

## EMILE DURKHEIM ON SANCTIONS AND SOLIDARITY

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On April 23, 1899 in Newman, Georgia two thousand spectators witnessed the lynching of Sam Holt, a black farm laborer accused of murdering his white employer and of raping his employer's wife. The sheriff had arrested Holt two weeks after the crime and as word of the arrest spread through the community a crowd formed around the jail. The sheriff turned the accused man over to the crowd, which then marched him through the town to the scene of the crime. Despite pleas by a former governor of the state and town judge, the mob pushed on to a site about two miles from town where Holt was tied to a tree, his body mutilated and set on fire. The participants and observers made no effort to conceal their identities and neither Georgia or Federal authorities took any legal action against any of Holt's well-known killers (Ginzberg 1972)

Over two hundred such lynchings took place every year in the United States in the early 1890's, primarily in the rural South (Tolnay and Beck 1995{x"Grant, 1975"}{xe "Ginzberg, 1962"}). Public torture and execution of condemned criminals was until the eighteenth century an even more common form of sanctioning throughout Western Europe. To explain what took place in Newman in April of 1899, therefore, requires more than simply an examination of the "peculiar institutions" of the American South at that particular historical period. The work of French sociologist Emile Durkheim (1858-1917) provides one system of ideas that both allow us to understand such episodes and to view more coherently the relationship between these archaic forms of sanctioning and their contemporary counterparts. After examining Durkheim's thesis we will consider a specific case of punishment in Puritan Massachusetts to explore some empirical consequences of Durkheim's thesis. Finally, we will consider the role of ritual punishment in contemporary society.

### PUNISHMENT AND SOLIDARITY

Durkheim suggested that under certain conditions criminal sanctions serve as social rituals that draw together the "upright" members of the community and provide them with opportunities to reaffirm and intensify their commitment to shared values and a common identity. Punishment of crime is above all else a social ritual that increases or intensifies group solidarity. While rituals of all kinds strengthen social bonds, the act of punishment provides a singularly powerful forum for reaffirming the values of the community. Imagine, suggests Durkheim, a community of saints,

a perfect cloister of exemplary individuals. Crimes, [commonly] so called, will there be unknown; but faults which appear venial to the layman will create there the same scandal that the ordinary offense does in ordinary consciousness. If then, this society has the power to judge and punish, it will define these acts as criminal and will treat them as such. (Durkheim, 1950, pp. 68-9{x"Durkheim, 1893": 68-69})

Within this parable are four important ideas about the social structuring of punishment:

1. Punishment is more proactive than it is reactive. Societies seek out opportunities to punish rather than passively await provocation.

2. Ritual punishment and social solidarity are functionally linked. Their levels and their content are mutually determined.

3. Criminality is a property of behavior produced in the end by ritual punishment; crime is not (as it is typically experienced) an intrinsic or objective property of the behavior being punished. 4. The behavior being punished, in fact, need have no direct objectively harmful consequences for the community.

### **Punishment Is More Proactive Than Reactive**

We usually think of punishment as a simple, automatic response of society to crime. The greater the crime rate, for example, the higher we expect the prison population to be. This apparently simple, straightforward relationship between crime and punishment, Durkheim suggests, is deceptive. Communities punish offenders who violate their norms; but communities also ignore violators, warn them, divert them, and commute them. Considerable filtering occurs between the breaking of a norm and the final fall of the axe or slam of the cell door. For example, anthropologist Bronislaw Malinowski observed the ritual suicide of Kima'i, a sixteen year old youth.

The truth was that he had broken the rules of exogamy, the partner in his crime being his maternal cousin, the daughter of his mother's sister. This had been known and generally disapproved of, but nothing was done until the girl's discarded lover, who had wanted to marry her and who felt personally injured, took the initiative. This rival threatened first to use black magic against the guilty youth, but this had not much effect. Then one evening he insulted the culprit in public - accusing him in the hearing of the whole community of incest and hurling at him certain expressions intolerable to a native.

For this there was only one remedy; only one means of escape remained to the unfortunate youth. Next morning he put on festive attire and ornamentation, climbed a coco-nut palm and addressed the community, speaking from among the palm leaves and bidding them farewell. He explained the reasons for his desperate deed and also launched forth a veiled accusation against the man who had driven him to his death, upon which it became the duty of his clansmen to avenge him. Then he wailed aloud, as is the custom, jumped from a palm some sixty feet high and was killed on the spot. . . . If you were to inquire into the matter among the Trobrianders, you would find that . . . the natives show horror at the idea of violating the rules of [incest]. . . When it comes to the application of morality and ideals to real life, however, things take on a different complexion. In the case described it was obvious that the facts would not tally with the ideal of conduct. Public opinion was neither outraged by the knowledge of the crime to any extent, nor did it react directly - it had to be mobilized by a public statement of the crime and by insults being hurled at the culprit by an interested party. Even then he had to carry out the punishment himself. (Malinowski 1962 [1926], pp. 77-9{x "Malinowski, 1962\;77-9"})

While this ritual suicide dramatically illustrates the complex connection between performance of a criminal act and societal reaction to it, much the same story emerges from studies of more mundane episodes in contemporary American society. Surveys of crime victims report that less than half of all rapes, robberies, assaults and personal larcenies are reported to the police. Similar filtering of episodes is conducted at each point in the criminal justice system. Societal reaction to crime, thus, is complex and contingent on a variety of factors, not all of which are directly related to the immediate offense. Durkheim hypothesized that in large part those factors had to do with the solidarity or social integration of the community.

### **Punishment Is Functionally Linked To Solidarity**

Crime brings together upright consciences and concentrates them. We have only to notice what happens, particularly in a small town, when some moral scandal has just been committed. They stop each other on the street, they visit each other, they seek to come together to talk of the event and to wax indignant in common. (Durkheim 1964, p. 102{x"Durkheim 1893\;102"})

This pattern of "waxing indignant" in common is found across a wide range of collectives: small task groups (Lauderdale 1976{x"Lauderale, 1976"}), families (Vogel and Bell 1968{x"Vogel and Bell, 1968"}), fraternities (Sanday 1990), communities (Erikson 1966{x"Erikson, 1966"}).<sup>1</sup> Not only does collective reaction against an outsider bring together the community, but conversely a disruption of the community's solidarity will lead it to seek out a crime to punish. Thus,

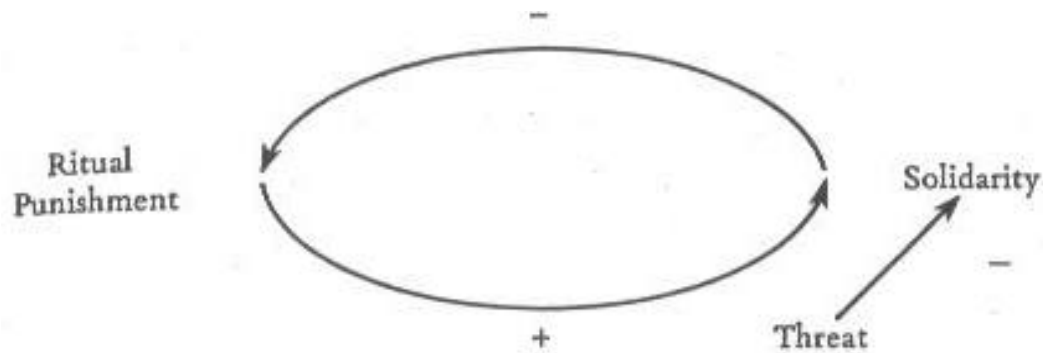
when going through circumstance which sadden, perplex or irritate it, society exercises a pressure over its members, to make them bear witness, by significant acts, to their sorrow, perplexity or anger. It imposes upon them the duty of weeping, groaning or inflicting wounds upon themselves or others, for these collective manifestations (and the moral communion which they show and strengthen) restore to the group the energy which circumstances threaten to take away from it, and thus they enable it to become settled. This is the experience which men interpret when they imagine that outside them there are evil beings whose hostility, whether constitutional or temporary, can be appeased only by human suffering. These beings are nothing other than collective states objectified; they are society itself seen under one of its aspects. (Durkheim 1949, p. 459{x"Durkheim 1912\;459"})

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<sup>1</sup> Some occupational groups, for example, enjoy a high level of commonality and identity maintained in part by ritual stigmatization of outsiders. Jazz musicians, for instance

derive a good deal of amusement from sitting and watching squares. Everyone has stories to tell about the laughable antics of squares... Every item of dress, speech and behavior which differs from that of a musician is taken as new evidence of the inherent insensitivity and ignorance of the square (thus fortifying) their conviction that musicians and squares are two kinds of people... The jazz fan is respected no more than the other squares. His liking is without understanding and he acts just like the other squares; he will request songs and try to influence the musicians playing, just as other squares do. (Becker, 1960:91)

Implicit in this argument is a model represented in Figure 4.1,



**FIGURE 4.1**  
**Durkheim's Functional Model of Ritual Punishment**

which outlines a characteristic functional relationship among three key variables: solidarity, ritual punishment, and external threat (cf. Stinchcombe 1968, p. 5{xe "Stinchcombe, 1968\;89"}). The positive arrow from ritual punishment to solidarity represents the argument that episodes of ritual punishment increase solidarity. The negative arrow from solidarity to ritual punishment represents the converse argument (not made by Durkheim, but implicit in his functional model) that high levels of solidarity inhibit the performance of ritual punishment. The model implies that these two variables tend toward equilibrium. Solidarity, however, is prone to disruption by the third variable in the scheme, external threats.<sup>2</sup> This model suggests that the disruption of solidarity by a threat leads the community to engage in some form of ritual punishment. Once the ritual has restored integration, occasional episodes of ritual will occur to maintain solidarity in equilibrium.

One way to think about this process is by analogy to a central heating unit. Below a set temperature the thermostat kicks on the furnace, until the critical temperature is restored. Thermostat and furnace thus maintain an equilibrium, which may be broken by some outside force, such as the opening of a door or window. Durkheim's theory of ritual suggests that solidary communities work in much the same fashion in performing periodic episodes of ritual punishment to maintain integration and by responding dramatically in response to some disruption from forces external to the control system. This image of social control, in turn, implies the following hypotheses about punishment:

<sup>2</sup> The term **external threats** refers to threats outside the relationship between solidarity and ritual punishment, **not** necessarily to forces outside the community; these threats may be foreign or domestic.

