

Access to Justice in Revenue-Seeking Legal Institutions

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A pervasive, yet largely unconsidered, feature of legal institutions is their use by states to generate revenue. I construct a series of formal-theoretic models to investigate how a state's use of its legal system for revenue generation interacts with other institutional and economic conditions to shape access to justice and the emergence of competition from private legal services providers. I find that states that value revenue-generation to any extent never provide fully accessible legal systems, even if they also value citizens' access to justice. Moreover, I demonstrate that when this feature is considered, the determinants of access become fundamentally different in poor and wealthy countries, and between poor and wealthy groups of citizens. In wealthy countries, systemic legal bias against the poor further decreases access to the legal system; in poor countries, however, such bias may increase it. In poor countries, economic growth increases both demand for and supply of property rights protections; in wealthy countries, growth may increase demand while decreasing supply. Finally, wealthy social groups pay hefty premiums for access to private legal institutions, while disadvantaged groups only prefer private legal services if they are much cheaper to access than the state.

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In 2013, the British government proposed raising almost all civil and family court fees, many to amounts well above the average cost of a case to the court system, in order to take advantage of what it called an “untapped increased willingness to pay more” (Ministry of Justice, 2013*b*).¹ While the government affirmed its commitment to access to justice and acknowledged that civil court fee income already “broadly cover[ed] the full costs of the service,” it argued that enhanced fees would generate a valuable surplus that could fund other business of the Courts and Tribunals Service (Ministry of Justice, 2013*a,b*). Critics voiced two main objections. First, raising court fees to extract more from the wealthy would also substantially decrease access to justice for small businesses and the middle class (Judiciary of England and Wales, 2014; Bar Council, 2014; Civil Justice Council, 2015; House of Commons Justice Committee, 2016; Croft, 2015).² Second, the fee raises might cost the state courts business in the long run by making them less competitive with alternative, private providers of legal services (Civil Justice Council, 2015).³ Despite these objections, most increases were implemented.

The British government is not an outlier. Most states use their property rights institutions to generate income; in the U.S., for example, there has been a “burgeoning reliance upon courts to generate revenue to fund both the courts and other functions of government” (Reynolds and

¹For example, it proposed raising divorce fees from £410 to £750, explaining that “we believe that divorcing couples would be prepared to pay a higher fee to complete the dissolution of the marriage. ... [T]he cost of an uncontested divorce was around £270. ... Our proposal is that the fee should be £750, or around three times the cost of the proceedings” (Ministry of Justice, 2013*a*).

²“[These proposals] will restrict or deny access to the courts to those who cannot afford increased fees. The effect of these proposals will be felt most severely by middle income individuals and families and small to medium sized enterprises. These court users do not benefit from fee remission and do not have the deep-pockets of those users the Impact Assessment presumes would be willing to pay more” (Bar Council, 2014).

³“[D]espite a traditional perception of there being a monopoly, the fact is the court system does not offer the only means of resolving legal disputes in England and Wales. Providers of arbitration services are already actively citing court fees in their marketing material as a reason not to use the courts.” (Civil Justice Council, 2015) .

Hall, 2012).⁴ In fact, the majority of this income is not produced by court fees, but by the fees that must be paid to other segments of the state legal apparatus—land registrars, licensing agencies—to avoid disputes in the first place: property registration fees to ensure legal ownership; stamp-duties to ensure that written instruments like contracts and deeds are legally valid; licenses to legally operate a business. Thus, in India, property registration fees and stamp-duties are the third-largest source of income for many states (Alm, Annez and Modi, 2004); in Pakistan, they form the single largest source of provincial income (World Bank, 2000); in Britain, the Land Registry pays a substantial annual profit into the general treasury (Her Majesty’s Land Registry, 2014, 2015); and in countries as dissimilar as France and Nigeria, stamp duties are regularly raised to deal with revenue shortfalls (Guardian Editorial Board, 2016; French Property, 2013).

Does a state’s use of its legal system to generate revenue decrease access and facilitate competition from private legal services providers, as critics of the British fee increases claimed? Inadequate access to justice and the emergence of private legal competition are certainly common. Most countries contain large numbers of citizens who do not, or cannot, access the state legal institution (de Soto, 1990; Rhode, 2004; World Justice Project, 2015). And although some of these citizens simply do without, others turn to private protection mechanisms, offered by entities as diverse as community leaders (de Soto, 1990), tribal elders (Mamdani, 1996), Sharia councils (Talwar, 2012), religious militias (Hasan, 2009; Ismail, 2006), merchant societies (Bernstein, 1992), or even the mafia (Gambetta, 1993), as well as by professional arbitration services targeting particular industry groups.

Yet the answers are not obvious, and a straightforward empirical assessment is difficult. Although most states obtain revenue from citizen use of state-run legal institutions, many may also value widespread citizen access; for example, as a way of maintaining political legitimacy (e.g., Tyler, 2003, 2006). Scholarly accounts in the political economy literature tend to ignore the revenue-generating feature of legal systems, linking variation in legal access and effectiveness

⁴By recent estimates, 39% of the income from Florida’s courts and 33% of the income from Oklahoma’s fund other state agencies (Diller, 2008; Greer, 2015)

to variation in (endogenous) economic conditions, like wealth and income inequality, without considering how these conditions might also affect legal systems' profitability (e.g., North, 1990; Sachs and Warner, 1997; Hall and Jones, 1999; Sokoloff and Engerman, 2000; Acemoglu, Johnson and Robinson, 2001; Rodrik, Subramanian and Trebbi, 2004; Dixit, 2004; Djankov et al., 2009; Onoma, 2009)⁵, or explaining it with reference to variation in the long-term tax gains a state anticipates from providing a legal system, without considering that the state might also obtain immediate gains from access fees (e.g., Olson, 1993; Besley and Persson, 2011). By contrast, legal scholars emphasize the role played by a legal system's access fees—together with its *institutional bias* (the degree to which its procedural requirements privilege attributes held by the wealthy, like the ability to hire a lawyer)—in determining accessibility, but tend not to consider that this relationship might change under different economic conditions (Rhode, 2004; de Soto, 1990; Galanter, 1974). And as Figure 1 illustrates, there is huge variation in access to justice even among economically similar countries: wealthier countries boast higher access on average, but cross-country variation is so high that many poor states do better than some of the wealthiest nations. Thus, access in Britain is on par with access in Brazil and the Dominican Republic; access in the United States with access in Pakistan; access in Canada with Sierra Leone and Cote d'Ivoire; and access in Australia with Sri Lanka.

