

The Difference between Legal Culture, Judicial Culture, and Court Culture

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The constructs legal culture, judicial culture and court culture have been used frequently in the literature but there is a lack of clarity between them. This study aims to identify the difference between them. The existing literature and dictionary definitions have been used to conceptually understand the differences between them. Characteristics of them are identified using the existing literature. The meaning of legal, judicial and court have been explored from the various popular dictionaries. Based on the comparative analysis of their characteristics and meanings, a conceptual model is developed. The conceptual model depicts legal culture as a macro construct, judicial culture as a meso, and court culture as a micro-level construct. This study is an initial attempt to make a distinction between these three constructs. The findings of this study will help the legal researchers to develop a clarity between legal culture, judicial culture, and court culture. This clarity will help in avoiding using these constructs interchangeably.

Keywords: legal culture, judicial culture, court culture.

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Различие между правовой культурой, судейской культурой и судебной культурой

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Понятия правовой культуры, судейской культуры и судебной культуры часто используются в литературе, тем не менее, их значения недостаточно четко определены. Исследование направлено на установление различий между ними.

Для того, чтобы понять концептуальную разницу между ними, были использованы существующие в литературе и словарях определения. Их характеристики определены с помощью существующей литературы. Значения слов «правовая», «судейская» и «судебная» были исследованы, основываясь на различных известных словарях. На базе сравнительного анализа их характеристик и значений, была разработана концептуальная модель. Концептуальная модель отражает правовую культуру как макро-понятие, судейскую культуру как мезо-понятие и судебную культуру как микро-понятие. Данное исследование представляет собой первую попытку разграничить три данных понятия. Выводы данного исследования помогут ученым-юристам установить четкое разграничение между правовой культурой, судейской культурой и судебной культурой. Данное разграничение будет препятствовать взаимозаменяемому использованию данных понятий.

Ключевые слова: правовая культура, судейская культура, судебная культура.

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1. Introduction

Judicial culture, legal culture, and court culture have been used in various studies of history, law, and social psychology. But in no study, their differences are clearly defined. Some papers have used these constructs interchangeably [6; 30]. There is no clear understanding of the differences between these three terms. Some authors have clearly stated no clear understanding of legal culture [19; 40].

2. Concept of culture

To understand the differences between legal culture, judicial culture and court culture, it is important to understand the concept of culture. Atran et al. define *culture* as ‘causally distributed patterns of mental representations, their public expression, and the resultant behaviours in given ecological contexts’ [2]. Schein explains culture ‘in terms of basic assumptions, shared beliefs or values’ [48]. In contrast, Tylor narrates culture as a ‘complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by a person as a member of society’ [51]. Moreover, as per Albert, ‘The culture of a society is the whole complex of knowledge and beliefs and attitudes and practices embodied in the society and its social, political and economic arrangements’ [1]. Some researchers define culture as ‘beliefs, assumptions, and values that members of a group share about rules of conduct, leadership styles, administrative procedures, ritual, and customs’ [35; 38; 49]. Also, culture is understood as ‘the shared philosophies, ideologies, values, assumptions, beliefs, expectations, attitudes and norms’ [31]. Goffee and Jones mention culture as ‘an organisation’s common values, symbols, beliefs, and

behaviors' [23]. Quinn and Cameron define culture as 'the prevailing ideology that people carry inside their heads' [46]. Culture is also construed as 'accumulated shared learning of a given group' [52]. According to Young and Mack, culture is a learned and shared behavior. Behavior includes thought, emotion, and external action. When most group members share a behavior, it becomes culture but not when only a person possesses the habit of a particular behavior [54]. Gudykunst and Ting-Toomey define culture as 'the way of life, customs, and script of a group of people' [24].

