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ARTICLE

Special Issue: Informal Judicial Institutions—Invisible Determinants of Democratic Decay

What Does it Take to Become a Judge in Spain? An Informal First Step into a Formal World

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Abstract
One of the most prominent informal institutions that affect access to the judicial career is the system of coaching to prepare for the state exams to access the judiciary. This Article focuses on the relevance and impact of that informal institution, together with other informal aspects that affect the process of judicial selection. It is claimed that the system of preparation for judicial state exams has a crucial impact on the composition of the judiciary. Its informality and peculiar features however raise important democratic concerns due to its lack of transparency, the important economic barriers it imposes, and its longstanding impact on judicial culture.

Keywords: Judicial careers; access to the judiciary; judicial selection; coaching and training; informal judicial institutions; formalism; transparency

A. Introduction

The structure, career, governance, and internal functioning of the judiciary in Spain rely heavily on regulation and formalism as a guarantee of capacity, merit, equality, independence, and impartiality. The Spanish legal culture tends to place a high value on formality as a guarantee of objectiveness and to counterbalance the historical inclination toward clientelism. Formality is seen as a shield against political influence and a natural antidote to the inclination toward informality embedded in Spanish social culture. Informal practices, however, emerge wherever regulation leaves, intentionally or not, vacuums that practice naturally tends to fill.

This Article focuses on what we have found to be the most prominent informal institution that affects the system of access to a judicial career: The system of coaching to prepare for the judicial exams. This Article will therefore focus on the relevance and impact of that informal institution, together with other informal aspects that affect the process of judicial selection—an otherwise extremely formalized system. It is claimed that that system constitutes one of the more important examples of an informal institution, not only for its generalization, resilience, social perception, and endurance, but also because of the crucial, real and perceived, impact that it has on the composition of the judiciary, on the social perception of the judicial "class" and on its own identity. In particular, it is posited that the informality and peculiar features that surround the training period for the state exams, raises important democratic concerns for three essential

reasons: First, its lack of transparency; second, it raises important economic barriers to potential candidates; third, it has a longstanding impact on judicial culture, on the understanding of the law, as well as on the professional socialization of the members of the judiciary.

This Article will first offer a brief historical and contextual overview of the formalization of the status and regulation of the judiciary in Spain, as well as an overview of the system of state examination that serves as the main avenue for access to the judiciary. It will then focus on the period of preparation for the state exam and conceptualize it as an informal institution. The Article will then present two important sets of informal practices that embody entrenched attitudes and that have an important impact on the overall system of access to the judiciary: The emptying of the selective function of the Judicial School and reluctance toward lateral access to the judiciary. We will end with a conclusion.

B. History and Context: The Roots of Formality

Informality seemingly has little place in the Spanish judicial system and culture. First, as is the case for many other European states, the status of judges and the functioning of the judiciary are thoroughly regulated at the constitutional, legal, and regulatory levels. All aspects of judicial life, including the functioning and every single aspect of the composition of courts are thoroughly regulated. Second, the model chosen for the Spanish judiciary—the bureaucratic model—and the fact that Spain belongs to the civil law tradition create a broader framework that places a very high value on attachment to formality, which is often regarded as a synonym for legality. Third, the *raison d'être* of the bureaucratic judiciary in Spain is a direct reaction against the political dominance of the judicial world that prevailed until the second half of the 19th century—regulation and its strict observance are regarded as a natural antidote to political influence.

However, all these reasons, often adduced for encumbering formalism as a cure for all the ills from the past, have proven to be misguided. For one thing, political influence on the judiciary has made its way *into the law*, mostly, in the regulation of the composition of the body that governs the judiciary—the General Council of the Judiciary—which itself has powers to appoint the members of the highest levels of the judiciary as well as managerial positions. The politization of the appointment regime of the members that make up the body in charge of the judiciary's government, that is seen nowadays as the major problem of the Spanish judiciary and has led to a situation of serious dysfunctionality—with the renewal of constitutional organs being blocked by political parties—has been possible through "formal" avenues backed up by the current legal framework. Those problematic aspects have already been examined by doctrine,[1] and will therefore not be the object of this Article, but they must nonetheless be kept in mind as a relevant contextual factor.[2]

The body of norms that frames the judiciary in Spain is vast and thorough. Besides Part VI of the Spanish Constitution, devoted to the judicial branch, the most important piece of legislation is the Organic Law on the Judicial Power, *Ley Orgánica del Poder Judicial*,[3] which also regulates the General Council of the Judiciary.[4] The General Council of the Judiciary has regulatory powers

[1]*See* Aida Torres Pérez, *Judicial Self-Government and Judicial Independence: The Political Capture of the General Council of the Judiciary in Spain*, 19 GERMAN L.J. 1769 (2018).

