USES OF EMPIRICAL RESEARCH IN REFOCUSING JUDICIAL REFORMS: LESSONS FROM FIVE COUNTRIES

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Following the democratic opening of the 1980s, Latin Americans took a renewed interest in their court systems and initiated two decades of concerted efforts to improve their performance. While Latin American judiciaries have been under reform almost since their inception, this recent movement is distinguished by several characteristics:

- First, it follows a period of several decades during which the region's judiciaries suffered from an unusual absence of attention, leading to their characterization as the "orphan branch of government."[2]
- Second, although legal change remains central to the reforms, they incorporate novel elements, including the creation of new sector organizations, investments in equipment and buildings, a new attention to administration and management, and an emphasis on values like increased access, independence, and efficiency.
- Third, the reforms have been supported, in some cases initiated, by external donor agencies and by a more diverse group of local stakeholders.[3]
- Fourth, it has benefited from an unusual degree of contact among participating countries. This has helped to overcome local resistance to change and also accelerated the adoption of new trends across countries.
- Finally, judicial reform is increasingly linked to broader societal goals, including economic growth, poverty reduction, and democratization.

As has been documented by numerous observers,[4] the reforms have produced remarkable changes in the organization, operations, resources, and visibility of the region's sector organizations. Court systems throughout the region have expanded their size and coverage. New institutions – public ministries, public defense, constitutional tribunals and chambers, judicial councils, judicial schools – have appeared. The internal organization of these entities and of the judiciary itself has become more complex. Appointment systems and terms of service have been changed to discourage political intervention in the selection and decisions of judges. Many courts enjoy larger budgets and higher salaries for their employees. Large investments have been made in equipment

[1] The opinions expressed here are those of the author and do not represent the positions of the World Bank nor, despite being based on their data collection and analysis, those of the local research teams. See appendix for more information on the local researchers.
[2] Correa (1999) provides an excellent overview of the historical neglect of the judiciary.
[3] For a review of IDB, World Bank, and USAID programs in Latin America, see articles in Domingo and Seider (2001).
[4] Even critics are usually willing to admit this much. For a sample, see Correa (1999), Popkin (2000), Hammergren (1998 and 2003, forthcoming), Prillaman (2000), Ungar (2002), Baytelman (2002).

and infrastructure. Procedural and substantive codes have been rewritten and put into practice. Innovations like conciliation, arbitration, and special services for marginalized populations have been added. Many courts now have public relations and outreach offices to publicize the changes and help citizens access services. In short, after twenty years of reform programs, the sector looks and operates very differently than it did when the movement started.

Unfortunately, and despite the dynamism and sizable investments, the changes have not reduced the traditional complaints about judicial performance, and in some cases have added new ones. If they have advanced the broader, extra-sector goals, no one so far has been able to document their contribution.[5] As indicated by opinion polls conducted throughout the region,[6] the comments of national and international observers, and a growing body of academic literature, Latin Americans still don't have faith in the fairness of their justice systems, believing they produce costly delays, render irrelevant, sometimes politicized or purchased judgments, and are increasingly removed from the interests and concerns of ordinary citizens. Defenders of the reforms have responded with two answers: these basic institutional changes take time to perfect, and still more time to register in the public view.

Change is slow because it requires a complicated sequence of steps: altering internal rules and practices, thereby modifying behaviors and outputs, to eventually improve outcomes and impacts. Each stage takes time and may require further adjustments. Institutional change does not just happen with the enactment of a law or legal creation of a new organization. Moreover, there is a predictable delay in any impact being noticed. Most citizens do not have regular contact with their courts, and thus may overlook even massive improvements,[7] basing their views on media coverage of a few high profile cases (usually the worst tests of judicial performance, even in developed countries) or experience from years back. The fact that in most countries, caseloads continue to expand, sometimes at explosive rates, would suggest that things cannot be that bad. Nonetheless, there are causes for concern. To the extent we have reliable data, times to disposition do not appear to have improved in most countries, backlogs continue to grow, many citizens find it difficult to access the courts, and abusive litigation (using the courts to avoid justice) does not appear to have declined. In many countries, politicization of the judiciary or out and out corruption appear not to have been touched.

[5] Given uncertainties as to real progress in these other areas, and recent setbacks in some of them, there is also the possibility of a negative contribution. However, the best bet is that the sector's role has been marginal in either sense.

[6] A recent regional poll indicates that only 24 percent of those surveyed have much faith in the courts. National averages vary, but the highest never gets above 40 percent. However, as Toharia (2002) notes, the figures for Europe are not much better, although there is often a difference between system approval and faith in judicial integrity, with the former lower than the latter. Europeans, one might conclude, like their judges more than they like the way the system delivers justice. No one has ever made the distinction in Latin America, but one fears the judges might not do as well there.

[7] For this reason, many opinion polls have now begun to differentiate between views of ordinary citizens and those of citizens who have had recent contact with the courts (or other institutions of interest). See Kritzer (2000) for a discussion of the use of opinion polls to evaluate judicial performance in the U.S.

We also have instances where purported improvements, once adopted, may have produced unanticipated negative results. Compulsory pre-trial conciliation can be still another obstacle confronting the poor. Judicial fees, like those adopted in Peru and Ecuador, appear to be associated with declining use of courts by some population groups (not necessarily the abusive litigants). Access to justice without effective enforcement of judgments (a problem in many countries) may only increase popular cynicism: having won their case, litigants may discover they still cannot make good on their claims. Greater use of constitutional and public interest law (the "amparization"[8] of justice) may produce similar deceptions and also drive out the space for normal litigation. Constitutional cases, enhanced court independence, and judicial review are also producing more frequent clashes between branches of government, and judicial entry into policy making – leading to dire predictions as to a government of judges or their stifling of the executive's ability to promote new programs.[9]

All these developments have produced concerns as to the validity of the models and assumptions informing reform programs. Many of these, it is now admitted, were drawn up with little understanding of real sector operations. As the orphan branch of government, the judiciary, and the rest of the justice sector, were also the least studied and least understood of the region's government institutions. While to some extent, two decades of reforms have increased our understanding and also added tools (statistical data bases and the like) for advancing it still more, the reform models have not been adjusted accordingly. Definitions of problems, causes, and solutions remain much as they were two decades before; neither expanded information on the sector nor disappointments with results have encouraged any effort to revise them. Further concerns arise from recent events in the developed nations, where those reviewing judicial performance have begun to caution about the efficacy of these same models in industrialized settings.[10]

Many of these concerns go far beyond the scope of the current paper. It nonetheless bears mentioning that our most cherished beliefs about the courts' role in resolving conflicts, the connection of conflict resolution to rule enforcement, and the place of judicial independence and the judicial checks and balance functions are now being questioned. Observers suggest that an overreliance on the courts to resolve conflicts may weaken rather than strengthen juridical security, that the usual goals of independence, access, and efficiency may not allow simultaneous resolution, and that judicial review, as commonly practiced, may not be an appropriate way to resolve inherently political conflicts (the who gets what, when and how definition of politics). The latter is especially true in the area of second and third generation rights where court intervention can have major effects on how public resources will be used. A society may want to provide housing to all the homeless or subsidize all health care for all citizens, but

[8] This term is now gaining currency in Peru because of the expanded use of *amparos* (requests for protection from alleged violation of constitutional rights) to litigate matters formerly handled through normal civil or administrative proceedings. Other authors speak of the judicialization of politics and the constitutionalization of justice. See Tate and Vallinder (1995).