In this paper, I study how the use of a state legal system to generate revenue might interact with other economic and institutional factors to determine access to justice and competition from private legal services providers. To do so, I develop a series of formal models that capture the interaction between (one or several) rights-protecting institution(s) and a population of citizens. The models abstract away from other sources of legal systems' monetary value to states (for example, in enabling the growth of a state's tax base) to focus on one pervasive, yet largely unconsidered, characteristic: legal systems' immediate value to states as direct producers of revenue. Their

⁵While it is generally believed that where a state is sufficiently inaccessible or inefficient, enterprising social groups may form alternative, private legal systems (Greif, 1989; Milgrom, North and Weingast, 1990), when access and efficiency become sufficiently low is not clear.

clude multiple, economically-unequal social groups in the population of citizens, and investigate when competition arises from private rights protection mechanisms targeting these groups and how the state legal services provider responds.

The primary insight from my analysis is that when a legal institution is used—to any extent—to generate revenue, the determinants of access to justice and legal competition become fundamentally different across different economic conditions. For example, in very poor states that employ the legal system to generate revenue, greater legal bias towards wealthy citizens may paradoxically correspond to higher access for the poor and middle-class. This occurs through several channels. By motivating elites to buy into an otherwise fragile and unappealing institutional framework, bias can improve the institution's effectiveness and thus its appeal. At the same time, by reducing the institution's administrative costs, bias can allow it to lower fees, directly increasing accessibility. In wealthy countries that deploy their legal institutions for income generation, however, institutional bias always lowers accessibility, as predicted in the legal literature. This effect can be compounded by the emergence of new opportunities for commerce. In most countries, growing benefits to market participation lead to more effective, accessible legal systems by increasing both public demand for property protections and the profitability of providing them. But in wealthy states with biased legal institutions, an economic boom may generate such high willingness to pay among the wealthy that the institution may (as in the British case) be tempted to raise access fees, thus excluding a higher fraction of the remaining population.

At the group level, I similarly find that where both the state legal system and private alternatives are to some extent revenue-seeking, the decision to opt out of the state system and into a private protection mechanism may be very different for members of poor and wealthy social groups. Private rights mechanisms maintained exclusively for disadvantaged social groups, such as insulated working-class communities or ethnic or religious minorities, tend to provide less effective services than the state legal institution, due to the poverty of the group. As a result, for members of a poor social group to prefer a private mechanism to the state, the private option must be significantly less costly to access. By contrast, private rights mechanisms maintained for advantaged groups, such

as members of a successful industry or a merchant association, can be highly effective, meaning wealthy groups will often pay a premium to opt into a group-specific legal institution. One implication of this finding is that while private legal mechanisms for wealthy groups may invest in expensive procedures, those for poor groups must keep administrative costs down. At the same time, I show that the emergence of either type of private provider will not necessarily motivate the state legal institution to compete for business: if the private alternative provides services at low enough rates, the state provider may not be able to compete. Even when the state provider *can* compete, there are circumstances under which a revenue-seeking state provider might prefer not to, instead simply targeting new access fees to the remaining population.

These results suggest that considering the way in which institutional and economic factors seen as important determinants of access interact with a legal system's value as a revenue generator may yield more complex intuitions about the determinants of access to justice in a country. For example, since Galanter (1974), legal scholars have viewed access fees and legal-institutional bias, in combination, as key impediments to access. After taking into account the effects of economic conditions on access-fee setting, I find support for this understanding in wealthy nations, where bias and the use of legal systems for revenue generation interact to depress access to justice. But the same is not always true in poorer countries: there, high levels of institutional bias, in combination with the state's use of the legal system for revenue generation, may actually result in greater overall access to the system.

Similarly, since Demsetz (1967), growing benefits to market participation have been thought to improve the accessibility and quality of rights-protection mechanisms by increasing demand for the rule of law. Yet this view has been contradicted by some empirical findings indicating that periods of economic growth may actually correspond to *decreases* in institutional effectiveness and litigation rates (Kaufmann and Kraay, 2002; Clark, 1990). Incorporating a legal system's value as a revenue-generator for the state suggests an explanation for these contrasting findings. While the increased demand for property rights protections generated by an economic boom generally does increase a legal system's effectiveness and accessibility, in a wealthy country with a relatively

biased institution, the differential benefit to legal access for the wealthy may become so great that the legal system is tempted to raise prices, thereby excluding a larger fraction of the country's total population. This finding is mirrored in the British case, where in order to exploit "an untapped increased willingness to pay more" among wealthy court users, the British government increased court fees by so much that they risked decreasing overall access.

Finally, the model sheds some light on the circumstances under which competition from a private legal provider will motivate the state to lower fees, as well as on some differences between the private enforcement mechanisms preferred by advantaged and disadvantaged groups. A very wealthy group's choice to opt out of the state system and into a private, group-specific enforcement mechanism is motivated by effectiveness: to access a more effective private system, these members will even pay higher access fees than those charged by the state institution. By contrast, members of poor or lower middle class groups are motivated, not by effectiveness, but by cost: private mechanisms are worthwhile only if heavily discounted. This finding seems supported by the British case. In addition to the concern voiced by critics of the court fee raises that small businesses unable to pay higher court access fees may turn to "[p]roviders of arbitration services [] already actively citing court fees in their marketing material" (Civil Justice Council, 2015), members of the disadvantaged Muslim immigrant minority in Great Britain have long accessed private, Sharia-based dispute resolution mechanisms instead of the state courts (Talwar, 2012).⁶ While this preference is often attributed to ignorance, coercion, or ideology (e.g., Boztas, 2015), the model suggests that a material explanation may be sufficient: in order to appeal successfully to a *very* poor group, a private rights-protection mechanism must have very low administrative costs—and as a rule, procedural safeguards are expensive, while ideology-based heuristics are cheap.

In the next two sections, I outline the empirical characteristics of legal systems that inform my model set-up, then set forth a parsimonious, bare-bones version of the model that captures its basic tradeoffs and discuss generalizeability. After concluding this discussion of the baseline model, I

⁶This is also a common alternative among Muslim immigrants in other Western countries, as well as among poor Muslims in Muslim-majority countries (Simmons, 2010; Ismail, 2006).

turn to the main analysis of the paper. The analysis has two parts. First, I incorporate institutional bias, which many legal scholars believe fundamentally deters citizens from access, and analyze its effects. Second, I incorporate the presence of an insular group, either poorer or richer than the rest of the society, and investigate the consequences for access to justice of a private legal provider being offered to that group.

Characterizing a Legal Institution

The model developed in this paper is meant to capture two features of legal systems that fundamentally relate to their accessibility. The first is that legal institutions almost always charge access fees, generally set by the government. These fees must be paid for licensing agencies, property registrars, and courts to guarantee an individual's property rights.⁷ Property ownership must be registered before it is recognized; court fees must be paid before breaches of contract are remedied; licenses and permits must be obtained before individuals can engage in a variety of commercial activities without risk of fines or forfeiture; even a marriage certificate must be bought before tax benefits can be enjoyed. In other words, the secure possession of property (and of many other rights) requires the ability to pay a number of fees.⁸ In many countries, obtaining institutionally recognized property rights additionally requires bribes to bureaucrats, court clerks, or even judges (Transparency International, 2013; Li, 2010; Bearak, 2000; Brown, 1997). These fees can raise considerable revenue; they can also considerably limit access. While in some countries, exemptions or partial subsidizations are available to the poorest members of society, these measures are rarely sufficient: indigency can be hard to prove;⁹ there is generally a significant income gap be-

⁷In some countries, these are separate entities; in others, the same entity performs multiple functions.

