

# 1 **Lawfare: Economic Theory, Empirical Evidence, and** 2 **Judicial And Economic Policy**

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4 *This article analyzes the phenomenon of Lawfare and judicial corruption in*  
5 *Spain from the perspective of Law and Economics (L&E). The main objective*  
6 *is to examine the extent to which the strategic use of judicial proceedings can*  
7 *become an instrument of political and economic intervention, altering the*  
8 *normal functioning of democratic institutions and the impartial application of*  
9 *the law. It also identifies the incentives that explain the behavior of legal*  
10 *actors and proposes judicial and economic policy measures aimed at reducing*  
11 *these risks. The paper is structured into six parts. First, it presents the*  
12 *theoretical framework of Law and Economics and its application to the study*  
13 *of the Administration of Justice. Second, it addresses the origin and evolution*  
14 *of the concept of Lawfare. Third, it applies the methodology of Law and*  
15 *Economics to this phenomenon, paying particular attention to the incentives*  
16 *of judges, lawyers, prosecutors, politicians, and users of the judicial system.*  
17 *Fourth, it examines various international cases. Fifth, it studies several*  
18 *Spanish cases considered representative of the judicialization of political*  
19 *conflicts. Finally, it formulates proposals for judicial and economic policy*  
20 *aimed at strengthening the efficiency, equity, and democratic legitimacy of the*  
21 *system. The methodology employed combines a review of the specialized*  
22 *literature in Law and Economics, institutional and legal analysis of relevant*  
23 *regulations and judicial decisions, and a comparative study of national and*  
24 *international cases. The approach is fundamentally qualitative, supported by*  
25 *incentive theory, transaction costs, and the analysis of the economic and*  
26 *social effects of judicial decisions. The main conclusion of this paper is that*  
27 *Lawfare can be interpreted as a consequence of the ordinary functioning of*  
28 *the judicial system, in which institutional and individual incentives favor the*  
29 *strategic use of justice for political or economic<sup>1</sup> purposes. Consequently,*  
30 *improving oversight mechanisms, promoting alternative methods of dispute*  
31 *resolution, and reducing social inequalities emerge as essential elements for*  
32 *strengthening judicial independence—rather than discretion and*  
33 *arbitrariness—and, ultimately, legal certainty and democratic quality.*

34  
35 **Keywords:** *Law and Economics; Lawfare; Judicial Corruption;*  
36 *Administration of Justice; Institutional Incentives.*

## 37 38 39 **Law and Economics and the Administration of Justice**

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41 Undoubtedly, it is preferable to be moderately repetitive than to reveal  
42 substantial deficiencies in our methodology. For this reason, we explicitly  
43 distinguish here between *Law and Economics* and *Formal Legal Dogmatics*.

44 *Formal Legal Dogmatic* is the traditional study of the legal system as a  
45 whole or of each of its normative components.

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<sup>1</sup>For all, see Rose-Ackerman (1999).

1 By contrast, *Law and Economics* is a relatively new branch of economics  
2 that studies the motivations behind the origin of legal rules, the effects of their  
3 constituent elements, and, ultimately, the economic and social consequences of  
4 the existence of legal norms, whether or not they are applied and complied with  
5 by those subject to them.

6 Essentially, therefore, *Formal Legal Analysis* and *Law and Economics* share  
7 the same objective, the study of the judicial system, but employ different  
8 methodologies and approaches.

9 A prominent place within *Law and Economics* is occupied by the  
10 organization of the justice system as a public administration, with its inputs,  
11 internal mechanisms, and outputs, while taking into account institutional  
12 constraints and, of course, the rationality and empirical evidence concerning the  
13 behavior of legal actors, including judges, lawyers, and users of legal services.

14 Concepts such as efficiency, equity, transaction costs, externalities,  
15 organizational design, sanctions, and incentives are widespread in this body of  
16 literature.

17 The incorporation of the methodology of *Law and Economics* into the study  
18 of judicial systems already has a relatively young but intense trajectory. The  
19 origins of these approaches within economic science can be found in the work  
20 of Ronald Coase, Nobel Prize laureate in Economics, particularly in his article  
21 *The Problem of Social Cost*<sup>2</sup>, as well as in other equally influential works such  
22 as *The Nature of the Firm*<sup>3</sup>. These contributions contrasted with and influenced  
23 the work of Arthur Cecil Pigou, especially *The Economics of Welfare*<sup>4</sup>, which  
24 advocates government intervention in the resolution of social conflicts through  
25 regulation, notably taxation and sanctions.

26 B) Economic Analysis through the Athens Institute.

27 The Athens Institute has a long tradition of promoting and conducting  
28 research in the field of Law and Economics, in which I have had the opportunity  
29 to participate modestly. Among these contributions are:

30 *Traditional Justice System versus Mediation, from the Perspective of the*  
31 *Economic Analysis of Law*, presented at the 17th Annual Conference and  
32 subsequently published in the *Athens Journal of Business & Economics* (2022).

33 *Efficiency and Equity in the Digitalization Process of the Administration of*  
34 *Justice* presented at the 10th Annual Conference and later published in the  
35 *Athens Journal of Law* (2023).

36 *Low Emission Areas vs. Urban Congestion Taxes* presented at the 9th  
37 Annual Conference on Transportation and subsequently published in the *Athens*  
38 *Journal of Law* (2024).

39 The Athens Institute has already incorporated this line of research as a  
40 relevant field of inquiry and has compiled and published the collective volume:

41 *A Comprehensive Anthology on Law–Ethics–Business*, Athens Institute for  
42 Education and Research, Athens, Greece, 2024, to which I contributed the  
43 chapter:

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<sup>2</sup>Coase, R.H. (1960).

<sup>3</sup>Coase, R.H. (1937).

<sup>4</sup>Pigou, A (1912).

1 *An Economic perspective of the Justice Digitalization Process: The*  
2 *Questions of Efficiency and Equity.*

3 Getting to the point, the paper I presented at the Conference last May, and  
4 which, following the incorporation of numerous comments and reflections, I  
5 have now prepared for publication in this Journal, is entitled:

6  
7 *JUDICIAL CORRUPTION AND THE APPLICATION OF LAW IN SPAIN:*  
8 *A LAW AND ECONOMICS PERSPECTIVE*

9  
10  
11 **Economic Analysis of Lawfare**

12  
13 In most of the literature currently being produced, Lawfare is primarily  
14 associated with the instrumentalization of the judiciary for political purposes, for  
15 example, by using the administration of justice to persecute a political  
16 opponent<sup>5</sup>. However, it should not be forgotten that the reverse phenomenon may  
17 also occur: the direct interference of the judiciary in administrative and political  
18 decision-making, obstructing political action despite lacking any democratic or  
19 constitutional legitimacy to do so.

20 In reality, the term and concept of Lawfare constitute a feedback mechanism  
21 between political and economic power on the one hand and legal institutions on  
22 the other, through which the constitutionally proclaimed separation of powers  
23 may ultimately become little more than an illusion.

24 Nevertheless, without the slightest intention of obstructing this line of  
25 research—quite the contrary, the aim is to reposition it and provide it with  
26 genuinely scientific methods and resources—it is necessary to warn of its  
27 difficulties. One of these difficulties is operational in nature, while the other is  
28 broader, definitive, and philosophical.

29 A) ¿Throwing Stones at One's Own Roof?<sup>6</sup>

30 It is essential to point out that we are dealing with what are commonly  
31 known as white-collar crimes, among which judicial misconduct (prevarication)  
32 is perhaps the most publicized and common. Consequently, we are faced with  
33 what is practically an impossible crime to prosecute, because it is highly unlikely  
34 that a judge reviewing the conduct, ruling, or judgment of another judge will  
35 determine that the matter involves not merely a legal error but a deliberate abuse  
36 of judicial authority, unless, of course, there exists a prior and intense personal  
37 animosity between them<sup>7</sup>

38 The conviction of a judge in Spain, except in cases involving influence,  
39 retaliation, or personal vendettas by other judges or politicians, is virtually  
40 inconceivable. Despite the notable absence of officially published data on the  
41 matter, between 1995 and 2019 only 1.55% of complaints or criminal actions  
42 brought against judges and prosecutors in Spain resulted in convictions. By

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<sup>5</sup>For all, see. Dunlap, C. Jr. (2001).