3. Legal Culture

In the legal literature, legal culture, and local legal culture, terms have been used. In the pioneer study, Friedman defines legal culture as 'public knowledge of attitudes and behavior patterns toward the legal system' [19]. In contrast, Church et al. use the term local legal culture and define it as 'established expectations, practices and informal rules of behavior of judges and attorneys' [11]. Friedman mentions that legal culture includes 'attitudes, values, and opinions held in society, about the law, the legal system, and its various parts'. Furthermore, Friedman has mentioned, 'ideas, attitudes, values, and beliefs that people hold about the legal system' [20] or 'ideas, attitudes, expectations and opinions about the law, held by people in some given society' [21] or 'ideas, attitudes, values, and beliefs that people hold about the legal system' [20] or 'ideas, attitudes, expectations and opinions about the law, held by people in some given society' [21]. The Church has emphasized more to the judges and advocates and not mentioned other factors such as resources, clients' views, procedures, etc. According to Hamilton and Sanders, attitudes, values, and opinions concerning the law are components of legal culture. It also includes an acceptable way of resolving disagreements and disputes [25]. There is no clarity of the concept of legal culture in the literature. Scholars admit the vagueness of legal culture's concept [14; 19; 40]. Gibson & Caldeira, in their study 'the legal culture of Europe', has mentioned: 'that law and legal systems form a structure of meaning that helps in guiding and organising individuals and groups in interactions and situations of conflicts' [22]. Merry suggests four legal culture factors: 'practices and ideologies within the legal system, the public attitude towards the law, how people define their problems in legal terms and the fourth one is legal consciousness' [37]. Nelkan describes legal culture as: '...relatively stable patterns of judicially oriented social behavior and attitudes. The identifying elements of legal culture range from facts about institutions such as the number and role of lawyers or the ways judges are appointed and controlled, to various forms of behavior such as litigation or prison rates, and, at the other extreme, more nebulous aspects of ideas, values, aspirations, and mentalities. Like culture itself, judicial culture is about whom we are, not just what we do' [40].

4. Judicial Culture

There is a lack of clarity in the definition of judicial culture. It has been interchangeably used with legal culture in a study about joining formerly communist ruling countries in Europe and its effect on the European Union's judicial culture [30]. Bell defines judicial culture as 'features that shape how a judge's work is performed and valued within particular legal systems' [4]. Jamieson explains that judicial culture consists of values, meanings, perceptions, routines, occupational dynamics of judicial work and practices [28]. Benvenuti describes the role of judicial networks to build a judicial culture [5].

5. Court Culture

In the literature, mainly court culture studies are done in historical contexts. Strootman, in the study, has mentioned the court's ideology, heroic ethos, palaces, cultural and scientific patronage, ritual, and ceremonial as part of the court culture [50]. In a review study of European urban culture and court culture, Dixon has not defined court culture [15]. Fuess and Hartung (2011), in the study 'Court Cultures in the Muslim World Seventh to nineteenth centuries, has also not clearly defined court culture. Waller has talked about renaissance court culture and sir William Alexander [53]. Brown has analysed the role of judicial culture in judicial circuit courts [8]. Maguire has discussed byzantine court culture from 829 to 1204 [32]. Osborn, in the study, has described the role of the court in the medieval polities to run the kingdom [43]. Khare traces the trajectory of the wine cup in Mughal court culture [29]. Similarly, some other studies have used the term court culture in historical content, but they have not clearly defined it [9; 41; 50].

Ostrom et al. defined court culture as 'the beliefs and behaviors shaping the way things get done by the individuals – judges and court administrators...'. Along with beliefs and behavior, social scientists in general and psychologists, in particular, are also interested in understanding the attitudes of different actors in the system and the causes of the formation of the attitudes [44]. For example, the *speedy disposal* of a case is an issue that is important to all the stakeholders in the case. It would be interesting to understand the role of different actors' attitudes – litigants, lawyers, judges, and court staff in the case's speedy disposal. Ostrom et al. noted that the term local court culture has often been used in the USA to denote how courts conduct business. It includes a host of norms and resulting behaviors typically attributed to a particular court [44].

Quinn and Rohrbaugh have used the core values to identify the culture of a court. They ask court experts like court administrators and judges to determine the level of dissimilarity/similarity among different matters. Based on it, they formulate Court Cultural Values Matrix [47].

Ostrom, Ostrom, Hanson, and Kleiman makes a list of fifteen possible court-related cultural values [45] and norms after an extensive literature review [e.g., 7; 12; 13; 16; 17; 18; 26; 27; 39; 44]. To avoid overlapping and minimise redundancy, Ostrom et al. reduce it to a list of sixteen values, including constrained change, rule-oriented, sovereignty, case differentiation, efficiency, collegiality, a chain of command, continuity with the past, judicial consensus, discretion, flexibility, decentralisation, self-managing, collaborative problem solving, innovation and teamwork [45].

