

PUNISHMENT AND SOCIAL ORGANIZATION: A STUDY OF DURKHEIM'S THEORY OF PENAL EVOLUTION*

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For Émile Durkheim, crime and punishment were integral features of organized social life. He considered the study of crime and punishment essential to the sociological enterprise precisely because these "social facts" revealed the inner workings of society and the mechanism through which societies change. In *The Rules of Sociological Method* Durkheim argues (1938:70) that "crime is . . . necessary, it is bound up with the fundamental conditions of all social life," and that "it is no longer possible . . . to dispute the fact that law and morality vary from one social type to the next, nor that they change within the same type if the conditions of life are modified." Because he viewed law as a reflection of basic social arrangements, Durkheim grounded his theory of social change in an analysis of comparative legal types. He assumed (1933:68) that "since law reproduces the principal forms of social solidarity, we have only to classify the different types of law to find therefrom the different types of social solidarity which correspond to it." In his central theoretical work, *The Division of Labor in Society* (1933), Durkheim linked the changing nature of legal controls (repressive to restitutive) to transformations in the nature of social solidarity (mechanical to organic).

Durkheim's assertion that repressive controls were dominant in simple societies and restitutive controls in complex societies has been criticized by sociologists and anthropologists alike (cf. Merton, 1934; Schwartz and Miller, 1964; Barnes, 1966; Diamond, 1971; Lukes, 1972; Dubow, 1974). Restitution clearly represents an important principle in many undifferentiated (mechanical) societies (cf. Malinowski, 1926; Kuper, 1965), and the decline of repressive sanctions has not been as general or systematic as Durkheim (1933: 152-168) implied. Although many questions

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have been raised about Durkheim's theory of law and social evolution, his most important insights on the nature of punishment have failed to receive systematic attention.

Durkheim's most thorough examination of penal evolution, "Two Laws of Penal Evolution" (1969, 1973), which originally appeared in *Année Sociologique* (1899-1900), sets forth Durkheim's most straightforward and elaborate explanation of punitive controls and the conditions governing their transformation. The article offers two propositions concerning the quantitative and qualitative evolution of the apparatus of punishment. The first law, the law of quantitative change, states that "*the intensity of punishment is the greater the more closely societies approximate to a less developed type—and the more the central power assumes an absolute character*" (1973:285). In interpreting this law three concepts need to be clarified—social development, punitive intensity, and political absolutism.

Durkheim's theory of social evolution is based on an essentially organic model of social development (cf. Schnore, 1958). He believed that societies become increasingly more complex as they move through a process of structural differentiation. This process, much like its biological counterpart, involves a pattern whereby simple societies form more developed compounds which "combine again to form more complex wholes" (1938:81). "Segmental" (clan-based and primitive) societies are transformed into "organic" social types characterized by a more complex division of labor and concentration of population. This transformation is triggered by an increase in the "dynamic or moral density" of a given society.

According to Durkheim, social evolution is related to the "punitiveness" of social controls. The explanation of this relationship is found in the changing nature of crime and moral sentiments. He argues (1973:300) that "since punishment results from crime and expresses the manner in which it affects the public conscience, it is in the evolution of crime that one must seek the cause determining the evolution of punishment." The progressive weakening of the *conscience collective*, an important element in Durkheim's analysis of social change, helps account for the lessening of "religious crimes" (i.e. crimes having collective things as their object). It is these crimes—offenses against public authority and its representatives, the mores, tradition and religion—which offend the collective conscience and call forth violent repression. Since social evolution diminishes the primacy of collective sentiments, crime comes to be defined in more indi-

vidual terms, and punitiveness tends to be reduced. In Durkheim's (1973:303) words:

Seeing as, in the course of time, crime is reduced more and more to offences against persons alone, while religious forms of criminality decline, it is inevitable that punishment on the average should become weaker. This weakening does not come from the fact that morals become less harsh, but from the fact that religiosity, which was earlier imprinted in both the penal law and the collective sentiments which underlay it, steadily declines.

In spite of these observations, Durkheim did not see the movement toward leniency as without limit. In the substitution of individual for collective crimes a weakening of the average level of punishment does occur, but offended sentiments do not disappear. Instead, they are expressed in a new range of offenses such that:

frauds and injustices which yesterday left the public conscience almost indifferent, arouse it today, and this sensitivity will only become more acute with time. There is not in reality, therefore, a general weakening of the whole apparatus of repression; rather, one particular system weakens, but it is replaced by another which, while being less violent and less harsh, does not cease to have its own severities, and is certainly not destined to an uninterrupted decline (Durkheim, 1973:307).

In viewing punishment as a barometer of offended collective sentiments Durkheim assumed that harsh punishment was a response to feelings of indignation, horror and the desire for vengeance—feelings which would be aroused under specific conditions of social organization. Offenses against venerated collective objects represent a form of sacrilege and “an act which is simply reprehensible when directed against an equal becomes sacrilegious when it concerns someone who is superior to us; the horror which it produces can therefore only be calmed by a violent repression” (1973:301). This interpretation led Durkheim to classify punitive intensity in terms of the level of direct physical violence against the offender. He considered mutilation and capital punishment involving torture as the most severe type, while capital punishment without “refined cruelties” was evaluated as less severe, as was corporal punishment short of death. Among the physical penalties which might be applied Durkheim viewed the deprivation of liberty, in itself, as the most lenient. Finally, although material penalties were not discussed in this context¹ it is clear from other writings (1933: Chapter 3) that

1. One reason for this omission was Durkheim's conceptual separation of “punishment” from other forms of social control. In his attempt to distinguish repressive from restitutive reactions, Durkheim defined punishment as an “essentially . . . passionate reaction” (1933: 96). Accordingly, he was not eager to emphasize the similarities between, or the complementary character of “expiatory” and “co-operative” controls.

