

REGIONAL JUDICIAL DECENTRALIZATION: AN EMPIRICAL ASSESSMENT OF DEVOLUTION OF JUDICIAL POWERS IN WESTERN EUROPE AND COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE AUTONOMY OF THE SAHARA REGION

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Abstract

Unlike legislative and executive powers, judicial authority still is a rare thing for regions to have, to the point that nowadays fairly high levels of political federalism can perfectly coexist with very low levels of judicial federalism. This paper empirically explores judicial decentralization of West European countries and their decentralized units. In particular, it designs and builds a composite indicator of regional judicial authority to identify patterns of judicial decentralization in West European countries and compare the results to the Moroccan Initiative for the Autonomy of the Sahara Region. The resulting database contains 15,058 region-year observations, with information for all the first-level decentralized units of all West European countries with more than 1 million inhabitants, for the 1950-2019 period.

1. Introduction

Unlike legislative and executive powers, judicial authority still is a rare thing for regions to have. If centralization of executive, legislative, and legal orders has traditionally been considered the hallmark of the transition between the medieval and modern State (Halpérin 2014), only the latter has been relatively untouched by contemporary movements toward regional decentralization. The existence of distinct, sub-federal legal orders is sometimes considered a defining feature of federalism (Aparicio 2013; Arbós 2013), but while each unit in Switzerland, Germany and the United States have their own judicial system, federated units in Austria and Belgium have no judicial self-rule. Even more, the cases of Spain and Italy also tell us that varying levels of regional political power can coexist with strongly centralized judicial systems.

Letting jurisdictional authority to be in hands of decentralized units may lead to a number of tensions between different levels of policymaking, legislation, and judicial power (Baker 1995), which make up for relevant areas for empirical legal studies and political science scholars to focus on (as political decentralization has proved to be). Despite the already abundant and varied existing literature on comparative judicial federalism (Shapiro 1981; Jacob et al. 1996; Le Roy and Saunders 2006; Gerpe and Barceló 2006; Gerpe and Cabellos 2013; Arbós 2013; Aroney and Kincaid 2017), this field of research still presents low levels of cross-pollination between legal studies and political science (Halberstam 1998), and a clear dominance of case study methodology. These two factors have, in our opinion, imposed two major limits to the study of judicial decentralization. First, the relative rarity of judicial decentralization across political systems has brought decentralization scholars to leave the judicial power out of the very conceptual scope of regional authority (Marks, Hooghe, and Schakel 2008), or to include in it only certain policy-related aspects of judicial organization, e.g., government control of the judiciary (Dardanelli 2018).

This brings us to a second limitation. On the one hand, the difficulty to meet the demanding methodological standards associated to case study methods has produced research with limited generalization power. On the other hand, most legal technical approaches have tended to stress out the particularities of the judicial organization in single cases (whether federal or regional) than to try

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to find a common language to allow for systematic, empirical comparisons across and within systems. In turn, we still lack measurement tools to identify, measure, and compare judicial decentralization across time and countries, which hinders our capacity to achieve a more systematic understanding of decentralization and a better grasp of whether and in what ways judicial decentralization affects behaviour (political or otherwise) and institutions. As a consequence, the existence of differences, similarities or simply patterns in the organization of the judicial power in decentralized countries remains largely unexplored.

The main research question behind this seminar on the Initiative for the Autonomy of the Sahara Region is how an autonomous Sahara Region would compare to other decentralized regions in judicial matters. Given the limits commented above, this question poses an important challenge to researchers of judicial decentralization. To address it, this paper empirically explores judicial decentralization of West European countries and their decentralized regions units. In particular, it uses a composite indicator of Regional Judicial Authority (Vallbé 2014).

One of the main advantages of this indicator is that it takes the decentralized region (federated state, province, etc.) as the unit of analysis with the aim of (1) achieving a clear language to support systematic comparison between the relevant components of what can be understood as “judicial decentralization”, (2) offering a way to empirically evaluate and compare a high number of cases in a single moment in time (cross-sectional), the evolution of particular cases (longitudinal), or both combined, in order to (3) explore the patterns of judicial organization in scenarios of political decentralization. In its original form (Vallbé 2014), the database of this indicator contained only data of the sub-national entities of four countries – Germany, Italy, Spain, and the United Kingdom – for the 1950-2006 period, but for this paper the number of countries (and their regions) has increased to 16, and its timespan now covers the whole 1950-2019 period.

The section below outlines the Regional Judicial Authority Index (RJAI) indicator, briefly explaining how its eight components can be measured through a coding scheme to capture regional judicial authority. Next, the results for each component are discussed separately comparing the most relevant results in Western Europe with the content of the Moroccan Initiative for the Autonomy of the Sahara Region. Finally, an overview of the distribution of the RJAI indicator across West European countries is also presented.

2. Regional Judicial Authority Index

2.1 The composite indicator

Conceptually, the indicator adopts the well-known two-dimensional framework of regional authority – self-rule and shared rule (Elazar 1987; Marks, Hooghe, and Schakel 2008) – although the two components are measured separately. On the one hand, we measure a region’s capacity to have judicial self-rule taking into account the institutional, decisional, and economic aspects of judicial autonomy. On the other hand, the second dimension of judicial autonomy (judicial shared-rule) intends to measure the capacity of a region to influence those decisions affecting the organization and functioning of the upper-level Justice administration and the judicial power. While the self-rule component allows us to measure and compare regions according to their capacity to hold judicial power, the shared-rule dimension allows us to measure to what extent countries allow regions to participate in the governance of judicial matters.

Table 1. Components of judicial decentralization into two dimensions.	
Judicial Self-Rule	Judicial Shared-Rule
Institutional Autonomy	Representation in High Courts
Recruitment	Executive Control
Design	Fiscal Control
Economic Autonomy	
Last-Instance Capacity	

Table 1 presents the components of each dimension. The first component of judicial self-rule (Institutional Autonomy) captures simply the extent to which a region holds an administration of Justice of its own, which usually is reduced to whether there is official acknowledgement of such a regional judicial system. Rather than a typical binary mechanism, judicial institutional autonomy is here conceived of as a gradual, continuous dimension that ranges from a complete absence of a regional judicial system to a fully-fledged administration of Justice at the regional level. The extent to which a region is more “judicially capable” is measured by the accumulation of issues its administration of justice (AoJ) is entitled to manage. This is mostly a matter of formality – i.e. the extent to which the existence of a regional AoJ is formally acknowledged. This first dimension has four categories, the first one being a null one, where a region has not its own administration of Justice. Regions that fall into this category will thus score 0 in this component. The second category is reserved for the existence of a regional AoJ that is only entitled to manage minor issues. The third and fourth categories complete a cumulative logic, the third referring to the existence of a regional AoJ with a full jurisdiction in either civil or criminal cases, reserving the fourth for a regional AoJ with full jurisdiction in both areas of law. The scoring system for this component is thus:

- 0: no Administration of Justice at the regional level
- 1: a small regional Administration of Justice to deal with minor issues
- 2: a regional Administration of Justice to deal with either civil or criminal issues
- 3: a regional Administration of Justice to deal with both civil and criminal issues

While the first dimension of judicial self-rule captures a formal feature of the capacity of regions to have their own judicial system, the second dimension of judicial autonomy (Recruitment) tackles a more substantive matter: the extent to which regions have any role in the recruitment of the personnel that works in the administration of Justice within their boundaries. This dimension is conceived of, again, as a continuous measure that ranges from the absolute lack of participation of regions in the recruitment of Justice personnel, to the full regional recruitment for the administration of Justice. Its scoring system is as follows:

- 0: the region does not have any role in recruiting the staff for the administration of Justice (AoJ) or the judicial branch
- 1: the region recruits only administrative staff for AoJ
- 2: the region recruits administrative staff and at least one group of specialized staff (forensic doctors, clerks of the court, experts)
- 3: the region complies with all the above and also recruits prosecutors
- 4: the region complies with all the above and also recruits judges in its jurisdiction

The null category in this dimension refers to the absence of regional participation in the recruitment of any personnel, as in the case of Italian regions. Once regions have some role in judicial recruitment, the gradual importance of their role is a function of the type of personnel the region is entitled to recruit. For instance, hypothetically we consider that the recruitment of administrative staff gives less power to a region than its capacity to recruit the clerks of the court or forensic doctors. In turn, a region that recruits clerks has less judicial capacity than one that can recruit prosecutors or even judges.² The basic logic here is that regions with capacity to recruit higher-level decision-makers (e.g. judges and prosecutors) are more able to give some particular form to judicial policy.

The next component (Design) refers to the capacity of regions to shape (and change) the map of judicial districts in the boundaries of regions. It intends to capture two different things. First, whether there is a match between the boundaries of the judicial districts of the courts of first instance within a region and the boundaries of the region itself. Second, whether regions can decide on reshaping the map of judicial districts within their own boundaries. The next component involves the ability to shape the map of judicial districts in the boundaries of regions. The notion is incremental, and so is the indicator, which will be coded accordingly:

- 0.5 is scored for each of the following features (scores range 0 and 1.5)
 - (+ 0.5) match between boundaries of judicial districts and region, but the region does not intervene in redistricting
 - (+ 0.5) boundary match, and the region can intervene in design together with the central or federal government
 - (+ 0.5) boundary match of districts and region, and the region has the exclusive capacity of reshaping the judicial map (create or eliminate districts)

Next, the Economic Autonomy component measures the capacity and responsibility of a region to provide for resources to courts within its boundaries. Again, we envisage a cumulative process where, on one end, a region does not provide any resource to courts at all, while on the other extreme we shall have regions that provide all material resources to courts and pay salaries of all personnel, including judges. The coding scheme for this component has six different variations of the economic judicial autonomy (0 to 5 points):

- 0: the region does not provide any resource to the administration of Justice
- 1: the region provides material resources
- 2: the region provides material resources and pays salaries of administrative staff

² We are blind towards the specific method of judicial appointment, although popular election of judges, prosecutors and clerks implies in practice at least some degree of decentralization of justice. In that case, an indicator would be whether the power to manage such elections lies in federal- or state-level hands.

