

ARTICLE

Missing Links Between Crowds and Law

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Abstract

As *homo socius*, the man lives in a community. Because the law deals with relationships between people, it is necessary to know the fundamental characteristics of these relationships, which are established in a community between people. Because all major social changes involve crowds, legislation and regulation must know how to address collectives, how they are influenced, how collective emotions are formed, and how they can effectively deal with external behavior in and between groups. This Article presents basic elements of crowds that should be included in legal decisions, especially in general ones. The Article shows potential applications of crowd elements in the law presented as a systemic arrangement of complex adaptive systems that can be reflected in the determination of public opinion through crowds. When a legal system in the right meaning of the word “system” determines public opinion and implements actions through crowds, it could be more effective and efficient and thus also more legitimate.

Keywords: Law; collectives; social elements of crowds; systems; institutions; collective intelligence

A. Introduction

Families, gatherings, troops, masses, hordes, mobs, crowds, companies, assemblies, and other types of collectives are inevitable and influential elements of our lives. They influence what we think, feel, and do. From the mildest group of people united by fashion to a unified political assembly, to the most solid military formation, they are all united by some common elements, which people respect and obey. They are in the law usually known as norms and/or “patterns or traits taken to be typical in the behavior of a social group.”¹ A norm of behavior can emerge when at least two individuals are present, when a specific uniformity is established between them, and when their behavior reaches the abstract level that other people also respect when it exhibits the effective behavior. The effectiveness of the latter guarantees the validity of norms even when they were passed down from or even from dead people. Notwithstanding the fact that man is the Aristotelian *homo politicus*—also *homo socius* or *homo civilis*—who cannot live without the society, it is surprising how little the law pays attention to the characteristics of people in groups, because it is in and through them asserts itself. Even in the presence of technological changes, there are some universal principles of group behavior in which a person’s social norms are formed and attached to *social roles* as shared expectations on how a particular person is supposed to behave. When these expectations are highly valued, they become legal rules sooner or later. In the current times of mass migration, it is all the more important how people in groups act and live, how the law addresses them and is respected by them, and how the law can be successful given that its reliability is also conditioned by *group cohesiveness*, where members of a group stick together and trust each other. This does not mean

¹Norm, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/norm> (last visited Feb. 20, 2022).

that group cohesiveness can always be linked with legal effectiveness because it can lead, as it is presented below to discrimination. The latter against—usually—other groups and other forms of unethical behavior is usually equated with corruption. However, the law can prosper not only on equality, but also on *diversity*, which can lead to improved performance.²

Social collaboration or rivalry, as a sociological and cultural phenomenon, cannot be properly understood when a person is studied in his unique psychological individuality. The assumption is that the law could be more effective and efficient with a better knowledge of groups, as norms emerge when relations/activities among (non-)members are consolidated through reciprocity. Sovereignty *per se*, or the supreme authority in democratic systems, has the people as the collective, not as an individual. Although the latter has his human rights, they are proportionately respected given the public interest as the human right of the community. People use enacted norms because life is thus more predictable; they generate new norms through discussion or follow what others do to reduce uncertainty. Hence, another new norm is established. Therefore, groups can crucially—through peer group pressure, conformity, or popularity of a group—affect the effectiveness of the legal norm simply by respecting, following, obeying, or using it. Inversely, groups can negatively impact the effectiveness of a norm by not respecting or abusing it. Crowd behavior emerges from the transition of an individual to a group member when he sees himself through some categories, or “frames of reference.” These make him *equal* to all others in a group when their actions are alike, when they act and are *related* to each other, and when he is no longer an individual but a member of some higher collective identity, or “social identity.” For the public interest, it is *sine qua non* that it emerges out of *relations* between parts or persons and that it has properties—or understanding based on numerous views and combinations—that individual parts do not. The same also holds for groups: They have properties their members *per se* do not. A new substance or functional structure emerges not from their simple aggregation but from their arrangement of connections. As crowds are based on relations, legal science could hence advance also if the systems and complexity theory are considered because they are based on relations also. In legal parlance, the words “system” and “systemic” are used incorrectly when they do not address the system as such, its parts, and its way of doing things.

New types of social organization, such as trade unions, syndicalism, strikes, anarchism, socialism, and other political movements, lead the masses to challenge gaping social inequalities. It is no surprise that a distinct science on crowds emerged during the nineteenth century, dominated by a crisis of social order caused by industrialization that converted a previously largely agrarian populace into urban masses. If the masses were seen as a potential threat to the status quo, the crowd was the radicalized mass in action, like the 1871 Paris Commune.³ And hence it is no coincidence that Gustave Le Bon, as one of the most prominent authors who studied crowds, came from France, and it is no surprise that labor and administrative law emerged in the same era that needed the regulation of numerous people in a more and more crowded urban area. However, it is a surprise that labor and administrative law have been developed to a much higher level than crowd science, regardless of the fact that crowd or a group is the basic ingredient of general legal rules that regulate the general public. As every major social change involves crowds, the aim of this work is to broaden our knowledge of them because their behavioral elements are of utmost importance for legislation and regulation. Legislators should know how collectives are made, how they are influenced, and how their sentiments are formed to be able to effectively address the external legal behavior of individuals in groups, and *vice versa*. Practical dealings between groups, rather than the study of the different individuals, constitute the central problem of inter- and out-group relations, and the latter should be addressed also within legal frames. To endorse the connection between groups as the key denominator of the effectiveness and efficiency of legal systems and the law, the following section deals with

²SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS, AND SOCIETIES* (2008).

³STEVE REICHER, *Crowd Psychology in* *ENCYCLOPEDIA OF HUMAN BEHAVIOR* (Vilayanur Subramanian Ramachandran ed., 2012).

the basic elements of crowds. The third section addresses the inequality between groups, which is a major source of distinction between “us” and “they.” The fourth is based on the distinction mentioned on potential applications of the essentials of crowds for the law. The fifth presents the systemic arrangement of complex, adaptable systems to which the legal “system” could accommodate its actions. This can be done in the context of crowd-determined public opinion, which is the content of the sixth section, after which the conclusion follows in the seventh section.

B. Basic Elements of Crowds

I. Social Mimicry

Also known as the chameleon effect, social mimicry is the universal behavioral principle in which one individual unintentionally imitates the behaviors of another. People change their behavior with the change in their surroundings—such as using a different driving style at home or abroad. To be similar or adapted to what or who is around the person—the latter improves communication and rapport between interlocutors—and mimicry or getting along is the basis of social interaction.⁴ On the one hand, it improves the social influence of individuals who are louder, more vivid, and more picturesque, who stand out with their personal characteristics. On the other hand, it enables a mimicking person to empathize with the mimicked and better understand his mental state. “Getting along” enables communication and coordination of actions, and not only that: To ensure the most successful team, it is not so important to have people with the best achievements, but to allow *equal amounts of various communication* between them. Based on a six-week measurement of communication patterns of 2,500 people, these patterns were found to be the most important predictor of team success:

The data also reveal, at a higher level, that successful teams share several defining characteristics: 1. Everyone on the team talks and listens in roughly equal measure, keeping contributions short and sweet. 2. Members face each other and their conversations and gestures are energetic. 3. Members connect directly with each other, not just with the team leader. 4. Members conduct back-channel or side conversations within the team. 5. Members periodically break, explore outside the team, and bring information back The best way to build a great team is not to select individuals for their smarts or accomplishments but to learn how they communicate and to shape and guide the team so that it follows successful communication patterns.⁵

Social mimicry based on the open, equal, respectful, and argumentative communication of various people with various data, has a better probability of success than individuals acting alone. When people do not have information, they look at what other people are doing and trust the information of other people. If there is insufficient information about a particular situation or the general situation is extremely unstable, people tend to follow others and herd. If we cannot collect enough data to allow the neocortex to function, our limbic system takes over, and we act instinctively and emotionally.⁶ If information is not critically assessed or reflected upon, it can only be amplified due to the mimicry and emotional engagement of nearby people. This deficit comes close to information cascades that “arise when individuals rationally choose identical actions despite having different private information.”⁷ Herding is an even broader occurrence that occurs through

⁴MICHAEL BOND, *THE POWER OF OTHERS: PEER PRESSURE, GROUPTHINK, AND HOW THE PEOPLE AROUND US SHAPE EVERYTHING WE DO* (2014).