<sup>6</sup>See Castillo López, J.M (2024).

<sup>7</sup>For all, see: [https://www.elplural.com/sociedad/tribunales/jueces-sancionados-expulsados-con-denados-prision\\_343526102](https://www.elplural.com/sociedad/tribunales/jueces-sancionados-expulsados-con-denados-prision_343526102)

1 contrast, among the general population, the conviction rate in proceedings  
 2 initiated through preliminary investigations exceeds 50%, and rises above 80%  
 3 in cases that proceed with formal charges brought by the Public Prosecutor's  
 4 Office<sup>8</sup>.

5 Judges in Spain enjoy what could be described as a dual form of privileged  
 6 jurisdiction: one legal and the other practical. When a citizen believes that a  
 7 judge has committed a criminal offense, the citizen must proceed by filing a  
 8 criminal complaint, which requires hiring and paying both a lawyer and a court  
 9 representative. In the unlikely event that the complaint is admitted for  
 10 consideration, the investigative stage is likely to be plagued by obstacles and  
 11 procedural difficulties<sup>9</sup>. Ultimately, the case will be heard by a higher court  
 12 whose members may themselves be influenced by political authorities or by  
 13 other judges. In short, a Spanish citizen who believes they have been wronged  
 14 by a judge faces serious obstacles merely in exercising their legal rights. It is  
 15 often difficult to find a lawyer willing to confront a judge, particularly when both  
 16 operate within the same territorial jurisdiction.

17 Corruption among lower-court judges can be explained, like other forms of  
 18 administrative corruption, by expected *ex ante* benefits, local influence  
 19 networks, and the fact that any eventual misconduct will be judged by fellow  
 20 judges. Corruption in higher courts, meanwhile, is more closely related to their  
 21 connections with political power and, naturally, to the benefits that may be  
 22 obtained *both before and after* the relevant decisions are made.<sup>10</sup>

23 Among the numerous complaints submitted by Spanish citizens to the  
 24 European Commission alleging systemic corruption, particular attention has  
 25 been given to claims regarding collusion between certain judges, legal lobbying  
 26 groups, and large corporations, as well as the proliferation of revolving-door  
 27 practices through which judges who recently presided over specific proceedings  
 28 subsequently come to work for the parties who had appeared before them.

29 In Spain, a widespread popular sentiment is expressed through the saying  
 30 that placing a corrupt judge in charge of justice is akin to *putting the fox in charge*  
 31 *of the henhouse*.

32 Although Article 14 of the Spanish Constitution provides that:

33  
 34 *Spaniards are equal before the law, and no discrimination may prevail on grounds*  
 35 *of birth, race, sex, religion, opinion, or any other personal or social condition or*  
 36 *circumstance. The reality is that, for various reasons, more than 10,000 individuals*  
 37 *in Spain enjoy special jurisdictional privileges.*

38 Popular wisdom often explains this situation quite succinctly: *neither*  
 39 *political institutions nor judicial institutions are willing to throw stones at their*  
 40 *own roof*.

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<sup>8</sup>See Comisión Nacional de Estadística Judicial (2025).

<sup>9</sup>For all, see [https://www.tiktok.com/@elconstitucional\\_es/photo/7651530091788258582](https://www.tiktok.com/@elconstitucional_es/photo/7651530091788258582)  
[https://www.elconstitucional.es/es/investigacion/se-activa-caso-togas-grupo-empresarios-se-querellan-contra-presidenta-cgpj-otros-20-magistrados-supremo\\_5202\\_102.html](https://www.elconstitucional.es/es/investigacion/se-activa-caso-togas-grupo-empresarios-se-querellan-contra-presidenta-cgpj-otros-20-magistrados-supremo_5202_102.html)

<sup>10</sup>For all, see Ackerman, S- R. (1999).

1 At a more general level, some of the most influential philosophical  
2 traditions Marxism<sup>11</sup>, Legal Sociology (Bourdieu<sup>12</sup> and Foucault<sup>13</sup>), and  
3 Institutional Positivism<sup>14</sup> have highlighted and analyzed these dynamics.

4 a) Law as an Instrument of Social Domination.

5 Law lacks a truly scientific nature and, in reality, may be used—and  
6 frequently is used in practice—as a useful and decisive instrument for imposing  
7 the interests of the hegemonic or dominant classes upon others through a  
8 normative and budgetary framework that legitimizes inequalities and establishes  
9 economic, political, and policing mechanisms designed to ensure obedience.

10 In *Discipline and Punish*<sup>15</sup>, Michel Foucault argues that modern societies  
11 have evolved from forms of power based on visible physical coercion to more  
12 subtle mechanisms of discipline and institutional control, although repression by  
13 police forces continues to be employed. Similarly, Orde F. Kittrie, in *Law as a*  
14 *Weapon of War*<sup>16</sup>, defines and analyzes the strategic use of law as an instrument  
15 for achieving political and power-related objectives.

16 From this perspective, the concept of Lawfare would be superfluous and  
17 sterile, since domination and control are intrinsic to the role performed by the  
18 legal system within the broader economic and social order.

19 *A first precaution:*

20 b) The Economic Behavior of Legal Actors and Judicial Corruption.

21 Law and Economics (ADE) analyzes the behavior of legal actors—judges,  
22 lawyers, and litigants—as rational agents who respond to economic incentives  
23 in the broadest sense. This implies that the actual functioning of the judicial  
24 system cannot be understood merely as the neutral application of legal rules, but  
25 rather as the outcome of actions undertaken by legal actors in pursuit of their  
26 individual interests<sup>17</sup>.

27 The existence of Lawfare may therefore be interpreted as the normal result  
28 of rational decisions made by legal actors and other political and economic  
29 agents. In general terms, an economic agent will seek to use the judicial system  
30 in a manner that maximizes personal utility, that is, whenever the expected  
31 benefits of using the system exceed the associated costs<sup>18</sup>.

32 B) *Judicial Actors*<sup>19</sup>

33 Who are the legal actors, and what criteria and motivations explain their  
34 behavior?

35 *Judges:* Who are judges? What objectives do they pursue? Are they  
36 philosophers? Are they environmental activists? Do their rulings generally  
37 challenge established power?

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<sup>11</sup>For all, see Cristobo, M. (2014).

<sup>12</sup>For all, see Bourdieu, P. (Coord.) (2000).

<sup>13</sup>For all, see Mieles, E. (2005).

<sup>14</sup>For all, see Días de Assis Neto, N. (2025).

<sup>15</sup>Foucault, M. (2012).

<sup>16</sup>Kittrie, O. (2016).

<sup>17</sup>For all, see Becker, (1968); Posner (1998) y Cooter y Ulen (2016).

<sup>18</sup>For all, see Buchanan, J. y Tullock, G. (1962) y North, P. (1990).

<sup>19</sup>A more detailed description can be found in Castillo López, J.M (2024).

1 *Lawyers and Court Representatives.* ¿Who are lawyers and court  
2 representatives? What objectives do they pursue? Are they generally highly  
3 educated individuals? Are they corporatist in orientation? Do their professional  
4 activities typically place them in conflict with wealthy individuals or public  
5 institutions?

6 *Users of the Judicial System:* ¿Who are they? ¿What do they seek? ¿Are we  
7 pursuing JUSTICE? Or are we simply seeking to win the lawsuit?

8 Judicial corruption can be understood as the result of the ordinary  
9 functioning of the judicial system in Spain and may be summarized as follows<sup>20</sup>.

10 Spain exhibits a relatively high level of public corruption, which constitutes  
11 one of the principal obstacles to achieving an efficient allocation of public  
12 resources and fulfilling other constitutional mandates, particularly those relating  
13 to equity. Among the 180 countries evaluated by Transparency International,  
14 Spain ranks 35th, alongside less developed countries such as Botswana, Cape  
15 Verde, and Saint Vincent and the Grenadines.

16 Within the European Union, Spain ranks 14th out of 27 countries, slightly  
17 above Portugal and Lithuania.

18 Public corruption, and judicial corruption in particular, are among the  
19 principal explanatory factors behind the deficiencies of the rule of law in Spain  
20 and perhaps the most significant obstacles preventing the country from moving  
21 beyond the lower positions in various European rankings.

