DOWNLOAD PDF DEMOCRACY AND JUDICIAL INDEPENDENCE

Chapter 1 : Judicial Independence, Freedom, and Duty â€“ Double Aspect

Democracy Threatened: Judicial Independence Under Attack in Poland "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

Photograph Courtesy of the Office of the President. Judicial independence is one of the most important principles of the rule of law. It is critical in defending people from intrusions and overreach by the government and preserving a free and democratic society. An independent judiciary envisions that courts should follow the rule of law, basing their decisions on constitutional principles, applying relevant statutes and legal precedents to the facts of each case. Unlike politicians, judges should be immune from public opinion and special interests and must decide cases according to the law, even when doing so may be unpopular. Disagreeing with a decision is one thing. But personal attacks on judges are attacks on our Constitution. The ABA and the legal community cannot tolerate assaults on the judiciary because they can chip away at the legitimate authority of that branch of government and give undue influence to the legislative and executive branches. In many jurisdictions, state court judges face elections. Campaign contributions and interest group pressures during these elections, at the very least, create an appearance of influence and undermine public confidence in the impartiality of the judiciary. So do political attack ads that mislead the public about the legal process and the role of judges. Because judges must follow professional codes of conduct that prohibit them from speaking about pending cases, they are often prevented from publicly defending themselves from attacks. It is therefore up to the bar, the legal community and all citizens to protect the integrity of the courts. In his book, On Tyranny, Yale history professor Timothy Snyder studies the ways that authoritarian regimes came to power and offers lessons to protect against tyranny. He argues that it is imperative to defend institutions, which include the press, trade unions and, of course, the courts. He points out that although institutions normally protect people, there are times when institutions cannot protect themselves and need to be defended. The ABA evaluates the professional qualifications of federal judicial nominees, responds to unwarranted criticism of judges and, through programs like Law Day, provides information about the role of the judiciary in our system of government. Please share them widely. The ABA has opposed state and federal legislation that has attempted to punish judges for making unpopular decisions or even from hearing cases that deal with controversial issues. These are attempts to circumvent the authority of the courts. Because the bar is uniquely qualified for this role, it will continue its important work to preserve the independence of the judiciary and take action when judges are subjected to attacks. The legal community must remain diligent and vigilant in their support of institutions, especially the autonomy of the courts. Our judiciary safeguards rights and liberties and needs to be protected from attacks.

Chapter 2 : Judicial independence sacrosanct to democracy - CJ Jallow - The Standard Newspaper

Today's threats to judicial independence come from across the political spectrum. Illiberal democracy can appeal as much to populists on the left as it does populists on the right.

Ming Chin Attacks on judicial independence are almost as old as the American republic itself. They date back at least to , when President Thomas Jefferson tried but failed to use the impeachment procedure to remove U. Supreme Court Justice Samuel Chase, in part because of the content of his decisions. But most people agree that attacks are now on the rise. One in South Dakota would have allowed judges to be sued or criminally prosecuted for their decisions the measure was defeated by to percent in A proposed action in Montana would have allowed judges to be recalled at any time for any reason. Of course, attacks on judicial independence do not come only in the form of ballot initiatives. In , after a nationally orchestrated campaign, three Iowa Supreme Court judges were voted off the bench in a retention election for joining a unanimous decision declaring that same-sex marriage is legal under the Iowa state constitution. Sadly, the increasing effort to politicize the judiciary is partly a self-inflicted wound, as advertising in judicial elections has taken an increasingly negative tone. According to reports , campaign contributions in judicial races have skyrocketed, with some successful state supreme court candidates raising more money than candidates for the U. When judges rely on campaign donors for their jobs, a public perception of judicial bias and favoritism inevitably arises. It commands respect only if the public thinks the judges are neutral. In June , the court held in Caperton v. Six months later, in Citizens United v. Federal Election Commission, a closely divided court invalidated laws prohibiting corporations and labor unions from making independent campaign expenditures that expressly advocate the election or defeat of a particular candidate. It is tremendously hard to create, and easier than most people imagine to destroy. Let us together insure that our judicial system continues to be fair, impartial, independent, and dedicated to the rule of law. If we do that, then our democracy will remain strong and enduring. The Honorable Ming W. Chin was sworn in to the California Supreme Court in March Justice Chin has authored landmark decisions in areas such as DNA, toxic tort insurance coverage, surrogate parents, and hate crimes.