- 3: the region provides material resources and pays salaries of administrative staff + other experts (medical examiners, clerks, other technical experts)
- 4: the region provides all the above + pays salary of prosecutors
- 5: the region provides all the above + pays salary of judges

The last component of the self-rule dimension (Last Instance) measures the extent to which ordinary court cases heard within the boundaries of a region find the ultimate decision made by courts within the same regional boundaries (last instance), or they can be reversed by higher courts that are not a supreme or constitutional court. Thus, regions with higher judicial capacity do have courts of appeal within their boundaries with the capacity of making final decisions on most civil and criminal cases.³ For this component, we have a four-category scheme where regions where not a single court can issue a final decision on any matter score 0, and regions where courts of appeal can issue final judgments on both civil and criminal matters score 3:

- 0: there is no final court of appeal in the region
- 1: there is final appeal for minor civil and/or criminal issues (low quantities, minor offense, etc.)
- 2: there is final appeal for most civil or criminal cases
- 3: there is final appeal for most civil and criminal cases (except the usual constitutional and fundamental rights issues)

The second dimension of the RJAI indicator (Shared Rule) intends to measure the extent to which countries allow regions to participate in the governance of judicial matters. It has only three components. The first one is Representation and captures whether appointments to federal-level High Courts take a regional dimension at all. Here representation is measured as a 4-level variable, where regions can score 0 when they have no influence whatsoever in the composition of High courts and they score higher (up to 3) at different stages of influence on High Court appointments:

- 0: regions do not intervene at all in the appointment of member of High Courts
- 1: regions do not intervene in the appointment, but regional origin (or language, when that matters) of High court judges is taken into account in their appointment
- 2: regions intervene in the appointment of at least some members of the High Court (mixed appointment), or appointments are decided together with central decisional bodies
- 3: regions determine the composition of High Courts

The next shared-rule component (Executive Control) measures whether regions participate at any level in the governing bodies of the judiciary at a regional or federal level. These governing bodies may have many duties, ranging from the organization of judicial selection at different levels to decide upon any disciplinary measures to be taken against any member of the judiciary. Regional power here is measured through the level of influence regions have in appointing the members of such governing bodies, if they exist, or in case there is no separate body for governing the judiciary, in whose hands remains the capacity to enforce disciplinary measures against judges. The scores go as follows:

- 0: regions do not intervene in the appointment of members of the governing body of the judiciary (or don't have any disciplinary capacity)
- 1: regions do not intervene in the appointment of members of the governing body, but regional (or linguistic) origin of appointees is taken into account in their appointment

³ With usual exceptions on constitutional issues or fundamental rights.

- 2: regions participate in the appointment of at least some members of the governing body of the judiciary (mixed appointment)
- 3: regions determine the composition of the members of the governing body of the judiciary, or have full competence to discipline judges

Finally, Fiscal Control refers to the extent to which regions can influence (i.e. shared rule) over the distribution of resources obtained through taxes, which several authors have usually considered separately from the fiscal authority of regions. In fact, Marks, Hooghe, and Schakel (2008), when building their indicator of regional political authority, created a variable exclusively focused on measuring this ability to influence decisions over the redistribution of federal-level resources. Naturally, if this regional capacity is relevant to measure political authority, so it should be when measuring the role of regions in redistributing resources devoted to the administration of Justice. However, given that (1) a variable already exists to measure the notion, and that (2) there is little use in trying to extract the influence of regions in this matter regarding exclusively regarding judicial matters, the creation of another variable to measure just the same would be highly redundant. We therefore use that of Marks, Hooghe, and Schakel (2008):

- 0: regional governments or their representatives in the legislature are not consulted over the distribution of tax revenues
- 1: regional governments or their representatives in the legislature negotiate over the distribution of tax revenues, but do not have a veto
- 2: regional governments or their representatives in the legislature have a veto over the distribution of tax revenues.

Once the coding scheme is in place, the Regional Judicial Authority Index synthesizes all the scores in one single normalized value, while separate scores for self-rule and shared rule can also be calculated. The formal definition of the Regional Judicial Authority Index (RJAI) is:

$$RJAI_r = \sum_{q=1}^Q I_{qr}$$

where q represents the standardized values of each individual component I of regional judicial authority for each region r . The index has a value range of [0,1].

2.2 Data

Complete data have been gathered on all the first-level sub-national entities of all West European countries for the period 1950-2019 (or for all the applicable years to each case).⁴ As of 2020, the database contains 15,058 region-year observations covering the eight components of the Regional Judicial Authority Index (RJAI), which makes 120,464 cell entries. Regarding the internal validity of the indicator, the Cronbach's α test across the eight components for all sub-national entities of the 16 countries is around 0.95 throughout the 1950-2019 period (see Figure 1), pointing to a high level of internal consistency of the components as different dimensions of one single measure of judicial authority (Neuendorf 2002).⁵

⁴ Countries with populations smaller than 1 million have been left out of the database, because small countries hardly present any kind of first-level decentralization systems (nor they have any kind of judicial decentralization). Therefore, the Holy See, San Marino, Liechtenstein, Monaco, Andorra, Iceland, Malta, and Luxembourg are not present in the dataset.

⁵ The average value of Cronbach's α across all the years, its value is 0.95.

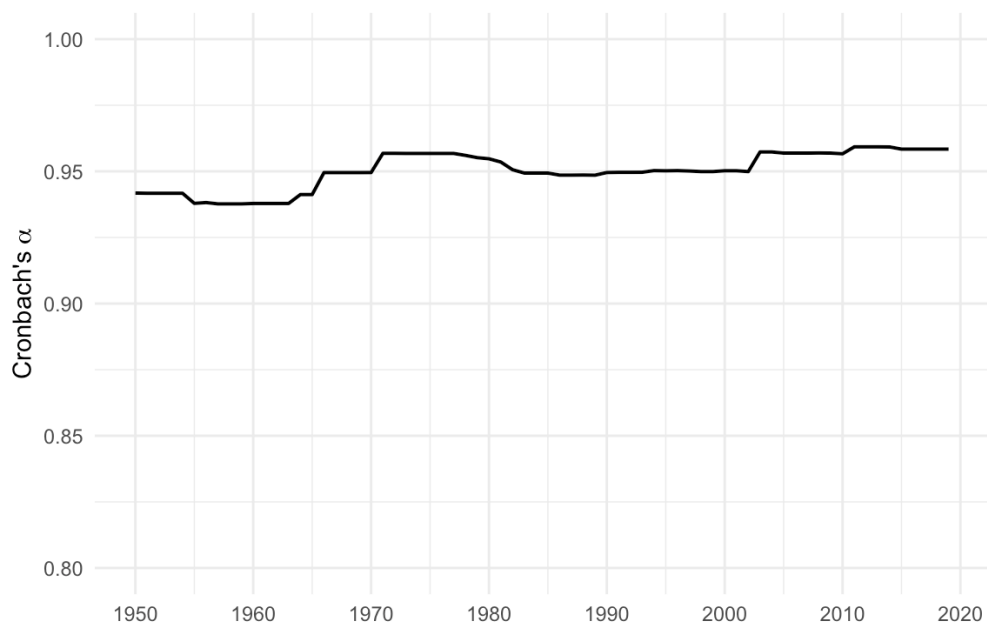


Figure 1. Levels of consistency of the eight components of regional judicial decentralization across time (1950-2019), measured through Cronbach's α .

3. Comparing judicial decentralization

3.1 General patterns

Table 2 shows basic descriptive statistics for the RJAI index, its two dimensions, and all its components. Note that only the values of self-rule and shared-rule dimensions, along with the RJAI itself, are normalized to have values between 0 and 1, while the rest have different value ranges according to the coding scheme described above. The average level of regional judicial authority across regions of West European countries is 0.196, but there is fair variation across regions and countries. Actually, in three of the 16 countries in the dataset (France, Ireland and Norway) no region has ever scored other than zero since 1950, while Swedish regions score zero since 1970 and the values for Denmark, Finland, Greece, Italy, the Netherlands, and Portugal are very close to zero throughout the period. In contrast, only the decentralized units from Germany, Switzerland, and Belgium (plus some regions in Denmark, Spain, and the United Kingdom) score at some point above the average in judicial decentralization. Still, they amount to 21 percent of our observations, thus giving the data fair variation. Switzerland's cantons after the 2002 reform are the most judicially decentralized units in West Europe (RJAI=0.937) followed by German *Länder* after 1965 with a score of 0.877.

Table 2. Descriptive statistics of all the components, the two dimensions, and the index of judicial autonomy.

Statistic	N	Mean	St. Dev.	Min	Max
Judicial Autonomy	15,058	0.562	1.170	0	3

Recruitment Capacity	15,058	0.751	1.543	0	4
Judicial Design	15,058	0.432	0.543	0	2
Judicial Economic Autonomy	15,058	0.922	1.915	0	5
Last Instance	15,058	0.570	1.050	0	3
Representation	15,058	0.440	0.823	0	2
Executive Control	15,058	0.564	1.164	0	3
Fiscal Control	15,058	0.555	0.783	0	2
Judicial Self-Rule	15,058	0.196	0.363	0	1
Judicial Shared Rule	15,058	0.195	0.303	0.000	0.875
Regional Judicial Autonomy Index (RJAI)	15,058	0.196	0.326	0.000	0.938

Figure 2, on the other hand, represents the average value of the RJAI index for each year and country in the dataset,⁶ uncovering sharp differences between cases. The plot shows a varied reality in at least in two ways. On the one hand, regarding temporal evolution, two distinct groups of countries may be observed: those whose regions (or at least some of them) experience changes in time (UK, Spain, Denmark), and those whose regions present a more stable, almost flat evolution in terms of judicial power (e.g. Germany, Switzerland, Italy, Greece). On the other hand, variation is also observed in the level of judicial authority itself, of course, which points to key differences in institutional design.

