
The Sociology of the Moral and Ethics

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abstract: This article revisits a classic Durkheimian problem: whether and how solidarity can adapt itself to the consequences of a fully developed division of labour. What would a developed sociology of the moral constitution of society look like? It would firstly have to be empirical and not philosophical; secondly it would have to produce an 'irritant' and thus a communicative learning process within sociology itself. The necessary condition for this is the *interdiction of self-exemption*. The proposed correlation between this negative condition and moral communication is refutable only if moral communication could be found signalling esteem and disesteem in which the communicator took the licence of not applying the proclaimed standards reflexively. The division of labour cannot, in itself, be the source of morality because it is ruled by self-exemption. In moral communication, the duality of ego and alter and the opposition of esteem and disesteem are translated into a binary code that opposes positive and negative values and which is acceptable to both sides of a moral dispute as a framework to which they can refer. Codes are invariant but specific; ethical programmes change historically with the structural changes of the social system. This is not to end with a sterile relativism but to make the distinction, *pace* Durkheim, between ethics and the sociology of moral communication.

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I

There are good reasons, after a hundred years, to revisit the relations between sociology as a science and morality. Durkheim's dissertation '*De la division du travail social*' of 1893 (1973) is presented as a positive science of

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the *faits de la vie* and of the moral problems of modern society. The concept of the moral is taken for granted. In French, more than in English and German, 'moral' and 'social' are closely related terms. Durkheim's attention is immediately caught by the problem of whether and how the moral of solidarity can adapt itself to the consequences of a fully developed division of labour. The formulation of this problem has theoretical and methodological consequences and it was important for the new science of sociology to see these relations between theory and method. The theory presupposes the moral constitution of society and postulates a correlation between forms of differentiation and the moral codes of a society. The method takes moral facts to be objects of scientific research like any other social facts. Whatever metaphysicians may derive from principles with a priori validity, the actual morality of a real society has to be based on a scientific investigation of social facts. The practical aim of sociology should be to propose new forms of moral solidarity, or even '*notre premier devoir actuellement est de nous faire une morale*'. The task of sociology, therefore, would not be to follow moral directives but to create norms. '*Nous ne voulons pas tirer la morale de la science, mais faire la science de la morale*' (Durkheim, 1973: xxviii, 406). To update the moral is to remake the world as a moral entity.

If, however, one could find a scientific basis for moral rules, only the rules proposed and validated by sociology would be truly moral rules. Sociology would assume the final juridical position which Kant reserved for transcendental (but individually accessible) reason. Durkheim sees that this contradicts the premise of freedom: '*On objectera l'existence de la liberté*' (1973: xxviii). But he dares to decide the issue for science and against freedom.

This decision is clearly unacceptable today. Even the question is unacceptable. But this cannot mean that the moral is not a possible topic for sociological research. We need other conceptual and theoretical preparations.

II

We can make our first step once again with Durkheim: '*Les fait moraux . . . consistent en des règles d'action qui se reconnaissent à certains caractères distinctifs*' (1973: xxviii). Moral observations, then, presuppose a *distinction between rules and actions*. They depend upon a two-level approach. The first condition of their possibility is not a principle or a '*Sittengesetz*' but a difference; but then, what are these '*caractères distinctifs*'?

A minimal prerequisite is, of course, an empirical reference. A

sociology of the moral or of any other normative fact has to be an empirical science. But what does this mean? Given the findings of semiotics, linguistics or systems theory, it cannot mean that one has to organize an operative contact to the outside world. This is impossible (de Man, 1986; Luhmann, 1990a). But it means that concepts have to be chosen in a way that creates irritations, difficulties, resistance and therefore learning *within* sociology. This is the only possible meaning of meaning or empirical reference.¹ In this sense, the concept of the moral refers to communication (not to consciousness!) and it designates the conditions under which esteem and disesteem can be communicated. These conditions have to be institutionalized in the sense that one can expect social support for them: if not the consensus of everybody, at least the support of one's own group. This takes place in communication, regardless of what conscious systems think about it.² There are no eternal or logical or natural bases for these conditions, no principles, transcendental judgements or values that are valid *per se*. Such notions already belong to the domain of 'ethics'; and ethics already reflects the historical conditions of specific societies and their quest for 'inviolable levels'.

There is only one necessary condition for the emergence of moral conditionings and that is the *interdiction of self-exemption*. We need – and this is a sure indicator of theoretical significance – the negation of a negation to state this. It would be inappropriate to formulate this as an ultimate principle or a metaprinciple. It is not a principle at all, not an original, not something to start from. It is just a condition. For, if we allow for self-exemption, communication would not generate morality but power.