⁵Alex Sandy Pentland, *The New Science of Building Great Teams*, HARV. BUS. REV. 5 (2022) <https://hbr.org/2012/04/the-new-science-of-building-great-teams>.

⁶CONSTANTIN MALIK, *AHEAD OF CHANGE: HOW CROWD PSYCHOLOGY AND CYBERNETICS TRANSFORM THE WAY WE GOVERN* 68 (2010).

⁷Jonathan E. Alevy, Michael S. Haigh & John List, *Information Cascades: Evidence From an Experiment with Financial Market Professionals*, NAT’L BUREAU ECON. RSCH. (2022) https://www.nber.org/system/files/working_papers/w12767/w12767.pdf.

other—besides informational—means such as the remuneration, preferences for conformity, to please someone, or avoid sanctions.

II. Hive Switch

Humans can, under special conditions, transcend self-interest and become a part of something larger than themselves. Haidt calls this group-related adaptation the “hive switch” that can be explained only by between-group selection and not at the individual level. The hive switch is an adaptation to make groups more cohesive and more successful in competition with other groups.⁸ Durkheim proposed the individual-society dichotomy with the notion of *homo duplex*, where individuals have two contrasting natures: The first is biologically selfish, egocentric, violent, and passionate, and the second is universally rational, sociable, and altruistic.⁹ Because each binary contains not two but four combinations, it is more appropriate to speak of a *homo multiplex* than of a *homo duplex*.

III. Conformity to the Majority

One of Durkheim’s great findings was that external, collective sentiments exist due to our presence in a group, in which people collectively feel these sentiments—or collective conscience—and hence defend them also against individuals who would reject them. “Once people get into collective settings, they appear only too ready to conform to the majority in the group and to abandon their own personal beliefs and opinions . . . this turns out to be a remarkably robust and culturally near-universal phenomenon.”¹⁰ For Le Bon, due to the numerical number of a crowd, an individual obtains the sentiment of invisible power, which brings to that point suppressed instincts, and due to its anonymity, an individual’s responsibility disappears.¹¹ The loss of a sense of personal identity is called *submergence*, and the cessation of the application of its own personal interests and values is *contagion*. The third stage is a *suggestion* that enters the scene after some length of time which an individual passes in a crowd, resembles to the state of fascination in which the hypnotized individual follows a leader or his unconsciousness. The main elements of the individual forming part of a crowd are the immersion, contagion and suggestion, and/or the disappearance of personality, the predominance of the unconscious personality, and the tendency to transform the suggested ideas into acts in a form of automaton. In cases of uncertainty, people see what other people are doing and conform to the majority.

IV. Conformity to the Chief

Conformity can be present not only to the group majority but also to its leader. The most negative examples are communism or fascism, when an individual in a group does not matter anymore, where the collective is not the product of a state of homogeneity but of an organized despotism that eradicates the individual for the sake of the despotic authority of one chief. Milgram’s experiment on obedience to authority¹² caused by the trial of German war criminal Adolf Eichmann included electric shocks that volunteers inflicted on other people if they gave a wrong answer, in accordance with the experimenter’s instructions. The result was that 65 percent of the volunteers administered the experiment’s final massive 450-volt shock. The inspiring finding from Asch and Milgram’s research is that disagreement is powerful. When a few bold people speak out in contradiction of compliance, it also gives other people courage to dissent—no wonder powerful rulers are averse to political dissent. Unity of mind represents a state in which crowd members

⁸JONATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION* (2012).

⁹EMILE DURKHEIM, *WD HALLS & LEWIS COSER, THE DIVISION OF LABOUR IN SOCIETY* (1984).

¹⁰RUPERT BROWN & SAMUEL PEHRSON, *GROUP PROCESSES: DYNAMICS WITHIN AND BETWEEN GROUPS* 51 (2019).

¹¹GUSTAVE LE BON, *THE CROWD: A STUDY OF THE POPULAR MIND* (2001).

¹²STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW* (2009).

have an equal or similar opinion on a certain issue, where individuals lessen their individual opinions in the name of a collective one “mental contagion.” Such stances are hence probably based more on emotions than on reason.

V. Conversion of the Influence of the Majority or Minority

A minority can also influence the majority with its new ideas and information that leads the latter to reexamine its views—such as during the suffragette movement. Moscovici repeated Asch’s experiment, but in reverse. Instead of a single subject among cooperative members, he placed two cooperative members together with four genuine participants. The basis of minority influence is the consistency with which people hold their position: By close, stable, coherent fashion over time, and unanimously, a minority generates a social divergence whose resolution may involve some impact.¹³ When a minority can convince the majority to reflect on issues and reason about *pro et contra* arguments, then the minority has a good chance of influencing the majority.¹⁴

VI. Social Facilitation

Social facilitation addresses the question of whether people can make their jobs or assignments less difficult in the presence of other people. Researchers found that the presence of others improves the functioning of modest, learned tasks, while in more problematic tasks, people do worse.¹⁵ One cause for this is arousal increases in the presence of others,¹⁶ “even when the participants performed the additional task itself alone after they had experienced the perception of the presence of others and exercise.”¹⁷ The opposite of the social facilitation effect is *social loafing*: When a person is anonymous or less exposed to other people, he is not aroused but relaxed. It is the people’s propensity to relieve their tension when other people are not present *and* their personal functioning cannot be evaluated; here, these so-called free riders do worse on simple tasks for which they do not care but better on complex tasks that are important to them.¹⁸ The results of feeling anonymous on simple tasks could be more severe when such anonymous people do not reduce their effort but reduce their moral, social constraints on behavior, or de-individuation. The point is thus that people respond to the presence of other people.

VII. The Crowd is Better or Worse than the Individual Who Renounces His Personality

Based on the idea of submergence, some authors claim that anonymity lowers concern with social standards and causes antisocial behavior.¹⁹ This was especially evident in Zimbardo’s prison experiments.²⁰ Anonymity connected with a group’s ability to hide its members are two basic

¹³PERSPECTIVES ON MINORITY INFLUENCE (Serge Moscovici, Gabriel Mugny, & Eddy van Avermaet, eds., 1985).

¹⁴Christine M. Smith, R. Scott Tindale, & Bernard L. Dugoni, *Minority and Majority Influence in Freely Interacting Groups: Qualitative versus Quantitative Differences*, 35 BRIT. J. SOC. PSYCH. 137 (1996).

¹⁵ELLIOT ARONSON, TIMOTHY D. WILSON, SAMUEL R. SOMMERS, ELIZABETH PAGE-GOULD, & NEIL LEWIS JR., *SOCIAL PSYCHOLOGY* (10th ed. 2020).

¹⁶Robert B. Zajonc, *Social Facilitation*, 149 SCIENCE 269 (1965).