⁸Indeed, this is one concern of the World Bank's "Doing Business Project," which ranks countries' friendliness to business based on the costliness of their licensing, registration, and court application procedures. See <http://www.doingbusiness.org/>.

⁹See, e.g., Roy (2002); *Kijewska v. Poland* (2007) ECHR Application No 73002/01 (6 September 2007).

tween those the government deems poor enough to obtain exemptions and those who can afford to pay the regular access fees (Bar Council, 2014; Civil Justice Council, 2015; Rhode, 2004); and to the extent that the poor are subsidized via the access fees paid by the remaining population, increasing exemptions may simply increase access fees.

The second feature captured in the model is the reciprocal relationship between legal accessibility and legal effectiveness. A legal institution derives its power from the shared equilibrium belief that all will follow its directives (Calvert, 1995; Basu, 2000; Mailath, Morris and Postlewaite, 2001; Greif, 2006). If too few citizens have recourse to it, its rights determinations will become meaningless. Moreover, most legal institutions depend heavily on citizens' voluntary obedience: if the institution is widely perceived as illegitimate its rules are likely to be widely disobeyed, and if citizens do not benefit from it themselves, they do not have incentives to take costly measures to assist it (Tyler, 2003, 2006; Dickson, Gordon and Huber, 2015; Greif, 2006, 147-150). This can devolve into a vicious cycle, as growing institutional ineffectiveness further lowers the number of people for whom access costs are worth it (Cappelletti, Garth and Trocker, 1976).

In focusing on these institutional features, I necessarily abstract away from others. First, a large scholarship details the implications of rights institutions' membership in a particular legal tradition or colonial legacy for their effectiveness (e.g. Acemoglu, Johnson and Robinson, 2001; La Porta et al., 1999; Glaeser and Shleifer, 2002). Because these implications are well-understood, I simply assume that these characteristics are held fixed for the purposes of the model.

Second, much work has been done on the principal-agent problems that can arise, to varying degrees, within different legal institutions. For example, political bodies may differ in their abilities to ensure compliance from the bureaucrats and judicial actors tasked with implementing laws (e.g., Shipan, 2000, 2004). The degree of hierarchical control exercised within the sub-components (e.g., courts, agencies) of a legal institution may similarly vary across institutions (e.g., Cameron, Segal and Songer, 2000). While the severity of such principal-agent problems has implications for a legal system's general character, I again treat these aspects as fixed, instead focusing on the unified role all actors in a legal institution play in providing property rights protection.

Third, a significant scholarship has argued that the rule of law develops as a consequence of states prioritizing their long-term interests in obtaining revenue through taxes and loans; where political leaders are focused on short-term survival, cannot consistently collect domestic taxes, or otherwise wish to expropriate with ease, the rule of law (and thus, access to justice) will remain inadequate (Besley and Persson, 2011; Olson, 1993; McGuire and Olson, 1996; North and Weingast, 1989; Onoma, 2009). Because this theory is well-established, and for analytical clarity, I abstract away from these considerations in the model. While I assume that the government cares to some degree about the widespread provision of legal services, as well as about direct revenue-generation, I do not endogenize its preferences. Instead, they are left as an exogenous representation of whatever other political considerations exist in the state at the moment.

Finally, there are a number of canonical models that set forth the mechanisms that can sustain cooperation among members of a population playing various types of repeated Prisoner's Dilemma trading games (e.g., Milgrom, North and Weingast, 1990; Kandori, 1992). These models tend to abstract away from the empirical reality of incomplete access, instead demonstrating that the construction of a universally accessible institution that perfectly sustains cooperation is possible. For example, the law merchant described in Milgrom, North and Weingast (1990)'s seminal paper was an effective legal institution because all traders knew that a trader who paid to query the law merchant could not be cheated subsequently, and all traders could (and did) pay it. I abstract away from individual citizens' decisions to cooperate or defect with one in order to focus in on the determinants of incomplete access.

The Baseline Model

In this section, I set forth the basic structure of the model and discuss how I incorporate the characteristics described in the last section. The analysis follows in the next section.

Primitives

There is a national legal institution N and a continuum of citizens of unit mass. Each citizen is characterized by a wealth parameter ω distributed uniformly on some range $[\omega^M - \beta, \omega^M + \beta]$.

The game begins when the legal institution selects a user fee $k \geq 0$ to charge each population member for access. Given k , the institution generates revenue λk , where $\lambda \in [0, 1]$ is the fraction of citizens who access the institution. The administrative cost to the institution of providing rights protections for λ citizens is λx for $x > 0$. The institution's net revenue from setting access fee k is thus $\lambda[k - x]$. Suppose that the institution cares both about revenue-generation and about providing accessible legal services. Let the value it places on legal services provision be $\phi \geq 0$ and the value it places on revenue generation be $\psi \geq 0$. Note that so long as a legal system must even partially self-fund, it *must* place a strictly positive value on revenue generation. Then the institution's utility from setting fee k is:

$$U_N(k) = \phi\lambda + \psi\lambda[k - x].$$

After the institution sets the access fee, all citizens simultaneously decide whether to buy access to the legal institution's rights protections. Then payoffs are realized, and the game ends. Each citizen's benefit from accessing the legal institution is composed of a common benefit to access, $Q(\lambda)b$, which all citizens obtain from participating in the system, and an individualized benefit to access ω , which is increasing in a citizen's wealth. This yields the following utility from access:

$$U_\omega(\omega, k) = Q(\lambda)b + \omega - k.$$

Here, $Q(\lambda) : [0, 1] \rightarrow [0, 1]$ represents the *quality* of the legal institution, and it is increasing in the fraction λ of the citizens who have access to the institution. The parameter b , which scales legal quality, is meant to capture, in reduced form, the benefits of market participation given the overall strength of the country's economy. Thus, higher values of b represent the presence of more economic opportunities in the society, and could be measured by, e.g., a higher average return on economic investments or a higher level of economic growth in the country. For simplicity, let $Q(\lambda) = \lambda$. Each citizen's benefit to opting out of the system is normalized to zero.

I employ these specific utility functions and set $Q(\lambda) = \lambda$ primarily for ease of interpretation. In Appendix B, I provide several illustrations of a generalized formulation in which citizens' ben-

efit from access is represented by some general function $B(\lambda, \omega)$ increasing and concave in λ and ω , and N 's cost of administration is represented by $c(\lambda)$ increasing and convex in λ .