Chapter 3 : An Essay on the Role of Judiciary in Democracy

Judicial Independence and Democracy By Ed Vopal, President Wisconsin Association for Justice. January Presidential Candidate Newt Gingrich recently said that "activist judges" should be compelled to justify their unpopular decisions in Congressional hearings.

See Article History Judicial independence, the ability of courts and judges to perform their duties free of influence or control by other actors, whether governmental or private. The term is also used in a normative sense to refer to the kind of independence that courts and judges ought to possess. That ambiguity in the meaning of the term judicial independence has compounded already existing controversies and confusions regarding its proper definition, leading some scholars to question whether the concept serves any useful analytical purpose. There are in general two sources of disagreement. The first is conceptual , in the form of a lack of clarity regarding the kinds of independence that courts and judges are capable of possessing. The second is normative, in the form of disagreement over what kind of judicial independence is desirable. Practical considerations As a practical matter, the type of judicial independence that is widely considered both the most important and the most difficult to achieve is independence from other governmental actors. On the one hand, that type of judicial independence is highly valued among those who impute to courts a special responsibility for ensuring that individuals and minorities do not suffer illegal or unjust treatment at the hands of the government or a tyrannous majority. On the other hand, that type is considered especially difficult to achieve because the other branches of government ordinarily possess the power to disobey or thwart the enforcement of judicial decisions, if not also to retaliate against the courts for decisions that they oppose. Today the idea of judicial independence has such broad and powerful normative appeal that even states that do not honour it in practice are wont to profess a commitment to it. Judicial independence has been formally endorsed at the international level as wellâ€”for example, in the Basic Principles on the Independence of the Judiciary, adopted by the United Nations General Assembly in Empirical research suggests, however, that the existence of formal constitutional guarantees of judicial independence is poorly correlated with actual respect for judicial independence in practice. Definition and scope Any comprehensive and coherent definition of judicial independence must address several questions. Judicial independence can be defined as a characteristic of individual judges or as a characteristic of the judiciary as a whole. Neither conception is indisputably preferable to the other as a practical matter. On the one hand, if judicial independence is guaranteed at the institutional level but not at the individual level, individual judges can be forced to obey the wishes of the leadership of the judiciary, which may result in a less-than-wholehearted enforcement of the rule of law. In Chile and Japan, for example, the extent to which the judiciary as an institution commands obedience and conformity from its members has been blamed for producing timid judges who are unwilling or unable to rule against the government. On the other hand, if judicial independence is ensured at the individual level, individual judges will find themselves at liberty to pursue their individual preferences. Unchecked discretion of that kind not only invites abuse but also raises the likelihood that judges will decide cases in inconsistent ways, with the potential effect of undermining the predictability and stability of the law. The existence and adequacy of judicial independence become matters of practical concern only when a court decides a dispute involving the interests of some actor or institution with potential or actual power over the court. Generally speaking, the more powerful the actor whose interests are at stake, the greater the need to protect the independence of the court from that actor. If both sides to the dispute are powerful, however, that symmetry of power may provide part or all of the necessary protection. The three scenarios that a court may encounter are: In the first scenario, the court must strive to remain independent from the parties, who may attempt to undermine its independence by a variety of means, such as bribery or intimidation. In that situation the government is a friend of judicial independence: In the second scenario, the prospects for judicial independence are again relatively favourable. The court is asked not to face down a powerful actor on behalf of a weak one but rather to choose sides between two powerful actors in an impartial way. Whichever side the court chooses, the result will be a two-against-one dynamic that ought to provide the court a degree of