¹⁷Masatoshi Ukezono, Satoshi F. Nakashima, Ryunosuke Sudo, Akira Yamakazi, & Yuji Takano, *The Combination of Perception of Other Individuals and Exogenous Manipulation of Arousal Enhances Social Facilitation as an Aftereffect: Re-Examination of Zajonc’s Drive Theory*, 6 FRONTIERS PSYCH. 2 (2015).

¹⁸STEPHEN G. HARKINS, KIPLING D. WILLIAMS & JERRY M. BURGER, *THE OXFORD HANDBOOK OF SOCIAL INFLUENCE* (2017); DAVID MYERS, *EXPLORING SOCIAL PSYCHOLOGY* (2017). When a leader hence wants from the known subordinates to successfully act on a simple problem evaluation is a good approach. He should not appoint unsupervised subordinates in groups, as lowered performance on simple tasks will probably occur; however, he should do just that when subordinates are supposed to solve hard problems.

¹⁹Philip G. Zimbardo, *The Human Choice: Individuation, Reason, and Order versus Deindividuation, Impulse, and Chaos*, 17 NEBRASKA SYMP. ON MOTIVATION 237 (1969).

²⁰PHILIP G. ZIMBARDO, *THE LUCIFER EFFECT: UNDERSTANDING HOW GOOD PEOPLE TURN EVIL* (2008).

elements of deindividuation theory, which assumes that these elements can lead to negative actions of groups that become mobs. Although pioneering Le Bon's crowd psychology is generally understood as destructive, Zimbardo specifically mentions that:

[T]he crowd is always intellectually inferior to the isolated individual, but that, from the point of view of feelings and the acts these feelings provoke, the crowd can, depending on the circumstances, be better or worse than the individual. All depend on the nature of the suggestion to which the crowd is exposed.²¹

A crowd can be seen as a tool, the actions of which depend on the nature of the suggestion, situation, or context; it can be good or bad. The results of 60 independent studies showed that groups and individuals adhere more to situation-specific norms that could lead to negative or positive results.²² "Deindividuation does not always lead to aggressive or antisocial behavior; it depends on what the group's norm is," that is, how much it differentiates from the social one.²³ In conditions where a person does not renounce his personality, when he is self-aware—such as in front of a mirror, or a camera, when other people know his identity—his attention focuses on himself, despite the presence of a group. It makes people more sensitive to their own attitudes and dispositions. Therefore, selfawareness is the opposite of deindividuation.²⁴

VIII. Positive Social Identity

Over recent decades, the social identity model (SIM) of crowd behavior has become the main approach to crowd psychology. Contrary to Le Bon's loss of personality for the sake of the collective one, SIM claims that the individual can sometimes feel his personal identity and act as an individual, "I," and sometimes as a social identity, as part of a larger whole, "we," such as fans of a particular sports club, environmental activists, or citizens of a specific country. The social identity of Tajfel and Turner²⁵ is based on three elements. The first element is that people prefer to view themselves positively rather than negatively. The second element is, because people's personal concepts are often related to groups, they will also seek a positive social identity. The final element is the evaluation of group memberships is comparatively better or worse than other groups. Given a general fondness for a positive identity, people are driven to seek ways for their ingroups to be different and better than outgroups; they search for "positive distinctiveness."²⁶ When your social identity is not positive—in the sense of Plato's mix of *logos* (logic, reason), *tymos* (emotion, spirit), and *eros* (appetitive, desire)²⁷—they will take steps to remedy the situation. They can abandon your group for another, create new criteria for intergroup comparison that would show the group in a more cognitively attractive light, or they can remedy their action to be more effective than before.

SIM draws an explicit distinction between physical crowds based on copresence and psychological crowds based on social identification Just as identity is not lost in crowds but refocused from the personal to the social level, so control is not lost but shifted from personal norms and values to those that define the relevant social category.²⁸

²¹Le Bon, *supra* note 11, at 9.

²²Tom Postmes & Russell Spears, *Deindividuation and Antinormative Behavior: A Meta-Analysis*, 123 PSYCH. BULL. 238 (1998).

²³Aronson et al., *supra* note 15, at 297.

²⁴Myers, *supra* note 18.

²⁵Henri Tajfel & John Turner, *An Integrative Theory of Intergroup Conflict*, in THE SOC. PSYCH. INTERGROUP RELS. (W.G. Austin & S. Worchel, eds., 1979).

²⁶*Id.* at 44.

²⁷PLATO, THE REPUBLIC (2000).

²⁸Reicher, *supra* note 3, at 634.

Those may be managers in companies, officials in state administration, or politicians who can influence social identity—that is, how a person sees himself as a member of a specific group. They can even establish social identity through a *command*, as “a command addressed to a large number of people has a very special character. It is intended to make a crowd, and, as far as it succeeds in this, it does not arouse fear.”²⁹ In the next stage, how a crowd behaves, and how its social identity is taken care of depends on the context of a group, that is, on its goals, values, *modus operandi*, and how other persons or groups behave or do—interpersonal and intergroup behavior—and how an individual perceives himself as a crowd member given various systems by which the relevant state of affairs is determined. By identifying with the group, whatever happens—or is perceived as such—to the group happens to the individual; for the latter, this is a call for action despite the fact that nothing has been done to him directly. Thus, through new social identities they offer to individuals, groups also offer the basis for social action. It matters how the context is established.

IX. Bad Collective Sentiments

Also known as *groupthink*,³⁰ these sentiments are an excessive form of consensus seeking among members of small cohesive groups regardless of whether group members believe it to be valid, correct, or optimal, or not. To preserve this cohesive atmosphere, group members suppress personal reservations, mute dissents, and follow the group’s leader proposals. Janis recognized some underlying conditions that cause groupthink, such as the cohesion of a decision-making group, the formal rules that govern its decision-making process, the character of its leadership, the social homogeneity of participants, and the situational context they face, which lead towards a distorted view of reality, excessive optimism, and with this the neglect of other relevant matters. Even in the 1920s, Pigou linked cooperative social dynamics to economic booms and depressions: People usually correct their own mistakes when they act alone but renounce their responsibility to do so in cases with strong social understanding, irrespective of the flagrant conceptual error, or the error of optimism/pessimism.³¹ Psychological interdependence is seen when a person acts not as an ethical individual but as a part of the larger, moral society, where strictly rational or evidence-based decision-making is sometimes put on hold. According to Lewin:

[I]t is not similarity or dissimilarity of individuals that constitutes a group, but rather interdependence of fate . . . a person who has learned to see how much his own fate depends upon the fate of his entire group will be ready and even eager to take over a fair share of responsibility for its welfare.³²

Under the right conditions, “simply being arbitrarily categorized into one group rather than another does reliably generate forms of group behavior.”³³ Alternatively, “the mere act of allocating people to arbitrary social categories is sufficient to elicit biased judgments and discriminatory behavior.”³⁴ Categorization could be the origin of groups: When people classify, that is, recognize themselves as a group through some criteria—such as fate, task, area, or some other circumstance—they begin to act as a specific group, distant from the other ones when they categorize themselves as citizens, they act as individuals, or they take their share of responsibility for the country’s welfare. Categorization can lead to positive or negative discrimination; hence, it matters how it is established.

²⁹ELIAS CANETTI, *CROWDS AND POWER* 311 (Carol Stewart trans., 1981).

³⁰IRVING LESTER JANIS, *VICTIMS OF GROUPTHINK: A PSYCHOLOGICAL STUDY OF FOREIGN-POLICY DECISIONS AND FIASCOES* (1972).