⁶ Country scores are calculated through the average of the scores of the regions within that country.

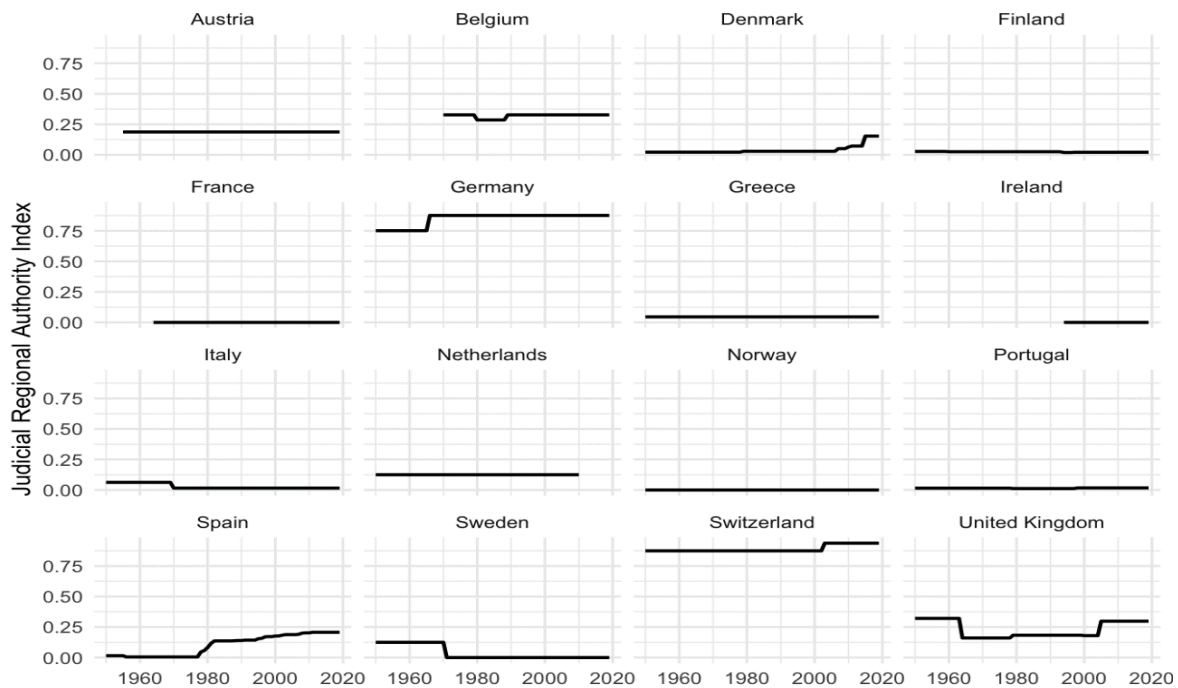


Figure 2. Evolution of the Regional Judicial Authority Index across West European countries, 1950-2019.

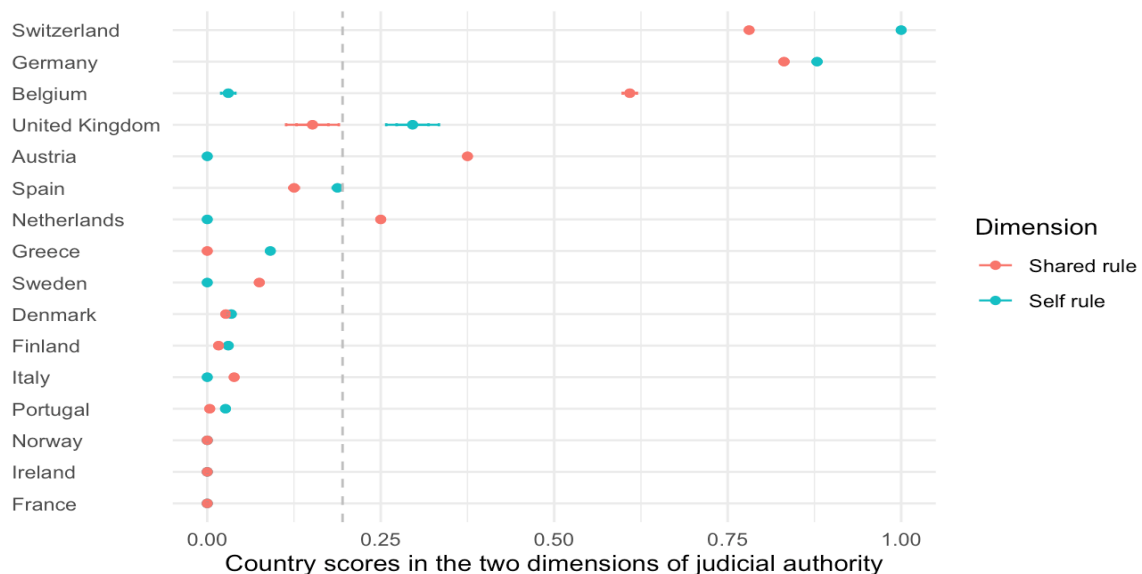


Figure 3. Distribution of regional judicial self-rule and shared rule across countries in Western Europe (1950-2019).

Yet, are changes in regional judicial capacity due to changes in judicial self-rule or evolution is mostly explained through an increasing capacity of regions to influence judicial matters at the federal level (shared rule)? Figure 3 shows two types of information. Green dots represent the average score of each country's regions for regional judicial self-rule, whereas red dots represent their score in the judicial shared-rule dimension. Finally, the grey-dashed vertical line represents the global average value of both dimensions, which turns out to be almost identical (see Table 2). The plot shows to what extent judicial decentralization is uncommon across Western European regions and countries, as only two countries (Switzerland and Germany) present average values above the mean in both dimensions.

Moreover, it also points to the fact that in most countries, levels of self-rule and shared rule tend to present similar values (either both are high or both are low). In other words, whenever regions have high levels of judicial self-rule, they also tend to participate in judicial shared rule, and vice versa. When that does not hold (e.g. Belgium, Austria), regions present only relevant values for judicial shared rule (they are part of federal unions), while their level of judicial self-rule is almost negligible. In the following sections we shall explore how regions and countries fare for the separate components of judicial autonomy and how the proposed Sahara Region autonomy compares to them. We shall first explore the five components of self-rule (judicial autonomy, recruitment, design, economic autonomy, and last instance), and then the three of the shared-rule dimension (representation, executive control, and fiscal control).

3.2 Judicial self-rule

3.2.1 Institutional Autonomy

To score more than zero in this dimension, the existence of some form of regionalization of the administration of Justice must be acknowledged, at least formally, and this is precisely what articles 5 and 12 of the Moroccan Initiative for the Autonomy of the Sahara Region (IASR) do. Article 5 begins acknowledging that, alongside with executive and legislative powers, the Sahara region will hold judicial system proper, while article 12 includes courts (“jurisdictions”) among the issues over which the Sahara Autonomous Region will exercise powers. However, the very acknowledgement of the existence of a regional jurisdiction is extremely uncommon in West European countries. In fact, out of the 16 Western European countries analysed, only Germany and Switzerland score 3 for all their decentralized units (*Länder* and cantons) during the whole period, while Denmark (Faroe Islands and Greenland), and the United Kingdom (Scotland and Northern Ireland) have only a couple of regions scoring the maximum for judicial autonomy (but not for the whole period).

Decentralized units in Germany and Switzerland control the first and second instances in civil and criminal matters, while federal-level appeal courts make last instance decisions on almost all kinds of matters. Therefore, German *Länder* and Swiss cantons have their own judicial systems, although they are not completely self-sufficient for the German case (Riedel 2005). Both countries present a completely symmetric model with an equally distributed set of both political and judicial powers to the regions, which in this dimension score 3 points.

In contrast, the United Kingdom and Denmark constitute highly asymmetrical cases. In the last 15 years, both countries have carried out thorough constitutional reforms (e.g. UK’s Constitutional Reform Act 2005) that have brought a significant level of structural institutional updating: devolution of powers to Northern Ireland (Northern Ireland Act 1998), Scotland (Scotland Act 1998 and 2012) and Wales (Government of Wales Act 1998 and 2006), independence of the Bank of England, or the election of the Mayor of London and other cities within a great reform of local government (Greater London Authority Act 1999; Local Government Act 2000). In Denmark, regional decentralization has focused only on Greenland and the Faroe Islands, thus producing another asymmetrical decentralization system.

Judicial autonomy applies to both civil and criminal jurisdictions (with some exceptions such as immigration, labour law, and issues related to the military and terrorism, in the case of the UK). In our data, then, regarding the UK Scotland and Northern Ireland obtain 3 points while Wales obtains 0 points for the whole period, while in Denmark the judicial autonomy of the Faroe Islands started in 2010 and Greenland’s judicial autonomy is only in effect since 2014.

Figure 4 shows that Germany, Switzerland, Denmark, and the UK are actually the only four countries that score higher than 0 regarding judicial institutional autonomy. Denmark's score is only slightly different from zero because only two of the 19 first-level regions have held judicial autonomy throughout the period.