protection from retaliation. The government does not pose a meaningful threat to judicial independence in such cases, because it is at war with itself. In the third scenario, the government does pose a potent threat to judicial independence, but the threat may be either counteracted or compounded by the public. For instance, if a ruler seeks to extend his or her own term of office in an illegal fashion, the court faces a threat to its independence from the government, but its ability to withstand that threat is greatly improved to the extent that it can count on public support if it rules against the government. As long as the court is in the position of siding with either the government or the public, its independence enjoys protection. Either should be capable of providing the court with the support that it needs to withstand attacks from the other. In other situations, however, the court may be asked to take a position that is antagonistic to both the government and the public, as in the case of illegal government discrimination against an unpopular minority. Here the prospects for judicial independence are at their nadir: There are various ways to protect judicial independence in the face of such threats. Common strategies include limiting government discretion over judicial salaries, placing heavy restrictions on the removal of judges from office, fixing the minimum jurisdiction that courts are to possess, and relieving judges of personal liability for acts performed in the course of their duties. Less obviously, the internal organization of a judiciary can also have a profound effect on its susceptibility to external influence. The organization of the Japanese judiciary, for example, renders lower court judges highly obedient to an administrative bureaucracy controlled by the chief justice of the Supreme Court of Japan. A decentralized organizational structure that grants greater autonomy to individual judges, by contrast, may make it harder for the government to capture or co-opt the judiciary as a whole. In the long run, however, it is difficult, if not impossible, to create a perfectly independent judiciary that is completely insulated from all forms of political and popular influence. The relatively lengthy experience of the U. Supreme Court , for instance, suggests that even a highly independent court is likely over time both to be reshaped by political forces and to accommodate the wishes of a durable political majority. It is optimistic to think that a handful of judges, lacking the power of either the purse or the sword, could consistently defy more-powerful actors and institutions without ever suffering any consequences, no matter what formal protections they might enjoy. There are limits to what can be accomplished simply by adjusting the institutional characteristics of the judiciary or by enacting solemn declarations about the inviolability of judicial independence. Ultimately, the prospects for attaining even moderate levels of judicial independence are likely to depend on political and historical conditions that are exogenous to the judiciary and may well lie beyond reach, such as the existence of a stable, competitive, multiparty democracy. Not all forms of influence over judicial decision making constitute threats to judicial independence. Whereas some activities aimed at influencing courts, such as bribery and intimidation, may be inappropriate under any plausible conception of judicial independence, others can be evaluated only on the basis of contestable normative judgments. In the case of public protests in front of courthouses, for example, one view might be that such protests should be privileged as a form of political expression and that judges in a democracy are permitted or even obligated to take public opinion into account. Alternatively, one might take the view that judges should be shielded from such expressions of public opinion, much as jurors are sequestered, to ensure that their deliberations are not tainted by considerations that ought to be irrelevant. Likewise, a public campaign to deny a judge reelection because he has ruled in unpopular ways on controversial issues can be characterized as either a healthy manifestation of democracy or as a threat to judicial independence. Whether such efforts to influence judicial decision making are consistent with judicial independence cannot be answered by fiat. Defining the requirements of judicial independence in such cases demands instead a normative theory of what courts are supposed to take into account when deciding cases, what judicial independence is supposed to achieve, and to what extent judicial independence can and should be balanced against other objectives and considerations. Independence for what purpose? Judicial independence is generally considered a means to an end rather than an end in itself. Most would probably agree that the ultimate goal can be described as the fair and impartial adjudication of disputes in accordance with law. If that is indeed the goal, however, then the pursuit of judicial independence is open to several objections. One objection is that the goal itself is unattainable, because it rests on a misconception of the nature of both law and adjudication. It is a commonly held view among legal theorists that the law is

frequently indeterminate and that it is therefore impossible for judges to decide disputes simply by applying preexisting law. Rather, it is said, the act of adjudication requires judges to make the very law that they purport to merely apply. Yet if adjudication necessarily entails lawmaking, then judicial independence does not simply protect the ability of judges to decide disputes in accordance with law but instead licenses them to make and impose whatever laws they see fit, which is a prospect that many consider incompatible with either the appropriate role of judges in a democracy or the idea of separation of powers. Another objection is that judicial independence is neither necessary nor sufficient to ensure impartial adjudication in accordance with law and may even undermine that goal if left unchecked. On the one hand, it is possible for a judge who faces potential retaliation to nevertheless decide cases in an impartial manner. On the other hand, there is no guarantee that giving judges the freedom to decide cases as they wish means that they will choose to do so fairly and in accordance with law. Even if it were possible to create a judiciary that is completely free from both popular and political control, what would then prevent the judges from deciding cases on the basis of personal prejudice or self-interest? It is on the basis of such concerns that many consider it essential to balance judicial independence against judicial accountability and to distinguish appropriate forms of influence over the judiciary from inappropriate forms. However, any mechanism that might be devised for preventing or punishing judicial abuse of power is itself likely to prove susceptible to abuse. The resulting question of how to oversee the judges who are responsible for overseeing the governmentâ€”quis custodiet ipsos custodes Latin:

Chapter 4 : Judicial independence - Wikipedia

Webmaster Webmaster May 8, 0 Comment cj, democracy, independence, jallow, judicial, sacrosanct By Tabora Bojang Chief Justice Hassan B Jallow said there cannot be any effective and functioning democracy in the absence of efficient independent judicial system in the country.

