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## Megan's Law and Durkheim's Perspective of Punishment: Retribution, Rehabilitation or Both?

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### ABSTRACT

The victimization of Adam Walsh, Jacob Wetterling and Megan Kanka has been instrumental in designing sex offender laws. Registration and Community Notification Laws (RCNLs) are informally known as Megan's Law (Terry 2011) This paper explores sex offender legislation from the Durkheimian framework of retribution versus rehabilitation. In this paper I attempt to answer the research question: Does sex offender legislation respond to the diluted stance of punishment, which Durkheim envisioned is characteristic of modern societal sentiments (rehabilitation replacing retribution)? Why or why not? I first outline a brief history of sex offender legislation, followed by a discussion of select characteristics of societies that exhibit retributive and rehabilitative justice. Based on scholastic evidence presented in this paper, I conclude the punitive tendencies of current sex offender legislations are more retributive than rehabilitative. Current policies do not conform to the progress of punishment which Durkheim envisioned is concomitant to social evolution, and in many ways, demonstrates taking a step backwards.

**Keywords:** Durkheim, Megan's law, rehabilitation, retribution, Sex offender.

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### 1. Introduction

The victimization of Adam Walsh, Jacob Wetterling and Megan Kanka has been extensively instrumental in the social perception and treatment of sex offenders. After the violent victimization of these children, laws have been established in the United States which include the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act, Megan's Law, and the Adam Walsh Child Protection and Safety Act (History of the Law, 2008). Current scholarship pertaining to sex offender legislation raises important ideological and practical concerns while engaging in a very divisive discourse over its justification (Simon, 2007; Visgaitis, 2012; Fox, 2012; Corrigan, 2006; Duwe and Donay, 2008).

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One of the earliest conversations social scientists are introduced to in the discipline of criminology pertain to the logic of punishment. In other words what purpose does punishment serve? These include deterrence (communicating the gravity of sanctions to deviants prone to committing similar kinds of crimes), incapacitation (putting away the offender and preventing future crime), retribution (society punishes the offender and thus prevents the victim from personally avenging themselves), restitution (when accused primarily through financial means compensates the victim) and rehabilitation (when the offender is changed into a law abiding citizen minimizing the potential of future crimes) (Storm 2017). In some cases, restitution and rehabilitation work together.

Different philosophies of punishment might co-exist within the same temporal frame of reference, or can even vary by the type of crime. Thio (2012) defines high consensus deviance as that which is recognized as a serious crime by many people whereas low consensus deviance is less serious. Sex offender legislation is one grey area which targets both serious offenders committing high consensus deviance (rape of a minor) as well as violations which can be considered less serious (sexting).

Of the different rationales of punishment, Emile Durkheim (1893/1984) discusses the evolution of punishment from retribution to rehabilitation, which is relevant in comprehending the motivations behind sex offender legislation. Garland (1990) argues while other theoretical traditions have questioned the intrinsic and absolute nature of social control (including Marx and Weber), the functionalist argument for punishment which includes Durkheim's ideas, even with its criticism, explains the origins and metamorphosis of penal measures into current times. This is an important consideration for this paper. I share Garland's (1990) perspective that the functionalist paradigm provides an important lens through which the justifications of modern punishment could be observed. A thought provoking derivative which can emerge from this discourse is whether sex offender policies are a unified response to certain kinds of crime, or the working of something more nuanced and political.

After examining the Durkheimian derivatives from retribution versus rehabilitation in the context of modern sex offender legislation, I will attempt to answer the following question:

*Does sex offender legislation respond to the diluted stance of punishment, which Durkheim envisioned is characteristic of modern societal sentiments (rehabilitation replacing retribution)? Why or why not?*

In the subsequent section of the paper, I will first outline a brief history of sex offender legislation, followed by a discussion of select characteristics of societies that exhibit retributive and rehabilitative justice according to Durkheim (1893/1984). I will then explain in what ways these social attributes correspond with how sex offender legislation work. In the end, I will provide my understanding of Megan's Law within the Durkheimian framework and seek to answer the research question.

## **2. Recent history of the sex offender**

Victim centric legislation in the United States has an interesting history. Prior to initiating a theoretical discussion on Durkheim and its applications to Meghan's Law, the foundations of social attitudes towards the sex offender needs to be outlined, which in turn demonstrates how these have changed from time to time.

Crime perspectives from Industrial Revolution onward centered on the state rather than the individual victim. This changed post 1940's with a renewed scholastic interest on the role of the victim in connection to crime (Daigle, 2012). The focus on sexual offending in recent years can also be partially attributed to the formalization of victim issues in academic and legislative domains (Daigle, 2012). Intra familial offences against children had come to the public preview after the discovery of bone injuries and hematoma among children, and Henry Kempe's subsequent journal publications in Child Abuse and Neglect (Gelles, 1997). Focus on women and children as victims was further buttressed by the

President's Commission on Law Enforcement and the Administration of Justice, the formal development of National Crime Victimization Survey, the Civil Rights and Feminist Movements, the Child Victim's Bill of Rights and the Violence Against Women Act, among other measures (Daigle, 2012). Punishment in America over the last few decades also went through its own socio-political trajectory that can explain its recent metamorphosis into more austere standards.

