

# A Survey of Judicial Effectiveness

## The Last Quarter Century of Empirical Evidence

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## Abstract

Courts around the world are often perceived to be ineffective in the delivery of justice. The resolution of cases takes too long, costs too much, and is biased in favor of the rich and politically connected. These stylized facts motivate judicial reform. With the benefit of a quarter century of empirical research, this paper finds that judicial reform is successful in improving court effectiveness when it coincides with or is motivated by periods of extraordinary politics. The paper studies the four most discussed ingredients of judicial

effectiveness—independence, access, efficiency, and quality—and finds that transformative judicial reform is most likely to succeed in countries emerging from conflict and violence or those that are pursuing accession to regional or international groups. Absent such conditions, reformers are better off focusing on the adoption of procedural rules that increase the effectiveness of the existing judicial system. The survey highlights procedural reforms that deliver better outcomes.

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**A Survey of Judicial Effectiveness:  
The Last Quarter Century of Empirical Evidence**

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A large scholarship posits the critical role of judicial effectiveness in encouraging economic growth. The link between the proper functioning of courts and business activity is put forward as early as in the writings of Thomas Hobbes, who observed that courts ensure the smooth working of the economy because otherwise “he that performeth first has no assurance the other will perform after because the bonds of words are too weak to bridle men’s ambitions, avarice, anger, and other passions without the fear of some coercive power” ([1651] 1962:8). Extending this line of thinking, Max Weber’s (Weber 1905) analysis of China and Western Europe argues that effective courts are the primary means of ensuring the rule of law.

The link between the rule of law and economic growth is in turn well-documented. Adam Smith ([1755] 1980:322) observes that “a tolerable administration of justice,” along with peace and low taxes, is all that is necessary to “carry a state to the highest degree of opulence.” Nobel Prize laureate Douglass North (1990) argues that “the inability of societies to develop effective, low-cost enforcement of contracts is the most important source of both historical stagnation and contemporary underdevelopment”. Williamson (1995) posits that the high-performance economy features a multitude of long-term contracts—business relationships that thrive in the presence of a well-functioning judicial system. A large empirical literature follows on these seminal studies (for example, Acemoglu and Johnson 2006; Dhillon and Rigolini 2011; Spruk and Kovac 2019).

Other theorists suggest that the pace and character of judicial improvement can build on a country’s initial conditions. This evolutionary perspective dates back to Veblen (1899), who describes “the evolution of social structure has been a process of natural selection of institutions,” and is also associated with Hayek (1973), who argues that institutions “have evolved because the groups who practiced them were more successful and displaced others.”

These theories have been the subject of intense debate in both the academic and development aid communities. The empirical evidence has proliferated in the past quarter century, and we survey this evidence using the framework developed in three previous surveys on the practice of judicial reform (Posner 1998; Messick 1999 and Botero et al 2003) published in the *World Bank Research Observer* (WBRO). We focus on empirical studies in peer-reviewed economics and law journals since these three scholarly articles were published, to answer some

previously wanting questions or to revisit the answers to questions posed by other eminent scholars.

The first question we revisit is when judicial reform happens. Posner (1998) and Messick (1999) argue that such reform emerges as a result of a society-wide consensus or as a precursor to the creation of such consensus. The second question we pose is what constitutes judicial effectiveness. Messick shows that reform to improve judicial effectiveness involves four groups of measures aimed at increasing 1. independence, 2. efficiency, 3. access and 4. quality. Botero et al (2003) show that the impact of judicial inefficiency is particularly severe in poor societies, where all four ingredients may be missing at once.

The third and final question we revisit is what elements constitute a sound judicial reform project. Here we look more specifically at some hypotheses that have populated the development debate but have insufficient basis in academic studies predating the three WBRO surveys. One example is the focus on pay and other monetary incentives in reform projects – a focus that many foreign aid projects have (Posner 1998). A second example is the increase in the number of judges or courts – a reform that finds little empirical support but is nonetheless widely practiced in development projects. A final view, propagated especially in Botero et al (2003), is that most cases of judicial stagnation require simplifying procedures and increasing their flexibility. We study the new evidence for clues on the ingredients of successful judicial reform.

The new surveyed evidence does not always settle adequately the question of the direction of causality between various types of reform and judicial effectiveness (this question is also raised in Ramos Maqueda and Chen 2021). First, both institutional building and judicial effectiveness may be a result of preexisting attitudes and beliefs in society (Ellickson 1991; La Porta et al 1999). Second, the same fundamental factors that contribute to building any government institution may also be responsible for improvements in the judiciary, for example the accumulation of human capital (Pistor 1995; Glaeser et al 2004; Angrist et al 2021). As countries become more prosperous, they can afford to invest additional public resources in improving judicial effectiveness (Posner 1998). Finally, it may be that richer societies spend more on all public institutions, including the judiciary, so the causality runs from institution building to judicial effectiveness (Murphy, Shleifer

and Vishny 1991; Bosio et al 2022; Shleifer et al 2022). In other words, court reform goes part-and-parcel with broader reforms of public institutions and thus only succeeds in periods of extraordinary demand for improvement in government services.

Where possible, we attempt to distinguish causality from correlation. This effort is useful for establishing the degree of robustness of our results. The additional value of this exercise is in answering the critics who say that academic results do not carry over to the development field. We largely corroborate this claim – development projects continue to include specific reforms to the courts haphazardly, without regard to the findings of the by-now voluminous empirical literature.

Our findings suggest that judicial reform is successful in improving court effectiveness. In the instances where this is the case, extraordinary politics aid the transformation of the judiciary, alongside transformation of other institutions. In other words, judicial reform succeeds when part of larger institutional change. Next, while four ingredients for judicial effectiveness are commonly discussed in the literature – independence, access, efficiency, and quality – there is no robust evidence that independence is correlated with effectiveness, while there is mixed evidence that access in terms of more courts or larger number of judges increases court effectiveness. The research on the quality of court judgments is in its nascency. Finally, empirical evidence questions the benefits of some common features of judicial reform, for example increase in judicial salaries, raising the number of judges, or the usage of ADR mechanisms. This may not necessarily imply that such reforms are unproductive, but it does suggest that these reforms need further empirical evidence.