Interpreting the setting

This set-up is constructed to capture, in the simplest possible way, two aspects of legal institutions that are both crucial to access to justice and rarely considered in theories of the endogenous development of legal institutions. The first is simply that legal institutions are often used to generate revenue, and that this naturally affects their accessibility. To capture this, I assume that citizens must pay some flat access fee in order for their rights to be recognized and protected by the institution, and that the institution maximizes revenue from this fee. (Incorporating a universal tax for institutional maintenance would add notational complexity with no qualitative effect on the results.) Note that allowing the legal system to subsidize the poorest individuals would not change the results, so long as the institution was at least partly self-funding. The subsidized group would—from the perspective of the legal system—simply have been removed from the population pool, and the system would re-maximize its fees with respect to the remaining population. (Moreover, an empirically coherent account of this behavior would require that subsidization increase the per-paying-population-member cost of operating the system. If the institution is even partly self-funding, these new costs would be passed onto the paying population.)

This fee approximates the expenses—almost always set at a flat rate—that citizens must outlay in order to register property, validate written instruments, obtain licenses, and (if necessary) access courts. The citizens who can afford to pay this baseline fee then represent the fraction of the population with baseline access to justice; those who cannot will not have recourse if they are expropriated and will modify their economic behavior as a consequence. Notice that this formulation does not consider the many additional expenses which in many countries are not strictly necessary for access but can significantly affect the quality of rights protection afforded once baseline access is achieved (for example, hiring a lawyer to handle property registrations or transfers). I categorize legal systems that reward such additional expenses with better rights protection as systems that are biased in favor of the wealthy, and consider them in Section 4.

The second crucial aspect of legal institutions is that, all else equal, an institution's effectiveness should be increasing in its accessibility. This means that citizens benefit from coordinating to access a legal institution. In the baseline framework, I incorporate this intuition by letting citizens' utility from market participation (b) increase in legal effectiveness, and simply setting legal effectiveness equal to access λ .¹⁰ In the next section, I extend this framework to allow the legal institution's effectiveness in protecting an individual's property rights to vary based on that individual's own wealth.¹¹

Equilibrium

The solution concept is a pure-strategy subgame-perfect Nash equilibrium. A pure strategy for the legal services provider is a choice of the fee $k \in \mathbb{R}_+$. A pure strategy for each citizen is a mapping from their wealth and the fee k into their choice to access the legal system, $s(\omega, k) : [\omega^M - \beta, \omega^M + \beta] \times \mathbb{R}_+ \rightarrow \{0, 1\}$.

¹⁰I do not allow λ to modify ω , the benefit to access that depends on individual wealth, because in equilibrium λ is endogenously determined by ω . Consequently, specifying a benefit to access such as $\lambda(b + \omega)$ would incorporate an interaction effect that would undermine my ability to isolate equilibrium access rates under different economic conditions, without qualitatively informing my analysis. Moreover, as noted above, in Appendix B I demonstrate that the results are robust to a model in which the benefit to access is some unspecified, increasing function of both access and wealth.

¹¹An interesting avenue for further research is to investigate whether there are any circumstances under which it might be optimal for the wealthy to subsidize the poor's access to the legal institution by paying fees on a sliding scale tied to wealth rather than at a flat rate, in order to improve the legal institution's general quality. Note, however, that for a wide range of parameters the benefit to the wealthy from a potential increase in effectiveness would be far outweighed by the cost to the wealthy of subsidization, that such behavior would almost never be optimal where the institution's effectiveness in protecting an individual's rights is a weighted increasing function of both general accessibility and that individual's personal wealth, and that practically speaking such a system would be very difficult to implement due to the level of information it would require about each participant's wealth.

Because the benefit to citizens from access is monotonically increasing in their wealth ω , every citizen employs a monotone cut-point strategy that dictates her best response: buy access to the legal system if and only if

$$\lambda b - k + \omega \geq 0.$$

In equilibrium, a further consistency condition must be met. Suppose that, given this best-response function, some proportion λ of citizens buy access. For this to be consistent with equilibrium play, all citizens in λ must prefer to have access, and all citizens not in λ must prefer not to have access, given k and λ . If the fraction of citizens with access is interior ($\lambda \in (0, 1)$), these conditions hold only if there exists a marginal type who is exactly indifferent between buying access and not, every citizen with a lower reservation value buys access to the legal institution, and every citizen with a higher reservation value does not. Define this marginal type as $\omega^*(\lambda)$. Given that ω is uniformly distributed on $[\omega^M - \beta, \omega^M + \beta]$ with unit mass 1, we have the following:

$$\omega^*(\lambda) = \begin{cases} \omega^M + \beta & \text{if } \lambda = 0; \\ \omega^M + \beta - 2\lambda\beta & \text{if } \lambda \in (0, 1); \\ \omega^M - \beta & \text{if } \lambda = 1. \end{cases}$$

Given this one-to-one relationship between ω^* and $\lambda(\omega^*)$, we can characterize the equilibrium fraction of citizens with access as the $\lambda(\omega^*)$ that solves the following:

$$\lambda(\omega^*)b - k = -\omega^M - \beta + 2\lambda(\omega^*)\beta.$$

Now define $\lambda^*(k)$ as the fraction of the population that has access to the legal institution at a given k . The following result characterizes $\lambda^*(k)$.¹²

Lemma 1. *So long as the range of the wealth in the country exceeds the benefit to citizens from market participation ($2\beta > b$), there exists a unique access level $\lambda^*(k)$ that is characterized by the*

¹²This derivation of optimal behavior is similar to Bueno de Mesquita (2013).

following:

$$\lambda^*(k) = \begin{cases} 1 & \text{if } k \leq b + \omega^M - \beta; \\ 0 & \text{if } k > \omega^M + \beta; \\ \frac{\omega^M + \beta - k}{2\beta - b} & \text{otherwise.} \end{cases}$$

Throughout this paper, I focus only on cases where equilibrium access $\lambda^*(k)$ is interior and unique. To ensure uniqueness, throughout the paper I maintain the mild assumption that the range of wealth in the society is larger than the benefits to citizens from market participation, i.e. $2\beta > b$. I will refer to this as Assumption 1.¹³

Anticipating the citizens' access decisions, the legal services provider solves:

$$\max_k \phi \lambda^*(k) + \psi \lambda^*(k)[k - x].$$

The resulting equilibrium is described in Proposition 1. For the complete equilibrium characterization see Appendix A.

Proposition 1. *If $\psi > 0$, access $\lambda^*(k^*)$ will always be strictly less than 1. When $\lambda^*(k^*) > 0$, the unique interior equilibrium fee and access level are given by:*

$$k^* = \frac{\omega^M + \beta + x - \frac{\phi}{\psi}}{2} \quad \text{and} \quad \lambda^*(k^*) = \frac{\omega^M + \beta - x + \frac{\phi}{\psi}}{2(2\beta - b)}.$$

Proof All proofs are in Appendix A.