In the Civil Rights era, while the liberal social outlook focused on structural contributors to crime and sought to seek remedies, the conservative social stance was that the poor, minorities or those who were substance abusers are incapable of making good decisions (Beckett & Sasson, 2000). The Republican political strategy formalized the war on crime during and post 1968, with the mantra that social "permissiveness" has encouraged accelerating crime rates. The Nixon era intensified its crusade against crime through several means- usage of massive funds to support law enforcement, providing quantitative assessment of effectiveness of the war on crimes and upholding the need to curtail drug related offences (Beckett & Sasson, 2000). The legacy of the war on drugs continued with Reagan administration without addressing the needs for better drug treatment, prevention, or education. The drug issue primarily became a central political agenda (prior to society identifying it as such) (Beckett & Sasson, 2000). The Reagan administration consolidated this political message of functioning as a security state rather than a welfare state (Beckett & Sasson, 2000). The Gulf War in the 1990's for a while eclipsed the focus on domestic street crimes. Clinton's political regime in the subsequent years, despite its political difference on many issues from preceding administrations, also supported the need to put more police officers on the street (including community policing), and later passed the Violent Crime Control and Law Enforcement Act (Beckett & Sasson, 2000). Expansion of the war on crime was further facilitated by terrorist attacks of 9/11 and subsequent passage of the USA Patriot Act.

Sex offender legislation similar to changes in punitive standards in the United States overall, has also evolved over a period of time. Registration and community notification laws (RCNLs) or those informally termed as Megan's Law (Terry, 2011) were originally intended to prevent recidivism of sex offenders and protect the community. On average, required information for registries include offender's name/ aliases, home address, date of birth, social security number, picture and description of physical attributes, fingerprints, nature of the offence committed, victim's age, conviction date, punishment type, vehicle, and employment information (Terry, 2011). Court, parole and probation officers, as well as the department of corrections notify offenders of the obligation for registration, the violation of which can in some cases be treated as a felony that revokes the rights of offenders. After the Supreme Court decision on Connecticut Department of Public Safety versus Doe in 2003, the primary method of making offences known to the public is through state websites (Terry, 2011). In some cases law enforcement can notify schools, child care agencies, or other service providers of children, of the whereabouts of a sex offender (Rahmberg & Cohen, 2001).

Diversity in terms of what constitutes RCNLs persists, although two laws have attempted to nationalize RCNLs. The Pam Lychner Sexual Offender Tracking and Identification Act of 1996 created a national database of offenders committing a crime against minors. Sex Offender Registration and Notification Act (SORNA- Title I of the Adam Walsh Child Protection and Safety Act) enacted in 2006 provides an exhaustive list of offence types and requires more extensive information about the background of sex offenders, periodic updating, verification, and appearances. The law extends to all fifty states, District of Columbia, U.S territories and tribal administrations (SORNA, 2016). Sex offender legislation now also include a tier system—with Tier III being the most serious felony and entails different penal guidelines for each class of offence (ranging from 15 years of registration for Tier I to life time registration for Tier III) (Reinhart, 2006).

While SORNA might have centralized some of the legislative guidelines, there are variations in terms of registration requirements. 19 states and the District of Columbia have a two-tier registration system. In the first tier while offenders register for life for more serious offences, those convicted of misdemeanors and less serious offences register for typically 10 years (Love, 2015). In 18 states, the overarching sentence is for lifetime (although the less serious cases can appear for re-appeals). In

another 13 states, registration for life, 25 years or 15 years is contingent on category of offence (Love, 2015). After the passage of SORNA in 2006, laws evolved to become more stringent with longer durations for registration, and apply retroactively to offenders previously subject to more flexible guidelines by the court systems (Visgaitis, 2011). Few states have laws against misuse of the information to commit criminal acts against offenders (Rahmberg & Cohen, 2001). The punitive standards for sex offender legislation became more and more stringent. To an extent, this shift in rhetoric reverses Durkheim's perspective of the social progression of punishment, and more will be discussed in the subsequent section.

### 3. Durkheim, Megan's law and the morality verdict

#### 3.1 Retributive characteristics

According to sociologist Emile Durkheim (1893/1984), there are two judicial procedures or sanctions that define punitive momentum in a temporal frame of reference—the first occurs when the perpetrator is punished and thus divested of honor, liberty, life, fortune, or anything else they value (repressive), and the second occurs with society and offender working together to reinstate whatever has been upset by the offender into a previous state of normalcy (restorative) (Durkheim, 1893/1984). These punitive responses vary with societal types and can be located in a historical frame of reference.

