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Legal Issues Connected with Cultural Context

With the increasing effect of globalization and multiculturalism, the legal system of the United States is experiencing significant changes. Along with new cases that necessarily consider cultural context when coming up with verdicts, one can trace a pattern showing how legal terms like discretion emerge and transform the way courts operate, as well as how judges make their decisions. In such a context, understanding legal issues within cultural contexts require breaking down the subject into its constituents. While doing so, it is important to note that notions like cultural competence, multiculturalism, and cultural relativism entered the legal realm, thus pushing the domain to adapt to new realities. An illustration of legal issues connected with cultural context also means exploring the role of culture in various areas of law, determining the increasing effect of culture when a judge sets statutory damages and showing the emergence of the discretionary power of judges as the phenomena in new cultural contexts.

In the article "Culture in the Domains of Law," the prominent legal advisor and author David Howes argues that the existing legal realm of the United States is inevitably adapting to new cultural trends. As a result, for people who want to work as legal professionals, it is necessary to be aware of terms like cultural sensitivity and cultural defense. From a broader

perspective, new generations of lawyers, judges, and prosecutors should not only be competent legal experts but culturally competent as well (Howes 9). This means that when one is engaging in cases involving people from different cultures, the cultural factor automatically becomes something experts should take into equation. In such a case, the author argues that multiculturalism is responsible for such changes in the domain of law. Howes indicates the following: “Culturally-reflexive legal reasoning is increasingly necessary to the meaningful adjudication of disputes in today's increasingly multicultural society” (10). In practice, this means that instead of abandoning and overriding cultural differences, something that judges did in the past, contemporary courts ought to acknowledge such differences as a means of recognizing cultural variations as a crucial part of any given case. Theoretically, one can say that with the increasing role of culture as the factor considered in legal cases, it will be increasingly challenging for professionals to come up with objective decisions. Therefore, it is apparent that with the emergence of the phenomenon of multiculturalism, culture became a factor courts cannot avoid when it comes to making legally based decisions. The key questions are about adopting the notion of multiple cultures and their effect on people in a manner that will not disrupt the fundamentals of the domain of law but instead will indicate appeal to cultural acceptance.

Speaking about legal issues arising as a direct inclusion of the factor of cultural context, one cannot avoid the aspect of determining legal damages. The fundamentals of determining appropriate compensation for such physical or emotional harm a plaintiff experienced is based on correlating the overall impact of damages as well as trauma received (Grillo et al. 199). However, there are many cases when people tried to claim punitive damages more significant

than the actual trauma they experienced. With the emergence of cultural factors, it has become much more difficult for a judge to make an accurate and just decision concerning legal damages. In the words of Ralph Grillo, the author of *Legal Practice and Cultural Diversity*: “Sometimes individuals who have injured file lawsuits in which they claim that they experienced greater trauma than the ordinary plaintiff because of their cultural or religious background” (199). The problem is that with the increasing inflow of immigrants, namely people from various cultural backgrounds, the issue of the link between culture and legal damages becomes even more pressing. While the domain of law was always built upon accuracy and scrutiny in terms of the terminology used and notions applied, culture brings the idea of cultural relativism into the legal realm. The potential hazard of cultural relativism is the premise that people can interpret culture differently. As a result, the law must acknowledge such variations, presupposing that the actions of a person could have been motivated by a personal interpretation of a cultural factor (Grillo et al. 215). Cultural relativism makes the application of the law less objective and more open to manipulation. As a result, having the idea integrated into the legal process can be detrimental for the objective of the domain of law, and objectivity is crucial for maintaining a just and civil society.

The third legal issue that is directly related to cultural context is discretionary power granted to judges. Initially, the rules of discretion were adopted in 1938 when the Federal Rules of Civil Procedure emerged. According to the authoritative document, discretion is perceived as “the keystone to the effective functioning of the federal rules” (Chase 72). The rule grants a high degree of legal power to a judge without any clear indications concerning how such an authority should be exercised. In such a context, since 1938, the image of the courthouse changed, as well

as the image of a judge. Oscar G. Chase, the author of the book titled "*Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context*," believes that modern courthouses are similar to corporate headquarters (Chase 85). Importantly, with the rise of discretion in the twentieth century and the image of a judge as a part of a legal corporation, many started to fear that the very validity of law was under threat. With the changing of American values, the ones leaning toward the elevation of corporate culture in the context of governing institutions of the United States, the image of the nation's legal system started to steer away from what it was initially meant to be (Chase 92-93). As a result, the increasing role of discretion among judges and the adaptation of the legal system to corporate culture makes it difficult to anticipate whether the domain of law in the future will be about justice and impartiality.

Considering the above, it is apparent that the emergence of culture as a legal factor is a force to reckon with and that immense changes were introduced in the domain of law. From the introduction of cultural competence as a legal skill experts should necessarily possess to cultural relativism as something judges were obliged to consider when setting legal damages, it seems that culture is a force that is reshaping many aspects of modern social and legal institutions. However, most importantly, the tendency for praising corporate culture proved to be something that drives the domain of law away from its cornerstones. As a result, future generations may find themselves living in a legal system that is not founded on the principles of justice and impartiality but subjectivity and cost-efficiency instead.

Works Cited

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