

Judicial Institutions in Authoritarian Regimes and its Implications for Transitional Justice

Panel Proposal for the ECPR General Conference

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Chairs:

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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 y 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 that lie at the very heart of this recent literature on Judicial Politics. 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 involved in the repressive strategies of the regime in exchange for perks and benefits (Aguilar, 2011). Hence, we observe how autocrats deal in diverse ways with the configuration of judicial systems (Solomon, 2007). Accordingly, our guiding question in this panel is: Why autocrats deal in diverse ways with the configuration of judicial systems, and how exactly they do that?

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), analyzed the transitional justice policies adopted by different countries (Aguilar, 2008; 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 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 all 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 and the authoritarian rule. The panel covers several world regions and includes empirically as well as conceptually oriented contributions. Paper proposals (max. 150 words) should be submitted via email by **January 31th** to the panel chair Juan A. Mayoral: juan.mayoral@eui.eu