In this segment of the paper some attributes of societies that exhibit retributive sentiments towards punishment will be discussed, and then these will be compared to contemporary applications of sex offender laws.

1. Durkheim considers that in the heart of all legal initiatives resides the concept of collective consciousness—"the totality of beliefs and sentiments common to the average members of a society forms a determinate system with a life of its own" (Durkheim, 1893/1984, p. 39). This consciousness is diffused within society and was at its strongest when societies were based on mechanical solidarity, a trait of pre-industrial social orders. There are two states of consciousness which were important to human being—one which is personal and individualistic, the second which is more collective. However, these two states were conjoined to form one omnipotent social psyche (Durkheim, 1893/1984).

In societies characterized by mechanical solidarities, crime provoked social sentiments because it violated what is acceptable by a plurality (in this case their shared collective consciousness). Such violations necessitated intervention: "any act which, regardless of the degree, provokes against the perpetrator the characteristic reaction known as punishment" (1893/1984, p.31). Punishment itself did not manifest cruelty but communicated the plural status quo of society, promoted social solidarity, had to fit the crime and in the process, avenged violations against society.

Tenets of collective consciousness in modern societies to an extent work in similar ways. Megan's Law is based on a legacy of social mobilization, even if initiated primarily by the family members of the victim. Such legislation apparently resonates concerns of the social whole. Society considers sexual offence against a minor more reproachable than other relatively tolerated sexual acts. For example, in the social perception of what constitutes family violence for instance, marital rape was ignored for a long time in comparison to child abuse (Lieb et al., 1998). Scholars critiquing current sex offender legislation reaffirm this persistent focus on children as victims: "According to the rhetoric of Megan's Laws supporters, sex offenders are different because they are animals who prey upon vulnerable children" (Garfinkle, 2003, p.173). Garfinkle (2003) argues that the potent usage of emotional narratives, buttressed by statistics and 'dehumanized' portrayals of offenders who can be potentially tackled through legislation, set advocacy against sex offenders into actual endorsements. This personalization of the victim's account and depersonalization of the offender subsequent to community notification is consistent with the reproaches of repressive law. The circumstances of offending are highlighted as much as the plight of the victim—life history of offenders in comparison,

are largely ignored.

2. The second characteristics of societies of mechanical solidarity pertained to the existence of common mindsets. These social organizations were characterized by homogenous division of labor and membership in the clan. Communism was vital to the existence of the clan which included the notion of collective ownership of property. The clans themselves were segmented from each other, but formed dense social unions. The social organization of the clans was also largely “politico- familial” (p.128), where relationships were defined in terms of blood ties and other extended ties between the larger groups of same kinds of people (Durkheim, 1893/1984).

Following Durkheim, we would tend to understand contemporary American society through the framework of organic solidarity, given its complex social organization. However comparable homogenous sub groups with common interest can be located within contemporary American society. Interest groups that exhibit clannish tendencies are instrumental in setting legislation into practice, or in some cases preventing them. Some corporations while contributing to environmental crimes might work towards minimizing the magnitude of harm done and work towards preventing legal checks. At the same time, there are other interest groups formed by friends and families of victims of crime including Mothers against Drunken Driving, who have been proactive in campaigning for stricter legislation.

With regards to the social stance towards the sex offender, the ‘advocacy clans’ are formed in two different ways: First, state legislation for sex offender notification often emerges from mobilization of distressed parents of the children (Koeing, 1998). If communities are geographically proximal to an act of sexual offending, they can also feel threatened and support the legal initiative. Second, even when individuals are separated physically, clustering of similar social philosophies and interest are formed for different reasons including a complex political agenda as explained by Beckett & Sasson (2000).

3. Additional characteristic of societies of yesteryears according to Durkheim includes a strong commitment to voices of authority. The chief of the clan for instance supervised religious activities and assumed a position of influence higher than the common masses (Durkheim, 1893/1984). What gave power to the status was the extent of collective consciousness which it represented and protected (Durkheim, 1893/1984). In other words, the chief supervised the sanctity of the collective consciousness. While crime violated the body social, it was also an injury or offence against the authority representing the interest of the collective (Durkheim, 1893/1984). Garland (1990) contends that in practice, collective consciousness is not always the overarching moral binder of society, but is a prevalent type that dominates over competing and alternative tenets of thoughts. In so far, collective consciousness then becomes the ruling morality, a form of dominant ideology. Durkheim acknowledges the need to uphold collective consciousness and suppress those who violate it, and in this case the state becomes instrumental in sustaining what is the social norm (Garland, 1990).