[9] These complaints are more common in countries with the most activist constitutional bodies – Colombia, Costa Rica, and more recently Argentina and Brazil. Recent events indicate Peru may be joining the group.

[10] For a discussion of European trends, see articles in Zuckerman (1999).

presumably those decisions should be made with the broadest participation and with full consideration of the costs and trade-offs, not only by the judges.

IIMPROVING THE INFORMATION BASE FOR REFORMS

Short of efforts to produce a new model of the judicial function and its role in national development, much can be done in simply truth-testing our assumptions about the traditional failings of judicial performance. Most reforms and most criticisms of the judiciary have been guided by a standard set of beliefs, what we have taken to calling the conventional wisdom or "what everyone knows about how courts perform." Universally, and irrespective of the specific country, these usually include the following contentions:

- Cases ordinarily take years to resolve. Nothing is ever processed rapidly.
- Delays are caused by litigants and by judges.
- Judicially caused delay often originates in the excessive workloads of judges.
- Litigants normally create delay by a tendency to use every exception and to appeal every decision.
- In debt collection cases, judges are biased against creditors.
- The most critical delays are in the time to judgment, or in the time added by repeated appeals.
- Courts have an enormous economic impact because of their slow treatment of cases filed by large entrepreneurs (usually assumed to be a majority of all filings). Hence, the frequent argument of the need for special courts to handle them.
- The biggest obstacles to the poor are the location of courts, fees (including those for lawyers) and poor treatment. The solution is more judges and more subsidized legal services.
- Justice of the peace and other small claims courts serve the poor
- The inquisitorial criminal justice system is a major source of delays, impunity, and other injustices

There are also a number of country specific contentions. In Peru, it is believed that justice of the peace courts handle largely family cases. In Mexico it was believed that *jucios ejecutivos* (summary debt collection proceedings) were predominantly used by banks. Countries introducing court fees (*tasas*) frequently argued that they would reduce abusive litigation. Those, like Mexico, which refuse to use fees, argue that "making justice free" makes it equally accessible to all.

The problem with all of these conventional beliefs is that they are largely based on perceptions. Many of those perceptions come from the presumed experts – judges and litigators. However, as experience in other countries has demonstrated, even the experts can perceive things inaccurately.[11] People tend to base their generalizations on the most memorable events, or simply repeat what others have told them. An entire model of

[11] Herbert Kritzer (1983) a U.S. expert who has done similar studies on court users was one of the first to call attention to this fact. The Australian Commission (2000) charged with reviewing court performance in that country marveled at the number of reforms introduced without any study of the real status of cases.

court operations (or of any other phenomenon) can thus have its origins in a few very skewed opinions. As in Latin America, no one had ever looked systematically at the facts behind the image, the World Bank decided to commission a series of studies to test these common beliefs against the hard data presented by court case files.[12] The idea was very simple – to use the information in a random sample of case files to determine the real facts as regards who uses the courts, with what purpose, and with what results. We thus titled the studies "uses and users of justice." The present paper summarizes their findings and offers further comparative analysis.

The methodology is not novel; it has been used for years by researchers in the United States, and more recently, in other common law countries.[13] Civil law nations have been somewhat slower in adopting it. In most Third World nations, a lack of attention to judicial statistics (needed as a basis for designing samples or identifying topics), the costs of the research, and the prevailing belief that this kind of information was not needed – because the situation was already understood – have hindered its adoption.

The relatively simple idea was more complicated and expensive than imagined. The initial funding barely covered one country (Argentina) and had to be supplemented to include a second study in Mexico. Since then, we pieced together funds to extend the work to Peru, Ecuador, and Brazil. However, with funding ranging from $25,000 to $70,000, the five studies have only produced a partial snapshot of the each national situation. Samples were necessarily limited to cases filed in one year, and could at most cover two court districts.[14] Given the varying circumstances even in the smaller countries (Peru and Ecuador) and the enormous variations in Mexico, Argentina, and especially Brazil (with their federally organized judiciaries), the research makes no pretense at representing national reality. The immediate goal was to check common understandings against the limited sample, indicate where discrepancies occurred, and suggest how such gaps affect our notions about problems, remedies, and likely impacts on economic and social conditions. We hope this exercise will awaken interest in doing similar work for other types of cases and court districts, and discourage a reliance of reform planning on what the Brazilians call "*achismo*" (opinion).

While the courts were very cooperative in affording access to the research teams, there were endless logistical problems. Case files were difficult to locate because of poor recording keeping in the courtrooms and judicial archives. Poor statistical systems made it difficult to design samples. In Peru, the team had to inventory all cases in the justice of the peace courts because there was no master list. Judicial strikes, lengthy vacations, and occasional resistance to opening case files caused other setbacks. In one country, we had to start over after collecting half the data because the team contracted to do this made excessive mistakes. Funding inevitably proved inadequate, and in several cases, the local

[12] These studies are on file with the author and will eventually be published either by the World Bank or the local researchers. See World Bank (2002), and World Bank (forthcoming 2003).
[13] For a small sample, see Australian Commission (2000), Kritzer (1983), Ontario Reform Commission (1998), and Twohig et als (1998, part of the former study).
[14] An earlier study, conducted in the Dominican Republic (Varela and Mayani, 2000, Pastor and Vargas, 2000 a and b) worked with sentenced cases. This is not the recommended approach because, as our research demonstrated, sentenced cases are a very special group of all filings.

teams ended up financing part of the work. The following chart provides an overview of the five studies. Although we started with filings, the goal was to track cases through all judicial instances and execution. Years were chosen to allow a reasonable time for cases to reach closure. As discussed below, reasonable was not always sufficient, and in Ecuador in particular, a majority of cases remained *en tramite* even after over three years.