There is robust evidence that small procedural reforms, as postulated in Posner (1998) and Botero et al (2003) increase judicial effectiveness. The new studies in support of this claim are useful resources for the specific types of procedural reforms that yield results. One further step in collaborating the country case studies on procedural reform is extending the analysis to a cross-country panel setting, as in Chemin (2020). Fulfilling this task is the biggest recent contribution in the study of court effectiveness.

The final point that this literature survey raises is about the scope of judicial change and

more specifically about the increasingly high expectations of what judicial reform can achieve. The judiciary is responsible for numerous tasks ranging from ensuring that people accused of a crime are treated fairly; to supporting the claims of divorced women to receiving alimony; to serving as a guarantor that legislatures and executives are operating lawfully and without corruption. The initial surveys of the literature of judicial effectiveness began with what in many developing countries appeared to be reasonable, modest goals: the enforcement of commercial contracts and the protection of private property rights. In the past quarter century the number of goals in front of the judiciary mushroomed into holding other branches of government accountable. While this broadening of scope is understandable, the literature is yet to come to grips with how to properly capture the enormity of these tasks.

The study is organized as follows. Section 1 summarizes the literature on the conditions for judicial reform. Section 2 details the four ingredients of judicial effectiveness and the rationale behind each condition, as documented in the literature. Section 3 delves into the evidence on specific court reforms. Section 4 concludes with some implications for future policy advice.

## **1. Conditions for Judicial Reform**

Judicial reform presents a threat to the status quo. Because of its fundamental nature, such reform happens only when there is a significant societal shift due to either egregious violations of citizens' rights, evidence of high corruption in government, or in the presence of external forces that galvanizes the need for institutional change. Judicial reform rarely happens if these conditions are not in place. This claim is consistent with the broader experience of institutional change (Olson, 1982; Acemoglu and Johnson 2006; Balcerowicz, 2014). Only during periods of extraordinary politics can society galvanize significant judicial transformation.

Examples of country-level reform abound. In response to the legacy of apartheid and the need to improve access to justice for marginalized communities, South Africa implemented judicial reforms in the 1990s and 2000s (van der Burg 2006). These included the establishment of specialized courts for dealing with gender-based violence, the creation of community courts to provide accessible justice for rural communities, and the implementation of a system of judicial

performance evaluation to ensure accountability in the judiciary. In Kenya, the presidential elections in 2007 resulted in civil unrest, deaths of dozens of citizens and an effective breakdown in the rule of law. A number of judicial reforms followed, including the introduction of the Judicial Transformation Framework, which transformed Kenya's courts into more efficient and easily accessible public institutions (Gainer 2015).

Vietnam's effort at reform of the courts and the prosecutor's office began with the Nãm Cam corruption scandal (Quinn 2003). Nãm Cam was considered the most powerful mob boss in the country and was said to have attained influence that extended into the high ranks of government and the courts, which he used to protect his lucrative enterprise. The public reaction to the corruption scandal created the political impetus to reform the judiciary. The reforms centralized the management of the courts, reduced the power of individual prosecutors and created checks-and-balances within the legal system, including with the establishment of the Vietnam Bar Association and the creation of a specialized court for economic cases.

Mexico's increasing murder rates in the early 2000s, due to elevated levels of petty crime and violence from organized crime, prompted public outcry for the need to reform the courts. Mexico introduced constitutional and legislative changes that aimed to transform its justice system (Shirk 2010). Mexico's judicial sector reforms comprise four main elements: 1) changes to criminal procedure through the introduction of new oral, adversarial procedures, alternative sentencing, and alternative dispute resolution (ADR) mechanisms; 2) a greater emphasis on the due process rights of the accused (i.e., the presumption of innocence and an adequate legal defense); 3) modifications to police agencies and their role in criminal investigations; and 4) tougher measures for combating organized crime.

Romania's experience with judicial reform demonstrates the role of an external anchor when domestic dynamics impede strengthening the courts. European Union accession played a catalytic role in demanding judicial independence and efficiency (Mendelski 2012). Judicial reforms in Croatia and Serbia followed a similar trajectory, with blockages during the initial stages of post-communist transition and a momentum gained with the prospects for EU accession (IMF 2017).



When societal consensus for judicial reform is lacking, Messick (1999) recommends that the development community forgo judicial reform altogether. Instead, governments can focus on building a consensus for reform by opening a dialogue with bar associations, business groups, and other nongovernmental organizations to campaign publicly on the benefits of reform (Botero et al 2003). Hammergren (2014) takes issue with this prescriptive view. She observes that building consensus may create such strong opposition that reform will be stalled. Hammergren also cautions that nongovernmental organizations have their own interests that may be at odds with the broader judicial reform agenda. Business groups may, for example, be interested solely in the creation of commercial courts or steps that reduce legal fees.

In line with the arguments of Messick and Botero et al, Heise (2000) analyzes the determinants of judicial effectiveness for cases that reach a jury trial. The study uses one year of civil jury case outcomes from 45 of the United States' 75 most populous counties and identifies supporting institutions such as bailiffs as one important variable, along with political characteristics (which party won the last elections). The findings from this study call into question the efficacy of ADR reform efforts and increases in judges' pay. Instead, variables that exert systematic influence on the judicial system prevail. Partial reform, absent political will, worsens court results rather than improve them even in an advanced economy like the United States.

Armytage (2010) finds that reform of the Papua New Guinea judiciary between 2003 and 2007 yielded little improvement in court effectiveness, despite the significant foreign aid that went into increasing judicial budgets, improving court infrastructure, and addressing judges' incentives. Instead, reform needs to be based on domestic political resolve, an ingredient that was missing during the period under study. Dias and Gomes (2018) reach the same conclusion in the case of Portugal, where court reforms during 2013-2016 did not reduce disposition time and costs despite significant investment in physical infrastructure and increased judges' pay.

