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AP Comparative Government

May 28, 2025

The Independence of The Judiciary

At a time when democratic institutions are under growing scrutiny across the world, judicial independence ranks as one of the most vital but vulnerable pillars of democracy. Judicial independence refers to the autonomy that the courts and judges possess to perform their duties free from interference or control by any other authority, government, or nongovernmental (Encyclopedia Britannica). "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country" (OHCHR). The principle secures equitable application of the law, avoids executive overreach, and secures basic rights. Yet, both established democracies and authoritarian states have increasingly undermined this institution. In the United States and China judicial independence, essential to the rule of law's integrity and as a check on executive power, is increasingly threatened in democratic and nondemocratic regimes alike; to protect this pillar of democracy, states like the United States need to strengthen institutional safeguards against political interference in the selection of judges, while China must begin establishing an independent judiciary by reducing party control over the courts and promoting legal professionalism.

Background

Judicial independence has been an American bedrock principle. The United States Constitution guarantees federal judges the right of life tenure and an established separation of powers to grant the judiciary an unfettered hand free from interference from the executive and

legislative branches. This was meant to be used to uphold the rule of law and protect citizens' rights. Chief Justice John Roberts has warned the public of rising threats to the judiciary, including intimidation, misinformation, and disobedience to court decrees. Political scientist Kevin J. McMahon argues that the contemporary Supreme Court is increasingly detached from democratic processes. He observes that five of the nine justices currently sitting were confirmed by senators who collectively had fewer votes than their opposition senate counterparts, and three were nominated by a president who lost the popular vote. McMahon also discusses the "democracy gap," or growing disparity between the Court and the electorate. He goes on to say that the altered politics of nominating and confirming justices and the increased salience of the Court during campaigns have produced this division.

Article 131 of the Constitution of China provides that courts shall exercise judicial power independently. Article 133 states that the Supreme People's Court is accountable to the National People's Congress, showing the lack of independence. The CCP controls the courts and prohibits them from making independent decisions. Courts also don't maintain an independent budget but are funded by the local government, undermining their impartiality and integrity (William & Mary Law School). Judicial review powers in China are weak due to its narrow range and lack of judicial independence. This institutional inferiority makes the judiciary unable to function as an independent court of law.

The institutional make-up of each country's judiciary section unveils the scope of such difficulties. For the United States, the judiciary is made up of approximately 900 life-tenured federal judges and 800 term-expiring federal judges, with state courts staffed by approximately 28,000 judges. The size and decentralization of the American system lend power but expose it to heightened criticism and assault from all sides. China's judiciary is nevertheless structurally

subordinated. It lacks an independent fiscal base, and courts are therefore dependent upon the very political actors they may be required to adjudicate against. In addition, China's judicial review powers are limited and rarely exercised, reflecting the broader limits on judicial power in an authoritarian state (William & Mary Law School). Substantive reform will remain beyond reach so long as the judiciary remains ensnared within the party-state apparatus.

In order to guarantee judicial independence, the United States and China must initiate reforms most appropriate for their own political and institutional weaknesses. In the United States, a critical step is to strengthen institutional safeguards against political intrusion into judge selection. The increasing politicization of the nomination and confirmation process has been creating concerns regarding impartiality and legitimacy of the courts. Establishing bipartisan or nonpartisan judicial nomination commissions might be able to reduce political influence and render appointments subject to legal background rather than ideological compatibility. Finally, it is essential to strengthen protection for incumbent judges, like secure tenure and reasonable compensation, in order to shield them from political pressure and keep them focused on unbiased decision-making. An educated public is less likely to be misled by erroneous information or politically motivated attacks on the judiciary. Educational courses emphasizing the judiciary's function of upholding constitutional rights, resolving conflicts fairly, and maintaining checks and balances on executive power can foster greater civic trust and deter politically motivated attacks on the courts and judges.

China's judiciary, on the other hand, faces more systemic issues based on the structure of the one-party state. In order to progress toward true judicial independence, China needs to start building an independent legal framework that limits the Communist Party's authority over the courts. This might include fostering legal professionalism through improved legal education,

greater precision in judicial appointment standards, and safeguards for judges deciding according to law instead of political orders. Granting the courts independent budgets is also a step toward institutional independence. Without budget autonomy, judges remain captive to local or central authorities that can employ the withholding of funds as leverage. Even if making such adjustments would destabilize the Party's deep-rooted ascendancy, they must be undertaken to create a more legitimate, rule-of-law judiciary.

Judicial independence is not merely a rule of law; it is a pillar of democratic government and a condition of the rule of law. While both the United States and China face real threats to this principle, the nature of the threats is distinct. Outside the judiciary, threats in the United States include misinformation, political polarization, and intimidation of citizens that can taint the integrity and legitimacy of the judiciary. In China, threats are more internalized and included judicial institutions being firmly controlled by the Communist Party and unconstitutionally integrated. Even though they are different from each other, the risk at their core is the same: without independent courts, the law will not be a check on power or a guardian of rights. To overcome them requires targeted reforms, either through a strengthening of democratic safeguards in America or laying the foundations for judicial independence in China. In both situations, a reinforcement of judicial independence is required to guarantee the legitimacy of government and the integrity of democratic institutions.

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