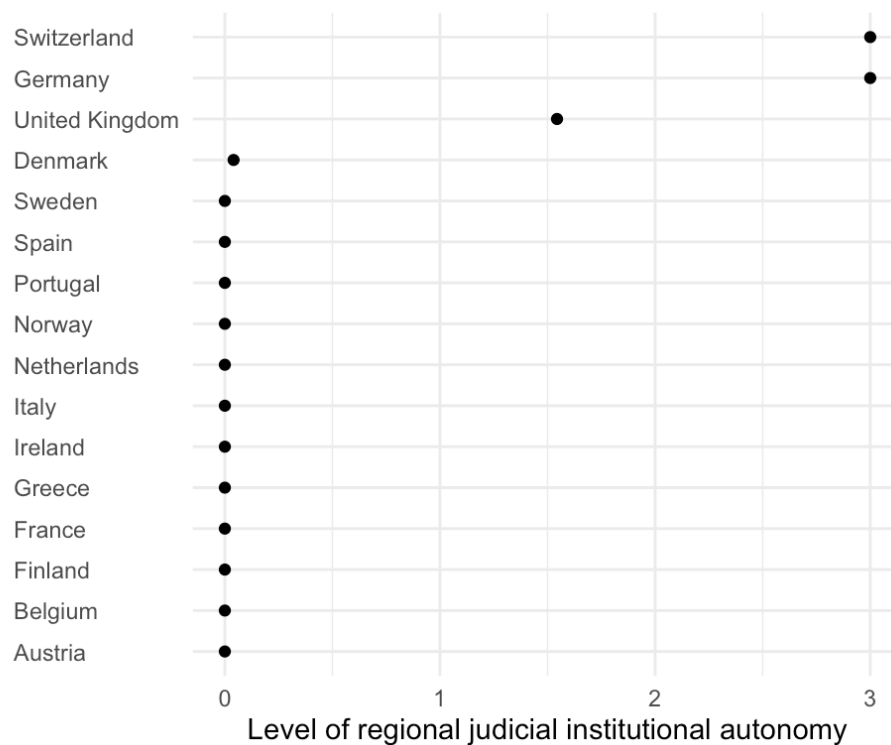


Figure 4. Average score of the Judicial Autonomy component for West European countries (1950-2019).

For the rest of first-level units of the 12 remaining West European countries, there is no official acknowledgment of the existence of judicial autonomy and all score 0 in this component. For instance, Italy is one case of null regional judicial decentralization as a constitutional principle. During the constitutional process of the Italian Republic after World War II there was a timid attempt of judicial decentralization for those regions with “special characteristics”. Thence the Statute of the Region of Sicily approved in 1946,⁷ which contains the provision of the creation of a High Court (*Alta Corte*) (art. 24) with six members appointed equally by the national and regional legislative assemblies. Moreover, the *Alta Corte* was to have powers on constitutional review for regional legislation and national legislation to be applied in the region (arts. 25-30). Despite this promising beginning the Sicilian *Alta Corte* was left to no effect by successive decisions of the Italian Constitutional Court, thus cutting off any attempt of judicial decentralization in Italy. Therefore, Italian *regioni* score zero in this first dimension.

Spain also has a judicially centralized system. Any potential judicial decentralization in Spain is bounded, on one hand, by a few constitutional principles regarding the organization of the judicial power (articles 117 and 122 of the Spanish Constitution), which, on the other hand, have been implemented and interpreted in a strongly unitarian and centralizing way (Díez-Picazo 1991; Porrás

⁷ Statuto della Regione siciliana, approvato col decreto legislativo 15 maggio 1946, n. 455, transformed into a Constitutional Law on February 26, 1948, n.2.

2013). These constitutional principles establish a unique and central jurisdiction throughout Spain, under which the whole Spanish court system is deployed, which logically leads to the fact that, at least formally, none of the Spanish autonomous communities can be said to have its own judicial system (Aparicio 2013). Yet, as explained below, not having a formal recognition of regional judicial system has not stopped several Spanish *comunidades autónomas* from having a certain role in judicial matters.

3.2.2 Recruitment

Regarding the capacity of regions to recruit the personnel at work in the administration of Justice within their boundaries, our data show that this is also a rare competence to have for regions in West European countries (see Figure 5). Actually, only Germany and Switzerland score the full 4 points in this indicator, while the UK and Spain score far below them. As a constitutional principle (but also in practice), Swiss cantons have their own fully working court system and are thus responsible to appoint their own judges and to recruit the rest of personnel at work in courts. This implies that cantons may establish different requirements to be met for judicial appointments (Suter 2014). The German constitutional norm on courts (CCA)⁸ does not establish a unique, central judicial office at the federal level, but every Land has its own—and different (Riedel 2005) – judicial recruitment system applicable to judges, prosecutors and staff. For instance, in recruiting prosecutors, like Swiss cantons German *Länder* have the authority to establish statutory mechanisms to appoint the groups of civil servants and other personnel who are to serve in the prosecution office. Other federal designs such as Belgium’s, though, allow only for a centralized office (the High Council of Justice) that is responsible for judicial appointments.

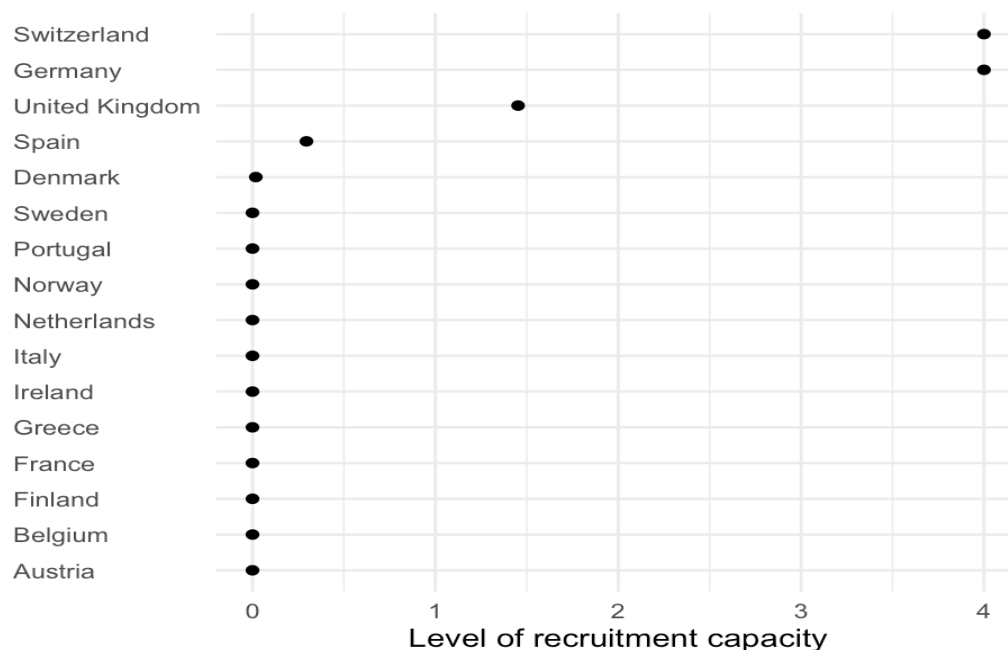


Figure 5. Average score of the Recruitment component for West European countries (1950-2019).

⁸ Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 4 des Gesetzes vom 7.12.2011 (BGBl. I S. 2582). We are using the official English translation of the law: Courts Constitution Act in the version published on 9 May 1975 (Federal Law Gazette [*Bundesgesetzblatt*] I p. 1077), last amended by Article 4 of the Act of 7 December 2011 (Federal Law Gazette I p. 2582).

In contrast, Spanish regions vary in their scores, both at a cross-sectional and temporal level. To begin with, the Spanish Constitution establishes the existence of a unique body of judges for the whole national territory and a unique office for appointments (General Council of the Judicial Power), which in principle cuts off any possibility for regions of even influence decision-making on this subject. Yet at lower levels of decision-making, the advancements made by regions such as Catalonia and some decisions by the Spanish Constitutional Court (e.g., SSTC 56/1990 and 62/1990), have progressively allowed certain regions to recruit certain administrative staff of courts within their boundaries. However, not all Spanish regions have adopted these capacities, nor the regions that have it acquired it simultaneously. For instance, Catalonia scores 0 in recruitment between 1978 and 1990, and 1 between 1990 and 2019, while Andalusia only scored 1 after 1994. Other regions scored other than zero at the end of the first decade of 2000, among a wave of statutory reforms (e.g., Cantabria, Asturias, Aragón), while 7 out of the 19 existing decentralized units in Spain still score 0 in this regard.

Extreme variation is also observable among British regions, with Wales and England scoring always 0, Northern Ireland scoring 1 until 2004 and 4 onward, and Scotland scoring the maximum (4) for the whole period. Even more asymmetrical is the case of Denmark, in which Greenland only acquired the power to recruit judicial personnel in 2014 while the other region with some degree of judicial autonomy (Faroe Islands) has no power to recruit whatsoever.

Apart from acknowledging the existence of a regional judicial order, the Moroccan Initiative for the Autonomy of the Sahara Region also hints to the possibility that the Region itself should be responsible for the recruitment and appointment of the court personnel. In particular, article 22 of the Initiative establishes that “courts may be set up by the Regional Parliament to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara Autonomous Region”. In so far it is the Regional Parliament the one entitled to set up courts within the boundaries of the region, the principle might yield to regionally based judiciary and court personnel as we find in Switzerland, Germany, Scotland, Northern Ireland, and Greenland.

Under the Moroccan Initiative, the cultural aspects specific to the Saharan tribes should be taken into consideration during the recruitment process to assure an adaptation of both the magistrates as administrative teams to the tribal culture, in order to preserve the linguistic Hassani heritage.

3.2.3 Judicial design

Figure 6 shows at least four different realities in West European regions according to their capacity to influence judicial design. First, we find the regions of countries such as Austria, France, Ireland, Italy, Netherlands, Norway, and Sweden in which there is a mismatch between judicial districts and the boundaries of the decentralized units, nor these units have a say in districting.

