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Reforming courts: the role of empirical research

Effective judicial reform requires research on the cases courts actually hear, the parties involved, the trajectories and outcomes, and the time required to deliver judgments.

Working with local researchers, World Bank staff recently analyzed a random sample of cases filed in the first instance courts of Argentina and Mexico. (First instance or trial courts make the initial rulings on cases based on both facts and law. Higher instance or appeals courts are often restricted to questions of law and so may not reconsider the facts of a case.) The Mexico study was conducted in the Federal District, the largest of Mexico's 32 local and state jurisdictions, and reviewed 464 debt collection cases brought under a special procedure that provides for rapid dispute resolution. In Argentina a stratified sample of criminal, civil, and labor cases was drawn from trial courts in the national capital, Buenos Aires (600 cases), and in the province of Santa Fe (450 cases). In both countries the identities of the parties, the nature of the cases, the amounts at issue, the times to disposition, and other data from the case files were coded and analyzed. Aggregate statistics kept by the judiciary and information from interviews and focus groups were used to help interpret the case file findings.

Both studies revealed that when it comes to the operation of Latin American justice systems, much of what experts "know" is incorrect. Because this conventional wisdom often informs judicial reform projects, it can encourage changes aimed at solving nonexistent problems—while ignoring real ones. This shortcoming should come as no surprise. In industrial countries it is widely recognized that judicial reform must be built on a solid empirical base (Australian Law Reform Commission 2000; Twohig and others 1996). But because of costs, time constraints, the difficulty of accessing court records, and other obstacles, little analysis of case files has preceded judicial reform in developing and transition (post-communist) economies.

Judicial reform must be built on a solid empirical base

Unexpected findings

In both Argentina and Mexico contested amounts tended to be far smaller than is generally believed. In Mexico's debt collection proceedings, 80 percent of claims were for less than 150,000 pesos (about $16,000). Civil cases in Argentina showed the same pattern: 80 percent were for less than $15,167. Although Argentina's labor disputes involved larger amounts, 80 percent were for less than $30,000.

Banks and corporations turn to courts less often than is conventionally expected. Firms accounted for just over half of the plaintiffs in Mexico's debt collection cases, and banks for only about 15 percent. In Argentina individuals accounted for 57 percent of plaintiffs, but in civil cases the state was the most common organizational plaintiff—private financial institutions accounted for just 12 percent of plaintiffs. Except in Argentina's labor cases, individuals accounted for the vast majority of defendants in both countries.

Judicial workloads appear to be lighter than is commonly thought

Delays were nowhere as excessive as judges and lawyers often portray them. Resolution times for Mexico's debt collection cases ranged from 29–977 days, with a median of 223 days—fewer than for comparable cases in Colombia, Portugal, and Spain, as well as Argentina's median of 300 days. In Argentina the median time to resolution (judgment, dismissal, or negotiated agreement) varied considerably across criminal, civil, and labor cases and between the two jurisdictions, ranging from fewer than 100 days for criminal cases in Buenos Aires to more than 500 days for criminal cases in Santa Fe. Variations were even greater among the 12 types of proceedings, especially in criminal cases—from fewer than 30 days for cases involving minors to more than 700 days for economic crimes in Buenos Aires, for example.

In both countries a large portion of cases were considered "abandoned" (unresolved). Such cases are technically open, but their files indicate that the parties are no longer pursuing them, whether because of an unrecorded settlement, frustration, or some other reason. (In criminal cases this often means that the investigation has reached a dead end but that no one has bothered to close the case or at least remove it from the active list.) In Mexico abandoned cases accounted for 81 percent of the proceedings reviewed. In Argentina the share of abandoned cases varied by case type and jurisdiction. After four years less than 2 percent of the labor cases surveyed in Buenos Aires remained open—compared with more than 85 percent of the criminal cases in Santa Fe.

Appeals were less common than is generally thought. In Argentina appeals were common only in labor cases (41 percent) and were almost nonexistent in civil and criminal cases. In Mexico appeals were entered against 30 percent of judgments—a relatively high share, but far less than the "every decision is appealed" belief that forms part of conventional wisdom. Moreover, appeals in Mexico did not appear to add much delay: they were decided far more rapidly than the initial cases. An earlier World Bank study in the Dominican Republic indicated that appeals increased delays substantially, although the methodology did not make it possible to determine the appeals rate (Varela and Mayani 2001).

There were few records indicating executions of judgments for noncriminal cases—almost none for Mexico's debt collection cases and only for about one-third of Argentina's civil and labor cases. While this is not unusual, it is a cause for concern in Mexico, where judicially supervised auctions of seized assets are the primary means of formal execution in debt collection cases. Because the auctions are complicated and costly, this setup may work in favor of defendants who resist making payment.

