

Emile Durkheim

Society – source of morality, nature as amoral (lacking moral sense)

Social facts

Law as a social fact

They are a mode of acting/being

- Language, style/tone of speaking/dress/social obligations/manners of interacting w/ public space
- “If {1 of the above happens a particular way} it is b/c there exists trend of opinion, collective drive w/ imposes itself on individuals”

That is coercive/constraining

- Social facts – “coercive” character – departure will be uncomfortable for ind who departs, either from anticipated social force from around person/actual social force (retribution)
- “there is no innovator, even fortunate 1, whose ventures don’t encounter opposition of this kind”
- When constrain is “indirect, exerted by economic org” may be harder to establish
 - o Generality combined w/ objectivity (ie externality) easier to establish

That is external to individuals

- Extends beyond ind habits
- Social facts – having “existence independent of ind manifestations” – exist independently of use ind makes of them
- Exist before he did – continue even if he flouts them
- Collective rep – sui generis, may have origins in ind reps – but surpass the
 - o Mind is more than cells
 - o Social facts more than ind rep – when become collective, they transformed

That is collective – at least to a degree

- Need not be general to whole society – to subset of society fine/to specific situations fine
 - o Religious denominations, political, literary schools, occupational corp
- Collective mode of acting
 - o General – where shared, not truly collective
 - o Eg, most walk on 2 legs – not collective social fact but biological fact
 - o Wearing shoes & speaking Eng – collective facts
 - o Arise from social process – gradually changed – whereas general modes of acting result from external, non-social processes can’t be changed – eg. Human genetics

Social solidarity (SS)

Law as expression of social solidarity – 2 kinds: MS & OS

More primitive society is – more characterized by MS

- Ex, Members where everyone is a farmer – more likely resemble e/o & share same beliefs & morals

Solidarity necessary for society to hold itself together & function properly – despite diff interests, multitude of diff social facts combine to guide behavior towards societally beneficial action

- Only 1 of many conditions of existence of society

Society more advanced & civilized – ind member become more distinguishable from 1 another

- Ex, managers/laborers/philosophers/farmers
- More organic as societies develop own divisions of labor

LAW = visible symbol of SS & org of social life in precise & stable form

- Plays a part that’s analogous to nervous system in org
- Nervous system regulates various bodily functions so work together in harmony = legal system regulates all parts of society so work together in agreement
- D argues infrequency – happens only when law no longer corresponds to state of existing society – leg
 - o Society develops custom to get around
 - o But normally, custom forms basis of law
 - o So law allows us to observe social facts & assess levels
- “genuine” exceptions – where custom alone manifests SS – rare & secondary – lack importance & continuity