



Donor-Instigated Justice Reforms: Achievements, Shortcomings, and the Road Ahead

PROFESSIONAL ARTICLES

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ABSTRACT

This article reviews post-1980s reform programs introduced by donors to improve the performance of justice systems in developing and transitional countries. Based on examples taken from donor programs in LAC and CEE countries, it is developed in three parts: 1) a brief explanation of the reforms' objectives, methods and achievements, 2) a discussion of their shortcomings and their causes; and 3) an explanation of how and why the more successful program graduates found themselves confronting the still-unresolved challenges facing judiciaries everywhere. Along with much foreign assistance, justice programs are in definite decline, but they suffered criticism for years before this happened. Nonetheless, in their initial years, they had a lasting, positive effect on the judiciaries they touched as well as providing lessons worth retaining on the limits of the models informing their efforts.

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KEYWORDS:

justice reform; judicial governance; judicial accountability; balance of powers

TO CITE THIS ARTICLE:

Linn Hammergren,
'Donor-Instigated Justice Reforms: Achievements, Shortcomings, and the Road Ahead' (2026) 17(2) *International Journal for Court Administration* 2. DOI: <https://doi.org/10.36745/ijca.798>

Donor promotion and support of justice reforms in developing and transitional countries have faced increasing criticism for their disappointing impact on sector performance. Combined with the more recent retrenchment of all foreign assistance, this has meant the near disappearance of new ventures. The critics had a point, but they also overlooked the fundamental, largely positive changes the reforms produced in the two regions where they began and proliferated— Latin America and Central and Eastern Europe. Without these changes, and improvements to services— the reforms' ultimate objectives— would have been unthinkable.

The question is why the subsequent improvements did not occur as expected. Based on a review of donor programs, the explanation is provided in three parts: 1) that in their early years the reforms did achieve improvements in the sector's size, structure and resources; but (2) that they stopped short of leveraging them to create a comparable transformation in service delivery; and (3) that in the most transformed sectors, they introduced new challenges also impacting the donors' own judiciaries.

EXPLANATIONS AND LIMITATIONS

By donor-instigated reforms, I mean efforts to improve the performance of courts and related justice-sector institutions, supported and often initiated by donor programs providing financial and technical assistance. These activities began in the mid-1980s and continue, if in diminished dimensions, to this day. This excludes an earlier and shorter-lived "Law and Development" movement abandoned as a failure, even by its proponents.¹ Despite their larger size and longer duration, the later reforms are increasingly criticized for their inability to achieve their ultimate objectives – significantly fairer, more efficient, more accessible, more effective, and more trusted justice systems. The mix of objectives varies by donor, country, and resources, but with few exceptions critics now question whether the accomplishments justify the time and funds they absorbed.

In exploring these issues, I am relying on my experience in both regions as a participant in or observer of donor programs. Although I have worked in nearly all Latin America, in several Eastern European countries, and followed trends in both regions, my examples are not randomly selected but rather were chosen as those "most likely to succeed" because of their multifaceted designs, donor financial contributions (for grant programs at least \$20 million and for loans at least twice that amount), and their duration – typically at least twice the usual program length of five years plus, in the case of the EU repeated negotiations over required changes. Among the sources cited, material from USAID may no longer be accessible because when USAID was closed, its website disappeared as well.

1 See David Trubek and Mark Galanter. "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States." *Wisconsin Law Review* 1062 (1974). The founders' disillusionment was arguably excessive. Their work did introduce new attitudes among local participants, many of whom contributed to the next round of reforms.

Justice reforms no longer depend exclusively on donors, but their programs remain influential in partner countries' own improvement efforts. Parau² describes their content as a universal "template," although the term is a more apt description of EU programs. Even bilateral European donors vary in goals and methods. Other multilateral (e.g. the World Bank) and bilateral donors share some template elements but typically add other activities (e.g. buildings and large equipment purchases financed by loan programs), de-emphasize some objectives. (e.g. judicial independence) or add their own (e.g. gender parity and sensitivity; civil society development).

Looking at the programs' evolution over time, the objectives pursued have multiplied but underlying them all is improving service to users and promoting the sector's role as a co-equal branch of government. These goals constituted the ultimate reason for the reforms; but were not where they first focused. Instead, they aimed at giving judiciaries³ what they needed to perform them. In the two regions, if for different reasons, judiciaries nearly universally lacked sufficient financial and other resources to provide even their traditionally slow and sparse outputs, were often highly susceptible to political influence,⁴ did not attract the best professionals, suffered high levels of corruption and low levels of public trust, were inaccessible to many citizens, and lagged far behind the modern management and technological trends adopted in other government agencies.

