Measuring Judicial Performance in the Former Communist Countries of Central and Eastern Europe

Abstract

This project seeks to measure judicial performance in each of seventeen former communist countries in Central and Eastern Europe using a 32-question survey administered to experts on the law in each country. These experts will be asked to give their individual assessments of judicial performance in their home countries along eleven dimensions that comprise five broad categories of performance—Independence, accountability, efficiency, effectiveness, and access. No other such comprehensive measure of judicial performance currently exists and the results from this project will enable researchers to determine more effectively how far along the path to democracy each of these countries has progressed individually and comparatively since the demise of communist rule. Researchers will also be able to assess the conditions and strategies that lead to effective judicial reform, and will be able to look at the connection between strength of the judicial sector and investment and economic development.
1. Category Justification

This is a grant proposal under Category 1. I began my current appointment as an Assistant Professor of Political Science in August 2008. The funds requested will allow me to embark upon an important research project that otherwise would be impossible to conduct because of the required costs.

2. Present Status of Knowledge

The project, using results obtained from a survey administered to teams of experts in the law, will measure judicial performance along eleven dimensions related to five broad categories in each of seventeen former communist countries in Central and Eastern Europe. Successful completion of this project will greatly enhance our knowledge of the countries in this region. Regrettably, there is at present no adequate way to assess how far along the judicial systems in these countries have advanced since the demise of communism throughout Central and Eastern Europe, and no way to know how well they are currently performing. Without knowledge of the operation of courts in a country, any effort to understand the working of politics and governance is severely limited. Without knowing how the courts are faring, it is not possible to fully appreciate the degree to which democracy has taken hold in a given country, and next to impossible to understand how much a country adheres to the rule of law. This project intends to fill this void.

Scholars who specialize in studying the former communist countries of Central and Eastern Europe, and policy makers who are responsible for charting the course of these new democracies, are becoming increasingly aware of the important role that judicial systems can play in advancing and consolidating democracy in the region. Strong and effective judicial systems are seen as providing a missing piece of democratic development. A democracy worthy of the name requires that the rule of law prevail; that citizens similarly situated are treated equally; that civil rights and liberties are respected by the government; that due process of law is provided to those facing government action, including those accused of crimes; and that disputes between citizens and between citizens and the government are resolved in a timely, orderly, and fair manner. These are all things that courts can play an important role in securing.

Unfortunately, we know very little about the performance of judicial systems in these countries because until very recently we have given almost no scholarly attention to them. This neglect characterizes a tendency among scholars of developing democracies to give far more attention to legislative and executive institutions and very little to the judicial sector (Staats, Bowler, and

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1 Independence of supreme court and trial courts; efficiency of court system; effectiveness of courts in bringing justice in civil cases, upholding rights of accused in criminal cases, and protecting civil and political rights; honesty and professional competence of judges; and access to courts based on rural/urban locale and socio-economic status.

2 The countries are: Albania, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, and Ukraine
Hiskey 2005, 77-78). Even when we do take note of the courts, the primary purpose of doing so is oftentimes to show what their relationship is with other institutions (Herron and Randazzo 2003, 423) rather than to develop a better understanding of the judicial sector itself. What we know about judicial systems anywhere in the world, including Central and Eastern Europe, derives mainly from the study of American courts. When we fail to include inquiries of courts in other parts of the world, we impoverish our knowledge of courts and political systems generally, including our own. While we have made incremental gains in recent years through the efforts of a few intrepid scholars, what Gibson, Caldeira, and Baird (1999, 343) had to say on the subject nine years ago remains largely true today: “Despite impressive progress in understanding many aspects of cross-national politics, comparativists know precious little about the judicial and legal systems in countries outside the United States.”