To start with â€¦ No, there is no attack on democracy and we are not headed for a technocratic government yet. But yes, the courts in Pakistan have engaged in judicial activism. The original Panamagate verdict on Nawaz effectively prepared ground for the latest disqualification. The legality of the new verdict rests on the decision that was given on the iqama case as part of Panamagate. At this stage, even Imran Khan agrees that the iqama verdict was weak and felt as if the Joint Investigation Team had made up its mind in advance to convict Nawaz and came up with the weakest reason. Because the reasoning was so weak, the verdict never inflicted the political damage on Nawaz and the PML-N that many expected. The new verdict does not really hamper the narrative that Nawaz had since built and the PML-N is now reliant on either. However, he being barred from heading the party does create problems for the PML-N going forward with regards to leadership and succession. Choices for the ousted prime minister The basic issue is that Nawaz does not trust anyone apart from his wife, his daughter and himself when it comes to running the party. It is hard for people to comprehend how possessive he is of the party having gone through the trauma of and how the party was dismantled in Those experiences have stayed with Nawaz and have made him very reluctant to trust anyone else. So, when the courts ban him from being the party president, the only other person he can realistically choose is Kulsoom Bibi. Why not Shehbaz Sharif? Because mian sahab does not trust his younger brother. He has still not thrown his full support behind Shehbaz for the prime-ministership. Similarly, the rally planned in Lodhran by Hamza Sharif in which Shehbaz was supposed to put on a show and claim credit for the by-election win was preempted by Nawaz as he opted for a sneaky jalsa of his own so that he could claim credit instead. The issue is that Shehbaz does not have the charisma that Nawaz has and neither is he a politician. He is an administrator who has very narrow goals. Mian sahab just does not trust him to lead the party because he fears that the party would disintegrate as a result. Shehbaz has barely met his Provincial Assembly members in the past 10 years. He rules through a royal court made up of bureaucrats some of whom are now being indicted in corruption cases. As much as Shehbaz thinks he can handle the affairs at the federal level, he is on for a rude awakening. The senior politicians listen to his brother. Shehbaz cannot ignore them and work through bureaucrats alone. And most importantly, his brother will be practically keeping 15 different checks on him from all sides. In such circumstances, if Nawaz was to give up the control of party presidency, it would be akin to letting Shehbaz have a free reign. Hence, mian sahab would rather hand the leadership to his wife Kulsoom Bibi, even though she is still recovering from battling cancer. The court verdicts have helped the party build a narrative. How is this narrative built? The narrative is based on the courts being portrayed as the effective government and the talk of supremacy of the judiciary on a regular basis helps fuel the idea that somehow the courts are the ones running the country while the parliament, where the PML-N has majority, fights to survive. This is a straightforward premise to work with and the apparent judicial activism has helped feed the notion that it is the courts that are in power instead of the party that holds majority in the National Assembly. Whatever the courts and honourable judges might think or believe, this has helped the PML-N. But what led to judicial activism? However, when Justice Saqib Nisar took over, the Supreme Court began taking up a lot more suo motu cases, and apparently also expanded its operational jurisdiction. The point is that the judiciary being activist is not a bad thing. It only becomes troublesome if it tries to take over the operational jurisdiction of other institutions. When that becomes the case, the judiciary technically starts hurting democracy. But we are far from that at this point in time. Regrettable verdict Lastly, it is pertinent to understand where we are headed. This allows the PML-N to build a narrative that hides its own internal issues. The impending shift within the party will take centre stage only after the elections. It is much easier to hide them from full public view. As for judicial independence, it is a requirement for democracy, but judicial activism can potentially be counterproductive in some cases. An institutional showdown involving the courts,

if it ever comes down to that, could damage not only the sanctity of our democracy but also that of the judiciary.

Chapter 5 : Judicial Independence in the Age of Democracy | The University of Virginia Press

1 Judicial Independence: A Cornerstone of Democracy Which Must Be Defended1 Introduction "It has been said that democracy is the worst form of government except all the others that have.