³¹Completely apart from the financial ties by which different businessmen are bound together, there is a certain measure of *psychological interdependence*. A change of tone in one part of the business world diffuses itself, in a quite unreasoning manner, over other and wholly disconnected parts. AC PIGOU, *THE ECONOMICS OF WELFARE* 840 (1920).

³²KURT LEWIN, *RESOLVING SOCIAL CONFLICTS: SELECTED PAPERS ON GROUP DYNAMICS* [1935-1946] 165 (1948).

³³Brown & Pehrson, *supra* note 10, at 17.

³⁴*Id.* at 24.

X. Patterned Social Mood

Prechter³⁵ introduced the notion of *socionomics* and the emerging science of social prediction based on *The Wave Principle*, published in 1938.³⁶ The principle is based on the price movements of financial markets, shown as *iterating patterns*, motive; directional counter-directional; 5 - 3 down waves; and corrective 3 - 1 directional-counter-directional waves. There is a lot more to add to the wave principle, but due to space constraints, let us continue with the interesting fact: For Prechter, the basis of the wave principle is an unconscious endogenous human herding instinct, for example, unconscious crowd behavior, which causes people to act as a collective and creates, in the aggregate, the wave principle as the pattern of human social behavior. His idea is based on MacLean's triune brain model.³⁷ People have three related minds, primal, emotional, and rational, demonstrated by the primitive brain (the basal ganglia; impulses essential to survival), the limbic system (emotions), and the neocortex (reason):

As a primitive tool of survival, emotional impulses from the limbic system impel a desire among individuals to seek signals from others in matters of knowledge and behavior, therefore to align their feelings and convictions with those of the group. The desire to belong to and be accepted by the group is particularly powerful in intensely emotional social settings, when it can overwhelm higher brain functions. The less that reality intrudes on the thinking of a group, the stronger is its collective conformity. Dependence most easily substitutes for rigorous reasoning when knowledge is lacking or logic irrelevant.³⁸

The primal, emotional, and rational behavior emerge in relevant conditions: If crowd phenomena are all the more relevant at the presence of uncertainty or insecurity, when people have no understanding or information about how they should behave, emotions prevail over reason, and decide around 62% towards positive versus 38% negative or look what other people in the majority do. The neocortex needs data or evidence to make reasonable decisions. Based on interviews with more than 600,000 servicemen conducted by the war department research branch during and immediately after WWII, Lazarsfeld concluded that people's findings are obvious to them—because they ex post find reasons—regardless of whether the findings were correct or had been intentionally wrong. Therefore, if an answer and its opposite are equally obvious, then “something is wrong with the entire argument of obviousness.”³⁹ Thus, when opponents have equal/similar (contra) arguments, a final judgment is probably wrong—in statistics, contrarian findings cancel each other out. It is better to make decisions differently: By cooperation, not through majority votes, or even better, they could be made *independently*. People's opinions may be submitted to other people after independent reasoning on a decision, or better still, to statistical evaluation through simpler aggregation, median, or more complex algorithms. When this feedback is absent, responses from the earlier evolutionary phases of human development begin to emerge, and the limbic system takes control.

XI. Relation Between Reason and Emotion

Haidt presents the metaphor of a rider on an elephant: The rider is our conscious reasoning of which we are fully aware, while the elephant is the other 99 percent of mental processes that occur outside of our awareness and that really administer most of our behavior.⁴⁰ Because the wave

³⁵ROBERT ROUGELOT PRECHTER, *THE WAVE PRINCIPLE OF HUMAN SOCIAL BEHAVIOR AND THE NEW SCIENCE OF SOCIONOMICS* (1999).

³⁶RALPH ELLIOTT, *THE WAVE PRINCIPLE* (2019).

³⁷PAUL MACLEAN, *THE TRIUNE BRAIN IN EVOLUTION: ROLE IN PALEOCEREBRAL FUNCTIONS* (1990).

³⁸Prechter, *supra* note 35, at 152.

³⁹Paul F. Lazarsfeld, *The American Soldier-An Expository Review*, 13 *THE PUB. OP. Q.* 377, 380 (1949).

⁴⁰Haidt, *supra* note 8; JONATHAN HAIDT, *THE HAPPINESS HYPOTHESIS: PUTTING ANCIENT WISDOM TO THE TEST OF MODERN SCIENCE* (2015).

iterates, with its pattern that is always similar in form, it is wrong to predict future events based on current successes or failures and/or the sentiments of such a collective. The latter could be very positive or negative and ascending or descending, but they “predict,” or show, only the present mood, not the future that will follow the pattern of the wave principle: “Events that are considered important to the future are not causes of change; they are the results of social mood changes that have already occurred. . . . [W]hile the stock market is like a thermometer with respect to the public mood, it is like a barometer with respect to public action.”⁴¹ Influence is therefore based on reverse causality; waves—decisions or actions—originate in social mood and not the other way around. Notwithstanding the fact that social mood also changes as a result of actions, in reality, it is a circular causality in action, where one aspect is used as an input to another, a result of which is again used as an input to the previous one, and so on. Because humans do most of our activities intuitively, unconsciously, or learnedly, without constant reasoning, it is more likely that emotions have a greater influence on the intellect than the contrary, and hence also social mood over actions than the other way around. It is therefore important to have some kind of system that could systematically record public mood, values, and public opinion, as they serve as principles through which particular actions are reflected or mentally sifted.

C. Inequality Among Groups

Muzafer Sherif was the first to scientifically confirm that intergroup conflict occurs when two competitive groups strive for limited resources in the Robbers Cave Experiment.⁴² He divided two dozen 12-year-old boys in a summer competition with each other at the Robbers Cave State Park in Oklahoma to study the effect on their behavior. Within just four days, they had developed an intergroup rivalry. Discrimination had arisen simply by a dividing line between two groups and had eased by forcing the groups to work together to reach common goals. “Functional relations between groups and their consequences, rather than the study of the deviate individual, constitute the central problem of intergroup relations.”⁴³ If interpersonal behavior is usually based on similarity or equality between members, then intergroup behavior is not. A comparison between groups, or social categorization, produces a subjective division of social groups, where “our” group is more similar to others. There is an assumption of similarity within and dissimilarity outside that leads to stereotypes.⁴⁴ Division into categories can produce “a tendency to exaggerate the difference . . . between items which fall into distinct classes, and to minimize these differences within each of the classes.”⁴⁵ Acting and deciding on the basis of predetermined criteria is one of the fundamental elements of the principle of equality or equal treatment in law. Such a feature can break down when treating a group in relation to another group, where categorization and/or the mere act of categorizing can lead to bias, ingroup favoring, and outgroup disfavoring responses. But it is not always so—“exactly the same categorical self-definition process can, under appropriate conditions, reduce hostility . . . produce cooperation . . . a sense of justice and fairness . . . and the potential for extreme heroism and individual self-sacrifice.”⁴⁶ Allport argues that contacts with individual outgroup members do not always lead to constructive attitude change and suggested four conditions for such a change: Equal status, common goals, intergroup cooperation, and support from legal authorities or customs.⁴⁷

It is on the unbiased decision-makers that categorization is understood in the context of facts. However, what is the fact and how it can be recognized can be based on values, principles, and

⁴¹Prechter, *supra* note 35, at 259.

⁴²MUZAFER SHERIF, *THE ROBBERS CAVE EXPERIMENT: INTERGROUP CONFLICT AND COOPERATION* (1988).

⁴³*Id.* at 200.

⁴⁴Henri Tajfel & A.L. Wilkes, *Classification and Quantitative Judgement*, 54 *BRIT. J. PSYCH.* 101 (1963).