Durkheim viewed the development of restitutive compensation as consistent with the first law: as societies become more advanced, repressive sanctions involving expiatory attacks on the offender are progressively replaced by restitutive sanctions consisting of a simple "return in state." Thus, when fines are substituted for, or completely replace physical coercion, punishment is recognized as palpably less intense.

An important exception to the general relationship between societal complexity and punitiveness is incorporated in the first law. To explain instances where more developed societies adopted excessively punitive controls Durkheim calls attention to the effects of political absolutism. Citing examples from ancient Egypt, Imperial Rome and European monarchies he argues that regressions in the trend toward leniency necessarily occur if advanced societies are characterized by "hypercentralized" or "unilateral" authority. Under these conditions absolutism can reimpose the collective conscience in the sense that "the constitution of an absolute power necessarily has the effect of raising the one who wields it above the rest of humanity, making him superhuman . . . wherever the government takes this form, the one who controls it appears to people as a divinity" (1973:305).

Although Durkheim devotes considerable discussion to the impact of political organization on penal evolution, it should be emphasized that he presented this variable as a secondary factor, useful in explaining exceptions to the general pattern of social change. Rather than exploring the relationship between social evolution and political development, Durkheim asserts that "political organisation is not . . . a consequence of the fundamental nature of society, but rather depends on unique, transitory and contingent factors" (1973:288).² Political systems, therefore, create more or less random disturbances in the unfolding of punishment. When it happens that "in passing from a primitive type of society to other more advanced types, we do not see punishment decreasing as we might have expected" it is "because the organisation of government acts at the same time to neutralise the effects of social organisation" (1973:289).

The second law, the law of qualitative change, states that "*deprivations of liberty, and of liberty alone, varying in time according to the seriousness of the crime, tend to become more and*

2. This method of handling negative evidence appears throughout Durkheim's work and has been described by Evans-Pritchard as an "irritating manoeuvre, when a fact contradicts his thesis, of asserting that its character and meaning have altered, that it is a secondary development and atypical, although there is no evidence whatsoever that such changes have taken place" (cited in Lukes, 1972: 33).

more the normal means of social control" (1973:294). Distinguishing between imprisonment as a means of detention before punishment and as a means of punishment itself, Durkheim suggests that the entire field of punitive options has been progressively restricted to confinement alone. This tendency is accounted for in several ways.

With regard to detention it is noted that in "underdeveloped" societies responsibility tends to be collective, with clan and kinsmen held accountable for transgression of individuals. Under these conditions "there is no reason to arrest and hold under guard the presumed author of the act." But, Durkheim goes on to add, "to the extent that society is centralised, these elementary groups lose their autonomy and become merged with the total mass, and responsibility becomes individual. Consequently, some measures are necessary to prevent punishment being evaded by the flight of those who have earned it and, as the least offensive to established morality, imprisonment makes its appearance" (1973:296). As in the case of the first law, the process of *individualization* is central to the interpretation of penal evolution. But in this instance it is individualization in the definition of the criminal rather than the victim. Clearly, for both laws the form, as well as the degree, of punishment is presumed to be functionally related to the changing requirements of collective life.

To complete the argument, Durkheim notes that dwellings begin to take on wider and more permanent functions as collective life becomes more concentrated, intense and continuous. "Thus, at the very time when the establishment of a place of detention was becoming useful in consequence of the progressive disappearance of collective responsibility, buildings were arising which could be utilized for this purpose." Although the prison was originally restricted to pre-trial detention, "once that it had been set up on this basis it quickly assumed a repressive character" (1973:298).

Even though Durkheim chooses to distinguish between quantitative and qualitative changes in punishment, it is clear that the second law simply represents a special case of the first. The emergence of incarceration, as a more lenient punitive response, is consistent with the progressive weakening of punishment that Durkheim described. This attenuation is assumed to take a specific developmental form whereby the most serious punishments (e.g. aggravated capital punishment) "are the first to be affected by this regression, that is to say, which are the first to grow milder, then to disappear" and "lesser punishments must be de-

veloped to fill the gaps which this regression produces." In general, therefore, "new forms of punishment invade the free spaces which they then find before them" and "various modes of imprisonment are the last punishments to develop" (1973:298-299).

HYPOTHESES

The essential relationships in Durkheim's analysis of penal evolution may be summarized as follows.

Hypothesis 1: The greater the complexity and dynamic density of a society, the less severe punishment will be, other things being equal.

Hypothesis 2: The more absolutist political structures become, the greater the deviation from the trend toward leniency.

Hypothesis 2a: Variations in political structure will occur independently of changes in basic social forms.

Hypothesis 3: The greater the complexity and dynamic density of a society, the greater the proportion of individual to collective crimes, other things being equal.

Hypothesis 4: The greater the complexity and dynamic density of a society, the less severely collective crimes will be punished, other things being equal.

Hypothesis 5: As punitive systems evolve, punishment will increasingly assume the form of the deprivation of liberty, other things being equal.

METHOD

Durkheim was sensitive to the problems involved in formulating and verifying general evolutionary laws. In his own analysis he utilized historical examples as "a preliminary means of coming to grips with reality" and was aware that "this leads one now and then to what are merely gross approximations" (1973:285). Although much of the historical evidence regarding punishment remains fragmentary and obscure, a strategy for systematically examining Durkheim's insights is available to the modern researcher. By comparing culturally distinctive social systems at a given point in time, it is possible to shed light on the long-term process of evolutionary change.³ Specifically, cross-cultural evidence can be utilized to explore the relationship between differing levels of structural differentiation and forms of social control. The Human Relations Area Files provide

3. For a discussion of the problems involved in making dynamic inferences from static data see Udy (1965) and Schwartz (1965).

a major resource in this regard, and a number of studies—including investigations of legal evolution (Freeman and Winch, 1957; Schwartz and Miller, 1964; Wimberley, 1973)—have successfully explored developmental hypotheses through the use of these data. The present research draws upon a sample of societies from these files to test relationships between social organization and penal response.