Constituencies of Singapore and Group Representation Constituency There are two types of constituencies electoral divisions in Singapore: In SMCs candidates vie individually for parliamentary seats, whereas in GRCs the contest is between teams of candidates. Under the GRC scheme, which came into effect on 1 June , the Government may, having regard to the number of voters in a particular constituency, advise the President to declare it to be a GRC and designate it as a constituency in which at least one of the candidates is from the Malay community, or from the Indian or some other minority community in Singapore. Each team in a GRC may have between three and six candidates. Further, it has been suggested that the scheme puts a "premium on parties which can field credible teams", thereby demonstrating that they are "fit not just to become MPs but to form the government". The GRC scheme has been criticized as weakening the candidateâ€"voter relationship, because it may be more difficult for voters to feel that candidates actually represent them when there are a number of candidates in a team to vote for. Most voters elect MPs whom they can identify with and are better able to represent their interests. It would be much easier for voters to identify with a single candidate than with a team of, say, four individuals. Since the people "cannot clearly identify themselves with the candidates In fact, minority representatives are required to vote according to their party line ; they are not allowed to vote specifically in the interests of their racial groups. The multiracial element in Parliament has been artificially imposed by way of a racial quota to ensure that the minorities are represented. It is based neither on a clear electoral mandate like ordinary MPs, nor on expertise or specialization as in the case of NMPs. As a result, the privileges of NCMPs are severely curtailed and this limits their effectiveness as alternative voices in Parliament. Nevertheless, it still seems to be a mechanism for representation of the minority opposition. Nominated Member of Parliament Author and law professor Simon Tay served as a NMP from to The NMP scheme was introduced in and serves to introduce into Parliament alternative, independent and non-partisan views from minorities and experts. This is said to effectively raises the level of political discourse. In , the number of NMPs was increased from six to nine. Despite the protests of many PAP MPs, the party whip was enforced to effect the passing of this scheme. Criticism of the scheme mainly revolved around the dilution of the democratic legitimacy of the Parliament since the electorate has no say in choosing the NMP based on his or her merits. During general elections, Singaporeans still continue to elect MPs who best represent their interests, and NMPs do not feature in the equation. In other words, the NMP scheme has never compromised the democratic process of free elections. Article 49 of the Constitution states that a vacancy not due to a dissolution of Parliament "shall be filled by election in the manner provided by or under any law relating to the Parliamentary elections". However, when a vacancy arises in a GRC, no election needs to be held unless all the MPs have vacated their seats. Several arguments have been advanced by the Government. First, when a voter casts a vote for a candidate, he is also voting for the political party that the candidate is a member of. Requiring the other members in a GRC to vacate their seats so that a by-election can be called would be unfair to them. Secondly, the Government believes that a GRC can function if it is lacking a member, as MPs from other constituencies can help to address the needs of residents in that GRC. If a by-election is not called promptly upon a parliamentary seat falling vacant, the electors in the GRC in question will be represented to a lesser extent. This is particularly pertinent where more than one MP vacates his or her seat or when the seat vacated is that of a minority candidate. Should the latter situation arise, the rationale behind the GRC scheme â€" to guarantee minority representation in Parliament â€" would be defeated. However, this arrangement may not work if an opposition MP vacates his or her seat and no by-election is called, because of the dearth of opposition MPs in Parliament. Therefore, the voters in the opposition ward will be denied of representation until the next general election. In fact, the President is generally required to act in accordance with the advice of the Cabinet, or of a Minister acting under the general authority of the Cabinet, in the exercise of his functions under the Constitution or any other written law, unless the contrary is expressly provided for. Tony