CHART I: Sample design in the five countries

Country	**Sample size and number, courts included**	**Areas covered**	**Districts**	**Date of filings (and of study)**
Argentina	1050, 2 samples, all first instance courts	Civil, Labor, Penal	Federal Capital (BsAs), Santa Fe Province	1996 (2000)
Mexico	464, 2 samples, civil and JP courts	Juicios Ejecutivos	Federal District	1997-98, 1997 filed and sentenced cases (2000)
Peru	1250, 2 samples first instance and JP courts	Civil, family, labor	Lima	1998 (2002)
Ecuador	630, one sample	Civil (includes family)	Quito	1998 (2002)
Brazil[15]	845, three samples, civil and fiscal courts	Ações de Execução, ações monitórias, Mandados de segurança[16]	Sao Paulo state, central courts	1996 (2002)

FINDINGS ON CONVENTIONAL WISDOM: THE EXPERTS OFTEN GUESS WRONG

The findings from all five studies suggest that the conventional views about court operations are often in error, partially or wholly. The errors are important because they inform the assumptions on which many judicial reform programs are organized. As the study was financed by the World Bank, our main concern was examining assumptions

[15] The Brazil study is on-going. Data reported here refer to the first stage. Later stages will trace *mandados de segurança* filed over three separate periods, and review filings in a single small claims court during 4 different years. Initial results produced an interest is seeing how the nature of filings in these areas had changed in response to legal reforms and other circumstances.

[16] Like *amparos,* these are requests for protection against rights violations.

linked to a hypothesized impact of the courts on economic growth and poverty reduction.[17] Thus for the most part we reviewed non-criminal cases. There is another set of assumption about the problems of criminal justice that also deserves reexamination. However, only the research in Argentina looked at criminal cases; the experience there, while interesting, indicated adequate treatment would require a separate study and a larger sample.

The usual argument about courts' impacts on economic activity emphasizes the purported failings listed above as they affect commercial and civil litigation, and especially that by large economic actors litigating large sums. It can be summarized briefly as follows: courts' slow, ineffectual, and frequently biased treatment of cases brought by important economic actors (banks, larger domestic and foreign firms) discourages investment, decreases the availability of credit, and makes economic agents unwilling to enter into contracts with unknown parties. Banks have been particularly adamant about these effects, arguing that the decreasing availability of credit throughout the region can be blamed largely on the courts. In several countries, they recommend this be remedied by creating separate *fueros*[18] for their affairs. There are two problems with this argument: first, most court users, even banks and the like, are litigating modest sums. Second, many of the purported weaknesses are less than portrayed and to the extent they do exist, are often the fault of the plaintiff, not the judge or defendant. If banks have problems recuperating loans, they may want to put more attention on how they make them and on the subsequent activities of their own lawyers. The following sections review these and other findings related to conventional assumptions about court performance.

Big users, and big claims: court use by large economic actors was remarkably limited throughout the region. In some sense, this is surprising only in the context of the region's conventional wisdom. On a worldwide basis, large companies prefer not to take their conflicts to court, but rather to resolve them through arbitration or some still less formal means. This should not be taken as a sign of lack of confidence in the court systems. Internationally-based firms simply find it more convenient to litigate in a few jurisdictions (arbitration centers in one of several third countries) — this increases predictability for them because it means a stable set of rules. Domestic firms may use these same mechanisms, the growing number of national mediation centers, or less formal arrangements.[19] Even for them, courts are intrinsically too formal, too unspecialized, and too slow under the best of circumstances.

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[17] While macro statistical studies have established a relationship between court quality and economic growth, and theoretical arguments suggest the nature of the linkages, there has been remarkably little done to test the resulting model in real cases. For examples of the macro studies, see Castelar (1998), Kaufman et al (1999), La Porta et al (1998), and Sherwood et al (1994). Critics suggest the linkages may be reversed (economic growth improves judicial performance) or that to the extent causality flows in the anticipated direction, the linkages may not lie in patently economic (civil and commercial cases) but in other areas of judicial performance or nonjudicial aspects of the rule of law.

[18] A *fuero* is essentially a specialized court. Thus the 12 *fueros* covered in Argentina were 11 types of courts specializing in some aspect of civil or criminal cases plus the labor courts (single *fuero).*

[19] For a discussion of the use of informal mechanisms in Brazil (and their utility as opposed to more formal processes in Chile) see Stone et al. (1998).

Our studies showed varying results as to the incidence and type of large users, but they often were litigating small amounts, essentially debts owed by individuals or organizations. Banks were frequently in this situation. In Peru they were the majority users of justice of the peace courts; in Mexico they didn't bother with amounts litigable in JP courts, but did constitute the largest organizational (but still a minority) user in ordinary first-instance civil courts. In our sample of *ações de execução* and *monitórias*,[20] in Brazil, banks were important users (38 and 20 percent respectively), but most defendants were individuals, and median amounts (for *execuções* only) were a modest Rs 6,590[21] (4,959 when the plaintiff was an individual and 8,232 when a firm). Banks were also prominent in Quito's civil courts for nonfamily, contentious cases – along with other financial institutions they were 50 percent of organizational users. However, amounts litigated were again modest, only 15 percent over Sucres 65 million ($11,993) and 19 percent under Sucres 5 million (US $917). In Argentina, the state was the largest user of the civil courts. This overlooked fact is a logical consequence of the legal framework – because taxes and other amounts due to state entities must be collected judicially.

Aside from the identity of the users, and the predominance of small and medium sized claims, many of the traditional complaints about how courts processed cases did not hold up in practice. Taken together the two findings suggest that whatever the economic impacts of court performance, they are not those highlighted in conventional arguments. This casts doubts on the conventional model and the recommendations derived from it.

Extraordinary delays: There is no denying that delays are a part of court processes in the five countries. However, delays vary by country and by type of case and usually are less than whatever local experts hold. The one glaring exception was Ecuador, where it is difficult to speak of disposition times as only 39 percent of controversies had been closed (by judgment or other judicial decision) in the three to four year period, and fully 69 percent of the *procesos ejecutivos* remained *en trámite* (active). Moreover a majority of unclosed cases were in the initial stages of *calificación de la demanda, citación*, and *contestación*. As Ecuadorian attorneys, unlike those in several other countries, do not report using the time after filing to negotiate with the defendant, these early delays appear to have a judicial origin. In this case, the 23.6 percent of lawyers interviewed who complained of delay as the biggest judicial problem can be held correct. However, in the other countries similar perceptions were not as accurate.

The banks' contention in Mexico that it takes 3 to 4 years to dispose of a *juicio ejecutivo* were simply not born out by the data. The median time to disposition was 223 days, with a minimum of 29 and a maximum of 977 days. While 80 percent of the cases did not reach disposition, most ceased moving so early in the process that they can be considered permanently inactive. Although judges are now instructed to close cases (declare *caducidad*) after six months of inactivity, they are reluctant to do so, fearing complaints from the attorneys.

[20] The *ação monitória* is a process whereby a document establishing a liquid debt is recognized as a *título executivo*. It is thus preliminary to an *ação de execução* (*juicio ejecutivo*).
[21] In 1996, the Brazilian *Real* was on a par with the dollar. Hence these are also dollar amounts.