Unsurprisingly, the equilibrium fee charged by the legal system is decreasing in the degree to which the system cares about accessibility relative to revenue, while equilibrium access to justice is decreasing in the degree to which the system cares about revenue relative to accessibility. Moreover, so long as the legal system cares *any* amount about revenue ($\psi > 0$) it will never set a fee

¹³Additionally, note that while I need not assume that $\omega^M - \beta > 0$, for substantive coherence I must assume that $b + \omega^M - \beta > 0$; otherwise, normalizing the benefit of not joining the institution to zero would imply that by not joining the legal institution, people in debt could cancel their debt.

that allows for universal access to justice. This result holds throughout the rest of the analysis (for details, see Appendix A). Therefore, given the empirical reality of incomplete access, for the remainder of the paper I assume $\psi > 0$.¹⁴

Analysis

I now turn to the main analysis. In the first part of the analysis, I extend the baseline framework to incorporate institutional bias in favor of the wealthy, and investigate the determinants of access in this context. In the second, I extend the baseline to incorporate a situation where some citizens belong to a cohesive social group that is either economically advantaged or disadvantaged relative to the general society, and investigate the circumstances under which group members would prefer a private, group-specific rights protection mechanism over the state legal system.

Access to Biased Legal Institutions

In most countries, all citizens who pay the baseline fees necessary to access the state legal institution do not obtain the same quality of rights protection. Instead, the institution tends to provide better protection to the wealthy than to the middle class or the poor. This is for at least two reasons. First, in some countries, the legal institution may explicitly privilege the rich and well-connected, or simply award protection to the highest bidder (Galanter and Krishnan, 2004; He and Su, 2013). Second, a great many legal institutions—in countries ranging from Uganda and Nigeria (e.g., Kiyonga, 2015; Amadi, 2009), to India and China (Bearak, 2000; *Times of India*, 2015; He and Su, 2013), to the U.S. and Great Britain (Rhode, 2004; Chellel, 2016)—are structured in a way that may inadvertently benefit those who can afford to hire substantial professional assistance. For example, where property registration is a complex, multi-step process, applicants may benefit from the assistance of a lawyer (World Bank Group, 2015); where bringing suit in court requires a sig-

¹⁴Note that if $\psi = 0$, the legal services provider's utility becomes $\phi\lambda(k)$ and from Lemma 1 it is decreasing in any k that induces an interior $\lambda(k)$. Thus, to maximize his utility the legal services provider will set any k^* that induces $\lambda^*(k^*) = 1$ and obtain utility ϕ . This result also holds throughout. See Appendix A for details.

nificant knowledge of substantive and procedural legal rules, an attorney may be indispensable to winning a case (Galanter, 1974; He and Su, 2013).

Under these circumstances, a citizen trying to determine whether the costs of engaging with the state legal apparatus are worth the legal protection it would provide her must also consider that the quality of this protection will depend on her wealth. A biased institution's effectiveness in assisting citizen ω will depend not only on the total fraction of citizens λ with access, but also on citizen ω 's own relative wealth. The degree to which it depends on the latter as opposed to the former is increasing in its bias. To take this into account, denote a legal institution's structural bias by $\alpha \in (0, 1)$, with larger α indicating greater bias. Assume that, in the short term, bias is fixed. Then the benefit of access to citizen ω is:

$$U_{\omega}(\omega, k) = b \left((1 - \alpha)\lambda + \alpha \frac{\omega - (\omega^M - \beta)}{2\beta} \right) - k + \omega.$$

Suppose, for the moment, that a legal institution's procedural bias against the poor has no direct effect on the legal provider's own utility. Then the legal institution continues to obtain utility

$$U_N(k) = \phi\lambda + \psi\lambda[k - x]$$

from fee k . The next result characterizes equilibrium play in this biased institution.

Proposition 2. *In a biased institution, when $\lambda^*(k^*) > 0$, the unique interior equilibrium fee and corresponding access level are given by:*

$$k^* = \frac{\omega^M + \beta + \alpha b + x - \frac{\phi}{\psi}}{2}, \lambda^*(k^*) = \frac{\omega^M + \beta + \alpha b - x + \frac{\phi}{\psi}}{2(2\beta - b + 2\alpha b)}.$$

Proposition 3 characterizes the effect of bias on the legal institution's accessibility.

Proposition 3. *Access to the state legal institution decreases with institutional bias iff the state is sufficiently wealthy, benefits to market participation are sufficiently high, and the state values access enough relative to revenue $\left(\omega^M > x - \frac{1}{2}b - \frac{\phi}{\psi}\right)$; otherwise, access increases with institu-*

tional bias.

According to the legal scholarship, bias in a legal institution should always decrease its accessibility, by (further) discouraging lower-income individuals from an institution they expect will not provide effective protection (e.g. Galanter, 1974; Galanter and Krishnan, 2004; He and Su, 2013). The model, however, suggests that bias, economic conditions, and fee-setting decisions may interact in a more complicated way. While in wealthy countries, bias has the expected effects, in poor countries, especially those with weak economies, it can actually increase the legal system's accessibility. It does so by motivating wealthy elites—certain of being protected at the expense of the less privileged—to opt into a relatively fragile institution. By opting in, the wealthy strengthen the system, making it more effective and thus increasing its general appeal. Notice that the strength of this effect increases the more the state prioritizes the legal system as a revenue-generating mechanism.

In the preceding two propositions, I assumed that a legal institution's degree of bias towards the wealthy has no direct effect on its costs. But the procedural rules that generate this kind of bias tend to make access more expensive for individuals by shifting various burdens and responsibilities from the institution to the citizen-applicant. Such burden-shifting considerably facilitates the work of the institution—thereby lowering its administration costs. Consider, for example, the additional expenses an institution would incur if it were required to explain registration processes and legal proceedings to every individual who could not afford to hire professional help, or to walk through licensing applications with every applicant to ensure they correctly answered all questions. And where bias consists in simple responsiveness to the wealthy or the highest bidder, the amount of effort saved (in, e.g., determining whether claims, applications, and registrations were properly made) may be even greater. To capture these savings, assume that the legal institution's administrative costs are decreasing in structural bias. Institutional utility from setting fee k is now:

$$U_N(k) = \phi\lambda + \psi\lambda[k - (1 - \alpha)x].$$

This yields the following result.