22 Corruption fundamentally weakens the Administration of Justice in Spain  
23 because it creates substantial barriers to the right of individuals to receive an  
24 impartial trial and seriously undermines public confidence in the judiciary.

25 Judicial corruption is arguably even more serious than other forms of public  
26 corruption because the judicial system represents the last institutional avenue  
27 through which citizens can obtain an adequate response from the rule of law.  
28 Beyond this point lie frustration, alienation from public institutions, and  
29 sometimes the search for individual solutions outside the legal framework.

30 Judicial corruption is largely responsible for the widespread perception  
31 among citizens—and particularly among students, as daily experience in our  
32 profession confirms—that there are more profitable means of achieving  
33 economic, professional, or political objectives than study, effort, or honest work.

34 Corruption among lower-court judges can be explained, as with other forms  
35 of administrative corruption, by expected *ex ante* benefits, local influence  
36 networks, and the fact that any misconduct will ultimately be judged by fellow  
37 judges. Corruption in higher courts is more closely associated with connections  
38 to political power and, naturally, with both *ex ante* and *ex post* benefits.

39 Among the many complaints submitted by Spanish citizens to the European  
40 Commission concerning systemic corruption, particular attention has been given  
41 to allegations regarding collusion between certain judges, legal lobbying groups,  
42 and large corporations, as well as the proliferation of revolving-door practices  
43 through which judges who recently presided over cases later become employed  
44 by the very parties who appeared before them.

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<sup>20</sup>A broader and more detailed analysis can be seen in Castillo López, J.M. (2023).

1 In Spain, a widespread popular sentiment is expressed through the saying  
2 that a corrupt judge is akin to “putting the fox in charge of the henhouse.”

3 Although Article 14 of the Spanish Constitution states that:

4 *Spaniards are equal before the law, and no discrimination shall prevail on*  
5 *grounds of birth, race, sex, religion, opinion, or any other personal or social*  
6 *condition or circumstance* ,the reality is that, for one reason or another, more  
7 than 10,000 individuals in Spain enjoy special jurisdictional privileges.

8 Despite resistance from affected groups—which may even marginalize or  
9 harass those unwilling to participate in corrupt practices, particularly  
10 whistleblowers—it is socially beneficial to acknowledge the existence of judicial  
11 corruption. No society can prosper by concealing reality from itself. Moreover,  
12 only through such recognition can effective mechanisms of prevention and  
13 enforcement be developed.

14 Turning to the other actors within the judicial system, namely lawyers,  
15 justice in Spain is extremely expensive and therefore unequal, depending largely  
16 on the litigants' level of income. In practice, as in many other areas of life, there  
17 are two systems of justice: one for the rich and another for the poor.

18 Large corporations, banks, public institutions, white-collar criminals, drug  
19 traffickers, and similar actors can afford to hire the most accomplished lawyers  
20 and thereby secure a high rate of success in legal proceedings. The market fees  
21 charged by these lawyers are prohibitive for most of the population. Consequently,  
22 individuals lacking substantial financial resources who decide to pursue legal  
23 action must generally rely on court-appointed counsel, who—with a few notable  
24 exceptions—are not typically among the most prestigious or experienced  
25 members of the legal profession.

26 Among other factors, practices that are arguably medieval in nature—such  
27 as mandatory bar membership, professional authorization requirements attorney  
28 fee recovery procedures , and even the institution and role of the \*procurador\*  
29 itself—create both formal and practical barriers to citizens' access to the public  
30 service of justice.

31 Mandatory bar membership is partially responsible for this situation. In  
32 reality, there is no genuinely competitive market for legal services. Compulsory  
33 professional membership effectively transforms the private practice of law into  
34 a quasi-monopolistic enterprise.

35 The number of lawyers in Spain exceeds the European average, as does its  
36 rate of growth. This excess supply encourages lawyers to stimulate demand for  
37 their services, generating costly and lengthy judicial proceedings to resolve  
38 disputes that could undoubtedly be settled more efficiently and fairly through  
39 alternative, non-judicial mechanisms. Such alternatives, however, would  
40 naturally reduce legal fees.

41 Mora-Sanguinetti and Garoupa (2015)<sup>21</sup> found evidence that for every 1%  
42 increase in the number of lawyers, litigation rates increase by approximately  
43 1.4%. Consequently, growth and excess supply in the legal profession do not  
44 result in lower prices for legal services but rather in the generation of additional  
45 judicial proceedings.

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<sup>21</sup>See Vid. Mora-Sanguinetti, J. and Garoupa, N. (2015).

1 Furthermore, legal ethics in Spain largely consist of formal compliance with  
 2 legal rules, including professional codes of conduct derived from mandatory bar  
 3 membership. Among these is the doctrine of professional secrecy, which may  
 4 permit harm to be caused through the concealment of information or even  
 5 through actions that unfairly prejudice individuals who are not clients of the  
 6 lawyer involved.

7 Most lawyers in Spain consider morality to be primarily a matter of private  
 8 life rather than professional practice<sup>22</sup>.

9 A highly respected Catalan lawyer, José María Laporena, who possesses  
 10 first-hand knowledge of this reality, expressed it eloquently:

11 *One piece of advice: never go to a hospital or a courthouse of your own free*  
 12 *will. If you have no alternative—if you are carried in on a stretcher, handcuffed,*  
 13 *or legally compelled to attend—then do so, but never cross their doors without*  
 14 *thinking a thousand times beforehand. While everyone knows where the entrance*  
 15 *doors lead, the exit doors may take you either to the cemetery or to prison. Many*  
 16 *of you reading this may wonder whether competent, honest, upright, fair lawyers*  
 17 *who steadfastly defend the weakest still exist. Without wishing to be corporatist,*  
 18 *I can assure you that they do. Of course they do. During the forty years I*  
 19 *practiced law, I met more than one hundred of them.*

20 In reality, the greatest potential for improving the public justice service lies  
 21 on the demand side, namely by reducing the number of users and cases. In other  
 22 words, the growth of disputes and the choice of judicial avenues for their  
 23 resolution are linked to the bureaucratic culture that affects the operators of the  
 24 Administration of Justice, who function within procedures characterized by  
 25 monopoly power, as is the case with judges but also, and especially, with lawyers  
 26 and court representatives.

27 Accordingly, the principal problems exhibited by the Spanish justice system  
 28 are, first and foremost, corruption and, partly as a consequence thereof, inefficacy,  
 29 inefficiency, and inequity. These have become systemic characteristics.

30 The economic capacity of litigants influences judicial decisions not only  
 31 through their ability to exert pressure on judges but also through their capacity  
 32 to deploy persuasive resources, endure lengthy legal proceedings, and, indeed,  
 33 to litigate at all. As a consequence, Lawfare both originates from and contributes  
 34 to social inequality.

35 Culture and ethics may influence the behavior of legal actors, but they are  
 36 not decisive factors in explaining judicial corruption. Judicial corruption is based  
 37 precisely upon the marginalization of ethical considerations within political and  
 38 judicial processes.

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<sup>22</sup>A list of popular songs demonstrating the disrepute of the Judicial System in Spain can be found at: <https://www.diarioconstitucional.cl/2023/10/22/10-canciones-inspiradas-en-el-mundo-legal/>. The most recent one, dated 22.06.2026, can be seen in <https://www.facebook.com/reel/2084041332464822>. It is important to recall here one of the most important principles of sociology. This idea is formally known as the Thomas Theorem, formulated in 1928 by sociologists William I. Thomas and Dorothy Swaine Thomas. Its fundamental postulate is: *If people define situations as real, then they are real in their consequences.*

1 At times, judicial corruption may operate directly through the issuance of  
2 unjust decisions or through bribery. However, there is also a long list of less  
3 direct mechanisms and practices:

- 4
- 5 • Judges: delaying or accelerating proceedings; admitting or excluding  
6 evidence; admitting or rejecting appeals.
- 7 • Politicians: systematic appeals; publicity and media exposure of judicial  
8 proceedings; transfers and promotions within the judiciary.
- 9

## 10

### 11 **Do Judges Possess Constitutional and Democratic Legitimacy? The Case of** 12 **Mexico**

13

14 Article 1.2 of the Spanish Constitution of 1978 (CE), by virtue of which  
15 "national sovereignty resides in the Spanish people, from whom the powers of  
16 the State emanate: Legislative, Executive and Judicial.

