all other values. Its importance in the Jewish cultural system is evident from the fact that justice is perceived as the foundation of life: "Justice, justice shall thou pursue that thou mayest live . . ." (Deut. 16:20). Of the three paramount values demanded by the deity, justice is first; it stands above mercy and humility (Micah 6:8). Justice is independent of the seat of power; it stands above the monarchy so that the regulations concerning justice precede those concerning the appointment of kings. Justice and law are two distinct phenomena: the former is independent of power, but those in power and those who rule are subject to its prescriptions. So important is this value that in the name of justice one can question even God's actions.

These aspects of Judaism illuminate a seemingly paradoxical aspect of Durkheim's sociology, his tendency to criticize yet uphold the social order at the same time. Durkheim charges frequently that rules and laws in themselves are not sufficient to prevent anomie. He distinguishes between society as it really is versus how it appears to be especially in *Sociology and Philosophy* ([1924] 1974). He invokes the is-ought controversy by distinguishing between moral facts that should be sanctioned by society and those that should not ([1893] 1933:431). Piaget (1932) and Filloux (1977), in particular, made much of this apparent paradox. It may be true, as Filloux and others have suggested, that Durkheim made God a representation of society, but he also dared to question society — a refraction of the Judaic willingness to question God.

What is justice? Here, too, we will seek an answer not in a definition but in the prescriptions associated with justice. Above all, justice seeks to moderate relations in asymetrical power relationships (e.g., "And you shall judge with justice between man and his brother and the stranger" Deut. 1:17). It specifies further that an equitable relationship should exist between the poor and the mighty. Justice, then, consists primarily in the moderation of relations between unequals, a concern with the use and abuse of power and privilege. As a value, it stresses the idea that human relationships should be governed by a set of universally defined duties and privileges which cannot be altered or abused by an asymmetrical power relationship. We find, for instance, that in the name of justice Nathan attacks the powerful monarch David, Jeremiah adminishes the rulers, and Isaiah rebukes the priests.

Likewise, once the use of power begins to be questioned, attention is focused upon the individuals who represent the system and accordingly, upon questioning the system that permits the abuse of power. In other words, when justice is the dominant value, a critical examination of the system is encouraged in order to evaluate its justness, particularly the manner in which power is used. Unlike charity, which encourages a particularistic relationship between members of a social system, justice demands a universalistic orientation. In sum, while charity directs attention toward the individual and toward alleviating the individual's problem through acts of charity, justice deals primarily with power relationships, directs attention toward power inequities in the system and to the problems which follow upon such inequities, and thus seeks the solution of social problems within the system itself.

Again, this perspective enables one to understand why Durkheim never advocated overthrowing the social system which produces anomie, why he criticized both capitalism and socialism but ultimately sought to modify the existing system. He was neither

a defender of the status quo nor a revolutionary. He was committed to justice, not to any particular social or economic system. In *Le Socialisme*, in particular, Durkheim argued that social ills will not be cured if power is given to either of the two social classes at the expense of the other ([1928] 1958:204).

Moreover, the linkage between justice and power illuminates a perplexing aspect of *The Division of Labor in Society*. The division of labor produces dissimilarity, which in turn is a source of differentiation in power. Mechanical solidarity is possible under conditions of minimal stratification and therefore minimal differentiation of power. Durkheim harps on this theme, remarking that even gender and age differences counted for little in societies characterized by mechanical solidarity. Justice is not a penultimate concern in such societies. It is only under conditions of extreme diversity in power that justice becomes essential to the moral order, making collective and individual life possible. The role of justice in Durkheim's thought may be likened to the role of the ego for Freud. Justice keeps power relations in balance much like the ego mediates various dualistic forces in Freud's system.

This is not to assert the absence of charity in the value system of Judaism: on the contrary, it is an important Jewish value. But, in the case of Christianity, one acts charitably out of subjective kindness and love, whereas in the case of Judaism charity is a moral norm, a duty for the performer and a privilege for the recipient. The Hebrew word for charity is *tzedokah*, from the root *tzadok*, from which are derived also the words *tzedek* (justice) and *tzadik* (righteous). In other words, charity (*tzedokoh*) is an activity which is related to maintaining justice (*tzedek*). *Tzedokoh* represents the idea of "just due," and implies that the poor have the right to expect help. Judaic charity, then, is a duty and not a choice.