Changes to legal rules may assist in creating the preconditions for future reform while in the meantime improving judicial effectiveness (Hay, Shleifer and Vishny 1996). This rules-first strategy attempts to raise effectiveness within the confines of the existing inefficient judiciary, by

increasing access or improving the quality of legal judgments. Posner (1998) gives examples of such rules: a requirement that certain disputes between employers and employees must be referred to binding arbitration; or a rule that the winner of a judgment for damages will receive interest on the judgment at the market rate from the date of the original claim.

The adoption of effectiveness-raising rules places fewer demands on the time and competence of judges and is therefore more likely to be implemented with success. Such rules also facilitate the monitoring of judges' work and can reduce the possibility of corruption or the influence of politicians on judges (Posner 1998). In other words, in normal times a modest investment in procedural rules is more beneficial than a big investment in judicial transformation. In fact, Botero et al (2003) show that the level of resources poured into the judicial system and the accessibility of the system have little impact on judicial performance. Most of the problem of judicial stagnation stems from inadequate incentives and overly complicated procedures. Incentive-oriented reforms that seek to increase accountability, competition, and choice seem to be the most effective in tackling the problem. But incentives alone do not correct systematic judicial failure. Chronic judicial stagnation calls for simplifying procedures and increasing their flexibility (Botero et al 2003).

Examples of halted judicial reforms can often be explained by the failure to recognize that the period of extraordinary politics has either ended or yet to start. Cepeda-Francesc and Ramírez-Álvarez (2023) show, for example, how the adoption of common-law style court proceedings in Mexico increased crime rates and was accompanied by a reduction in the use of pretrial detention for property crimes in the early implementer municipalities. Mamak et al (2022) demonstrate how the 2015 criminal law reform in Poland aimed in vain to limit sentencing disparities across courts. Their study compares trial outcomes from before and after the reform from district courts in 13 cities in Poland for two offences: drug possession and drunk driving. The findings demonstrate that there remained significant differences in sentencing across courts, even in courts that are situated in the same city.

El Bialy (2016) provides an empirical study on the performance of Egyptian first instance courts. A panel data model on 22 courts for 9 years is used to establish whether the 2007 judicial

reform improved the performance of Egyptian courts. The findings suggest that resolution rates in Egyptian courts have not improved markedly and delays persist. Similarly, Assegaf (2019) documents how a 2011 reform enabled the judiciary and the Supreme Court of Indonesia to strengthen their independence by having a freer appointment and removal process of Supreme Court judges, new power to manage the personnel and resources of the lower courts as well as expansion of their own organization and budget. Despite such progress, the Supreme Court did not establish its legitimacy in the eyes of the public and other state institutions, which pursued other venues – such as bringing cases to the Constitutional Court instead – to protect their rights and interest. In the end, many of the judicial reforms in Indonesia were reversed within five years.

Reform sometimes fails to improve court effectiveness even in countries with high human capital. Blank and Heezik (2020) for example apply a cost function model to time series data of the Dutch judiciary between 1980 and 2016 to show a decline of judges' productivity over the entire period, despite various reform measures been undertaken. Heise (2000) and Voigt and El Bialy (2013) have qualitatively similar findings in the case of court reform in the United States and Council of Europe jurisdictions.

In contrast, Bielen et al (2015) find that simple procedural improvements reduce delays and costs in the courts. Using a sample of first-instance cases in Belgian courts, they show that the implementation of the “synthesis pleadings” accelerates the judge’s deliberation. Second, the obligation of a procedural calendar speeds up the exchange of pleadings since (1) deadlines become binding, (2) court hearings are requested before pleadings are exchanged and (3) intentional delays are impeded. Third, the Act reduces frivolous litigation in order to increase court speed. Also, regulating the length of adjournments has a significant effect on improving efficiency.

Similarly, Chemin (2012) analyzes data from Indian courts to show that mandatory time limits on plaintiffs and defendants at each stage of the litigation reduce delays. In the context of Spanish courts, Rosales-López (2008) found that procedural changes like the creation of a Common Procedural Services unit which registers, delivers and enforces judicial resolutions increases effectiveness and has a positive effect on the perception of the court’s output. Bray et al (2016) use the example of Italian courts to also show that simple procedural modifications, such

as imposing time limits, providing training on case flow management techniques, and convincing judges to adopt case-level first-in-first-out policies to the extent feasible, has been shown to increase the speed with which a case moves through the system and, in turn, to have a beneficial effect on the economy and society.<sup>2</sup>

So far in this section we have provided some case study evidence suggestive of positive reform outcomes. This evidence is insufficient to make a generalized claim. It is more instructive to gather cross-country empirical evidence of when justice reforms happen, for example by using the extension of the database of court reforms in Djankov et al (2003). Such an analysis can provide evidence beyond ad-hoc country cases. The reader is referred to Chemin (2020), the first study that attempts such an enormous task. A triple difference is used by Matthieu Chemin to compare firms in countries with or without judicial reforms, before and after reforms, and in sectors more or less reliant on contract enforcement mechanisms, due to their need for relationship-specific investments. The study finds that comprehensive judicial reforms improve perceptions of judiciary efficiency (for all firms) and firm productivity (for sectors relying on relationship-specific investments), respectively.

## **2. Ingredients of Judicial Effectiveness**

Posner (1998) and Messick (1999) suggest that the factors that underpin judicial effectiveness are independence, access, efficiency and quality. When justice institutions operate effectively, accountability increases, trust in the government grows, and businesses can invest with confidence that their rights will be protected. Becker (1997), however, asserts that the emphasis on narrow technical issues to improve one of these factors has often come at the expense of more fundamental reform to change societal beliefs about courts.