Proposition 4. *If structural bias is assumed to decrease the legal institution's administrative costs:*

1. *Access to the state legal institution decreases in bias iff the state is sufficiently wealthy and either benefits to market participation are high or inequality is low ($\omega^M > x \frac{\beta + \frac{1}{2}b}{b} - \frac{\phi}{\psi} - \frac{1}{2}b$); otherwise, access increases in bias.*
2. *The access fee k^* decreases in bias iff the benefit to market participation is sufficiently low ($x > b$).*

This finding adds additional nuance to Proposition 3. As before, in poor, economically stagnant countries, institutional bias can motivate the wealthy to buy access to fragile legal institution in greater numbers, increasing the institution's effectiveness and thus its overall accessibility. But because bias now directly lowers administrative costs, it may under some conditions be profitable for the institution to pass on some of these savings in the form of reduced access fees. In poor countries with sufficiently weak economies, the model suggests that this is indeed profitable: few citizens would otherwise anticipate market gains large enough to justify accessing a biased institution, and due to the low benefits from market participation the institution would not be able to extract enough from the very rich to make higher fees worthwhile. Interestingly, while under some circumstances, a biased legal institution in a middle-income country may lower fees, in these countries the adverse effects of bias on the quality of assistance afforded the majority of the population are too great to be outweighed.

In wealthy countries, the model suggests the reverse effect. As in poor nations, the presence of institutional bias increases demand among wealthy citizens for the legal system. But in wealthy countries, the profits the legal institution can generate by targeting fees to the wealthy are too great to be ignored, and it responds to this increased demand by raising fees, instead of lowering them. This behavior may be exacerbated by an increase in the benefit to market participation—i.e., by economic growth—as shown in the next result.

Proposition 5. *Whether or not bias reduces the legal institution's administrative costs, if bias is high ($\alpha > \frac{1}{2}$) access increases with the benefit to market participation iff the country is sufficiently*

poor; otherwise, access decreases with the benefit to market participation. If bias is low ($\alpha < \frac{1}{2}$), access always strictly increases with the benefit to market participation.

The usual understanding of the relationship between economic growth and property rights is that as opportunities for profit via market participation increase in a society, so will the demand for—and supply of—property rights protections (Demsetz, 1967). This suggests that economic growth should always increase overall access to property rights protections. But where a legal institution is highly biased, demand among the wealthy for property rights protection in periods of growth will naturally show a much greater increase than demand among the rest of the population. And the wealthier the country, the larger the profits the wealthy class will accrue from investment in new economic opportunities. Under these circumstances, the model suggests that a legal provider may be tempted to raise fees by so much that—in spite of increased demand for property rights by all sections of society—overall access actually decreases.

These three propositions suggest some insights into the motivations behind the British government's court fee raises, as well as into the general empirical patterns shown in Figure 1. With regard to Great Britain, they suggest that the country's wealth, its relatively robust economy, and its heavily professionalized and procedurally complex legal system may exacerbate, rather than mitigate, the negative consequences for access to justice of using the state legal institution to generate revenue. In particular, they suggest that wealth and economic development in a country like Great Britain are liable to motivate fee increases substantial enough to decrease overall access to justice. This is consistent with the British government's justifying its proposed fee raises by the argument that substantially more in fees could be extracted from the wealthy—despite complaints that, while wealthy individuals and large businesses can afford the fees, small businesses and middle class litigants are being “priced out” of the system (Croft, 2015).

More generally, these results suggest an explanation for the interesting parity in access to justice between very poor, unequal, economically fragile countries, such as Uganda and Nigeria, and wealthy countries such as the U.S. and Great Britain. It is possible that Uganda and Nigeria's high accessibility ratings, relative to other countries in their economic cohort, are in part due

to extremely high levels of procedural bias in combination with poor economic indicators and a substantial emphasis on using the legal system to generate income (e.g., Kiyonga, 2015; Amadi, 2009). They are also consistent with the empirical situation of countries like India, which is ranked second-to-last in access to justice by the World Justice Project in spite of being a lower-middle-income country with high growth. Such a country is not poor enough to derive the benefits from high procedural bias: even though bias may permit lower equilibrium access fees, the rights protections afforded the poor are so abysmal in quality that even cheap access is not worth it (see, e.g., Bearak, 2000).

The Emergence of Private Legal Competitors

The British government's proposed fee raises were not only criticized as potential impediments to access to justice. They were also condemned as bad business, making the formal court system in Britain less competitive with alternative, private dispute resolution services. As discussed above, such alternatives exist—and compete with the state—in most countries. In form, they run the gamut from private institutions created by wealthy merchant groups or industry networks (Milgrom, North and Weingast, 1990; Greif, 1989; Bernstein, 1992) to those created within concentrated poor communities (de Soto, 1990; Gambetta, 1993; Basu, 2000), or by ethnic or religious groups (Talwar, 2012; Hasan, 2009; Mamdani, 1996). To what extent does revenue-seeking on the part of a state legal system motivate the emergence of these kinds of private legal providers? Theoretical work on this phenomenon generally assumes that such providers emerge in the absence of an accessible or effective state system, but does not pinpoint the exact conditions or welfare consequences of emergence (Dixit, 2004) or incorporate the role of legal revenue-seeking.

In this section, I investigate how states' (and private providers') revenue-seeking motives combine with country- and group-level economic conditions to affect the circumstances under which members of cohesive social groups (broadly defined) choose private, group-specific rights protection mechanisms over the state apparatus. I do not distinguish between the informal legal institutions formed by ethnic or religious communities and those formed by communities defined in some other fashion, except to note that ethnic and religious minorities are frequently poorer than

the general population. Additionally, I hold fixed the effects of ideology, ignorance, or coercion on group members' decisions to opt into a group-specific institution. While I do not discount the importance of such factors, I exclude them from the analysis in order to focus on the issue raised by critics of the British fee increases: when might material concerns alone be sufficient to motivate individuals to access a private institution instead of the state legal system? Similarly, I construct a sequential-move game in which the state legal system is the first-mover and in which private legal services providers target sub-populations rather than the entire country population to focus on the competitive scenarios that seem to be most common in Britain and many other countries. (Note that competition between two legal services providers over the whole country population would simply result in the lower-cost legal services provider obtaining the business of the entire country, unless e.g., transportation costs or exogenous differences in quality motivated a split.)

To represent different social groups in the model, return to the baseline framework described in Section 3, but suppose that instead of a single population differentiated by income, the state's population is composed of members of two unequal groups: a richer group A , and a poorer group B . Let each group $i \in \{A, B\}$ contain a continuum of citizens of unit mass distributed along an income interval $[\omega_i^M - \beta, \omega_i^M + \beta]$, but suppose that median wealth in group A is higher than median wealth in group B , such that $\omega_A^M > \omega_B^M$. Further suppose that members of A make up fraction $\pi \in (0, 1)$ of the state's population; members of B make up $1 - \pi$. To focus on the effects of wealth inequality *between* groups ($\omega_A^M - \omega_B^M$), I assume identical levels of inequality β within each group.

First consider each group's access to the state institution. Let $\lambda_N^A \in [0, 1]$ and $\lambda_N^B \in [0, 1]$ be the fraction of citizens from the rich and poor groups, respectively, with access. Since the state institution derives income corresponding to the *overall* fraction of the country with access to it, it obtains utility

$$U_N(k_N) = \phi(\pi\lambda_N^A + (1 - \pi)\lambda_N^B) + \psi(\pi\lambda_N^A + (1 - \pi)\lambda_N^B)(k_N - x_N).$$

from setting fee k_N .