In contemporary America, the prominence of ruling morality is also evident from state endorsement for crime control. This for instance is in American penchant for governing through crime with a corresponding emphasis on deterrence, discipline, and need for strong punitive response (Simon 2000). Beckett and Sasson (2000) argue that sociological research does not support the idea that stronger sanctions are a deterrent in American Society, and yet the centrality of punishment has remained at the core of both Republican and Democratic political agenda over the last few decades. Simon (2000) directs attention to the legislative trends of victim naming, which reacquaints society with the plight of the victim, repeatedly. The specific instance of Megan Kanka has been highlighted as recent function of democracy where the victim reigns as sovereign, the victim’s social origins from a White middle class background receives specific attention, offenders are construed as incorrigible “monsters”, and a model of justice working on “zero sum game model of risk” (Simon, 2007, p. 1139). This last concept refers to current punitive tendencies of simply subtracting the offender from the social space and putting them away in the controlled regiment of the prison. In comparison, the non-prison environment is perceived as the safe zone. The victims are not simply the subjects but also

objects of social power (by serving as mechanisms of social control). In the historic verdict of *Connecticut Department of Public Safety v. Doe*, the appellars argue that under the Due Process, the offenders should receive a hearing prior to being included in the state registry (Visgaitis, 2012). However, the court rejected the appeal on grounds that sex registries was based on offenders past offences rather than unique considerations to current threat levels to the community (Visgaitis, 2012). This further establishes a disconnect between personal predicament of the sex offender and all-encompassing impersonal sanctions.

The shaming of the modern sex offender is further facilitated by media's perennial focus on sex offence through crime drama, news infotainment and recently biased blogs (Fox, 2013). This had not been the role of the media before. Historically media had played various roles in community notification laws including political (monitoring whether government is functioning correctly), educational (informing the masses of required knowledge with regards to laws), providing human interest stories and acting as a bulletin board (announcements—including release of an offender into the community) (Johnson & Babbock 1999). Prior to formal notification, journalists were confronted with the moral dilemma of whether to publish names of offenders within the content they were working on.

In recent times, media's focus on political, educational or journalistic endeavors pertaining to sex offender laws have transformed –the moral backlash from society is sustained by perennial media panic about sex offence (Fox 2012). Online blogs are a new entrant in the domain often participating in discourses over the subject. Blog inputs are characterized by strong ethical connotations which, in turn, contribute to biased framing of the issue rather than serving as legitimate and balanced resource for informed deliberation (Fox, 2013). Lack of clarity in what information is available versus what is not (which can influence public opinion) seems to be a pressing concern for registries. Much of the information on the offence type is in legal jargon, and can therefore be both imperfect and imprecise (Ferrandino, 2012).

4. To further elaborate on characteristics of punishment in societies characterized by mechanical solidarity, Durkheim explains that even when punishment was retributive, crime perspectives were not absolutely neutral: "... Assuredly murder is always an evil, but nothing proves that it is the greatest evil" (Durkheim, 1893/1984, p.33). While homicide was universally condemned, the magnitude of harm inflicted by it might not be extensive in comparison to the consequences from financial crises. Durkheim (1893/1984) further argues that while these violations are condemnable by society and exist to preserve order, sometimes legal responses to these violations do not always make sense. Punitive biases in current judicial processes also seem to emphasize certain kinds of sex crime.

For instance, recent feminist commentaries argue Megan's Law is unfavorable to framing the extensiveness of violence against women by stressing sexual offence, including rape, as a monstrous atrocity committed by a handful, specifically strangers (and thus ignoring the wider scope of the problem) (Corrigan, 2006). There is some evidence of reduction in repeat offences following implementation of Megan's Laws, but such findings are not without a caveat (Duwe & Donnay, 2008). First, it applies more to high risk offenders, does not apply to non- sexual offences, and implies additional expenditures for law enforcement (Duwe & Donnay, 2008). Second, other studies argue sex offender legislation such as Megan's Laws have failed to substantively reduce forcible rapes (Ackerman, Sacks & Greenberg, 2012). Irrespective of these limitations with regards to its effectiveness, Megan's Law is portrayed as one of the most potent weapons of anti-rape measures since the 1970's, cultivating the image of the rapist as a pathologically and mentally challenged deviant, and through its austere method of monitoring and controlling the offender, disproportionately targets selected few (Corrigan, 2006).

Overall, a few important characteristics of sex offender legislation corresponds to social mindsets which support retributive rationale of punishment. These include (1) morally reproachable nature of sex crimes, (2) the preponderance of homogenous mentality of a handful of advocates who support stern forms of punishment, (3) voices of authority (in this case government's) in prompting guidelines for

correction, (4) subjective interpretation of what kind of crimes constitute greater harm to society.

### 3.2 Rehabilitative characteristics

To Durkheim (1893/1984), restorative justice models where the offender is rehabilitated and re-integrated into society happen at a mature stage in punitive evolution. Restorative justice is a concomitant of societies characterized by organic solidarity. This type is characterized by differentiation of functions; uniting the actors in respect to the functions they perform (Durkheim, 1893/1984). Societies lose the dense homogenous character of mechanical solidarity based on common ancestry—human beings in this society find a place based on the nature of function they perform (analogous to human organs in the body). Blood ties no longer connect human beings, but geographies and inhabited spaces do (Durkheim, 1893/1984). Similarly, segmentary organizations are replaced by professional ones where social ties are determined in terms of networking. Social harmony emerges from cooperation (which is a function of human interdependence), and through which everyone fulfils their personalized interest. An individual largely depends on others and to an extent on the larger society. This explains why the sense of body social is not completely lost on the human mind (Durkheim, 1893/1984).

