

The Dynamics of Judicial Independence

Lorne Neudorf

The Dynamics of Judicial Independence

A Comparative Study of Courts in Malaysia
and Pakistan

 Springer

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Preface

This book was born of a fascination with the idea and rationale of an independent judiciary, sparked by a series of developments in Canada that culminated with the Supreme Court declaring judicial independence to be an unwritten constitutional principle, capable of invalidating ordinary laws. That holding, which sharply contrasts with the position in the United Kingdom, suggested that the legal meaning of judicial independence could vary from one country to another, even among countries within the same legal tradition. This comparative project expands upon that observation and proposes a more nuanced, context-sensitive understanding of an independent judiciary as compared to the prevailing universalist view. It is based on the work I carried out during my doctoral studies in the Faculty of Law at the University of Cambridge.

Through two case studies of Malaysia and Pakistan, the book seeks to address a number of questions about how judicial independence can take shape in different national legal systems. As a comparative study, the book is not intended as a treatise on the laws of Malaysia or Pakistan. Instead, it is aimed at public law scholars who are interested in what can be learned from country-specific studies of courts and how judicial independence can develop and be used in different places. In particular, it is focused on those who are interested in comparative constitutionalism and legal institutions. It may also be of interest to those working on law reform initiatives, such as international and nongovernmental organizations. In terms of the case studies, Malaysia and Pakistan were selected for a number of reasons, including that they seemingly challenge a universalist view of judicial independence because of differences between them. This is all the more surprising as their legal systems have similar starting points: at the time of their independence from the United Kingdom, both inherited English common law systems and attendant notions of courts and judicial independence. But since that time, Malaysia and Pakistan have gone down different paths. The book reflects upon and proposes explanations for this divergence.

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Lorne Neudorf

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