Empirical findings establish that comprehensive reforms – i.e., those targeting all four characteristics of judicial effectiveness – affect firm productivity and from there economic growth. In contrast, partial reforms – i.e., those that do not target all characteristics at once – have passing

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<sup>2</sup> Carillo et al (2022) show evidence from Chilean courts on the benefits of information sharing for the speed of case disposition.

effect. The intuition is that increasing access to an otherwise slow and corrupt judiciary does not fundamentally affect economic outcomes (Chemin 2020).

In this section we review the evidence on the ingredients of each of the four postulated areas (independence, access, efficiency, and quality). We also attempt to address the question of whether partial reform brings judicial effectiveness or whether there must be an all-out effort to transform the judiciary, especially given that the latter is plausible only during periods of extraordinary politics as described in the previous section.

Two caveats are in order here. When studying “judicial reform”, the various studies surveyed here refer to positive reforms that improve the effectiveness of the justice system. There are no studies that we could identify on reforms that weaken the justice system. It is instructive to understand whether such reform also happens under similar conditions. For instance, at the time of writing this literature survey there is debate about the weakening of the judiciary in Israel, following on similar reforms in countries like Hungary and Poland. These dynamics potentially fit into the bigger picture of judicial reform. Second, by construction the studies we survey analyze reforms that have taken place. There is limited literature on reforms that were attempted but ultimately were not adopted by parliament or the judiciary. Such failed reforms again provide useful information but are not easily available.

## **2a. Independence**

Judicial independence allows judges to make impartial decisions in accordance with law and evidence only, shielding them from inappropriate outside influence, whether from other branches of government, the public, or business leaders (van Dijk and Vos 2019). According to Alexander Hamilton, “nothing can contribute so much to [the judiciary’s] firmness and independence as permanency in office” (Federalist Papers, no. 78).

Judicial independence has obvious value for securing property rights when the government is itself a litigant, as in the takings of property by the state (La Porta et al 2004). Besides seeking to influence judges, politicians may also wish to pursue policies and pass laws that benefit

themselves, or allied interest groups. Constitutional review is intended to limit these powers. By checking laws against a rigid constitution, a court—particularly a supreme or a constitutional court—can limit such self-serving efforts. In effect, courts rather than legislators become final arbiters of what is law (Hayek 1960).

A large literature exists measuring the effects of judicial independence. A central feature is the distinction between ‘de jure’ and ‘de facto’ independence (Rios-Figueroa and Staton 2014). Judicial discretion—rules that give judges the power to reject cases or direct them to pre-trial mediation—is considered an important feature of judicial independence. Judicial discretion is highly correlated with the efficiency of court proceedings (Kondylis and Stein, 2022). This result echoes similar findings on discretion in the fields of environmental and public procurement regulation (Bosio et al. 2022; Duflo et al. 2018).

The independence of judges increases the probability that they act with integrity in adjudicating cases. But integrity is also associated with sufficient resources for the functioning of the courts (court budgets) and disclosure laws that pre-empt or uncover corrupt behavior (Djankov et al 2010). Judicial accountability, including as measured by the availability of codes of judicial conduct designed to draw the line between acceptable and non-acceptable behavior increases economic growth through various channels, one of which is the reduction in corruption (Voigt, 2008).

Several studies point to the selection of judges as an entry point to judicial independence. These studies capture the differences between “career” and “recognition” models of judicial organization. This difference is considered relevant for (i) the initial appointment process; (ii) the criteria used for promotion; (iii) the length of tenure; and (iv) lateral transfers, as it impacts the incentive structure for judges (Ramseyer and Nakazato 1999). The career judiciary, in which judges join the judiciary at a young age and remain there for their entire careers, refers to the system prevalent in most civil law jurisdictions (Garoupa and Ginsburg 2011).

The danger of a career judiciary is that it can produce a bureaucracy that is risk-averse, promotion-minded, and far from manifesting behavioral independence (Dam, 2006). A study in

Japan, for example, shows that one possible outcome of career systems is that younger judges who too aggressively challenge accepted ideas are likely to find themselves with less desirable appointments. For this bias to be avoided, the composition of the authority in charge of appointments and promotion is relevant (Ramseyer 2001).

Recognition models run the risk of biased views due to previous political or business experience. Previous political activity is also the focus of recent research on France, which looks at the economic consequences of judges' decisions by collecting information on more than 145,000 appeal court rulings, combined with administrative firm-level records covering the whole universe of French firms. The quasi-random assignment of judges to cases reveals that judge bias due to previous political activity has statistically significant effects on the survival of small low-performing firms (Cahuc and Carcillo 2021).

Another study on the topic of political activity analyzes judicial decisions to estimate the bias due to prior political activism among judges arbitrating dismissal disputes in Australian labor courts. The political color of the appointing political party and judges' previous political background affect probability of employee success by about 10% points (Booth and Freyens 2014).

The appointing process can be a determining factor in independence. Research on Ukraine finds that the practice of conducting competitive selection of judges is a critical part of independence of the judiciary (Shcherbanyuk 2018). A study on Pakistan finds that when the judge selection procedure in Pakistan changed, from the President appointing judges to appointments by judge peers, rulings in favor of the government decreased significantly and the quality of judicial decisions improved (Mehmood 2021). A study conducted on Albania investigates the role of assets assessments as one of 3 criteria for the vetting of judges. The study finds it to be an effective criterion when paired with background assessments (previous links with political parties or organized crime) and professional competence (Hasmuça 2017).

The length of tenure is also a determining factor of independence. Studies confer iconic status on the clause of England's Act of Settlement (1701) mandating secure tenure for judges. A

study on Argentina confirms this finding by showing that the ability of new Presidents to have their own court is a major cause of the continued economic decline of the country (Alston and Gallo 2005). More recent research, however, has shown that the effect of all judges having secure tenure is negative on the quality of decisions, as measured by the number of citations of judges' decisions (Murrell, 2021). In the United States, cases are randomly assigned to judges, and researchers have found that some lenient judges jail juveniles on average 4 percent of the time, while other stricter judges jail on average 22 percent of the time (Aizer and Doyle 2015). Therefore, some youths, simply because their case was assigned to one judge and not another, end up being incarcerated for longer periods due to the independence judges have in deciding on cases.