## "Crime" Is Not A Property Of Behavior

Apart from societal reaction to it, Durkheim argued, nothing else distinguishes actions as crimes. Property offenses may be serious crimes but so may theological errors.<sup>3</sup> Killing is universally a crime, but only under certain circumstances that vary from time to time and place to place. "Crime" is logically, a product of punishment. That we experience the relationship in the reverse order is simply an illusion. This argument appears most intuitively convincingly where conventional notions of individual culpability for criminal acts are problematic. For example, in the ancient Roman practice of **decimation** every tenth member of a legion was executed if the legion had performed poorly (Sykes 1978, p. 61{x"Sykes, 1979\;61"}). As a rule, Durkheim argued, societies tend to punish ". . . for the sake of punishing. . . . Thus, they punish animals which have committed no wrong act or even inanimate beings which have been its passive instrument" (Durkheim, 1964, pp. 85-86{x"Durkheim, 1893\;85-86"}).<sup>4</sup> While contemporary culture, for reasons we will explore later, tends to condemn communal sacrifices of blameless individuals, Rene Girard cautions us that "if the modern mind fails to recognize the strongly functional nature of the scapegoat operation and all its sacrificial surrogates, the most basic phenomena of human culture will remain misunderstood and unresolved" (1977 p. 276{x"1977\;276"}).

## Crime Need Have No Objective Correlation with Social Harm

Intensity of punishment, Durkheim argued, is imperfectly related to harmfulness of the crime.

In the penal law of the most civilized people, murder is universally regarded as the greatest of crimes. However, a stock-market crash, even a failure can disorganize

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<sup>3</sup> "Societies which place a high premium on ownership of property are likely to experience a greater volume of theft than those which do not, while societies which emphasize political orthodoxy are apt to discover and punish more sedition than their less touchy neighbors" (Erikson 1966:19-20).

<sup>4</sup> For example, in September of 1750 Jacques Ferron was charged with the crime of sodomy with a she-ass at Vanvres, France. Witnesses at the trial testified that they had observed Ferron having sexual intercourse with the animal. Ferron was convicted and executed. The animal was then tried.

The prior of the convent, who also performed the duties of parish priest, and the principal inhabitants of the commune of Vanvres signed a certificate stating that they had always shown herself to be virtuous and well-behaved both at home and abroad and had never given occasion of scandal to anyone, and that therefore 'they were willing to bear witness that she is in word and deed and in all her habits of life a most honorable creature.' (Evans, 1906:150)

The court acquitted the donkey because she had been the victim of her master's coercion. Other animals fared less well in Western European criminal prosecutions. Such cases illustrate Durkheim's thesis that it is a mistake to take such rituals at their face value, which invites dismissing them as irrational aberrations. In fact, for us they represent in pristine form an essential feature of repressive justice: ritual punishments respond to external social forces, rather than to the objective features of the object of the ritual itself.

the social body more severely than an isolated homicide . . . if we compare the significance of the charge, real as it is, and that of the punishment, the disproportion is striking. (Durkheim 1964, p. 74{x"1893\;74"})

Periodically this consequence of Durkheim's theory is rediscovered, most often taking the form of moral indignation over disparity between the penalty imposed and the harm inflicted. Economic loss for white collar crime is a case in point. Durkheim argues, in essence, that such disparities can surprise only the sociologically naïve, who view social control as some kind of antibody manufactured by society to counteract socially harmful behaviors. Punishment is driven by deeper forces than the rational calculation of costs.

### Assessing the Validity of Durkheim's Theory

Having spelled out the rudiments of Durkheim's analysis we need now to consider whether the argument is valid. How ought we to go about assessing the validity of this -- or any other -- sociological thesis? We might begin with intuition. For example, in an article entitled "The Function of Crime Myth," Roshier argues that

to say that crime is functional and hence necessary for society's health is to say that we must always consciously retain a stock of people whom we humiliate, imprison or at the very least (or perhaps worst of all) regard as suitable cases for treatment. Next to that [conventional criminology] looks positively enlightened. (1977, p. 323{x"Roshier, 1975\;323"})

In short, for Roshier, the problem with Durkheim's argument about crime, punishment and social solidarity is that it violates our common sense understanding of crime and punishment and implies unpalatable consequences.<sup>5</sup> This critique has two defects. First, experience with criminal justice is far less consistent than Roshier allows; Lewis Carroll's *White Queen* represents a recognizable reality. Second, there is a nagging recollection of experiences, particularly in the natural sciences, in which intuitively absurd assumptions turned out to provide the best explanations. Roshier's intuitive judgment needs to be tested. Nonetheless, Roshier joins a large group of critics (Tarde 1895; Sorokin 1937) who have critiqued Durkheim's radical ideas about the nature of punishment in debate for the past eighty

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<sup>5</sup> Indeed, the image of criminal justice suggested by Durkheim's model resembles the dispensation of justice in Lewis Carroll's *Through the Looking Glass*.

... [the King's Messenger, the Mad Hatter is] in prison now, being punished, and the trial doesn't even begin till next Wednesday and of course the crime last of all. 'Suppose he never commits the crime?' said Alice. 'That would be all the better, wouldn't it?' the Queen said... Alice felt that there was no denying **that**. 'Of course it would be all the better,' she said: 'but it wouldn't be all the better his being punished.' 'You're wrong **there**, at any rate,' said the Queen. 'Were **you** ever punished?' 'Only for faults,' said Alice 'And you were all the better for it, I know,' said the Queen triumphantly. 'Yes, but then I **had** done the things I was punished for,' said Alice: 'that makes all the difference.' 'But if you hadn't done them,' the Queen said, 'that would have been better still; better, and better, and better.' (Carroll, 1960:248)

years.

To see how Durkheim's argument might be investigated through a sustained and systematic investigation of crime and punishment in the real world, we turn now to a book published in 1966 by the American sociologist Kai Erikson. His *Wayward Puritans* remains the best effort to date to apply Durkheim's thesis. In tracing how people in seventeenth century Massachusetts dealt with offenders, Erikson assesses empirically the validity of Durkheim's argument concerning punishment and solidarity.

## **WAYWARD PURITANS: A TEST CASE**

### **Setting**

The choice of Puritan Massachusetts as a site for testing Durkheim's thesis is in many ways ideal because the Puritans created an unusually homogeneous society characterized by a high level of common commitment. Any relationship between changes in solidarity and changes in ritual punishment are likely to be clearly visible in such a setting.<sup>6</sup> We will first examine some background characteristics of this community and its inhabitants. We will then describe three "crime waves" that engulfed the community in the 1600's and seek to explain them by using Durkheim's model of ritual punishment.

Table 4.1 places the Massachusetts colony in historical context by providing a chronology of major events in England, America, and Europe that are central for Erikson's discussion. Religion played a much more central role in the social and political life of this period. For a century wars between and within nations centered on the survival of the Protestant revolt from the Catholic Church begun in 1517 the German monk Martin Luther.

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<sup>6</sup> Erikson's empirical test of Durkheim's theory stands outside the mainstream of research that has sought to evaluate Durkheim's proposition about "legal evolution." These studies attempt to test Durkheim's arguments by comparing relevant correlations among items in the Human Relations Area Files (HRAF), a compendium of ethnographic reports broken down by subject. For example, Spitzer (1975a) presents such a test based on materials from 48 societies ranging from the Trobriand Islands to "Georgia and the Soviet Union in Russia" [sic]. We will not here fully review the difficulties with these efforts (see e.g., Baxi, 1974; Turkel, 1979), but simply indicate some features of these studies that make them problematic. First, Spitzer divides his sample into two types of society, "simple" and "complex." The relationship between this division and the theoretically relevant distinction between types of solidarity is not apparent. A "simple society" such as the Trobriand Islands may, for instance, have a predominance of organic solidarity. Consequently finding a correlation between simplicity of the society and restitutive justice has really no bearing at all on Durkheim's thesis. In general this line of investigation fails to adequately operationalize either the concept of solidarity or the corresponding concepts of repressive and restitutive sanction.

Table 4.1

## CHRONOLOGY FOR WAYWARD PURITANS

EUROPE	ENGLAND	MASSACHUSETTS
1215 4th Lateran Council; Franciscan and Dominican reforms		
1378-1417 Great Schism, Popes in Rome and France		
1430 Joan of Arc executed		
1486 Malleus Maleficarum		
1517 Luther's reform (Germany)		
1536 John Calvin's reform (Geneva)	1533 Henry VIII separates Church of England from Rome	
1572 St Bartholomew's Day massacre (Paris)	1542 death penalty for witchcraft	
1616-1648 30 Years War (Germany)	1558-1603 Elizabeth	1630 Arrival of Puritans
Peace of Westphalia establishes principle of religious toleration in Europe	1603-1649 James I, Charles I Stuart	1636-38 Anne Hutchinson & Antinomian crime wave
	1649-59 Puritan Commonwealth	1656-61 Quaker crime wave
	Oliver Cromwell, Lord Protector	1675-76 King Phillips War
	1660-1688 Charles II, James II	1684 Charter revoked
	1688 Glorious Revolution	1691 Royal colony imposed
	William and Mary	1691-92 Witchcraft crime wave
	1736 Repeal of witchcraft law	

The Puritans were a group of English Protestants who sought to "purify" the Church of England of its Catholic residues.<sup>7</sup> In 1534 King Henry VIII had separated the church in England from the Pope's political control, but left untouched the Catholic liturgy, sacraments, and church organization; only gradually did innovations of the Continental Protestant Reformation begin to diffuse into the English church. Decades of civil war followed as religious factions struggled to use state power to exterminate the opposition. During this conflict a group of Protestant reformers led by John Winthrop departed England in 1630 in a bold move to establish a reformed Christian community in America. Winthrop and his followers sought establish an experimental utopian community, based on Biblical standards, a community that would in time become so successful that all the rest of England would follow their lead.<sup>8</sup>

<sup>7</sup> Martin Luther had begun the Protestant Reformation in 1517. Henry VIII, an amateur theologian, wrote an attack on Luther which won him the title "Defender of the Faith" from the Pope. Despite the break with Rome, Henry kept the title which is still held by British monarchs.

<sup>8</sup> John Winthrop had articulated very early the commitment to community solidarity that inspired Massachusetts Bay Colony in its early years of settlement.

"We must be knit together in this work as one man," he declared; "We must delight in each other,... rejoice together, mourn together, labor and suffer together, always having before our eyes our commission and community in the work, our community as members of the same body." Since each community was almost



Unlike Virginia and the other colonies founded in the Americas during this period, Massachusetts Bay Colony did not attract men and women seeking to amass a personal fortune quickly, but instead drew a community with the purpose and expectation of founding a new order of Christian community, "a city upon a hill." (For a sociological examination of such utopian communities see Kanter [1972]{xe "Kanter 1972"}.)