The payoff to each citizen in group i from access is now:

$$U_{\omega_i}(k_N, \omega_i) = (\pi\lambda_N^A + (1 - \pi)\lambda_N^B)b - k_N + \omega_i.$$

Solving for the unique equilibrium level of access for each group yields the following result.

Lemma 2. *In a state with two economically unequal social groups, fewer members of the poorer group have access to the state legal institution than members of the richer group. Moreover, so long as $\psi > 0$, it will never be optimal for the legal institution to induce full access among members of the poorer group.*

The first part of this result is unsurprising: fewer members of a poorer social group can afford to access their state legal institution than members of a wealthier social group. The second part is perhaps more interesting: as in the first portion of the analysis, it is never optimal for a legal services provider that cares any amount about revenue generation to set a fee that permits *all* members of the poorer social group to access justice. The intuition that follows from these results is that members of a poor group should be more willing to opt into a private rights-protection mechanism, while members of a wealthy group should be more content with the protections provided by the state.

To test this intuition, suppose one group i is cohesive enough to maintain some private alternative institution P^i . Let the other group represent the state's general population. Private, group-based legal institutions like those described above derive their power from inflicting some combination of reputational sanctions, social or economic pressure, and violence. For these tactics to be effective, the group must be both relatively insular and willing to cooperate with the private institution. Since the effectiveness of the group rights-protection mechanism depends solely on the cooperation of the group, not on the behavior of the country as a whole, I assume that the alternative institution's effectiveness increases with λ_{Pi}^i , i.e., with its accessibility to the group it serves.

Then group members derive utility from accessing P^i at fee k_i of

$$U_{\omega_i}(k_i, \omega_i) = \lambda_{P^i}^i b + \omega_i - k_i.$$

Suppose that the private mechanism cares $\eta \geq 0$ about access among members of the group and $\theta > 0$ about revenue. Then the private mechanism derives utility

$$U_{P^i}(k_i) = \eta \lambda_{P^i}^i + \theta h(i) \lambda_{P^i}^i (k_i - x_i)$$

from providing alternative rights protections for fee k_i , where $h(i)$ represents the fraction of the population in group i , and x_i are P^i 's administrative costs.

The game begins when N sets an access fee $k_N \geq 0$. The private provider P^i observes k_N , then sets $k_i \geq 0$ to maximize its own payoff function. Last, citizens in the cohesive group i choose to coordinate on N or on P^i , or not to access either, given k_N , k_i , and λ_N^{-i} . At the same time, the rest of the population ($-i$) can choose only to access N or not given k_N and λ_N^i . The payoffs for N and the citizens remain the same. The following Lemma describes the best response for members of group i , given the choice between paying k_N to access the state legal system N and paying k_i to access the private institution P^i .

Lemma 3. *Members of group B prefer to access the private institution P^B iff the private access fee k_B is sufficiently smaller than the state access fee k_N , such that $k_B < k_N - \pi \frac{b(\omega_A^M - \omega_B^M)}{2\beta}$. Members of group A prefer to access the private institution P^A iff the private access fee k_A is not too high relative to the state access fee k_N , such that $k_A < k_N + (1 - \pi) \frac{b(\omega_A^M - \omega_B^M)}{2\beta}$.*

Instead of being more willing to opt into private rights-protection mechanisms, members of poor groups with relatively low access to state legal protections would, if offered a private group alternative, pay a premium to continue to access the state. By contrast, members of wealthy groups with relatively high access to the state legal institution would pay a premium to opt into a private group-specific alternative. The size of the premium, for each type of group, is increasing in commercial opportunity and the wealth gap between the group and the general population.

The reason for this is as follows: private institutions constructed by and for poor groups face challenges in achieving the level of effectiveness of the state legal institution, even though the group institution's effectiveness only depends on within-group participation. By contrast, a private institution maintained by an economically advantaged group (e.g., merchants; members of a particular industry) can easily surpass the state institution's effectiveness, making it worthwhile to opt in even at higher fees.

This yields the following result in equilibrium.¹⁵

Proposition 6. *A private legal mechanism targeting a poor group emerges only if its administrative costs are significantly lower than the state's. A private legal mechanism targeting a wealthy group emerges even if its administrative costs are higher than the state's.*

Recall that members of wealthy social groups would prefer an informal group mechanism even if it is more expensive to access than the state. Consequently, informal mechanisms with *higher* administrative costs than the state can compete for, and win, wealthy group members away from the state. By contrast, poor social groups will only prefer an informal group mechanism if its fees are significantly lower than the state's. As a result, in order to successfully compete against the state, such a mechanism must have low administrative costs—and the poorer the group, the lower these costs must be.

Although it is outside the scope of this model to allow an institution to select its administrative costs, this does seem congruent with empirical reality: the alternative enforcement mechanisms popular with extremely poor groups often lack substantial procedural protections and rely heavily on cheap methods of punishment. For example, it is relatively cheap to protect property rights by removing the hands of individuals who have been reported by others to disregard these rights—as Islamic fundamentalist groups operating in poor rural areas have been known to do; the property rights protection provided by Mafia groups operates on a similar premise. In the same vein, private mechanisms based in tight-knit ethnic or religious communities are likely able to rely heavily

¹⁵The derivation of the equilibrium and the full equilibrium characterizations used to derive Propositions 6 and 7 and Remark 1 are set forth in the proof in Appendix A.

on volunteers, and to draw their procedures from simple and well-known religious or cultural prescriptions, cutting down on both labor and procedural costs.

Remark 1. *If the state institution N 's administrative costs x_N are low enough to compete successfully, N 's utility from competition increases in the mean wealth ω_i^M of group i iff the fraction $h(i) \in \{\pi, 1 - \pi\}$ of the population in group i is large; otherwise it decreases in ω_i^M . If $i = A$, N 's utility from competition is decreasing in x_N iff N 's equilibrium fee targeting group B is higher than the competitive fee N must set to keep both groups and increasing otherwise; if $i = B$, N 's utility from competition is always decreasing in x_N . N 's utility from competition is increasing in competitor P^i 's administrative costs x_i iff inequality β is not extremely low.*

Competition does not always motivate a state institution to lower access fees. Under some circumstances, a state legal system facing private competition prefers to cede the targeted group to the private competitor and set new access fees for the remaining population. The state legal system will always cede the targeted group when its administrative costs are not competitive with the private institution's. However, even when the state legal system's administrative costs make it competitive, it will only find competition worthwhile under the conditions described in Remark 1. To understand the first of these conditions, recall Lemma 3. By Lemma 3, the richer an advantaged group, the larger the premium they are willing to pay to opt *out* of the state system and into a private institution, while the richer a disadvantaged group, the smaller the premium they are willing to pay to maintain access to the state institution. Thus, the higher the group's mean wealth ω_i^M , the less profitable it is for the state to compete for either type of group—unless the group is so large that its opting out would substantially diminish the state's customer pool.

