

Opinion: California's courts are failing us

By Joe Mathews

Dig deep enough into California's biggest problems, and you'll hit upon a common villain: our court system.

California's housing shortage, its poverty, its poor business climate, and its failing infrastructure all are explained in part by the failure of our underfunded, delay-prone courts. But in public narratives of what's wrong with the state, we have mostly let the courts dodge responsibility for their many crimes against California's future.



Joe Mathews

Why? Our courts have been broken for so long that we've stopped expecting them to work. And so we've become too accustomed to blaming others – regulators, politicians, unions, businesses or even President Trump – for our failure to build a state that meets its population's needs.

But the biggest reason why we've allowed the courts to skate responsibility involves a public underestimation of their importance. While the courts account for a small fraction of the state workforce and budget, they have a huge impact, serving as a faulty foundation for our state's economy and government.

Too often, Californians blame laws—like CEQA, the California Environmental Quality Act—for costly delays in building housing or infrastructure, when more of the blame should go to the courts, argued Emile Haddad, the chairman and CEO of FivePoint, the largest developer of mixed-use communities in coastal California, at a recent Chapman University conference.

“I’m one of those probably odd developers who say they love CEQA,” he said, because it protects open space and adds to the quality of life. The real problem, he said, is “the entire legal system.” He recounted a project that got local government approval in 2003 and permits a decade ago, but still hasn’t happened, as his company is now litigating its 30th lawsuit.

Such legal delays bear a heavy responsibility for our historic housing shortage and add to housing costs that are more than twice the national average. In turn, expensive housing is a huge factor in California’s highest-in-the-nation poverty rate and its persistent homelessness. Poverty is now highest in coastal areas with the most development restrictions, which produce more litigation and costlier housing.

The same court-related delays and resulting costs also plague transportation and water projects, and new businesses. The state courts so utterly failed to resolve California’s prison problems that the U.S. Supreme Court had to step in. And while Californians love to mock our years-behind-schedule high-speed rail project, most of the project’s delays involve the courts.

The delays are likely to get worse, as courts are being asked to do more with less. New state policies on sentencing and marijuana have created new questions and petitions that boost court workloads. And the courts still haven’t recovered from Great Recession cuts that shuttered more than 50 courthouses and 200 courtrooms. Court officers in 49 of 58 counties warned in a February letter to Gov. Jerry Brown that without more money in this year’s budget, they’ll need to cut existing

levels of service.

The pressure on the courts would be even worse if the total number of court filings hadn't declined by 25 percent over the last decade. But that may be bad news. Almost all the decline has been in small claims, challenges to infractions, and minor civil cases. Regular Californians have simply given up on seeking justice in our courts.

"Inadequate funding and chronic underfunding of the courts is just one way a justice system can become unjust," warned California Supreme Court Chief Justice Tani Cantil-Sakauye in a recent speech, noting that since 2011 the state has added 6,408 laws while the judiciary budget has stagnated.

I recently walked three blocks from my office to the Stanley Mosk Courthouse in downtown Los Angeles. Amid the glitter of new urban development, the court building is an eyesore, with visible scars on its walls and roof. Inside, nothing—from bathrooms to WiFi—works particularly well. Lawyers receive trial dates more than two years in the future, court reporters are scarce, and overworked clerks scramble to keep things from breaking down. A lawyer acquaintance who took me around quoted Charles Dickens' "Bleak House," a 19th-century novel about the delays and injustice of England's Court of Chancery.

Broken courts, Dickens wrote, promote a crippling fatalism in society, "a loose belief that if the world go wrong, it was, in some off-hand manner, never meant to go right."

It's way past time for California to pull itself out of this Dickensian muck. Yes, fixing our court system—making it the fastest and most efficient in the country—would be challenging politically. But it also would be relatively cheap, just a couple billion more dollars a year in a state with a \$150 billion budget and a \$2.5 trillion economy.

This budget season, let's return timely justice to the courts, and stop this crime against California's future.

Joe Mathews writes the Connecting California column for Zócalo Public Square.