While sex offender legislation pertains to sentencing guidelines, they have a grave impact on the subsequent life of the offender. Rehabilitation might not be an opportunity available to all offenders, and when they are the nature and scope of its application is also limited. Here, I discuss Durkheim's vision of rehabilitative justice, and then examine whether these can be located in the context of current sex offender legislation.

1. According to Durkheim, in societies characterized by organic solidarity, restitutive law replaces repression. The main emphasis here is on the amalgamative objective of law to restore situations into a state of normalcy (Durkheim, 1893/1984). Suffering is not in proportion to the crime, but the individual is compelled to acknowledge their action, with a binding obligation to reinstate the damage into its previous form.

While the retributive components of Meghan's law are easier to identify, when it comes to extending second chances, sex offender laws in the United States in recent years have only employed a handful of restorative mechanism. Circles of Support and Accountability (COSA), working to reintegrate sex offenders, initiated amongst a Mennonite community in Canada in 1990's, is based on a similar model of restorative justice. The Community Reintegration Project as it was known initially (Wilson & Prinzo, 2001), was devised to bring communities and high-risk offenders together "through guidance, advocacy and monitoring" (p.68). Typically comprising of 4-6 members, the circles were comprised of religious members, law enforcement, psychologists, and medical practitioners, as well as representatives of the community (Wilson & Prinzo, 2001). While COSA in Canada requires that sex offenders comply with rules including adherence to peace bonds (specifying terms and conditions including preventing offenders from contacting victims and their families), follow a relapse prevention and treatment prevention plan appropriate to them, the model concurrently encourages sympathy, help, and support from the community (which makes it different from other approaches including community protection–risk management) (Petrunik, 2002). Between 1994 and 2000, 30 circles were set up in Toronto and 12 others in other parts of the nation, lasting in general between 18-24 months (Petrunik, 2002), with some decrease in sexual and overall recidivism (Wilson, Cortoni & McWhinnie, 2009).

In the United States, the COSA model was supported by federally funded reentry programs including SVORI (Serious and Violent Offender Reentry Initiative) or the Second Chance Act (Fox, 2013), although the nation has been slow in adopting it. So far, COSA has been implemented in Minnesota (Duwe, 2013), Vermont (Fox, 2013), California (Circles of Support and Accountability, 2016), Colorado (Circles of Support Colorado, 2016), North Carolina (Durham COSA, 2016) and Oregon (Ecumenical Ministries of Oregon, 2016). Several merits of the COSA approach have been outlined in the process—enabling deinstitutionalization, helping the previously incarcerated to work with legal boundaries, helps establish mutual respect between offenders and community members and provides greater

engagement, team spirit and guidelines (Fox, 2013).

2. To elaborate more on societies characterized by organic solidarities Durkheim (1893/1984) explains that in modern societies many crimes of yesteryears have disappeared (for e.g. idleness or disobeying the patriarch), and what collective consciousness characterizes as criminal is fewer in scope (Durkheim, 1893/1984). The more diffused nature of collective consciousness cannot dominate all aspects of the individual psyche, albeit present. In these societies characterized by organic solidarity, personal consciousness in an individual precedes over the collective. Durkheim (1893/1984) further explains: “everything social was religious—the two words were synonymous. Gradually political, economic and scientific functions broke free from the religious function, becoming separate entities and taking on more and more of a markedly temporal character” (p. 119). This loss of religious supremacy grants a certain degree of autonomy to the human mind. Common consciousness does not disappear—but becomes more free flowing in nature and more abstract. The existence of restitutive law per se does not denote the absence of collective consciousness, but rather, the dilution of it in the minds of the social actors (Durkheim, 1893/1984).

Rehabilitative programs based on religious or moral education seem to help the offender connect with their latent collective consciousness. Some of these methods of alternative punitive intervention were observed in an Israeli prison among sex offenders. Among those incarcerated crime trends could escalate over a period or the life course. This known as a criminal spin, can initiate with a childhood negative experience (Ronel 2009; Elisha, Idisis & Ronel, 2013). In the Israeli prison, turning points preventing further criminal spin were achieved through therapy sessions, external support from the family, as well as from religious motivations experienced by the offenders (Elisha et al., 2013). In the United States religion seems to be a key component in many of the prison based treatment programs as well: “Because sex offending behavior involves a moral and ethical transgression, spiritual and religious remedies may be particularly important” (Gockel & Burton, 2013: 282). These include practices of confession, atonement, reflections, methods of moral chastisement etc. Religious organizations outside of prisons have also expressed an interest in rehabilitating sex offenders specifically juveniles (Venable, 2015). Some sex offenders have mixed feeling about treatment programs within the prison but do tend to think of these as supportive, important for transformation and a precursor to early release (Connor, Copes & Tewsbury, 2011).

