



Social Power, Law and Society

Saulo Jose Casali Bahia

Member, Board of Trustees, World Academy of Art & Science;
Professor of Law, Federal University of Bahia, Brazil

Abstract

The article aims to discuss some aspects of the formal centers of social power. Thus, it seeks to answer how power becomes institutionalized in formal social organizations; what is the source of political power and how it is converted into institutions of governance; how legal power is generated by society and how it grows; what is the relationship between legal power and those who are governed; what is the role of the legal system and human rights in fostering the distribution of social power; and how a society has enhanced access to and equitable distribution of power in recent centuries.

1. The Rise of Institutions

*“From these things, therefore, it is clear that the city-state is a natural growth, and that man is by nature a political animal, and a man that is by nature and not merely by fortune citiless is either low in the scale of humanity or above it (like the “clanless, lawless, hearthless” man reviled by Homer, for one by nature unsocial is also ‘a lover of war’) inasmuch as he is solitary, like an isolated piece at draughts.”**

Aristotle defined the nature of man as gregarious, social and political.

City-states, or States, are a natural consequence of human character. As Aristotle pointed out, it is a “natural growth”. Life in society demands a set of conditions or organization between individuals. Anarchy or absence of rules would bring to an end the possibility of living together. These conditions or organization is a complex system of duties and responsibilities. For each arrangement we will find a specific institution.

“Law is power, because legal rules establish relationships among individuals within a society, and retain the permanence and stability of these relationships.”

* Aristotle, *Politics*, 1.1253a. In *Aristotle in 23 Volumes*, Vol. 21, translated by H. Rackham. Cambridge, MA, Harvard University Press; London, William Heinemann Ltd. 1944.

Thus, State came into existence with the emergence of man, because the common protection against enemies (animals or hostile human groups) and the promotion of a general supply of alimentation, protection against unfavorable climatic conditions and so on, demanded an organization of scarce resources, which was only possible after the social establishment of *hierarchy**, *specialization*†, *coordination*‡ and *integration*.§ The State carries out exactly this work.

“The juridical rules, under any kind of government, must get the acceptance of the individuals of a society.”

Another example is the family, which came into existence naturally; family is an institution which was born out of survival and evolution needs, after sexual activity had been practiced by a couple or group and led to the birth of the offspring. Those individuals who did not protect the young did not give continuity to the species, which furthered natural selection, whereby individuals were able to understand and enhance the institution.

State and family are ancestral institutions. But there are a great number of others that were born out of the complexity of life in society.¶

2. Law and Institutions

Law is power, because legal rules establish relationships among individuals within a society, and retain the permanence and stability of these relationships. The *hierarchy*, which is inherent in the state, helps to develop a perfect way to demand the enforcement and observance of rules, with the menace of sanction. Law is a human creation that corresponds to an (inter-) institutional police. Law is an institution for maintaining institutions.

Thus, power becomes institutionalized in formal social organizations by Law.

Law defines the structure of a society, because the society needs to be defined and protected by a large frame of settled-out legal duties and rights.

As Janani Harish has written, *“society is more than the sum of all people. It is an intricately linked, complex organization. It is like the human body.”*** Society can only be defined by Law; it is protected by institutions which preserve it.

* “Vertical grouping and delineation of authority and responsibility are required for the smooth functioning of any organization,” as defined by Janani Harish in the article *Society and Social Power* (in *Cadmus* v.2, issue 3, 2014: p.47).

† “Specialization is an improvement on coordination wherein different individuals or sub-groups within a group perform different tasks, and collectively accomplish far more than would otherwise have been possible. This is an improvement on coordination, and generates greater social power.” *Idem*, p.46/47

‡ “By coordinating the efforts of many people, society acquires capacities that are not available when everyone acts in isolation.” *Idem*, p. 45/46.

§ “Integration magnifies the energy of organization. Within a group, when the various subgroups and their activities are integrated, the overall effectivity is enhanced.” *Idem*, p.47.

¶ As Janani Harish points out, “the building that one calls house gives an objective reality to the biological tie of the family, but it is not just this physical structure that fully explains the idea of family. A set of rooms – some brick and mortar are not enough – and the social construction of roles and responsibilities are needed to make the biological tie real and complete the family. Society consists of many such non-physical structures that bind people. Language, manners, customs, standards and laws are some. They define and guide the interactions between people. They are like the standardized language, HTML, which makes it possible for billions of people to interact with one another on the internet. Guilds, unions, currencies, governments, armies, religions, trade, markets, factories, ports, banks, courts, parliamentary assemblies, hospitals, schools, newspapers and other media are specialized institutional structures that enable society to engage in a wide range of activities – for self-defense, production, exchange, commerce, governance, healthcare, education and recreation”. *Idem*, p.39.