The Puritans were fundamentally committed to Martin Luther's notion of "the priesthood of all believers"; each Puritan was expected to read and interpret the Bible, minimally supervised by a church organization. Unencumbered by priests devoted to maintaining a church organization, each individual would arrive at more or less the same conclusions about matters of faith and morals.<sup>9</sup> Inconsistencies would be resolved by discussion among the elect. Consensus would be spontaneously generated. Consequently, "no resolution could be passed by the church unless some kind of working consensus was reached. . ." (Erikson 1966, p. 79{xe "Erikson, 1966\;79"}).

In reality the Puritans were not of one mind on every issue; diversity of opinion and debate among them were common enough, but always within narrow limits. Like an earlier generation of mariners who feared falling off the edge of a flat earth, the Puritan could only venture so far in entertaining novel ideas and opinions.<sup>10</sup> Diversity was no virtue; unorthodox ideas and practices could well be the work of the Devil bent on destroying the Puritans' experiment in the New World. Novel unorthodox ideas, however, were becoming increasingly commonplace. The sixteenth century saw the birth of modern natural science. In 1543 the Polish astronomer Nicholas Copernicus had published his theory that the earth moved around the sun, challenging long established doctrine that the earth stood stationary at the center of the universe. Within the next 100 years Galileo had confirmed Copernicus' theory by using the newly invented telescope to make more precise observations of the heavens. Later,

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literally a "body," the individuals who composed it could neither logically nor practically regard themselves as autonomous creatures with their own "particular" interests. For a person to pursue such self-determined course was as destructive and, ultimately, as absurd as for one part of the human body to pursue its own good: for a hand to refuse to release to the mouth the food it held in its grasp, for example, for the mouth to refuse to pass along that food to the stomach. "Self-interest" was like that. If left uncontrolled, it could result only in the failure of the community and of every person within it. (Boyer and Nissenbaum, 1974:104).

<sup>9</sup> This fundamental feature of Puritan world view is revealed in the diary of a Puritan minister written shortly after having a conversation with the President of Harvard College, one Henry Dunster. In Europe a new sect, the Baptists, had appeared and Dunster was speculating about their doctrine that infant Baptism is meaningless, having no reference in Scripture. Rather than debate the theological issue on its merits, Mitchell tells us that

These thoughts were darted in with some impression and left a strange sickliness on my spirit. Yet, methought, it was not hard to discern that they were from the Evil One. (Quoted by Erikson, 1966:52)

<sup>10</sup> For example, the British chemist and physicist Robert Boyle (1627-1691) — famous for his law of gasses — also conducted a survey in which he interviewed English miners in an attempt to find out if the 'meet with any subterraneous demons; and if they do, in what shape and manner they appear; what they portend, and what they do.' (Stannard, 1967:77) Heaven and Hell to Puritans were geographic places, closer in many ways than the distant places in Africa or Asia then being explored by Europeans.

in 1687 Isaac Newton published a general theory of universal gravitation, which explained precisely the movement of the earth and other planets and the behavior of falling objects with the same mathematical laws. Thus within a total span of 150 years Western Europeans were given a very dramatic demonstration of the power of human reason, the frailty of established ideas and the role of observation to comprehend the natural world and ultimately to reshape it. Puritans were in the transition, closer in many ways to the medieval than to modern ways of thinking and reasoning.

They arrived in New England in 1630 bearing a special sense of their worldly enterprise as part of a Divine Plan to create a perfect Christian community. As God's elect, they fully expected this New Israel to be challenged by Satan and were prepared for the forces of evil to attempt to undermine the true Church. The legal code of 1648, for example, spelled out provisions for dealing with Jesuit missionaries who were active in Canada. The Puritans, however, failed to anticipate the forms the Devil would take.

### The Puritan Legal System

The legal system of Puritan Massachusetts combined two diverse sources of law, Biblical commandments<sup>11</sup> and English common law. King Charles I granted a charter for the Puritan colony with the provision that the colony's laws would conform to the laws of England. This requirement created an unresolvable conflict between two very different standards of justice, Biblical commandments and English common law. The latter evolved principles that protected the accused from arbitrary, capricious, or unfair discretion. For example, common law banned **ex post facto** (after the fact) rules, which defines as criminal an action that was not a crime at the time it was committed. Due process standards required that the accused be given notice of the charges, a public trial in which to contest them, an opportunity to cross-examine witnesses and present evidence (including witnesses) in defense, and to refrain from compulsory self-incrimination. If convicted, due process provides the defendant the right to appeal the conviction to a higher court.

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<sup>11</sup> The Puritans sought to incorporate Scripture directly into their law. For example:

Massachusetts Code of 1648: If a man and a stubborn or REBELLIOUS SON, of sufficient years and understanding (viz) sixteen years of age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him will not harken unto them; then shall his Father and Mother being his natural parents, lay hold on him, and bring him to the Magistrates assembled in Court and testifies unto them, that their Son is stubborn and rebellious and will not obey their voice and chastisement, but live in sundry notorious crimes, such a son shall be put to death.

Deuteronomy 21:18-21: If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not harken unto them: Then shall his father and his mother lay hold on him, and bring him unto the elders of his city, and unto the gate of his place; And they shall say unto the elders of the city, This our son is stubborn and rebellious, he will not obey our voice; he is a glutton, and a drunkard. And all the men of this city shall stone him with stones, that he die...

In reality, no rebellious Puritan sons were executed; see Sutton (1981).

By 1630 English law had established certain rights to a public trial and to appeal the decision of a trial court to a higher court.<sup>12</sup> British common law thus provided some protection to a suspected criminal. These constraints, rudimentary by contemporary standards, did serve to limit the power of the prosecution, as we shall see when we examine the individual trials. The Puritans thus, by choice and obligation, held contradictory legal and religious values. While Scripture armed the Puritan Saints to do battle against Satan's agents, the common law gave the accused basic due process protections.

### **Erikson's Hypothesis: Boundary Crises and Crime Waves**

To move from the abstraction of Durkheim's theory to the concrete reality of social life in Puritan Massachusetts, it is necessary to transpose the theoretical ideas into the particular social context. The task is complicated in this case because of the limitations of historical records. Opinion surveys and other direct measures of criminal conduct and of communal values do not exist. Although observable indicators of variation in community solidarity are absent, strong circumstantial evidence suggests Puritan Massachusetts bound its members to a common commitment, a close approximation to Durkheim's parable of the Community of Saints.

To apply Durkheim's theory to this case, therefore, Erikson relies heavily on interpreting sequences of events. He argues that major dramatic episodes of repressive justice (which he calls "crime waves") should be preceded by disruptions of solidarity in the community (which he calls "boundary crises"). A boundary crisis will not only precede a crime wave in time, but will affect the content of the particular crime wave as well.<sup>13</sup> Thus, "men who fear witches soon find themselves surrounded by them; men who become jealous of private property soon encounter eager thieves" (Erikson 1966, p. 22{x "Erikson 1966:22"}). The burden of Erikson's analysis, thus, is to demonstrate systematic connections between crises in solidarity and outbreaks of repressive justice. We will consider how well he forges the link in the three cases: Anne Hutchinson's trial, the Quaker prosecutions, and the Salem witchcraft episode.

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<sup>12</sup> Most due process procedures familiar to us today had not yet been developed. For example, *habeas corpus* (the right to have a court review the basis for which the state has detained an individual) was not guaranteed until an act of Parliament in 1689. Similarly, in common law a judge could fine or imprison a jury that returned a verdict contrary to his own opinion. *Bushel's Case* (1670) set a precedent giving the jury the final word in acquittal decisions. Only in the middle of the 19<sup>th</sup> century did Anglo-American law formalize the principle of *stare decisis* ("let it stand"), which required judges to base their decisions on specific cases that had previously addressed the same legal issue (Kemplin [1973:84-6]).

<sup>13</sup> A corollary of this argument is that deviant individuals will be motivated to test the boundaries. For example, as an inmate of a mental hospital,

...Mrs. Baum seemed especially talented in divining what would be an invasion of other people's privacy. On a shopping expedition, for example, she had been known to go behind the counter or examine the contents of a stranger's shopping bag. At other times she would enter a stranger's car at an intersection and ask for a lift. In general she could provide the student with a constant reminder of the vast number of different acts and objects that are employed as markers by which the borders of privacy are staked out, suggesting that in the case of some "mental disorders" symptomatology is specifically and not merely incidentally an improper keeping of social distance (Goffman, 1956, p. ).

## Case I: Anne Hutchinson's Heresy and the Boundary Crisis of Puritan Authority

The first major crisis, the “Antinomian”<sup>14</sup> heresy disrupted the colony in the 1630's shortly after the Puritans arrived in Massachusetts. We need to consider this crisis at two levels. At the structural level the crisis may be viewed as the result of an internal contradiction within Puritan society between Protestant individualism and communal integration. Puritan theology celebrated Luther's conception of “the priesthood of all believers.” No priests or other authorities were necessary in a true Christian community. One consequence of this doctrine in Europe had been religious anarchy. In the hundred years since Luther broke with the Catholic Church, European Christianity had splintered into a variety of sects, each based on groups of individuals reading the Scriptures in their own peculiar way. Because the Puritans were struggling to establish a viable society in a hostile environment, “some form of external discipline was necessary if the colony were to survive at all, and few settlers seemed concerned that the earlier individualism of the movement was quietly disappearing” (Erikson 1966, p. 73{x “1966\73”}).

In addition to this conflict over political authority, a second contradiction within Puritan Massachusetts can be seen in light of Weber's (1958 [1905]) essay *The Protestant Ethic and the Spirit of Capitalism*. Weber argued that Calvin's doctrine of predestination led to tremendous anxiety about salvation. Because only a fraction (about twenty percent) of humanity was predestined for salvation and no one could be certain of election, theologians sought to find some meaningful basis for identifying salvation. One such idea was that success in one's calling was a visible sign. For those who found this idea attractive, success in work and – its most visible manifestation, economic prosperity – took on new significance. In most preindustrial civilizations status is achieved by the avoidance of work. A leisure class maintains its high status by conspicuous consumption (Veblen 1899). For the Puritans, however, indolence became a visible sign of eternal damnation. The net result was Calvinist domination of the new forms of economic enterprise in Western Europe – regardless of nationality, followers of Calvin were in the forefront of the new commercial and industrial enterprises.

Over time the unprecedented accumulation of wealth undermined religious commitments.<sup>15</sup> The secularization for the Puritans reaches its fulfillment, Weber argued, in Benjamin Franklin in the late 1700s. Franklin had little concern with the afterlife, predestination, salvation or any of the traditional preoccupations of organized religion. He had, however, inherited from the Puritan tradition obsessive preoccupation with success in one's calling as the primary source of personal fulfillment – the work ethic, or what Weber called the Spirit of Capitalism. This set of values, Weber argued, was central to the emergence of Western Europe and New England as the centers of the new industrial economy.