For those designing judicial reforms, perhaps the most significant finding involved the rate at which cases are abandoned. Because of the large number of cases abandoned early in their proceedings, judicial workloads appear to be lighter than is commonly thought. In Mexico 60 percent of debt collection cases did not advance beyond the admission of the complaint. Thus they placed few demands on judges' time. In Argentina cases that could not be decided quickly often seemed destined for abandonment after long periods of near inactivity. This pattern suggests a need for caution in evaluating judges or judicial systems based on disposition rates. Judges evaluated in this manner quickly learn to "cherry pick," improving their ratings by focusing on cases that can be decided easily.

The studies did not support common complaints about judges' pro-defendant or pro-debtor biases. In Mexico's debt collection cases 90 percent of judgments favored the plaintiffs—even after appeals. In Argentina plaintiffs won 52 percent of all civil cases and 63 percent of debt collection cases. Argentina's system may be more efficient, however, because Mexican judges may spend too much time on cases with clear outcomes.

Finally, Argentina's use of mechanisms like conciliation and filing fees produced some interesting findings. Labor and juvenile cases took longer to resolve and had a

lower resolution rate in Santa Fe, apparently because judges there were less willing to encourage negotiated settlements. In both Buenos Aires and Santa Fe the higher claims in labor relative to civil cases appear to be linked to plaintiffs' ability to initiate action in labor courts without depositing a percentage of the amount claimed. A comparison of case trajectories—such as the length of proceedings and causes of delay—suggests that lawyers in the two provinces follow different strategies. In Buenos Aires delays come earlier in the proceedings (before the trial) and are controlled by plaintiffs' lawyers, suggesting efforts to reach out-of-court settlements. The later delays in Santa Fe—either late submissions of pleas or requests for additional action—are most likely initiated by defendants. Pretrial delays may actually conserve judicial resources; those occurring later create more work for judges and seem to reflect traditional efforts to buy time.

Implications for reform programs

Many judicial reforms appear to be aimed at making things easier for large users contesting large amounts. Yet courts appear to be used more often to dispute smaller claims. This disparity has implications for the types of reforms needed. Mexico's median resolution time of 223 days might not be long for a conflict over a large debt, but it seems less reasonable for the small amounts usually at stake. Given that three-quarters of defendants do not even answer the demand, the rest of the procedure appears superfluous.

More attention needs to be paid to what happens out of court and after judgments. A good system should encourage out-of-court negotiation (which is not the same as alternative dispute resolution, or ADR, because it does not involve court or other third-party supervision). Thus reformers need to explore whether such negotiation is occurring and with what results. Speeding up a judgment is of little use if it is not executed or if post-judgment bargaining gives more weight to the loser (because judicial auctions, for example, are costly and complicated). Rather than just finding ways to accelerate the pre-judgment stage, reformers should focus more on execution—particularly for programs intended to enhance court access for poor people.

In determining the need for more courts and judges, real rather than nominal workloads should be used. Every filing does not require the same attention from a judge, and assuming that it does may waste resources. A related issue involves the desirability of certain cases even going to court. Countries that use ordinary courts to collect debts owed to the state may want to reconsider this practice. It congests the courts and, at least in Argentina, does not seem to help the state collect what is due.

Procedural changes may cut disposition times, but certain procedures—summary debt collection cases, judicial auctions, and so on—may just be inherently slow. In fact, it was hard to find comparable data for European countries because most have made radical changes in such proceedings—de-judicializing the disputes, relying on default judgments, or otherwise making resolution more automatic.

Two cultural factors need to be explored: a seeming judicial bias against out-of-court negotiations and an emphasis on procedural guarantees. Neither seems to benefit those most in need of protection, and both may aid actors inclined to abuse the system. Appeals are one example. While far less common than suggested and apparently not adding much delay, appeals could still be subject to a better filtering system. When, as in Mexico, appeals overwhelmingly support initial rulings, their value is questionable.

Practical lessons

The Argentina and Mexico studies show how valuable such work can be as an input to reform planning. But the research took longer and cost more than anyone anticipated, even in two countries with excellent local research teams and cooperative judicial authorities. The Argentine and Mexican researchers had access to reliable data

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already kept by the courts. In countries without this advantage, designing and drawing a sample will be far more difficult. With many of the files located in judicial archives, it helped that these were well organized in both countries.

The decision to base the samples on filed, rather than decided, cases was important. It allowed rates of resolution and appeals to be calculated, comparisons of real and nominal workloads, and the development of a profile of all court users—not just "successful" ones. But this approach also complicated the process of locating case files and raised unresolved questions about the fate of abandoned cases. It also meant that in Mexico a second sample of decided cases had to be drawn to allow analysis of this category. Finally, the narrowly focused Mexican sample differed from the Argentine effort to develop a complete profile of cases. Mexico's use of one relatively uncomplicated proceeding allowed more detailed analysis, including flowcharts and simple regressions. Both approaches are useful. The choice depends on what is already known and what the research hopes to learn.

Research is a valuable input to judicial reform—but it is no easy task

Further reading

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