In other countries, delays were often far longer, although still less than conventionally portrayed. In Argentina, the median time to disposition for *juicios ejecutivos* was 300 days. It was the same for all civil cases, and 200 and 100 days for labor and criminal cases filed in Buenos Aires. Closure rates in Argentina were also better than Ecuador or Mexico – 50, 67, and 86 percent of criminal, civil, and labor cases had reached closure within the four-year period. Of those not closed, still fewer remained active (*en trámite)* – 19, 17 and 10 percent respectively. The rest were temporarily retired.

In Brazil, the median time to judgment for debt cases (those not settled or closed along the way) was 499 days. These cases represented only 7 percent of the sample, but another 21 percent resulted in payment or successful attachment of goods, exiting before sentencing. Conceivably there were more spontaneous payments or renegotiations of the debt not recorded by the courts, but on a whole Brazil's experience with summary debt collection looks much like Mexico's, except for the longer time taken to process cases to sentencing as against the possibility of reaching earlier judicially recognized repayment somewhere short of the judgment.

Peru's first instance and justice of the peace courts present two very different profiles. In the former, 22 percent of the cases were not admitted (a record for our five countries) and 43 percent of civil (39 percent of all) cases had not reached closure in the three to four-year period. Median duration of cases ending with a first-instance judgment (all *fueros*) was 566 days. In the JP courts on the other hand, admission rates were higher, and times to closure shorter – 55 percent of the cases reaching judgment did so in less than 3 months and only 5.4 percent (all in civil) took more than a year. However, of those reaching judgment, over half had been provisionally archived awaiting execution. This would be great news except for this last detail, and the fact that a majority are summary debt cases brought by banks and pension funds against unrepresented defendants, many of them individuals. The contrast is also striking given that it was the first instance courts that benefited from Peru's efficiency-targeted reform program, while the JP courts were virtually unattended, and that the JP courts receive over twice the annual filings.

In terms of efficiency defined as level of and time to judgment, Peru's JP courts and Mexico's civil and JP courts seeing *juicios ejecutivos* are the winners. Ecuador and Peru's ordinary first instance courts are at the bottom of the scale, with Argentina and Brazil falling somewhere in between. Argentina does better than Brazil in both closure levels and time to closure, although, as discussed below, there is a great deal of variation among the different *fueros* that is hidden by the averages. In Brazil, the far lesser percentage of cases going to judgment is explained by a filtering process which screens out early both insolvent debtors and defendants who offer no protest.

Frequency of dilatory tactics: when delays occurred, they could not always be blamed on the defendants' dilatory tactics. Much delay seems to arise in lack of impetus from the plaintiff or the plaintiff's lawyer. This is apparent in the high incidence of defendants in *rebeldía* – those who never answered the demand and for whom the proceeding thus progressed without their active participation. Of course, some systems (Ecuador) do not respond to this apparent advantage, and still proceed at a snail's pace despite the lack of

opposition. Whether the problem is the lack of lawyer impetus, or as the lawyers' claim, the courts' intrinsic slowness and incompetence is an unanswered question.

In Mexico, defendants offering exceptions and incidents did not appear to slow the process markedly. In any event they were very rare. Argentina's two court districts offered another interesting contrast. In Buenos Aires, the greatest delays came between admission and notification and were generally attributed to lawyers' using the time to negotiate out of court. In Santa Fe, on the other hand, most delays were in the evidentiary period, and can probably be blamed on litigious defendants. Judicial tactics also mattered – labor cases in Santa Fe took far longer (450 as opposed to 150 days) to resolve than those in Buenos Aires. The research team attributes this to the Buenos Aires judges' greater inclination to use conciliation to reach agreements among the parties.[22]

Lack of resistance from defendants was also apparent in Brazil and Peru. In Brazil, a major part of delays can at most be attributed to passive resistance. As the creditor has to identify assets to embargo, defendants can slow the process by evasive tactics or lack of cooperation. In only one quarter of the 243 (52 percent) of filings that got beyond admission did defendants offer a protest. (In another 99 cases, however, action stopped when no embargoable goods were identified, and in many of the 48 percent that did not get to notification, it can be presumed that the creditor gave up,anticipating that problem). In Peru, the pattern of little active response was repeated except in labor cases heard by the first instance courts – 50 percent of the defendants participated actively in protesting the claim, 42 percent responded but offered no active defense, and only 8 percent did not respond. In addition to slowing the process, they also affected the results – as opposed to an overwhelming majority of rulings in favor of the plaintiff in civil and family cases, the outcome in labor was only 26 percent full and 53 percent partial awards to the plaintiff.

Appeals rates were also lower than predicted. The highest rate was for Brazil's *mandandos de segurança*, because the state always appeals when it loses. Otherwise the highest appeals rates were in Peru's first instance courts (32 percent for civil, 64 percent for family and 79 percent for labor) and Mexico (30 of all judgments, with 12 going to *casación*). Appeals added little additional delay in Mexico. They were slow in Peru, but still took only half the time of the initial judgment. Except for Argentina's labor cases (41 percent) appeals were not common elsewhere. Hence for all the complaints, the most frequent source of appeals is the state and employers in labor cases.

To summarize, dilatory practices as less common than envisioned. An active defense, while it can slow things down, is rare. However, passive resistance can delay or paralyze cases where plaintiffs must identify assets to embargo, and it can affect the likelihood of realizing amounts awarded. The best dilatory practice may thus be not showing up at all, especially in debt cases. Only in the Peruvian JP courts do judges and plaintiffs use *rebeldía* to speed up judgments, and even there the ultimate defense – not having anything to pay – still works.

[22] This is also apparent in that cases closed by judgment in Buenos Aires took twice as long as all closures.

Bias against plaintiffs, especially in debt cases: the frequent complaint that judges tend to favor certain parties and especially debtors, because they are more likely to be debtors themselves, was simply not born out. In Mexico, 90 percent of the cases reaching judgment gave the award to the plaintiff. In Argentina it was only 63 percent, but this was a higher average than in other types of conflict. Plaintiffs, in debt and other cases, more usually won than not: in Ecuador (85 percent); Peru (80 and 91 percent in civil and family, respectively); and Brazil's summary debt collection (56 percent with another 28 percent partial victory). One can argue that plaintiffs (and creditors) should have won still more frequently, but in most instances there was not much room for improvement. In fact, the high percentage of awards in favor of the plaintiff is not really a positive sign -- persistence pays off, but courts seem to be wasting their time and that of plaintiffs on too many sure things.

Of course, the bias may exist in the delay, not the final outcome, but frequently delay appeared to originate with the plaintiff's lawyer or (Ecuador, Peru's ordinary courts) a process that continues at a snail's pace even when there is no opposition. There are, however, additional frustrations for the plaintiff, as further discussed below.