Donors responded logically to this situation. Often summarized as capacity building, sponsored activities included the creation of permanent training programs; modifications to appointment systems to reduce political control and emphasize merit; new laws shaping system organization and procedures; and equipment, buildings, and other resources to facilitate work and "raise the judicial image." Initially, there was less or only sporadic attention to sector institutions aside from courts; to the needs and demands of the broader public; and to sector governance functions apart from any role in appointments. Programs eventually expanded to incorporate prosecution, defense, the private bar and so on, but attention to the broader public and governance remained constrained. Although a few donors (especially USAID) promoted/introduced legal aid programs targeting traditionally underserved groups, others entered the area only recently or not at all.

Because they aimed at improving sector conditions, rather than focusing on performance failings, donor programs were largely welcomed by the targeted judiciaries and national governments. In Latin America, a network of concerned jurists provided much of the content inspired by the democratic transition of the 1980s.⁵ In

2 Cristina Parau. *Transnational Networks and Elite Self-Empowerment: The Making of the Judiciary in Contemporary Europe and Beyond*. (British Academy Monographs, 2019).

3 Although true that the donors started with the courts, I will also use the term "judiciary" to include all justice sector institutions as organizational placement varies considerably.

4 This trait, usually summarized as politicization, is different than an emerging variation. In earlier times, "politicized" judiciaries or judges succumbed to pressures not out of partisanship but only to avoid negative consequences of resistance. In its modern form, politicization means judges are chosen for their loyalties and convictions so needing no pressures to rule as anticipated.

5 For a discussion of the network, its members and its history, see Hammergren, Linn. "Good Intentions, Questionable Advice: Explaining Reform Networks' Disappointing Results." In *Informality and Courts: Comparative Perspectives*. Eds. Bjorn Dressel, Raul Sanchez Urribarri, and Alexander Stroh, (Edinburg University Press, 2024): 283–305.

the CEE region, the inclusion of key reforms as a condition for EU accession provided a definite push. In both regions, governments were further enticed by the argument that reform was necessary for economic growth. This explains the willingness of Ministers of Finance/Economy to provide counterpart for grants and approve loans for big ticket items like buildings and equipment.

Tactically this was a successful approach as it implied service issues were the fault of others (politicians, governments, abusive litigants). This opened the way for the reforms to improve the sector's human resource base through training of existing staff and by making positions attractive to better qualified candidates; facilitated judicial work by taking the first steps into digitization and updating traditional systems like archiving;⁶ and broadened public attention to and knowledge of system workings. And while donors rarely contributed to operational budgets and salaries, they did convince governments to increase both. Consequently, sector institutions increased staff numbers, distribution, and quality, as well as enjoying improved buildings and equipment.⁷

Although only beginning in 2004, the CEPEJ (European Commission for Efficiency in Justice) biennial reports on European justice trends⁸ (CEPEJ, 2004 and later) demonstrate growth in installed capacity — human resource numbers and qualifications, budgets and other (e.g. ICT) resources — output, and use of services. Latin America lacks equivalent comparative data, but even in the least developed countries, improvements in the quantity of personnel, work units, use, and output are visible. In those that took the message more seriously, some only influenced by donor programs (several Argentine provinces, Brazil, Chile, and Uruguay, not coincidentally the most developed), these changes are better documented.

Lacking exposure to the status quo ante, later observers often evaluate accomplishments against the programs' ultimate objectives, overlooking the enormous strides made in moving courts out of their former "Cinderella" status⁹ and into a situation where they were theoretically capable of improving their societal impact. In most countries where they occurred the initial reforms had a positive effect on the sector's organization, composition, and resources. Most of this remains, even in some seeming backsliders. The advances are direct results of what the reformers attempted and how they went about it. By focusing on easily recognized problems with relatively simple solutions early reforms found little resistance in their paths.

CAVEATS

As the reforms spread through the two regions and beyond, there were already signs of problems. As just one example, Mexico has been a principal target of donor and especially US Government (USG) efforts to improve its criminal justice system. But

6 Something so simple as teaching staff to store files vertically rather than horizontally made a huge difference as did systems, either automated or manual, to locate archived files. In some courts, until the reforms arrived, the transition from the pen to the typewriter had not occurred, let alone from the typewriter to the computer.

7 See López-Ayllón and Fix Fierro (2000) on changes in Mexico. In the CEE staff increases were also a convenient way of providing jobs, reaching record levels in the judge-population ratio.

8 European Commission for Efficiency in Justice (CEPEJ). *European Judicial Systems*, 2022 (2024) <https://www.coe.int/en/web/cepej> As well as earlier and later biennial reports.