** *Idem*, p.40.

3. The Political Power

As mentioned above, the role of Law is to organize and stabilize relationships among individuals in a society, and to reinforce all the institutions by granting coercive power to the State.

Even political institutions are defined and circumscribed by Law, because hierarchy, integration, coordination and specialization (which form the base for a government's activities) imply juridical duties, rights and responsibilities among individuals.

"The source of political, social and legal power is the collective."

4. Consent of the Governed

Does law have its own will? Obviously not. Law is not an autonomous institution with self-direction and self-determination. The juridical rules, under any kind of government, must be accepted by the individuals of a society.

When a law is imposed by an authoritarian leader and his army, without the society's acceptance, the imposition will hardly be stable.

It is possible to impose authoritarian rules on some individuals or a specific group all the time. It is possible to impose these rules on all individuals perhaps a few times. But history has not registered any instances of imposition of laws by authority on all people all the time (or most of the times) without a minimum level of acceptance.

Consent is the basis for Law, and democracy has the advantage of facilitating the permanent and contemporaneous control of the creation and modification of juridical rules.

Legal rules, when established without link with the true aspirations and values of the society, tend to be deprived of their legitimacy and tread on toward the lack of applicability to the real world. Formal and informal insurrections will come out, official clashes will take place, government support will become increasingly fragile, and in the course of time it will have necessarily opened new paths or models for the political governance of the society.

History has demonstrated that the lack of democracy is only supported when the people believe that other superior or valuable rights are granted by the government, and accept state impositions. But social power, like constituent power, is always there in potential and belongs to the people. Democracy is certainly a choice of each person, when they perceive the advantages of living under a different political power system, and refuse to accept authoritarian treatment.

In this sense, the source of political, social and legal power is the collective.* Because of this, *human capital is the ultimate source of all resources, and it is inexhaustible in potential.*†

* "The source of social power is people. It is from people's aspiration, energy, and capacities that society derives its power. When individual capacity is organized and channeled through a system, it becomes social power". Idem, p. 44

† Idem, p. 49

5. Human Rights and Distribution of Social Power

Democracy is not the only value to be considered by individuals in a society. Social power is crucial to all human rights that the legal system has to consider it (or not) in its provisions.

Only those human rights consented by the people must be adopted by Law. Human rights are historical, evolutionary and variable. But it is a fact that all human rights which are deemed by the society to be appropriate, must be acted on by the legal system as a consequence of social power. Justice is consensus.

The history of advancement in human rights means the history of an increase in solidarity and equality. Only when solidarity and equality develop, are individual, collective and social rights reinforced and can be experienced.

Solidarity and equality indicate that differences among individuals are merely secondary and accidental, and that such differences are not the true reason for discrimination. These feelings and values show that any member of the society can be seen like any other individual, considered by the observer as an equal, thereby creating proximity and empathy. These values suggest that the differences of gender, race, nationality and so on are commonly and generally irrelevant, and that the other members of the society have more things in common with us than differences. It allows us to understand that what really matters is the presence of common humanity in each of us.

As Janani Harish mentions, “Today, clan loyalty or fierce regionalism is increasingly giving way to a growing sense among many people that we all share a common identity and destiny as human beings. Society is evolving from the nation state to the human community”.* The same idea has been espoused by Marta Nešković: “We consider that the recognition of equal values of diverse human capacities is a necessary step towards the individual accomplishment acquired through the expression of a unique potential”.†

Our common core values must be perceived. These values provide the best lives, and promote solidarity and altruism. After all, human development requires unselfishness, and human rights have their roots in our humanity. Altruism necessarily arises from the identity of individuals. It is necessary to identify the essential traits of common mankind in each of us. This is the essence and the goal of Social Power.

Author contact information:

Email: saulocasalibahia@uol.com.br

* Idem, p. 38.

† *Knowing Beyond the Structure: Maximizing Social Power through a Synergistic, Values-based Approach on Diversity.* Article in *Cadmus* v.2, issue 6, 2016: p.134.