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<sup>14</sup> Literally, “anti-law.” Antinomianism the theological doctrine that through the believer's faith and God's grace salvation may be attained without observances of Old Testament laws, or indeed, laws in general. It represents Protestantism in its purest form, eliminating all forms of authority as intermediaries between God and the believer,

<sup>15</sup> This cycle had occurred in the past in the monastic movements of the middle ages. With some frequency but on a smaller scale a monastery was established to pursue salvation; part of the pursuit involved economically productive work, so that over time the monastery's wealth rapidly expanded. The wealth, in turn, undermined the original goal of otherworldly pursuits.

We can understand Puritan Massachusetts in the 1600s as being in the midst of this transition between John Calvin and Benjamin Franklin. While many colonists – particularly the residents of Boston and Salem Town – successfully engaged in trade and commerce, others were involved in a largely self-sufficient household and local economy outside the international market economy. These divisions between town and country, debtor and creditor, merchant and farmer found expression in the dominant discourse of religious ideas. Friction between landowners and merchants over the moral significance of overcharging, usury, and material success led to recurrent conflicts for which the colony was unprepared by its ideology (Bailyn 1964, p. 41{x "Bailyn, 1964:41"}). (This basic conflict reappeared in a different form in the social bases of the witchcraft prosecution in the 1690's and illustrates a problem we will examine later in detail: What happens to mechanical solidarity when the division of labor creates heterogeneity of values and orientations)?<sup>12</sup>

In 1634 a remarkable woman named Anne Hutchinson (c. 1591-1643) arrived in the colony. Hutchinson, a religious virtuoso,<sup>16</sup> soon began holding regular meetings in her home to discuss religion. These discussions soon turned to criticism of the character and competence of the local ministers. Hutchinson argued that religious authority could not be based on educational credentials; faith alone is necessary for salvation. If the minister has not been saved through grace, no amount of work on his part can give him either community authority or personal salvation. Moreover, Hutchinson herself believed she could distinguish between ministers who adhered to "the covenant of works" from those who adhered to "the covenant of grace." Hutchinson soon began to attract a sizable number of followers who carried her views into the congregations, freely criticizing certain ministers during their Sunday sermons.

Hutchinson embodied the contradiction in Puritan values between the tradition of individualism and the necessity for authority. Her faction drew followers from the merchant class of Boston, while the opposition party attracted the landowners. Hutchinson's party became a major political force, which included the colony's governor Henry Vane. After Vane lost the critical 1637 election and returned to England, Hutchinson's opponents felt powerful enough to begin legal proceedings against her. The prosecutors accused her of heresy, but were uncertain about the legal grounds for the desired conviction. Finding a Scriptural rule on which to convict her proved problematic, particularly because she was as conversant with Scripture as any of her prosecutors. At one point

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<sup>16</sup> Max Weber describes this general type, uncovered in his comparative study of world religions:

The empirical fact, important for us, that men are differently qualified in a religious way stands at the beginning of the history of religion... The sacred values that have been most cherished... could not be attained by everyone. The possession of such faculties is a 'charisma,' which, to be sure, might be awakened in some but not in all. It follows from this that all intensive religiosity has a tendency toward a sort of status stratification in accordance with the differences in the charismatic qualifications. 'Heroic' or 'virtuoso' religiosity is opposed to mass religiosity. By 'mass' we understand those who are religiously 'unmusical'...now, every hierocratic and official authority of a 'church' — that is, a community organized by officials into an institution which bestows gifts of grace, seeks to organize the religiosity of the masses and to put its own officially monopolized and mediated sacred values in the place of the autonomous and religious status qualifications of the religious virtuosos. (Weber, 1924:287-288)

Winthrop asked the defendant to cite a Biblical rule giving her the right to hold meetings in her house, and she answered smartly, "there lies a clear rule in Titus that the elder women should instruct the young." Then Mrs. Hutchinson quite properly argued that the court should find rules to support its proceedings. . . (Erikson 1966, p. 94{x "Erikson, 1966\;94"})

The record suggests the court had difficulty meeting this demand. The outcome of the trial remained uncertain until Hutchinson faltered and impulsively confessed that her insights came through direct revelation. "I bless the Lord, He hath let me see which was the clear ministry and which the wrong . . . by the voice of His own spirit to my soul." Moreover she warned the court that "if you go on in this course you will bring a curse upon you and your posterity, and the mouth of the Lord hath spoken it" (Erikson 1966, p. 98{x "Erikson, 1966\;98"}). Hutchinson's histrionic statements provided the basis for conviction that the court had vainly struggled for days to find. For the Puritans the Bible contained all revelation; if Anne Hutchinson were hearing voices, they were the revelations not of God, but of Satan. Like Joan of Arc two hundred years before, claims of direct revelation from God were well-recognized legal basis for prosecuting heretics. The court found Hutchinson guilty of heresy and banished her from the colony.

The conviction of Anne Hutchinson, Erikson argues, resolved the first boundary crisis of the Massachusetts settlement. It dramatically condemned the strain of anarchy inherent in Protestant doctrine and established the legitimacy of a hierarchy within the Puritan Church. The episode demonstrates Durkheim's thesis that episodes of repressive justice occur in response to organizational problems of solidarity. Basic to Durkheim's theory is the inability of the participants to be fully aware of the causes or consequences of their actions. It was by no means clear at the time what offense Anne Hutchinson had committed. As Erikson suggests

the two principals were trying to speak the language which had not yet been invented, to argue an issue that had not yet been defined. In a sense, the trial was an attempt to develop such a language. (Erikson 1966, p. 93{x "1966\;93"})

Furthermore, the theory does not predict this outcome as foreordained. The trial itself was a highly unpredictable event. For Durkheim's argument, however, the outcome of the trial is not of major importance. The central feature is the relationship between the Puritan boundary crisis and the form of crime discovered by the community. The theory simply states that to the extent that the trial is successful, solidarity will be restored.

## **Case II: Quaker Invasion and the Boundary Crisis of Puritan Identity**

"Quaker" was originally a derogatory term applied to members of "The Religious Society of Friends." "Quaker" arose from the tendency of the Friends to "quake" during their spontaneous religious services.<sup>17</sup> Erikson suggests that, as in Hutchinson's case, the "crisis" over the Quakers was only the

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<sup>17</sup> The sect was begun in England around 1646 by George Fox who preached that the essence of Christianity was "inner light," the direct experience of communion with God, rather than any outward trappings of sacraments or

surface manifestation of a deeper structural problem confronting the Puritan community. By the 1650s, the Puritans in Massachusetts were beginning to discover that England was drifting further and further away in its religious orientation. In 1649 English Puritan revolutionaries headed by Oliver Cromwell overthrew the monarchy and established a Commonwealth with Cromwell as the head of the government. After the years of civil war, however, the English grew tired of theological conflict and adopted a new mood of religious toleration. In this they followed the exhaustion of most Western Europeans with the wars of religion. Increasingly the English Puritans came to view their Massachusetts cousins as a bit odd, old fashioned, isolated and out of touch with reality. This change was a great disappointment to the Puritans of Massachusetts after twenty years of hardship in the wilderness to build an exemplary Christ's kingdom.

Faced with a loss of a sense of mission, Erikson suggests, the Puritans responded swiftly and harshly to the new heresies propounded by the Quaker sect. In 1656 two Quaker women were discovered and quickly deported. As others entered the colony and converted followers, the magistrates increased the penalties to whipping and then to cutting off ears. Such punishments seemed to only attract more Quakers to suffer martyrdom. Following two executions, the Quakers increased the level of rule breaking. They disrupted church services, they argued with the magistrates during court hearings, and they paraded naked through the streets. The escalating conflict between Puritans and Quakers was brought to an abrupt halt by the intervention of the King in 1665. Charles II, firmly committed to the toleration of Protestant sects<sup>18</sup> ordered the Massachusetts government not only to grant "freedom and liberty of conscience" but to extend voting rights to all eligible men, regardless of church membership.

Unlike the Antinomian crisis of Anne Hutchinson which concluded with a resolution of the conflict favoring Puritan values, this second crisis ended -- from the Puritan's standpoint -- in failure. Note that nothing in Durkheim's theory says that a ritual must achieve a successful result. This theory, like any other, is limited to a small set of variables (threat, ritual, solidarity) operating in isolation with external (or "exogenous") variables held constant. True experiments hold the exogenous variables constant in a literal sense by manipulating the relevant environment: temperature, air pressure, amount of social interaction, magnitude of deprivation, and so forth. In non-experimental research, where such control is impossible, allowances and adjustments must be made for these exogenous factors. We should no more expect Durkheim's model of ritual punishment and solidarity to fit completely Puritan crime waves than we should expect the law of free fall to work outside a vacuum. Erikson's choice of Puritan

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rituals. Like the Puritans, the Quakers were seeking to restore New Testament Christianity by eliminating corrupting external influences. The Quakers went further. They pointed out, for example, that the standard names for the months (January, February) were all based on the names of pagan gods. They, therefore, adopted a numerical system for naming the months. Quakers used archaic modes of speech ("thee" and "thou") and Quaker men did not remove their hats in church. While these actions and beliefs appear to be innocuous deviations, the Puritans saw them as major threats, regardless of their content. As Thomas Dudley forthrightly remarked to the Quakers during one of their trials, "If ye meet together and say anything we may conclude ye speak blasphemy" (Erikson 1966, p. 131{x "Erikson, 1966\;131"}).

<sup>18</sup> Partly because of the continued political antagonism between the English monarch and the Pope, English Catholics continued to suffer legal disabilities until the Reform Bill of 1829.

Massachusetts, a relatively homogeneous community with strong collective commitments, meets the assumptions of Durkheim's model. Several events, such as the intervention of the King of England in terminating the Quaker prosecution could not be predicted from the theory, since such an event is totally exogenous. Puritan Massachusetts, thus, underwent a fundamental change in character between 1656 and 1665. The sense of identity, of common mission and unanimity was greatly weakened. The colony's effort to recapture this solidarity by staging the ritual punishment of Quakers failed. Before the final disintegration of the Puritan community, however, it underwent one more crisis.