OVERLOOKED DETAILS: TOWARD A FULLER UNDERSTANGING OF COURT PERFORMANCE AND ITS ECONOMIC AND SOCIAL IMPACTS

Potentially of still greater importance than the challenges to the conventional wisdom were the insights into details often ignored by the courts' critics and defenders. Many of these were discovered by accident in the earliest research, but were tracked more systematically in the later ones.

The fallacy of the average case: many discussions of judicial failings in the region rely on the "average case" -- as in the average case takes X years to reach judgment or the average case is appealed twice. While most of these statements rely on the estimates of informed experts, researchers occasionally document the trajectory of a single or a few cases presumed to be average to support their claims. Our first study, conducted in Argentina, and looking at a random sample of 1050 filings from two judicial districts, quickly dispelled the utility of the concept. It reviewed cases in 3 areas and 12 *fueros* (specialized jurisdictions within areas), demonstrating that the average values for the entire group quickly disappeared as we began to examine the subgroupings. On an (median) average, civil cases, for example, took 300 days to reach closure (by judgment or judicial order) in Buenos Aires and 400 days in Santa Fe. However, in the former jurisdiction, median times by *fuero* ranged from 100 days for family cases to nearly 500 for civil and commercial. Variations were comparable in Santa Fe.

Dispersion within the *fueros* (the lowest level of disaggregation) was also substantial, and in some instances produced patterns in which a certain percentage of cases was resolved relatively quickly while others dragged on forever. Averaging the results (whether by arithmetic average or median) tended to hide these variations and give the appearance of a consistency of trajectories that was simply not present.

The second investigation, in Mexico, allowed us to elaborate on this finding as it only looked at debt proceedings, the *juicio ejecutivo mercantil,* in the Federal District. As in Brazil, cases coming to judgment were only a small fraction of those filed, but a flow analysis revealed more complex patterns of exits and resolutions along the way. We also found difference as regards users and outcomes in the two types of courts – abandonment was far more common in the justice of the peace courts, most likely because the smaller amounts litigated did not warrant continuing through the complex procedure common to both. In civil courts, while we could find little difference between the amounts litigated in sentenced and filed cases, banks seemed to pursue to judgment cases with organizational as opposed to individual defendants – possibly because the former were more likely to have identifiable assets.

Although the sample size reduces the significance of more detailed analysis, all the studies were suggestive of potential differences in case trajectories by type of conflict and the identities of the parties. For example, in Ecuador, *juicios ejecutivos* initiated by individuals had an average time to disposition of 442 days as opposed to 369 for those initiated by organizations. *Juicios fiscales* (tax and fee collection by the state) in Argentina showed differences in closure rates and times to disposition depending on the *fuero* in which they were initiated.

The high percentage of abandoned cases: one striking finding in the Mexico study was the high proportion of cases (80 percent) that never reached disposition and which for the most part, appeared to be abandoned by the parties. Prior to judgment, cases most commonly went inactive (60 percent) just after admission – which is to say that the plaintiff filed the case, had it admitted, and then took no further steps to press it forward. After judgment, abandonment was also the most common outcome. Judicial execution was extremely rare, and if claims were paid spontaneously immediately or partway through the execution process, no record was filed with the court.

Abandonment (the Mexican judges' term) cannot be assumed to mean a failure to resolve the conflict extrajudicially. Observers in fact suggested that in many apparently abandoned cases the defendant might have paid spontaneously They explained that plaintiffs often do not wait for formal notification, but rather inform the defendant of the action on their own, hoping that this additional pressure will be sufficient to force payment of the full or partial amount or a renegotiation of the debt. They also noted that plaintiffs may file to reserve their chance at future legal action, may file and then determine that the debt is uncollectible, or file simply to declare a tax loss.

While the Mexican case was the most dramatic, we found comparable practices in other countries. In Brazil, 48 percent of the *ações de execução* and 51 percent of the *ações monitórias* stopped after admission. In the former, another 99 (20 percent) were abandoned at the stage of embargoing assets. In Peru, banks pursuing debts in justice of the peace courts often get a judgment quickly, but do not push to collect. In Ecuador, a large portion of cases remains *en trámite,* probably abandoned but not officially closed. Moreover, of those with judgments, nearly half are temporarily suspended awaiting execution. Only in Argentina, are the levels of abandonment relatively low – only the

criminal cases have not reached some resolution in their majority, and closure by judgment is 76, 56 (plus another 32 by agreement), and 29 percent in civil, labor, and criminal cases respectively.

The introduction of the abandoned case also changes our interpretation of several other common complaints, especially as regards disposition of cases and backlogs.

What disposition and backlogs really mean: in attempting to track progress in increasing efficiency, the region's courts often contrast filings with dispositions. The problem is that many dispositions close cases without a judgment. If those closures are due to judicial or extra-judicial settlements, that is positive – a conflict has been resolved. If it is because cases have not been admitted (Peru's civil courts), or have been terminated for lack of activity, it is not. An emphasis on closure rates (or even on judgments) can produce some perverse reactions. Judges may admit cases only to dismiss them later for lack of merit, not admit them at all to decrease their workload, or put most of their effort into resolving the easier ones. Disposition rates can also be artificially inflated by case purging exercises (see below). When a court suddenly starts resolving cases in excess of annual filings, this is often the reason. The exercises are valuable, but should not be taken as an indication of permanent improvements in disposition rates.

Large backlogs are also used by the region's courts to demonstrate their impossible workload and the consequent need for more courts, judges, and funding. The fact that in most of our studies so much of this backlog appears to be composed of cases which are not going anywhere, because the parties have resolved their difference out of court, lost interest, or for some other reason desisted, suggests the fallacious basis of this argument. Perhaps all that is needed is a good case retirement policy and a better archiving system, separating cases into the temporarily inactive and definitively closed. Periodic case purging exercise are also useful – where they have been undertaken, they frequently reduce the active backlog dramatically. As noted above, this does not imply a permanent improvement in delay reduction but it can eliminate the excuse for not effecting one.

Unrepresented defendants: in most Latin American countries, and in all of those sampled (except in Brazil's small claims and Peru's justice of the peace courts), parties to civil cases require legal representation. The state sometimes provides subsidized legal service for civil as well as criminal cases, and NGOs, universities, and some private lawyers help to fill the gap, but the potential demand far exceeds the supply. Many criminal defendants never get a lawyer until their first court appearance; criticisms of the quality and quantity of free criminal defense are well known in the region, although they were not explored here. However, the worse situation as regards civil representation has been ignored and remains as one of the unacknowledged barriers to court use by the poor. Proposals to do public education campaigns about legal rights and how to access them will be largely ineffectual while these barriers remain.