⁴⁵Henri Tajfel, *Cognitive Aspects of Prejudice*, 25 *J. SOC. ISSUES* 79, 83 (1969).

⁴⁶Penelope Oakes, *The Root of All Evil in Intergroup Relations? Unearthing the Categorization Process*, in *BLACKWELL HANDBOOK SOC. PSYCH.: INTERGROUP PROCESSES* at 15-16 (Rupert Brown & Sam Gaertner, eds., 2008).

⁴⁷GORDON W. ALLPORT, *THE NATURE OF PREJUDICE: 25TH ANNIVERSARY EDITION* (1979).

world view, hypothesis, again subjective. Facts are recognized as such through our categorization lenses. Rothbart thinks similarly when he claims that to modify the stereotypes of outgroup members, “a modification of the relations among the categories themselves [is needed], by augmenting, combining, and redefining category boundaries in a way that yields a less extreme and more heterogeneous view of the outgroup.”⁴⁸ It is essential for groups to have a common denominator, be it a common goal, interest, way of working, cooperation, communication, or common friends—these should be superordinate to all groups. One cannot understand either crowds or their actions if an evaluator’s social context and the crowd are not considered. Although outstanding individuals also count, “crowds play a critical role in forming the identities of participants and creating new unexpected identities in the crucible of collective interaction,”⁴⁹ which can also replace an outstanding leader when results are not delivered satisfactorily.

I. Group Decision-making

Group decisions taken by the referendum, the legislative and executive acts enacted by the Parliament and the Government, the Court decisions taken by juries or the members of the Supreme Court, and the Constitutional Court confirmed that when the most important decisions are at stake, the law also places more emphasis on groups than on individuals. Groups not only exhibit groupthink, as previously discussed, but they can also correct individual mistakes; many heads can be better than one. This can be seen in a simple tactic, when group leaders shut up and let other people speak, to more sophisticated tournaments, prediction markets, and public comment processes.⁵⁰ With the right conditions, collective/group intelligence can emerge not only from cooperation and common group advantages but also from the competition of many individuals’ opinions; these conditions are the probability that *people are not laymen*, that is, they know something on a deciding matter or are more likely than not to be right—although they should not be experts—which is the essence of Condorcet Jury theorem.⁵¹ This predisposes people to *share* their perhaps peculiar information and be *attentive* to the information of other members, discuss the positive and negative attributes of alternatives, and systematically process information.⁵² Therefore, there must be mutual *independence* between people; their opinions should not be based on others’ opinions but should be the result of an individual rational consideration as groups usually tend to focus only on the information, they already collectively have. Then, through mutual amplification, they turn it to the extreme—see the following section—as they become more confident. “When people find that their views are corroborated by others, their views are more extreme and risk taking (the so-called enclave deliberation).”⁵³ There should also be *diverse* people present; they should not enforce their opinions to on others, because a final decision is made in statistical groups made as an extraction from different opinions due to their mutual cancellation. Each individual prediction contains bits of truth mixed with various errors; the bits of truth add up to a larger truth, such as standing on the shoulders of giants, whereas the errors cancel each other through negative correlation. The more diverse the opinions are represented the more complementary bits of truth can be combined.⁵⁴

⁴⁸Myron Rothbart, *Category Dynamics and the Modification of Outgroup Stereotypes*, in BLACKWELL HANDBOOK SOC. PSYCH.: INTERGROUP PROCESSES at 60 (Rupert Brown & Sam Gaertner, eds., 2008).

⁴⁹Reicher, *supra* note 3, at 637.

⁵⁰CASS R. SUNSTEIN & REID HASTIE, WISER: GETTING BEYOND GROUPTHINK TO MAKE GROUPS SMARTER (2015).

⁵¹JEAN-ANTOINE-NICOLAS DE CARITAT CONDORCET, *ESQUISSE D’UN TABLEAU HISTORIQUE DES PROGRÈS DE L’ESPRIT HUMAIN: SUIVI DE FRAGMENT SUR L’ATLANTIDE* (Alain Pons ed., 1988).

⁵²Poppy Laretta McLeod, *Distributed People and Distributed Information: Vigilant Decision-Making in Virtual Teams*, 44 SMALL GRP. RSCH. 627 (2013).

⁵³CASS R. SUNSTEIN, HOW CHANGE HAPPENS (2019).

⁵⁴JAMES SUROWIECKI, THE WISDOM OF CROWDS (2005); Page, *supra* note 2; SCOTT E. PAGE, DIVERSITY AND COMPLEXITY (2010); P.J. Lamberson & Scott E. Page, *Optimal Forecasting Groups*, 58 MGMT. SCI. 805 (2012); COLLECTIVE WISDOM: PRINCIPLES AND MECHANISMS (Helene Landemore & Jon Elster eds., 2012).

D. Applications for the Law

Lack of information leads to imitation of the actions of other people or social mimicry. Legal decisions should hence give clear reasons on which decisions are taken not only to convince other parties in a procedure, but to prevent them from imitating other people instead of considering the law. When the law is understandable, people can more easily respect it. In the absence of this, a majority prevails regardless of the correctness of its decision. Social mimicry can be considered in the law if used in public participation. A transfer of self-interest on the collective level (hive switch) has consequences not only on how groups act, but how organizations are formed: Human interaction and cooperation are based on *relational* and *obligatory* rules of the game—mores, customs, formal law—that cannot be present in an individual *per se*. The law should not ignore how “things are done here.” In sociology, this is known as social facts and/or beliefs, cultural patterns, and social/political structures that exhibit social control and exceed the individual. This happens also within social organizations and even in the presence of other people, such as “in a public gathering the great waves of enthusiasm, indignation, and pity that are produced [which] have their seat in no one individual consciousness.”⁵⁵ When a person looks another person in the eye, it is more likely to believe him than to a written paragraph of law. As rules are applied in practice, they should be based and formed on collective *relations*. When people are more aligned with a group and/or feel a part of it, they can respect or disregard the law to a higher level. And to ask a follow-up question: Do you remember a case where an experimental psychologist gave an opinion on a legislative proposal that addressed a larger group of people? It is important that collective relations are considered in the law.

Informational cascades can influence how we vote. This can happen when elections, election news, public opinion, polls, decisions, or individual opinions are held sequentially. “In the absence of new information, the quality of collective decision-making is bound to diminish as the group grows.”⁵⁶ The sheer number of like-minded people in the same information can create an increasingly strong but false sense of correctness of opinion, or an information bubble. In law, this applies especially to collegial decision-making bodies, including parliament, government, and judicial chambers. Decisions could be more objective if each member making a decision wrote down his or her decision in advance and then disclosed it to everyone not sooner than at the end of the meeting. Only then would a new round of more informed decision-making take place. The theory of deindividuation gives the reason for the aggressiveness when allowed to hide a personal identity. Therefore, many police forces require police officers to wear their identification number or name on their uniform, and on. On the contrary, public gatherings could be recorded by the police to prevent anonymous crimes. The same reason of anonymity applies to decision-making in individual administrative proceedings. It is necessary to indicate who led and decided a proceeding, and the same could apply to statutes and regulations: The information on who authored or participated in a draft text could bring a critical reflection about text on a higher level. Given the results of social facilitation and social loafing, general legislation and regulation, which addresses unidentified people who should do simple or hard tasks, should be prepared in a way that could enhance cooperation between known persons at simple tasks. For hard problems, identifiable experts, such as scholars or researchers, should have conditions for individual and autonomous actions. Because the free-rider problem arises when simple tasks are done by anonymous people, there should be legal possibilities of detection in conjunction with some financial, tax, or other incentives for anonymous people to motivate them to solve hard, challenging problems.