At the theoretical level the same interdiction of self-exemption is a necessary precondition for producing universal theories. It is, in other words, the condition for avoiding the fallacy of the subject, which conceives of an object outside of the subject, even if we have learnt from Kant that this could never be a *Ding an sich*. The subject cannot control the process of communication, whether from the side of utterances or from the side of understanding.³ The subject is excluded from objects and from communication. Within the frame of subjective transcendentalism the interdiction of self-exemption has to be placed within the subject and this integrates, for Kant, cognition and moral practice. However, this requires the transcendentalizing of the subject; it requires the primacy of the distinction between the transcendental and the empirical, between freedom and causality. And it also requires the unacceptable assumption that all empirical subjects, when reflecting upon the facts of their consciousness, necessarily generate the same transcendental judgements on correct thinking and acting.

Sociology has, by all means, to avoid this fallacy of the subject which is, so to speak, the fallacy of misplaced abstractness. The interdiction of self-exemption is simply an empirical condition for producing certain results and not others. Its correlation with the moralization of communication could be refuted only if one could find communication signalling esteem and disesteem in which the communicator, whether a person or a social system (e.g. a political party), took the licence of not applying the proclaimed standards to itself.

This makes it necessary to distinguish between esteem and other forms of evaluation, such as admiration for heroic efforts or respect for specific capacities and performances as an artist, athlete, doctor or politician. This distinction makes it possible to revisit Durkheim's conception of the relation between the division of labour and morality. The division of labour requires and makes possible the differentiation of standards of good work or even of exceptionally good performances. However, this cannot, in itself, be the source of morality. It is, on the contrary, ruled by self-exemption. One may evaluate the accomplishments of others without committing oneself to do as well or even better. The opposite is true for the communication of moral claims, rules, standards or evaluations. This does not mean that the moral can and will counterbalance the effects of division of labour. The distinction between requiring and excluding self-exemption is an important but highly specific distinction. It does not, by some kind of natural necessity, warrant the 'integration' (whatever that means) of the societal system.

III

The interdiction of self-exemption certainly does not mean that unanimity is the rule in moral affairs. Quite the contrary. For nobody likes, except under strong pressure of an already established moral, to put the blame on himself or herself and to indulge in self-disesteem. At least one cannot make the moral dependent upon such an improbable condition. If moral blame is unavoidable, the victim will find accounts that point to others as the real culprits. This shame-sharing works under all circumstances because the network of causal attributions is flexible enough. Hence, the duality of ego and alter and the opposition of esteem and disesteem have to be translated into a binary code that is acceptable to both sides of a moral dispute as a framework to which they can refer (Luhmann, 1993). The moral is, then, a specific distinction, a form with two sides: good and bad or, taking internal commitments into account, good and evil. Such a positive/negative opposition can never be reduced to a unity, except in the form of a paradox. Moralists, and indeed

Durkheim himself, would have to assume that the distinction of good and bad is a good distinction. Also theologians, such as Augustine, teach that God does not care for the simplicity of the good but for the distinction. But can we be so sure? This is certainly not a logical conclusion and somebody with experience of living under totalitarian regimes might well prefer to see the distinction of good and bad as a bad distinction. As did the Marquis de Sade.

In other words, moral communication has to be framed within a specific binary code which opposes a positive and a negative value. This code can be supposed to be invariant because it is necessary to identify communication as moral communication. It is specific and universal at the same time because, once invented, there cannot be an uncoded moral communication: would it refer to beauty, holiness, urgent needs or what? But this evolutionary universal is void of content. It does not give any information about what is good and what is bad. The values are interchangeable by simple negation and the discussion about the possibility of an absolute evil shows that absolute (i.e. unconditioned) evil might well be indistinguishable from absolute good. As a complement to its code, the moral needs criteria to decide which behaviour is good and which behaviour is bad. Since there are no good versus bad criteria, the criteria or programmes of the moral cannot be identified with the values of the code. The criteria serve to differentiate between good and bad. So 'the preservation of life on earth' is an ambivalent value (and not a code value): it marks some behaviour as good and other behaviour as bad. Ordinary language is not quite adapted to this degree of sophistication and this may create confusion. But 'ordinary language' is no argument; it is nothing but a contingent fact that has to be taken into account.

If codes are invariant, programmes are variable and change historically – that is with structural changes of the societal system. One has to distinguish between these two levels of structuration to be able to see the transformations of the historical semantics of morality and its ethical reflection and to be able to see its limits and its structural drift towards modernity. Moreover, the diversity and fluidity of programmes compensate in a way for the interdiction of self-exemption. Nobody can avoid the moral implications of his or her own statements but everybody can choose the programmes that favour their own interests and opinions.

