Focus: The use of data and metrics to evaluate judicial and prosecutorial performance as evaluation shapes activity
Goal: Determine which metrics are most effective in supporting and evaluating holistic reform of the criminal justice system

KEY TAKEAWAYS
Central tenets of a strong rule of law—judicial and prosecutorial independence—can be misused to create cultures of impunity in weaker democracies.

- Need for oversight may be at odds with judicial or prosecutorial independence, but independent review is necessary for fair administration of justice
  - Take care to avoid judicial harassment
- If problem persists, it is increasingly difficult to build independent institutions for lack of qualified, non-captured candidates

A central debate about the oversight of legal decisions is whether an independent evaluator should be able to review the content of those decisions or evaluate them solely based on non-legal aspects and numerical metrics.

- Traditionally judicial independence and necessary expertise have foreclosed externally reviewing legal decisions
- Additional challenges include the time and skill required for a full review
- However, numbers may be manipulated and unfair treatment may only appear on full review
  - Surveying “satisfaction” may not capture bias accurately as losing party can leave unsatisfied without injustice

In theory, such legal review could ensure decisions fell within the bounds of the law without investigating a judge’s logic or beliefs, but it is not clear whether such review is possible.

- Legal realists warn that decision rationales are at least partially illusory, making it hard to prove bias in outcome
- Requires very similar cases to be effective; differences (may) justify disparate treatment
  - Most likely found in criminal law given the number of co-defendants
- Over time, judges may write decisions to pass this review without addressing underlying bias or corruption
- An alternative, data-driven option may be to chart an individual judge’s decisions and identify changes over time or across groups

Big data can be a useful tool for generating questions for a deeper qualitative analysis.

- Can quickly reveal implicit bias or disparate outcomes based on key characteristics
  - E.g. Ethnicity, gender, socioeconomic status, religion, political party, geography
- Can also reveal the fairness of the system if operating correctly
  - Can help overcome skepticism in divided societies
- Not all insights are controversial
  - Those that aren’t are starting points
- Many systems are not set up to collect data, but partnerships with universities can help

If data uncovers bias, long-term response must be system-wide rather than individual decisions within justice system.

KEY EXAMPLES
- **Prosecutorial Performance Indicators** (US)

REFERENCED RESOURCES

- “Understanding and Diagnosing Court Culture” by Brian Ostrom & Roger Hanson
- The Lammy Review
- Works on Legal Realism