

**Emile Durkheim On Crime And Punishment (An Exegesis)**

by  
**Seamus Breathnach**

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Til minde om Jette



EMILE DURKHEIM  
ON CRIME AND PUNISHMENT  
(An Exegesis)

BY

SEAMUS BREATHNACH

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## Introduction

By their very nature theories of crime and punishment presuppose the more primary theoretical formulations both of evolution and society, the one answering the theoretical time requirement, the other the spatial requirement, and each symbiotically related to the other in an integral theory of social evolution. Into such an overall perspective sink Durkheim's theories of crime and punishment.

It is the intention of this essay to explicate these theories without, it is hoped, paying too much attention to extra- criminological or penological concerns at their expense. In his theory of evolution, for example, Durkheim felt the necessity to differentiate himself, from Comte and Spencer ; in his social theory from theorists like Rousseau, J. Stuart Mill, Hobbes, and Machievelli ; in his theory of crime from Lombroso, Tarde, Garofalo and the Italian School ; and in his theory of punishment (as in his 'theory' of the State) from Kant and the utilitarians. In anthropology, philosophy, religion, political economy, morality and pedagogy similar differentiations are made. There is, therefore, in a work of this modest nature, an obvious need to choose not just what is pertinent to Durkheim's theories of crime and punishment, but, also, what is important.

Since the aim of the essay is an expositional account of these theories, the more popular interest in 'anomy' and 'suicide' are not formally dealt with. Because of this overriding perspective and the lack of space available, criticism has practically been reduced to a hurried sixth chapter. This latter constraint has also prohibited recourse to original French texts.

Consequently, there is a total reliance on popular translations of Durkheim's major works - a reliance which, if we are to accept the advice of the erudite, must necessarily cast some doubt on the interpretation which these pages purport to ascribe to Durkheim's theories of crime and punishment. Steven Lukes has found serious fault with these translations, particularly the two major texts upon which this essay has heavily relied, viz. 'The Division of Labour' and 'The Rules.' In view of such limitations it is only fair to warn the reader that Durkheim's own words - even in translation - have been faithfully, if not always wisely, preferred.

The following abbreviations should be familiarised by the reader , lest their repeated appearance irritate him unduly. I am not at all convinced that the use of these abbreviations benefits either the reader or the writer one whit - but it seemed like a good idea at the time.

#### Abbreviations Used

DOL = The Division of Labour in Society, trans. by G. Simpson, 1933

ROSM = The Rules of The Sociological Method, trans. by S.A. Solovay and J.H. Mueller, 1938

S= Suicide: A Study in Sociology, trans. by J.A. Spaulding and G.Simpson, 1975

TLOPE = Two Laws of Penal Evolution, trans. by T. Anthony Jones and Andrew T. Scull, Economy and Society, v. 2, no. 3, Aug., 1973

JS = The introduction to TLOPE by Jones and Scull

EFRL = The Elementary Forms of the Religious Life, trans. by J.W. Swain, 1976

EAS = Education and Sociology, trans. by S.D. Fox, 1956

SAP = Sociology and Philosophy, trans. by D. F. Pocock, 1933

ME = Moral Education, trans. by E.K. Wilson and H. Schnurer, 1961

PECM = Professional Ethics and Civic Morals, trans. by C. Brookfield, 1957

SL= Steven Lukes: 'Emile Durkheim: His Life and Work, A Historical and Critical Study', 1973.

## Chapter 1

### CRIMINOLOGY AND PHILOSOPHY

It is convenient for the purposes of this part of the essay to treat Durkheim as (i) a rationalist, (ii) a conceptualist, and (iii) a realist philosopher. As a rationalist we attempt to locate his status within a historical perspective; as a conceptualist we shall attempt to illustrate his approach to the theory of crime and punishment; and as a realist we shall attempt to describe his contribution to the theory of universals.

#### 1.1 Durkheim as Rationalist

Descartes, whom Durkheim quotes in support of his scientific sociology (though not to any great effect), is generally regarded as the father of modern rationalism. Philosophers like Malebranche, Spinoza and Leibniz can be seen to trace their views back to the famous Cartesian 'cognito' and the dualism between mind and matter which, as we shall see, Durkheim tried - methodologically - to bring together. Generally speaking, however, rationalism finds its truest expression in Kant, who completed the Cartesian revolution and upon whose thought theorists like Fichte, Schelling and Hegel have mounted their 'weltanschauungen'.