Tan Keng Yam , who won the presidential elections in In response to the criticisms, Prime Minister Lee Hsien Loong argued that the qualification process is necessary and was "carefully designed to ensure that the electorate is presented with qualified candidates". The PEC is not constitutionally obliged to give reasons behind its decisions to award or deny a certificate of eligibility. Its decision is not subject to legal or political scrutiny, and its verdict is final. There has been criticism of how Andrew Kuan , who applied to be a candidate in the presidential election , was denied a certificate of eligibility. Before the PEC could reach a decision on the matter, he was reportedly discredited though statements from various people which were published in the media that alleged incompetence and cast doubt on his character. There is no legal requirement for the PEC to interview prospective candidates, and it did not do so to allow Kuan to explain his side of the story. As a result, the unopposed incumbent S. Nathan was declared the President for a second term. A more democratized process open to public scrutiny would give citizens a role to play, thus enhancing the notion of representative democracy. Nathan was deemed to have been elected unopposed for two consecutive terms. She has suggested that to ensure that the institution of the Elected President continues to be legitimate, even if there is only one candidate in an election a vote should be held, and the candidate only declared elected if he or she receives at least a specified percentage of votes. These Ministers, together with the Prime Minister, form the Cabinet. First, MPs are chosen by the electorate to represent their concerns and needs in Parliament. Secondly, the Prime Minister, who is vested with the confidence of majority of the MPs, and the Cabinet which is made up of popularly elected MPs, effectively represent the views of the electorate as he heads the Government. The structure of the executive is therefore based on the concept of political representation. Role of the judiciary[edit] Appointment and independence of judges[edit] Main article: Judicial independence in Singapore Article 93 of the Constitution vests judicial power in the judiciary. Rather than being elected, the Chief Justice , Judges of Appeal, and the judges of the Supreme Court are appointed by the President if he, acting in his discretion, concurs with the advice of the Prime Minister. Thus, unelected judges influencing the laws that govern people through the making of decisions seems incompatible with the idea of representative democracy. However, even though the appointment of judges is counter-majoritarian in nature, this does not mean that the concept of representative democracy is undermined, as it appears that a counter-majoritarian judiciary more effectively upholds the Constitution and the concept of representative democracy. The liberal use of glass in its architecture and the open layout of the building are said to signify the ideal of transparency in the law, an important function of the courts in a representative democracy , while the disc-shaped structure represents the impartiality of justice. As Alexander Hamilton put it: Jeyaretnam , Tang Liang Hong and Dr. Chee Soon Juan [95] with litigation, in some cases causing bankruptcy and, eventually, removal from the political scene. The Chief Justice of Canada , Beverley McLachlin , has commented that democracy itself is a lot more complicated than elected persons making law. Democracy not only requires majority rule, but rule that protects individuals and groups of individuals whilst promoting fairness. The courts have asserted that the judiciary thus has the power and duty to ensure the observance of constitutional provisions, and is also responsible for declaring invalid any exercise of legislative power exceeding the limits conferred by the Constitution, or contravening any prohibition that the Constitution provides. Thus, the judiciary essentially upholds the idea of representative democracy that the Constitution embodies when playing its counter-majoritarian role of serving as a check on Parliament and a "Protector of the Individual".

Chapter 6 : "The Importance of Judicial Independence" - Judge Robert C. Leuba

Judicial independence ensures the rule of law, safeguards our democracy and is what former Supreme Court Chief Justice William Rehnquist called "the crown jewel of our system of government.".

All one has to do to appreciate the benefits of our system is to look to the recent experiences of our neighboring States. The Connecticut judicial system is held up as an example of what others should strive for, and we are regularly consulted by other states and countries for advice. The single most important aspect of our current system is the concept of judicial independence. The concept of judicial independence is one of the key factors that distinguishes our system of government from others around the world. It protects the weak from the powerful; the minority from the majority; the poor from the rich; yes, even the citizens from excesses of government. What does the concept of judicial independence mean? It surely includes the ability and duty of a judge to decide each case according to an objective evaluation and application of the law, without the influence of outside factors. The citizens of our State rightly expect that in every case decided by a court. It is hard to imagine the same level of judicial independence in a system where judges are elected. This would create a temptation for a judge to make a decision based on how it would be perceived by those in power from time to time without regard for the law. Judges are particularly vulnerable at reappointment because the threat of returning to private law practice is a real concern for people who have left behind their relationships and been away for eight years. The concept of judicial independence is supported by our statutes on the reappointment of judges. Section a of the General Statutes, regarding evaluation by the Judicial Selection Commission of judges for reappointment, states that, "There shall be a presumption that each incumbent judge who seeks reappointment to the same court qualifies for retention in judicial office. I would like to first point out that the Judicial Branch does not participate in any way in the selection or appointment of new judges. We do, however, work with the Legislative and Executive Branches during the re-appointment process. And we do operate a judicial performance evaluation program for current Superior Court judges. The Connecticut Judicial Performance Evaluation Program has been recognized throughout the country as being on the cutting edge of meaningful judicial evaluation. Operational since the mids, its purpose it to evaluate the on-the-bench performance of judges. Questionnaires are distributed to attorneys who appeared before the judge for a proceeding that lasted at least one hour, and to jurors who sat on a case presided over by the judge. The attorneys and jurors are encouraged to be forthright by the care exercised to keep the respondents anonymous. These results of these evaluations are used in three ways. They are used by a Deputy Chief Court Administrator, who meets with judges regularly to discuss them. They are used in the design of educational programs for judges. They are also provided to the Judiciary Committee and the Judicial Selection Commission at the time for considering the re-appointment of a judge. It is important to note that, since its inception, the evaluation program has resulted in overwhelmingly favorable responses from attorneys and jurors. The reappointment of judges to subsequent eight-year terms is largely a matter for the Executive and Legislative Branches of government. However, the Judicial Branch is committed to cooperating fully with those branches of government to ensure that they have all the information that is pertinent to the renomination of any judge. Our efforts are aimed at ensuring that the reappointment process is based on all the available information on that judge, so the decision that is made is based on the complete picture, not just one incident or aspect that has come to light. If I have one message to deliver here today it would be that our system of government depends upon the independence of the judges to decide cases based upon the law free from fear of retribution, and that the system for appointment and reappointment should guarantee that to our citizens. I will leave to others whose testimony will follow the specifics of the legislative actions most likely to bring about that result. I would like to thank the committee for all the time and effort it has put into looking into this very important matter and for the opportunity to testify here today.