The 48 societies utilized by Wimberley (1973) in his study of legal evolution provided a preliminary sample for the present analysis. This sample differed slightly from that employed earlier by Schwartz and Miller (1964), which in turn was derived from an investigation of societal complexity by Freeman and Winch (1957). Six societies analyzed by Wimberley were not included in the Human Relations Area Files at the University of Pennsylvania as of July, 1974.⁴ Each of the remaining 42 societies was examined in terms of the adequacy of information on punitive controls by consulting categories 68 (offenses and sanctions), 625 (police), 692 (judicial authority), 696 (execution of justice), and 697 (prisons and jails). Through this procedure an additional 7 societies were found to have incomplete and/or unreliable data on punishment and were excluded from the sample.⁵ Thirty-five societies remained. To re-establish a sample size of 48, thirteen societies with appropriate punishment data were added through a process of random selection within each of the geographic areas sampled—North America, Asia, Africa, Middle East, Oceania, Russia, South America and Europe.⁶ The number of societies in each geographic region was determined according to procedures adopted by Freeman and Winch (1957).

In order to test Durkheim's theory, all forms of punishment

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4. These were Elizabethan English, Imperial Romans, Cheyenne, Hopi, Lakher and Ossett.
 5. These were Syrians, Ukrainians, Trobrianders, Tupinamba, Yakut, Copper Eskimo and Yaruro.
 6. Unsampled societies were enumerated for each geographic area. Using a table of random numbers societies within each area were systematically selected and evaluated in terms of whether data on punishment were available and reliably reported across observers. If a society (e.g. Bulgaria) within a particular area (e.g. Europe) failed to meet the requirements of completeness and consistency, another society was randomly identified for review. This process was continued until the desired distribution of societies across geographic areas was attained—eight in North America, six in Asia, seven in Africa, five in the Middle East, seven in Oceania, five in Russia, six in South America and four in Europe. The thirteen societies added through this procedure included the Iroquois, Nootka and Zuni in North America; the Nuer in Africa; Saudi Arabia and Somali in the Middle East; Turkestan, Georgia and the Soviet Union in Russia; the Guana and Inca in South America; and Albania and the Serbs in Europe.

were analyzed within each of the 48 societies.⁷ Four patterns of punitive control, each reflecting a somewhat different level of "punitive intensity," were distinguished and societies were assigned to one of the four types.⁸ In most of the societies investigated, control systems were relatively informal and data on punishment were primarily *behavioral*—based on direct observation or second-hand accounts of punishment-in-action. In relatively complex societies, where controls were more formal, impersonal and regularized, evidence was typically available for both punishment-on-the-books (prescribed legal norms) and punishment in practice. Wherever possible, an effort was made to classify societies in terms of punishment as it was actually applied, although this proved more difficult in the case of the most complex societies studied.⁹

Punishments reported in Type I societies were the most severe and included aggravated capital punishment, mutilation, torture and severe corporal penalties for a wide range of offenses. Type II societies were characterized by less physical violence against offenders, and even though torture and mutilations were occasionally carried out, they did not represent routine features of official control. Societies classified as Type III might also rely

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7. All classifications were made independently by the author and Cecile Sue Coren. Discrepant classifications occurred in 6% of the cases. These cases were submitted to Andrew Scull who was able to resolve the inconsistencies in every instance but one. The society involved in this case (Afghanistan) was replaced through the procedures outlined in note 6 above.
 8. Assignment was based on qualitative and quantitative differences in patterns of punitive control. First, all varieties of punishment were listed for each society with special attention to variations in "harshness" as conceptualized by Durkheim. Forms of punishment which could not be readily evaluated in terms of Durkheim's original argument (e.g. slavery, banishment, supernatural sanctions and social ostracism) were excluded from consideration. Then, if information was available, the frequency of sanctioning—both within and between offense types—was estimated (coded as frequent, occasional and rare). Punitive control was considered more intense to the extent that: (1) it involved direct and "cruel" physical violence against the offender; (2) the most severe penalties were applied for a wide, rather than narrow, range of crimes; and (3) the most severe penalties were applied with high relative frequency—irrespective of the specific crime(s) to which they were considered a response.
 9. For example, HRAF data on the Soviet Union (Kulski, 1954) and Czechoslovakia (Benes, 1952) were limited to surveys of formal legal codes. In contrast to studies of other societies, little, if any, attention was devoted to the contingencies of the implementation of criminal sanctions. While the discrepancy between prescribed and enacted penalties must be acknowledged in any comparative analysis of legal systems, the independence of the two (and the error introduced by equating them) is likely to be greatest in modern, heterogeneous and highly industrialized societies (cf. Galanter, 1966). Since the sample utilized in the present study—with the exception of the two societies identified above—was basically nonindustrial (cf. Udy, 1959), the problem of distinguishing between prescribed and applied sanctions did not generally arise.

on physical punishments for crime, but these sanctions were generally restricted to mild corporal punishment and capital punishment "pure and simple." Material penalties were found more frequently in societies of this type. Societies of the final type (IV) were distinguished by the dominance of material sanctions (e.g. fines, compensation in kind, confiscation or destruction of the offender's property) and/or confinement as modalities of punishment. In these societies the most "primitive" physical penalties are either unknown or extremely rare.