Even if we define 'rationalism' in its narrow sense as the use of reason to dispel irrational religious beliefs, Kant's 'Pure Theory', and Durkheim's 'Elementary Forms', have at least the death of God in common - and, of course, the passage from a theocentric world to an anthropocentric or philocentric one (in the case of Kant), and to a sociocentric one (in the case of Durkheim). Having attacked the foundations upon which the existence of a Thomistic/Aristotelian God was based, Kant was forced to find a new foundation for the absoluteness of moral values. This he grounded, not in the will of the Divine, but as Masterson points out, 'in the a priori forms of man's own understanding and the autonomy of man's pure practical reason'. (1) God is replaced by the transcendental dimensions of the human spirit itself, and in order to regulate the practical affairs of men the moral imperative or categorical imperative is introduced. For Durkheim 'the clan' or 'society' is God:

"In the world of experience I know of only one being that possesses a richer and more complex moral reality than our own, and that is the collective being. I am mistaken; there is another being which could play the same part, and that is the Divinity. Between God and society lies the choice ... I can only add that I myself am quite indifferent to this choice, since I see in the Divinity only society transfigured and symbolically expressed." (2)

This distinction between God and society is of primary importance, not just in locating Durkheim in the history of philosophy, but in understanding his whole theoretical outline, the relationship between the individual and the group, the notion of the sacred, his interpretation of history as moving from a religious to a human type of society and the parallel movements of law and morality, his secular morality, his methodology, and his theory of punishment and expiation. For both Kant and Durkheim God is the master-concept - or in Kelsen's terms, the Grundnorm - which any epistemological thesis must embrace. Consequently, Durkheim writes:

"Kant postulated God, since without this hypothesis morality is unintelligible. We postulate a society specifically distinct from individuals, since otherwise morality has no object and duty no roots." (3)

From our point of view it is sufficient to note how Durkheim's sociology dealt with the cult of the individual arising out of the Cartesian revolution and, for that matter, the Christian ethic itself. This emphasis on the individual rather than the group has had important consequences for sociology and criminology. In sociology it has found echoes in Weber and defenders of western individualism like Popper (4) (against the real or imaginary totalitarianism of Plato's universals, Hegel's idealism, and Marx's communism). In criminology it can be found in early Matza, (5) Becker, (6) and Bottoms and McClean. (7) It must be noted, therefore, that Durkheim's whole outlook, his account of the social fact, his 'conscience collective', his theory of history, society, knowledge, religion, crime and punishment - all stand in opposition to the whole tenor of individualist (though not empiricist or positivist) philosophy for the past two centuries.

To constitute such an opposition Durkheim simply must distinguish himself from Kant. And this he does, not in one sphere, but in all spheres, especially in the relevant areas of punishment, of morality, and of epistemology. In the

case of punishment, for example, we can see how Durkheim classically disposes of individualistic philosophy. First of all, he calls on Kant to support the existence of abstractions in order to put the individualist utilitarians to flight; but then, by giving that abstraction the vibrant organic life of his 'conscience collective', he distinguishes his sociology from Kant's philosophy:

"If we reprove acts which lack humanity, it is because they offend the sentiments of sympathy which we have for man in general, and these sentiments are disinterested precisely because they have a general object. This is the great difference, which separates the moral individualism of Kant from that of the utilitarians. Both, in a sense, make the development of the individual the object of moral conduct. But for the latter the individual in question is the tangible, empirical individual, as realized in each particular conscience; for Kant, on the other hand, it is like human personality, it is humanity in general, in abstraction from the concrete and diverse forms under which it presents itself to the observer." (8)

Further, Durkheim claims that the distance between 'man in general' and 'concrete man' equals the distance between man and his concept of God. Since, however, God is society, the theory of punishment is to be found in history. Just as for Feuerbach 'all theology is anthropology' so, too, for Durkheim, punishment is better understood when anthropologically explained.

## 1.2. Durkheim as Conceptualist

In the 'Division of Labour' Durkheim not only classified social solidarities according to the repressive and restitutive sanctions proper to their respective juridical rules, but he further developed this classification (9) in a useful way for understanding criminal statistics. In the 'laws' he makes the distinction between religious and human crimes, and in the 'Rules' he classifies societies by type. To understand the justification for such classifications it is necessary to devote some time trying to appreciate the status which the notions of categorization and classification enjoy in Durkheim's sociology. (10)

Let us begin by posing the problem posed by Bertrand Russell in his 'Introduction to Philosophy': 'How do I know this table'? Of necessity Russell proceeded to disentangle the subjective elements in his knowledge from the

objective elements, the intellectual from the sensual, that which was apriori from that which appeared aposteriori. And whether the table exists, by reason of a chemico-physical relationship (Empiricism: Locke et al.) or on an inherent consciousness within the observer and, when the observer's eyes are closed, on God's consciousness (Idealism: Berkeley), depended the answer to the epistemological question, 'How do I know this table?' Between these two classical schools of thought came two others prior to Durkheim, that of Hume and that of Kant, and it is these latter two whom Durkheim challenges.