Chapter 7 : Independent courts are vital to democracy

In response to the judicial reform proposition of Turkey's governing Justice and Development Party (AKP), Ã–mer TaÅŸpinar questions whether a particular type of judicial authoritarianism will be.

Economic basis[edit] Constitutional economics studies issues such as the proper distribution of national wealth including government spending on the judiciary. In transitional and developing countries, spending on the judiciary may be controlled by the executive. This undermines the principle of judicial independence because it creates a financial dependence of the judiciary on the executive. It is important to distinguish between two methods of corruption of the judiciary: State corruption of the judiciary can impede the ability of businesses to optimally facilitate the growth and development of a market economy. Development of the concept[edit] National and international developments[edit] The development of judicial independence has been argued to involve a cycle of national law having an impact on international law, and international law subsequently impacting national law. The first phase occurred in England with the original conception of judicial independence in the Act of Settlement Historically, the appellate function had a connection with the executive branch due to the types of cases typically heard â€" impeachment and the hearing of felony charges against peers. In addition, the Constitutional Reform Act replaced the Lord Chancellor by the Lord Chief Justice as head of the judiciary, separated the judicial Appellate Committee of the House of Lords from the legislative parliament, reforming it as the Supreme Court , and creating a Judicial Appointments Commission. In this process, concepts and ideas have become enriched as they have been implemented in successive judicial and political systems, as each system has enhanced and deepened the concepts and ideas it actualized. In addition to the UK, similar developments of conceptual cross-fertilization can be seen internationally, for example in European Union law , [14] in civil law countries such as Austria, and in other common law jurisdictions including Canada. Scopus International Standards of Judicial Independence between and These include rights to tenure although the Constitution has since been amended to introduce mandatory retirement at age 75 and the right to a salary determined by the Parliament of Canada as opposed to the executive. In a measure of judicial independence was extended to inferior courts specializing in criminal law but not civil law by section 11 of the Canadian Charter of Rights and Freedoms , although in the case Valente v. The Queen it was found these rights are limited. They do, however, involve tenure, financial security and some administrative control. The year saw a major shift towards judicial independence, as the Supreme Court of Canada in the Provincial Judges Reference found an unwritten constitutional norm guaranteeing judicial independence to all judges, including civil law inferior court judges. The unwritten norm is said to be implied by the preamble to the Constitution Act, Consequently, judicial compensation committees such as the Judicial Compensation and Benefits Commission now recommend judicial salaries in Canada. There are two types of judicial independence: Institutional independence means the judicial branch is independent from the executive and legislative branches. Decisional independence is the idea that judges should be able to decide cases solely based on the law and facts, without letting the media, politics or other concerns sway their decisions, and without fearing penalty in their careers for their decisions. Hong Kong[edit] In Hong Kong , independence of the judiciary has been the tradition since the territory became a British crown colony in

Chapter 8 : Representative democracy in Singapore - Wikipedia

On Judicial Independence. From the Foundation. Foundation for Democracy and Justice "A Government of Laws, Not of Men" A white paper is intended to provide concise and accessible context to the understanding of "the rule of law," and its relevance to the daily lives of individuals.