9 This is a term used by Latin Americans, but possibly still more appropriate for many CEE countries.

after nearly three decades of financial and technical support from USAID and other USG agencies promoting adoption of the standard capacity building measures, crime remains a principal concern of Mexican citizens while perceptions of corruption and political favoritism have not decreased.¹⁰ Meanwhile, the recent adoption of judicial elections seems poised to eliminate improvements in judges' legal and managerial capabilities. Similar examples can be drawn from Eastern Europe where the USG largely left the field to the EU and European bilaterals. Admitted into the EU in 2007, Romania and Bulgaria caused so much concern about their compliance with judicial and anti-corruption standards that the EU instated the CVM (Cooperation and Verification Mechanism) requiring each country to demonstrate further advances in these areas. The EU closed the mechanisms in 2023, despite doubts that all its concerns were satisfied. The two countries, like Mexico, benefited from donor support and conceivably will continue doing so despite the service objectives not having been met and thus providing more fuel for the program's critics.

Such specific failures can be explained by politics and poor design.¹¹ However, the standard model already showed indications of its own shortcomings; questionable applicability to new countries; limitations of installed capacity as a source of better performance; and renewed incentives for outside actors to interfere with sector performance.

Issues with new regions and countries

First, and not further explored here, the standard reforms, while applicable to new countries, were a less perfect fit there. In other regions, governments and populations were less interested in or even opposed to change, the incentives working in the first two regions (like EU membership) did not exist, resources were often prioritized for other uses, and demographic and geographic characteristics made the standard activities both more difficult to implement and less impactful. Thus, while following the same first-generation logic, programs taken to Africa, Oceania, and Central and South Asia did not benefit from the urgency enjoyed in the first two regions. Moreover, they often faced new obstacles — widely dispersed populations with little interest in or understanding of the objectives pursued and broad reliance on traditional or religious dispute resolution, even in urban areas but nearly exclusively outside them. And by now, efforts there have been overtaken by the advent of digitalization and artificial intelligence. Although neither has advanced in most of these areas, their promised arrival appears to short-circuit the perceived need for other reforms. This is unfortunate as ICT, like other elements of capacity building, is arguably less important on its own than in combination with basic activities like improving human resources and making salaries and budgets more attractive.¹² This has not prevented several

10 See USAID, Midterm Evaluation of USAID/Mexico Promotion of Justice Project (USAID, 2018) for a discussion of these issues in several states, where, as one local activist said, "had it not been for small scale drug trafficking (*narcomenudeo*) we would have no advances to report."

11 In Mexico, USG reforms gave more attention to the judiciary than to the police and prosecution, the weakest links in the criminal justice chain. In the CEE, quick admittance to the EU and fast improvements to sector salaries and conditions discouraged local interest in further change.

12 See for example, World Justice Project. "Advancing Access to Justice Via Information and Communications Technology: A Literature Review." (2025) https://worldjusticeproject.org/sites/default/files/documents/A2J_via_information-and-communications.pdf. As for increased efficiency, in 2020 Peru signed an agreement for a \$100 million loan from the IADB (with equal local funding) to digitalize its criminal justice process. Given rising

countries from moving straight into it, especially if traditional donors are willing to finance the process (usually, however, through loans).¹³

The limits of capacity building

Second, and more critically, the expectation that increased “installed capacity” would automatically lead to better services was only partly borne out. The issue is not with programs immediately undermined by opposition, but rather with those that went ahead as planned. Under the former conditions no one could expect success; it is under the latter that questions arise. In countries where programs lasted longer, had multiple, amply financed components, and were consistently supported, some service aspects improved, but rarely to the extent and in the dimensions promised by the reforms’ promoters. They commonly reached a plateau after which improvements were more gradual or simply stopped.

Not all programs were even this successful in implementing the standard reform. Those in Central and Eastern Europe, on average, did better than those in Latin America, largely because of the greater variations in levels of development in the latter region and the absence of an external body (like the EU) monitoring progress. In Latin America, reform progress depended instead on local political support or simply willingness to allow outsiders to provide whatever assistance they brought. In the early years, this was sufficient, but just as in CEE countries where deviations might occur after accession, the potential for a conscious reversal with a change of leadership was always present.

Still for countries that pursued reforms over time, without serious design failures like those in Mexico, and with relative consistency in aims and methods, the installed capacity argument worked to improve services if with temporal and substantive limitations. Even in the less successful programs (e.g. Guatemala, El Salvador, Ecuador, Paraguay and Bolivia), output quantity nearly inevitably increased in response to heightened demand and as a direct result of having more, better equipped human resources to respond to it. With few exceptions,¹⁴ as judges and staff were added, the courts’ output grew. Productivity, however, frequently remained constant. In short, as individual judges (or prosecutors, forensic specialists, defenders and so on) produced roughly what they did before, the service became no more efficient. A subsequent

crime levels any advances in digitalization seem not to have dented the problem or to tackle contributing factors like corrupt, ill-prepared police undertrained and understaffed prosecution; and intrusion of foreign-based drug cartels. See Inter-American Development Bank, Program to Improve Criminal Justice Services in Peru. 2020.