This seems to be the reason why the language of 'values' comes out best in the competition for usable moral programmes. Values are indisputable; they are not even in need of explicit communication. They can be taken for granted and this taken-for-grantedness can also be taken for granted. They are silent persuaders; but they decide nothing, because decisions

are necessary only in cases of value conflict. In this sense, it is attractive to use values as criteria or programmes in moral communication, because they seem to fulfil but do not fulfil the function of allocating the values 'good' and 'bad' to concrete behaviour. They are stable, because they are ambivalent. They produce a semantic cover for unresolved conflicts. And therefore we need legitimization by procedure.

IV

My very brief sketch of the theoretical possibilities of a sociology of moral communication suffices to make one point clear: a sociology of the moral will never become an ethical theory. It will never be able to claim for itself a moral quality, be it good or bad, be it nice and helpful or cynical. Moralists may feel free to evaluate sociological theories and sociologists may feel free to respond in moral terms; but sociologists, at least, should avoid mixing up roles, codes, systems.

Sociology is not ethics and ethics is not sociology. This is not simply a question of keeping academic territories separate and clean. And it is not, as Durkheim believed, the problem of distinguishing the 'science' of the moral from metaphysical or transcendental judgements (1973: xxxviii). The important point is to distinguish theoretical universalism from practical or moral universalism. One of the tasks of sociology will be to explain (whatever this means) not only moral communication but also ethical descriptions, reflections, theories of moral behaviour. This is part of its research field because ethics, too, is realized as communication. No theory of the societal system could be complete without taking into account that society, having reached a certain point in its evolution, generates ethical terminologies and, if this is the case, a sociologist will assume that he or she may find correlations between the semantical forms of ethical reflection and social structures, in particular forms of system differentiation at the societal level (Luhmann, 1990b). Whether this high-brow ethics will ever be able to control real social communication (and, again, I do not speak of the invisible deep structures of individual consciousness) is a further question; one may assume that the printing press, the novel and modern mass media, including television, make a difference. The Aristotelian 'ethos' (as *hexis*, *habitus*, natural perfection) may have been a plausible frame for observing noblemen who needed no motives because they are what they are. The revival of the moral definition of nobility in the Italian Renaissance (Donati, 1988) and in other European countries, beginning with Burgundy, may have been a reaction against decay, when the real issues were already money, tax exemption

and the political registration of noble status. The academization of ethics as a philosophical discipline in the 18th century and the optimism of Kant or Bentham regarding good reasons and convincing arguments for evaluating moral judgements may have been a response to increasing societal complexity produced by functional differentiation. (Parsons would have seen a relation between increasing differentiation and value generalization.)

Historical investigations of this kind are accused, from a moral point of view, of transforming fundamentals into contingent relations, thus denying the possibility of fixed points of orientation or ultimate values. There is some truth to this, but why is it problematic? Historicism and relativism do not mean that 'anything goes'. They mean, for sociology, that one has to observe the societal system to find out where the resistance is resistance to theoretical descriptions, resistance to structural changes, resistance to communication.

Another line of sociological investigations could focus on society at the end of this century. 'Ethics' is a la mode together with other elusive terms such as 'culture'. Even sociological associations prescribe ethics to themselves. This is, to use a strong term, ridiculous. There is no clear concept of ethics and it is not even clear whether adapting behaviour to prescribed ethical rules would be ethical (or perhaps unethical?) behaviour. Neither Kant nor Bentham could answer this thorny question that hits the nerves of their theories (internal constraint or greater utility?). The present use of 'ethics' is nothing but fashion. And fashion has its own way of reflexive universality: it can and it will become fashionable to think of ethics as a fashion of the recent past.

There are more serious ways to engage in sociological research in ethics. I repeat, if the unity of the moral is not the good (nor, following Sade, the bad) but the difference of good and bad (or esteem/disesteem), the ultimate ground of all moral criteria is a paradox, i.e. the unity of what has to be distinguished. One can replace this paradox by the distinction between problem and problem-solution. If the unity of the moral is a paradox, it is a problem that cannot be solved, whether by logic or by any other kind of technique. This is important. For the solution of the problem would cancel the problem. It would eliminate the distinction between the problem and its solution. This would bring moral communication to an end. We need the problem for being able to continue communication with reference to moral standards. We need the problem for what can be called self-renewal or 'autopoiesis' of moral communication. And if we want to have reasons why the problem cannot be solved, we have to observe its carefully hidden source – the paradox.⁴

The problem of communication referring to moral conditions of esteem

and disesteem may well be its pathological context. It can be described, following Julien Freund (1983) as 'polémogène'. Such communication is generated by the anticipation of conflict and it may well lead to conflicts which will then focus on the moral evaluation of persons and their actions and, in this way, become unsolvable, except by law or by violence. In other words, morality is a device for generalizing controversies, a device that may, but normally does not, solve the conflict. The 18th century developed a different, peaceful concept of moral sentiments and ethics – but on the basis of a dissociation of morality (internal constraint) and law (external constraint), the law being the last resource for solving conflicts and for protecting, under the name of liberty, the freedom to engage in unreasonable and immoral behaviour.