All of the former communist countries of Eastern Europe have during the last sixteen years undertaken significant reform of their judicial systems. One reason for doing so stems from the fact that they had no real choice in the matter since law under the former communist regimes was in service to state policy, not to the enforcement and protection of individual rights and liberties and the resolution of commercial and private disputes as is expected in democratic capitalist systems. It would hardly do to continue operating a judicial system designed for a socialist society under democratic/capitalist auspices, so reform was as much a necessity as it was a conscious choice of those in charge of the new regimes. Another reason for engaging judicial reform was that many of these former communist countries wished to join the European Union. A major requirement for entry into the EU was implementation of institutional reforms strengthening the rule of law, both in terms of internal affairs and with regard to transactions involving other EU countries. “The very success of the European integration model depends on mutual trust and confidence that each partner will respect the law—not only in form but also in substance—and play by the rules” (Emmert 2003, 289).

We know that all of these former Communist countries implemented reforms, and presumably the judicial systems in each of these countries operate better than had reform not been undertaken. What we do not know with any degree of certainty, however, is how well the judicial systems are performing after reform and how well each is performing in comparison to the others. Our problem is that we have not had a reliable measure of judicial performance for these countries. Without having some such measure, we are unable not only to compare countries, but are also unable to assess the factors that may have contributed to allowing some judicial systems to perform better than do others. We are also unable to determine the degree to which well-functioning court systems in developing democracies facilitate economic wellbeing and development through protection of property rights and enforcement of contracts, matters of concern to investors both domestic and foreign (North 1990; Li and Resnick 2003).

Judiciary scholars generally agree that any assessment of judicial system performance should consider, at the very least, the level of independence, accountability, efficiency, effectiveness, and accessibility (Staats, Bowler, and Hiskey 2005, 79; Prillaman 2000, 15; Saez Garcia 1998). Judicial independence means independence of the judicial system as an institution from unwarranted external political influence and the ability of individual judges to make independent decisions in particular cases. Accountability relates to whether the judicial branch is itself subject to the rule of law. Efficiency is the ability of a judicial system to process cases relatively quickly
and to avoid the large backlogs of cases that inevitably occur when unreasonable delays in processing cases are the norm and not the exception. Effectiveness means that courts are able to enforce their decrees in ways that bring justice to the affected parties. Accessibility relates to the degree to which the judicial system is equally available to citizens regardless of socioeconomic status or geographic location.

I offer in this project the first comprehensive measure of judicial performance in the former communist countries in Central and Eastern Europe that captures all five of the broad categories of performance just discussed. This will be accomplished through opinions offered by my teams of experts.

3. Plan of Work

This project represents a natural continuation of a similar project begun in 2002 that I supervised in which Latin American judicial performance was measured based on a survey of legal experts in each of seventeen countries (Staats, Bowler, and Hiskey 2005). For the current project, I will send surveys to ten experts in each of seventeen Central and Eastern European countries. Each expert will receive a modest compensation for participation, and one expert from each country will be designated a team leader and receive additional compensation.

Although I will be the principal investigator in charge of the current project, I will again collaborate with professors Bowler and Hiskey, as well as with Glen Biglaiser. Shaun Bowler is professor of political science and department chair at the University of California, Riverside. He has published widely on issues related to democracy and European politics and has extensive contacts throughout Europe that will be instrumental to making the project a success. Jonathan T. Hiskey is associate professor of political science at Vanderbilt University. He has numerous publications to his credit and specializes in research relating to developing democracies. He and I have conducted a preliminary investigation of judicial performance at the state court level in Mexico. Glen Biglaiser is an assistant professor at Texas Tech University. He also has published widely, and specializes in research relating to democratic and economic development. He and I recently concluded a survey of chief executive officers of American corporations with investments in Latin America to measure the degree to which they consider the quality of court systems and adherence to the rule of law when making investment decisions in the region. A manuscript relating to that project is currently under review at a leading political science journal. Professor Biglaiser and I have also been invited to write a chapter on the connection between judicial performance and economic investment and development for an edited book project currently under review by the University of Michigan Press, among others.