13 For example, see Edgar Kuhimbisa. “Experience and Impact of Digital Transformation in the Administration of Justice in Uganda: A Critical Analysis,” *International Journal for Court Administration*, 14 no.1 (2024) <https://ijcajournal.org/articles/10.36745/ijca.580>.” Although the article’s title implies it will cover impacts, Kuhimbisa is largely discussing a plan with no indications of service results even from whatever pilots were done.

14 One exception is documented in a World Bank study of Honduras, World Bank. “Justice and Citizen Security [in Honduras],” Chapter for *Strengthening performance accountability in Honduras: Institutional and Governance review* (Report No. 53517-HN, Vol. 2: Background Chapters). Latin America and the Caribbean Regional Office (2009). As compared to 1987 statistics an already low output per judge declined even further over the intervening three decades. There are some legitimate exceptions as when Costa Rica eliminated the need to take all traffic violations to court. This drastically reduced caseloads, but the eliminated cases were minor and those charged often did not even show up. Output per judge declined as the remaining more complex cases took more judicial time.

stage, more common in Europe,¹⁵ used monitoring systems (eventually IT-based), to track output; it could raise productivity, although not necessarily permanently. A study in Costa Rica, one of the Latin American exceptions, tracked the impact of caseload monitoring, finding an immediate improvement in clearance rates that soon leveled out.¹⁶ In Serbia, the World Bank (2014) found that court clearance rates significantly increased from 2010 to 2013, going from a majority below 100 to far higher average rates; subsequent information indicated that they remained high in courts with large backlogs. This most likely was again a result of the imposition of monitoring.

Increased production, even if not accompanied by comparably higher productivity, is important, but less so absent improvements in other areas. One of these is quality; of its several meanings (fair, legal, unbiased, honest) the one most directly affected by the standard reforms is legally-based in the sense of consistent with the laws system members are expected to apply in processing cases. Output quality is most directly affected by changes to human resources through training, improved selection systems, and more attractive working conditions that in combination facilitated legal compliance. Moreover, as judges, by then other system actors (prosecutors, public defenders, members of specialized services like forensics) and in many cases their staff enjoyed their improved salaries, offices, and equipment, they were less likely to risk their gains by requesting or taking side payments. Unfortunately, by the same token, some of the principal incentives for seeking change had disappeared. While some still saw a need to improve services, taking measures to do so could be personally harmful as well as provoking opposition to the changes already introduced.¹⁷

Reformers rarely recognized this conundrum, assuming that better judges, prosecutors or defenders would automatically take services to the highest levels. But doing this effectively requires a different mentality — one that transcends gradually improving business as usual to comparing services provided to user (as well as non-user) needs, identifying emerging issues or gaps, and exploring ways they might be addressed. This approach also requires new tools or using existing ones in a different way. As case management information systems (CMIS) were introduced, they were typically used to monitor output of individuals or offices and so maintain a constant or gradually increasing level of productivity. Surveys might be used to measure satisfaction with existing services, and even to promote improvements, but the next step, to use them to tap into user (or non-user) needs is rarely taken. There are often individual judges, staff, and other sector members who have worked innovatively, but success hinges on organizational resolve and reformers still neither recognized that or asked

15 The acceptance in CEE countries benefitted from the Communist governments' measuring productivity of nearly all activities. Lacking this history, most Latin American judiciaries were very slow in accepting this type of monitoring.

16 Yuri Soares and Maria Micaela Sviatschi. "The Impact of Modernization of Justice on Court Efficiency in Costa Rica". (2012) https://www.inesad.edu.bo/bcde2012/papers/16.%20Sviatschi_JusticeCostaRica.pdf.

17 Judges are no different from other workers whose output is monitored – "quota-busters" can be unpopular so those finding ways to increase outputs might be tempted to keep it to themselves. There was the Brazilian state appellate judge rumored to finish his work quickly but have his secretary release it gradually, or the Salvadoran judge who found his staff could produce a week's worth of work in 4.5 days if rewarded with the last half day off. This is more than a rumor, but his practice was stopped by his superiors because "it was illegal." On a more positive note, the Brazilian justice who saved time by deciding process before substantive appeals on the same case eventually had this practice adopted by the entire Federal Supreme Court. The secret was that if the appeal failed on process, there was no need to go on to the usually more complicated substantive questions.

how it might be produced. As discussed below, this is really a task for organizational governance, another underdeveloped reform element.

