

# UNDERMINING LEGITIMACY OF CONSTITUTIONAL RIGHTS: THE LEGAL AND ECONOMIC ASPECTS OF SOCIAL CONFLICTS

Reza Eftekhari <sup>a</sup>

<sup>a</sup> Islamic Azad University – Gonabad Branch, Iran.

<sup>a</sup> Corresponding author: sreftekhari@gmail.com

©Ontario International Development Agency ISSN: 1923-6654 (print)  
ISSN 1923-6662 (online). Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

**Abstract:** Legal dimensions of social conflicts are not limited to rising crimes. Social conflicts in contemporary societies have become a dynamic that affects social life in all dimensions. The social powers that must serve the rights of people, adversely undermines the constitutional rights, legal and economic institutions, and cultural values. We argue that social conflicts, whatever their origins and nature may be, result in the weakness of legal establishments and legitimacy of constitutional and human rights. Our purpose is to examine the so-called legal, political and economical outcomes and to suggest some ways that may help to minimize the harmful effects of social conflicts. The way to control political and economic system, administering criminal justice, defining the relation between power and the mass, protecting value-based structures and private rights, and redirecting social dynamics toward constructive and reformative ends can be considered in this regard. In this paper, since we consider the social changes and movements partly appear in the form of social conflict as the dynamics that can positively or negatively affect the constitutional rights and the legitimacy of social status, we try to denote some direct or indirect influences of social conflict on these issues. However, as it is articulated in so many sociological works that the conflict theory, whether in its Marxist or non-Marxist form, has been the subject of different interpretations, the economic, legal, and cultural dimensions of its influence seems relevant in modern society.

**Keywords:** Social conflicts, Constitutional rights, Legitimacy, Economics, Legal Theory.

## INTRODUCTION

During the last century, the world has witnessed the purest and the most ideological conflicts in the form of different kinds of social movements. Perhaps most of the thinkers and philosophers of the 17<sup>th</sup> century had supposed that the emergence of new political structure in which people freely choose their rulers, would have put an end to the social inequality, historical aristocracy, dictatorship, and the depression of economic entity. Various factors such as poverty, neglect of lower classes, poor condition of the work place, racial approach in public policies, and discrimination toward women have caused social movements to appear as dynamics that assumes the battle against the current situation as its main mission. In social science, conflict represents any kind of opposition and disapproval of current conditions. Such a state may be seen among different groups with different causes from political, economic, and cultural reforms to the movements for women's rights and elimination of discriminations against minorities. Generally, these conflicts showed themselves in the 19<sup>th</sup> century mostly in the form of crowds and masses, while during the first half of 20<sup>th</sup> century they appeared as parties and organized groups rallying for gaining the political power, and during the second half of this century the emergence of organizations and goal-directed associations was the dominant facet of social movements. As Eric Berne proposes, although parties, crowds and masses are each interesting in their own way, their dynamics are different from those of organized groups. (Berne, 1975:73)

In a legal context, the importance of social conflict is in relation with the centers of power specially, in those areas connected with public order. In the political scene there are always some groups that they feel, or at least they are told so, they are misuse or cheated or oppressed by those in official power. This is not limited to the lower or disenfranchised classes or religious and racial minorities. These groups, regardless to the equal or unequal nature of the official rules of law, may believe that their survival or the maintenance of their interests is in the opposition with the political power. To this point, the social conflict is like a dormant volcano which can be triggered by some irresponsible actions. Governmental authorities may undertake two certain measures to prevent this state from becoming an uncontrollable social dynamics: (a) An essential change in the laws regarding the constitutional rights such as civil liberties, economic privileges, and political participation. In this respect, there must be some considerations as many political structures may not accept fundamental legal changes because they consider them as threats for the survival of the social order. Furthermore, there is no guarantee that such reforms would be the best resolution for these conflicts. (b) The act of silencing and weakening of social groups through the transformation, separation, and marginalization of their collective identities.

The existence of social conflict in modern societies doesn't mean it serves merely as a pressure lever or it does appear as a struggle between majority and minority for seizing power. Really, the social conflict as a cross-line of the flows representing different groups and their interests has been the subject matter of many researches during the past decades. Forming each of these groups or their trends is usually accompanied by cultural, political, religious, and even economic necessities which mainly originate from their value systems. Gathering these key factors, every group or organizational structure may shape its identity by which it will define its causes and the ways the group aims to step in. As Berne proposes, "the first objective of any group is to maintain its orderly existence. That is mainly the concern of the process group. Once this existence is assured, the group is free to turn its attention to its activity. Thus the effectiveness of the work group depends on the success of the process group. This can be said in another way which may be of interest to people who like theories. It is very similar to the theory of surplus goods which economics talk about".(1975:103) In this way, today social groups, structures, and organizations stress heavily on their identity and internal order. Even in their conflict status with other groups or official power, they prefer to negotiate, organize, and to defend their cultural values rather than jeopardizing their collective identity.