One obvious consequence is that many potential plaintiffs cannot access court services. Those who did get to court usually paid for their own lawyers. (The waiver of the court

fees charged in some countries, addresses only that barrier, and its minimal use suggests that it is only a secondary barrier – as many of those interviewed noted, parties usually need a lawyer to be made aware of the waiver). The other effect, very visible in our studies, is the high percentage of defendants in *rebeldía*, those who never respond to the summons and thus provide no defense against the claims. In many cases, these may be insolvent debtors who realize they have no defense except their inability to pay, and thus see no reason to hire a lawyer to provide one. The two exceptions (Peru and Brazil for their *juzgados de paz* and *juizados especias* respectively) demonstrate some other differences. Defendants (and plaintiffs) appear in the Brazilian courts without counsel; in Peru, despite the opportunity to do so, our study indicates that few use it. We return to the reasons for the difference below, only noting here that the possibility for pro se (self) representation may not in itself be sufficient to encourage those who can't afford lawyers to go to court. However, the worse situation is clearly where this is not allowed. Countries that require legal representation without providing adequate subsidized counsel need to review their notions as to what access to justice really means.

The role of enforcement of judgments: this is an overlooked area even in the developed countries, although researchers are currently recognizing its importance. Winning a case does a plaintiff little good if s/he cannot collect on the judgment. As all our studies demonstrate, this is a major problem throughout the region. In every country included, enforcement of judgment appeared problematic. The Mexico research, which reviewed this specifically and focused only on *juicios ejecutivos*, could find little indication of payment in the 226 sentenced cases it sampled. In Argentina, payment is often registered with the courts, but for two-thirds of the cases, there was no record. In Peru and Ecuador, court records indicated that in debt cases in particular, payments had not been made – leading the Peruvian researchers to suggest an alternative title for their report, "*ganan pero no cobran*." Although the Brazil research has not tapped enforcement, there is a similar saying in that country -- *ganhei mas não levei*.

The reasons for and the implications of this phenomenon probably differ among types of clients. Banks with a large expired portfolios (as well as lawyers who buy their receivables to litigate on their own) are working with the law of large numbers. They are less concerned with winning any particular case in a given amount of time than of ensuring a steady flow of income. In some instances, there are indications they are not even interested in that, but simply want the judgment or the record of having filed to allow a tax write off. However, for a small company trying to collect payments, a dismissed worker looking for severance pay, or a woman requesting child support, nonenforcement is a tremendous problem. The idea of access to justice thus must be expanded to incorporate enforcement of rulings – without that addition, it is of little use to the citizen who expects the courts to support a just claim.

CONCLUSIONS

Two sets of conclusions derive from these studies: one involves our assumptions and notions as to how to achieve the goals of on-going judicial reforms, and the other addresses the use of empirical research to improve their intellectual base. The first set

comes in several parts, although the common message is the inadequacy and inaccuracy of many of the understandings shaping current programs.

Revising our reform recipe: The picture that emerges from the five studies is different from what conventional wisdom dictates and also offers different implications for reform recommendations. In light of what we have learned, it is not surprising that many reforms have produced disappointing results. They often focused on less important problems, misrepresented events, and guessed wrong about causes and linkages.

The fascination with delay: delay is a problem, but delays to judgment were often less than anticipated, and moreover were often the fault of the plaintiff or the plaintiff's lawyer. In a dispositive system, when delay is caused by lack of impetus, it is the plaintiff who fails to provide it. Defendant or judge-caused delay appears less frequently. Thus if one is going to decrease what delay remains, the real changes need to work on the parties, not so much on the judge. Nonetheless, this comment deserves three qualifications.

Judicially caused or encouraged delay is sometimes an issue. In Ecuador and in Peru's ordinary courts, the possibility that judges are not responding rapidly enough needs to be investigated. Delays are so great here that either lawyers are really not doing their jobs, or "the system" however defined is discouraging forward movement. As both countries have adopted the "*juzgado corporative*"[23] in an effort to increase efficiency, at least in Peru (where it was already functioning) the results also raise questions as to its impact. The model features an assembly line approach to case processing, with the judge at the end of the line. One evident danger is to remove the judges from the control of their own caseload, and thus possibly from any sense of responsibility for how well it is managed. It could actually decrease overall efficiency by over bureaucratization and a tendency to let the lawyers, administrator, and staff, not the judges, decide what steps will be taken.

Second, while delays are sometimes reasonable when measured against procedural requirements, some parts of our studies suggest that procedural formalism is working against a rapid response. The summary debt collection proceeding (*juicio ejecutivo, ação de execução*) is a case in point, especially when the defendant acts in *rebeldía*. Given the eventual tendency to a pro-plaintiff ruling, the delay does not appear to be protecting defendant rights, but simply holding off the inevitable. Making a plaintiff wait even 223 days to be granted a right to collect a debt, and then an indeterminably longer period to do so seems pointless. Introducing default judgments (an automatic ruling when the defendant does not appear) would not resolve the enforcement problem, but it would reduce the unnecessary, and apparently nonproductive formalism. Fears about abusive creditors could be handled by allowing defendant protests after the fact – much as appears to be done in Brazil. Brazil's system still has many flaws, but it at least focuses the courts' efforts on real controversies, not the meaningless processing of papers.

[23] For those not familiar with it, the corporate courtroom emphasizes pooled resources (archives, process servers) for several judges and adds to this a court administrator who controls workflow. Cases are assigned to individual judges, but initial processing (the bulk of the work) is done by paralegal assistants. They prepare the case for the judge's final resolution.

Third, in those instances where defendants do indulge in dilatory practices (including unnecessary appeals), the only solution is proactive judging, which means both supporting judges who deny continuances, additional evidence, or meaningless appeals, and giving them weapons (an ability to impose fines for example) to back up their actions. Until Latin American courts can take a more dynamic role in controlling demand for their services, those services will be at the mercy of a minority of clients and their lawyers who use them to avoid, not to obtain, justice.

***Enforcement of judgments*:** a second finding suggests the above remedies will not be enough – because of the problem posed by enforcement of judgments. Latin America's judicial execution system is needlessly complicated and costly, and undermines the impact of many reforms aimed at getting people to courts or speeding time to judgment. Enforcement frequently becomes another conflict, and even when it does not, the steps are multiple, onerous and costly. In Mexico of the 226 adjudicated cases sampled, none had gone through the entire execution process and only 4 percent had reached the first judicial auction. Despite Peru's introduction of courts specializing in "execution," enforcement rates continue low there. Aside from debt cases, other civil as well as family and labor cases also show low enforcement rates in all our studies. Although not covered here, it bears mentioning that in many countries, the state is a notoriously poor loser, not only indulging in repetitive appeals of judgments against it, but also frequently failing to pay the eventual claims.

As with other themes uncovered in the studies, the reasons behind the poor enforcement rates are various and not subject to a single remedy. Defendant insolvency (including that of state agencies) is a frequent problem; in debt cases, this may originate in bad or abusive lending practices. However, blame also falls on the enforcement proceedings themselves and their tendency to be judicialized. In the next section, several proposals for improving debt collection are offered. Many are extra-judicial in nature and apply whether or not the judicial enforcement proceedings are maintained.

