

Judicial Institutions in Authoritarian Regimes and its Implications for Transitional Justice

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Abstract

In recent years, Comparative Judicial Politics research has rediscovered the topic of judicial institutions in non-democratic regimes. Dismissed as mere “window dressing” by some of the classical texts on authoritarian regimes, the last years brought an increasing appreciation of the relevance of judicial institutional structures for the dynamics of authoritarian rule (see notably Moustafa, 2007). The fundamental proposition that formal institutions matter in authoritarian regimes (Geddes, 1999; Gandhi and Przeworski, 2007; Gandhi, 2008; Wright, 2008; Gandhi and Lust-Okar, 2009) formed the basis for a considerable number of studies that analyzed the effects of judicial institutions on various aspects of authoritarian rule from a number of different perspectives. Although a clear consensus has yet to emerge, it is clear that diverse judicial institutional arrangements can no longer be disregarded as insignificant for authoritarian rule.

In the light of such developments, the aim of this panel is to systematically analyze two closely related issues. The first one is associated with judicial institutions during authoritarianism, and attempts to explain the relationship between the autocrat with the judiciary and the coercive apparatus. Goemans (2008) suggests that judicial institutions can be considered as a source of dissent that threatens the power of the dictator. In their role of guarantors of the rule of law, courts might open new avenues for the opposition to challenge the regime (Moustafa, 2007). In some other cases, the judiciary acts as a source of support contributing to the stability of the authoritarian regime as in democracies (Ríos-Figueroa and Pozas-Loyo, 2010; Vanberg, 2008). Some autocrats manage to contain judicial institutions to threaten their power through strategies of control and political deactivation of courts and its governing institutions, such as monitoring the recruitment system of judges, or the low involvement of judges in political repression (Hilbink, 2007; Linz and Stepan, 1996; Mayoral, 2012; Magalhães et al., 2006; Moustafa, 2007, Pereira, 2005, Toharia 1975, 2003). It may even become more or less directly involved in the repressive strategies of the regime in exchange for perks and benefits, or just as a strategy for survival (Pereira, 2005; Aguilar, 2011). Hence, we observe how autocrats deal in diverse ways with the configuration of judicial systems (Solomon, 2007). Accordingly, our guiding questions in this panel are: Why autocrats deal in diverse ways with the configuration of judicial systems? What motivates state leaders to establish judicial institutions with varying degrees of autonomy? And which are the consequences of adopting different judicial strategies in the general levels of repression and in the survival of the autocracy?

The second issue is related to the causal link between the role adopted by the judiciary and the subsequent type of transitional justice. Some researchers, claiming that different types of

dictatorship produce different democratization processes (Escribà-Folch, 2008; Geddes, 1999; Wright and Escribà-Folch, 2012), have analyzed the transitional justice policies adopted by different countries (Aguilar, 2008, 2012; Barahona de Brito, 1997; Kim and Sikkink, 2010; Nalepa, 2010; Olsen, Payne, and Reiter, 2010), and studied the functioning of the judicial system under authoritarian regimes (Ginsburg and Moustafa, 2008; Hilbink, 2007; Pereira, 2005), but there have been no systematic attempts to establish a causal relationship between the type of repressive practices used by dictatorships (clandestine *versus* official), the extent of the judicial system's involvement (direct *versus* indirect), and subsequent transitional justice policies (trials *versus* amnesties).

This panel attempts to bring together a number of researchers working on these issues as regards the role of judicial institutions under authoritarian regimes. Analyzing the dynamics of authoritarian judicial politics from a variety of different perspectives and with methodological approaches ranging from small-N comparative designs, to medium-N studies and cross-national quantitative analyses, all contributors will be centrally concerned with understanding the nexus between judicial institutions, the authoritarian rule and subsequent transitional justice policies. The panel covers several world regions and includes empirically as well as conceptually oriented contributions.

Paper proposals should be submitted via email by **January 31th** to the panel chair Juan A. Mayoral: juan.mayoral@eui.eu

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