



Some determinants of internal judicial independence: A comparative study of the courts in Chile, Peru and Ecuador

Santiago Basabe-Serrano ^{a,b,c,*}

^a*The Alexander von Humboldt Foundation, Germany*

^b*German Institute of Global and Area Studies (GIGA), Germany*

^c*Department of Political Studies, Facultad Latinoamericana de Ciencias Sociales FLACSO, Ecuador¹*

Abstract

This article explores the primary determinants of internal judicial independence in three Latin American countries. Considering the relative absence of research focused on this dimension of judicial life, this article is innovative in demonstrating how it is affected by two variables: the quality of judges' training and respect for their judicial careers as criteria for promotions or transfers. While these variables explain why some countries enjoy greater internal judicial independence than others, this article also shows – contrary to popular wisdom – that judicial activism does not have a strong influence on internal judicial independence. Conducting a comparison of the courts in Chile, Peru, and Ecuador using surveys and semi-structured interviews, this study also shows that judges' autonomy from politicians does not necessarily follow the same path as the lower-court judges' independence from their hierarchical superiors.

© 2014 Elsevier Ltd. All rights reserved.

Keywords: Internal judicial independence; Judicial autonomy; Judges; Peru; Chile; Ecuador

* Neuer Jungfernstieg 21, 20354 Hamburg, Germany. Tel.: +49 (0)40 428 25 593; fax: +49 (0)40 428 25 547.

E-mail addresses: Santiago.Basabe@giga-hamburg.de, santiagobasabe@gmail.com

¹On leave.

1. Introduction

Within the subfield of judicial politics, judicial independence is one of the issues that have attracted the most academic attention. Understood as the level of any type of influence over judges' decision-making, judicial independence may be considered from three specific dimensions. The first, known as external independence, refers to any type of interference with judicial rulings generated from the political sphere. The second dimension, called independence of a court from the parties to a case -judicial impartiality – has to do with the influence that the litigant, lawyers or other parties in the proceedings may have over the judges' decisions, through some type of illegitimate payment (Couso, 2005; Domingo, 2000). The third aspect of judicial independence is the influence that may be exerted by the higher-court judges over their colleagues in the lower courts, within the hierarchy of a judicial system (Kapiszewski and Taylor, 2008). This dimension is known as internal judicial independence (hereafter IJI).

In spite of the fact that studies of each of these three dimensions of judicial independence is equally important for fully understanding the performance of the courts, treatment of the subject in Latin America has been markedly asymmetrical. The vast majority of studies have concentrated on external judicial independence; considerably fewer studies have focused on judicial impartiality, and IJI has been given only minimal attention. Although it is important to analyze the interactions that take place between judges and political actors, as well as those between judges and the users and operators of the judicial service, studying the variables affecting the lower-court judges' autonomy from their superiors when making decisions about their cases is also important, for at least three essential reasons.

First, studying various levels of IJI helps to understand how institutional design affects the entire set of selective incentives that drive the internal dynamic of the courts. Second, by analyzing variations in IJI it is possible to identify the social factors that influence the behavior of some judges toward others. Third, studying the causes of IJI provides a panorama of the bureaucratic logistics that drive judicial activity. In short, exploring the autonomy of judges who are more removed from political influence because they enter the judicial system at a young age offers a clearer vision of how judicial decisions are made in areas that are more closely related to the daily needs of the citizen, and less of the politicians (Guarnieri and Perdezoli, 1999; Damaska Mirjan, 1986; Merryman, 1985).

The first part of this article provides an overview of the main contributions regarding IJI found in the existing research in judicial politics. The second part describes a theoretical framework that identifies variables within a socio-political context, as well as some that are endogenous to the courts, providing a possible explanation for why some countries have more IJI than others. Specifically, this article proposes analyzing variables related to: (i) the political and social context in which the courts function, and (ii) the logic of action observed between judges. This exercise, added to the institutional variables mentioned in previous studies, will provide a broader panorama of the motivations that explain differences in IJI among Latin American countries. The third part tests the hypotheses arising from theoretical proposal through a comparative design of the courts of Chile, Peru and Ecuador. The results show that the quality of judges' training and respect for their judicial careers explain why some countries enjoy greater IJI than others. Furthermore, the empirical analysis shows that judicial activism does not have a strong influence on IJI. The final section presents conclusions and issues to be evaluated in future research agenda.

Download English Version:

<https://daneshyari.com/en/article/1097951>

Download Persian Version:

<https://daneshyari.com/article/1097951>

[Daneshyari.com](https://daneshyari.com)