### **Case III: Salem Village Witchcraft and the Boundary Crisis of Community Integrity**

The third is the most infamous crisis. In 1692 twenty persons were put to death for alleged witchcraft and scores of others were imprisoned on suspicion of engaging in the practice. Few Puritans doubted the existence of witches or questioned their power. Indeed, most cultures recognize that witches and sorcerers can conjure up the supernatural, although not as necessarily evil agents. Western European Christianity had long accommodated itself to the practice of magic, viewing it throughout the medieval period more as a pagan nuisance rather than a major threat. About the middle of the Fifteenth Century, however, that attitude began to change. This change came at a time of great social turmoil. The feudal order was beginning to disintegrate, trade and commerce were expanding the horizons of Western Europeans and the old certainties were being undermined by new discoveries and ideas. Along with the advances of art, literature, and the sciences later generations labeled the Renaissance came a deadly fear of supernatural forces. As a result, as many as half a million Europeans were executed for witchcraft between 1484 and 1730. In some towns witchcraft charges were made against a third of the inhabitants, with one out of ten residents executed (Stannard 1977, p. 36{x"Stannard, 1977\;36"}). Such prosecutions appeared to be based on ample evidence of malevolent activity. Life in general was, in the famous phrase of English philosopher, Thomas Hobbes, "nasty, brutish and short." The life expectancy of a British lord at birth was only thirty years (Stannard 1977, p. 38{x"Stannard, 1977\;38"}). Food shortages and epidemic diseases were commonplace. Inexplicable deaths and birth defects were often seen as the work of witches. Prosecution of witches was supported by clear Biblical commands: "Thou shalt not suffer a witch to live" (Exodus xxii:18; Deuteronomy 24:11, 23:1).

While the potential threat of witchcraft in Massachusetts was unquestioned, few convicted witches were executed before 1692. This restraint is quite remarkable considering the number of executions being conducted in England during this same period. Particularly instructive is the case of John Bradstreet who confessed in court to practicing witchcraft in 1672 but was thrown out of court for lying (Erikson 1966, p. 155{x"Erikson, 1966\;155"}). Twenty years later the court responded very differently to such confessions.

The Puritan witchcraft prosecution began in the fall of 1691 when a group of teenage girls in Salem Village began to have fits, speak in tongues and suffer convulsions. These afflictions began in the household of the village minister, Samuel Parris. For some time their cause remained undiagnosed. In late February 1692, three women were arrested for witchcraft: Rev. Parris' black slave Tituba, a native of Barbados, who confessed in great detail to participating in a witch's coven; Sarah Good, a disagreeable old woman with many enemies; and Sarah Osborne, whose marriage of her Irish indentured servant had recently scandalized the community. During the hearing, the girls were appeared



to be afflicted with convulsions and visions by the accused. Tituba confessed her guilt and implicated numerous conspirators within the community.

The young victims of the alleged witchcraft quickly became diviners for identifying suspects. Particularly susceptible to accusation were personal enemies, which came to encompass members of the community who voiced skepticism about the proceedings. In June, the first trials were held and by September nineteen convicted witches had been hanged. In the meantime over 100 accused witches awaited trial. The circle of accusation spread to include residents nearby towns, total strangers to the afflicted. When the wife of the governor was accused, the magistrates dismissed the accusation. By then, however, public doubt had reached a level to bring the prosecution to a close.

Erikson locates the source of the witchcraft prosecution in the disintegration of the social structure. The Quaker crisis had not been resolved to the satisfaction of the Puritans, who had been required to acknowledge the legitimacy of the Quaker sect and of the established Episcopal Church. Several events in the 1680's combined to undermine further the Puritans' confidence in the success of their "city upon a hill." By 1688 a contemporary observed that "the people were 'savagely factious' in their relations with one another and acted more out of jealousy and greed than any sense of religious purpose" (Erikson 1966, p. 139{x "Erikson, 1966:139"}). This state of affairs sharply contrasts with the earlier sense of community and common purpose.

### **Assessing Erikson's Analysis**

While these crises fit Erikson's thesis, his study presents several problems of evidence and interpretation. First, the extent to which members of the Colony actually participated in the three major trials is unclear. Much of our knowledge about these trials comes from the writings of elites, who may have been projecting their own interests and orientations in describing the colony as a whole; the actual audience of the Puritan trials might have been quite limited. This possibility becomes especially problematic during the seventeenth century, as the growing population began to include immigrants who were not members of the church. Second, Erikson provides no explicit criteria for selecting these three particular episodes in the Colony's history as instances of boundary crises. If no other dramatic social strains had occurred during this period the selection would be compelling, but the absence of explicit criteria weakens the evidence for the thesis.<sup>19</sup>

Third, because Erikson's analysis is limited to Puritan Massachusetts and it provides no clear idea about the domain or scope of the thesis. Do boundary crises produce crime waves only in theocratic regimes or in secular states as well? Jamestown, Virginia, for example, was a colony

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<sup>19</sup> Erikson's use of the crisis as an independent variable is a common method in non-experimental research (cf. Balbus, 1973; Goldstone, 1980; Piven and Cloward 1978). In most of these studies only face validity serves to classify a set of events as a crisis. For a good discussion of the dangers of the circular reasoning created by this procedure see Rule and Tilly (1972).

The Puritans faces other crises during the period. Erikson discounts the crisis (Nelson; Erikson) as a major turning point. The lack of explicit criteria seems also to be a problem in his discussion of the events precipitating the witchcraft episode. Erikson (1955, p. ) enumerates several crises between 1665 and 1692. Although "the sense of impending doom reached its peak in 1686" (Erikson 1966, p.138) the witch craze took another six years to appear.

organized around commercial interests rather than religious commitment (cf. Diamond 1958{x"Diamond, 1958"}; Breen 1980 {x"Breen, 1980"}); would a boundary crises in Virginia have resulted in a reaction similar to those in Massachusetts? Little systematic work has been done so far comparing the colonies; Rhode Island, however, appears to have been subjected to similar boundary crises faced by Massachusetts, but without having experienced crime waves, as one would expect if Erikson's thesis was universally applicable (Bernstein 1975, p. 102{x"Bernstein, 1975\;102"}). Massachusetts itself underwent major changes after the Seventeenth Century. The gradual disintegration of the Puritan experiment may have been partly a consequence of the failure to resolve satisfactorily the two earlier boundary crises. In the 1700's the Puritans were joined by members of other denominations. The immigration of the Irish in the 1800's totally changed the religious and moral composition of the state (see Thernstrom 1964, pp. 33-56{x"Thernstrom, 1969\;33-56"}). Massachusetts was transformed from a relatively homogeneous religious community to a diversified, pluralistic society. It is by no means clear that these different types of society would respond to boundary crises with collective ritual punishment.

## LYNCHINGS IN THE AMERICAN SOUTH: A SECOND TEST CASE

Between 1880 and 1930 over 2,000 episodes of lynching occurred in the South. The high tide occurred during the 1890s, when lynchings outnumbered legal executions in the South by two to one (Bye 1919, pp. 57-8,64-5). Durkheim's theory provides an explanation for the explosion of lynchings. This interpretation departs from the conventional view of lynchings as one of an array of white terrorism that flourished after the Civil War through groups like the Ku Klux Klan and countless murders committed by individual whites. Durkheim's theory suggests that there was something more to lynchings than racially motivated murders committed by multiple individual perpetrators.

Lynchings exemplify in several respects Durkheim's concept of repressive justice as a ritual punishments "in which the whole society participates in rather large measure" (Durkheim, 1893:76). "A lynching may be defined as an illegal and summary execution at the hands of a mob, or a number of persons, who have in some degree the public opinion of the community behind them" (Cutler 1905, p. 276). Typically, lynching episodes involved large segments of the community participating in an open, public reaction against a targeted individual. Two out of three victims of Southern lynchings were accused of murder or sexual assault (Tonry and Beck 1995, p. 92 ). On occasion the offense was a minor crime or a breach of etiquette; for Durkheim's theory the nature of the offense is logically incidental. Seldom did participants attempt to disguise their identities; indeed, in many cases photographs of the participants subsequently appeared in newspapers and souvenir post cards. Lynchings were carried out with the acquiescence, if not approval, of law enforcement agents. Many prominent white Southerners-publicists, newspaper editors, politicians-viewed lynching as a necessary and legitimate adjunct of the legal system, to maintain law and order (cf. Collins, 1918). How diffuse these sentiments were in the general white population is difficult to gauge precisely, although as late as the 1930s some 64 percent of the survey respondents in a small Mississippi town agreed that lynching was justified in rape cases (Powdermaker, 1939:389). These sentiments were backed up by prominent elites. Theodore Roosevelt's Attorney General, for example, wrote in a law review article that the only cure for lynching was to ensure that accused criminals were promptly and severely punished by the

state; lynching was the inevitable reaction of people frustrated by the malpractice of the criminal law (Bonaparte 1899).

The epidemic of Southern lynchings coincided with a period of political upheaval among Southern whites similar to the boundary crises that Erikson found in Puritan Massachusetts. (c. 1867-1876) provided the real basis for "the Solid South." After the Civil War, Congress, dominated by Radical Republicans, reconstituted the state governments of the former Confederacy. Through Constitutional amendment and national legislation, former slaves became not only citizens but officeholders. Reconstruction (1867-1876) not only revolutionized the status of blacks, but brought incursion of Northern profit-seeking adventurers, and a continuing occupation by Federal troops. "The upshot [of Reconstruction] was a suppression of class feeling. ..the like of which has probably not been seen in any other developed society of modern times" (Cash 1941:112). From the end of Reconstruction to the last decade of the century, Southern whites created "the Solid South," a political coalition centered on the Democratic Party. This one party political system persisted for over 100 years. As Williams (1961:47) notes: "In the monolithic Democratic party the whites could thresh out their differences; but these differences would never become troublesome because no issue must be permitted to divide white solidarity." This consensus on values, harmony of interests and unity of purpose among Southern whites was generated and sustained by two major external threats, the North and the Negro, both of which in the were politically institutionalized in the Republican party.

Class divisions, however, sharpened during the economic depression of the 1890s. Workers and farmers nationally were drawn to a third political party. "[This] agrarian revolt was no less than a political and social earthquake" (Degler, 1974:320). The cause of this convulsion lay in the social structure of Southern society, a deeply divided class structure typical of commercial plantation systems (cf. Stinchcombe, 1961). Before the Civil War only about 30 percent of the white farmers owned any slaves and of half the slave owners owned fewer than five slaves (Wooten, 1936). Except for the threat of black labor competition, most whites, therefore, had little vested interest in the institution of slavery. During the Civil War lower-class whites throughout the South were enraged by Confederate conscription laws (which exempted owners of large plantations) and by war profiteering of their wealthier brethren. Lower-class whites openly rebelled against the Confederacy in several areas (Shugg, 1939; Degler, 1974). White plantation owners, merchants and industrial entrepreneurs constituted a relatively homogeneous elite while most whites were tenants, small farmers or laborers. The dormant class conflict was increasingly exacerbated by the elite policy of laissez faire capitalism, which curtailed public education and other social services instituted by the Reconstruction governments. Southern elites encouraged Northern and British capital to expand the railroad system and exploit the natural resources. Although progress was, in the long run, to be beneficial to the whole population, the short run profits were to be used to motivate entrepreneurs while the short run costs were to be borne by the poor whites and the blacks.