Persistence of traditional service vices

Third, despite the disincentives for system members to succumb to traditional vices, corruption and politicization remained complaints, even in seemingly successful reforms. (Again, the question is not for systems where political opposition and disinterest undermined even simple changes from the start¹⁸). Not all these complaints accurately reflect reality. Sometimes, this is because old perspectives are not easily eliminated, especially among people with no exposure to the new system. Even in countries with very high litigation rates, those using the courts, prosecution or public defense are a minority of the population. Initial opinions, often based on hearsay or media reports, are thus not easily changed. In other cases, it might be because old habits die hard and activities to monitor internal behavior were poorly planned and targeted. Clients used to doing small favors for judges and staff might never lose that habit, just as judges might see no obstacle in meeting privately with a single party to a case or understand that a conflict of interest is defined by the potential for a quid pro quo rather than requiring its realization. Much of this is not corruption and much less politicization, but the losing party in an affected case might interpret it as such.

Traditional vices also persist as a consequence of how reforms change the perspectives of politicians, governments, and system users. Unsuccessful reforms, those that changed little beyond adding judges and courthouses otherwise preserved the old vices both within and outside the system. This was a common result in the least developed Latin American countries, especially parts of Central America (plus Bolivia, Ecuador and Paraguay). Still, reforms that did effect the desired improvements (better prepared staff, more effective training, relative independence from external control) also altered the incentives for external actors. The changes made it harder to interfere with internal operations but also gave outsiders more reason to do so. As sector actions and decisions became more important to more important individual and organizational users, both were more motivated to attempt to influence them. As several have commented about the impact of raising public sector salaries, corruption never entirely disappears; it simply becomes more expensive, pricing out the small bribes and gifts in favor of those only the wealthy or powerful could afford.¹⁹

The achievements in improving human resource quality and independence had other side effects. One was that better trained system actors with higher status might feel empowered to make less conventional decisions. This is further discussed in the next section on balance of power issues; for the moment it bears mentioning that unusual actions and decisions quickly eroded the traditional notion that the sector, if even regarded as a branch of government, was the least dangerous one. This belief initially

18 Honduras is an example, along with several of its Central American neighbors. In Honduras, Guatemala, and Nicaragua, training was introduced, but selection systems remained dominated by the executive, the Congress, or a Supreme Court controlled by the other two.

19 See Kunt Asli Demirgüç- Michael Lokshin, and Vladimir Kolchin. "Effects of public sector wages on corruption: Wage inequality matters." *Journal of Comparative Economics* 51 no. 3 (2023): 941–959. Also the World Bank log, <https://blogs.worldbank.org/en/african/higher-salaries-can-worsen-corruption>.

benefited the reforms by lulling potential opponents into a perception of irrelevance.²⁰ Once that notion dissipated, a first reaction was usually to exercise influence on individual cases: A later one, as discussed below, was a substantial backlash against the reforms' objectives and changes.

UNANTICIPATED CONSEQUENCES OF EARLY REFORMS

A final set of issues arising from the early reforms involves new challenges, including many now emerging in the donor countries as well. They include questions about balance of powers, sector accountability (how, what, and to whom), and the location and functions of sector governance. These are increasingly the challenges for modern judiciaries and thus for successful graduates of the early reforms. Donor staff were rarely thinking that far ahead although, as the same issues appear in their own countries, they might want to take notice now. The emergence of these topics and especially the balance-of-powers question, has already provoked a backlash in some reform beneficiaries.

Balance-of-Powers

As regards balance-of-powers issues, it is fitting that this is written by a US author given the "constitutional crisis" anticipated or perhaps realized already in this country. However, the list of those now confronting conflicts they had presumably settled long ago grows day by day — most recently at the time of writing in France where the courts' ability to exclude an important candidate (Marine Le Pen) from the next national elections is questioned as an undesirable judicial incursion into politics and executive affairs. These two examples and others from within a similar group of nations have for the most part come as an unpleasant surprise. However, the potential for these conflicts was evident in the donor-assisted countries two or three decades earlier as the reforms took shape.

The reforms' emphasis on judicial independence plus some ability to rule on government actions encouraged a few courts to take unprecedented actions. These effectively warned concerned parties that the reforms were upgrading more than human resources and equipment. Although some of the most notorious incidents occurred in Eastern Europe (especially Hungary and Poland) the potential was first recognized and provoked responses in Latin America.²¹ This is partly a consequence of the region's long-standing, if largely unutilized, constitutional provision for judicial review, an effort to duplicate US practices.²²

Once the reforms took hold, clashes over judicial review, whether exercised by Latin American Constitutional or Supreme Courts, began even in countries as seemingly

20 This comment has been made by many observers to explain how reforms reached approval in the first place. See Cristina Parau, "The Dormancy of Parliaments: The Invisible Case of Judiciary Empowerment in Central and Eastern Europe." *Journal of Representative Democracy*, 49 no. 3 (2012): 267–280, and Linn Hammergren, *Envisioning Reform: Improving Judicial Performance in Latin America*. (Penn State University Press, 2007).