Impacts of frequent recommendation for separate commercial or financial fueros: banks and some donors have begun to lobby for the creation of separate commercial courts (where they do not exist) and separate financial courts (where they do). Neither our findings, nor experience with these specialized courts in other countries lends much support to this proposal. Banks' reasons for backing it vary by country and often appear to have less to do with their actual use or experience with courts, than with two other motives. On the one hand, in countries like Mexico where banks have come under attack for not providing sufficient credit, this seems almost a diversionary tactic – shift the blame to the courts, and then when pressed, develop a plan for some new arrangement required before they can do better. On the other, in Mexico and elsewhere, banks may believe that friendlier judges might overcome some perceived problems. However, the problems actually encountered appear to center on enforcement not processing of cases, and a special *fuero* is unlikely to resolve them. Peruvian banks actually have their own *fuero* – the justices of the peace where they are majority users. They, like banks in other countries, seem to have fewer problems than other users in

getting a favorable judgment, but they don't collect, partly because of the convoluted enforcement system, and partly because of debtor insolvency.

Given the large proportion of total filings represented by summary debt collection proceedings (*juicios ejecutivos*) and the problems posed for all plaintiffs, not just banks, there are a series of other proposals which might make more sense:

- Create a special *fuero* for these cases, not limited to banks but available to any creditor. This would allow a focus on the problems inherent to debt collection, might encourage simplification of the procedures (which if usually more rapid than others, are still far too long for the nature of the conflict), and allow more attention to the potential abuses arising among the creditors themselves.
- Modify the enforcement process, making it more automatic, and less judicial in nature. Allow self-enforcement in more cases (appropriation of assets when payment is not forthcoming) as opposed to a judicial auction.
- Develop auxiliary institutions (credit bureaus, improved property and collateral registries) to create incentives to pay and make identification of assets easier. In today's more anonymous societies, better information is increasingly the key to effective enforcement (and to wise lending). Information systems have not kept up with social conditions, meaning that enforcement becomes another via cruces for the winning plaintiff.
- Develop additional mechanisms for workouts of repayment by temporarily insolvent or illiquid debtors, thereby avoiding the all or nothing syndrome.

Problem of representation: judicial biases overlook the biggest barrier to access (and so do the international reformers). This is the usual requirement that parties to a case have legal representation. The requirement clearer has backers – the entire private bar and to some extent the judges, who find it easier to deal with lawyers than with lay clients. However, absent a far larger quantity of subsidized services, the requirement prevents many potential plaintiffs from accessing courts and causes many defendants to act in *rebeldía*. There are three obvious solutions to this problem:

- That the state, NGOs and the private bar jointly increase the supply of free services – the problem here is the sheer quantity required to meet the demand. Private providers might be encouraged by the greater use of contingency fees, but this also has drawbacks in terms of encouraging abusive litigation.
- That free or subsidized alternative mechanisms be supplied in far greater quantity – while this would resolve part of the problem, even ADR may require legal representation, not all cases are suitable for this forum, and someone in the end must pay for the services.
- That the requirement be waived for some kinds of cases, or courts – the drawbacks here is that legal representation will be needed for more complex cases, that where this leaves an unrepresented client working against one with representation, the playing field is hardly level, and where one or both parties lack counsel, the judge will require training to work with them.

No solution is ideal. The best response may be to use all of them. The one most likely to incur resistance is self (pro-se) representation. It has been tried with some success in Brazil, but requires simplified proceedings and judicial training. Unfortunately, its success is also its undoing – the proliferation of Brazil's small claims courts has not kept up with the demand for their services. Still the problem of the barrier to court use for those who can't hire a lawyer is enormous and urgently requires concerted attention.

Abandoned cases and the possibility for out-of-court settlement: like enforcement of judgments, the proportion of cases never reaching sentencing is an unrecognized phenomenon in all our countries. Abandonment is a catch-all term for several possible situations, ranging from that of plaintiffs who file with no intent of going any further, through those who give up partway through the process because they have no more funds or see no further point in proceeding, to those where out-of court settlements end the conflict without notification to the judge. The private and public implications of each of these situations are different. Abandonment in and of itself is not a bad outcome – to the extent parties file as a means of encouraging out-of-court settlement, this may be a very efficient use of court resources. Encouraging the recording of such agreements would be useful for several reasons, not the least of which is tracking their incidence. Filing without intent to continue (for tax purposes, to place a marker) may be less publicly beneficial, but it also is the least costly to the state (and where filing fees are charged may be a net gain). Cases abandoned partway through the process, either for lack of funds or lack of hope, are the least satisfactory from both the private and public standpoint and obviously are a sign of something not working. However, that something may be less the courts than the bar (encouraging filing of claims to collect what they can) or the plaintiff (making bad loans without properly assessing the likelihood of repayment). Clearly, we need more information on what lies behind the abandonment phenomenon and what its impacts are on judicial services and outcomes. Without such information, it is difficult to tell whether a problem exists and if so, how it might be resolved. (The same can be said of abandonment after judgment – which may have many of the same explanations and potential problems)

The larger point is that the apparent expectation of many judicial reforms – to increase the timeliness and incidence of judgments – may not be a practical or even desirable goal taken to its logical extremes. While barely recognized by reformers, settlement out of court can be a preferred outcome and to the extent courts directly or indirectly encourage it, can be counted as part of their service. If they are worried about abuses of, the solution is to track it – ensuring that settlements are recorded. In the current era, the expectation that courts can directly resolve every conflict is not realistic. Their fundamental role, that of encouraging conflict resolution in accord with ("in the shadow of') the law, thus becomes more important. They can promote that role by speedy, predictable resolution of the conflicts they do decide directly, thereby discouraging time-buying and other abuses. In this context, outcomes like that of Mexico (90 percent pro-creditor rulings) are symptomatic of misuse, not of a well-functioning system. Courts should be handling real controversies (as indicated by a closer to 50-50 outcome) not simply validating obvious rights.

Judicial workload: judiciaries throughout the world believe they are overburdened with work. Those in our five studies are no exception. Usually estimates of workload are based on annual filings and accumulated backlog. Our studies indicate that neither is a reliable measure of real work levels. First, all studies revealed that a substantial portion of cases never advanced far in the process, usually due to a lack of outside impetus.[24] They thus constitute less work for the judge and his or her staff. Mexico, with its 60 percent of filings never getting beyond admission, is an extreme case, but all the studies suggest that many filings simple sit in judicial offices, unattended, until for some reason or other they are closed. We also have evidence of double-counting of filings (the Peruvian staff's tendency not to admit on the first round) or of other tactics to inflate the apparent amount of work.[25] As a result, we can conclude that the real quantity of work is somewhat, and sometimes substantially, below what the filings indicate. Much the same can be said of dispositions – which may result from a full trial process, may (in cases where the defendant is in *rebeldía*) be little more than paper processing, or may represent the closure of an inactive case. How much work judges actually do, and what constitutes a reasonable workload for different mixes of cases are questions still to be answered, but aggregate statistics do not tell the story.