## CONFLICT AND SOCIAL CHANGES AND MOVEMENTS

Whether the social changes and new social movements are to be considered the results of the social conflicts or vice-versa, or there can not be found any relevance between these two categories, remains a question for further analysis of the socialists. The reality is that in the last decades, the emergence of the new forms of collective action in advanced industrial societies stimulated a provocative and innovative re-conceptualization of the meaning of social movements.(Johnston et al., 1994)

What we know about the traditional forms of social unrests, suggests that in a historical process the different elements which have traditionally distinguished the social classes from each other would have been triggering these unrests. Most of these movements were but about the primitive social, economic, or religious objectives. Ideology was found as the director of these movements solely if charismatic causes were relevant. Since the basic thoughts regarding the state's responsibility and the constitutional and civil rights as the social patterns of solidarity had not been institutionalized at those times, the conflicts were not directed toward organizing an orderly group or movement. The new forms of conflict, specially, in 19<sup>th</sup> and 20<sup>th</sup> centuries brought about the protests acclaiming the rights which had been known for people through the revolutionary movements of 17<sup>th</sup> century. Toward the second half of 20<sup>th</sup> century, the conflicts were characterized by a set of organizational elements. They were studied sociologically and philosophically, and the new faces of social conflicts were discovered. In this area, as Johnston argues, sociological studies of social movements have been dominated first by theories of ideology and later by theories of organization and rationality.(1994)

There are a great deal of studies and analysis regarding the different aspects of these changes and their relations with the other social factors such as culture, ethics, laws, and the political responses which might be provoked in the administrating powers. For sociologists there are many problems regarding the critical factors that emerge through the social conflict and may influence the future structures and institutions. Even, most of the researchers have difficulty understanding the complicated nature of the movements or the multi-dimensional appearance of the changes. Given these difficulties, no one can expect to attain a precise definition and a clear perception of the theoretical and functional results of these movements. In the last decades of 20<sup>th</sup> century the main problem of many analysts was to understand the process of movement formation by analysis of the social structure that gave rise to the ideology and the

problems to which it was directed. The paradigm shift between the main themes of these movements during the 19<sup>th</sup> and 20<sup>th</sup> centuries from economic ideas to the legal and social discriminations resulting in dynamic groups was an important part of the problem. "The nineteenth-century emphasis on labor and capital fit well into this general paradigm, from which it was also derived. Labor movements and the rise of new political parties have long been the ideal-typical images of social movements and mobilization; through them, the revolutionary actions of communism and fascism were further examined". (Id.) During the last decades of 20<sup>th</sup> century, the world witnessed a glamour renewal of the study of social changes and movements, and in particular the critical elements of their ideology and rationality. Here one can find a variety of views regarding the sociological nature of the changes; from a political perception to legal, economic, and cultural conceptualization. There is a belief (Mc Adam, 1994:36) that in that period the study of social movements has been among the most productive and intellectually lively subfields within sociology.

#### THE FRAMEWORK OF ANALYSIS

In this paper, since we consider these changes and the social movements partly appear in the form of social conflict, as the dynamics that can positively or negatively affect the constitutional rights and the legitimacy of social status, we try to denote some direct or indirect influences of social conflict on these issues. However, as it is articulated in so many sociological works that the conflict theory, whether in its Marxist or non-Marxist form, has been the subject of different interpretations, the economic, legal, and cultural dimensions of its influence seems relevant in modern society. Generally, regarding the legal and economic aspects of social conflict theory and its implication in the modern societies, there are five important observations that should be noted here:

#### The relation between social conflict and current stratifications

If we accept the class base divisions of social dynamics in accordance with the Marxist conflict theory, that would mean the continual existence of the struggles between the opposite groups as outlined in this theory. However, as it can be seen, the capitalist society with its special rules and the classes whose conflict was claimed now exists and survives, though its corruption has been predicted.

Marx identified the economic structures in society that control all human relations. Production has two components: (1) **productive forces**, which include such things as technology, energy sources, and material resources; and (2) **productive relations**, which are the relationships that exist among the

people producing goods and services. The most important relationship in industrial culture is between the owners of the means of production, the **capitalist bourgeoisie**, and the people who do the actual labor, the **proletariat**. (Siegel, 2006:257) In Marxist theory, the term class does not refer to an attribute or characteristic of a person or a group; rather, it denotes the position of different classes in relation to others. From a legal and political perspective, in Marxist theory the two reasons which are mentioned as the social dynamics in movement toward socialism are found to undermine the legitimacy of the ruling classes or say the political power. Thus, in a historical process, the capitalist dragon disappears gradually in two steps. First, it loses its legitimacy and then witnesses its collapse.