The classification of societies is reported in Table 1. The logic of Durkheim's approach, which suggests that the evolution

TABLE 1: SOCIETIES BY PUNISHMENT TYPE

Society	Type I	Type II	Type III	Type IV
Aranda	X			
Ashanti	X			
Azande	X			
Balinese	X			
Cambodians	X			
Chagga	X			
Cuna	X			
Inca	X			
Iranians	X			
Koreans	X			
Saudi Arabia	X			
Siwans	X			
Turkestan	X			
Vietnamese	X			
Buka		X		
Chuckchee		X		
Creek		X		
Jivaro		X		
Mbundu		X		
Nootka		X		
Zuni		X		
Cayapa			X	
Comanche			X	
Crow			X	
Guana			X	
Hottentot			X	
Indonesians			X	
Iroquois			X	
Kazaks			X	
Lapps			X	
Lepcha			X	
Maori			X	
Serbs			X	
Thonga			X	
Albania				X
Andamanese				X
Czechs				X
Formosan Aborigines				X
Georgia				X
Ifugao				X
Navaho				X
Nuer				X
Riffians				X
Siriono				X
Somali				X
Soviet Union				X
Woleaians				X
Yurok				X

of punishment is developmental rather than cumulative, is reflected in this classification. In contrast to the process of legal evolution, where advanced forms (e.g. legal counsel) presuppose and build upon prior evolutionary stages (police, courts, mediation), punishments do not *accumulate* in any simple linear sense.¹⁰ Instead, Durkheim argues that the acquisition of more advanced (lenient) controls requires the dropping out of primitive (severe) penal types.

In addition to the analysis of punishment, data were gathered on crime in the societies sampled. Through an analysis of legal norms and perspectives on offensive behavior it was possible to classify punishable crimes in each society as either *individual* (i.e. having individuals and their property as objects) or *collective* (i.e. crimes against religion, moral beliefs, or the state). Crimes where a corporeal victim did not exist (e.g. violations of ceremonial rites), where victimization was diffuse (e.g. 'social dangerousness'), and where victimization was restricted to "public authority and its representatives" (e.g. disloyalty) were coded as collective. Crimes involving injury to specific victims (e.g. murder, theft, assault) were designated as individual. For certain categories of sexual and moral offenses, where *both* individual and collective victimization might be assumed (cf. Durkheim, 1973:300), decisions were made on a case by case basis.¹¹ For instance, adultery was classified as a collective offense in societies where it was regarded as an attack against long-standing sexual taboos or the family as a sacred social form, while in societies such as the Thonga (Junod, 1927:196-198) and the Andamanese (Radcliffe-Brown, 1922:50) it was coded as individual since these societies viewed it in much the same way

10. This is why Guttman scaling, which was used by Schwartz and Miller (1964) and Wimberley (1973) to examine the acquisition of legal structures, is inappropriate here. If forms of punishment were discrete and temporally stable phenomena (such as police and courts), a developmental scale (cf. Leik and Matthews, 1968) could be applied. Unfortunately, the evidence developed in this study does not permit us to assume that punishments remain stable over an extended period of time. The period of time over which the data were collected and the precision of analysis was dependent on the conditions of data gathering in each society studied. The variability of these conditions made it impossible to specify a uniform range or point in time for comparisons across societies.

11. Even though witchcraft and sorcery may have been directed against individuals in specific circumstances, these crimes were classified as collective because they were consistently perceived as "supernatural" in both cause and effect. The essence of collective crime as described by Durkheim is its tendency to offend something "superhuman" and "transcendent," to call into question the basis of morality itself.

as property theft. Generally, sexual offenses were categorized as collective if they were culturally defined in terms of taboo or kinship rules (e.g. incest), and individual if they were defined as an abrogation of individual rights (e.g. rape in certain societies).

A measure of social complexity was available for many of the societies through a previous study by Freeman and Winch (1957). Evidence on population, political organization and other features of these societies was also culled from Murdock's *Ethnographic Atlas* (1967). This information provided a more complete basis for examining the relationship between punishment and social structure in most of the societies explored.¹²

FINDINGS

The *first hypothesis* asserts that punitive intensity is inversely related to societal complexity and dynamic density. Freeman and Winch ratings of complexity were available for 30 of the societies sampled. According to this scale, societies are progressively more complex to the extent that they cumulatively acquire a symbolic medium of exchange, officially organized punishment, full-time specialized priests, full-time specialized teachers, full-time bureaucrats unrelated to a government head and a written language. If a society was characterized by three or less of these characteristics (money, official punishment, and religious specialization) it was defined as simple, while societies reaching the fourth, fifth or sixth level (educational specialization, bureaucracy and written language) were defined as complex. The relationship between punishment type and social complexity is presented in Table 2.

TABLE 2: SOCIETAL COMPLEXITY BY PUNISHMENT TYPE

	Punishment Type				Total
	I	II	III	IV	
Simple Societies	11.7% (2)	23.5% (4)	23.5% (4)	41.2% (7)	17
Complex Societies	46.2% (6)	7.7% (1)	15.4% (2)	30.8% (4)	13
Total	8	5	6	11	30*

*Data on societal complexity (Freeman and Winch, 1957) were only available for 30 of the 48 societies studied.

12. See the Appendix for an inventory of all designations used in the data analysis.

Instead of confirming Durkheim's general law, this table suggests that severe punishments are found more frequently in relatively-differentiated societies, while simple societies are more likely to be characterized by lenient forms. The fact that the negative evidence is stronger in the case of simple societies is especially interesting because it cannot be argued that political structure confounds the relationship between social complexity and punitive forms. Since simple societies do not possess a differentiated political system, distortions in the relationship between punishment and social organization cannot be attributed to fluctuations in political power *per se*.

Although "dynamic density" involves more than the concentration of population alone (cf. Schnore, 1958; Lukes, 1972), Durkheim clearly singles out "social condensation" as the basis of fundamental social change. The *Ethnographic Atlas* (1967) describes settlement patterns for 37 of the societies studied. Sixteen of these societies were made up of compact and relatively permanent settlements (i.e. relatively concentrated), while the remaining twenty-one were designated as either migratory bands, separated hamlets, neighborhoods and dispersed homesteads, or seminomadic communities (i.e. relatively dispersed). Table 3 describes the distribution of relatively concentrated and relatively dispersed societies across punishment types.

TABLE 3: SOCIETAL CONCENTRATION BY PUNISHMENT TYPE

	Punishment Type				Total
	I	II	III	IV	
Dispersed Societies	14.3% (3)	14.3% (3)	38.1% (8)	33.3% (7)	21
Concentrated Societies	56.2% (9)	18.8% (3)	6.2% (1)	18.8% (3)	16
Total	12	6	9	10	37*

*Data on societal concentration (Murdock, 1967) were only available for 37 of the 48 societies studied.