David Hume took the empiricist line and propounded a theory whereby the origin of the categories accrued to our sensual experiences. Moreover, he reformulated the principle of causality in terms of a psychological habit of expectation arising from repetitive and associated ideas, elsewhere known as the 'billiard-ball' theory of causality. From such sense data it is possible to know this table; and, by the same argument, it is not possible to know a transcendent God or first cause. Kant, however, held that no amount of sense-data could give rise to the concept of causality without there being something prior in the mind, something subjectively innate, which made knowledge possible.

All knowledge comes initially from sense data, but it is only made knowable by inner modalities, categories, which must be assumed. Therefore while there is no rational proof of the existence of God, morality demands His or a similar 'categorical imperative'. Moreover, I know this table, not just by feeling it, seeing it, etc. - i. e. by sense data, but also because, aprioristically, I conceive of the abstraction wood and tableness into which my sense data of this table can be meaningfully fitted.

Durkheim, who felt that one of the great advantages of sociology lay in its ability to solve certain philosophical questions, sought to resolve these 'two conceptions that have been pitted against each other for centuries.' (11)

"At the root of our judgments, there exists a certain number of essential ideas which dominate the whole of our intellectual life; they are those which philosophers since Aristotle have called the categories of understanding: notions of time, space, genus, number, cause, matter, personality, etc. They correspond to the most universal properties of things. They are like solid

frames enclosing thought, and thought does not appear to be able to break out of them without destroying itself, as we do not seem to find it possible to think of objects, which are not found in time, or space, which are not numerable, etc." (12)

In rejecting Kant, because it is no explanation to say that the categories are inherent in the nature of the human intellect, Durkheim sought to explain the dilemma in terms of social structure, social morphology and 'concepts' which are 'collective representations'. Durkheim succeeds and compliments Kantian thought rather than demolishing it. Kant admirably poses the present issue in so far as it tempts a Durkheimian solution. Kant, for example, assumes a concept called 'innateness' and, that this concept is polarized from experience. But this polarity needs a middle term both to conjoin the categories and to explain them. This is what Durkheim's concept of sociology does.

Innateness, for Durkheim, 'is a simple way of stating the impossibility of reducing rational knowledge to empirical data.' (13) But if 'the categories are, as we believe they are, essentially collective representations, before all else, they should show the mental states of the group; they should depend upon the way in which this is founded and organised, upon its morphology, upon its religious, moral and economic institutions, etc.' (14) To understand the import of what Durkheim is saying we need to understand the nature of man in society, the interplay between the individual and the social. We have already seen that society is 'God' and that, consequently, 'it is a reality sui generis.' We now need to know that the individual and the social dimensions of our nature have as their consequence in the practical order 'the irreducibility of a moral ideal to a utilitarian motive, and in the order of thought, the irreducibility of reason to individual experience. In so far as he belongs to society, the individual transcends himself, both when he thinks and when he acts.' (15)

It is because the categories are such pre-eminent concepts that they have such an important part to play in our knowledge. In fact, their function is 'to dominate and envelop all the other concepts: they are permanent moulds for the mental life'. (16) But this is not to say that the categories do not change; they do. It was the fault of Hume and Kant to think that they remained fixed. If we understand

their origin in religious society, and understand the social nature of all religion, we can see, not only how they become modeled on the social forms, but also how they change as society changes. Moreover, we can begin to understand how Durkheim can claim that science and religion share the same social source, how classification becomes the basis of all science, and how concepts like causality and logical forms are initially nourished into our consciousness by the cumulative rhythms of social life. Inversely, those whom we have not successfully socialized into firmly grasping these more basic categories we invariably call insane.

The idea of 'collective representations' is best understood, as Nisbet understood it, i.e. as the phrase for what most of us call more commonly 'traditions, codes, and themes of culture.' (17) By our interplay with the socialising forces of our society we come to understand the basic 'collective representations', or categories, or concepts, which our society has evolved up to the time of our socialisation. But because these collective representations change, so do our social and scientific concepts. What is important for us to note here is (a) the manner in which logic becomes superceded by socio-logic, and (b) the place classification plays in this new form of logic.