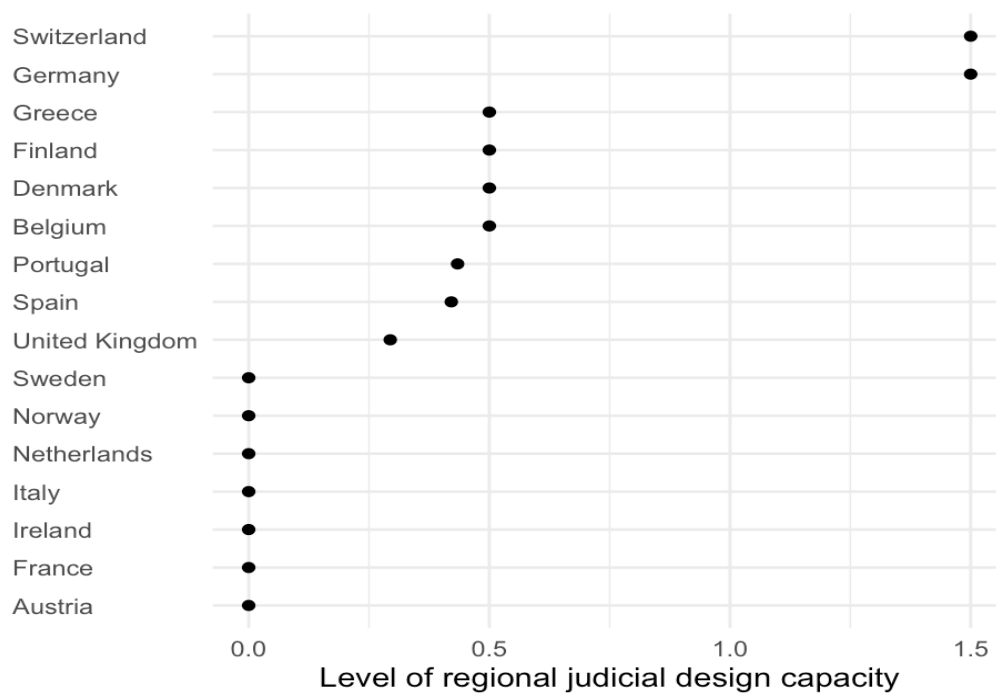


Figure 6. Average score of the Design component for West European countries (1950-2019).

In a second group of regions, there is perfect boundary matching between regions and judicial districts, but regions cannot change districting because it falls entirely in the hands of the central government, such as in Scotland, Wales, and Northern Ireland, or in the regions of Greece, Finland, Portugal, and Belgium. We also find cases where there is perfect boundary matching and where judicial redistricting may be done jointly between regions and the central government, such as in Catalonia or the Basque Country in Spain. Finally, German Länder and Swiss cantons can design and reshape their own judicial districts and they are the only units that score 1.5 in this indicator.

The Moroccan Initiative for the Autonomy of the Sahara Region makes no explicit claim about the powers of the Region regarding the design and change of judicial districts within its boundaries, although the capacity of the Region to set up its own judicial order and recruit judicial personnel could perfectly accommodate the ability to shape its own judicial districts. However, the correlation between autonomy or recruitment and design is not highest in the data, since highly autonomous regions (in judicial terms) such as Denmark’s Greenland and Faroe Islands do not hold large powers to change judicial districts within their own boundaries.

3.2.4 Economic Autonomy

Economic Autonomy is one of the indicators that better captures the limited capacity of most regions to perform any judicial duty. In particular, effective regional autonomy (judicial or otherwise) is usually linked to the capacity of regions to make effective decisions on resource distribution. Our data, though, shows that in 12 of the 16 West European countries (e.g. Austria, Belgium, Italy, Denmark, Norway) regions have no capacity whatsoever to make their own decisions on funding justice within their own boundaries, and therefore their regions score 0 in our indicators (see Figure 7).

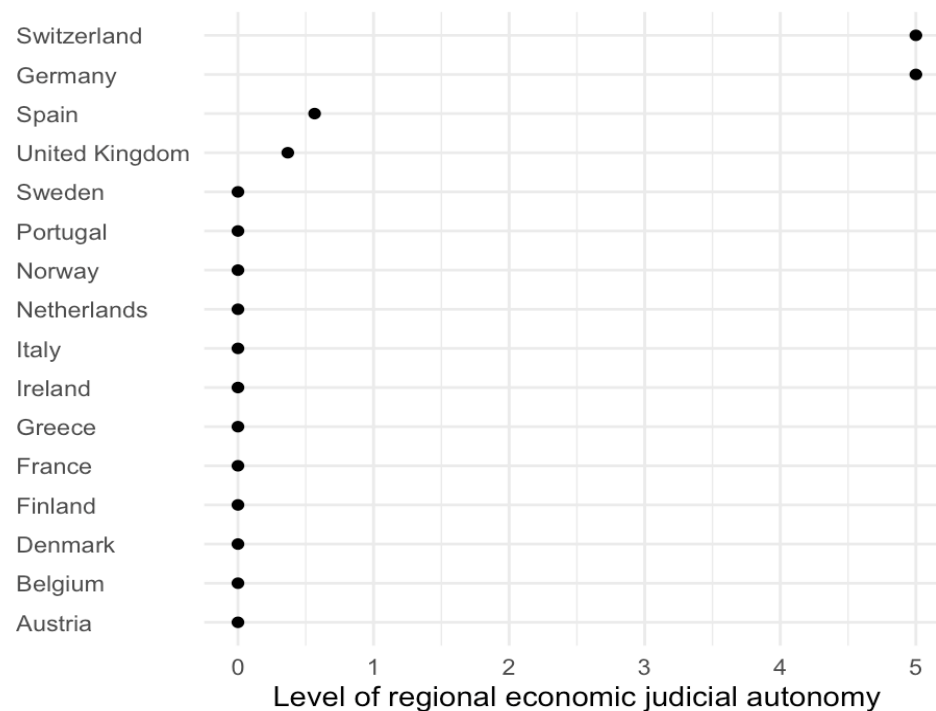


Figure 7. Average score of the Economic judicial autonomy component for West European countries (1950-2019).

A first step in resource involvement is made by regions that provide just material resources (offices, computers, paper) but that have no involvement in paying salaries for any judicial staff, administrative or not. In Spanish regions we find both cross-sectional and temporal variation, from regions with no involvement at all during large periods (e.g. Cantabria), to regions that acquired the capacity to provide material resources and even pay the salaries for judicial administrative staff (e.g. Catalonia and the Basque Country). In any case, the distribution of such capacities in Spain is asymmetrical, as is among regions in the UK. At the upper end of the scale are, as ever, the German Länder and Swiss cantons, with full economic capacity, and Scotland, which scored 0 from 1950 until 1999, and acquired full capacity (scoring 5) from the year 2000 on.

Although its drafting is very generic, article 12 of the Initiative for the Autonomy of the Sahara Region allows for the Region to exercise powers on its “budget and taxation”, which combined with the provisions of article 22 (regional capacity to set up its own court system), would be compatible with high scores in judicial economic capacity – in the manner of Germany or Switzerland. Besides, article 13 of the Initiative for the Autonomous Region of Sahara indicates that the economic and natural resources management are financed by: “[t]axes and contributions enacted by competent organs of the region, Income of natural resource of the region, resources derived in the framework of national solidarity and the income from the patrimony of the region.”

3.2.5 Last Instance

This is a complex matter. In this indicator, variation is theoretically expected on both the volume of issues on which regional courts of appeal can make final decisions, and on the nature of the cases that can be decided upon, civil or criminal. Regarding the first issue, in any case, the existence of a court of appeal with the capacity to issue final decisions within the boundaries of a region does not necessarily

entail that that court of appeal is part of the regional administration. This is the case, for instance, of Spain's Superior Courts of the autonomous communities: their existence responds to the very existence of the Spanish regions (autonomous communities), but in no case does this entail the existence of a regionalized judicial system (Gimeno Sendra 2013). This holds also for Greek regions, while obviously countries where judicial districts do not match regional boundaries usually neither have regionally based courts of appeal nor acknowledge region-specific legal orders (in civil or criminal cases) to be decided on a regional basis.

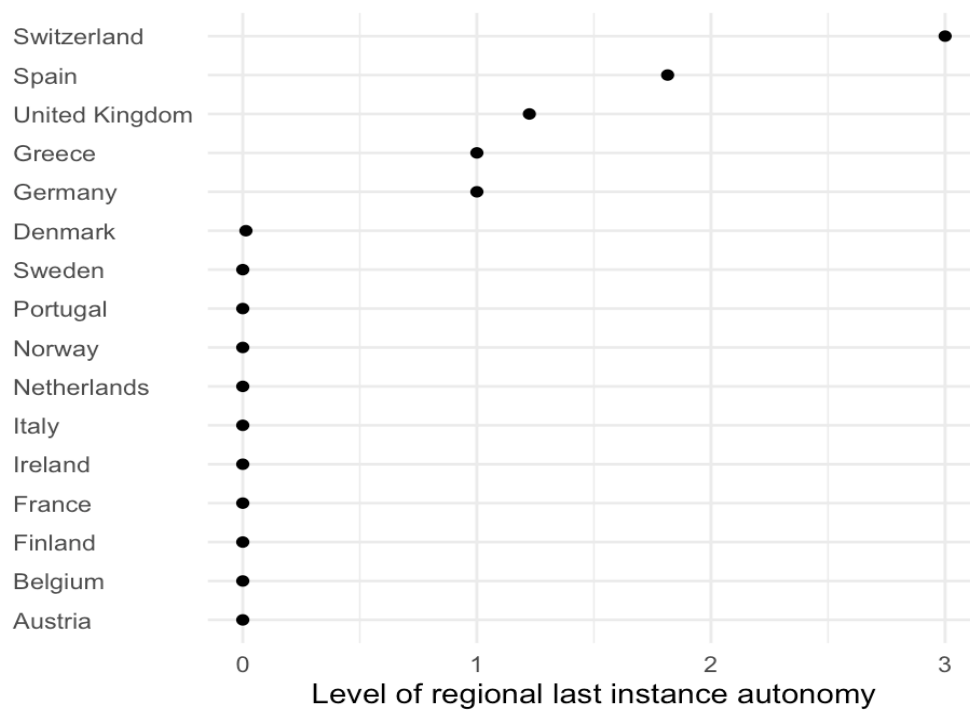


Figure 8. Average score of the Last Instance component for West European countries (1950-2019).