Ostrom and Hanson describe court culture as the behaviors and beliefs of the people responsible for the case resolution. They mainly emphasise the routine tasks and ongoing relationships among judges, court administrators, and court staff. They identify five types of work areas within four court cultures: courthouse leadership, case management, internal organisation, change management, and four distinct cultures, including communal, networked, autonomous, and hierarchical [44].

6. Difference between Legal Culture, Judicial Culture, and Court Culture

The literature has not clearly defined the differences between judicial, legal, and court cultures. In some studies, it is used interchangeably. Mak et al. have briefly mentioned the relation between judicial culture and legal culture [33]. They have noted that legal culture is a classic tool to 'describe patterns of legally oriented social behavior and attitudes. The concept of judicial culture has not yet been used with the same frequency in the academic literature as legal culture and, most likely as a consequence, has not yet been conceptualised in an in-depth manner'.

6.1 Difference Between Terms Legal, Judicial, and the Court as according to Dictionaries

Various reputed dictionaries have been referred to understand the meaning of ‘legal’, ‘judicial’, and ‘court’ words. Their meanings are given in Table 1.

Table 1

Meaning of terms ‘legal’, ‘judicial’, and ‘court’ by different dictionaries

Dictionary Reference	Legal	Judicial	Court
Oxford Dictionary [42]	Relating to the law.	‘Of, by, or appropriate to a law court or judge; relating to the administration of justice’.	1. ‘A body of people presided over by a judge, judges, or magistrate, and acting as a tribunal in civil and criminal cases’. 2. ‘The place where a court meets’.
Merriam Webster dictionary [36]	Of or relating to law	1. ‘Of or relating to a judgment, the function of judging, the administration of justice, or the judiciary’. 2. ‘Belonging to the branch of government that is charged with trying all cases that involve the government and with the administration of justice within its jurisdiction’.	1. ‘An official assembly for the transaction of judicial business’. 2. ‘A place (such as a chamber) for the administration of justice’.
Cambridge dictionary [10]	Connected with or allowed by the law	‘Relating to or done by courts or judges or the part of a government responsible for the legal system’.	‘A place where trials and other legal cases happen, or the people present in such a place, especially the officials and those deciding if someone is guilty’.

Macmillan dictionary [34]	1. Allowed by the law 2. According to the law	1. ‘Relating to the judges and courts that are responsible for justice in a country or state’. 2. ‘Done by a judge or court’. 3. ‘Relating to the work of a judge’. 	‘A place where trials take place, and legal cases are decided, especially in front of a judge and a jury or a magistrate’.
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6.2 Characteristics of Legal Culture, Judicial Culture, and Court Culture

To understand the difference between these three constructs, an in-depth literature review has been done to identify characteristics of these constructs. Along with the literature review, some features have been added based on the dictionary meaning of the terms ‘legal’, ‘judicial’ and ‘court’.

6.2.1 Legal culture

Based on literature and logic characteristics of legal culture includes attitude and behavior of the people towards legal systems [19], ‘established expectations from judges and attorneys’ [11], ‘practices of judges and attorneys’ [11], ‘informal rules of behavior of judges and attorneys’ [11], ‘attitude, values and opinions held in the society with regards to law, legal systems and its various parts’ [19; 25], ‘ideas, attitudes, values, and beliefs that people hold about the legal system’ [20], ‘ideas, attitudes, expectations and opinions about law, held by people in some given society’ [21], acceptable way of resolving disagreements and disputes [25], ‘practices and ideologies within the legal system’ [37], attitude of public towards law [37], ‘how people define their problems in legal terms’ [37], ‘how much individual sees him or herself as embedded in the law and entitled to its protections’ [37], ‘relatively stable patterns of judicially oriented social behavior and attitudes’ [40], the way judges are appointed [40], litigation rate [40], ‘the number and role of the lawyers’ [40], prison rates [40], legally oriented social behavior and attitudes [33], how do people resolve their issues, how does the legislature get influenced to make a particular law, how is the law implemented, who forms the law, name of law implementation agencies, role of different agencies influencing law etc.

6.2.2 Judicial culture

Judicial culture characteristics consist of hierarchy in the courts[6], eligibility of selection of judges[6], the selection process of judges[6], judicial autonomy[3], trust in the judiciary [3], staff numbers, judges salary and building infrastructure[3], mainly three dimensions of judicial culture; ethical, legal and institutional [33], the selection process of the employees in the judiciary, the procedure followed within the judiciary, responsible people to make rules within the judiciary, etc.