The conflict between social classes during the transformation may produce many other social changes and cause unrest and crime. Marx did not write a great deal on the subject of crime, but he mentioned it in a variety of passages scattered throughout his writing. He viewed crime as the product of law enforcements policies exerted by the ruling power. He also saw a connection between criminality and the inequities found in the capitalist system. He argued: "There must be something rotten in the very core of a social system which increases in wealth without diminishing its misery, and increases in crime even more rapidly than in numbers". (Marx, 1971:92)

There can be found various categorizations of the living classes between societies, which may be different from that of Marxist theory. But as a matter of fact, there isn't any social class in the traditional meaning. Modern socialists speak of social layers or the dynamics characterize the nature and the existence of organizations and group. In modern societies, different groups with their special interests and approaches has found that in order to follow their causes they must act according to the norms of the group and in conformity with the rules of law.

#### Culture, Identity, and Collective Behavior

Social conflicts in modern society are directed by the movements with a well-known identity. The states do not use power to resolve the conflicts because they face themselves with a collective identity and an organizational behavior based on values and norms. In this new condition, every attempt to disapprove or to diminish the cultural identity would certainly question the legitimacy of the power. We can say that the cultural concept of conflict theory dominate the idea of changes in modern society. A conflict theory of culture fits well with influential non-evolutionary theories of culture such as Marxism. Marxism posited that economically dominant classes construct culture to serve their interests. A conflict theory of culture

also accords with common observation of intense conflict over cultural issues (e.g., conflicts within legislative bodies over the teaching of evolution or prayer in public schools; conflicts over regulation of the content of media messages on aggression and sexuality). (MacDonald, 2009)

What was titled by the social scientists **the new social movements** referred to a novelty in social changes of 20<sup>th</sup> century that has constantly distinguished these movements from the class conflict actions and the traditional movements that have prevailed in Europe after Industrial Revolution. (Melucci, 1989) New social movements often involve the emergence of new or formerly weak dimensions of identity. The grievances and mobilizing factors tend to focus on cultural and symbolic issues that are linked with issues of identity rather than on economic grievances that characterized the working class movement. (Id.) The non-material factors which are supposed to have great influence on the critical parts of sovereignty and administration such as legislature and economic policies became the firsthand elements of these identities. As Johnston proposes the new movements are associated with a set of beliefs, symbols, values, and meanings related to sentiments of belonging to a differentiated social group; with the members' image of themselves; and with new, socially constructed attributions about the meaning of everyday life. This is specially, relevant to the ethnic, separatist, and nationalistic movements within existing states. (Johnston et al., 1994)

Social theories and researches about the conflicts and the new movements have been generally influenced by the recent concepts of identity and collective behavior. In one orientation, it is assumed that identity constructions, whether intended or not, are inherent in all social movement framing activities. (Hunt et al., 1994) Not only do framing processes link individuals and groups ideologically but they introduce and embellish identities range from collaborative to conflicting. According to Hunt, they do this by situating or placing relevant sets of actors in time and space and by attributing characteristics to them that suggest specifiable relationships and lines of actions. Students of social interaction have long noted that interaction between two or more individuals or groups minimally requires that they be situated or placed as social objects. In other words, situational specific identities must be established. It is our contention that within the realm of collective action pertinent individual and collective identities are proffered and affirmed in two analytically distinct but interconnected ways: through engagement in collective action itself, such as protesting and celebrating, and through framing processes. (Id.)

### **The rational modern society and its perception of social conflict**

The modern era of social changes is characterized by rationality by some scholars. In many societies, even the movements containing harsh conflicts are guided by rationality and intelligence.

In more recent years, guided in part by conceptions of rational choice, sociologists have gone well beyond Weberian insights into a focus on how collective action depended on the ability of associations to mobilize resources and to conduct the organization on the basis of planned and rational action. (Johnston et al., 1994) It seems that the modern thought heavily stresses on the importance of rationality and the intellectual power of social dynamics in adopting any approach toward improving constitutional enjoyments and civil freedoms. This trend is not limited to the organizational system or cultural groups. Even on the part of official power and its institutions such as legislator and policy makers the rational approach is considered a proper means to resolve such problems as social conflicts and to maintain the social order.