17 In short, aside from the tortuous loopholes, legal dribbling, and similar  
18 devices found in a certain type of legal literature aimed at adapting reality to the  
19 corporate interests of judges, Justice, like the other branches of the State,  
20 originates from the Spanish people, who are the sole holders of national  
21 sovereignty.<sup>2324</sup>

22 Spanish citizens of legal age can elect the Legislative Branch and, by  
23 delegation, the Government, but we cannot elect the Judicial Branch, that is,  
24 judges. Therefore, **judges lack constitutional and democratic legitimacy in**  
25 **Spain.**

26 However, the influence of judges over citizens and over the Government is  
27 extremely significant and even extends to the Legislative Branch, which they  
28 sometimes attempt to instruct on what may be voted on and even on the direction  
29 of the vote.

30 In most countries, power resides in the popular will expressed through  
31 voting.

32 In states governed by the rule of law and democratic systems, governments  
33 at all levels have their activities reviewed by the administration of justice to  
34 ensure that they conform to the law and constitutional principles. That is all.

35 However, the promoters and beneficiaries of legal engineering seek to  
36 mislead public opinion by invoking the indispensable principle of judicial  
37 independence. In reality, they use this concept at their convenience, equating it  
38 with discretion and arbitrariness.

39 This deficiency is not as serious in scientific disciplines, but it is in law,  
40 which lacks this characteristic. Two judges faced with the same facts may issue  
41 different rulings, including in cases involving the death penalty or life  
42 imprisonment.

43 The shortcomings of law as an instrument of social action, despite its  
44 widespread use, are evident. First, because law is not a scientific discipline, its

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<sup>23</sup>See <https://chatgpt.com/c/6a2703f2-0a94-83eb-b50b-58efc07def41>

<sup>24</sup>See Miraut, Martín, L. (2022)

1 local principles and practices lack universal validity. Second, legal education is  
 2 largely based on memorization. Judicial recruitment systems reproduce this  
 3 same pattern. Judges generally do not display major intellectual concerns and  
 4 are not usually voluntary contributors to social causes. Finally, judicial practice  
 5 does not encourage the improvement of law as a discipline because judicial  
 6 decisions are not based on scientific or technical rationality; instead, they are  
 7 governed by the principle of authority, whereby the decision of a judge or court  
 8 higher in the judicial hierarchy carries more weight than that of a lower one,  
 9 without further justification.

10 It is common for judges to become genuine legislators. The abuse of this  
 11 power of judicial review can create significant problems, including with regard  
 12 to the economic policies designed by a parliament elected through popular vote  
 13 and a government supported by a parliamentary majority. The decisions of both  
 14 may be altered or obstructed by institutions whose members have not been  
 15 selected through a process of direct democracy.

16 In order to address this major deficiency, which has not been confronted due  
 17 to the considerable corporate influence exercised by judges in Western countries,  
 18 Mexico implemented a reform<sup>25</sup>, and in 2025 judges began to be elected through  
 19 universal suffrage, naturally only from among individuals possessing the  
 20 required legal professional qualifications<sup>26</sup>. Nevertheless, there have been some  
 21 previous, more limited experiences, at least in the United States, the Northern  
 22 Mariana Islands, Bolivia, and Switzerland.

23 In addition, the case of the International Court of Justice is little known,  
 24 where judges are also elected democratically by the member states<sup>27</sup>.

## 27 **Cases of Lawfare**

28  
 29 In reality, disputes among judicial, economic, and political powers over  
 30 control of the administration of justice for their own benefit or in order to direct  
 31 government policy are both ancient and universal phenomena.

### 33 A) International Sphere.

#### 35 *Latin America*

36  
 37 -The case of Brazil (Lula da Silva, President). One of the most frequently  
 38 cited examples is that of former President Luiz Inácio Lula da Silva. He was  
 39 convicted, removed from office, and imprisoned within the framework of  
 40 Operation Car Wash on charges of corruption and money laundering.

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<sup>25</sup>DECREE amending, adding to, and repealing various provisions of the Political Constitution of the United Mexican States, regarding the reform of the Judicial Branch. OFFICIAL GAZETTE. September 2024.

<sup>26</sup>A detailed description of this process can be found in <https://eljuegodelacorte.nexos.com.mx/eleccion-popular-de-jueces-federales-en-mexico-2025/>

<sup>27</sup>[https://es.wikipedia.org/wiki/Elecciones\\_judiciales](https://es.wikipedia.org/wiki/Elecciones_judiciales)

1 Subsequently, the Federal Supreme Court annulled the convictions on the  
2 grounds of lack of jurisdiction of the court and bias on the part of Judge Sergio  
3 Moro.

4 – Evo Morales in Bolivia (2019) and López Obrador in Mexico (2024). They  
5 were removed from office through judicial intervention.

6  
7 *United States of America: Proceedings Against Donald Trump*  
8

9 He has 34 final convictions from various courts. He has not yet been arrested  
10 or imprisoned.

11 It should be noted that, among other actions, Donald Trump encouraged a  
12 crowd of people to storm the Capitol. This action was carried out and, of course,  
13 those involved were convicted. Donald Trump subsequently pardoned them.

14 With regard to the Trump–Epstein case, there reportedly exists a large  
15 number of documents proving Trump's participation in criminal activities  
16 involving minors. However, with the collaboration of the Department of Justice,  
17 he has so far managed to prevent these documents from becoming public and  
18 consequently from being tried on those grounds.

19  
20 *Netanyahu in Israel*  
21

22 Netanyahu has been subject to various arrest warrants issued since 2024 by  
23 the International Criminal Court concerning deaths caused in the Gaza Strip.  
24 However, he has not yet been arrested in any of the countries he has visited.

25 Netanyahu recently proposed a criminal law reform, now in force, which  
26 includes the death penalty for terrorism offenses committed by Palestinians.

27  
28 B) Cases in Spain.

29 Spain is one of the countries with the highest levels of public corruption in  
30 the European Union<sup>28</sup>, including, of course, judicial corruption.

31 Recently, the following cases have acquired major social relevance, in  
32 chronological order:

33  
34 *The PODEMOS Case and Julio Iglesias*<sup>29</sup>  
35

36 In 2011, a social movement popularly known as the Indignados emerged in  
37 Spain. It protested against the social, economic, judicial, and political  
38 consequences of the bipartisan system established in Spain, characterized by  
39 alternating governments between the PP and the PSOE. The movement  
40 emphasized public corruption, the similarity of the global policies adopted by  
41 both political parties in response to the international financial crisis, and the  
42 resulting social spending cuts. Consequently, it demanded greater participatory  
43 and genuine democracy, public transparency, and social justice.

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<sup>28</sup><https://es.tradingeconomics.com/country-list/corruption-rank?continent=europe>

<sup>29</sup><https://www.chattide.ai/es/chat/>

1 Following this movement, Julio Iglesias and other participants founded a  
 2 political party called PODEMOS. In the European elections of 2014, it won five  
 3 seats. In the general elections of 2015, it obtained 69 seats, and in the June 2016  
 4 elections it reached 71 seats, becoming the country's third political force, only  
 5 14 seats behind the PSOE (85).

6 This spectacular electoral growth and the resulting real political power  
 7 acquired by PODEMOS caused deep concern among the established powers,  
 8 triggering fierce political and judicial persecution against the party and  
 9 particularly against its Secretary General, Julio Iglesias. This persecution may,  
 10 among other factors, have contributed to the reduction of its parliamentary  
 11 representation in subsequent elections: 31 seats in the 2023 elections, two seats  
 12 in the 2024 European elections, and none in the 2026 Andalusian regional  
 13 elections. Mission accomplished.