The interests of the latter in railroad rate regulation, cheaper credit and higher wages diametrically opposed Southern elites. In the 1870s and 1880s, as agricultural prices declined and credit became tighter, lower-class Southern whites began to join farmers throughout the country in a series of national agrarian social and political movements: The Grange, the Farmer's Alliance, The People's

(populist) Party. While most of these organizations sought to work within the framework of existing political parties, the Populists organized as a distinct party. The conflict between the two classes of whites was complicated by the racial factor in Southern politics. In Louisiana the blacks were enfranchised in 1868 and overwhelmingly supported the Republican Party. After Re-construction Southern elites continued to support voting rights for the blacks. Since black males of voting age outnumbered their white counterparts in many areas, the elites perceived a manipulated black electorate as essential in guaranteeing their position vis-a-vis the poor whites. Moreover, the ability of the Bourbons through economic and physical coercion to deliver black votes in their districts gave them power in the national Democratic party. Lower-class whites, on the other hand, opposed the black franchise both for the threat it posed to their status and, increasingly, for the power it gave to the elites. The Populist leaders sought to overcome the racism of the lower-class whites and pragmatically sought to attract the black vote, arguing, in the words of Georgia's Tom Watson, that "the accident of color can make no possible difference in the interest of farmers, croppers, and laborers" (Woodward, 1951:402). The Populists viewed the ideal of the Solid South as a form of false consciousness disguising the true class interest of the lower-class whites. The Democratic Texas Gazette lamented, "We can no longer depend upon the solidarity of the white race" (Hair, 1969:238).

Populists waged strong campaigns in the state and national elections of 1892, the Congressional election of 1894 and the gubernatorial election of 1896. Not only did the Louisiana Populists seek support of the blacks, but they formed coalitions with the Republican Party. The peaks of the insurgency was reached in 1896 when, for example, the Populists and other anti-Democratic factions in Louisiana won control of 40 percent of the seats in the state General Assembly. Although the Populists won local contests, they were unable to win gubernatorial and Congressional contests, for the Democrats controlled both the black votes and the election machinery in too many areas. Frustrated by legitimate means of political opposition many Populists discussed the possibility of open, armed revolution. The agrarian revolt, however, died quietly. Many of the supporters of Populism simply "...withdrew from politics altogether while others returned to the Democratic Party. The latter restored white solidarity in two ways. First, it adopted a major Populist demand, in inflationary monetary policy. (In the Presidential election of 1896 the Populist Party formed a coalition with the Democrats behind free silver advocate William Jennings Bryan.) Second, the Democrats adopted the policy of disenfranchising the blacks and promoting Jim Crow segregation laws. For example, the number of black registered voters was cut from 130,334 in 1896 to 1,342 by 1904. While in 1896 black registered voters outnumbered the whites in 26 parishes, by 1900 whites were the majority in all parishes (Woodward, 1957:68). In effect, these policies shifted emphasis from economic interests back to racial and regional identities as the basis of political organization. "Hopes for reform and the political means employed in defiance of tradition and at great cost to emotional attachments...met with cruel disappointments and frustration. There had to be a scapegoat. And all along the line signals were going up to indicate that the Negro was an approved object of aggression (Woodward 1957, p. 64).

Evidence of the impact of the Populist revolt on the incidence of lynching is mixed (Inverarity 1976; Soule 1992). One indicator is the coincidence of peaks of lynchings in Louisiana with the hard-fought elections. In the three election years (1892, 1894 and 1896), the average was 17 incidents per year, about three times as great as incidents in non-election years. Moreover, the sharpest increase in lynchings occurs in 1896, the year of the most bitter contest in the gubernatorial election (Hair, 1969:259 ff).

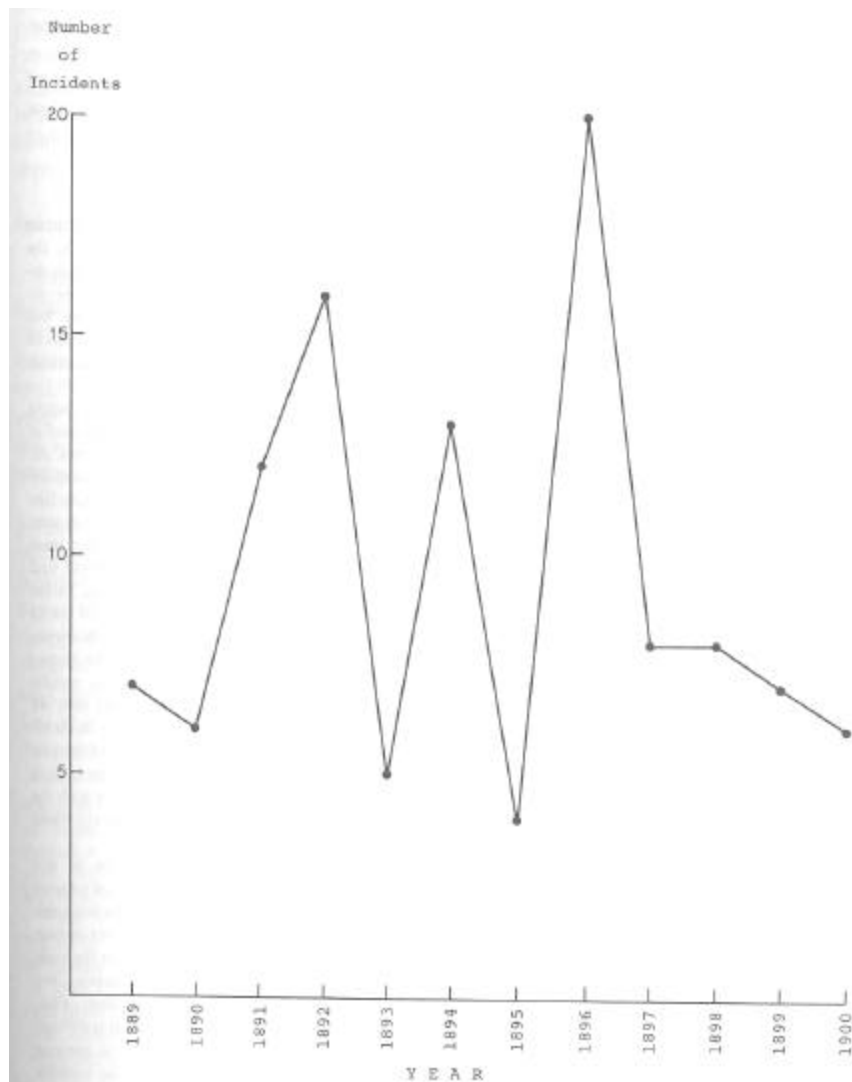


Figure 1. Frequency of Lynching  
in Louisiana, 1889-1900

A further, qualitative indication of the validity of lynching as an index of repressive justice is Woodward's observation that a wave of virulent racism swept the South around the turn of the century, during and after the passage of Jim Crow and disenfranchisement legislation; further, the decline in the rate of lynching was "*happily not in conformity with [this] deterioration in race relations*"(1951 :351, emphasis added). The weight of the evidence, then, suggests that the rate of lynching varies systematically with the disruption of white solidarity and is unaffected by fluctuations in the degree of racist hostility toward blacks.

Because elections intensified the strain on white solidarity, the symbolic threat criminals and other transgressors correspondingly increased. Groundless accusations became more accepted; when accusations were made, there was much less willingness to allow the law to take its course and a greater need to immediately and ritualistically punish the alleged offender. Lynching and political conflict,

however, might be related more directly, simply as a consequence of the attempts by whites to coerce black voters. Although political violence was widespread during the elections, lynchings do not seem to be simply one manifestation of political violence. If lynchings were used as a form of direct political intimidation, there should be some increase in the victims charged with non-criminal offenses during election years. In the election years (1892, 1894, 1896), only 4 of the 43 victims of lynch mobs in Louisiana were not charged with criminal offenses. Furthermore, 79 percent of the victims were charged with the most serious crimes, murder and rape, during the election years, while only 46 percent of the victims were charged with these offenses in non-election years. This increase in the proportion of serious offenses during elections is more consistent with Erikson's theory than it is with the interpretation of the increase in lynchings as a direct outgrowth of political violence. A plausible alternative interpretation is that lynchings were basically a mode of political violence and that the accusations of rape or murder were simply cover-ups designed to conceal the real motive. This is a difficult argument to address with the kinds of evidence available. There are, however, two reasons for rejecting this interpretation. First, political murders were so common that it is difficult to see why indirect methods of political coercion would have been employed. Second, the available descriptive accounts yield no evidence that politically active blacks were accused of crimes and then lynched. During the 1892 election, white Democrats attempted to lynch a prominent black Populist (Woodward, 1938:240), but this incident seems on the basis of available evidence, to be isolated.

Durkheim's theory, then, provides one interpretation of the explosion of lynchings in the South during the 1890s. Lynchings exemplify repressive sanctions in their ritual character of involving members of a community in common reaction against an outsider. The selection of outsiders, in turn, appears to be driven by variations in the level of crisis experienced by the community. Lynchings appeared earlier, persisted later, and served a variety of purposes. There does seem to be some evidence that during this period, lynchings were a form of ritual punishment precipitated by boundary crises in the Solid South.

## **A Further Elaboration of Durkheim's Theory**

### **Mechanical Solidarity and Repressive Sanction**

Durkheim (1964{x "Durkheim (1893")}) distinguished between two forms of social solidarity, which he called mechanical and organic.<sup>20</sup> Mechanical solidarity is based on similarity of individual characteristics

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<sup>20</sup> Erikson (1966) fails to pursue the implications of Durkheim's distinction between mechanical and organic solidarity. The last chapter of the book, "Puritanism and Deviance", contrasts the Puritan view of deviance as an inherent, incurable feature of certain individuals with the Quaker view of deviance as a temporary, remediable condition. Erikson contends that these two seventeenth century philosophies shaped the discourse correctional policy over the next several centuries. This contrast between Puritan and Quaker orientations could, however, be transcribed into Durkheim's contrast between repressive and restitutive sanctions. The advantage of the transcription is that it redirects our attention to the social organizational bases of these orientations. As it stands, Erikson's last chapter abandons Durkheim's analysis in favor of a conventional history of penological ideas.

