New Tendencies in Judicial Reform
and Where Brazil Fits Among Them

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Introduction

- Topic trends in justice/judicial reform since 1980s, in LAC, CEE, but also Global North (GN)
- Reform is not a finite project; it is continuous and for this reason GN still working on its own improvements - often overlooked by donors and Global South (GS)
- In LAC, CEE, rest of GS, two periods – one ending; other just beginning
- Turn to Brazil last, but generally successfully completed first stage, on its own, w/o involvement in regional movement or donor input.
Early Development of GS Reforms

• In LAC early 1980s; in CEE late in decade
• LAC movement supported but not designed by donors; CEE more direct donor and EU influence
• Still content similar:
  – New/modified constitutions with human rights guarantees
  – Creation of CCs or widening of SCJ review powers
  – Judicial selection – aim to depoliticize and make merit-based
  – Higher budgets/salaries
  – Training programs especially at entrance
  – Judicial councils – half LAC; much more of CEE
  – New codes and institutions (MP, defense)
• Aim to create independent judiciary and judges; guardians of constitution with broader protections to all citizens
• Donors support in many countries, but most funding is national. LAC’s cross fertilization
Balance Sheet by 2004

• Despite criticisms, did make a difference: more financial and physical resources; more staff, judges, work units; more political weight for courts/sector; changed relationships within sector; modern technology; selection systems more transparent with many former vices eliminated

• But – complaints about corruption, delay, politicization continue; with few exceptions, public image remains low; efficacy In combating crime or resolving ordinary disputes questioned.

• Sector is more costly, but was the investment justified?
What Happened? Part 1: Design Errors and Oversights

• Reforms outdated before their time – context and needs had changed (especially crime and violence but also in other areas)
• Selection systems succumb to politicization – intent or poor planning?
• Disproportionate attention/funds to courts
• Poor structural choices (Guatemala’s SCJ, many councils)
• Old habits remain; new laws and training don’t change them – police brutality, symbolic orality, pre-trial judges revert to instructional model
• Administrative services generally unattended
• Innovations not used strategically – ICT
• Achismo for reform plans – done by lawyers unused to setting objectives and testing for results. Conventional wisdom and “axiomatic principles” inform choices instead.
What Happened? Part II: Lessons from the Global North

• In GN, resource poverty, political dependence largely resolved, but concerns about performance remain – less corruption, but delay, costs and non-resolution of real disputes for many users

• Resulting attention to four themes:
  – Improved governance and management, if possible by judiciary itself
  – Accountability – transparency plus other issues
  – Public service and user focus – supply and demand side attention (Reduce delay, costs, uncertainty but know the user)
  – Humanizing emphasis – realization that formal proceedings often did not resolve many problems; mix of mechanisms, ADR, small claims, attention to unrepresented user, problem solving courts, outreach and so on
Governance and Management as the key to others

• Two separate functions with various structural arrangements. Both more pro-active than former practices

• Trends at two levels: system and courtroom
  – Systemic governance/management oversee all performance, identify problems, develop solutions, set goals, manage relations with other PS entities. For this need MIS (major contribution of IT, but rarely recognized)
  – More managerial approach for judges – control case flow, prevent party abuses, meet production targets
Where does Brazil Fit?

• In earlier reforms, worked above the curve and w/o need for outside push.
  – Courts and rest of sector well-financed,
  – Merit-based selection, corruption less than elsewhere, even under military less obtrusive interference
  – High caseloads and high productivity (but still backlog of unmeasured proportions)
  – Public opinion about judges high – about system not so high (costs to user delays, per M.Taylor, efficiency, not efficacy).
Where Does Brazil Fit?: 2

• Signs by 2004 that recognizing need for new approaches, including much of GN program
  – National Council as more advanced governance
  – Council’s early decisions (nepotism, overly high pensions) and emphasis on performance statistics positive
  – Early adopter (even before) of small claims and mobile courts, ADR
  – Already judges and Ministros seeing need to “manage the caseload,” removing frivolous complaints, controlling appeals and recursos especiais, focus courts on what they do best.

• However, obvious opposition (lawyers, many judges, even government) – question for others: have positive moves continued or are they falling prey to the many vested interests in business as usual? Not a bad business, but still not the best that could be done nor what modern society and citizens most need.