

Constitutional and Legal Culture, Social Culture and Human Rights

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The central point to emphasize is that modern legal culture, influenced by 19th century science, sought to develop law as a discipline insulating it from social and political forces. It also sought to insulate law from values, and, by implication, human rights. Because law is not purely an academic discipline, its insulation is sustained by professionalism that seeks to secure the autonomy of law, illusory as this is, from social and political forces.

Alongside the idea of law rooted in formalist isolationism, was the insight of Oliver Wendell Holmes, who stated that the life of the law is not based on logic but on experience. The idea of law as an approach rooted in social experience continues to be a struggle between the law as experience and law as formalism.

Experience is rooted in the challenges of the culture of society in general, and the extent to which it is shaped by legal and constitutional culture. The fundamental problem with social culture is that we need an adequate description of what it is. The most important efforts at description include efforts to define social culture in terms of stratification. This has given rise to class-analysis. Others have sought a description with a focus on elite-analysis. A further theory of society is the theory based on the idea of group-analysis; in short, the focus on social dynamics must be the group basis on which a society is maintained.

The most modern analysis seeks to integrate elite theory, class theory, and group theory into an analysis that focuses on the dynamics of the individual in the larger social process universe. The great challenge here, if we look at social process from a global point of view, is to understand the position of the individual in the constellation of multiple groups that comprise the global social process. This means that all abstractions about society must also account for the position of the individual and the human rights of the individual in these processes. The definition of this approach is that human beings as individuals and aggregates of individuals act to secure basic values and desirable objectives through the institutions specialized in the global and local society to facilitate value-realization.

The importance of understanding social process is that we have to understand that the individual, acting alone or in groups, is the important driver for accretion of human values. The problem with the focus on the individual is that, in some form or another, groups are still instruments of power, and the struggle for an adequate position of the individual in the larger aggregate, whether it be local or global, is one of the important tasks of the advancement of human rights on a global basis. The focus of WAAS is on the revolutionary idea of the centrality of human capital in social process. It is also one of the central components of the universalization of human rights.