21 Sandra Botero, Daniel Brinks, and Ezequiel A. González-Ocantos. *The Limits of Judicialization: From Progress to Backlash in Latin America*. (Cambridge University Press, 2024).

22 According to Andrew Donohue in a Foreign Policy webinar (March 26, 2025) 80% of all constitutions now have some provision for judicial constitutional review. The figure was apparently taken from Tom Ginsburg and Mia Versteeg. "Why Do Countries Adopt Constitutional Review?," *The Journal of Law, Economics, and Organization* 30 no 3 (2014): 587–622.

unlikely as Guatemala and Peru. When simply pressuring judges (whether through bribes, threats, or offering a better position, often outside the courts) no longer worked, governments took steps to replace them. Venezuela did it first in 2004 stacking the Supreme Court with party loyalists. Th was followed by the elimination of the Judicial Council and Administrative Courts and then replacing other judges it deemed too independent. However, Mexico made the possibly most effective move with the 2024 constitutional amendment requiring elections of all judges, federal and state. Since state courts have no role in judicial review it is not clear why the government went so far, exceeding the only other regional example, Bolivia, which restricted elections to members of the three high courts and the Judicial Council.²³

Although so far replacing only the Supreme Court and half the state judges, Morena, Mexico's ruling party, shows no signs of backing down. It already controls the Executive and 70% of the Congress, giving it the largest role in choosing candidates for judicial positions. Once completed the elections will likely give it total governmental control and as intended, free rein in introducing and implementing its policies.

Mexico is at one extreme; Brazil remains at the other end. Its 1988 Constitution gives the Federal Supreme Court (STF) enormous powers.²⁴ It does this as well for its individual members, who, because of the heavy workload, can decide some important questions on their own. Argentina is in between, but during the financial crisis at the turn of the century, its Supreme Court and national appellate chambers held the government hostage, threatening to reopen frozen dollar accounts (and so cause a run on banks) unless the cases against their members were dropped. This type of clash is rare, and rarer still is a positive outcome for the courts. More often, as in Venezuela, and more recently in Mexico, courts taking a contrary position on principle have suffered government retaliation. In Colombia, however, the governments seem to have accepted the Constitutional Court's ability to override policy decisions, while the Court, depending on its composition, usually takes the tack of suggesting rather than dictating changes. Until recently in Brazil, the STF members typically consulted the government before ruling on a potentially important economic policy.

None of this indicates the emergence of a single answer to the implicit questions – which government actions, policies, laws can the courts overrule and at what level (since this also varies by country)? Nor has a single set of answers arisen in the “Global North” as the questions emerge. Unfortunately, as in the US, Israel, and Hungary, by the time the issues arise, they have become so thoroughly politicized that a rationally derived, non-partisan answer is nearly impossible. And in any case, the answers are likely to differ by country, history, and legal culture.

Accountability

Traditionally, the courts' accountability or that of other sector actors was rarely an issue in either region or for that matter in most donor countries. Against the decisions of individual members, it was formally through the appeals system although direct threats or removal were always available. Against the organization there was no provision, because as noted in the next section, responsibility for any actions or

23 Bolivian observers (Eduardo Rodríguez, for example, former Supreme Court and briefly National President) do not consider this a success against the purported aim of decreasing distance between the judiciary and the people. See <https://aristeguinoticias.com/1512/mundo/los-bolivianos-llevan-a-cabo-su-tercera-aunque-incompleta-eleccion-judicial/>.

24 For a recent, brief explanation, see *The Economist*, April 29, 2025: 24–25.

decisions was assumed to lie with individual actors. When Europeans speak of accountability, they are often referring to judges' ability to defend themselves against accusations of malfeasance of various types. None of this addresses the new question of broader service accountability, by each organization and its members. That is how well the sector, its institutions and its individual members are doing in providing the public services for which they are responsible, to whom they are accountable and for what. Generally, the to-whom is no longer the government, a judicial inspection, a disciplinary body, or a higher court, but rather the public and the for-what is not just individual decisions but rather the entire service output. The latter easily ranges from treatment of users to absence of biases in other aspects of their operations or how budgets are used.

Accountability is sometimes equated with transparency, which although different is related. Here advances in either region have been slight. Until recently Latin America had come furthest but some Eastern European countries are experimenting with the open justice philosophy and attempting to make more operations visible to the public.²⁵ Latin Americans, but hardly all countries, did come first in providing basic information to the public on court activities – usually in annual reports. Typically, this includes the number of cases of each major type entered and resolved, times to resolution, size of backlogs, and possibly the results of surveys that include trust in justice as one of their many questions. Where surveys are done, they are usually nationally sponsored and focused although there are regional ones like *Latinobarómetro*. In the CEE countries and in fact within the EU, national justice surveys are rarer, and any information on public attitudes often must come from a few questions on sources like Eurobarometer. The World Bank has also done some more detailed justice surveys in the Western Balkans,²⁶ but no individual country has taken these on with its own budget.