6.2.3 Court culture

Court culture characteristics includes the beliefs of and behaviors of the people who are responsible for the case resolving [45], core values of the courts can be used to identify the culture of a court [47], sixteen values represents the court of culture; they are: ‘case differentiation, chain of command, collaborative problem solving, collegiality, constrained change, continuity with the past, decentralization, discretion, efficiency, flexibility, innovation, judicial consensus, rule oriented, self-managing, sovereignty and teamwork’ [45], varying court culture type consists of five areas

including ‘case management, judicial/staff relations, change management, courthouse leadership and internal organization’ [45], language used in the court, qualification of judges, advocates and court staff, on job training of the judges, advocates and court staff, number of employees and judges in the court, use of technology in the court, punctuality in the court, behavior of judges, advocates and staff with clients, opinion of court stakeholders regarding court activities, status of accountability in the court, perception of the corruption, role of the police forces in the court, level of the transparency in the court, extent of utilization of the court personnel, status of the intentional case delay in the court, infrastructure of the court etc.

7. Findings and Discussion

Different dictionaries have given the meaning of term ‘legal’ as ‘related to law’ [10; 34; 36; 42]. Law is a broader concept as compared to judiciary which is responsible for giving the judgements about the law. It is also a broader concept compared to courts because courts are functional units of the judiciary. Legal culture has been conceptualised in the literature as the attitude and behavior of the people towards legal system [19; 20; 21; 33; 40], expectations from judges and attorneys [11] and practices in the legal system [11; 37]. Based on the comparative analysis of the meanings and characteristics of three constructs, it can be concluded that legal culture is the broadest term.

The meaning of term ‘judicial’ in different dictionaries explains it as ‘related to the branch of government responsible for administration of justice’. So, the term ‘judicial’ is related to the judiciary. Judicial culture has been described as the characteristics related to judiciary such as hierarchy in the courts [6], recruitment rules for judges [3; 6], trust in the judiciary [3] etc. This construct is broader than the term ‘court culture’ but narrower than the term ‘legal culture’ so it can be considered as a middle level construct in the hierarchy of legal culture, judicial culture, and court culture.

The meaning of term ‘court’ in different dictionaries explains it as a place where legal cases are decided. ‘Court culture’ has been described in the literature as the belief and behavior of the court stakeholders [45], court values [45; 47], etc. So, this construct deals in the variables within the court premises. The findings of the meaning and characteristics of the ‘court culture’ is consistent with the comparison in previous two paragraphs.

Based on the analysis of the meaning and characteristics of three constructs a conceptual model is developed (See Figure 1). A rectangular shape in the model depicts court culture that is a micro level term. Court culture is related to a functional unit in judiciary. A square shape just above the ‘court culture’ denotes ‘judicial culture’ that is a meso-level term and the outer circle depict ‘legal culture’ that is a macro level term.

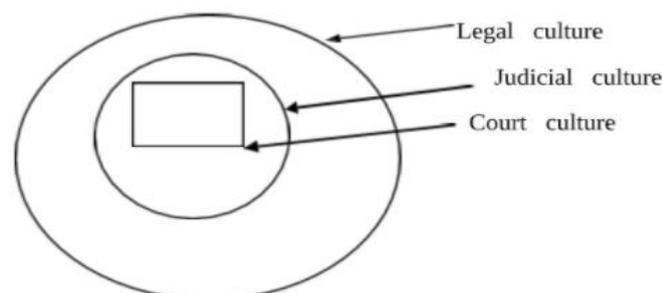


Figure 1. Conceptual Model for the Difference of Legal Culture, Judicial Culture, and Court Culture

8. Conclusion

This study makes a significant theoretical contribution by clarifying the constructs of legal culture, judicial culture, and court culture. Previous studies have used these terms interchangeably [6; 30], but this study identifies the differences between these three constructs. This study explains ‘legal culture’ as a macro level construct, ‘judicial culture’ as meso level construct, and ‘court culture’ as a micro level construct. This clarity will help future researchers select the appropriate term as per their specific scope of research.

Though this study has used strong theoretical background to make conclusion about the difference between legal culture, judicial culture, and court culture. However, future researcher can also conduct empirical study using interviews to explore these three constructs based on the expert knowledge of the legal stakeholders and lawmakers. They can compare the findings of this study with the findings of their empirical study.

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