As in the case of societal complexity, the data fail to support the hypothesis relating social organizations to punitiveness. Relatively dense societies are more likely to employ harsh sanctions, while lenient controls are found with greater frequency when societies are relatively dispersed.

The *second hypothesis* concerns the impact of political absolutism on the evolution of punitive controls. Potential support for this hypothesis is found in an examination of the societies which employed the most severe penalties (Type I). All of these

societies (see Table 1), with the exception of the Aranda, exhibit a relatively high level of political integration and absolute power is exercised by a single ruler (i.e. prince, emperor, chief, king, sheikh) or venerated elite. But if Durkheim's analysis is correct it is not enough to argue that absolutism produces severity in punishment; political "hypercentralization" must be essentially uncorrelated with social development (*Hypothesis 2a*).

One means of examining the nexus between political and social organization is by looking at the extent to which the societies studied varied in terms of political integration. According to the *Ethnographic Atlas*, 60% of the simple societies were characterized by a relative absence of political integration, while 85% of the complex societies possessed at least "minimal states."¹³ The problem with this finding is that Freeman and Winch (1957) included "government" as one of their measures of complexity, and therefore assume (rather than explore) the relationship between political and social structural change.

To provide a more meaningful test, the data on political integration were analyzed in terms of social concentration. The results of this cross-classification, which are reported in Table 4,

TABLE 4: SOCIETAL CONCENTRATION BY POLITICAL INTEGRATION

	Political Integration		Total
	High	Low	
Dispersed Societies	38.1% (8)	61.9% (13)	21
Concentrated Societies	87.5% (14)	12.5% (2)	16
Total	22	15	37

indicate that concentrated societies are likely to be politically integrated, while dispersed societies usually lack structures of authority beyond the family. At the very least, this finding casts doubt on Durkheim's assertion that political and social changes are unrelated. More generally, the relationship between social and political concentration supports the conclusion that social condensation may be basic to the emergence of the modern state (cf. Fried, 1967).

13. Murdock's classification of political integration includes: (1) societies with an absence of any political integration, (2) autonomous local communities, (3) dependent societies lacking any political organization of their own, and (4) peace groups where the basis of unity is other than political. Societies falling into any of these categories were defined as low on political integration. In contrast, minimal states (politically integrating 1,500 to 10,000), little states (politically integrating 10,000 to 100,000) and states (politically integrating over 100,000) were defined as high on political integration.

Durkheim explained the weakening of repressive controls in terms of the changing nature of what constitutes crime. The *third hypothesis* asserts that increased complexity and social density will be associated with a movement from collective crimes to offenses where the victim is individually defined. The uneven quality of the data made it impossible to estimate reliably the exact proportion of individual to collective crimes defined in each society. However, a comparison could be made between societies in which collective crimes were relatively commonplace and those in which they were not. Twenty-four of the forty-eight societies defined, and applied major penalties to, *three or more* categories of collective crime, including political (e.g. treason, sabotage, sedition) and/or moral (e.g. violation of sacred ceremonies, incest, witchcraft) offenses. The remaining societies (24) gave greater emphasis to individual (e.g. murder, assault, theft) and less to collective crimes (see Appendix).¹⁴ Table 5 presents a comparison of these two groupings in terms of societal complexity and concentration.

TABLE 5: SOCIETAL TYPE BY CRIMINAL DEFINITIONS

Societal Types	Distribution of Criminal Definitions		Total
	Societies Defining Three or More Collective Crimes	Societies Defining Less than Three Collective Crimes	
Simple	35.3% (6)	64.7% (11)	17
Complex	69.2% (9)	30.8% (4)	13
Total	15	15	30
Dispersed	42.8% (9)	57.2% (12)	21
Concentrated	56.3% (9)	43.7% (7)	16
Total	18	19	37

Although the evidence is far from conclusive, it clearly challenges the contention that collective definitions of deviance disappear as societies become more complex. To the extent that

14. Societies were differentiated at the level of three or more collective crimes for two reasons: (1) it permitted an equalization of marginals in the comparison of individual and collective categories and (2) it successfully distinguished between societies in which isolated collective definitions were found and those where collective crimes represented a more than negligible proportion of all offenses defined and punished. Twenty-one (87.5%) of the twenty-four societies classified as "collective" identified four to six collective crimes, while 19 (79.2%) of the 24 societies coded as "individual" punished one or less collective offenses. By dividing the sample at the level of 3 or more collective crimes this bimodal distribution was effectively represented.

these data suggest developmental tendencies they do not permit us to conclude that "crime is reduced more and more to offences against persons alone" or that "religious forms of criminality decline." However, if we recall (Table 2 and 3) that more differentiated societies are likely to apply harsher rather than milder penalties, then Durkheim may have been correct in assuming that offenses against collective objects tend to be punished more severely. The question is raised, then, whether Durkheim was incorrect in asserting that conceptions of deviance increasingly assume more individualized forms, but correct in associating punitiveness with collective definitions of crime.

To explore this issue, the distribution of societies identifying three or more and less than three collective crimes was analyzed within each punishment type. Table 6 indicates that societies employing harsh punishment are more likely to define deviance in collective terms. In fact, moving from the most severe (Type I) to the least severe (Type IV) levels of punishment, the proportion of societies with three or more collective definitions declines progressively.