[2]Moreover, see the latest remarks by the European Commission in its 2022 Rule of Law Report, *Commission Staff Working Document Country Chapter on the Rule of Law Situation in Spain Accompanying the 2022 Rule of Law Report*, COM (2022) 509 final (Jul. 13, 2022), as well as the recent ruling of the European Court of Human Rights, Lorenzo Bragado & Others v. Spain, App. No. 53193/21 (June 22, 2023), https://hudoc.echr.coe.int/fre?i=001-225331.

[3]Law on the Judicial Power (B.O.E. 1985, 157) (last modified B.O.E. 2022, 180) (Spain) [hereinafter Organic Law on the Judicial Power].

[4]That the legal instrument for the regulation of the judiciary is an organic law is constitutionally mandated by Article 122 of the Constitution, and ensures that the setting up, operation, and control of courts and tribunals, as well as the legal status of judges and magistrates, are approved by an absolute majority in Parliament. The Constitutional Court is not part of the

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which complete the vast array of legal and infra-legal rules that govern access to the judicial career, the status of judges, and the different aspects of the functioning and organization of the judiciary.

Of course, as is the case in every legal system, the façade of legalism and formalism does not offer an accurate picture of what happens inside the many different rooms, or even secret compartments of the cellars of the entire judicial building. Where there is a formal rule, informality tends to fill the small cracks left between the lines, and to alleviate the pressure of often overtly formalistic solutions that may prove to be unrealistic to fit within the pressing needs of real judicial life.

In the pre-deliberation stage of judicial decision making there is little room for informality, as standardized and formalized procedures are approved within each court. The formation of judicial panels and selection of reporting judges are regulated by the Organic Law on the Judicial Power (OLPJ),[5] with explicit rules also governing the allocation of cases.[6] Similarly, the deliberation stage of judicial decision making is highly formalized and shielded from external pressure. One may argue that there is always room for internal and external influence in the form of informal consultations of a technical nature amongst judges and other professionals based on personal connections, but there is rarely a practice that could be identified as widespread and generalized as a feature of the judicial system.

Certain informal practices in the Spanish judicial world may be identified at different stages. Some elements may permeate the formal shield that pretends to isolate judges from any kind of influence, such as the informal influence that participating in training experiences or networks at the national or international level may exert—be that the national program, the Human Rights Education for Legal Professionals (HELP) program of the Council of Europe, the visits to the Court of Justice of the European Union (CJEU) that are organized, or participation in different judicial networks. There are also criticisms of judicial decisions in the media and eventually from politicians, independentist movements,[7] or certain organizations of a religious nature.[8] However, in general, there is a strong attitude toward shielding judges from political interference. This applies with even more emphasis to the output of the judicial profession. Judges' communication with the general public is channeled through official avenues,[9] and the participation of judges in public debate on their own decisions and those of other judges or courts is strictly limited, if not non-existent.[10] The need for further research notwithstanding, these practices do not seem to be systemic and repetitive enough to meet the threshold of informal institutions.

organization of the judiciary in Spain and is governed by Part IX of the Constitution and by the Organic Law of the Constitutional Court –it will also be omitted from the current analysis.

[5]Organic Law on the Judicial Power arts. 152, 160, 167, 454.

[6]Art. 68(2) L.E. Civil (Spain).

[7]*See, e.g.*, *Ofensiva de los partidos independentistas contra los jueces*, RTVE.es (Sept. 20, 2018, 12:40 AM), https://www.rtve.es/play/audios/14-horas/14-horas-ofensiva-partidos-independentistas-contra-poder-judicial/4746822/ (mentioning how episodes of external pressure from independentist movements have been made public by the media) (Spain); Germán González, *Académicos de cinco universidades denuncian el acoso del independentismo y la Generalitat al poder judicial*, El Mundo (June 1, 2021, 7:32 PM), https://www.elmundo.es/cataluna/2021/06/01/60b66f3cfdddffa8928b4598.html.

[8]*See e.g.*, for some indication in the press, Lucía Villa, *El Juez Santiago Vidal: "Un Tercio Del Colectivo Judicial Es Del Opus Dei,"* Público (July 12, 2012, 6:12 PM), https://www.publico.es/espana/juez-santiago-vidal-tercio-del.html (stating that the possibility of religious influence is hard to identify in practice—Opus Dei: Key members of high institutions, including the Constitutional Court, Supreme Court, and General Council of the Judiciary); Escolar, *El Búnker Judicial: Quién Es Quién En El Gobierno de Los Jueces Que Ocupa El PP*, ElDiario.es (Sept. 26, 2020, 9:16 PM), https://www.eldiario.es/politica/bunker-judicial-gobierno-jueces-pp-cgpj_1_6248834.html.

[9]*See* 2020 Justice Communication Protocol of 27 May 2020, presented by the President of the Supreme Court and the General Council of the Judiciary to the Plenary of Governing Body of Judges, (May 28, 2020), https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Sala-de-Prensa/Protocolo-de-Comunicacion-de-la-Justicia/ (saying that for an account of the regulation and organization of the communication from the judiciary).