This could constitute a problem depending on how observers feel about sector responsibilities to the public. Still, given that the public increasingly has strong opinions about sector performance, it might benefit the sector as a whole or by institution to sponsor surveys. In its own surveys the World Bank found that system users are more positive about performance than non-users. This is not always true, but where it occurs is a positive sign. Additionally, where governments complain about sector performance, survey results could constitute a counter argument or at least show sector members where they ought to improve. Admittedly, accountability is not as controversial as the balance-of-powers issues, largely because it is seldom discussed. Different individuals, political parties, and government members often do not share the same views as to what should happen. That makes it no less important, nor does it eliminate the argument that reform promoters might have recognized its importance earlier, and if not providing an answer to the questions, at least raising the need to consider them.

25 This comes from a webinar sponsored by USAID, the International Network of Judicial Reformers, and the Independent Lawyers of Georgia. Held November 24, 2022, with speakers from Georgia, Ukraine, Moldova and Germany. Interestingly, the German speaker stressed that in her country, the level of transparency sought by the other three was not legally feasible.

26 Srjan Svircev and Domagoj Ilie), Justice Surveys. Presentation for World Bank (n.d.) <https://pubdocs.worldbank.org/en/256341604090175170/BBL-Justice-Surveys-Why-to-do-them-and-how-to-do-them-right.pdf>.

The third issue, governance, evokes less controversy but only because it remains overlooked. Nonetheless, it arguably can and should be addressed soonest as it also conditions the responses to the other two issues. Among its several functions, organizational (or sector) governance is the ideal place to start discussions on the balance-of-powers and accountability and to develop ideas about how to address them as well as service shortcomings.

Governance is a late-comer because of the way sector operations have been conceived, especially for the courts, but if to a lesser extent for prosecution, and where separate, defense. The logic underlying the early reforms was fairly traditional – the belief that placing better people would produce better outcomes, an expectation that considerably simplified the governance function. This made sense when courts had fewer and less diverse cases. However, as the quantity and variety of demand and thus workloads increased to seemingly impossible levels, relying on the good judgment of individual workers was no longer sufficient. Courts under modern conditions are more than the sum of their individual members; they are organizations needing internal planning, monitoring, an ability to anticipate changes in what is asked of them, and the capacity to develop and promote solutions to problems as they appear.

Today anything that could be considered judicial governance can take a variety of forms and functions. In much of the Global North it was traditionally located in the Ministry of Justice. Judicial appointments were often shared with the Legislature. In Latin America, this was rarely the model, and any governance functions were most often left to the Supreme Court (and later to an independent Public Ministry as well). Again, appointments of professional staff were most often shared or left to the other branches of government. In none of these forms was it expected that the governance body do more than draw up the budget, pay salaries, buy supplies, and possibly hire auxiliary staff.

As judicial councils were adopted or further developed in Europe, some took over and expanded the governance role, but with few exceptions, largely in Northern Europe. Otherwise, councils were expected to handle judicial appointments and careers and “protect judicial independence.” Although donors often promoted them in their projects, the councils’ track record has not been impressive, even in their appointment functions but especially in developing mechanisms to monitor and enhance service delivery. Among the CEE countries, local observers²⁷ have questioned the councils’ utility, claiming they either became judicial lobbies (for higher salaries and better conditions) or were again politicized. Latin American councils have done no better, but a few Western European councils (e.g. the Netherlands) have adopted a more sophisticated vision of governance functions, focusing on organizational and procedural changes intended to improve both the quantity and quality of output while also exploring the use of digitalization to facilitate case processing and improve access.

A nonsystematic review of governance variations in form and functions does not provide any guidance as to what works best. In Latin America, a few courts (e.g. Chile, Costa Rica, some Argentine and Mexican provincial/state judiciaries) have taken on planning and monitoring but always accompanied by a strong administrative

27 See Cristina Parau, “The Dormancy of Parliaments”; and David Kosar and Katarina Sipolová, “Politics of Judicial Governance.” In *Research Handbook on the Politics of Constitutional Law*, eds. M. Tushnet and D. Kochenov (Edward Elgar, 2023): 262–286.

body. The only national council with a broader vision is in Brazil, and interestingly it has nothing to do with judicial appointments.²⁸ In Europe, in addition to ministry or council governance usually with some mixture of the two, a few countries (e.g., Ireland, Sweden) have separate judicial services or administrative bodies that seem fairly effective in planning, monitoring trends, identification and development of policies to address emerging problems, and also communication with the public. In the US there are various arrangements, but at the national (i.e. federal) level while the Supreme Court and a series of judicial committees discuss policy, the Court as well as those in the states are supported by a strong administrative body, capable of doing the necessary planning, monitoring, agenda setting, public communication and preparation of arguments for policies requiring action by the Legislature and/or Executive.