TABLE 6: PUNISHMENT TYPE BY CRIMINAL DEFINITIONS

Punishment Type	Distribution of Criminal Definitions		Total
	Societies Defining Three or More Collective Crimes	Societies Defining Less than Three Collective Crimes	
I	71.4% (10)	28.6% (4)	14
II	57.1% (4)	42.9% (3)	7
III	46.2% (6)	53.8% (7)	13
IV	28.6% (4)	71.4% (10)	14
Total	24	24	48

A case by case examination of "lenient" societies (Types III and IV) also reveals that when they do resort to severe punishment, it is often because the offense involved violates collective rather than individual crimes. Thus, for example, although the Navaho (Valkenburgh, 1937) and Thonga (Junod, 1927) rely primarily on systems of compensation, they both define witchcraft as an exceptional crime and punish it by death. To the extent that these instances are representative, the link between collective definitions and punishment appears to exist within, as well as between structures of punitive response.¹⁵

15. Even though the most developed societies in the sample (e.g. Czechs and Soviet Union) are likely to define collective deviance in political

The *fourth hypothesis* addresses the process of punitive substitution described by Durkheim. To account for the character of penal evolution and establish the limits of leniency, Durkheim argued that individual crimes come to be punished more severely as societies evolve. The evidence considered thus far offers little support for this proposition. More advanced societies are generally characterized by harsher penalties coupled with a larger number of collective crimes. Accordingly, we have little reason to assume either that the number of individual crimes defined and punished expands with the process of social development, or that these crimes come to be punished more severely.

A more precise investigation of this relationship was achieved by rating each society in terms of whether it punished individual or collective crimes more severely, or whether both categories were handled in approximately the same way (see Appendix).¹⁶ Twenty-one societies (43.8%) punished individual crimes more severely, sixteen (33.3%) applied harsher punishment to collective offenses, and eleven (22.9%) societies punished neither individual nor collective crimes more severely. Table 7 describes the relationship between foci of punitive control and the major features of social organization studied (complexity and concentration). As in the case of Table 5, the direction of the relationship is more explicit for the complexity than the concentration variable. Nevertheless, it seems reasonable to infer that undifferentiated societies are likely to punish individual infractions more severely, while more developed societies generally

TABLE 7: SOCIETAL TYPE BY PUNITIVE EMPHASIS

Societal Type	Punitive Focus			Total
	Human Crimes	Neither Type	Collective Crimes	
Simple	52.9% (9)	35.3% (6)	11.7% (2)	17
Complex	7.7% (1)	23.1% (3)	69.2% (9)	13
Total	10	9	11	30
Dispersed	52.4% (11)	33.3% (7)	14.3% (3)	21
Concentrated	37.5% (6)	18.7% (3)	43.8% (7)	16
Total	17	10	10	37

rather than religious terms, the relationship between punishment and collective definition remains the same.

16. All crimes and punishments were identified within each society. Instances where the connection between specific crimes and punishments could not be established were eliminated from consideration. Two crimes were then selected which received the most severe pun-

reserve extreme punishments for collective crimes. To the extent that one type of crime comes to replace another as the most severely punished, the data suggest that the sequence is more likely to involve a shift from an emphasis on individual to collective definitions than vice versa.

Finally, the *fifth hypothesis* focuses on the deprivation of liberty as a form of punitive control. In his investigation of qualitative change, Durkheim equated the deprivation of liberty with incarceration. It is not surprising, therefore, that he was able to establish a connection between confinement and the emergence of modern societies. The history of modern Europe and America supports the hypothesis that incarceration became a more and more popular mode of punishment (cf. Rusche and Kirchheimer, 1968; Rothman, 1970). Nonetheless, there is an important flaw in this approach. The deprivation of liberty, as one dimension of repressive control, need not take the form of physical confinement within a structure designed for detention. It may also involve methods of segregation, deprivation and exclusion which, although functionally comparable to incarceration, do not require the creation of a specialized physical facility.

An analysis of punitive reactions within the sample societies reveals that the Soviet Union and Czechs rely predominantly on incarceration, while three other societies (Lepcha, Serbs and Albanians) occasionally impose restrictions on physical mobility as a means of punishment.¹⁷ But in addition to these examples, *banishment* and/or *punitive slavery* is utilized by twenty-four societies (see Appendix) as a means of segregating, coercing and systematically excluding deviants.¹⁸ We may extend Durkheim's analytical model by asking whether banishment and slavery are in any way "functionally equivalent" to contemporary methods and by exploring the relationships between these "deprivations" and other modalities of punitive response.

ishment within each society. Severity was measured by applying qualitative (e.g. corporal penalties vs. fines) and, if necessary, quantitative criteria (e.g. amount of fine, number of lashes, etc.). If both crimes were either "individual" or "collective," societies were assumed to punish that particular type of crime more severely. If one of each type of crime was represented, then the society was classified as "neither type" (Table 7).

17. For instance, the Albanians (Hasluck, 1954:247-251) sometimes "incarcerated" offenders by forcing them to remain confined to their homes during the day. In this case, incarceration was not only imposed without the benefit of a specialized facility, but also without the intervention of specialized control agents.
18. Slavery and banishment were not used in the classification of punitive types. See Note 8 above. Not all societies where slavery exists impose slave status as a means of reacting to crime (e.g. Somali). Slavery is only considered punitive if it represents a concrete response to the commission of a specific offense.

The distribution of slavery and banishment according to various levels of punishment is presented in Table 8. Dividing societies into those characterized by punitive slavery (or slavery

TABLE 8: PUNISHMENT TYPE BY FORMS OF CONTROL

Punishment Type	Patterns of Control		Total
	Societies with Punitive Slavery or both Slavery and Banishment	Societies with Banishment Alone	
I	67% (6)	33% (2)	8
II	67% (2)	33% (1)	3
III	20% (1)	80% (4)	5
IV	12.5% (1)	87.5% (7)	8
Total	10	14	24

combined with banishment), and those employing banishment alone, an interesting pattern appears. When banishment is found without punitive slavery societies are likely to be classified as relatively lenient, but when punitive slavery is present levels of punishment tend to be more severe.

Several observations are suggested by these results. First, banishment may operate as a punishment of last resort in societies based primarily on restitutive controls. To the extent that these societies are what Fried (1967) has called "simple egalitarian" and are based on principles of reciprocity (Dalton, 1968), status differences do not have to be protected through repressive controls. Moreover, since these societies are not likely to have a well-developed state, serious or persistent offenders are most easily killed immediately (without "refined cruelties"), or excluded from the group. Exclusion is normally permanent, although in a few societies (e.g. Andamanese, Siriono, Albania) exile may be imposed on a temporary basis.