Tsereteli (2022) develops a case study on Georgia to show that judicial independence can be abused by a close-knit group, with a handful of influential judges (i.e., judicial oligarchs) at the top of the judiciary's hierarchical structure. Drawing on in-depth interviews with sitting as well as former judges and other stakeholders of reform processes, the author attributes the failure to improve judicial effectiveness to lack of checks and balances in the courts. More importantly, it warns about the reliance of judicial oligarchs on informal rules and practices to undermine formal rules. Tsereteli documents informal mechanisms allowing the network of powerful judges to cement itself into leadership positions, stifling reform. One solution may be the introduction of a mandatory retirement age, which Ash and MacLeod (2020) suggest improves court performance, as measured by output (number of published opinions) and legal impact (number of forward citations to those opinions). The studies in this paragraph show various instances in which partial reforms can work in improving the effectiveness of the justice system. These reforms are administrative or procedural in nature.

Budget plays a role in independence, but its natural tension with efficiency is frequently highlighted in the literature. Building on two case studies, Finland and the Netherlands, Viapiana (2018) shows that the "performance-based" budgeting system, which relates the courts' budget to the efficiency results, setting specific performance targets, is influencing the independence of judges. Although fundamental to ensure proper resource allocation among courts, these approaches have an impact on judicial independence, because they put pressure on judges' efficiency, to the detriment of quality. This tension can create problems as governments work to keep spending in



check, while continuing to honor judicial independence (Rosselli 2020). Consistent with this finding, a large group of studies find mixed evidence of positive effects on judicial effectiveness from increased court budgets (for example, Voigt and El Bialy (2013) for European courts).

## **2b. Access**

Access to justice measures the ability of the justice system to deliver outcomes that are accessible to all, irrespective of wealth, status, and gender. This includes eliminating barriers that prevent people from understanding and exercising their rights; and delivering fair and just outcomes for all citizens, including those facing financial and other disadvantages (Cappelletti 1981; Peysner 2014).

Access is associated with higher rates of entrepreneurship (Lichand and Soares 2014). Evidence from debt recovery tribunals in India shows that the speed and affordability of justice greatly increases the use of formal courts (Visaria 2009; Lilienfeld-Toal et al 2012). Lower court fees in the resolution of commercial disputes are also associated with a smaller size of the informal sector (Djankov et al 2003), another proxy for access. Empirical evidence on access to justice on GDP per capita growth in a panel of 83 countries from 1970 to 2014 shows that increasing access to justice by 1% increases the five-year growth rate of GDP per capita by 0.86 p.p. (Deseau et al. 2019). Cross-country and within-country evidence shows that increased court access, in the form of higher speed and lower procedural formalism, is a strong correlate of economic development (Chemin 2009a).

Although laws may be equal, prevailing discriminatory social norms, deeply rooted stereotypes, unconscious bias, and even ignorance or reluctance by institutions responsible for enforcing rights can be a major stumbling block to the implementation of legislation (Hyland et al 2020). In Pakistan, for example, Holden and Chaudhary (2013) and Ahmad, Batool and Dzuegulewski (2016) find that despite a legal change, few women were able to access justice due to factors such as lack of education and forced marriages. Gedzi (2012) highlights a similar result in Ghana, where reforms to inheritance laws led to some positive changes in terms of women's inheritance.

An issue that comes up frequently when studying legal reform is legal pluralism (Djurfeldt 2020). In many developing countries, formal and informal judicial systems coexist. Informal systems play a positive role in society by increasing fair justice due to their accessibility (Ahmad and Von Wangenheim 2021). In all cases, however, they are buttressed by a functioning formal system. Ali, Deininger and Goldstein (2014) note that the coexistence of different types of customary and formal laws can lead to a situation in which formal laws are disregarded if customary rules are less costly to execute—as is often the case. Reversion to customary courts, headed by village elders, leads to resolutions that favor men, as documented in studies on Burundi and Zimbabwe, where over 90 percent of disputes on family matters, petty crime, property and inheritance end up in the customary system (Sinha and Djankov 2023a, b).

On the proximity of courts, a study on Peru finds that interventions designed to improve judicial coverage for populations located outside important urban centers significantly shifts the resolution of conflicts away from informal mechanisms and improves the perception of residents regarding social norms and the law (Soares et al 2010). These interventions included the construction and staffing of justice modules, i.e., physical structures which housed courts, prosecutors, and public defenders. Similar results were found in Bangladesh, where the government focused on establishing Village Courts to ensure justice locally without having high costs due to travel. For many in Bangladesh, village courts remain the only legal institution which exists at the doorstep of the rural poor people for the privilege of justice (Bhuiyan et al 2019). In France, the removal of some local courts resulted in fewer claims in these locations, suggesting that disputes simply remained unresolved or resolved through informal means (Espinosa et al 2017).

Research on proximity in high-income countries finds similar results. A study on France emphasizes the central role of court proximity for the good functioning of the labor market. When the French government in 2008 enacted a reform that reduced the number of labor courts by one-quarter, many workers and employers had to travel further to proceed with conflict litigation. This had a measurable effect: cities that experienced an increase in the distance to their associated labor court suffered from a lower growth rate of job creation (−4 percentage points), job destruction

(−4.6 pp) and firm creation (−6.3 pp) between 2007 and 2012 compared to unaffected cities (Espinosa et al 2018).

Legal aid can improve economic and social outcomes by extending legal services to underprivileged groups (Gradinaru 2017). Legal aid workers not only must be knowledgeable concerning relevant laws and regulations, but also must be able to interact effectively on a personal, professional level with persons who have lower educational attainment or disabilities (Larson 2014). Similar results were found in the study of legal aid and access to justice for women victims of domestic violence in India (Hartanto et al 2018). The inability of disadvantaged people to access legal services is the result of the low degree of inclusion (Petre 2021).