14 Although a detailed and well-founded analysis of all judicial proceedings  
 15 brought against PODEMOS—most of them related to alleged irregular  
 16 financing—is beyond the scope of this article, it is worth noting that only  
 17 recently have judicial actions been initiated against some of the authors of this  
 18 political persecution. Apparently, Santiago Pedraz, a judge of the National Court,  
 19 has charged Police Commissioner José Manuel Catalán, a former senior official  
 20 of the UDEF, in proceedings seeking to determine whether, under the PP  
 21 government, irregular investigations lacking judicial authorization were  
 22 promoted from the police leadership against PODEMOS and its members of  
 23 parliament between 2015 and 2016.<sup>30</sup>

24 Whatever the outcome of these legal actions, which began only recently, ten  
 25 years after the events in question, the democratic process in Spain was altered in  
 26 an irregular manner by the Judicial Branch through mechanisms unrelated to the  
 27 popular will and, in practice, without any possibility of remedy.

## 28 29 Catalan Autonomy and the Referendum<sup>31</sup>

30  
31 This is one of the cases that has generated the greatest degree of social unrest  
 32 in Spain and the strongest rejection from international political and judicial  
 33 institutions for more than twenty years. The case illustrates, in a comprehensive  
 34 and detailed manner, the combination of judicial and political corruption used to  
 35 alter, through unlawful procedures, the popular will expressed in democratic  
 36 referendums and elections.

37 In Spain, Catalonia, the Basque Country, and Galicia are considered the so-  
 38 called historic communities, which receive differentiated treatment under the  
 39 Constitution. <sup>32</sup>However, the subsequent legislative development of the

<sup>30</sup><https://www.publico.es/politica/tribunales/juez-pedraz-imputa-exjefe-udf-guerra-sucia-podem.html>.

<sup>31</sup>[https://es.wikipedia.org/wiki/Estatuto\\_de\\_Autonom%C3%ADa\\_de\\_Catalu%C3%B1a\\_de\\_2006](https://es.wikipedia.org/wiki/Estatuto_de_Autonom%C3%ADa_de_Catalu%C3%B1a_de_2006)

<sup>32</sup>Article 2 of the Spanish Constitution: The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions that comprise it and solidarity among them all. The three original Historical Communities are Catalonia, the Basque Country, and Galicia, so named because they were the only regions that managed to approve a Statute of Autonomy during

1 autonomous regions has led to a practical homogenization of the level of powers  
2 granted to all of them ("coffee for everyone"), and some regions, such as  
3 Andalusia and Valencia, even possess broader powers and a higher level of  
4 autonomy than the so-called historic communities.

5 Partly for these reasons, but undoubtedly also because of aspirations to  
6 expand its powers and autonomy, the Parliament of Catalonia approved the  
7 reform of the Statute of Autonomy of Catalonia on September 30, 2005.

8 Subsequently, a referendum was held in Catalonia with the purpose of  
9 amending the Statute of Autonomy. The reform was approved and officially  
10 proclaimed by the Resolution of July 3, 2006, of the Central Electoral Board,  
11 declaring the official results of the referendum on the reform of the Statute of  
12 Autonomy of Catalonia, which had been called by Decree 170/2006 of May 18,  
13 issued by the Government of Catalonia, and held on June 18, 2006.

14 Thereafter, in 2006, the Spanish National Parliament approved the reform  
15 through Organic Law 6/2006 of July 19, introducing numerous substantial  
16 changes.

17 However, the Popular Party (PP), despite having obtained only 10.65% of  
18 the total votes cast, filed a historic constitutional challenge on July 31, 2006,  
19 against the reform of the Statute of Autonomy of Catalonia. The appeal  
20 challenged the preamble and 114 of the 223 articles of the text, arguing that it  
21 violated the equality of Spaniards and the constitutional structure of the State.

22 Before the Constitutional Court ruled on the appeal against the 2006 Statute  
23 of Catalonia, the PP promoted changes to the composition of the Constitutional  
24 Court, focusing on the recusal of judges considered progressive and other legal  
25 modifications.

26 Finally, by Constitutional Court Judgment 31/2010 of June 28, 2010, in  
27 Constitutional Challenge No. 8045-2006 filed by the PP, the reform of the Statute  
28 of Catalonia was partially annulled.

29 In short, the political challenge brought before the Constitutional Court and  
30 the subsequent constitutional review of a legal norm approved by both the  
31 regional and national parliaments and directly endorsed by citizens may be  
32 interpreted as the judicialization of a political conflict and an alteration of the  
33 popular will.

34 Subsequently, on September 6, 2017, the Parliament of Catalonia approved  
35 the Catalan Self-Determination Referendum Act, and on September 7 it  
36 approved the Legal and Foundational Transition Act of the Republic, to be  
37 implemented in the event that the referendum produced a favorable result for  
38 independence.

39 The Spanish Government, led by the PP, attempted to physically prevent the  
40 referendum from taking place through the forceful intervention of the National  
41 Police and the Civil Guard, and challenged the Transition Act before the  
42 Constitutional Court, which subsequently declared it unconstitutional and void.

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the Second Republic (1931-1936). Subsequently, through various statutory reforms, other autonomous communities have also legally defined themselves as "historical nationalities," such as Andalusia, Aragon, the Balearic Islands, the Canary Islands, and the Valencian Community.

1 Despite the intense police repression, broad popular participation enabled  
2 the referendum to take place, producing an overwhelming result in favor of  
3 Catalan independence.

4 A total of 43.03% of eligible voters participated. Of those voting, 92.01%  
5 voted YES and 7.99% voted NO.

6 For its part, the Criminal Chamber of the Supreme Court, with an ultra-  
7 conservative judge, Mr. Marchena, acting as rapporteur—a figure repeatedly  
8 criticized for his stance against public freedoms in Spain, particularly regarding  
9 progressive judges, citizens, and politicians—sentenced a significant number of  
10 pro-independence leaders to lengthy prison terms, which were subsequently  
11 enforced.<sup>33</sup>

12 The most significant sentences were:

- 13
- 14 • Oriol Junqueras: 13 years of imprisonment and disqualification from public  
15 office.
- 16 • Raül Romeva, Jordi Turull, and Dolors Bassa: 12 years.
- 17 • Carme Forcadell: 11 years and six months.
- 18 • Joaquim Forn and Josep Rull: 10 years and six months.
- 19 • Jordi Sánchez and Jordi Cuixart: 9 years (for sedition only).
- 20

21 We are obviously dealing with convictions handed down by the Supreme  
22 Court for political reasons.

23 Not all courts handling cases related to the Procés reached the same  
24 conclusions. The National Court, for example, acquitted Josep Lluís Traperó, the  
25 Chief of the Mossos d'Esquadra, who had been accused because of his refusal to  
26 violently repress citizens who came to vote and was ultimately acquitted.  
27 Likewise, the High Court of Justice of Catalonia (TSJC) issued several rulings  
28 opposing the imposition of prison sentences on participants in the referendum.

29 In 2021, the Spanish Government approved a series of pardons. In general  
30 terms, these did not overturn the convictions themselves; rather, while the  
31 disqualification penalties remained in force, the prison sentences were lifted.

32 In 2024, the National Parliament approved the Amnesty Law, subsequently  
33 upheld by the Constitutional Court. This law extinguished and eliminated the  
34 criminal, administrative, and financial liability arising from convictions linked  
35 to the Procés.

36 The law nullified the effects of convictions imposed on pro-independence  
37 activists who participated in the Procés and terminated pending judicial proceedings  
38 related to those events.

39 However, even before the publication of a first draft of the bill, the General  
40 Council of the Judiciary (CGPJ) publicly opposed the possibility of an amnesty  
41 for this purpose, arguing primarily that it would potentially violate the principle  
42 of separation of powers.<sup>34</sup>

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<sup>33</sup>For all, Vid. [https://es.wikipedia.org/wiki/Manuel\\_Marchena](https://es.wikipedia.org/wiki/Manuel_Marchena)

<sup>34</sup>[https://www.antena3.com/noticias/espana/cgpj-aprueba-mayoria-declaracion-institucional-le-y-amnistia\\_2023110665493abab2761500019d3fca.html](https://www.antena3.com/noticias/espana/cgpj-aprueba-mayoria-declaracion-institucional-le-y-amnistia_2023110665493abab2761500019d3fca.html).

1 Ignoring the many examples and traditions of amnesties around the world  
 2 and in Spain itself, the Council approved a declaration, with only eight votes in  
 3 favor out of its 145 members, stating that the approval of such legislation would  
 4 amount to the *abolition* of the rule of law in Spain.