(a) We have already stated the fact that the death of God marked the passage from a theocentric world to a philocentric one. This coincides with the relegation in Western Europe of theology to the rise of the social sciences, notably, psychology, anthropology and sociology. Giddens has adequately described this Comtean idea:

"These processes of development, according to Comte, are primarily governed by a simple principle: those disciplines relating to phenomena furthest from man's own involvement and control develop first, and the history of science as a whole is one of a progressive movement inwards towards the study of man himself. The mechanism of scientific development provides the key to the logical relations between the sciences. The earliest sciences to come into being are those, which deal with facts of the greatest generality; thus each field of study in the hierarchy of the sciences is predicated upon those, which lie below it, although its own concepts and generalizations are irreducible. Sociology, which concerns itself with human social conduct, presupposes the laws of biology, which apply to all organisms, while the latter in turn presume the laws of chemistry, etc."(18)

Since logical thought is made up of concepts, the part played by society in the genesis of logical thought must be sought in the manner society formulates concepts. Concepts, therefore, are the central piece in the mosaic of Durkheim's thought. They must first of all, to be defined, be distinguished from sensual representations, whether these come in the form of sensations, perceptions or images. Whereas sensations and perceptions change in a perpetual flux, concepts remain 'outside of time and change': they resist change, and 'in so far as they are what they ought to be, (they) are immutable'. (19) As with language, concepts, when they do change, change slowly. It is not simply because it is their nature to change that they do change, but rather because we change their apparent imperfections. The virtue of concepts lies in the fact that they are communicable. This is so, because, unlike sensations, which are grounded in the private personality and are therefore incommunicable, concepts are not private but are held in common. Being common, their origin is communal. Language translates the system of concepts because its diverse elements represent the facts of society's experience - but the ideas, which correspond to these elements are collective representations. (20) And if concepts express categories and classes rather than particular objects it is because society qua society is less interested in the unique and variable characteristics of things. This is how we distinguish between the general idea and the concept. Moreover, because we generalise from the particular, the individual can disengage himself from group knowledge, and there being nothing in the general but the particular, knowledge would not accumulate. What characterises logical thought and concepts, on the other hand, is their impersonality.

By their impersonality, stability and communicability, concepts are known to be social. And if we look to their social origin we will find, according to Durkheim, that the category of 'class' is no more than the realisation of the human group, the category of 'time' is known through the rhythm of social life, the category of 'space', is furnished by the territory occupied by society, and the concept of 'force' (21) is known to us from the collective force. Finally, the concept of 'totality' corresponds to the concept of society as a whole. In genera , therefore, 'logical life has its first source in society.'

(b) Because the first logical categories were social in origin, it followed that, for Durkheim, 'the first classes of things were classes of men, into which things were

integrated.' Moreover, being grouped, men assimilated the classified image of the group and, consequently, classified other things in the likeness of the group.

At base classification is a system whereby certain like elements are arranged into a hierarchy. But this hierarchy could not be learned from the spectacle of physical nature nor the mechanism of mental associations. (22) It is exclusively a social derivation, because it is only society that can create superiors, inferiors and equals. And men would never have thought of arranging their knowledge in terms of subordination and co-ordination had they not known beforehand what a hierarchy was.

To appreciate fully how classification is bound up with the categories we must first understand exactly what the 'concept' meant in Durkheimian epistemology. Thereafter, we can appreciate what precisely we do when we conceive of something. 'Conceiving something', said Durkheim, 'is both learning its essential elements better and also locating it in its place ; for each civilization has its organized system of concepts which characterizes it.' (2 3)

By sociologising the concept Durkheim perceives the unity of method between religion and science. Religion, no less than science, attempts to connect things with each other, to establish internal relations between them, to classify them and to systematise them. (24) To the question, therefore, 'How do I know this table?' the Durkheimian answer is: I know it because I have become socially predisposed, first of all to conceive of the representations which the word 'table' conjures up and means, and, secondly, to classify it as between wooden domestic objects that have relative social signification. If, on the other hand, I had never been socialised, then I could neither understand the question, its purpose, or the meaning of the words comprising it. It is hardly likely that this discourse would ensue were it not for the fact, realised or not, that all these things of which we speak are given to us by virtue of collective representations. The potential for linguistic philosophy as a derivative of Durkheim's sociology of knowledge has already been exploited by Mauss, Chomsky and Levi-Strauss. Ernest Gellner, in his 'The Devil in Modern Philosophy' noted that it was Durkheim's sociology that is also at 'the core of Wittgenstein's mature philosophy.'(25)