Aberra and Chemin (2021), using a randomly controlled trials methodology, show that legal aid provided to farmers in Kenya to resolve land disputes resulted in effort on land (measured by days worked) increasing by 15 percent in the treatment group versus the control group. Investment increased by 21 percent, access to credit increased by 56 percent, and agricultural production increased by 42 percent. In sum, legal representation increased the security of property rights, which translated into greater investment and access to credit.

## **2c. Efficiency**

An efficient judicial system – which resolves disputes in a timely manner and without significant monetary costs to the parties involved – supports economic growth (Esposito et al., 2014). Where judicial systems guarantee the enforcement of rights, creditors are more likely to lend at better rates (Bae and Goyal, 2009), businesses are more productive (Chemin 2020), firm size increases (Giacomelli and Menon 2012; Chemin 2009b) and investment rises (Djankov et al., 2008; Aboal et al 2014). A proxy measuring the extent to which disputes can be resolved at a low cost finds that increasing access to justice by 1% increases the five-year growth rate of GDP per capita by 0.86 p.p. or 0.17 p.p. annually (Deseau et al 2019).

Some sectors rely more on the judiciary than others because of the need for relationship-specific investments (Nunn 2007). An economy without an effective judiciary is trapped in the

production of generic goods to avoid such investments. Such economies cannot rise on the value-chain of exports (Levchenko 2007, Amirapu 2021). Because of the relation with the ladder of value enhancement, foreign direct investment is positively correlated with the efficiency of legal institutions, which in turn is linked to higher economic growth (Sabir et al., 2019, Bénassy-Quéré et al., 2007).

Survey evidence from Senegal shows that firms are willing to pay higher legal fees to achieve faster delivery of justice, suggesting positive benefits of judicial reform (Kondylis and Stein, 2022). Several studies have shown a link between entrepreneurship rates and the efficiency of the judicial system, suggesting that an efficient judiciary promotes entrepreneurial activity (Ippoliti et al., 2015, Ardagna and Lusardi, 2009).

Active case management has been consistently highlighted as a necessary tool in the pursuit of court efficiency. The Indian judicial system is plagued by especially high disposition times across all levels. Gupta and Bolia (2020) use simple measures of judicial resources, namely, number of judges and staff members as inputs, and two outputs, number of civil and criminal cases disposed. The results identify specific courts that are efficient in disposing cases, especially courts that use active case management.

A study using data on disposition times in Italy shows that three policies can make a significant contribution to the efficiency of the system: active case management, break-ups of large courts of justice into smaller ones to exploit economies of scale and use of offsite technologies. These three measures reduce the disposition time by 30% (Peyrache and Zago 2020). Another study on Italy finds that the causal effects of business uncertainty from court delays on company turnover, hiring and dismissals are of significant negative direction, and of sizable magnitude (Bamieh et al, forthcoming). Other work using Italian court data studies the effects of court inefficiency on public work performance. Where courts are inefficient, proxied by disposition times, Coviello et al (2018) find that public works are delivered with longer delays; that delays increase for more valuable contracts; that contracts are more often awarded to larger suppliers; and that a higher share of the payment is postponed after delivery.

Clearance rates are also used as a measure of efficiency in the literature, as shown by a study using these rates as an indirect measure of the time needed to dispose of cases in Greek courts (Mitsopoulos and Pelagidis 2007). The data suggest that the ratio of staff to total number of cases affects the time needed to dispose of cases in appeals courts and higher civil trial courts, but not in lower civil trial courts or administrative courts. In these courts, lower clearance rates appear to instead be connected to increased emphasis on case management. Similar results were found in a study focusing on the performance of 223 Portuguese first instance courts during the period of 2007–2011. The study shows that only 15% of the 223 courts make an efficient use of their resources and that improvement can be achieved with better case management, and more adequate staffing (Santos and Amado, 2014).

Clearance rate and the age of active pending caseload are both measures of backlog. Backlog can result from inefficiencies but can occasionally also be the product of short-sighted judicial reform. In Brazil, for example, the new Constitution of 1988 so expanded the range of constitutional rights, including new social and economic guarantees, and the kinds of plaintiffs entitled to bring constitutional actions, that backlogs multiplied many times over (Prillaman 2000; Rosenn 2000). This finding suggests that the expansion of enforceable rights needs to be accompanied by the introduction of case management tools.

Several studies explore the impact on outcomes of an increase in the number of judges. Analysis of the determinants of the performance of commercial district courts in Poland in the period 2009–2016 indicates that an increase in the number of judges can significantly enhance the number of resolved cases (Bełdowski et al. 2020). The output of Israel’s judiciary, as measured by the number of completed cases, however, is found to not vary with the number of judges (Beenstock 2001). The appointment of additional judges lowers the caseload of existing judges, who respond by lowering their productivity. The percentage fall in productivity is equal to the percentage increase in the number of judges, implying that the output of the courts remains unchanged. Suhrke and Borchgrevink (2009) find that the expansion of courts in Afghanistan in the early 2000s does not lead to more demand for formal justice, as these courts collide with local tradition. Nanwani (2016) echoes this finding in the case of Sri Lanka, while Clark (2000)

demonstrates the absence of a link between increased number of judges and efficiency of courts in Peru.

Smith et al (2021) analyze whether performance measurement improves efficiency, by reviewing performance measurement systems in Australian state-level jurisdictions. The overall conclusion is that performance measurement, at least in the judiciary, does not lead to better efficiency. In contrast, de Figueiredo, Lahav and Siegelman (2020) use the complete record of U.S. federal civil cases between 1980 and 2017 to document that judges close substantially more cases and decide more motions in the week immediately before they report their outputs as part of semi-annual evaluation cycles. Chemin et al (2023) find even stronger supportive evidence of performance measurement improving court effectiveness in the case of Kenya.