The concentration of punitive slavery in societies with the most severe penalties may indicate that slavery is simply one more manifestation of a repressive control system. It may also be argued, however, that these societies—distinguished by gross disparities in wealth and social rank—require an extensive and brutal system of sanctions (including punitive slavery) to guarantee their survival. If the latter explanation is correct then it would appear that methods of social confinement, including punitive slavery, must be understood in relationship to structures of authority and privilege in social life.

DISCUSSION

The evidence developed here raises serious questions about Durkheim's perspective on punishment and social change. To summarize: (1) The severity of punishment does not decrease as societies grow more concentrated and complex. On the contrary, greater punitiveness is associated with higher levels of structural differentiation. (2) While variations in political structure are related to punitive intensity, these variations are neither historically contingent, nor idiosyncratic. (3) Although the "religiosity" of deviance is correlated with punitiveness, collective crimes are more common in complex than simple societies. (4) Controls involving social and geographic segregation are not represented by incarceration alone and are not peculiar to advanced societies.

The discrepancies between Durkheim's observations and the data presented are important because they force us to re-examine his approach to the explanation of social order, social change and methods of control. If punishment is related to social organization, but not in the way that Durkheim describes, then we must investigate his assumptions about society, as well as the nexus between social organization and patterns of punitive response. If we can better account for the results by making different assumptions about the nature of society, then these findings are valuable in more than a narrow negative sense.

Two major assumptions of Durkheim's model are challenged by the findings reported here. These are the interrelated assumptions of *normative priority* and *emergent control*. Throughout his work Durkheim tried to identify the mechanism which coordinated and integrated social life. While the basis of interdependence might vary according to social type, it was the *conscience collective* which invariably played an important role. Because he viewed the collective conscience as the substructure of any society, Durkheim was willing to argue that beliefs shaped the character of social practices and institutions, rather than the reverse.¹⁹ Accordingly, he argued that transformation in punish-

19. While Durkheim accepted the possibility that structural arrangements could react on their cause (i.e. beliefs), especially in his earlier works, he came to attribute more and more significance to the impact of religion and collective beliefs (cf. Lukes, 1972: Chapter 7). In the same year that "Two Laws of Penal Evolution" appeared (1899), Durkheim wrote: "Religion contains in itself from the very beginning, even in an indistinct state, all the elements which in dissociating themselves from it, articulating themselves, and combining with one another in a thousand ways, have given rise to the various manifestations of collective life. . . . One cannot understand our perception of the world, our philosophical conceptions of the soul, of immortality, of life, if one does not know the religious beliefs

ment will reflect changes in the strength and nature of shared beliefs.

Even though the data suggest a connection between beliefs and punishment, we need not assume that beliefs cause punishment. Instead, we may argue that sentiments and sanctions are correlated because they perform a similar function—the maintenance of hegemonic control. From this point of view, beliefs act as legitimations or rationalizations which bolster a specific set of social arrangements. The significance of beliefs, therefore, will not depend on the “maturation” of the society *per se*, but will correspond to its requirements for social control. The more repressive a given system of domination is, the more important both punishments and beliefs will be in securing social order. Punishment, in this sense, is an instrumental mechanism for preserving the structure of social life, and although beliefs may complement formal sanctions, they do not produce these sanctions.

If the structure of punishment springs full blown from underlying beliefs, then it is reasonable to conclude that formal controls reflect a common consciousness, rather than specific interests. However, when we acknowledge the *instrumental* rather than *emergent* quality of punishment a number of relationships are rendered less obscure. If punishment is instrumental in consolidating a particular system of domination, then we can explain why greater concentration and complexity lead to harsher and more extensive punitive controls. This would seem to be particularly true in societies where the development of political integration has just begun. As Dubow (1974) has pointed out, simple societies and established nation-states have less need for excessive punishments than emerging states—who must impose homogeneity on heretofore autonomous groups. These emerging states come to rely on powerful collective definitions and naked force because they have neither “models to build on or to reject” (Fried, 1967:232), nor do they have other means of exacting obedience and labor power (which Durkheim described as “organic society”). While market economies may use “laws of the market” to regulate labor and institutionalize inequality, redistributive economies (Polanyi, 1944) must resort to political and ideological controls to support the concentration of wealth.²⁰ So-

which are their primordial forms. Kinship started out as an essentially religious tie; punishment, contract, gift and homage are transformations of expiatory, contractual, communal, honorary sacrifices and so on” (cited in Lukes, 1972:237).

20. Early states, such as ancient China, the Empire of the Incas, Indian kingdoms, Egypt and Babylonia, have been described by Thurnwald

cieties based on redistribution are also distinguished from reciprocal economies, which regulate labor through bonds of friendship, kinship or status. Institutions of slavery are common in redistributive economies because these societies cannot depend on social obligation (principles of reciprocity) or a labor market to insure a commitment to labor beyond that necessary for subsistence.

If the relationship between punitive intensity and social development is actually curvilinear—in the sense that sanctions are lenient in simple egalitarian (reciprocal) societies, severe in non-market (redistributive) complex societies, and lenient in established market societies—then the limitations of Durkheim's approach are as much a function of his selection of evidence as his theoretical presuppositions.²¹ Durkheim established the plausibility of a linear hypothesis by excluding the most undifferentiated societies from his analysis and identifying complexity with market systems (i.e. economic systems which are controlled, regulated and directed by markets alone). He reinforced that hypothesis by viewing complex non-market societies (e.g. Imperial Rome, ancient Egypt, mercantile France) as atypical, rather than intermediate, developmental forms.