### 1. 3. Durkheim as Realist

The 'theory of universals' presents one of the oldest philosophic questions in Western philosophy. So much so, in fact, that it is true to say that any philosophic problem, if pursued rigorously enough, will sooner or later be forced to confront at least some of its ramifications. Needless to mention, it is treated here artificially, i.e. we constrain its vital philosophic issues in order to bring them into contact with Durkheim's overview and thereby, it is hoped, understand more favorably his theories of crime and punishment. But how should we best illustrate our particular concern?

With Russell's epistemological question, 'How do I know this table?' we tried to bring out the issue between empiricism and rationalism (in a very limited way, no doubt). In asserting the a priori conditions of knowledge Kant answered this question by postulating reason's power to abstract and to understand the concept 'tableness.' Durkheim, on the other hand, dissatisfied with these inexplicable a priori postulates and abstractions, answered it in terms of his understanding of concepts, language, and the social classification of knowledge. In briefly delineating his definition of concepts we mentioned that it had to be distinguished from generalizations. Durkheim's concepts, we said, are social, they are collective representations, and are not simply disengageable by the individual as generalizations are. It is to this aspect of his concepts that we must now return.

The antithesis between empirical and rational knowledge has another related dimension. If I ask 'How do I know this man?' I can answer that, in seeing him, hearing him, etc., I can form an image of him. If, however, I ask, 'How do I know man in general?' Or humanity, courage, virtue, etc., I cannot answer that I have seen them, heard them, etc. So, how do I know them? And what are the conditions of their existence? This is the a priori argument again; but for our purposes we can distinguish between our knowledge of 'this man' and 'humanity' by similarly distinguishing between the image and the idea, imagining and thinking, between the sensible representation of this man and the idea of man in general. It will also be seen that objects, which present themselves to our senses, like images, are singular (this man), whereas ideas have nothing of the particular in them. The idea 'man' has nothing of Peter, Paul or Bill in it; it has been, we say, abstracted from a particular man, it is universal. But which is real, 'this man' or 'man

in general', the particular or the universal? If we bear in mind that what Plato called 'forms' is what the philosophers generally refer to as 'ideas', and is, equally, what Durkheim denotes when he talks about 'concepts' or collective representations, and if we also bear in mind that the interplay between the 'individual' and the 'social' parallels the problem of the relation between the particular and the universal, we shall all the better appreciate how Durkheim sociologised a very old philosophic problem.

When Plato, who first put forward the theory of universals, asks what is man, beauty, courage, etc., he does not mean that the answer should contain a list of examples of things that we regard as manful, beautiful or courageous. Using Socrates as a spokesman, Plato seeks a definition of man, beauty and courage in terms of those qualities 'which would then serve to guide us in deciding what we ought to say about particular cases.' (26)

Definition plays a similar role in Durkheim's methodology. If, consequently, we wish to define crime, it is futile to list those acts, which constitute an infraction. Because they are so multifarious they will not permit us to recognize the essential characteristics of crime, which alone will guide us in deciding what we ought to say about particular cases. Similarly, if we attempt to define social types, we should seek out the decisive or crucial facts, which, by themselves - and independently of their number - have scientific value and interest. (27) 'A satisfactory method must, above all, aim at facilitating scientific work by substituting a limited number of types for the indefinite multiplicity of individuals.' (28) Moreover, this method will only be 'truly useful if it permits us to classify characteristics other than those serving as its basis and if it procures for us a framework for the facts to come.' (29)

For Plato, it was the forms and not the particulars that was the subject matter of philosophical definition. Particulars were merely dependent on the forms, but the forms were not dependent on the particulars. The forms were immutable, the particulars were in constant flux; the forms were known only to the intellect, particulars were known to the senses. The forms constituted the reality of things. Consequently, philosophers who approximate this viewpoint, like Spinoza, Hegel and Durkheim, are in this sense realist. But Durkheim's thought is not quite that of Plato's; Plato's logic is somehow superceded by Durkheim's socio-logic. How has this become possible, and in what particulars? Despite the obvious similarities

between Platonism and Durkheimian thought, Platonism alone would not justify Durkheim equating definition with classification, or his emphasis on genus and species - concerning which Aron rightly noted:

"He has a tendency to regard the distinction between genera and species as fundamental, as inscribed in reality itself. Thus, if there are several causes of suicide, it is because there are several types of suicide. The same is true of crime." (30)

This observation of Aron's corresponds precisely with the main question concerning the existence of 'universals' as posed by Porphyry. If, according to Plato's dictum, there are no straight lines in nature, then where are they? 'Do genera and species exist in nature, or do they consist in mere products of the intellect?' (31) If we set aside Aristotle's distinction between primary and secondary substance, and take his secondary substance as given, we find the Durkheimian solution in logical terms, because for Aristotle the definition of secondary substances is carried out in relation to a system of classification 'according to which things are divided into various kinds (genera), which in turn are divided into various sub-kinds (species), these being distinguished from each other by certain characteristic properties (differentia). (32) Further, for Aristotle as for Durkheim, while 'genus' and 'species' may be relative terms there is a hierarchy of classes, which, for any given subject matter, has a one-to-one correct correspondence in nature. We have already mentioned how Durkheim located the concept of hierarchy in the social, we can now see that social types must similarly have their genus and species. (Is this method peculiar to the social or the natural sciences?)

In opposition to the Platonic realists, the nominalists (comprising some sophists, sceptics and, particularly, William of Occam, Hobbes, Locke, Berkeley, Hume and Spencer – and, these days, Foucault) believed that those things, which Plato called universal or real, had no existence except as ideas or names (hence nominalism). In other words they believed that there was nothing in reality or nature to which these forms, ideas, or universals correspond. By reasoning thus, this school had been accused of negating the possibility of intellectual knowledge and reducing science to a figment of the mind. (33)

There was, however, a third school which, like Durkheim, sought to solve

the realist/nominalist antinomy; this was known as the 'moderate realism' of St. Thomas. Following the scholastic tradition the 'angelic doctor', who had improved upon Aristotle's 'corrections of Plato', thought that the problem was resolved thus: Thomas first of all distinguished between the thing itself and the condition in which it is presented to the mind. He thought, consequently, that in reality a thing is individual, but by our ideas we apprehend it as a universal. In other words 'That which our ideas present to us as a universal does not exist outside the mind as a universal' - but 'exists outside the mind individuated'. (34) The mediating logic of Thomism has precisely the same result as the mediating sociology of Durkheim's 'social species'.

"This concept of the social species has the very great advantage of furnishing us a middle ground between the two opposite conceptions of collective life which have for a long time divided the ranks of scholars: the nominalism of historians, and the extreme realism of philosophers." (35)

Further:

"But one escapes from this alternative once one has recognized that, between the confused multitude of historic societies and the single, but ideal concept of humanity, there are intermediaries, namely, social species. In the latter are united both the unity that all truly scientific research demands and the diversity that is given in the facts, since the species is the same for all the individual units that make it up, and since, (36) on the other hand, the species differ among themselves."

Durkheim's initial similarity with Platonism may indeed merit him the name of realist. (37) Even when he uses the word 'idea', says Peristiany, '...he wishes to denote that he is using this term in its Platonic sense.' (38) But he also approximates Aristotle (and since St. Thomas assimilated so much of Aristotelianism) he can also be seen to approximate some of the teachings of the Catholic Church. As already stated by using Aristotle's concept of substance, by which the categories, genus and species, and classification, were possible in nature, Durkheim was able intellectually to exclude an appeal to a divine creator. Durkheim, it should be said, is not interested in putting forward a metaphysic. Apart, therefore, from the very central piece of the scholastic ensemble -- 'God' --

the criticisms which aimed at amplifying his debt to the medieval school would otherwise seem to be well founded. Catlin has noted his motives in this respect:

"Durkheim (himself of rabbinical parentage) wishes to provide French anticlerics with as good a moral authority as that upheld by the Catholic Church, with its appeal to a scholastic rationalism based on revelation." (39)

#### 1.4. Conclusion

We have variously described Durkheim as rationalist, conceptualist and realist because we feel that he defies any rigid designation peculiar to philosophic schools proper. Peristiany, moreover, has described his philosophic work with equal justification as 'Essays in Sociological Spiritualism', meaning that Durkheim believed 'that the properties (and interests) of the whole and those of the individuals who compose this whole are not homogeneous.' (40) Durkheim considered himself to be a rationalist. He even claimed that the only designation he could accept was that of 'rationalist'. Indeed, his principal objective was aimed at extending 'scientific rationalism to human behaviour.' (41)