Efficiency of the court system is related to the workings of existing ADR mechanisms, as these have the potential to reduce the caseload of courts. Court level data of conciliation activities in French civil magistrate courts between 2010 and 2017 show that efficiency is positively related to factors that foster the demand for ADR settlement. More efficient courts are more prone to involving conciliation in the ADR (Belarouci 2021). A study using data on 8,038 trials provides mixed support for ADR programs being able to reduce time or cost of proceedings but indicates that participation in an ADR program correlates with an increased likelihood of out-of-court settlement (Heise 2010).

In contrast, Genn et al (2007) find that out-of-court mediation is associated with similar delays and additional costs in London, the United Kingdom. They study the impact of ADR programs, using a quasi-compulsory mediation program which ran in the Central London County Court between April 2004 and March 2005. During the ARM pilot, 1,232 defended civil cases were randomly referred to mediation, of which 82% were personal injury cases. By the end of the evaluation (10 months after termination of the pilot), only 14% of the cases originally referred to mediation had been settled. Also, the study found that the additional cost of cases that did not settle and went back to litigation was between 1,000 and 2,000 pounds. The presence of mediation did not significantly affect the overall likelihood of earlier closure, that is, mediation showed little effect on case duration.

## 2d. Quality

The literature utilizes two ways of measuring the degree of quality of court judgments. First, by measuring the extent to which the judgment meets a certain number of features and pre-defined indicators (conformity with requirements); and second, by measuring the gap between the expectations that court users had before using the courts and the assessment made following their use (conformity with expectations). The usual indicator on the former is consistency and predictability of judgments, i.e., whether judgments follow precedents (Contini and Carnevali 2010). The most often-used empirical measure of the latter is the probability that the first-instance judgment gets overturned on appeal (for example, Calabrese 2013; Coviello et al., 2014). Increasingly, however, surveys of user experience are also the basis for judicial quality assessments (Mbassi et al 2019).

A study using data from Nepal assesses the determinants of the quantity–quality tradeoff. It finds that in Nepal judicial staffing exhibits a robustly positive effect on court output. Quality increases with the qualification of judges and can be seen in fewer reversals on appeal. The study does not find evidence implying that increasing court output would decrease adjudicatory quality (Grajzl and Shikha 2020). Similar results showing the importance of the quality of first instance rulings on reducing appeal rates were found in a study using Greek data (Mitsopoulos and Pelagidis 2007).

Research using European data finds that the most straightforward way to improve the judiciary involves the dedication of additional resources, and that these resources would be best devoted to increasing judicial pay (Cross and Donelson 2010). The pivotal role of judicial pay on quality also emerges from an analysis of the Mexican judiciary, which found that low judicial salaries left the best-trained and most capable young law graduates inclined to pursue careers in private practice. Consequently, lawyers with uncompetitive institutional pedigrees and undistinguished records of professional experience tended to pursue careers on the bench. This observation is corroborated, in part, by the findings of 1985 and 1993 judicial surveys that an average of 93.15% of Mexico’s federal judges and magistrates graduated from what are generally

considered to be inferior quality law programs (Kossick 2004).

Flynn (2009), however, contends that the desire for court efficiency has led to the implementation of reforms across criminal justice systems that, while seeking to apply the benefits of reduced delays and early guilty pleas, ultimately prioritize efficiency gains above the interests of the public, victims and defendants and in particular above the quality of judgments. She uses the example of court reform in the state of Victoria (Australia) to illustrate the trade-off between efficiency and quality, whereby increasing judges' salaries in the name of better efficiency actually reduced quality.

In agreement with Flynn (2009), research in other areas of public service delivery, for example schools and regulatory agencies, finds that increasing salaries improves work satisfaction but not the quality of this work (Weibel et al 2009; de Ree et al 2018; Zarychta et al 2020). Kaufmann et al (2019) further find in a study of Bolivian public institutions that undue emphasis has been given to civil servant wages, while undermining the priority of citizen voice and transparency. The latter set of "voice"-related variables has a larger effect on the service delivery performance than the more traditional public-sector management variables.

### **3. Ingredients of Sound Judicial Reform**

In this section we narrow our analysis to evidence that shows a robust link between certain features of judicial reform and increased court effectiveness. Robustness for our purposes is deduced from the existing empirical research. The absence of such robust links invites further research into the nature of judicial reform.

First, there is some evidence that the independence of judges is correlated with judicial effectiveness. There also exists an indirect link through the quality of judicial decisions, where independence determines quality and quality improves the country's judicial effectiveness. This indirect link is hypothesized in some studies, for example in Contini and Carnevali (2010), but the size of this effect is not investigated. Bobek and Kosar (2014) argue that in the countries of Eastern Europe the independence-of-judges model of court administration has not lived up to the promise.



In fact, in several countries in the region, judicial effectiveness has been made worse following the constitutional and other legislative changes towards independence of judges. In those countries, the new institution of Judicial Councils typically halted further reforms of the judiciary and soon negated the values in the name of which they had been put in place. The authors conclude that independence may have come too early and served to incapsulate existing inefficiencies.

Independence may allow judges' biases and beliefs to influence judicial decisions. Copp et al (2022) explore the extent to which the implementation of a pretrial risk assessment instrument in a US first-instance court corresponded to changes in the pretrial processing of defendants. They find little evidence of reductions in detention lengths or increases in the use of nonfinancial forms of release following the tool's adoption. This was largely attributable to the exercise of judicial discretion, as judges frequently departed from the tool's recommendation using alternatives that were more punitive and often included financial conditions—particularly for Black and Latino defendants. Angelova et al (2022) similarly find that judges override default procedural decisions incorrectly in over 90 percent of cases. Discretion is, in other words, costly to effectiveness.

Second, there is sparse evidence that increasing judicial pay – another indirect measure of independence - improves court effectiveness. Choi et al (2009) argue that there is a general sentiment that judges are underpaid. The primary argument being made in favor of a pay increase is that it will raise the quality of judging. Theory suggests that increasing judicial salaries will improve judicial performance only if judges can be sanctioned for performing inadequately or if the appointments process reliably screens out low-ability candidates. However, federal judges and many state judges cannot be sanctioned, and the reliability of screening processes is open to question. Choi et al's empirical study of the high court judges of the 50 US states provides little evidence that raising salaries would improve judicial performance.