(e.g., common race and region) and is characterized by consensus on values, harmony (if not identity) of interests and unity of purpose.<sup>21</sup> Strong ties bind members of mechanically solidary communities. Differences exist among members in their attributes, but such differences are regarded as secondary, not as bases for social organization. Mechanical solidarity generates repressive justice, which reaffirms a common value through ritual punishment. The specific rituals range from execution to ostracism. Despite these variations in the form of deprivation, all forms of repressive sanctions have one key element in common: they change the status of the offender, increasing the social distance between normal and deviant actors. The imposition of all repressive sanctions is, in essence, a "status degradation ceremony" that

brings about the ritual destruction of the person being denounced . . . recasting the objective character of the perceived other. The person [deviant] becomes in the eyes of his condemners literally a different and new person. (Garfinkel 1956, p. 421 {xe "Garfinkel, 1956\;421"})

In the words of a nineteenth century English jurist, the criminal law says in effect to the offender, "You are not fit for this world; therefore, take your chances elsewhere."

The change of status, not simply the deprivation itself, constitutes a repressive sanction. This point can best be grasped by contrasting the status of the *prisoner of war* with the status of the *convict*. Both may have been held captive in a degrading environment of deprivation. Both may have been (despite rules established by the Geneva Convention and the U.S. Constitution's Eighth Amendment) subjected to brutalization and torture at the hands of their captors or fellow inmates. The nature of the physical deprivation may be similar (cf. Feinberg 1970{xe "Goffman, 1961"}), but the POW emerges with a social status uncontaminated by the stigma and ostracism of the convict.

### **Organic Solidarity and Restitutive Sanctions**

In contrast to mechanical solidarity, *organic solidarity* is based on diversity of individual interests and is characterized by interdependence and exchange.

In a business firm, for example, though all managers may need some degree of commitment to common organizational goals, they also need different commitment to role values - the engineer to product quality, the accountant to cost, the personnel manager to industrial peace - for the survival and efficiency of the firm. Thus either role- or class-specific values may contribute more to social cohesion than general

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<sup>21</sup> One of the best descriptions of mechanical solidarity can be found in St. Paul's "Letter to the Galatians," in which he argues

For many of you as have been baptized into Christ have put on Christ, there is neither Jew nor Greek, there is neither male nor female; for ye are all one in Christ Jesus (3: 26-28)

core values. (Mann 1970, p. 425{x" Mann, 1970\;425"})

Organic solidarity consists of weak ties among members of the community (cf. Granovetter 1973{x" Granovetter, 1973"}). Organic solidarity, in contrast, generates restitutive sanctions, characterized by efforts to restore the disrupted relationship rather than stigmatize an offender. This restoration may take a variety of forms. Restitution compensates the victim for the loss caused by the offender's misconduct. For example, torts are wrongs resulting from the misconduct or negligence of another. These wrongs encompass injuries resulting from malfunctioning products, professional malpractice, slander, and trespass (see Abel 1990{x" Abel, 1981"}). While the monetary award may be quite substantial in civil cases, the restitutive sanction differs from repressive sanctions in that the victim receives compensation for the loss, while the harm-doer returns to his/her original position in society, legally if not financially. Rehabilitation differs in character from compensation in its focus is on changing the character of the offender through some form of treatment. Like restitution, however, rehabilitation aims to restore social relations to their original state rather than exclude the offender as an outsider.

In actual practice sanctions mix repressive and restitutive elements, much in the same way that physical reality consists of combinations of hydrogen, oxygen, and other elements.<sup>22</sup> We need to be careful, therefore, in examining sanctions to see how they are actually used in specific circumstances rather than take them at face value. For example, although mental hospitalization is ostensibly a restitutive sanction designed to rehabilitate aberrant behavior, stigma may attach to the diagnosis and treatment.<sup>17</sup> The repressive or restitutive character of a sanction must be determined by how the agencies of social control use it.

Similarly, the solidarity of any particular society will be a mixture of mechanical and organic types. No existing society exists that is integrated solely by mechanical solidarity.<sup>23</sup> While theory is written in terms of types, social reality consists of degrees of preponderance of types; some societies, like Puritan Massachusetts closely approximate the ideal type of mechanical solidarity; however, factions and divisions even there are not totally absent.

Theories do not earn their keep by simply providing a way to classify concrete descriptions into abstract categories. If types of solidarity correspond to types of sanctions, not only should it be possible to label the extreme cases reliably. Societies with a mixture of solidarity should experience conflicts in their use of sanctions. Put another way, examination of the sources of social integration should provide, if Durkheim is correct, some useful clues about the underlying cleavages in the creation and enforcement of sanctions.

## **Repressive Justice in Heterogeneous Society**

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<sup>23</sup> The horde, a mass of undifferentiated individuals is "the protoplasm of the social realm, the natural basis of classification. It is true, perhaps, that no society corresponds to this description" (Durkheim 1950, p. 83{x" Durkheim, 1950\;83"}).



Durkheim's theory further postulates a change in the law as mechanical solidarity is replaced by organic solidarity. A massive replacement of this nature took place in the transition from feudal to industrial society. Durkheim saw his own era as one of transition in which the "old gods are growing old or already dead, and others are not yet born" (Durkheim 1948, p. 475{x "1912\; 475"}). What ever new forms of mechanical solidarity were to take in industrial society, Durkheim suggested, the transition has several significant consequences for law.

First, Durkheim predicted civil law would increasingly replace criminal law. Division of labor increases the dissimilarity among individuals in their interests, commitments, and orientations. As they become interdependent, their disputes would be resolved through restitutive measures; the capacity for shared outrage would correspondingly diminish.

Second, Durkheim claimed that increasing organic solidarity made the state regularly independent of collective sentiments<sup>24</sup> such that

Some actions ... are more strongly repressed than they are strongly reproved by general opinion. There is nothing in us which protests against fishing and hunting out of season, or against overloaded conveyances on the public highway.... The state can become an autonomous factor in social life ... treating as criminal, actions which shock it without, however, shocking the collective sentiments in the same degree. (1964, pp. 82-83{x "1964\;82-83"})

Finally, Durkheim suggested that the criminal sanction would not disappear altogether, but that its character would be altered.

The spirit of foresight which has been aroused no longer leaves the field so free for the blind action of passion. It contains it within certain limits; it is opposed to absurd violence, to unreasonable ravaging. More clarified, it expands less on chance. One no longer sees it turn against the innocent to satisfy itself. (1964, p. 90{x "1964\;90"})

In other words, the criminal sanction undergoes a basic change when organic solidarity becomes predominant; it responds more directly to the behavior of the deviant rather than to the state of the collective conscience.<sup>18</sup>

To what extent do these assertions about alterations in sanctions with changes in the dominant form of solidarity account for trends in sanctioning in heterogeneous societies? We will consider in more detail the death penalty in Chapter 10. For the moment let us examine some broader implications of Durkheim's thesis.

The first issue we will review is the presence of mechanical solidarity and ritual punishment in a

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<sup>24</sup> For example, 'the Food and Drug Administration's standards of tolerance for filth in food [permit] . . . in every eight ounces of chocolate, 150 insect fragments and four rodent hairs...tomato juice is permitted no more than 10 fruit fly eggs or 2 larvae per 100 grams' (Blumberg, 1981. P. 34).

heterogeneous society. Much of the literature concerned with this general issue focuses on political rituals, but the core problems are the same for both substantive areas. This discussion of this issue may be conveniently divided into three camps. The first position argues that in the United States, Britain, France, and other industrial nations, rituals of national integration continue to reinforce mechanical solidarity.<sup>25</sup> A second position holds that Durkheim's theory logically applies to contemporary society, but because neither rituals nor mechanical solidarity are present in modern society, the theory bites the dust (e.g., Chambliss 1976{x"Chambliss, 1976"}). The third position is that mechanical solidarity and ritual punishment persist in modern society, but in attenuated forms. The latter position will be explored below.

Durkheim argued that mechanical solidarity does not disappear in heterogeneous societies, but its character is substantially altered.<sup>26</sup>

Only occasionally will an extraordinary event sustain an integrative ritual, as "dramatic threat overcomes the atomization that the proliferation of different occupations creates in the city, this type of rapidly created solidarity breaks up again rather easily as individual interests reassert themselves." (Moore 1973, p. 178{x"Moore, 1973:178"}). Thus, mechanical solidarity and ritual punishment will be found only in attenuated, ephemeral forms in complex societies. Overall, the connection between changes in criminal law and changes in collective sentiment should be weaker. Such weaknesses appear in the Puritan cases. Recall that the Quakers responded to the increasing severity of punishment with renewed commitment to violating the law. Because they formed a community, the Quakers experienced a separate mechanical solidarity was reinforced by the violence of the dominant Puritan legal system.

Durkheim sought to modify to incorporate such situations in which moral values are heterogeneous. Durkheim divides crimes into two classes, those directed against "collective things" and those that "offend only individuals." For example, a murder in New York City may only concern a limited number of persons involved, whereas a murder in a small Southern town may represent a larger threat to the

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<sup>25</sup> Edward Shils and Michael young, for example, contend that Durkheim's analysis can be fruitfully applied to the British Coronation, which represents a "series of ritual affirmations of the moral values necessary to a well-governed and good society" (Shils and Young, 1953:67). Other writers attribute such consequences to political rituals, including the inauguration of President Kennedy (Bellah, 1968) and the public mourning over Kennedy's assassination (Verba, 1965).

<sup>26</sup> Michael Mann, in reviewing the literature on class consciousness in Western industrial societies, suggests that a form of mechanical solidarity exists in these nations, but that the commitment is to very general symbols, ideals and values which achieve a generally incoherent and inconsistent adherence. In such societies the ordinary participant's

social relations are usually confined to a fairly narrow segment of society, and his relations with society as a whole are mostly indirect, through a series of overlapping primary and secondary groups.... Thus his normative connections with the vast majority of fellow citizens may be extremely tenuous, and his commitment to general dominant and deviant values may be irrelevant to his compliance with the expectations of others. As long as he conforms to the very specific role behavior expected of him, the political authorities may not trouble themselves with his system of beliefs. (Mann 1970, p. 435{x"Mann, 1970:435"})

community. If the crime involves essentially relationships between individuals,

there is no longer the same distance between the offender and the offended; they are more nearly on an equal footing ... the feelings of pity evoked in us by him who is struck by the punishment cannot be as easily nor as completely choked off by the sentiments which he violated and which react against him, for both are of the same nature. The first are only a variety of the second (Durkheim 1978 [1899], p. 175{x "1978\;175"}).