Socialists, specially, Charles Tilly and John McCarthy and Mayer Zald, pointed out that there was always strain in the society and that mobilization required both resources and a rational orientation to action. The actor in movements and in protest action was not under the sway of sentiments, emotions, and ideologies that guided his or her action, but rather should be understood in terms of the logic of costs and benefits as well as opportunities for action. When dealing with existing organized groups, as in labor unions or in the civil rights movement, the emphasis on organization could ignore the already existing ideologies. By treating the activities of collective actors as tactics and strategy, the analyst could examine movements and counter-movements as engaged in a rational game to achieve specific interests, much like pluralist competition among interest groups in political analysis. (Id.)

### **SOCIAL CONTROL AND SOCIAL ORDER**

In any perception of the conflict theory the role of social imposed paradigms such as official norms and rules of order consist the main parts of analysis. "Social controls are restrictions imposed on people as a consequence of their membership within a particular society or group". (MacDonald, 1995)

In the literature on models of the evolution of culture and the social changes as a whole, social controls are norms that involve punishment for transgressions. At the theoretical level, the theory of social controls depends on a classic article by Boyd Richerson (1992) showing that with punishment anything can evolve. That is, punishment can maintain any set of

social norms, including individually costly behavior that does not benefit either any individual or the group as a whole. (MacDonald, 2009) Social conflict, if it is accompanied by such behavior that may threaten the public order, will be the subject of illegal conducts which receive punishment from states. This is a means used by power to question the legitimacy of the act of groups and organization. This means that in the new period of conflict resolution the social control can guarantee the constitutional rights of masses in general and the legitimacy of the movements of the groups in particular.

In modern states, the police and the judicial system are empowered to punish non-cooperators. The costs for these enforcement institutions are not born by individual punishers but are widely shared as a result of tax collection system that are enabled by explicit processing. That is, the system depends on prospective defenders making explicit calculations of the possible costs and benefits to their actions in a situation with a host of features that were not recurrent over evolutionary time. (MacDonald, 2008)

The social controls that actually come to prevail in a particular society are often the result of conflicts of interests whose outcome is undetermined by evolutionary theory. In this context, the legitimacy of the regulations and the use of power to defend such structures as private property, public liberties, social order, and the security is a well-expected explanation of social control by states. Therefore, in the subsequent processes the society will face with a new form of conflict between the norms and principles of state's power and the legitimacy of the acts of social groups. In the end, the ideology of the collective culture and the dynamics of social movements confronts with the norms and rules of the government which psychologically transforms to a kind of ideology.

## CONCLUSION

If we want to study the social conflict as a theory, we should go beyond the traditional definitions of social factors to which the social groups pay attention logically. Social conflict today has found new dimensions regarding the critical elements of culture, collective identity, ideology and the modern definitions of law and economic rules. There are many differences between our time of cultural and

rational approaches and the era of undetermined movements in which economy enjoyed a philosophical interpretation. Today, both the sovereign states and the social movements and organizational norms need legitimacy over their existence and acts. The states cannot use the power to make social movements void of legitimacy. We are stepping in a time in which the new concepts related to the social dynamics, in both governmental and societal realm, appear as the emerging ideologies that must be interpreted according to the dominant cultural norms.

## REFERENCES

- [1] Hunt, Scott A., Benford, Robert D., Snow, David A., (1994), "Identity Fields: Framing Processes and the Social Construction of Movements Identities", *New Social Movements: From Ideology to Identity*, Edited by Enrique Larana et. al., Temple University Press, Philadelphia,
- [2] Johnston, Hank; Larana, Enrique; Gusfield, Joseph R., (1994) "Identities, Grievances, and New Social Movements", *New Social Movements: From Ideology to Identity*, Op. cit.
- [3] Marx, Karl (1971) "Population, Crime and Pauperism", In Karl Marx and Friedrich Engels, *Ireland and the Irish Question*, (Moscow: Progress, 1859, reprinted 1971) p. 92
- [4] McAdam, Doug, (1994) "Culture and Social Movements", *New Social Movements: From Ideology to Identity*, op. cit.
- [5] MacDonald, Kevin, (2009) "Evolution, Psychology, and a Conflict Theory of Culture", *Evolutionary Psychology*, 7 (2) 208-233
- [6] MacDonald, Kevin (2008) "Effortful Control, Explicit processing and the Regulation of Human Evolved Predispositions", *Psychological Review*, 115, 1012-1031
- [7] MacDonald, K.B., (1995) "The Establishment and Maintenance of Socially Imposed Monogamy in Western Europe", *Politics and the Life Sciences*, 14, 3-23
- [8] Mellucci, Alberto, (1989) "Nomads of the Present: Social Movements and Individual Needs in Contemporary Society", Philadelphia, Temple University Press.
- [9] Siegel, Larry J. (2006) "Criminology" Thomson – Wadsworth, USA