## *THE JEWISH ELEMENT IN DURKHEIM'S NOTION OF JUSTICE ELABORATED*

The Jewish view of man's relationship to God and fellow man was founded in the historical idea of the covenant. Elazar and Cohen (1985:46) point out that:

> What bound the *Bnei Yisrael* together in the epoch [of the Forefathers] was already more than their self-evident family affiliations mentioned in Gen. 42:11. The crucial element in their affiliation was the fact that they were all *bnei brit* the children of the covenant concluded between God and each of the patriarchs. Indeed, it is the cluster of covenants recorded in Genesis which comprise the constitutional basis of the emergent polity.

Indeed, the covenant has become the *sine qua non* of Jewish national existence. In the Passover holiday, the recounting of the exodus from Egypt is portrayed such that Jewish redemption stems from the covenant God had with Abraham. It was God's covenant with the Jews at Sinai which in the Jewish historical perspective has become the foundation of Jewish national life. The idea of the covenant, moreover, was the foundation on which tribal association was based and which was the infrastructure of the later national unity. The covenant is the cornerstone of Jewish political and interpersonal relationships. In essence, it is a contractual agreement between God and Abraham, and between God and the Jewish nation. It is this contractual feature of ancient Israelite life which made justice — not charity — the dominant value of that society.

The impact of a contractual relationship on justice is expounded by Durkheim. The essential feature of a contract, Durkheim proposes, is that it is not merely an agreement of convenience between the two contracting parties, but that it is also a moral relationship. As such, the contractual relationship is a matter of concern for the whole social system. Justice, that is, the moral norm which guides fairness in a contractual relationship, is an essential component in all contractual relationships. Durkheim writes: "Agreement between the parties concerned cannot make a clause fair which of itself is unfair. There are rules of justice that social justice must prevent being violated, even if a clause has been agreed to by the parties concerned" ([1893] 1984:162).

In short, like the Jewish view of justice, the Durkheimian view is that a contract is also independent of the contracting individuals. The contract is not derived from individuals. Rather, individuals invoke the contract, which is a collective product endowed with sacredness. The norms which govern the agreement between contracting individuals include especially the norm of justice: the contracting agreement *must* be fair. Within the contractual relationship, the powerful may not exercise their power to exploit the weaker. Durkheim writes:

> Common morality condemns more severely still any kind of contracting where one party gets the lion's share, where one is exploited by the other because he is weaker, so that he does not receive the fair price for his pains. The public consciousness ever more insistently demands exact reciprocity in the services exchanged and, recognizing only a very reduced form of obligation for those agreements that do not fulfill this basic condition of all justice ([1893] 1984:320).

In other words, justice exists as a social force and a social fact that is independent of human will and the individual. Justice is not the agreement between two or more individuals in the sense of being a personal contract. Like the Torah and the law in general, justice is external to the individual.

Durkheim argues clearly that justice is the norm that specifies that the contractual relationship is between units in the social system that do not have the same degree of power. Durkheim also observes that an important feature of justice is its collective concern: "wherever a contract exists, it is submitted to a regulatory force that is imposed by society not by individual: it is a force that becomes ever more weighty and complex" ([1893] 1984:158). In the ancient Jewish perspective of a just relationship, in which *tzedek* is exercised, a person meets certain obligations which another has on him. God, for instance, is just when he meets his obligations to the Jews, obligations which are part of the covenant. God *must* meet his obligations to the Jews. Durkheim makes the symbolic connection between God and society precisely along these lines: society *must* meet certain obligations toward its members, including the regulation of their desires. If it fails in these obligations, it is unjust.

Like the prophets and other charismatic leaders who are the symbols of the Jewish collective conscience and who stand as guardians of *tzedek*, the moral imperative in the covenant, so society must oversee all contractual relationships and must insist that the parties obey the norm of justice. The role of the prophets is to ensure that those in power do not disregard *tzedek* and use their position to exploit those who

are powerless. In this role the prophets have become the moral conscience of the nation and exercise the community's right to be critical of their leaders. It is this social condition which, we propose, made justice the pinnacle of the moral order.[1]

Durkheim has already been called the Moses of sociology on the grounds that he led it into the promised land (cf. Pickering, 1984:521). We propose another reason why he should be regarded as a prophet of sorts. Like the ancient prophets, Durkheim was *extremely* critical of the status quo when it abuses its power and exploits the weak. He criticized capitalism, socialism, pragmatism, Christianity, and Western education when he felt that they failed to promote justice or promoted its obverse, anomie. At the same time, he was not prepared to urge that Western institutions be overthrown.