3. Durkheim discusses other attributes of societies characterized by organic solidarity which contribute towards social integration. These include a wide array of legal tendency that can be discovered in domestic, contractual, commercial, procedural, administrative and constitutional law. According to Durkheim (1893/1984), “The relationships that are regulated by these laws are of a nature entirely different from the preceding ones; they express a positive contribution, a cooperation deriving essentially from division of labor” (p. 77). Contractual agreement creates a moral obligation on social actors to abide by the terms irrespective of negative sanctions attached to them. The binding nature of these laws is not omnipresent in the human psyche—however they are permanent and denote a societal expectation of being able to function together (Durkheim, 1893/1984).

Sex offender treatment programs that have attempted to partially “change” human behavior is partially based on this form of social contract. Offenders are key to the restorative process because unlike notification, they play an active role in the community making amends (paying restitution, extending formal apologies etc.) (Presser & Gunnison, 1999). In western nations, sex offender management primarily comprises of registration and offender contact with law enforcement (Day, Carson, Newton & Hobbs, 2014). This in itself denotes a life-long obligatory contract between the law enforcement and the offender—the former negotiating supervision and community safety, and the latter paying a price for regimented independence (Day et al., 2014). Current treatment models serve what turns out to be dichotomous purposes— aiding the needs of both the community and the offender, with the former receiving priority. Treatment models including involuntary treatment programs for instance can also violate conventional mental health ethical guidelines of adhering

importance to client's autonomy, avoiding harms, trying to provide more benefit to client over the harm they pose, and a concern for social justice (Glaser, 2010). In many cases the contractual component of sex offender rehabilitation seems to be facilitated by power rather than shared governance.

The rehabilitative tenets of modern sex offender legislation which correspond in part with Durkheim's notion of justice under organic solidarities albeit few include (1) newer models of justice including Circles of Support and Accountability (COSA), (2) treatment programs based on moral and religious education which reaffirms the importance of collective sentiments (3) the contractual component of modern day sex offender practices.

#### 4. Discussion

In making sense of the social rationales behind Megan's Law, I used Durkheim's punitive paradigm to examine whether the evolution of punishment in responding to the growing cultural sensibilities of recent times eradicate the more rigid and harsh tendencies of punishing sex offenders. In this section I share my observations. I conclude the punitive penchant of current sex offender legislation is more retributive than rehabilitative, and thus does not follow the punitive evolution Durkheim had envisioned.

The current prospect of sex offender laws combines several rigid punitive tendencies (Garfinkle, 2003, Lieb et al., 1998, Koeing, 1998). While the laws might originate around specific incidents, it has overtime become impersonal. The translation of the retributive sentiment is further facilitated by the media or American penchant of governance through crime (Simon, 2000, Johnson & Babbock, 1999, Fox, 2012). Sex offender registries might seem to exist with a superficial agenda of incapacitating a repeat offender or deter prospective others with similar malicious intentions. However, the legal mechanisms in place seems to be an unforgiving throwback to attempts/acts of discrediting what is portrayed and upheld as a sacred social sentiment. According to Corrigan (2006), Megan's Law combines some of the more archaic modes of punishment (shaming, ostracism) with more sophisticated versions of recent times (risk assessment, information management etc.).

The law can also isolate the offender at many levels (Ackerman, Sacks & Osier, 2013). These include concerns of collateral damages, increased vigilantism, feelings of anger, despair, ambiguity over how sex offender registries are used, the problem associated with bracketing all kinds of offenders into one category and dismal consequences for juvenile offenders (Ackerman et al., 2013). Alongside the overarching retributive component of sex offender legislation, current scholastic debates reveal the austerity does not vary by offence. Net widening (using the sex offender label to punish a whole range of offence) is construed to be a serious concern in sex offender management (Presser & Gunnison, 1999), specifically impacting juveniles. After passage of the Adam Walsh Child Protection and Safety Act (AWA) in 2006, the sex offender registration and notification (SORN) systems now applied to certain juvenile offenders aged 14 and above (Harris, Lobanov-Rostovsky & Levenson, 2010). The law ignores several trends observed among juvenile offenders: rates of juvenile recidivism are usually lower, the nature of offences diverse and at some levels, deviant behaviors are exploratory connected to childhood experiences of abuse (Trivits & Reppuci, 2002). Existing studies have demonstrated the lack of support for inclusion of juveniles in registries, specifically among the educated (Stevenson, Smith, Sekely & Farnum, 2011).