Further, he believed that behaviour of the past, when analyzed, could be 'reduced to relationships of cause and effect.' (42) But qua realist he felt that 'only the universal is rational' (43) and that 'there is nothing in reality that one is justified in considering as fundamentally beyond the scope of human reason.' (44) But the rationalist principle, for Durkheim, while necessary for science, does not imply that science can in fact exhaust the real. It only denies that one has the right to look at any part of reality or any category of facts as invincibly irreducible to scientific thought. (45)

## Chapter 2

### CRIMINAL AND PENAL STATICS

#### 2. A. Criminal Statics or Crime Defined

##### 2. A.1. The Necessary and Sufficient Conditions for the Science of Durkheimian Criminology

For a set of studies to be called a science Durkheim thought it 'necessary and sufficient' that they present certain characteristics. These characteristics are threefold:

(a) 'They must deal with verified, selected, observed facts.' (2) The science in question, whether it applies to educational, religious, economic, or criminal phenomena, is defined by its object. 'It assumes, consequently, that this object exists, that one can point it out, in some way, (and) mark out the place it occupies in the whole of reality.' (3)

(b) These facts must have within themselves a sufficient homogeneity to be able to be classed in the same category. 'If they were irreducible to one another, there would be, not one science, but as many different sciences as distinct types of facts to study.' (4)

(c) Finally, science studies these facts 'to know them, and only to know them, in an absolutely disinterested fashion'. (5) Durkheim purposely used this rather general and vague word, 'know', because he felt that it was of little consequence whether the scientist attempts to establish types rather than to discover laws, that he limits himself to describing or that he seeks to explain' phenomena. (6) Even though he may be quite conscious of the utility of his discoveries, he is, nevertheless, disinterested in their practical consequences. (7) The scientist 'says what is; he establishes what things are, and he stops there.' Being unconcerned whether his discoveries 'will be agreeable or disconcerting', the sociologist's role 'is to express reality, not to judge it.' (9)

In accordance with this procedure the 'initial definition', which characterised all of Durkheim's empirical work, assumes a singular importance. Apart from directing us to entertain a healthy Cartesian doubt and, thereby, eradicate all preconceptions he insisted in the 'Rules' that 'the subject matter of every sociological study should comprise a group of phenomena defined in advance by certain common external characteristics, and all phenomena so defined should be included within this group'. (10) The definition, therefore, must characterise the phenomena by 'elements essential to their nature', for these 'are our only clue to reality', and, consequently, 'must be given complete authority in our selection of facts'. (11)

In the case of the science of criminology, then:

"We note the existence of certain acts, all presenting the external characteristic that they evoke from society the particular reaction called punishment. We constitute them as a separate group to which we give a common label; we call every punished act a crime, and crime thus defined becomes the object of a special science, criminology." (12)

Being formulated at the beginning of criminological studies, however, the definition of social phenomena 'cannot possibly aim at a statement concerning the essence of reality.' (13) On the contrary, its sole function 'is to establish contact with things' by grasping at reality in the only terms in which it can be understood - its external qualities. From the outset, therefore, when Durkheim defines crime in terms of punishment or sanctions, we are to take it that he is defining the multi-forms of criminality in a preliminary way by the 'elements essential to their nature', one of which is punishment. If punishment is not the essence of crime, it nevertheless constitutes such a symptom thereof that 'in order to understand crime, we must begin with punishment.' (14) Why? Because by beginning in this way we 'establish a criterion for those acts that we call crime,' and the virtue in this is that 'the pattern of such a classification does not depend on him (the definer) or on the case of his individual mind, but on the nature of things.' (15)

Though this claim begs further questions Durkheim nevertheless claimed that the criteria according to which crimes are placed in a particular category, 'can be recognised by everyone' and the concepts thus formed do not always or even generally tally with that of the layman. (16) As an operational

device, this 'initial definition', then, serves to circumscribe 'the field of each problem, whether general or particular', and in that way the sociologist 'from the first, is grounded in reality'. (17)

Before going on to examine Durkheim's definition of crime and its derivative, punishment, as dealt with in the Division of Labour, it is instructive to describe briefly the context in which they arise and, further, to ask how crime is sociologically conceived.

## 2.A. 2. The Definitional context of the Division of Labour

Acknowledging his debt to Comte, Durkheim claimed that the division of labour had to be seen in its totality, i.e. not just as an economic phenomenon but one which linked all communal workers and classes to their predecessors and successors.