5 The principal criticism expressed by the progressive members of the  
 6 Council concerned the fact that no bill had yet been formally registered in the  
 7 Congress of Deputies and that the Council's powers extend only to issuing  
 8 reports on draft legislation prepared by the Government, not to exercising control  
 9 over parliamentary initiatives or agreements reached by political groups.

10 There were also unprecedented protests and public demonstrations by  
 11 judges against the amnesty outside courthouses while wearing their judicial  
 12 robes. Some judges have even sought to prevent its implementation through  
 13 procedures that have been described as irregular, clearly dilatory, and  
 14 manipulative.<sup>35</sup>

15 This situation has been interpreted by some sectors as a paradigmatic  
 16 example of lawfare, in which the judicial system allegedly influenced a political  
 17 process that had been duly approved by the relevant parliaments and the  
 18 Constitutional Court and endorsed by citizens through various referendums.

19  
 20 *Conviction of the Attorney General by the Supreme Court, Second Chamber*<sup>36</sup>

21  
 22 The proceedings originated from the alleged disclosure of confidential  
 23 information relating to an email exchange between the legal defense of Alberto  
 24 González Amador, the partner of the President of the Regional Government of  
 25 Madrid from the Popular Party (PP), and the Public Prosecutor's Office.  
 26 González Amador was under investigation for several alleged offenses. The  
 27 specific email contained a proposal for a plea agreement in connection with an  
 28 investigation into alleged tax crimes.

29 By Judgment No. 1000/2025, the Criminal Chamber of the Supreme Court  
 30 imposed the following penalties on Attorney General Álvaro García Ortiz by a  
 31 majority of five votes to two:

32  
 33 \* Two years of special disqualification from holding the office of Attorney  
 34 General.

35 \* A fine equivalent to twelve months at a daily rate of €20, amounting to a  
 36 total of €7,200.

<sup>35</sup><https://www.youtube.com/watch?v=SIImV6njt0Kk>.

<sup>36</sup>“We have the Supreme Court under control from behind the scenes.” These statements by Mr. Cosido, from internal communications of the Popular Group in the Spanish Senate, were widely reported by some media outlets in Spain. The Popular Party spokesperson heaped praise on Manuel Marchena, whom he considers “a great jurist” and proposes as president of the General Council of the Judiciary (CGPJ), believing him capable of ensuring that the votes of this body “are not 11-10 but closer to 21-0.” He continued, stating that with Mr. Marchena's presence on the Supreme Court, “We will control the Second Chamber from behind the scenes.” See also [https://www.elplural.com/politica/cosido-pillado-en-whatsapp-controlaremos-desde-de-tras-la-sala-segunda\\_206595102](https://www.elplural.com/politica/cosido-pillado-en-whatsapp-controlaremos-desde-de-tras-la-sala-segunda_206595102).

1       \* Payment of court costs, including those incurred by the private  
2 prosecution.

3  
4       According to the author's interpretation, the Supreme Court was unable to  
5 prove the Attorney General's direct responsibility and merely stated in its  
6 judgment that the disclosure must have originated from someone within his  
7 "immediate circle" and "with his knowledge." The Court also held García Ortiz  
8 responsible for issuing a press release, reasoning that "a false news report cannot  
9 be answered through the commission of a crime."

10       It should be noted that, among other matters, the Attorney General had  
11 expressed a favorable opinion regarding amnesty for Catalan political leaders,  
12 contrary to the position adopted by the Criminal Chamber of the Supreme Court,  
13 which had imposed severe sentences upon them.

14       Needless to say, judicial and prosecutorial associations expressed opposing  
15 views regarding the conviction. In general terms, conservative associations  
16 supported the judgment, while progressive associations opposed it.<sup>37</sup>

17       As the Spanish saying goes, "he who makes the law also makes the  
18 loophole." During a lecture before a conservative audience, the speaker Andrés  
19 Martínez Arrieta reportedly remarked at the conclusion of the event—to the  
20 amusement of those present—that he had to leave in order to finalize the judgment  
21 "against the Attorney General." To my knowledge, no legal proceedings have even  
22 been initiated against the speaker for the alleged disclosure of confidential  
23 information<sup>38</sup>.

24       According to this perspective, the reputation of the Criminal Chamber of the  
25 Supreme Court has deteriorated to levels incompatible with the important role it  
26 plays within the Spanish State. The decline in its public image, resulting from  
27 what critics regard as several controversial judgments, has become so

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<sup>37</sup><https://www.rtve.es/noticias/20251120/division-jueces-fiscales-condena-garcia-ortiz-piden-prudencia-conocer-sentencia/16824513.shtml>.

<sup>38</sup>[https://www.elplural.com/sociedad/tribunales/magistrado-lidera-condena-fiscal-general-impar-tir-curso-pagado-acusacion-senores-tengo-poner-sentencia\\_366025102](https://www.elplural.com/sociedad/tribunales/magistrado-lidera-condena-fiscal-general-impar-tir-curso-pagado-acusacion-senores-tengo-poner-sentencia_366025102)  
<https://www.youtube.com/watch?v=5U0jh4Xu4GA>.

1 pronounced that the Court has become the subject of jokes, satirical verses, and  
2 even popular Christmas songs.<sup>3940</sup>

3 This phenomenon can be related to one of the most important principles in  
4 sociology, formally known as the *Thomas Theorem*, formulated in 1928 by  
5 sociologists William I. Thomas and Dorothy Swaine Thomas:

6 *If men define situations as real, they are real in their consequences.*

7 In conclusion, according to this interpretation, the Criminal Chamber of the  
8 Supreme Court engages in a form of Lawfare that is widely recognized by many  
9 specialists in the field and constitutes a significant factor in the deterioration of  
10 democracy in Spain. Even more serious, in this view, is the fact that its members  
11 enjoy effective impunity regarding potentially unlawful conduct, since they  
12 ultimately participate in adjudicating complaints and legal actions brought  
13 against themselves a situation commonly summarized by the saying that *no one*  
14 *throws stones at their own roof.*

15  
16 *Proceedings Concerning the Wife and Brother of the Spanish Prime Minister,*  
17 *Pedro Sánchez*

18  
19 The judicial proceedings against Begoña Gómez Fernández, the wife of the  
20 Prime Minister, stem from an investigation initiated in April 2024 by Investigative  
21 Court No. 41 of Madrid, presided over by Judge Juan Carlos Peinado, following a  
22 complaint filed by the far-right organization *Manos Limpias*.

23 The proceedings concern activities associated with an extraordinary  
24 academic chair that Gómez directed at the Complutense University of Madrid.

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<sup>39</sup>Several businessmen have initiated legal actions that, according to information disseminated by various media outlets, affect the President of the General Council of the Judiciary (CGPJ) and about twenty magistrates of the Supreme Court in what some have already begun to call the "Robe Case." The main figure in this battle is José Manuel Martínez Pomares, a businessman from Alicante who claims he was convicted for a hit-and-run he did not commit. His argument is based on a documentary discrepancy that he has been trying to have reviewed for years: the injured party's complaint placed the accident on November 22, 2003, but the medical report cited by Martínez Pomares records medical care on November 21, 2003, that is, the day before. The documentary sequence begins with the Supreme Court's refusal to authorize an extraordinary appeal for review. On November 11, 2019, a chamber consisting of Manuel Marchena Gómez, Juan Ramón Berdugo Gómez de la Torre, and Ana María Ferrer García, with the latter drafting the opinion, denied permission to review the sentence that had sentenced Martínez Pomares for the alleged hit-and-run. The Supreme Court did not simply deny the existence of the date discrepancy. Its reasoning was different: it understood that this issue was already known or could have been discussed in the original proceedings, and that the medical document obtained years later was not new or unequivocally conclusive evidence sufficient to break the finality of the sentence. The documentary sequence begins with the Supreme Court's refusal to authorize an extraordinary appeal for review. On November 11, 2019, a chamber consisting of Manuel Marchena Gómez, Juan Ramón Berdugo Gómez de la Torre, and Ana María Ferrer García, with the latter drafting the opinion, denied permission to review the sentence that had sentenced Martínez Pomares for the alleged hit-and-run. [https://www.elconstitucional.es/es/investigacion/se-activa-caso-togas-grupo-empresarios-se-querellan-contra-presidenta-cgpj-otros-20-magistrados-supremo\\_5202\\_102.html](https://www.elconstitucional.es/es/investigacion/se-activa-caso-togas-grupo-empresarios-se-querellan-contra-presidenta-cgpj-otros-20-magistrados-supremo_5202_102.html)

<sup>40</sup>[https://cronicaglobal.elespanol.com/politica/20231222/lanzan-villancico-sala-penal-del-tribunal-supremo/819168217\\_0.html](https://cronicaglobal.elespanol.com/politica/20231222/lanzan-villancico-sala-penal-del-tribunal-supremo/819168217_0.html);

1 According to the author's interpretation, this is one of several examples of  
2 what are described as exploratory or speculative investigations conducted by  
3 Judge Peinado with a clear Lawfare objective, since the matter would allegedly  
4 lack substantial public relevance were it not for the fact that the person under  
5 investigation is the spouse of the Prime Minister.