This institutional framework of the constitutional liberal state made it possible to accept ethical theories that presented the moral as a consensual domain. These are still our semantic preferences, certainly in Durkheim's view. But society at the end of this century, the world society of our days, looks very different. We can observe morally fuelled conflict everywhere if we only adapt our concept so as to be able to see it. If there were any chances to develop a sociologically informed ethical theory, it would draw our attention to this polemogenous nature of moral communication and it would warn us to eat again and again this forbidden fruit.

V

My last point brings us back to sociology and, in particular, to the relation between differentiation and morality – that is, again, to Durkheim. Durkheim saw differentiation as a problem of integration. To increase differentiation by the division of labour would endanger the integration of society. If integration could no longer mean the mechanical identity of conscious world views, it should at least mean solidarity, complementarity of expectations for different roles and acceptance of the same rules – although they might mean different things to different people. That is, the unity of society should be repeated *within* society; it should be factored out, if I may say so, to warrant the identity of a set of rules on a sufficiently general level. Parsons will repeat this theorem.

However, let us try to see what happens if we accept systems theory as the constitutive frame for our observations. We will become different observers. First, systems theory means, nowadays, starting with a difference, that is, the difference of system and environment. Next, differentiation will mean systems differentiation and systems differentiation means repeating the difference of system and environment within

systems, i.e. presupposing the selective effects of a first boundary to increase selectivity by drawing and maintaining further internal boundaries. That leads, of course, to an increasing improbability of institutional arrangements and eventually to a greater degree of malfunctioning, anomie, alienation, apathy, fanaticism, etc. Finally, function systems have to recognize themselves not only in terms of goals or functions but, more effectively, in terms of specific binary codes, such as having/not having property, having/not having official power, legally right/legally wrong, true/untrue, transcendent/immanent, good grades/bad grades – and so on.

Only this sort of arrangement makes it possible to keep function systems separate and to reproduce open options, that is contingency within the systems. And this clearly excludes a moral integration of the society because it *excludes the identification of the code values of the function systems with the positive/negative values of the moral code*. It might look at first sight highly suggestive to simply upgrade the positive or negative values of the function systems with the corresponding moral values. We certainly would strongly object to such a simplification, because this would mean that the office holder is morally good, the simple citizen is morally bad; having low grades in school makes a morally bad pupil; having no property a bad citizen (and everybody does not own most things, however rich they may be). Criticism in science or the arts would turn into a moral battle. We see the temptation, but we also see that our society has to avoid such confusion of moral and other codes.

The most remarkable fact is that we would *morally* object to such a fusion of codes (and this is meant to be an empirical statement!). The moral itself accepts and even postulates this dissociation, this loss of sovereignty, this negative self-restraint as a condition of its autonomy. The moral has already adapted to modern conditions. Its social autonomy depends on not depending on scientific truth, property or political power. And now we understand why the 18th century had to reformulate the meaning of ethics as a reflection on the grounds of moral judgement. This was the only possible form to respond to the new, the modern society that had replaced rank differentiation (stratification) of families by functional differentiation. The theoretical success or failure of the transcendental or the utilitarian design of this new ethics is a different question. Sociology can explain their historical appearance.

Notes

1. I am of course aware that this is a highly disputed issue; but critics confuse two things which have to be kept separate: the *operative contact* (= boundary

crossing) and the *internal reference* to the outside world, that is the necessity to distinguish between self-reference and external reference within the system.

2. This refers, of course, to the increasing insulation of moral communities on ethnic or religious grounds that we can observe as a reaction to 'globalization' in recent years.
3. One of the most important witnesses is Hans-Georg Gadamer (1967).
4. This is, of course, the opposite of any Aristotelian ethics. Aristotle would maintain that all natural movements (including moral action) tend towards an end, the end being the perfection of the city. It is also the opposite of any Christian ethics, for Christians would explain the necessity to continue with moral efforts *ab extra* in terms of religious mythology: eating the forbidden fruit, obtaining the knowledge of good and evil, being drawn into unending conflicts about good and evil; that is, being subject to the *habitus* (not fault!) of this original sin until the end of time.

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