On the issue regarding the nature of the matters to be decided upon by the “regionalized” court of appeal, we have opted for a simple solution given the existing diversity. We broadly classify all possible matters as either civil or criminal, understanding that having the capacity to issue final decisions on criminal cases entails more power than to decide upon civil cases. Concerning the Autonomy Initiative in the Sahara region, the highest jurisdiction is the High Regional Court: it shall give final decisions regarding the interpretation of the Region's legislation without prejudice to the powers of the Kingdom's Supreme Court or Constitutional Council. Laws, regulations, and court rulings issued by the Sahara Autonomous Region's bodies shall be consistent with the Region's Autonomy Statute and the Kingdom's Constitution.

According to article 23 of the Initiative, the High Regional Court will decide last on the interpretation made of the Region's law. This provision guarantees respect by the State of the socio-cultural specifications of the local population. Furthermore, it underlines the importance of the conformity of the Region's law with the high jurisdictions at the national level.

In Spain, the Superior Courts of the autonomous communities have the capacity to issue final decisions in general civil matters and in those civil procedures that affect the regions' own civil law,⁹ and therefore these courts present the actual capacity to establish unified criteria for legal interpretation in such matters (Gimeno Sendra 2013). In contrast with the other dimensions, the German case of regional appeal does not follow a full federal model like Switzerland's but is closer to the Spanish system. In fact, in both criminal and civil cases, the last instance of decision in Germany is the Federal Court of Appeal (arts. 123 ss. of the German Constitution), and Länder-level courts can only issue final decisions for some particular cases of civil matters, scoring 1 in the dimension of judicial decision capacity. Swiss cantons, on the other hand, have full last instance capacity in the sense that Federal courts can only hear on federal-level indictments, violations, or decisions by federal authorities, but not on decisions made by cantonal courts (first instance, appeal or highest). Appeals to cantonal-level decisions are heard only by the Federal Supreme Court of Switzerland.

As long as the Sahara Region is able to exercise broad legislative and judicial powers "within the Region's territorial boundaries" (art. 12), it could adopt either a full-scale model such as the Swiss one or mixed models such as the Spanish and German ones. The former is better equipped to deal with regional courts that are able to make final decisions on both civil and criminal matters, while the latter (Spain and Germany) respond to a reluctance by design to allow regions to have final decisions made in criminal matters.

3.2.6. Wrapping up regional judicial self-rule

To conclude our examination of regional judicial self-rule in West Europe, Table 3 summarizes our findings regarding the first dimension of judicial decentralization. Among the highest scores in self-rule, we find two highly symmetrical federal systems: Switzerland and Germany, whose decentralized units enjoy ample judicial powers in the five indicators that conform judicial self-rule: institutional autonomy, recruitment, design, economic autonomy, and last instance capacity. Among the highest scorers we also find UK's Scotland, while Northern Ireland and Denmark's Greenland score well above 0.5 in the indicator. Below these regions with higher levels of self-rule we find a group of regions with little capacity of self-rule, though they score above 0 in some of the components of self-rule: Spanish *comunidades autónomas* and Denmark's Faroe Islands, scoring between 0.12 and 0.3. Below that we find regions that don't have judicial self-rule: most Danish regions, the rest of British regions, and all regions in Belgium, Finland, Portugal, Austria, France, Ireland, Italy, Netherlands, Norway, and Sweden.

Table 3. Distribution of levels of Self-rule among regions and countries in Western Europe (1950-2019). Rows show regions' highest score throughout the 1950-2019 period.

Country	Decentralized unit	Self-rule
Switzerland	All cantons	1.000
United Kingdom	Scotland	0.939
Germany	All Länder	0.879
Denmark	Kalaallit Nunaat/ Grønland	0.636
United Kingdom	Northern Ireland	0.636

⁹ Regions such as Catalonia and Comunitat Valenciana have particular civil legal provisions affecting real estate or marriage procedures, among others.

Spain	Andalucía, Aragón, Asturias, Cantabria, Catalunya, Comunitat Valenciana, Basque Country, Galiza, Islas Canarias, La Rioja, Madrid, Navarra	0.333
Denmark	Føroyar/ Færøerne	0.212
France	All <i>periféries</i>	0.152
Spain	Castilla y León, Castilla-La Mancha, Extremadura, Illes Balears, Murcia	0.152
Belgium	All provinces	0.030
Denmark	Rest of regions	0.030
Finland	All regions	0.030
Portugal	All regions	0.030
United Kingdom	Greater London Authority	0.030
Austria	All Länder	0.000
France	All regions	0.000
Ireland	All regions	0.000
Italy	All regions	0.000
Netherlands	All regions	0.000
Norway	All regions	0.000
Sweden	All regions	0.000
United Kingdom	England	0.000
United Kingdom	Wales	0.000
^a Scores indicate the highest score reached by a region throughout the 1950-2019 period.		

3.3. Judicial shared rule

Judicial autonomy and power in multi-layered or composite political systems can also be exercised through the influence of the decentralized units on decisions affecting the organization and functioning of the administration of Justice at a federal level. In particular, this influence can be exerted, first, through the regional representation or participation in the decisions concerning the composition of upper-level jurisdictional bodies such as Supreme or Constitutional courts. Second, judicial shared rule can also take the form of the regional participation or membership in the governing bodies of the administration of Justice at a federal level. And finally, regions can also influence the redistribution of federal tax money for the administration of Justice. Although the Initiative for the Autonomy of the Sahara Region does not refer to any of these components – as they would affect the

governance of the union instead of that of the Sahara Region –, in the autonomous region of the Sahara, the relationship between the regional and central jurisdictional levels is framed by the respect, in the decisions rendered by the justice, of the provisions of the Autonomy Initiative, which would be in conformity with the National Constitution. Thus, in its article 29, the Autonomy Initiative provides that the Moroccan Constitution will be amended and the Autonomy Statute incorporated into it to guarantee its sustainability and reflect its unique place in the country's national judicial architecture. Thereby, according to its paragraph 25, “[t]he Region's populations shall enjoy all the guarantees afforded by the Moroccan Constitution in the area of human rights as they are universally recognized.”

Data show that the components of judicial shared rule are worth considering when dealing with judicial decentralization. The next sections will briefly present them.

3.3.1 Representation

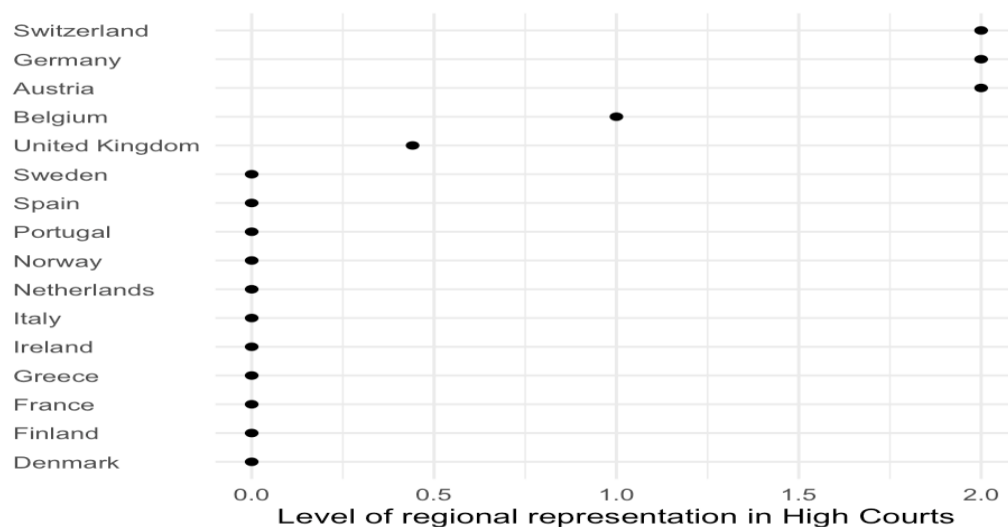


Figure 9. Average score of the Representation component for West European countries (1950-2019).

Figure 9 outlines the extent to which regions in West European countries participate in the appointments of High or Supreme Courts at the federal or central level in their political unions. Let's recall that regional participation in appointment is here conceptualized in two ways: whether regional governments (or regionally based independent agencies) have a say in federal-level Supreme Court appointments, or whether the regional origin of Supreme Court justices is taken into account when appointed by federal-level governments or agencies.

In the data we find many examples of absolute lack of regional influence in appointments of federal-level high courts. This is actually the case of all countries except Switzerland, Germany, Austria, Belgium, and the UK. For instance, in Spain, all the members of the Supreme Court are royal appointments with prior proposal by a centralized governing body of the Spanish judges (General Council of the Judicial Power). To the extent that Spanish regions have no role to play in the governing body of judges, neither they can have any influence in appointing members of the Supreme Court, nor is any regional origin or any of the four official languages spoken in Spain especially taken into account when appointing judges to the Supreme Court.