I. More Extreme Decisions

In collective actions, shared values, morals, and laws have emerged because they have proven to be effective means to meet individual and collective needs. As these tools have corrective

⁵⁵EMILE DURKHEIM, THE RULES OF SOCIOLOGICAL METHOD 52-53 (W.D. Halls trans., 1982).

⁵⁶Bond, *supra* note 4.

mechanisms, in the majority of cases, an individual goes with the flow, even when he disagrees or simply does not know for the reason of some rule which evolved through a longer time and proved to be effective in dispersed individual practices, while the other major part of collective unquestionably believes in collective sentiments—which could also be wrong or even negative.⁵⁷ The hive switch can also cause a negative adaptation of the cohesive groups. Along Festinger's cognitive dissonance—according to which people relieve mental stress by making negative things more attractive—actions or decisions can be amplified simply because they are followed by other people, simply when a feeling is enhanced “because so many people are doing the same as I or we.” It is not so rare to detect a move in a more extreme position when the group wants to reach a collective decision: “When people find themselves in groups of like-minded types, they are especially likely to move to extremes.”⁵⁸ To Sunstein, this is a general fact of social life: “Most of the time, groups of people end up thinking and doing things that group members would never think or do on their own.”⁵⁹ People are also affected by how a problem is framed nudge.⁶⁰ Or how attention is focused by others—the gorilla experiment⁶¹. Pressures toward consensus or what the majority thinks will increase the probability of failure or side effects due to less objective cues or data that could guide a process of decision-making. Groups often concentrate mainly on the information they have in common and overlook the hidden nonshared information, which is not revealed in a discussion.⁶² The more homogeneous or close a group is or a group in which all information is not revealed by its members, the greater the chance of errors if there is no built-in possibility to obtain new, different data or perspectives. This probability increases proportionally with the rate of change in the environment. A built-in legal possibility can be a system of deliberation that enables group discussion and extracts the knowledge of dispersed and diverse members. This is often enabled in legislation, but it is minimized in practice due to human character that defends its own position regardless of facts. IT or other technology can be built to diminish such characteristic human flaws.

A person's cognitive *relationships with* other people and *vice versa* cause a mutual recognition of other people as holders of rights and obligations, in the individual and collective sense—when a person claims what he is entitled to, he also refers to justice, honor, and others, as common social sentiments. These relations are not only the basic elements of law, but also open the question of applied reason, especially in general legal decisions, in legislation or regulation where other elements are also present—the multiple interests and psychological characters of leaders and other actors, power, political considerations, bureaucracy, and other institutional barriers, for example, all elements at the macro, mezzo and micro level—which are at the end camouflaged as legal reasons. The cognitive and personal elements at the level of “I” are different from those at the level of “we.” Even in the same person, different identities are equally judged by judicial or administrative institutions. The legal systems have not developed this distinction in the matters of liability, sanctions, or rewards—social

⁵⁷“Constraints on the practices of the small group . . . are hated. For . . . the individual following them, even though he depends on them for life, does not and usually cannot understand how they function or how they benefit him. He knows so many objects that seem desirable but for which he is not permitted to grasp, and he cannot see how other beneficial features of his environment depend on the discipline to which he is forced to submit—a discipline forbidding him to reach out for these same appealing objects.” FRIEDRICH AUGUST HAYEK, *THE FATAL CONCEIT: THE ERRORS OF SOCIALISM* 14 (1988).

⁵⁸CASS R. SUNSTEIN, *GOING TO EXTREMES: HOW LIKE MINDS UNITE AND DIVIDE* 2 (2009).

⁵⁹*Id.*

⁶⁰Nudges are initiatives that maintain freedom of choice while also steering, by choice architects, people's decisions in the right direction, from setting a printer's default options to providing organs for transplant operations. CASS R. SUNSTEIN & LUCIA A. REISCH, *TRUSTING NUDGES* (2019); RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE* (2008).

⁶¹Errors of perception results from a lack of attention to an unexpected object, so it goes by the scientific name of “inattention blindness,” as we experience far less of our visual world than we think we do. CHRISTOPHER CHABRIS & DANIEL SIMONS, *THE INVISIBLE GORILLA: AND OTHER WAYS OUR INTUITIONS DECEIVE US* (2010).

⁶²Garold Stasser, *Information Salience and the Discovery of Hidden Profiles by Decision-Making Groups: A “Thought Experiment”*, 52 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 156 (1992); Garold Stasser & William Titus, *Pooling of Unshared Information in Group Decision Making: Biased Information Sampling during Discussion*, 48 *J. PERSONALITY & SOC. PSYCH.* 1476 (1985).

incentives—and therefore treat the person equally, whether an act was committed when a person acts as part of a group—even the notion of “group member” still holds this individualistic position, although a person in a group becomes its part—or as an individual.⁶³ The results of numerous psychological experiments should therefore be applied more in general and specific legal decision-making.

A distinction could also be drawn between the dynamics of small and large groups, where internal cohesion is made differently. When small collectives compete, the more interrelated cooperative ones usually win over individuals and less efficient collectives. The first win due to their arrangement, or institution (*institutionem*). A similar notion of a corporation reflects the arrangement (body parts—from Latin *corpus*) of persons united in a body (of an organization) for some purpose. Institutions win over individuals due to their efficient management of interrelations due to their systemic arrangement of parts that form a unified whole. People can act as individuals or small-group members, but also as part of a larger, more important whole. Human rights are collective social sentiments, because these are plural rights that all people have. Because collective rules prevail over individual rules, it is usually more difficult to change them. However, it can be done: If the collective is equated with the institution, the country could effectively address various groups through official institutions, accommodated to specific groups. Countries could give additional emphasis on institutions, on their arrangement, and their presence in the wider, nonstop changing environment of people and things.

Official changes are usually the subject of resistance and negative consequences for individuals who have benefits in the present arrangements—which were once at the same stage as new innovations—even though a situation has changed or changes in the meantime. That is why morality, but also the law and other values *bind but also blind; the large groups also* have their own groupthink, as the small ones do, but with an important distinction vis-à-vis the small groups: The former often do not know why something is the way it is, while in the latter, reasons are known to a larger extent. In both cases, psychological cohesiveness is present: In the first, it is known as public mood or public opinion; in the second, it is internal cohesiveness. As a rule of thumb, it could be said that uniformity with group norms is more present in the second case, as the larger countries or companies usually exist for a longer time than the small ones, and dissenting, corrective mechanisms are welcomed to infuse and enhance higher flow of data, information, and diversity of available courses of action, objectives, their alternatives, and ways of achieving them—specifically addressed in the next section.

Drafts of legislation and regulation are presented equally to all decision-makers: That is, with the same preparatory text. As mentioned above, in the same shared information condition, it is of utmost importance that groups do not disregard other important information—the unique information condition—because decision quality will otherwise suffer. Decision-making systems should therefore include other stochastic indicators that “force” decision-makers to consider other perspectives that could also be relevant for a final decision. If someone wants his idea to prevail, he should share his initial preferences at the beginning of the discussion. Still, if members want decision quality, their preferences should be prepared individually and presented at the same time as others.