6 The case is presented as a typical example of Lawfare and abuse of  
7 authority<sup>41</sup>. Judge Peinado initiated the investigation against Mrs. Gómez on the  
8 basis of a complaint submitted by the ultra-conservative association *Manos*  
9 *Limpias*, which reportedly relied exclusively on newspaper clippings. According  
10 to this interpretation, when no conduct of criminal relevance was identified, the  
11 judge initiated further exploratory investigations covering a period of more than  
12 ten years in search of any potentially incriminating evidence.

13 The conduct of this judge is considered noteworthy and characteristic of  
14 Lawfare practices because, according to critics, whenever the Prime Minister  
15 participates in a significant international institutional event, the judge issues a  
16 highly publicized and controversial ruling in connection with the proceedings,  
17 thereby ensuring extensive coverage by both domestic and international media  
18 outlets. Subsequently, the Madrid Provincial Court frequently overturns these  
19 rulings, although such reversals receive considerably less media attention.

20 Among the Spanish public, perhaps the most memorable aspect of these  
21 proceedings has been the widely publicized episode in which Judge Peinado,  
22 while conducting procedural acts at the Moncloa Palace, reportedly insisted that  
23 his chair be placed upon a raised platform above the level of the other  
24 participants present.

25 According to the author, the judge's pursuit of publicity and Lawfare tactics  
26 has continued unabated. As of June 21, 2026, Spanish media<sup>42</sup> reported that  
27 Judge Peinado had decided to open trial proceedings against the Prime Minister's  
28 wife and had additionally ordered the withdrawal of her passport, prohibited her  
29 from leaving the country, and required her to appear before the court twice each  
30 month. These measures, which are relatively uncommon, were reportedly  
31 adopted at the request of the ultra-Catholic organization Hazte Oír.

32 It should be noted that Mrs. Gómez frequently accompanies her husband on  
33 international trips and is under permanent police protection. Consequently,  
34 according to this interpretation, concerns regarding a risk of flight can only be  
35 understood within the framework of Lawfare.

36 Furthermore, when the events under investigation allegedly occurred, the  
37 current Prime Minister neither held that office nor occupied any significant  
38 position within the Spanish Socialist Workers' Party (PSOE).

39 Accordingly, the proceedings are characterized here as a judicial  
40 intervention pursued for a clearly political purpose and constituting an example  
41 of Lawfare.

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<sup>41</sup>We are not aware in Spain, nor in any other country, of any language having established a name for *lawfare operators*, promoters of lawfare, but given the current state and dissemination of this issue, perhaps in a short time we will find the widespread use of *lawfarer*.

<sup>42</sup><https://elpais.com/espana/2026-06-20/peinado-abre-juicio-oral-a-begona-gomez-y-le-retira-el-pasaporte.html>.

1 For his part, David Sánchez Pérez-Castejón, the brother of the Spanish  
2 Prime Minister, is currently facing trial concerning his recruitment by the  
3 Provincial Council of Badajoz, where he initially served as coordinator of  
4 activities for the provincial conservatories and later assumed other  
5 responsibilities related to the performing arts.

6 He took up the position in June 2017.

7 At that time, the current Prime Minister, Pedro Sánchez, neither occupied  
8 that office nor held any significant responsibility within the PSOE.

9 None of the other applicants challenged the appointment. However, the far-  
10 right organization \*Manos Limpias\* filed a complaint.

11 The Public Prosecutor's Office has requested acquittal on the grounds that  
12 the alleged offenses have not been substantiated.

13 The oral hearing has already taken place, although no judgment has yet been  
14 issued. Nevertheless, for several months the case was among the most widely  
15 reported stories on private television channels and frequently served as the lead  
16 item in news broadcasts.

17 In essence, according to this interpretation, this pattern of Lawfare is  
18 repeatedly observed in Spain.

19 The organizational model known as Lawfare, or judicial warfare, consists  
20 of the instrumental use of judges and courts to weaken political adversaries. It  
21 operates through an ecosystem in which media actors and civic-judicial  
22 organizations reinforce one another by circulating rumors and unverified  
23 information in order to provoke the opening of judicial investigations.

24 Courts, particularly those presided over by judges characterized by critics  
25 as ultra-conservative, admit these complaints and lawsuits on the basis of media  
26 reports, leading to preliminary investigations. The immediate public and media  
27 impact generated by such proceedings constitutes, according to this view, their  
28 principal objective.

29 Judges then summon journalists or individuals involved in the matter to  
30 testify, thereby generating new headlines that feed the original cycle of publicity  
31 and alleged misinformation.

32 The primary purpose of this modus operandi is to impose what in Spain is  
33 commonly referred to as the \*pena de telediario\* ("television-news  
34 punishment"), namely reputational damage through public exposure of the  
35 individual under investigation, regardless of whether the proceedings are  
36 ultimately dismissed for lack of evidence or conclude without a final conviction.  
37 When dismissals or acquittals do occur, these outcomes are generally not  
38 publicized with the same intensity and are sometimes, according to critics,  
39 effectively concealed from public attention.

40  
41 *The Cases Concerning the Wife and Brother of the Spanish Prime Minister,*  
42 *Pedro Sánchez*

43  
44 The judicial proceedings against Begoña Gómez Fernández, the wife of the  
45 Prime Minister, consist of an investigation initiated in April 2024 by  
46 Investigative Court No. 41 of Madrid, presided over by Judge Juan Carlos

1 Peinado, following a complaint filed by the far-right organization Manos  
2 Limpias.

3 The proceedings are related to activities connected with the extraordinary  
4 academic chair that she directed at the Complutense University of Madrid.

5 According to the author's interpretation, this is one of the examples of  
6 exploratory investigations conducted by Judge Peinado with a clear Lawfare  
7 purpose, since the matter would allegedly lack objective relevance were it not  
8 for the fact that the person under investigation is the spouse of the Spanish Prime  
9 Minister.

10 The case is presented as a typical example of Lawfare and abuse of power.  
11 Judge Peinado initiated an investigation against Mrs. Begoña Gómez based,  
12 allegedly, on the original complaint submitted by the ultra-conservative  
13 organization Manos Limpias. That complaint reportedly relied exclusively on  
14 newspaper clippings. According to this interpretation, after failing to identify any  
15 conduct of criminal relevance, Judge Peinado launched a further exploratory  
16 investigation on his own initiative, searching for any potentially incriminating  
17 facts covering a period of more than ten years.

18 The conduct of this judge is regarded by critics as noteworthy and characteristic  
19 of Lawfare practices because, whenever the Prime Minister participates in an  
20 important international institutional event, the judge allegedly issues a highly  
21 publicized and controversial ruling in connection with the proceedings, thereby  
22 ensuring coverage by both domestic and foreign media outlets. Regularly, a few days  
23 later, the Madrid Provincial Court overturns these rulings, although such reversals  
24 naturally receive substantially less media attention.