In contrast, the Basic Law for the Federal Republic of Germany (art. 95.2) determines that the judges of all courts pertaining to the Federal Court "shall be chosen jointly by the competent Federal Minister and a committee for the selection of judges consisting of the competent Land ministers and an equal number of members elected by the Bundestag. Therefore, German *Länder* score 2 in representation, as do Austrian *Länder*. Apart from cantons being determinant in the appointment of justices at the

federal level, the Swiss system also ensures regional representation through a proportional representation of judges with at least three of the four official languages spoken in the country. Currently there are three Italian-speaking, 12 French-speaking, and 23 German-speaking judges in the Swiss Supreme Court.¹⁰

As it is the case in all countries except Switzerland, Germany, Belgium, and the UK, Article 57 of the Moroccan Constitution of 2011 indicates that “[t]he King approves the appointment of the magistrates by the Superior Council of the Judicial Power”.

3.3.2 Executive control

Figure 10 presents the distribution of countries in the second component of judicial shared-rule, which measures the extent to which regions either have their own governing body of the judiciary or participate in the federal-level agency entitled to appoint and discipline members of the judiciary.

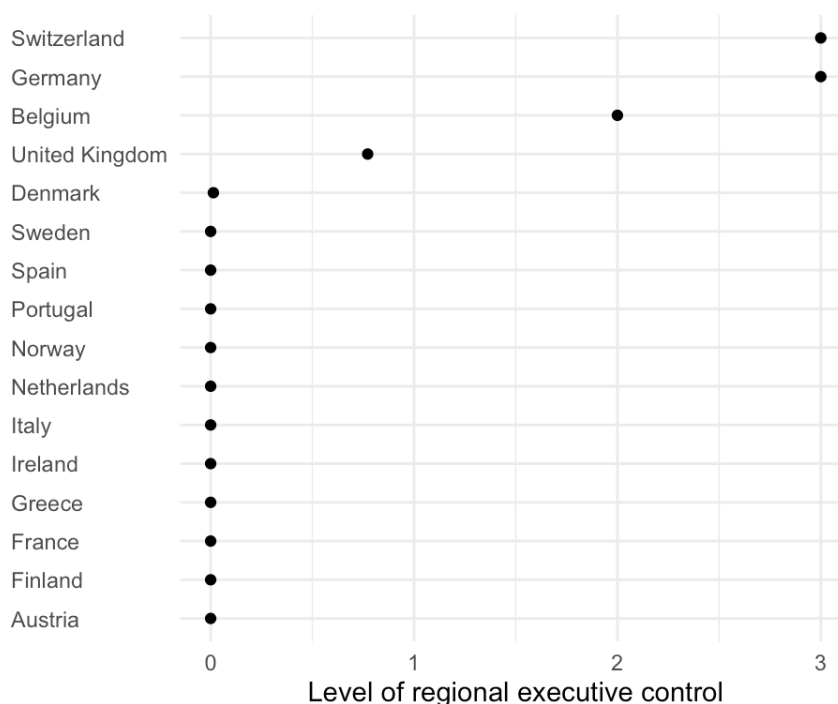


Figure 10. Average score of the Executive control component for West European countries (1950-2019).

From the data, as in the previous component, most regions and countries score 0 in this component, with the only exceptions of the UK, Belgium, Germany, and Switzerland. Germany does not have a unique governing body for the judiciary, but there is a service court in each *Länder*, composed by judges, that is in full charge of deciding and enforcing any disciplinary measures together with promotions, transfers, appointments, and repeal. In the UK the situation is asymmetrical, where only Scotland scores 3 in executive control, given that the Lord President of the Court of Session has full authority over all courts under the Scottish judicial system (except the Supreme Court of the United Kingdom). In 2007, moreover, the Judicial Council for Scotland was created, composed by judges of all categories from the Scottish judicial system, and with aim to “provide information and advice to the Lord President of the Court of Session and the judiciary of Scotland on matters relevant to the administration of justice in Scotland.”¹¹ In Northern Ireland, the head of the judiciary is the lord Chief

¹⁰ <https://www.bger.ch/fr/index/federal/federal-inherit-template/federal-richter.htm>

¹¹ <http://scotland-judiciary.org.uk/65/0/Judicial-Council-for-Scotland>.

Justice, as the president of the Courts of Northern Ireland. As in judicial recruitment, the election of the Lord Chief Justice for Northern Ireland has been reserved to the Queen (officially) with prior recommendation from the prime minister of the United Kingdom (through the advice of the Lord Chancellor). Therefore, Northern Ireland has no actual control over judicial executive matters.

As is currently the case with most countries except Switzerland, Germany, Belgium, and the UK, Article 113 of the Moroccan Constitution provides that “[t]he Superior Council of the Judicial Power sees to the application of the guarantees accorded to the magistrates, notably concerning their independence, their appointment, their advancement, their retirement and their discipline.” Finally, the Belgian Constitution (art. 151) ensures that “there is one High Council of Justice for all Belgium” with exclusive powers, among others, to nominate candidates to judge and to take disciplinary actions against judges. However, the Constitution also establishes the Council will be “composed of a Dutch-speaking college and of a French-speaking college”, with equal representation of members elected among judges and officers of the public prosecutor’s office, and members appointed by the Senate.

3.3.3 Fiscal Control

] Figure 11 plots the average scores of West European regions and countries in Fiscal Control. As mentioned above, this component has not been measured or coded by the author, but they have been taken from the dataset created by Marks, Hooghe, and Schakel (2008) to measure regional political authority, and we refer to Marks, Hooghe, and Schakel (2008) for the details of the measurement and the main results. This is the least judicial-specific of all the components of judicial decentralization, and actually Figure 11 reveals a variation that none of the previous components presented. Furthermore, here we find regions with ample fiscal control capacity (e.g., in the Netherlands or Belgium) that have little to no judicial capacity whatsoever. At the same time, systems that allow decentralized units serious levels of judicial decentralization—as German *Länder* and Swiss cantons – are not necessarily ones in with these regions have highest levels of fiscal control. There is no indication of Fiscal Control in the Moroccan Autonomy Initiative. This issue could be developed more in the future, following, for instance, models such as severe levels of judicial decentralization (German *Länder* and Swiss cantons) or ample fiscal control (e.g., in the Netherlands or Belgium).

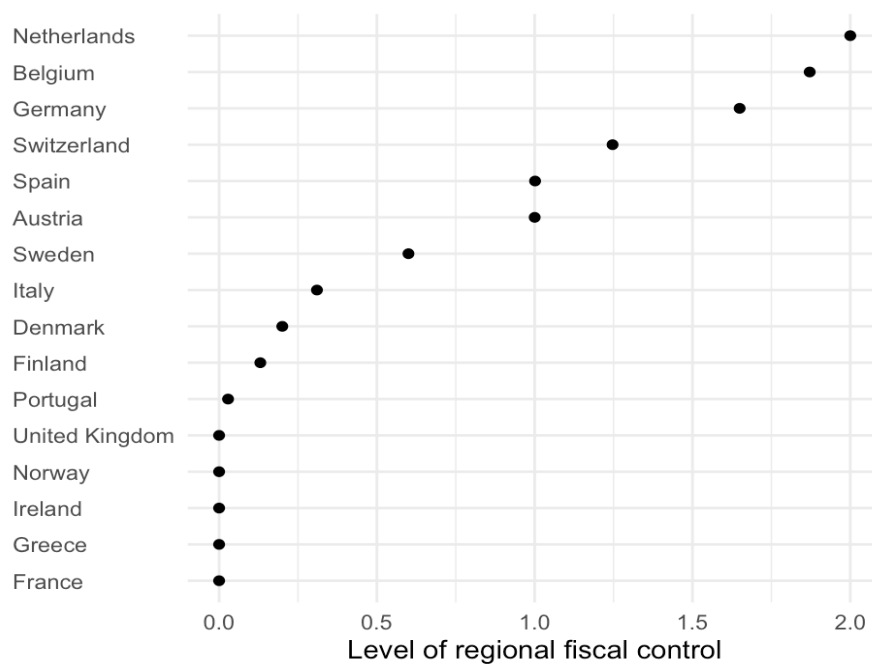


Figure 11. Average score of the Fiscal control component for West European countries (1950-2019).

3.3.4 Wrapping up judicial shared rule

Table 4 summarizes our findings regarding the second dimension of judicial decentralization – shared rule. As in self-rule, Switzerland and Germany are the countries where decentralized units score higher in judicial shared rule. Both are highly symmetrical and thoroughly federal systems. Unlike self-rule, though, results show that judicial shared rule correlates with political federalism, because alongside with Switzerland and Germany, Belgian provinces and Austrian *Länder* also score rather high in this dimension of judicial decentralization whereas their scores in judicial self-rule were quite low. Apart from this, Denmark’s Greenland, Faroe Islands and UK’s Scotland are consistent in their scores compared to how they fare in judicial self-rule: they are among the most judicially autonomous regions in West Europe out of Switzerland and Germany.

For its part, and as is the case for the Swiss and German models of federalism which include the political aspect, the autonomous region of the Sahara is due to have, within the framework of national unity, a broad judicial autonomy that will facilitate the exercise of the region's competences, with the full support of the State.

Table 4. Distribution of levels of Shared Rule among regions and countries in Western Europe. Regions show their highest score throughout the 1950-2019 period.