E. Systemic Arrangement of Complex, But Dynamic, Adaptable Systems

The gospel of John says: “In the beginning was the Word,” that is, *information* and/or the *order* in which letters were arranged. “Life is not simply matter and energy—it is informed matter and energy.”⁶⁴ Both the *organization* of things in the right order that can produce desired results, and the system that sorts and organizes its parts in the right parallel and sequential manner are important. All experiments in social psychology have been performed under some predisposed scientific conditions, which are, *per se*, also systemic. Regardless of their results, the first were provided due to a special arrangement of parts that worked as a *system*. The latter is usually

⁶³MIRKO PEČARIČ, *The Concept of Holistic Group Liability*, 8 COGENT SOC. SCIS. (2022).

⁶⁴FREDMUND MALIK, *MANAGEMENT: THE ESSENCE OF THE CRAFT* 47 (2010).

mentioned numerously in all kinds of public debate but is not really used. They should become our way of thinking as Daniel Kahneman, in his well-known book, *Thinking, Fast and Slow*, differentiates between two such ways: Fast thinking, rooted in the intuitive, rapid, automatic, and emotional operations, and slow thinking, rooted in the controlled, calculating, rational, and deliberative operations. For the first way of thinking, he uses the notion of System 1, and for the second, System 2. Both systems are always at work because a “conflict between an automatic reaction and an intention to control it is common in our lives.”⁶⁵ This connection between these systems again forms a system, as the systems are formed like Russian dolls. Systems are needed the most when collectives seem to be very well, to maintain such conditions, as well to prevent disasters—many crises emerged when the systems, more likely just “happy talks,” when group participants claim that everything is well and will probably be even better—were at their peak, but then suddenly collapsed without reason. The latter was de facto present, but due to the unsuccessful system, it was just not known.

Zimbardo noticed that “the bigger power to create evil out of good [is] that of the system, the complex of powerful forces that create the situation. A large body of evidence in social psychology supports the concept that situational power triumphs over individual power in given contexts.”⁶⁶ Despite the great power of systems that can make us heroes or villains, “our legal systems demand that individuals and not situations or systems be tried for wrongdoing.”⁶⁷ Power and incapacity reside in systems, in institutions that create “situations” in which people live. Therefore, a focus should be on a fuller appreciation of the ways in which situational conditions are created and shaped by higher-order factors, or systems of power. “Systems, not just dispositions and situations, must be taken into account in order to understand complex behavior patterns.”⁶⁸ Due to the existence of heroes and cowards at the individual level, as well as the sane and mad crowds, the common denominator may be the system that is a specific structure or an arrangement—or an absence of it—which predefines a resulting behavior. The same holds for in-group feelings and out-group ones: “Research supports the view that the way people think and feel about other groups (stereotypes and intergroup emotions) are systematically related to the structural relationship between groups.”⁶⁹ Therefore, an official or officials who know what a system could do, but do not react, are truly responsible for negative actions. Those truly responsible for the legal system are the ones who take negative action. As politicians, they are the subject of merely political responsibility and not legal responsibility. Why should there be different for the actions of people in groups who do not even know about the consequences of the systemic arrangement? Are they just pawns on a chessboard, who nevertheless are individually subjected for their actions made in groups?

Brown and Pehrson arranged group processes around three interlinked ideas.⁷⁰ *Social identity*—groups provide people with a sense of who they are—emerges from particular social contexts. Groups are vehicles of social action by means of which people often seek to achieve goals or changes in their environments. The gist is to know how social context is framed: It affects how groups perceive themselves, that is, social identity, and affects how they will act. The problem in a rapidly changing environment is its inability to quickly adapt or react to changes while still being as objectively justified as possible. It is difficult to change the established rules of operation overnight, even if it is sometimes necessary. The hive switch is based on a well-designed system that patches together parts in a way that produces results. It is the arrangement of a system present

⁶⁵DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* 26 (2013).

⁶⁶Zimbardo, *supra* note 20, at x.

⁶⁷*Id.* at xiii.

⁶⁸*Id.* at 9–10.

⁶⁹Brown & Pehrson, *supra* note 10, at 219.

⁷⁰*Id.*

in the complex environment that should be the focus of all various decision-makers; in the case of legislators, this arrangement is a country's legal system that should connect people within and outside institutions in a way that exhibits the highest levels of the rule of law and other shared values. Legislation is valid for all people in a specific country; as legality is collective sentiment, efficient legislation is conditioned with the knowledge of the behavior of all people.

Hayek's answer to the question of the best way to use the knowledge initially dispersed among all people was its decentralized competition on the market through the price system. Although in 1945 he claimed that the market is only one of those formations which man has learned to use, in 1988 he claimed that spontaneous human order could be created only by a competitive market through which also "our moral traditions, like many other aspects of our culture, developed concurrently with our reason, not as its product. Surprising and paradoxical as it may seem to some to say this, these moral traditions outstrip the capacities of reason."⁷¹ Such inference is particularly interesting when compared with advanced algorithms, where a process is also known, but not its result. Regardless of time, Hayek has a point with his emphasis on the importance of adaptability of rules; there are so many combinations and their patterns that people cannot even see at first. To disclose these patterns—or just to more objectively see what people are really doing—social network analysis emerged that "comprises a broad approach to sociological analysis and a set of methodological techniques that aim to describe and explore the patterns apparent in the social relationships that individuals and groups form with each other."⁷² A *de facto* examination of the structural properties of social relationships can give an answer to what people actually do, not only what they say. This could be more a relevant ground for social action and legislation, as it is more important what someone does, not says, in practice.

F. Determining Public Opinion through Crowds

There is an interesting dilemma between the friendly crowds and the most objective decisions: If you want the former, contact between them is needed, but if you want the latter, there should be no contact between them. The first comes from Allport's findings and/or his contact hypothesis:⁷³ When members of antagonistic groups interact with each other under conditions that endorse equal group status, common goals, intergroup cooperation, support of authorities, law, or custom, there is a high probability that antagonism will cease. Prejudice as "an antipathy based on a faulty and inflexible generalization . . . directed toward a group as a whole, or toward an individual because he is a member of that group"⁷⁴ can be reduced when people are in mutual contact,⁷⁵ while other Allport conditions are only facilitators. Prejudice is/can be tightly connected with legal adjudication; it came "from medieval Latin *prejudicium* meaning 'injustice', from Latin *praeiudicium* 'prior judgment, judicial examination before trial';"⁷⁶ in Allport's meaning it can also be connected with legislation when the latter is based on faulty generalization, or when a statute makes this mistake with a regulated group.

The most objective and nonprejudicial decisions paradoxically come from studies that have the apparent causes of prejudice built in them in the meaning of various prior judgments that are later objectively/statistically processed. These studies show that groups perform better when they are

⁷¹Hayek, *supra* note 57, at 10.

⁷²JOHN SCOTT, SOCIAL NETWORK ANALYSIS 2 (2000).

⁷³Allport, *supra* note 47.

⁷⁴*Id.* at 9.

⁷⁵Thomas Pettigrew & Linda Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCH. 751 (2006).