However, violations of community sentiment call forth ritual degradations of the offenders. The collective stands apart from the individual and demands normal continual sacrifices of self.

We have no inclination to fast, to humiliate ourselves, to forbid ourselves one or another meat, to sacrifice on the altar our favorite animals, to trouble ourselves out of respect for custom, and so forth ... such sentiments exist within us independent of ourselves and even, to some extent, despite ourselves. (Durkheim 1978 [1899], p. 17-3 {xe "1978\;172-173"})

Where collective sentiments are dominant, then, a wide distance separates the offended community from the individual offender. This social distance makes possible the lack of humanitarian sentiments in ritual forms of punishment.<sup>27</sup> Where individual sentiments predominate, punishment is more limited. John Stuart Mill provided the most articulate expressions of this outlook:

the only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others. . . . His own good either physical or moral is not a sufficient warrant. He cannot rightfully be compelled to do or forebear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise, or even right. (Mill 1859 [1930]: 11)

American law implicitly uses something like Durkheim's distinction between collective and individual interests as one dimension in defining criminal versus civil law. Crimes are those offenses in which the society undertakes prosecution on the initiative of state authorities, while civil suits are brought by individual plaintiffs. It is, however, erroneous to assume that because the law formally describes the difference between criminal and civil law in this fashion that in practice criminal law invariably deals with offenses against "collective things" whereas civil law deals in practice with offenses against individuals. Many civil suits involve collective interests (as, for example, class action suits) or punitive damages designed to send a message to would-be harm-doers in the future.

Moreover, criminal prosecution is highly dependent upon individual citizen's complaints to

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<sup>27</sup> In Western culture this conflict is embodied in the Biblical story of Abraham whose ritual sacrifice of his first-born son Isaac is commuted at the last minute.

police, the complainant's willingness to testify, and his/her preference for outcome. The classification of an offense as having a collective or individual object is, thus, a complex empirical question, not a simple legal classification. For example,

twelve of the eighteen judges in Pittsburgh tended to view the behavior of the typical criminal court defendant as a manifestation of a dispute between two private parties rather than between an individual and "society" ... in effect these judges acted as if they viewed the defendants behavior *less as a criminal act than as a civil act or tort*. (Levin 1977, p. 125, emphasis added{x "1977\;125"})

"Repressive justice" is not simply an alternative phrase for criminal law. Repressive justice encompasses a limited range of homogeneous phenomena, in which exclusion of a deviant solidifies a community. To the extent that sanctions lack this character, their occurrence cannot be explained by Durkheim's theory linking ritual punishment and mechanical solidarity.<sup>28</sup> Ritual forms of punishment may not simply lack integrative effect in a heterogeneous society, they may create divisiveness among the subgroups. Just as the state may impose sanctions without creating a ritual for the general public, a pluralistic society creates the possibility of a single sanction serving two (or more) ritual functions. Durkheim was well aware of this possibility in his own time. Humiliated by defeat in the 1870 war with Prussia, France was electrified in 1894 by the trial and conviction of Alfred Dreyfus, a Jewish army captain, for selling military secrets to the Germans. The necessary ingredients for a ritual punishment were all there: the unmanageable external threat, the need for collective reaffirmation of solidarity, a target compatible with widespread anti-Semitism. In this case, however, ritual exclusion of a deviant did not ensue. Instead the nation split on liberal-conservative lines, particularly as evidence began to appear that the real culprit was a superior officer, a member of the French aristocracy named Esterhazy and that the army had been involved in a massive cover-up to pin the blame on the Jewish captain. Dreyfus was initially convicted and sentenced to solitary confinement on Devils Island, a French prison off the coast of South America. The trials and public controversy continued until 1906 when Dreyfus was finally exonerated and awarded the Legion of Honor. Far from uniting the country, the Dreyfus episode further widened the gap between liberals (academics, intellectuals and workers) and conservatives (the military, the church, and the farmers). The military was discredited and the Dreyfus case played a significant role in the separation of the Catholic church from the French state in 1905.

For Durkheim the crisis over Dreyfus represented a significant manifestation of the disintegration of mechanical solidarity at the national level. In place of national mechanical solidarity, there appeared to be mechanical solidarity within the pro-Dreyfus and the anti-Dreyfus factions. This pattern is characteristic of politicized trials, which produce simultaneously scapegoats and martyrs. The

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<sup>28</sup> The relative autonomy of law and collective sentiments is further sustained by research on changes in the California penal code between 1955 and 1971.

... given the nature of piecemeal, incremental change in the Penal Code, often based on small and somewhat technical alterations, it is difficult to link public sentiment, whatever its nature, directly to legislative trends. Most legislative change received no publicity precisely because it bore little relation to the interests and competence of citizens. ... In short, it seems inescapable that criminal law in California was enacted primarily by elite actors (public officials, organizational professionals, etc.). (Berk et al. 1977, p. 280{x "Berk et al., 1977\;280"})

most recent example of the polarizing consequences of repressive justice is the October 1995 acquittal of O. J. Simpson. A *Newseek* poll taken shortly after the verdict found 85 percent agreement among African Americans with the jury, but only 32 percent agreement among whites. The intense debate which is fueled in part by racial divisions over the legitimacy of the criminal justice system, has every indication of joining a long list of such trials that reinforce social divisions in modern society.<sup>29</sup>

At the more mundane levels of legal life the existence of mechanically solidary subgroups the criminal sanction retains ritual functions. Studies of the police, for example, stress the high degree of solidarity among members of the police departments. This solidarity is more than a preference for the company of fellow officers, esprit de corps, or the bonds of fellowship and mutual responsibility formed among persons who share danger and stress. It often includes the protective stance adopted regarding police misconduct. A criticism of one policeman is seen as a criticism of all policemen, and thus police tend to unite against complaining citizens, the courts, and other government agencies (Skolnick 1975, p. 249{x "Skolnick, 1966\;249"}).

Structurally, the urban police department approximates the conditions of Durkheim's ideal type of mechanical solidarity. Urban police are socially isolated and routinely threatened. A policeman, James Baldwin wrote, moves through Harlem "like an occupying soldier in a bitterly hostile country" (1962, p. 67{x "1962\;67"}). The urban ghetto is not unique, however; police routinely face public opposition to their authority. As a result the social networks of police departments are unusually close. Police are more likely to choose close friends from members of their occupations than other occupational groups: More significantly, police engage in much higher rates of participation in occupation-centered social events than do members of other occupations. This solidarity is reflected as well in the tendency to cover up the errors made by fellow officers.

Social isolation is combined with the perception of danger. While the occupational death rate is not the highest for police work, the nature of the job gives danger particular salience. "Any profession which is continually preoccupied with the threat of danger requires a strong sense of solidarity if it is to

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<sup>29</sup> Dreyfus episode has several more recent parallels. In 1951 Julius and Ethel Rosenberg were convicted by a federal court in New York of conspiracy to commit wartime espionage. Ethel's brother, working in 1944 at the Los Alamos laboratory, had allegedly stolen plans for the detonating device in the atomic bomb. The Rosenbergs allegedly passed the secret on to the Soviet mission in New York. The "secret" of the atomic bomb was "lost" when Russia exploded its first device in 1948. Two years later the Communists took over China and within a year the United States was sending troops to Korea for a "police action," that ultimately cost over 50,000 American lives. In the midst of these crises, the Rosenbergs became a symbolic focus, but a factional, rather than a societal force. Mass demonstrations in support of the Rosenbergs took place throughout the world between their trial and their execution in 1953. Far from being a source of unity, the Rosenberg trial generated controversy that continues thirty years later (Radosh and Milton, 1983).

Public ritual arousing collective unity is thus rare in contemporary society. Justice is administered on an assemble line basis out of view of the general public. Those cases that do become the focus of public concern are more apt to result in polarization than in unification. Not only does criminal punishment not increase solidarity in this environment, but in this setting the converse of Durkheim's argument is equally valid. Boundary crises do not result in crime waves. Variations in conviction rate have very little to do with boundary crises or external threats to the society.

operate effectively" (Janowitz 1964, p. 175{x "Janowitz, 1964\;175"}).

Given the special characteristics of authority and danger, Skolnick maintains, the police develop

a perceptual shorthand to identify certain kinds of people as symbolic assailants, that is persons who use gesture, language and attire that the policeman has come to recognize as a prelude to violence. This does not mean that violence by the symbolic assailant is necessarily predictable. (1975, p. 45{x "Skolnick, 1966\;45"})

Symbolic assailants may come to include all residents of a high crime area (1975, p. 218{x "Skolnick, 1966\;218"}). Violation of the law, however, is not a sufficient condition; police, for instance, do not regard addict informers as being symbolic assailants, even though these individuals violate laws to which the police are personally highly committed. The tendency for such perceptions to develop creates a sustained tension between the police and the groups from which symbolic assailants are recruited. This tension has been chronic in the history of policing and has become even more acute in twentieth century "professional" modes of policing which separate in various ways the police from the community. The existence of symbolic assailants as part of the police culture is consistent with Durkheim's theory and has certain structural parallels with the other social groups we have considered. All have a strong level of internal cohesion and are faced with external threats. The ritual creation of deviants appears less frequently and is more localized in contemporary society. Although it occurs in law enforcement agencies, it is frequently limited by due process constraints. Unlike Puritan Massachusetts, repressive justice plays a subsidiary role in heterogeneous.

## SUMMARY

This chapter has examined one way in which a sociologist attempted to study the connection between the legal system and society. For his analysis, Durkheim took the nature of the legal sanction as the most salient feature of the legal system and sought to show that there is a systematic connection between the legal sanction and social solidarity. Durkheim's ideas resemble the familiar notion of scapegoating in which an individual is singled out for sacrifice as a means of satisfying some collective need. In many religions the scapegoat figure provides supernatural benefits for the group. At a less conscious level we may observe the same process at work in the creation of social outcasts -- minorities, deviants, the mentally ill. In each instance the rejection and stigmatizing of an individual provides a sacrifice for the group by allowing it to reaffirm its identity or to avoid intractable problems by displacing them on a manageable object of punishment. While such practices have been criticized and condemned as irrational, Durkheim suggests that we need to examine the social bases for such practices. This search, then, led us to his formulation of the relationship between repressive justice -- of which scapegoating is one special form -- and social solidarity. Durkheim presented these ideas in the form of a typology linking types of social structure and social integration to the form and distribution of social sanctions. It is important to get beyond the simple classifications in the original theory and examine the variation of sanctions and solidarity between and within societies.