## *IMPLICATIONS FOR SOCIOLOGICAL THEORY*

Durkheim apparently believed that justice should be the basis of modern social solidarity. This does not mean that he completely abandoned the notion of charity and its derivatives, but it does mean that he denied the possibility of charity being the primary basis of solidarity in the new moral order. For Durkheim, charity is too subjective and, in a word, too primitive to fulfill that task. Durkheim's social evolutionism maintains the previous stages in developmentally new stages. The collective conscience is weakened in organic solidarity, but not entirely lost. Charity becomes less important, but it is still a component of moral life. Nevertheless, with the rise of diversification and individualism, justice becomes more important than charity. We leave open the question of how justice and charity may co-exist in Durkheim's sociology.

Durkheim's focus on justice in the context of his quest for a science of moral facts is the reconciliation of many of the dualisms and conflicts we have been discussing, personal and professional. This focus and quest enabled Durkheim to be the moralist that his father was and the scientist that his father wanted to be. It allowed him to keep his Judaic heritage alive yet assimilate into the French republic. It wed fact and value, object and subject, science and morality, phenomena which have often been understood as being poles apart. Justice, as Durkheim conceived it, would lead to sub-

[1]The link between anomie and the notion of the infinity of desires which Durkheim claims characterizes anomie can be found in Talmudic philosophy. Consider the following story about Alexander the Great, which Durkheim must have heard as part of his Talmudic training: In his travels, Alexander once pitched his tend near a stream. Before his meal, he took a couple of dried fish and immersed them in a stream, at which point they became alive and swam away. Believing that the stream had magical properties, he decided to seek its origin. After three days of travel, he came to a wall beyond which the stream originated. An angel appeared at the gate and informed him that this was the Garden of Eden, but only those who improved the world for the next generation could enter. The angel did not consider world conquest as sufficient. Dejected, Alexander asked for a momento and was given a human skull. Upon his arrival back at camp, he asked his advisers the meaning of the skull. The tried to weigh it. However, no matter how much gold they placed on the scale, the skull on the other end continued to be heavier and to depress the scale. There was a rabbi there who thought he knew the meaning of the skull. Removing the gold from the scale he replaced it with a feather. Still, the skull remained heavier. The rabbi then took some dirt and covered the eye sockets of the skull. Instantly, the feather became heavier than the skull: The moral is that as long as human eyes are open, the wealth of the world is insufficient, while after death even a feather is too much. Only the law based on justice permits one to lead a contented life. The links to Durkheim's emphasis on closing and limiting the horizons of desire relative to anomie are obvious.

jective contentment in the lives of individuals, yet it was also a social fact. Justice is, in part, a moral phenomenon, but for Durkheim it is also an integral part of modern political institutions.

We are not in a position to specify how justice should be operationalized as an objective social fact. Rather, we wish to suggest that the focus on justice as one of Durkheim's central concerns opens up new vistas and agendas for sociological theory. It points to the need to know more about Durkheim's childhood and Jewish background. It lends one more perspective to the debates in the sociology of knowledge as they pertain to development of sociological theory itself. It introduces a new alternative to currently accepted ideologies like capitalism, socialism, communism and so on.

Above all, it introduces a new perspective on what healthy, normal, and happiness-producing relations in modern societies should be like. We realize again that this move, based as it is on Durkheim's criticized distinction between the normal and the pathological, is problematic relative to the fact-value and is-ought controversies. But the point is that Durkheim's conceptualization of justice introduces new, far-reaching problems for many branches of sociology. It is entirely beyond the scope of this essay to elaborate upon these problems. Durkheim's move exposes contemporary theoretical problems and debates precisely because he was deliberately trying to go beyond intellectual and epistemological problems that continue to beset contemporary social science.

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