To understand the second condition, consider the asymmetries between an advantaged group A and a disadvantaged group B . From the perspective of the national legal services provider, competing for the disadvantaged group B becomes increasingly unappealing as x_N increases because this increases the cost to the national provider of setting competitive (i.e. low) fees that members of B can afford to pay (as opposed to simply letting group B access the private institution, and targeting its access fees to the wealthier remaining population). By contrast, competing for an advantaged

group A may be worth-while as administrative costs increase if group A is able to afford to pay so much more than group B that setting a competitive rate for group A is still more beneficial than targeting access fees to the disadvantaged population. Finally, regarding the third condition, N 's utility from competition is generally increasing in the competitor's administrative costs for the reason that N 's competitive fee must use them as a benchmark; thus, the higher they are, the larger N 's competitive fee may be.

Recalling the British case, these results suggest that the threat of competition from private providers would not necessarily motivate the British government to refrain from increasing access fees. First, if the private providers' per-case administrative costs are very low relative to the state's (more likely the case for providers targeting extremely poor groups; for example, the British Sharia Councils that provide services to Muslim immigrants) successful competition might require the state to lower its fees by too much to be worthwhile. Second, even if the British government's administrative costs are low enough to motivate competition, a government concerned with generating revenue may still not find it worthwhile. Small groups that are either extremely advantaged or only slightly disadvantaged relative to the rest of the population may not be worth the trouble. Of course, the use by the state of other means to assert a monopoly over legal services provision—for example, by making private dispute resolution services illegal, as the British government has debated doing with the British Sharia Councils—is outside the scope of the model.

The last result in this paper describes the consequences of competition from alternative, private rights protection mechanisms for overall access to justice.

Proposition 7. *Entry by a private, group-specific legal provider P^i always weakly increases the targeted group's access. If the state competes, access strictly increases for the whole population. If the group opts out, the effect on overall access is ambiguous. A rich group's exit increases the remaining population's access (λ_N^{-i}) iff economic conditions are sufficiently poor ($\beta > b$) and the group's size π and relative wealth $\omega_A^M - \omega_B^M$ are sufficiently large. A poor group's exit always decreases the remaining population's access.*

The first part of this result is intuitive: to be a viable competitor, a private rights-protection

mechanism must be able to offer its target group a weakly better deal than the state, meaning that the targeted group will always be at least weakly better off when it has multiple rights protection options. To compete with such a mechanism, the state must lower its fees—increasing its own accessibility both to the targeted group and to the rest of the population. Consequently, whenever the state chooses to compete, the result is an overall increase in access to justice.

In order to understand the asymmetry in the second part of the result, notice that any group's exit decreases the state institution's overall effectiveness, but the state will raise fees after a poor group exits and lower them after a wealthy group exits. Thus, when a poor group exits, the remaining population is unequivocally worse off: effectiveness is lower, and fees are higher. If a wealthy group exits, the decrease in effectiveness may sometimes be so offset by a decrease in fees that the remaining population's access increases. To see why, imagine a society composed of a wealthy, insular social group, and a poor general population. The more unequal the country, the lower the benefit to market participation, and the richer and larger the insular group relative to the general population, the more the state will target access fees to the group, at the general population's expense. In this situation, the general population's pre-exit access to the state will be quite low. The wealthy group's exit will hit the state institution's revenue collection, but will also decrease its effectiveness, and thus its general appeal. To make up for the loss, the state must lower fees by so much that the general population's access actually improves relative to what it was before.

Does this finding suggest that opt-outs by advantaged groups, such as merchants or businesses, may improve general welfare, while opt-outs by disadvantaged groups may not? Not necessarily. While the model suggests that an opt-out by a wealthy group may improve the general population's welfare under some conditions, wealthy groups' incentives to exit the state legal system do not appear to be aligned with these conditions. For a wealthy group's exit to improve general population access in the model, the benefit to market participation in the country must be limited, and wealth inequality must be high. But by Lemma 3, the size of the premium members of a wealthy group are willing to pay for a private legal institution is increasing in the benefit to market participation, and decreasing in the country's wealth inequality. Thus, the model suggests that there will be less

willingness to exit among wealthy group members under exactly those circumstances when exit might benefit the remaining population. With regard to opt-outs by disadvantaged groups, recall that while these may result in somewhat lower access levels for the remaining population, they also may significantly increase access levels for members of the disadvantaged group itself. Consequently, such opt-outs might still increase baseline access in the country to a property protection mechanism.

Discussion

The use of a state legal system to generate revenue is pervasive. Yet the consequences are both largely unexamined and—as the British case illustrates—potentially substantial. In this paper, I develop a series of formal models to investigate the role of legal systems’ usefulness as revenue generators in determining citizen access to justice and the emergence of competition from private legal services providers. My analysis yields the following general insight: because of the way this feature interacts with other institutional and economic conditions, the determinants of access to justice and legal competition may be fundamentally different in poor and wealthy countries, and for poor and wealthy social groups.

This finding suggests that several existing intuitions about the determinants of access to property rights protections may have limited applicability. For example, the model suggests that legal-institutional bias—long thought to be a key impediment to access to justice—decreases access to a revenue-seeking state legal system in wealthy countries, but may actually increase access in poor countries by improving the institution’s effectiveness while allowing it to set lower fees. Similarly, according to the model, increases in the benefit to market participation—long thought to improve legal systems’ quality and accessibility—do increase demand for (and supply of) of legal rights protections in poor countries, but in some wealthy countries they may actually lead to a *decrease* in general access.

The model also provides some insights into the emergence of legal competition with the state from private legal services providers. I derive the conditions under which members of both ad-

vantaged and disadvantaged groups will prefer a private legal services provider to the state, and show that the presence of private alternatives will not always motivate a revenue-seeking state legal services provider to compete by lowering access fees. I also find that the consequences for overall access to justice of a group's decision to opt out of the state legal system are contingent on wealth. An opt-out by a disadvantaged group benefits the group, but injures the rest of the population. An opt-out by a wealthy group may benefit both parties under some circumstances; however, a wealthy group is less likely to wish to opt out in exactly the circumstances under which its doing so would be beneficial.

While the model's results seem broadly consistent with empirical patterns such as the government's targeting of "deep pockets" with higher court access fees in Britain at the cost of overall access to justice; the use by disadvantaged social groups of inexpensive, but procedurally lacking, private legal services providers; and the relatively high levels of baseline access to justice in some very poor countries with highly biased institutions, more work is needed. The model abstracts away from a number of other political motivations that might also affect the state's preferences regarding access to justice and revenue generation. Future work should endogenize the legal services provider's administrative costs, the degree to which the legal services provider cares about revenue as opposed to access to justice, and the degree to which (and in favor of whom) the legal services provider is biased.

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