Country	Decentralized unit	Shared-rule
Germany	All Länder	0.875
Switzerland	All cantons	0.875
Belgium	All provinces	0.625
Denmark	Kalaallit Nunaat/ Grønland	0.625
United Kingdom	Scotland	0.625
Austria	All Länder	0.375
Denmark	Føroyar/ Færøerne	0.250
Finland	Åland	0.250
Netherlands	All provinces	0.250
Sweden	All regions	0.250
United Kingdom	England, Northern Ireland, Wales	0.250
Italy	Friuli-Venezia Giulia	0.125
Italy	Sardegna	0.125
Italy	Sicilia	0.125

Italy	Trentino-Alto Adige/Südtirol	0.125
Portugal	Açores, Madeira	0.125
Spain	Rest of comunidades autónomas	0.125
Denmark	Rest of regions	0.000
Finland	Rest of regions	0.000
France	All regions	0.000
Greece	All regions	0.000
Ireland	All regions	0.000
Norway	All regions	0.000
Portugal	Rest of regions	0.000
United Kingdom	Greater London Authority	0.000
^a Scores indicate the highest score reached by a region throughout the 1950-2019 period.		

4. Conclusions

This paper presents a new tool to measure the evolution of regional judicial autonomy. Its main contribution is three-fold. On the one hand, it provides an operationalization of the legal structure of the multi-layered organization of the judicial system. On the other hand, it uses this operationalization to build an empirical composite indicator of regional judicial autonomy that (1) takes the region as the unit of analysis and (2) allows for the elaboration and testing of analytical models to be tested against data. Thirdly, the paper compares and discusses how the Moroccan Initiative for the Autonomy of the Sahara Region fits into the pattern of judicial decentralization in West Europe.

The first part of the paper has emphasized that the literature on federalism, political or judicial, and on models of decentralization has tended to disciplinary isolation, and to focus on a few cases without generalization power, leaving aside differences in models of territorial allocation of political power. In this sense, the inclusion of the judicial dimension related to the organization of a decentralized judicial order, taking the region as the unit of analysis, and the combination of this knowledge in one single, empirical measure constitute the main contributions to the literature on federalism.

The second part of the paper has described and presented the coding scheme to build the Regional Judicial Authority Index (RJAI), with the aim of adding a judicial dimension to existing notions of regional autonomy that focus mainly on political issues. The conceptual inspiration of the index comes from the methodology established by Marks, Hooghe, and Schakel (2008) for their Regional Authority Index. This provides the RJAI with a stable, proven methodological and analytical framework to build indicators of regional autonomy. Moreover, it enables the use of both indicators in a complementary way.

Finally, the third part of this work has tested the RJAI with actual data from 16 West European countries in order to take on two basic underlying questions. First, to what extent the RJAI allows for the identification of different models of judicial decentralization. Secondly, to what extent the

indicator of judicial decentralization can help contextualize the Moroccan Initiative for the Autonomy of the Sahara Region into the general trends in judicial decentralization of Western European countries.

First, observing the results, the indicator proves sensitive to the variations across countries. In particular, data suggest different models in terms of judicial development in both temporal and substantive terms. On one hand, our data single out countries whose regions have achieved distinct levels of judicial autonomy, and countries whose regions, regardless of their levels of autonomy, experience very few changes during the period under study. Secondly, regarding the value of the level of judicial autonomy itself, the indicator points to the existence of different scenarios of judicial decentralization.

Actually, the data show that when change in autonomy has taken place, it has not taken a homogeneous pattern either in judicial self-rule or shared rule. A quite clear example is given by the data on Spain, where there is almost null judicial shared rule among regions. In fact, throughout the period all countries present higher values in judicial self-rule than shared rule, with only a couple of exceptions.

Despite its generic drafting, the Moroccan Initiative for the Autonomy of the Sahara Region establishes relevant principles of judicial decentralization upon which an advanced model of judicial autonomy may be built. First, its acknowledgement of the existence of judicial institutional autonomy for the Sahara Region is a formal requirement met only by the most thoroughly decentralized countries in West Europe: Switzerland, Germany and, to a lesser extent, the United Kingdom and Denmark (only applicable to Greenland and Faroe Islands). Second, this principle of judicial autonomy opens the door for the Region to shape its own court system (art. 22), which, as we have seen, might yield to a regionally based judiciary, a fully regionalized system of recruitment for the regional judicial system, and an advanced capacity to district and redesign the court map within the Region. Should the Initiative further elaborate this provision in these directions?

As demonstrated through the Indicator of Regional Judicial Autonomy and given all the elements presented during this comparative study, the Autonomous Region of Sahara will take advantage of the most developed models of decentralization and would score among the regions with the highest levels of judicial decentralization compared to West European countries. The Moroccan Initiative proposes to set up a judicial system for the Sahara Region. The Moroccan Constitution shall be amended, and the Autonomy Statute incorporated into it will guarantee its sustainability and reflect its unique place in the country's national judicial architecture. The Autonomy Initiative is prominent concerning all the questions related to Regional Judicial Decentralization. It meets the highest international standards of autonomy regimes. This clarity in the contents of the Moroccan Autonomy initiative represents a high degree of willingness by Morocco to engage into real negotiations in order to end the dispute over the Sahara region.

Although, to our knowledge, the Moroccan Initiative does not provide for any further development in the direction of higher levels of shared rule in judicial matters, the comparison between West European regions and the text of the Initiative on the second dimension of judicial decentralization is not possible. However, for the sake of completeness a brief exploration of the main results on judicial shared rule has been also included in the paper. The results suggest that, although federal symmetry is rather unrelated to judicial self-rule, it does foster judicial shared rule as it incentivizes the participation of decentralized units in decisions at the federal level that are key to the functioning of the judicial system as a whole.

In conclusion, the paper presents the potential to provide a solid basis to empirically test the complex dynamics of both political and judicial devolution and the extent to which agendas for political and judicial decentralization follow distinct paths. Despite its limits, the fact that the current database is so sensitive as to suggest these differences emphasizes the need to further study the complex relationships between political and judicial power to uncover unexplored patterns of multilevel politics, and gives promise to our measurement instrument, which will be freely accessible and usable through an open repository.

References

- Aparicio, M. A. 2013. "La difícil relación entre la organización del poder judicial y el Estado autonómico." In *Poder judicial y modelo de Estado*, edited by M. Gerpe and M. A. Cabellos, 87–102. Barcelona: Atelier.
- Arbós, Xavier. 2013. "El poder judicial y el federalismo canadiense." In *Poder judicial y modelo de Estado*, edited by M. Gerpe and M. A. Cabellos. Barcelona: Atelier.
- Aroney, N., and J. Kincaid, eds. 2017. *Courts in Federal Countries: Federalists or Unitarists?* Toronto: University of Toronto Press.
- Baker, Thomas E. 1995. "A Catalogue of Judicial Federalism in the United States." *South Carolina Law Review* 46: 835–76.
- Dardanelli, P. 2018. "Conceptualizing, Measuring, and Mapping State Structures-with an Application to Western Europe, 1950-2015." *Publius: The Journal of Federalism* 49 (2): 271–98.
- Díez-Picazo, L. M. 1991. *Régimen constitucional del Poder Judicial*. Madrid: Civitas.
- Elazar, D. J. 1987. *Exploring Federalism*. Tuscaloosa (AL): The University of Alabama Press.
- Gerpe, M., and M. Barceló, eds. 2006. *El federalismo judicial: aproximación a los sistemas judiciales de Estados Unidos, Suiza, Canadá y Alemania*. Barcelona: Institut d'Estudis Autonòmics/Generalitat de Catalunya.
- Gerpe, M., and M. A. Cabellos, eds. 2013. *Poder Judicial y Modelo de Estado*. Barcelona: Atelier.
- Gimeno Sendra, V. 2013. "La función de los tribunales superiores de justicia y su relación con el Tribunal Supremo." In *Poder Judicial y modelo de Estado*, edited by M. Gerpe and M. A. Cabellos, 103–8. Barcelona: Atelier.
- Halberstam, D. 1998. "Comparative Federalism and the Role of the Judiciary." In *The Oxford Handbook of Law and Politics*, edited by K. Whittington, D. Kelemen, and G. Caldeira. New York (NY): Oxford University Press.
- Halpérin, J.-L. 2014. *Five Legal Revolutions Since the 17th Century. An Analysis of a Global Legal History*. Cham (Switzerland): Springer.
- Jacob, H, E Blankenburg, H M Kritzer, D M Provine, and J Sanders. 1996. *Courts, Law, and Politics in Comparative Perspective*. New Haven, CT: Yale University Press.
- Le Roy, Katy, and Cheryl Saunders, eds. 2006. *Legislative, Executive, and Judicial Governance in Federal Countries*. Montreal: McGill-Queen's University Press.
- Marks, Gary, Liesbet Hooghe, and Arjan H. Schakel. 2008. "Patterns of Regional Authority." *Regional & Federal Studies* 18 (2-3): 167–81. <https://doi.org/10.1080/13597560801979506>.
- Neuendorf, K A. 2002. *The Content Analysis Guidebook*. Thousand Oaks, CA: Sage.

- Porras, J M. 2013. "Los tribunales superiores de Justicia en el estado autonómico." In *Poder Judicial y Modelo de Estado*, edited by M Gerpe and M A Cabellos. Barcelona: Atelier.
- Riedel, J. 2005. "Recruitment, professional evaluation and career of judges and prosecutors in Germany." In *Recruitment, professional evaluation and career of judges and prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain*, edited by G. di Federico. Bologna (IT): Consiglio Nazionale delle Ricerche.
- Shapiro, M. 1981. *Courts: A Comparative and Political Analysis*. Chicago (IL): The University of Chicago Press.
- Suter, Benjamin. 2014. "Appointment, Discipline and Removal of Judges: A Comparison of the Swiss and New Zealand Judiciaries." *Working Paper*, Victoria, Australia: University of Wellington.
- Vallbé, J-J. 2014. "Measuring the Judicial Power of Regions: A Judicial Regional Authority Index." In ECPR 2014 Joint Sessions. Salamanca (Spain): ECPR.