More generally, there is mixed evidence to suggest that court budgets affect judicial effectiveness. Voigt and El Bialy (2013) analyze the determinants of judicial efficiency based on data of the 47 member states of the Council of Europe. They found three variables that had a negative correlation with judicial efficiency: (i) the increase in the budget of the judiciary, (ii) the introduction of court specialization, and (iii) the establishment of judicial councils, a body that

helps keep the administration of courts and the judicial system within the judiciary. Increasing the budget of the judiciary does not correlate with an increase in resolution rate. Perversely, in their data the larger the budget the slower the disposition rate for both civil and criminal cases. Voigt (2012) reaches similar findings as regards the number and size of courts: there is insufficient evidence that more resources relate to greater effectiveness.

Third, there is mixed evidence that increasing the number of judges or courts – an indirect measure of access - increases judicial effectiveness. Dimitrova-Grajzl et al (2012) find that in the case of Slovenian district courts, judicial staffing has an insignificant effect on court output. That is, when endogeneity is addressed, the number of cases resolved by Slovenian courts does not statistically significantly increase with the number of serving judges. Furthermore, the results indicate that the primary driving force of case resolution in Slovenian courts of first instance is the demand for their services: *ceteris paribus*, the number of cases resolved increases with caseload. This in turn implies that judge productivity increases with caseload.

Garoupa et al (2010) conclude that promoters of court specialization in Spain for the purposes of reducing case duration should be cautious in their optimism. By analyzing the length of cases in family courts compared to regular courts in specific family matters, the evidence shows that there was similar duration in specialized family courts. Gouveia et al (2017) find no evidence that larger courts handle more cases in Spain.

Court specialization is not associated with more effective judiciary either. Beenstock and Haitovsky (2004) show that the number of case dispositions in Israeli courts is independent of the number of serving judges, and that “productivity,” as measured by completed cases per judge, varies directly with the caseload per judge. These results suggest that the productivity of judges is endogenous; for the same caseload judges complete more cases under pressure, and complete less when new judges are appointed. Coviello et al (2019), using data from Italian courts, do however find evidence for specialization leading to faster disposition times. They estimate that when judges receive more cases of a certain type, they become faster, i.e., more likely to close cases of that type in any one of the corresponding hearings.

Similar evidence on endogeneity of caseloads is seen in several other studies. Spaić and Đorđević (2022) investigate the relationship between the relative number of judges within a court and the efficiency of the judiciary. To determine how the number of judges influences effectiveness, they compare data on the judiciary from six countries: Serbia, Croatia, Slovenia, France, Austria and Norway. The authors conclude that judicial effectiveness is static with the number of judges in a jurisdiction. Dimitrova-Grajzl et al (2012), Alencar and Ponticelli (2016), Grajzl and Shikha (2020) and Dimitrova-Grajzl et al (2016) study courts in Europe and Asia and find that the number of serving judges, a key court resource, matters only in a subsample of courts, a result suggesting that judges adjust their productivity based on the number of judges serving at a court.

Also, there is some evidence that restructuring the judiciary with a view towards increasing the quality of judgments pays off. Garoupa and Ginsburg (2009) provide a theory of the formation of judicial councils and their effect on judicial quality and from there to economic growth. They test the extent to which different designs of judicial council affect judicial quality and find a modest relationship between councils and quality. This result echoes Voigt and El Bialy (2013) in their findings on reforms in European courts. Further research is sorely needed to provide a detailed mapping of the path from quality of judgments to judicial effectiveness.

There is robust evidence on who benefits from judicial effectiveness. Improvements to judicial effectiveness disproportionately benefit the least privileged groups of society. Chemin (2021) studies data on 36 African jurisdictions and documents that the perception among the poorest decile of the population that the head of state will never ignore the courts and laws is lower at baseline by 11 percentage points compared to other more well-off groups in society, and that this perception differentially increases by 10 percentage points after a judicial reform, nearly closing the gap between groups.

#### **4. Conclusions**

Courts around the world are perceived to be often ineffective in the delivery of justice. The resolution of civil and criminal cases takes too long, costs too much and judgments are often

perceived to be biased in favor of the rich and politically connected. These facts motivate the need for judicial reform. With the benefit of a quarter century of additional empirical research from the time that several major surveys of judicial reform were written, we find that robust evidence on the precise ways to increase judicial effectiveness is starting to emerge. Some of the commonly-implemented reforms of the courts – for example, the increase in judges’ pay or the introduction of ADR mechanisms – are found to be tangential to subsequent court effectiveness. However, an accessible, swift and unbiased legal system constrains the executive by limiting expropriation and the misuse of public office for private gain. Judicial reforms disproportionately benefit the powerless and discriminated groups of society, a welcome finding.

The empirical evidence over the past quarter century lends support to the earlier findings in Posner (1998), Messick (1999) and Botero et al (2003) published in the WBRO. Transformative judicial reform is most likely to succeed in countries with extraordinary politics: these emerging from conflict and violence or in countries that are pursuing accession to either regional (for example EU) or international (for example OECD or WTO) groupings. Absent such conditions, reformers are better off focusing on the adoption of procedural rules that raise the effectiveness of the existing judicial system. A number of such promising procedural reforms are documented by case study evidence.

Several court-related reforms commonly practiced in the hope for improved effectiveness – for example, increased judicial independence, better judges’ pay, more courts and larger budgets – can benefit from further support in the empirical literature. In some cases, such reform brings about unexpected results, indicating that one must tread with significant caution when proposing institutional change or incentive structure change in the judiciary.

Access to justice and faster resolution times are associated with increased judicial effectiveness, highlighting the positive effect of reform. These links are often causal, further extending the opportunity to argue that court reform can be part of economic development strategies.

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