Overtime, sex offender legislation took on its own impersonal bureaucratic character in addition to not promising to be the most efficient solution to sexual offence. The tentativeness of overall sex offender registrations also persists with conjoined labelling of low and high consensus sexual violations as offence, or from restricted support of the relationship between registration and recidivism (Duwe & Donnay, 2008; Ackerman et al., 2012; Trivits & Reppuci, 2002). The very retributive preponderance of Megan's Law to an extent coincides with Garland's (1990) reworking of Durkheimian analysis of the

ruling morality, which does not represent mass support but is a function of certain kinds of social forces. This ruling morality seems to ignore/ not factor in a publicly supported definition of the sex offender. Rather than information and mass consent shaping legal outcome, existing policies seem to influence social perceptions, thus negating the omnipotence of collective consciousness, which should predate responses to its violations. In this case, ruling morality supersedes mass morality.

In comparison, the rehabilitative applications of Megan's Law are limited. This is clearly established by fewer application and adoption of Circles of Support and Accountability (COA) across the board (in comparison to other nations including Canada and UK). In addition, an intriguing takes on rehabilitation has been prompted by researchers including Glaser (2010) who believe court ordered rehabilitation can be nonetheless punitive, and should be treated as such. Restorative justice does not do away with elements of social control—the indirect mechanisms seem to replace the direct ones.

## 5. Conclusion

Sex offender laws appear to be more nuanced and political than simply being a form of collective rebuff for sexual violations against a minor. It does not follow the evolutionary pattern outlined by Durkheim (is more retributive) and is very tentative with regards to reduction in recidivism. Furthermore, the severity of sanctions does not consider the severity of the offence necessarily. It is important to iterate that my reading of effectiveness of sex offender practices are subjective. In many ways, to me Megan's Law demonstrates punishment, taking a step backwards, without embracing some of the logic of retribution. Retribution according to Durkheim (1893/1984) consolidates human sentiment through common consensus, which is often lacking in how the sex offender is construed.

In a perfect scenario, corrective sanctions should speak to the injury inflicted on the victim (mental and physical, direct and indirect), inhibit the criminal spin and recidivism, and successfully secure offender rehabilitation and reentry, as well as acceptance. If second chance to the sex offender was to be extended, Circles of Support and Accountability, is one such leap of faith, which needs to be explored. Besides its ideological appeal, COA seems to be practical, and imparts collective empowerment to both law enforcers and violators. This coincides with Durkheim (1893/1984)'s vision of a mature moment of punitive evolution when the influence of collective consciousness is not lost, neither replaced by the ruling morality but facilitated through socially committed individual agency.

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## References

- Ackerman, A R., Sacks, M., & Greenberg, D. F. (2012). Legislation targeting sex offenders: Are recent policies effective in reducing rape? *Justice Quarterly*, 29(6), 858-887.
- Ackerman, A. R., Sacks, M. & L. N Osier. (2013). The experiences of registered sex offenders with internet registries in three states. *Journal of Offender Rehabilitation*, 52, 29-45.
- Beckett, K. and Sasson, T. (2000). *The politics of injustice: Crime and punishment in America*. London: Sage Publications).
- Circles of Support and Accountability. (2016). Retrieved from <http://cosafresno.org/>.
- Connor, D. P., Copes, H., & Tewksbury, R. (2011). Incarcerated sex offenders' perceptions of prison sex offender treatment programs. *Justice Policy Journal*, 8(2), 1-22.
- Colorado Circles of Support and Accountability. (2016). Retrieved from <http://cocosa.org/>.
- Corrigan, R. (2006). Making meaning of Megan's Law. *Law and Social Inquiry*, 31(2), pp 267-312.
- Daigle, L. J. (2012). *Victimology- A reader*. Sage: California.