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27 that, while conducting procedural acts at the Moncloa Palace, his chair be placed  
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31 Judge Peinado had decided to open oral trial proceedings against the Prime  
32 Minister's wife and had additionally ordered the withdrawal of her passport,  
33 prohibited her from leaving the country, and required her to appear before the  
34 court twice each month. Such measures are relatively uncommon and were  
35 reportedly adopted at the request of the ultra-Catholic organization Hazte Oír. It  
36 should be noted that Mrs. Begoña Gómez frequently accompanies her husband  
37 on international trips and is under permanent police protection. Consequently,  
38 according to this interpretation, concerns regarding a risk of flight can only be  
39 understood within the framework of Lawfare.

40 Furthermore, when the events under investigation allegedly occurred, the  
41 current Prime Minister neither held that office nor occupied any significant  
42 position within the Spanish Socialist Workers' Party (PSOE).

43 Accordingly, these proceedings are characterized here as a judicial  
44 intervention pursued for a clearly political purpose and constituting an example  
45 of Lawfare.

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2 Minister, is currently standing trial concerning his appointment by the Provincial  
3 Council of Badajoz, where he initially served as coordinator of activities for the  
4 provincial conservatories and later assumed other responsibilities related to the  
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12 the alleged offenses have not been proven.

13 The oral hearing has already taken place, although no judgment has yet been  
14 issued. Nevertheless, for several months the case was among the most widely  
15 reported stories on private television channels and frequently served as the lead  
16 item in news broadcasts.

17 In essence, according to this interpretation, this pattern of Lawfare is  
18 repeatedly observed in Spain.

19 The organizational model known as Lawfare, or judicial warfare, consists  
20 of the instrumental use of judges and courts to weaken political adversaries. It  
21 operates through an ecosystem in which media actors and civic-judicial  
22 organizations reinforce one another by circulating rumors and unverified  
23 information in order to provoke the opening of judicial investigations.

24 Courts, particularly those presided over by judges whom critics characterize  
25 as ultra-conservative, admit these complaints and lawsuits on the basis of media  
26 reports, leading to preliminary investigations. The immediate public and media  
27 impact generated by such proceedings constitutes, according to this view, their  
28 principal objective.

29 Judges then summon journalists or other individuals involved in the matter  
30 to testify, thereby generating new headlines that feed the original cycle of  
31 publicity and alleged misinformation.

32 The primary purpose of this *modus operandi* is to impose what in Spain is  
33 commonly referred to as the *pena de telediario* ("television-news punishment"),  
34 namely reputational damage through the public exposure of the person under  
35 investigation, regardless of whether the proceedings are ultimately dismissed for  
36 lack of evidence or conclude without a final conviction. When dismissals or  
37 acquittals do occur, these outcomes are generally not publicized with the same  
38 intensity and are sometimes, according to critics, effectively concealed from  
39 public attention.

40  
41 *The Case of Former Prime Minister José Luis Rodríguez Zapatero*

42  
43 The airline company Plus Ultra received a public rescue loan of €50 million  
44 as part of the economic measures adopted in response to the effects of the  
45 COVID-19 pandemic.

1 Certain links have been identified between some executives of this company  
 2 and Mr. José Luis Rodríguez Zapatero. However, there is no evidence that Mr.  
 3 Rodríguez Zapatero participated in the decision to grant the loan by the Spanish  
 4 Government. Furthermore, at the time the loan was approved, Mr. Rodríguez  
 5 Zapatero held no public office within the Government.

6 During the course of the investigation, the police reportedly discovered  
 7 jewelry in the office of José Luis Rodríguez Zapatero.

8 At present, the original issue concerning the Plus Ultra loan has largely  
 9 disappeared from the proceedings. Instead, both the investigation and media  
 10 attention have become focused on determining the origin of the jewelry. This is  
 11 the current status of the case.

12  
 13 *¿A Judicial Coup d'État?*

14  
 15 Although this term does not formally exist within the Spanish legal system,  
 16 it has increasingly become part of public discourse in Spain. The expression is  
 17 now used not only by ordinary citizens but also by independent legal scholars  
 18 and practitioners.

19 A significant number of judges and university professors in Spain have  
 20 adopted this position and have advanced arguments in support of it.<sup>43</sup>

21 The retired Supreme Court Justice Martín Pallín has argued that Spain is  
 22 experiencing a form of judicial coup d'état. Drawing upon the classic study by  
 23 Curzio Malaparte (1898–1957), *The Technique of the Coup d'État*, he contends  
 24 that the seizure of state power does not require military force alone. Rather, it is  
 25 essential to gain influence over all spheres of power, including the media  
 26 apparatus and the judicial system, in order to achieve political objectives.

27 According to this perspective, the exercise of influence over judicial  
 28 institutions may become a decisive instrument for altering political outcomes,  
 29 limiting the effectiveness of elected governments, and reshaping the balance of  
 30 power without resorting to traditional forms of military intervention.

31 The concept of a "judicial coup d'état" is therefore used by some  
 32 commentators to describe situations in which judicial institutions are perceived  
 33 as intervening in political processes in ways that exceed their conventional  
 34 constitutional role. Supporters of this interpretation argue that such interventions  
 35 may have effects comparable to those historically associated with non-  
 36 democratic transfers of power, while critics maintain that judicial review and  
 37 constitutional oversight are essential functions of the rule of law and democratic  
 38 governance.

39 Consequently, the debate remains highly controversial and reflects broader  
 40 disagreements concerning the appropriate relationship between judicial  
 41 independence, democratic legitimacy, constitutional review, and political  
 42 accountability within contemporary democratic systems.

43  


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 43 <sup>43</sup>[https://www.lavozdelsur.es/opinion/golpe-estado-judicial\\_348971\\_102.html](https://www.lavozdelsur.es/opinion/golpe-estado-judicial_348971_102.html). Sr. Martín Pallín, Magistrado emérito del Tribunal Supremo, Sr. Javier Pérez Royo, Catedrático de Derecho Constitucional, Juez Baltasar Garzón, Juez José Castro.

1 **Conclusions: ¿What Should Be Done? Economic and Judicial Policy**

2 1. The analysis developed in this paper allows us to draw a central  
3 conclusion: *Lawfare* should not be understood solely as a legal anomaly or an  
4 instance of individual ethical misconduct, but rather as a possible—and even  
5 foreseeable, outcome of institutional design and the incentives operating within  
6 the judicial system.

7 2. In contrast to traditional legal analysis, which focuses on the formal  
8 interpretation of legal rules, **\*\*Law and Economics (L&E)\*\*** examines the  
9 incentives, behaviors, and economic and social consequences generated by legal  
10 institutions.

11 From the perspective of Law and Economics, the strategic use of law for  
12 political or economic purposes arises when the expected benefits of  
13 instrumentalizing the justice system exceed the associated costs. Consequently,  
14 the problem is primarily structural rather than merely behavioral.

15 3. Judicial warfare operates in two directions: from judges to politicians and  
16 from politicians to judges.

17 4. Lawfare is both a consequence of social inequalities and a cause of greater  
18 social inequalities. Therefore, greater economic justice would contribute to  
19 reducing Lawfare.

20 5. Ethical, moral, cultural, and similar variables, although potentially  
21 relevant, exert only a limited influence on Lawfare, as is the case with the  
22 broader economic and social system.

23 6. Ethics, morality, and culture are potentially relevant variables but, in  
24 practice, have relatively little influence.

25 7. The separation of powers may be altered through reciprocal influences  
26 among the different branches of government.

27 8. The economic capacity of litigants affects access to justice, the duration  
28 of legal proceedings, and the ability to sustain complex litigation, thereby  
29 potentially increasing social inequalities.

30 9. It is not necessary to rely solely on military force to gain control of the  
31 State. It is equally important to exercise influence over all spheres of power,  
32 including the media apparatus and the judicial system, in order to achieve  
33 political objectives.

34 10. Measures aimed at combating Lawfare should focus on institutional  
35 reform, increasing transparency, strengthening oversight mechanisms, and  
36 reducing incentives for the abusive use of judicial procedures. In this regard, it  
37 is advisable to promote alternative dispute-resolution mechanisms, such as  
38 mediation and arbitration, in order to reduce litigation and its associated social  
39 costs.

40 11. Ultimately, reducing economic and social inequalities constitutes a  
41 necessary condition for limiting Lawfare, since the unequal distribution of  
42 resources facilitates both its emergence and its effects on democratic quality,  
43 equality before the law, and public confidence in the justice system.

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