⁷⁶*Prejudice*, ETYMONLINE.COM, https://www.etymonline.com/search?q=prejudice&ref=searchbar_searchhint (last visited Mar. 6, 2022).

cognitively diverse,⁷⁷ when members exhibit social sensitivity when the equality in the distribution of conversational turn-taking is enabled, and when there is the proportion of females in the group.⁷⁸ The last two conditions are, in some studies, presented as independence among group members. Diversity and variety—which can also cause outgroup prejudice—provide various collection of data. This can avoid the problems of cognition, coordination, and cooperation in the presence of diversity, independence, and democratic decentralization. One should not overlook the long-known but still partially overlooked the fact that groups of individuals give statistically more reliable predictions than individual experts can provide. The idea is based on a scientifically validated idea of crowd-sourcing that is becoming more feasible due to the potential information communication technology.⁷⁹ Crowdsourcing can be related to Hayek’s *knowledge problem* or “a problem of the utilization of knowledge not given to anyone in its totality.”⁸⁰ By definition, this kind of knowledge cannot be fully possessed by public officials or other experts. Hayek left this problem of society—which occurs due to an urgency of rapid adaptation to changes—to the people who are familiar with these circumstances and proposed the price system as a mechanism for communicating information. Law can be closer to such information with the notice-and-comment rule-making and public deliberation procedures, but they can be updated—because they cannot enable the above-mentioned elements like the social sensitivity, the equality in distribution of conversational turn-taking, or independence—to the newer findings on decision-making. One of them is to more objectively assess priors; one possibility is to use the Bayes theorem⁸¹ or Sunstein’s free expression system that must meet two requirements: “[P]eople should be exposed to materials they would not have chosen in advance—heterogeneity—and many or most citizens should have a wide range of shared experiences—homogeneity.”⁸² There is a good message for leaders when decision-making, but it is still appropriate for small groups.

Wise leaders embrace a particular idea of what it means to be a team player: not to agree with the current view of the majority, but to add valuable information. Leaders create a culture that does not punish and even rewards the expression of dissident views. They do so to protect not the dissident, but the group. Groups can take steps to combine statistical averaging with deliberation, perhaps by ensuring that people’s private views are expressed and recorded before discussion begins.⁸³

For large groups, prejudice and collective intelligence can be a common denominator when people know they contact each other through the system of norms to which all contribute, while for contacts it is not necessary to be the direct ones. Rules and/or modes of operation can be better accepted if they are created through the discovery of rules by using a representative sampling of data and statistical methods when predicting of events. Reasons for the success of massive data

⁷⁷Ishani Aggarwal & Anita Williams Woolley, *Team Creativity, Cognition, and Cognitive Style Diversity*, 65 *MGMT. SCI.* 1586 (2019); Ishani Aggarwal, Anita Williams Woolley, Christopher F. Chabris, & Thomas W. Malone, *The Impact of Cognitive Style Diversity on Implicit Learning in Teams*, 10 *FRONTIERS PSYCH.* 112 (2019).

⁷⁸Anita Williams Woolley, Christopher F. Chabris, Alex Pentland, Nada Hashmi, & Thomas W. Malone, *Evidence for a Collective Intelligence Factor in the Performance of Human Groups*, 330 *SCI.* 686 (2010).

⁷⁹Robyn M. Dawes, *The Robust Beauty of Improper Linear Models in Decision Making*, *AM. PSYCH.* 571 (1979); PAUL E. MEEHL, *CLINICAL VERSUS STATISTICAL PREDICTION: A THEORETICAL ANALYSIS AND A REVIEW OF THE EVIDENCE* (2013); Page, *supra* note 2; Surowiecki, *supra* note 54.

⁸⁰Friedrich August Hayek, *The Use of Knowledge in Society*, *AM. ECON. REV.* 519, 520 (1945).

⁸¹Mirko Pečarič, *Confirmation of Standards of Proof through Bayes Theorem*, 106 *ARCHIV FÜR RECHTS - UND SOZIALPHILOSOPHIE* 532 (2020); Mirko Pečarič, *Bayes’ Theorem as a Tool for Better Administration of Employee Discretion*, 21 *CROAT. & COMPAR. PUB. ADMIN.* (2021).

⁸²CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA 6-7 (2017).

⁸³Sunstein & Hastie, *supra* note 50.

acquisition and opinions are still being investigated. Still, it seems that the key element is the mix of true and wrong answers, which are mutually exclusive, so there remain only correct ones.⁸⁴ In the right circumstances, groups are intelligent and often smarter than the smartest people. It is not necessary for groups to be dominated by extremely intelligent people to be intelligent. This way, collective intelligence can be viewed as another version of the common ingroup identity model in which prejudice can be lowered with the help of elements that change members' perceptions of group limits from "us" and "them" to a more comprehensive "we."⁸⁵

There may be other ways to gather dispersed knowledge in collectives outside of the market. The basic question of all leaders could therefore be: What has to be done for people to feel included or engaged in collectives and at the same time still be in their own worlds? Haidt proposes increasing similarity, not diversity, exploiting synchrony, and creating healthy competition among teams, not individuals. For religions and politics, it could be said that they followed this throughout the centuries.⁸⁶ There could be other methods that could be searched for in countries with the highest indexes on the rule of law or happiness, but all should act in a way by which individuals do not feel like isolated islands but members of a larger group in which they still have their own individual say. There is a known way, other than by the distribution of products in a competitive market, to inform individuals about the direction their several efforts must aim to contribute to the total product; it is the use of collective wisdom/intelligence. Today, this could be easily done with the help of a digital platform that aggregates people's votes and, through statistical rules, shows the average or median result in real time frames.

G. Conclusion

Civil servants are the ones who write most of the draft laws and regulations. Draft rules are further reviewed and corrected by the legal services of the ministries, the government, or the parliament, but most often only from a legal point of view. Life is also about relationships, relations, and combinations that law does not usually include in rules, even though they are an integral part of life. It is not comprehensive knowledge, but already, mere awareness of other aspects of life could affect the effectiveness of legal norms through their different content, accustomed to collective relations. How could a knowledge-generating and organizational function in today's societies or legal systems be fulfilled? There is a way in which claims systems could be changed; this Article gives some directions to be tested in the legal systems based on some main elements of groups and/or the results of social psychology. Without transparency and the respect of other main legal principles that have stood the test of time, the rule of law cannot be present, but without addressing collectives, the rule of law cannot be lifted on a higher level which should embrace the main effects of people living and acting in groups. This could be changed by changing the *system* of legislation that will include the crowd elements; the legal system is not only a system but a systemic arrangement of humans in collectives, both a complex adaptive system *per se*, which should along its main goals to strive, survive, prosper and grow, and a system that achieves wanted legal results that affect the former. The first step is to draw attention to the limitations of the current legal system, which often ignores the relationships between the people who make up the groups that the same legal system is trying to regulate. Because law addresses relations between people, it is essential to

⁸⁴Tim O'Reilly, *Government as a Platform*, in OPEN GOVERNMENT: COLLABORATION, TRANSPARENCY, AND PARTICIPATION IN PRACTICE (Daniel Lathrop & Laurel Ruma eds., 2010).

⁸⁵SAMUEL L. GAERTNER & JOHN F. DOVIDIO, THE COMMON INGROUP IDENTITY MODEL, HANDBOOK OF THEORIES OF SOCIAL PSYCHOLOGY, VOL. 2 (2012); Samuel L. Gaertner, John F. Dovidio, Phyllis A. Anastasio, Betty A. Banchman, & Mary C. Rust, *The Common Ingroup Identity Model: Recategorization and the Reduction of Intergroup Bias*, 4 EUR. REV. SOC. PSYCH. 1 (1993).

⁸⁶Haidt, *supra* note 8.

know the fundamental characteristics of groups. A group's social mimicry, hive switch, submergence, contagion, suggestion, conformity and conversion, social facilitation and social loafing, social identity, collective sentiments, social facts, social mood, informational cascades, complex adaptive systems, collective wisdom, and so on, are necessary to urgently address in the law, as they crucially affect its results. The law is not "Goldilocks" (ger. *Rapunzel*) locked in a tower, but an integral part of the life that goes on around and within it. Effective law must not only address but contain the fundamental elements of the groups in which people live.

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