- Day A., Carson, E. Newton D. & Hobbs, G. (2014). Professional views on the management of sex offenders in the community. *Journal of Offender Rehabilitation*, 53(3), 171-189.
- Durham COSA. (2016). Retrieved from <http://www.durhamcosa.org/index.html>.
- Duwe, G. & Donnay W. (2008). The impact of Megan's Law on sex offender recidivism: The Minnesota experience. *Criminology*, 46(2), 411.
- Duwe, G. (2013). What works with sex offenders? Results from an evaluation of Minnesota Circles of Support and Accountability. *Corrections Today*, 75, 32 – 34.
- Durkheim, E. (1984). *The division of labor in society* (Introductions by Lewis Coser). New York: Mc Millan
- Ecumenical Ministries of Oregon. (2016). Retrieved from <http://www.emoregon.org/cosa.php>.
- Elisha, E., Idisis, Y. & Ronel, N. (2013). Positive criminology and imprisoned sex offenders: Demonstration of a way out from a criminal spin through acceptance relationships. *Journal of Sexual Aggression*, 19 (1): 66-80.
- Ferrandino, J. (2012). Beyond the perception and the obvious: What sex offender registries really tell us and why. *Social Work in Public Health*, 27, pp 392–407.
- Fox, K. J. (2013). Incurable sex offenders, lousy judges and the media: Moral panic sustenance in the age of new media. *American Journal of Criminal Justice*, 38 (1), 160-181.
- Fox, K. J. (2013). Circles of Support and Accountability: Final report prepared for the state of Vermont Department of Corrections. Retrieved from <http://www.doc.state.vt.us/about/reports/circles-of-support-accountability-final-report/view>
- Garland, D. (1990). *Punishment and modern society*. Chicago: University of Chicago Press.
- Garfinkle, E. (2003). Coming of age in America: The misapplication of sex-offender registration and community-notification laws to juveniles. *California Law Review*, 91, 163-208.
- Gelles, R. (1999). *Intimate violence in families*. London: Sage Publications.
- Gockel, A., & Burton, D. (2013). Can god help? Religion and spirituality among adolescent male sex offenders. *Journal of Child & Adolescent Trauma*, 6(4), 274-286.
- Glaser, B. (2010). Sex offender programs: New technology coping with old ethics. *Journal of Sexual Aggression*, 16 (3), 261-274.
- Harris, A.J., Lobanov-Rostovsky, C., & Levenson J. (2010). Widening the net effects of transitioning to the Adam Walsh Act's federally mandated sex offender classification system. *Criminal Justice and Behavior*, 37(5), 503-519.
- History of the Law and Federal Facts (2008). Pennsylvania State Police. Retrieved from <http://www.pameganslaw.state.pa.us/History.aspx?dt=>.
- Koeing, P. (1998). Does congress abuse its spending clause power by attaching conditions on the receipt of federal law enforcement funds to a state's compliance with Megan's Law. *Criminal Law and Criminology*, 36 (2): 721.
- Lieb, R., Quinsey, V. and Berliner, L. (1998). Sexual predators and social policy. *Crime and Justice*, 23, pp 43-114.
- Love, M. (2015). 50-state survey of relief from sex offender registration. Collateral Consequences Resource Center. <http://ccresourcecenter.org/2015/05/14/50-state-survey-of-relief-provisions-affecting-sex-offender-registration/>
- Petrunik, M. (2002). Managing unacceptable risk: Sex offenders, community response, and social policy in the United States and Canada. *International Journal of Offender Therapy and Comparative Criminology*, 46(4), 483-511.
- Presser, L. & Gunnison, E. (1999). Strange bedfellows: Is sex offender notification a form of community justice? *Crime and Delinquency*, 45(3), 299-315.
- Rahmberg, E. & Cohen, F. (2001). *Sex offender registration and community notification laws: A Megan's Law sourcebook*. New Jersey: Civic Research Institute.
- Reinhart, C. (2006). Federal law on classifying sex offenders. Retrieved from <https://www.cga.ct.gov/2006/rpt/2006-r-0765.htm>
- Ronel, N. (2009). "The Criminal Spin". Pp. 126154 in *International Perspectives on Crime and Justice* edited by K. Jaishanka. Newcastle upon Tyne, UK: Cambridge Scholars Publishing.
- Simon P. (2007). *Governing through crime: How the war on crime transformed American democracy and created a culture of fear*. New York: Oxford University Press.
- SORNA (2014). Office of sex offender monitoring, apprehending, registration and tracking.

- <http://ojp.gov/smart/sorna.htm>. (Last Accessed May 26th 2016).
- Stevenson M.C., Smith, A.C., Sekely, A.D., & Farnum, K.S. (2013). Predictors of support for juvenile sex offender registration: Educated individuals recognize the flaws of juvenile registration. *Journal of Child Sex Abuse*, 22(2):231–54.
- Storm, L. (2017). Criminal law. Retrieved from [https://catalog.flatworldknowledge.com/bookhub/reader/4373?e=storm\\_1.0-ch01\\_s05#storm\\_1.0-chooabout](https://catalog.flatworldknowledge.com/bookhub/reader/4373?e=storm_1.0-ch01_s05#storm_1.0-chooabout)
- Terry, K. J. (2011). What is smart sex offender policy? *Criminology and Public Policy*, 10, 275-81.
- Thio, A. (2012). *Deviant behavior*. USA: Allyn and Bacon.
- Trivits, L. C. & Reppucci, N. D. (2002). Application of Megan's Law to juveniles. *American Psychologist*, 57(9), pp 690–704.
- Venable, V. M. (2015). Black church members' perspectives on the role of the black church in the rehabilitative process of juvenile sex offenders. *Social Work & Christianity*, 42(3), 350-368.
- Visgaitis, R. L. (2011). Retroactive application of the Sex Offender Registration and Notification Act: A Modern encroachment on judicial power. *Columbia Journal of Law and Social Problems*, 45, 273.
- Wilson, R.J. & Prinzo, M. (2001) Circles of Support: A restorative justice initiative. (2001). *Journal of Psychology and Human Sexuality*, 13, 59-77.
- Wilson, R.J., Cortoni, F, & McWhinnie, A.J. (2009). Circles of Support & Accountability: A Canadian national replication of outcome findings. *Sexual Abuse: A Journal of Research & Treatment*, 21, 412-430.