The interpretation outlined above is consistent with the findings that: (1) the intensity of punishment is related to the level of political integration within pre-industrial societies; (2) collective definitions of crime are found more frequently in complex, non-market societies than simple societies; (3) simple egalitarian societies are more likely to use material sanctions than hierarchical or stratified societies;²² and (4) slavery is likely to be institu-

(cited in Dalton, 1968:25) as redistributive in the sense that these societies "made use of a metal currency for taxes and salaries but relied mainly on payments in kind stored in granaries and warehouse . . . and distributed to officials, warriors, and the leisured classes, that is, to the non-producing part of the population."

21. If the relationship between punishment and social development is curvilinear, it is only in a general sense because control measures in simple and market societies are not strictly comparable. The relative "leniency" of sanctions in simple societies reflects the use of material and mild corporal penalties, while market societies rely primarily on incarceration as a method of punitive response.
22. It is axiomatic that material penalties can only be generally effective in societies without vast disparities in wealth. If large segments of the offending population are pauperized, then fines, confiscation and compensation in kind will have little sanctioning force. In this regard, it is instructive to consider Rusche and Kirchheimer's (1968: 69) description of how corporal punishment came to replace fines in the Middle Ages. They note that although "class differentiation affected only the degree of penance at first, it was at the same time one of the principal factors in the evolution of systems of corporal punishment. The inability of lower-class evil-doers to pay fines in money led to the substitution of corporal punishment in their case. The penal system thus came to be more and more restricted to a minority of the population."

tionalized as both a means of organizing productive labor and controlling selected deviants in societies utilizing the harshest sanctions, while banishment is more consistent with patterns of social control dominant in "lenient" (simple) societies.

Whatever its shortcomings, Durkheim's approach to the study of punishment provides a valuable model for the study of social control. In linking the nature of control to the organization of society Durkheim makes explicit what too many investigators ignore—the fact that punishment is deeply-rooted in the structure of society. Whether we determine that Durkheim's explanation must be specified or completely disregarded, one thing is clear: the investigation of punishment must be sensitive to the political and economic dimensions of social life. Although the present research has only been a preliminary step in this regard, it has at least raised the questions that must be asked if an understanding of the relationship between punishment and social structure is to evolve.

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APPENDIX

Societies	Punishment Type	Criminal Definitions	Freeman-Winch Rating	Settlement Patterns	Political Integration	Punitive Emphasis	Slavery/Banishment
Albania	IV	Individual	—	Dispersed	High	Individual	Banishment
Andamanese	IV	Individual	0	Dispersed	Low	Neither	Banishment
Aranda	I	Collective	0	Dispersed	Low	Neither	—
Ashanti	I	Collective	5	Concentrated	High	Collective	Slavery
Azande	I	Collective	0	Dispersed	High	Collective	Slavery
Balinese	I	Collective	4	Concentrated	High	Neither	Banishment
Buka	II	Collective	0	Dispersed	Low	Neither	—
Cambodians	I	Collective	—	Concentrated	High	Individual	Slavery
Cayapa	III	Collective	—	Dispersed	Low	Individual	—
Chagga	I	Collective	4	Dispersed	High	Collective	Slavery
Chuckchee	II	Collective	0	Dispersed	Low	Individual	Slavery
Comanche	III	Individual	—	Dispersed	Low	Individual	—
Creek	II	Individual	5	Concentrated	High	Collective	Banishment
Crow	III	Individual	—	Dispersed	High	Individual	—
Cuna	I	Collective	4	Concentrated	High	Neither	—
Czechs	IV	Collective	6	Concentrated	High	Collective	—
Formosan							
Aborigines	IV	Individual	0	—	—	Individual	—
Georgia	IV	Individual	—	—	—	Individual	Banishment
Guana	III	Collective	—	—	—	Neither	Banishment
Hottentot	III	Collective	0	Dispersed	High	Neither	—
Ifugao	IV	Individual	0	Dispersed	Low	Neither	—
Inca	I	Collective	—	Concentrated	High	Collective	Banishment
Indonesians	III	Collective	—	—	—	Collective	Slavery
Iranians	I	Individual	—	Concentrated	High	Individual	—
Iroquois	III	Collective	—	—	—	Collective	Banishment
Jivaro	II	Individual	0	Dispersed	Low	Individual	—
Kazaks	III	Individual	0	Dispersed	Low	Individual	Banishment

Societies	Punishment Type	Criminal Definitions	Freeman-Winch Rating	Settlement Patterns	Political Integration	Punitive Emphasis	Slavery/Banishment
Koreans	I	Collective	6	Concentrated	High	Collective	Slavery
Lapps	III	Individual	6	Dispersed	Low	Individual	—
Lepcha	III	Individual	3	Dispersed	Low	Individual	—
Maori	III	Collective	4	Concentrated	High	Collective	—
Mbundu	II	Individual	3	Concentrated	High	Individual	Slavery
Navaho	IV	Individual	5	Dispersed	Low	Collective	—
Nootka	II	Collective	—	—	—	Collective	—
Nuer	IV	Collective	—	Dispersed	Low	Individual	—
Riffians	IV	Individual	6	Concentrated	High	Neither	Banishment
Saudi Arabia	I	Individual	—	—	High	Individual	—
Serbs	III	Individual	—	—	Low	Individual	Banishment
Siriono	IV	Individual	0	Dispersed	Low	Individual	Banishment
Siwans	I	Individual	1	Concentrated	High	Individual	—
Somalia	IV	Individual	—	Dispersed	High	Neither	Banishment
Soviet Union	IV	Collective	6*	—	High	Collective	—
Thonga	III	Collective	2	Dispersed	High	Neither	—
Turkestan	I	Individual	—	—	—	Individual	—
Vietnamese	I	Collective	6	Concentrated	High	Collective	Slavery
Woleaians	IV	Collective	0	—	—	Collective	Banishment
Yurok	IV	Individual	1	Concentrated	Low	Individual	Slavery
Zuni	II	Individual	—	Concentrated	Low	Collective	—

*Not included in original Freeman-Winch study but rated in terms of available evidence