The survey instrument consists of 32 questions. Eleven of these questions are directly related to the five broad categories of judicial performance discussed earlier. The remaining questions ask for detailed information regarding how the judicial system is structured and performs and demographic information about the experts themselves. Each survey participant will be asked to offer an opinion on current performance, and performance ten years prior. Use of experts to offer
opinions on important empirical questions is a common and accepted practice in political science (see, e.g. Schoultz 1981; Djankov et al. 2001).

The project will begin in January 2009. Using existing contacts in Hungary, the Czech Republic, and Poland, I will travel to the capital cities of each of these countries to select and meet with a leader for each team of legal experts and to arrange for translations of my survey. Each team leader will be responsible for participating in the survey, reviewing (or performing) the translation, and recommending additional members to be recruited to the ten-person expert team, using guidelines that I will provide. Upon selecting the teams for each of these three countries, the survey will be sent to each member by email. I expect to have surveys completed for these countries by April 30, 2009.

On or before May 1, 2009, I intend to begin surveys in three more countries. Because of experience, contacts, and credibility gained from the first series of countries, it will be possible to complete this set of surveys (and all remaining) without visiting the region. I expect to be finished with the surveys in these countries by September 30, 2009.

On or before October 1, 2009, I will begin efforts to complete surveys in the remaining countries. My goal is to complete surveys in all countries no later than January 31, 2010. I expect to have a professional paper ready for presentation to the Midwest Political Science Association meeting in Chicago in April 2010, with the goal of having a manuscript ready for submission to a leading political science journal no later than June 30, 2010.

Using the data developed by this project, I, my colleagues, and other researchers, will have a whole host of further research possibilities related to understanding judicial behavior in the region and the connection between judicial performance and democratic and economic development. What will open even greater possibilities for research is a continuation of this project on a yearly basis in order to obtain time-series data on judicial performance. With this in mind, I intend to seek external funding through the National Science Foundation and other funding agencies to fund an ongoing operation of this project.

(Word count items 2 and 3: 1,902)

4. Budget Justification

I am requesting funds to pay for translation of the survey questionnaire into each of the languages of the seventeen countries covered by this project. I estimate that each translation will cost on average $500, making for a total for this category of $8,000 (16*500). Belarus and Russia share a common language.

I am proposing to pay each expert survey respondent $75, making a total of $12,750 (17*10*75). Based on information provided by contacts I have in Central and Eastern Europe, it is necessary to pay at least minimal sums to experts to secure agreement to participate in a survey of this sort.

I am proposing to pay each expert team leader $225, making a total of $3,825 (17*225). I will be asking the team leaders to assist in identifying and securing interest in the project by the
remaining expert team members. Having the cooperation of team leaders is crucial, and cannot be obtained without more than the minimal compensation paid to the other team members.

I am asking for funds totaling $4,396 to support a one-week trip to Poland, the Czech Republic, and Hungary to select and meet with team leaders in these countries and to arrange translations of the survey document. Personal meetings are important for the first three countries to secure trust and cooperation. After that, I will be able to use the credibility gained through start-up of the first three countries to gain support in the remaining countries without having to actually travel there.

5. Need Justification

I have been allotted $10,000 in start-up funds. Since my date of appointment was less than a month ago, I have not yet purchased office furniture and needed software packages, which I anticipate will total approximately $2,000. In addition, I have already made plans to conduct a survey of judges in two provinces of Argentina that will require expenditure of approximately $6,000 from my startup funds for travel to the region and to pay for survey translation and employment of local personnel to conduct the surveys. I am also committed to go to Rio de Janeiro for an international political science conference in June 2009 and intend to use $1,000 of my startup funds for this purpose.

References


Li, Quan, and Adam Resnick. (2003) “Reversal of Fortunes: Democratic Institutions and Foreign Direct Investment Inflows to Developing Countries.” International Organization 57: 175-211.