Difficult to accept, on the one hand, because independence from political, and ultimately electoral, control seats uneasily with our notions of democracy in which political power which judges exercise, since they make their decisions in the name of the community must spring from and be answerable to the voters. Difficult to work out, on the other hand, because even if we agree that, democratic qualms notwithstanding, that judicial independence is a good and important thing, we are bound to disagree about what, exactly it means or requires. To what extent can the executive be involved in the administration of the courts? Can it fail to raise these salaries for some prolonged period of time? People, and polities, committed to judicial independence as a principle can give different answers to these questions. In fact, he argues, it has two distinct purposes. One is to ensure the impartiality of ordinary adjudication. Judges need to be independent and secure in order to avoid situations where they will have or will be seen as having an interest in the case before them. No one ought to be the judge in his own case. Nemo judex in propria causa. The Roman law had rules to the same effect, but neither as general nor as pithy. This is interesting, but I think it does not go far enough. The focus on judicial review is unjustified. The political branches are not just involved in litigation against citizens in cases involving claims that a statute is unconstitutional. Much more frequently, citizens challenge the legality of executive, rather than the constitutionality of legislative, action, and in such cases too the judiciary must be independent in order to adjudicate impartially. I think that the second purpose of judicial independence, one that arguably goes beyond impartiality, is to avoid situations where judges become instruments of state policy, as administrative agencies can be. Even where the state is not involved in litigation, it might still want, for policy reasons, the case to come out a certain way. Depending on its political preferences, a government might like courts to favour, say, employees over employers in unjust dismissal cases, or corporate defendants over plaintiffs in product liability cases. Of course, the legislature can, subject to the constitution, change the law to, say, make proof of liability for a defective product easier, or to expand the definition of what constitutes just cause for dismissing an employee. But it must do so publicly, after at least a modicum of parliamentary debate, and usually prospectively, so that those affected by the change will have time to prepare for it. A change in the law is also more difficult to reverse than a change in policy, so it is less lightly to be undertaken lightly, as a matter of temporary convenience. The independence of the judiciary gives judges an extraordinary freedom. Nobody can force an independent judge to decide a case one way rather than another. They can act in ways that are deeply unpopular and retain their positions. This is precisely what is worrying about judicial independence from a democratic perspective though if what I said in the previous paragraph is right, judicial independence is also, in some ways, democracy-enhancing. But it is worth asking ourselves what it is exactly that judges are free to do. The somewhat paradoxical, but reassuring answer is that, by and large, judges are free simply to do their duty. This is not to deny the existence of judicial discretion in hard cases.

Chapter 9 : JUDICIAL INDEPENDENCE IN A DEMOCRACY: Reflections on Impeachments in America an

Often not only the judicial independence in a democracy is the case, but the external pressure can sometimes take place. Heywood argues that in this case it 'is not so much how judges are recruited, but who is recruited' (Heywood,).

An Essay on the Role of Judiciary in Democracy Article shared by The three limbs of Democracy are the legislature, executive and the judiciary. The first formulates policy and enacts it as law, the second carries out policy in action and the third applies the law according to rules of procedural justice and resolves disputes. To guarantee freedom, the hallmark of democracy, these three powers must be separated as much as possible and balanced against each other. Without an independent judiciary, the system may be practically equivalent to dictatorship. Judiciary is the guardian of the constitution which is rooted in the Rule of law. The judiciary is the interpreter of the constitution. Parliament and the state legislature are creatures of the constitution and the judiciary has a duty to correct their errors, if at times they cross the limits of their powers as defined in their constitution. Sometimes even the bare minimum of freedom needed by those on power, because this power is concentrated in the hands of a single individual or a small group of people. In this situation the judiciary remains the only institution to which individual may appeal for help and once the verdict goes against such an enactment, the executives and legislature are expected to retrace their steps if the democratic norms have to survive. The role of the judiciary came to be increasingly emphasized only when the democratic principles began to disseminate in the nineteenth century and as democratic governments began to be set up in the twentieth century. Today there is a wide-spread support and enthusiasm for the assertive posture adopted by the courts. It is because in a democracy the constitution is more steadfastly abided by because of its paramount nature in the political set-up. The judiciary sees that the constitution is not isolated and disgraced. Also hen a constitutional deadlock renders the government helpless, the judiciary is the only institution left as the authority on the constitution to defuse the crises. Lastly, as democracy leaves sufficient scope for different opinions and beliefs, sometimes thee arise two almost equal forceful opinions, contradicting and conflicting with each other, holding out little chance of compromise. At this time, judiciary being regarded and respected as independent and impartial, the judicial verdict is generally adopted by all and the crises are resolved. However, the role of the judiciary is generally limited because of the balance of power tilting towards legislation in most of the democratic systems. Also there is a section of people who are enraged over the aggressive developments brought into focus by the judiciary the new judicial crusade against corruption in high places has sent shock waves all over the country and many legislatures are expressing alarm in what they perceive as judicial activism. But actually this should not be considered as the judicial activism, in fact, these are the corrective measures taken by the judiciary. The constitution itself has given the judiciary over-riding powers. The Indian judiciary has upheld great values enshrined in the Indian constitution. The needs of the hour are restraint and conformity to the letter and spirit of the constitution both by the judiciary and politicians. A free judiciary can only exist in a political system in which democratic principles are truly believed in and acted upon by all alike. In return, the judiciary in a democracy should have the courage to protect its independence and deliver impartial judgments free of fear of repercussions on career and prospects.