So, while no particular arrangement stands out as superior and there are more negative than positive examples for each variation, what does emerge from this quick review is that successful governance bodies require a strong administrative office to support their policy setting and decision making. They also need a vision of their responsibilities that transcends simple housekeeping and ensures that housekeeping is guided by that vision. Hiring, firing, building, and spending are all necessary tasks, but to counter the challenges facing modern courts, both from within and without, a different form of governance, wherever located, is needed. This may be the most important missing element from the standard reforms, not surprisingly as it was still missing from many donor countries, and certainly from the models their reformers took to other nations.

THE ROAD AHEAD

This speculative section builds on two assumptions: that reform's goal is to improve services to the public and that the immediate goals of the standard reforms — improved staff quality, better working conditions, and elimination or significant reduction of external control — are the logical (if not only) means of getting there. There are countries and even judiciaries that want neither the standard reforms nor improved services, but they are not of concern here.

There are clearly questions still lacking answers as to why reforms either took root or didn't in specific countries, which of the several activities had the most impact, and how much or how little of the formula was required to make a difference. However, while interesting on its own, this kind of postmortem is not my purpose. Nor, although it is more important for future work, is the question of why some judiciaries or other sector institutions took a more activist look at their own governance bodies and so transcended simple housekeeping. They are a minority, but if their examples provide any guidance, it would be important to capture it.

Instead, I want to focus on a further set of questions, for which I have no answers except to stress that they appear critical to the future of modern justice sectors and the challenges they now face.

28 This is the National Council of Justice, created in 2004 to oversee Brazil's multiple court systems (state, labor, electoral and federal). It is headed by the STF President and among its first actions were outlawing nepotism in staff appointments as well as the illegal accumulation of pensions and state salaries by retired judges.

First, and most obvious are the three challenges discussed above — balance-of-powers, accountability, and governance. None of them, least of all the balance-of-powers, can be resolved by the judiciary alone. Still, it behooves it to consider the alternatives and work with the other branches to develop answers. Reaching a consensus will take time, but ignoring its importance will only exacerbate the problems.

Second, I have made multiple references to service improvements, but it is arguably time to explore (again with the entire political sphere) what is meant by sector services in each country. As the sector's image rises, popular expectations about the answers become more and more complex — drifting from the traditional application of the law to familiar disputes to the solution of various social problems, for which no legal guidance exists.²⁹ A broader vision of the justice sector, as opposed to just the courts, should leave room for other dispute resolution mechanisms, but it might also be recognized that the other branches could take the lead in addressing social justice issues. Again, these are not questions for the justice sector to resolve on its own, but it might take the initiative in raising the topics.

Finally, sectoral, as opposed to institutional policy needs consideration and discussion. If the courts only want to focus on their traditional role, then some entity needs to address the broader issues increasingly seen as part of the sector's responsibilities. This is something for the courts and other sector institutions to consider and for any donors still in the trenches to recognize. The reformers did good work if not everywhere they tried, but the work is half complete. Successful reforms now should join with other modern justice sectors to assume the second part of the task, ideally now as a conversation among equals, as to the sector's future.

COMPETING INTERESTS

The author has no competing interests to declare.

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Linn Hammergren, a former World Bank Senior Public Management Specialist, now works as an independent consultant on rule-of-law and citizen security issues. Before joining the Bank, she was an internal consultant to USAID, designing and managing justice projects throughout Latin America. First known for her Latin American experience, as a consultant she has broadened her focus to Eastern Europe, Southeast Asia, the Middle East and North Africa, sub-Saharan Africa, and Oceania. She has a PhD in Political Science and has published three books and numerous chapters, monographs, and articles on justice reforms and donors' roles in promoting them.

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29 Some judges, usually a minority are amenable to this. Aside from post-Communist judges' (e.g., in Romania) efforts to resolve property disputes without a legal framework, there is the neo-constitutional argument, developed in Spain and adopted by a minority of Brazilian judges. It told judges to ignore any law that worked against the poor and apply their own sense of justice. See World Bank, *Making Justice Count: Measuring and Improving Judicial Performance in Brazil*, The World Bank, Report No. 32789-BR (2004).

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Hammergren
*International Journal
 for Court Administration*
 DOI: 10.36745/ijca.798

TO CITE THIS ARTICLE:

Linn Hammergren,
 'Donor-Instigated Justice
 Reforms: Achievements,
 Shortcomings, and the
 Road Ahead' (2026) 17(2)
*International Journal
 for Court Administration*
 2. DOI: [https://doi.
 org/10.36745/ijca.798](https://doi.org/10.36745/ijca.798)

Published: 28 July 2026

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*International Journal for
 Court Administration* is
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 access journal published by
 International Association
 for Court Administration.