Much the same can be said about accumulated backlog. In most instances, this appears largely composed of dormant cases that have not been retired. Some courts have a better case retirement policy; in others, and regardless of the legal provisions, judges let cases accumulate until forced to do something about them. In courts which have purged judicial files, the remaining active cases often represent a small fraction of what was there in the first place. Thus, the often-repeated claim that the backlog is so extensive and the incoming cases so numerous that the courts could only catch up by closing their doors for five years is usually a sham. There certainly are overburdened courts and judges, but our studies suggest they may be less common than conventional wisdom holds. Thus, a first step toward improving efficiency is to get a better handle on how much work the incoming cases really represent,

Using empirical data to improve the content and refocus the goals of reform programs: if nothing else, we hope our studies have convinced reformers of the need to test their understandings of judicial problems, their causes and their solutions, and to place less faith in conventional wisdom. Judicial statistics systems, well designed and well used, will be some help in this endeavor, but there are many phenomena that only the most sophisticated systems will uncover. In the meantime, academic researchers have much to offer, if they are given access to court information, and resolve to examine it with rigorous, empirical tools. One of the most important steps will be to adopt research similar to that described here to flesh out the picture of the national reality. If Lima's justice of the peace courts serve mainly banks, that may not be the case in the rest of the

[24] This can be as true of criminal as civil cases, although the former's impetus is provided by the prosecution and police. In more inquisitory systems, the judge moves the case ahead, but s/he remains dependant on input from the police investigators or on actions requested or taken by the prosecutor.
[25] Not covered in our study, but reported elsewhere (Magaloni and Negrete, n.d) is the Mexican federal courts practice of admitting and then summarily dismissing *amparos* for reasons of form. These count as dispositions and thus, according to the authors, help the judges meet their quotas.

country, and it would be dangerous to assume so. If Mexico's *juicios ejecutivos* are largely abandoned in the Federal District, that may not be the case elsewhere. Ecuador's terribly slow and inconclusive civil proceedings in Quito may be the exception not the rule. What happens to similar proceedings in Sao Paulo may also be a result of special contextual circumstances. As our aim was to test conventional wisdom, we have no wish to substitute an equally flimsy set of new assumptions. Perhaps conventional assumptions hold up better in other parts of the nations studied. We will only know if we examine what the case files tell us and add other information, based on different methodologies, to explore areas (reasons for abandonment or lack of enforcement) the court records cannot illuminate.

One further impression coming out of the studies transcends the aims of the conventional reforms and addresses the larger question of what they are trying to achieve. Most reforms share a goal of increasing efficiency of and access to justice by improving the courts' handling of what arrives on their doorstep. When we review the composition of their workload, however, one can ask to what extent it represents value added. The question here is not whether courts could be more efficient in doing what they do, or provide more users access to these same services, but rather whether what they currently do is consistent with their larger roles of conflict resolution and rule enforcement.

Debt collection is important, and the most basic kind of contract enforcement, but based on the predominant tendency to pro-creditor rulings, the high incidence of defendants in *rebeldía*, and the subsequent problems in actual collection, the courts' contribution does not appear to be resolving the underlying issues. One can also question the courts' role, reviewed only in Ecuador, in "voluntary proceedings," those where they are asked only to validate a unilateral or mutual agreement – in these cases, 25 percent of filings, times to resolution ranged from 4 to 1309 days, with a average duration of 179. Four days might be more satisfactory, but the question is why a judge is needed in the first place and how this affects his or her ability to handle the rest of the caseload. The rule for all our studies appears to be that the persistent client eventually prevails, but often by simply wearing down the opposition. Justice should not be an obstacle course or an endurance race, but this often seems the best means of characterizing how it operates in the region.

The underlying problems, originating in an outdated legal framework, an underemployed, but hungry bar, and various social inequities and vices which make automatic compliance with the law unlikely, cannot be blamed on the courts. However, the courts will get the blame for the undesirable results, and thus it is in their interest to take a closer look at what they are doing, whose interests they are serving, and what consequences derive from their actions. Courts cannot resolve society's problems, but they can work to ensure that what they do makes a positive contribution. Conceivably much of their current business should not get there in the first place – by taking a stronger stand against frivolous and time buying litigation, by lobbying for simplifying or dejudicializing routine procedures, and by addressing the representational barriers confronting many potential clients, they could shift the content of their work to issues that make a real difference for individuals and society writ large. As one critic noted of the continental

systems, yes, we want more efficiency, but the question is "efficiency of what." [26] One might add "for what" as well, and ask the courts and their reformers to address those questions before they go much further in promoting their reform agendas.

[26] Jolowicz (2000).

ANNEX: The Local Research Teams

The idea for the research arose from discussions in the World Bank and was further developed by the author. The research itself was conducted by five local teams, which also did the initial analysis as presented in their individual reports. Much credit goes to the first team, under the direction of Germán Garavano. Garavano and his associates developed the initial research instruments in collaboration with the bank task managers, and with the help of Herbert Kritzer (University of Wisconsin). Their methodology and experience provided the guidelines for the four additional teams, although each of them also adjusted the contents to local conditions and their own research interests. Based on the early experience in Argentina and Mexico, it was decided to eliminate criminal cases and to include *juicios ejecutivos* (summary debt collection) in all the subsequent research. As the latter proceedings usually represent a high proportion of civil cases, are relatively similar in their details, and at least in theory, are not very complicated, they provided a good basis for cross-national comparison. Once approved by the Bank, and as necessary, by local authorities, both the reports and the data bases will be made available to other interested researchers. The contractual arrangements (either with the principal investigator or with the affiliated institution) give joint ownership of the products to the local researchers and the World Bank. The following table provides further information on the local groups.

Country	Researchers	Institution
Argentina	Germán Garavano (PI), Hector Chávez, Milena Ricci, Carlos Alejandro Cambellotti	FORES (Foro de Estudios Judiciales), Buenos Aires
Mexico	Ana Laura Magaloni (PI), Layda Negrete, Alfredo Ramírez, Rosario Tellez	CIDE, Centro de Investigación y Docencia Económicas, México City
Peru	Gorki Gonzales Mantilla (PI), Jean Carlo Serván, Luciano López, Hernando Burgos	Pontifica Universidad Católica (Lima)
Ecuador	Farith Simón (PI), Jacqueline Vásquez, Jorge Arroba, Fabián Muñoz, Javier Andrade, Lorena Cascante	Fundación Esquel, Quito
Brazil	Kazuo Watanabe (PI), Caetano Lagastra, Mario Vargas, Maria Tereza Sadek	CEBEPEJ (Centro Brasileiro de Pesquisas Judiciais (Sao Paulo)

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