'It is', said Comte, 'the continuous repartition of different human endeavours which especially constitutes social solidarity and which becomes the elementary cause of the extension and growing complication of the social organism.' (18) If this hypothesis were proved, Durkheim felt that it would be a condition of the existence of all societies, their cohesion would be assured, and it would 'determine the essential traits of their constitution.' Moreover, if such was really the function of the division of labour, its moral character could be implied, 'for the need of order, harmony, and social solidarity is generally considered moral.' (19) Thus far, then, Durkheim held that social solidarity was a completely moral phenomenon, which could be measured by law, its external index and visible symbol. Accordingly, 'the general life of society cannot extend its sway without juridical life extending its sway at the same time and in direct relation'. (20) Juridical rules, repressive and restitutive, therefore, between them divide up the social universe and provide an index of societies' interactions. Also, to measure the part, which the division of labour plays in any given society at any given time, it is only necessary to compare the number of juridical rules, which express it (i.e. those with a restitutive sanction) with the total volume of law. (21)

We can classify juridical rules according to the different sanctions attached to them, because every legal precept can be defined as a rule of sanctioned conduct. As society changes, its precepts change with the gravity society accords to them.

Correspondingly, the sanctions promoting these precepts also change. Whereas repressive sanctions call forth a spontaneous punishment, restitutive sanctions attempt to return things as they were. Social evolution moves from a society characterised by repressive sanctions toward one characterised by restitutive sanctions and the division of labour.

Moreover, if there are types of social solidarity which custom alone manifests, Durkheim informs us that it is unnecessary to consider them, because, although they are diffuse, they are of secondary importance. Law more positively produces primary relations, which are sufficient for the purposes of classifying social solidarity, whereas the relations accruing to customary practices 'lack importance and continuity'.

### 2.A.3. What Crime Essentially Is

Since the essential properties of a thing are those which are observed universally, if we wish to know what crime essentially is, then 'we must extract ' those elements of crimes that are similar in all criminological varieties and in the different social systems : 'none must be neglected'. (22) Durkheim insisted on this thoroughness, it is here suggested, because methodologically his sociology (rather than his criminology) rests upon a very tentative classification of all societies into 'species and types'. Such social types centralise his concept of science, by both the manipulative use of the 'average', and his primary need for definition. The biologist, he claimed, would have given vital phenomena a very inexact definition if, disdaining to observe monocellular organisms, he solely contemplated organisms of a higher type. Such inattention would have led him mistakenly to conclude that life 'essentially consists in organization'. (23) So, too, with the criminologist.

Having said that, however, Durkheim criticises Garafalo who attempted such a thorough investigation and who tried to formulate his findings into a theory of 'natural crime'. The method he adopted, however, 'of finding this permanent and pervasive element' was unsatisfactory ; because the enumeration of all acts that have ever been called crimes, is of itself methodologically futile . (24) In Durkheim`s estimation 'the only common characteristic of all crimes is that they consist ... in acts universally disapproved of by members of each society'. (25) From this opinion he is led to what he regards as an incontestable truth, namely , 'that crime shocks sentiments, which, for a given social system, are found in all healthy

consciences.' (26)

To define crime, therefore, we must seek out its essential characteristics: for these are to be found wherever crime occurs, no matter what the social type, be it high or low. It is instructive if we first give Durkheim's definition of crime, and then inquire how he came to define it.

A crime is an act, which offends strong and defined states of the collective conscience. This is so, because the only characteristics common to all crimes recognised as such are the following:

(a) A crime offends sentiments which are found among all normal individuals of any given society;

(b) These sentiments are strong;

(c) These sentiments are defined.

#### 2.A.4. Crime Defined

(a) In arriving at this proposition Durkheim, methodologically speaking, distinguishes himself from (i) Garafalo and (ii) the Marxists, particularly Quinney.

(i) If - as has already been stated - we set out to enumerate acts ubiquitously recognised as crimes, and attempt to classify their characteristics, we would, says Durkheim, wind up with a set of crimes universally recognised, but which would nevertheless be small and exceptional in number. This type of 'natural' crime would total the offenses that are contrary to universal sentiments and would be, on that account, the 'invariable part of the moral sense and that alone'. Such a method, he held, was faulty on a number of grounds. If, for example, we tried to collate them with a list of acts universally punished, we would not be satisfied, because the latter would be excessive whereas the former, being a collection only common to all societies, would be minimal.