[10]*See* Judicial Ethics Committee Report Consultation 5/20 of 3 December 2020 https://www.poderjudicial.es/stfls/CGPJ/COMISIÓNDEÉTICAJUDICIAL/DICTÁMENES/20201203Dictamen-Consulta05-2020-Inglés.pdf.

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There is however one quite specific aspect of informality in the Spanish judicial system which reaches the level of an informal institution: The training phase that precedes the public competition leading to access to the judiciary. Against the background of the context just explained, this training phase has an important impact on what is often portrayed as a completely objective and neutral system, having very relevant consequences in the selection of members of the judiciary and the self-identity of the judicial class. Before analyzing that training phase as a prominent and impactful judicial informal institution, it is necessary to briefly present the system of access to the judiciary in Spain through the system of the state exam.

C. Access to the Spanish Judiciary in a Nutshell

I. Historical and Legal Background

Ever since the 19th century, Spain has relied almost exclusively on a system of selection of judges through state exams. This, far from being a system specially designed for the judicial career, is applied across the board to access the public sector as a civil servant in virtually all branches of government and permanent positions at all levels of the public administration.[11] The system of public competition through state exams to access the judiciary has quite a solid pedigree. Spain is part of a consolidated group of European states that organizes access to the judiciary more or less exclusively through an open system of public competition—the bureaucratic model of judiciary—where candidates are mostly recent graduates with no or very limited professional experience, who are socialized in the profession only once they have become members of the judicial corps. [12]

The choice of this generalized system can be traced back to the effort to control, limit, and eventually eradicate the clientelism and politization that permeated the system of access to the judiciary for most of the 19th century.[13] Access to the judiciary through the system of state exams was imposed by the Constitution of 1869, which was developed through the Provisional Organic Law of the Judicial Power of 1870.[14] That legal framework tried to put an end to the preexisting practice of capturing all institutions, including the judiciary, following each change of government, and had as its main objective to isolate the judicial profession from politics.[15] However, the Constitution at the same time included an escape valve which allowed lateral access to the judiciary, as it was also constitutionally provided that the King could appoint up to one quarter of the number of senior judges and Supreme Court judges outside of the formalized system. This system of lateral access to the higher ranks of the judiciary, which still exists today with major modifications in its design as shown below, has been met with reluctance from the judicial class ever since.

The legal framework in force today is supposed to prevent the political capture of the judiciary. The Spanish Constitution of 1978, which adopted a manifestly conservative attitude toward the establishment of a democratic judiciary,[16] did not establish a predetermined system of access to the judicial function. Leaving the mechanisms for selection open, the Constitution merely set out

[11]*See generally* J. I. Muñoz Llinás, La función pública en España: 1827–2007 (2019).

[12]Carlo Guarnieri, *El acceso a la magistratura: problemas teóricos y análisis comparado*, *in* El acceso a la función judicial 19, 19–40 (Rafael Jiménez Asensio ed., 2001).

[13]Julia Solla, *Justice Under Administration: An Overview of Judiciary and Courts in Spain, 1834–1870*, 59 Am. J. Legal Hist. 232 (2019).

[14]C.E., B.O.E. n. 94, 1969 (Spain). *See* Manuel Martínez Sospedra, *El juez-funcionario y sus presupuestos: el nacimiento del juez ordinario reclutado por oposición—el art. 94 de la Constitución de 1969 y el sistema de la LOPJ de 1870*, 39 Revista de las Cortes Generales 7 (1996).

[15]Rafael Jiménez Asensio, Imparcialidad Judicial y Derecho al Juez Imparcial 49 (2002).

[16]Rafael Jiménez Asensio, *El acceso a la judicatura en España: evolución histórica, situación actual y propuestas de cambio*, *in* El acceso a la función judicial 115, 158 (Rafael Jiménez Asensio ed., 2001).

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some general principles alluding to merit and ability,[17] as well as equality in access to public functions.[18] The ideals of "merit and ability," as well as equal access, accompanied by objectivity and transparency, are at the forefront of the system of selection adopted by the Organic Law of the Judicial Power.[19] Lacking a constitutional mandate, the guiding principles just mentioned merely translated into the continuation of historical tradition based on a theoretically hybrid system of selection which, in practice, leaned toward a system essentially based on public competition—the state exam—with some very limited elements of openness to lateral access.

II. Public Competition: The State Exam

Today, both avenues for accessing the judicial profession and a judicial career are regulated at the level of the law, with the Organic Law of the Judicial Power and the specific Regulation on the Judicial Career both being approved by the General Council of the judiciary in accordance with Article 110(2) of the Organic Law.[20] The backbone of the selection system is public competition by way of a state exam composed of two phases. Successful candidates must then also attend Judicial School and follow a period of internship.

There are no prior requirements for participating in the public competition other than being older than 18, having Spanish nationality and a law degree, and not having incurred any legal prohibition.[21] The law has more recently included the obligation to reserve at least 5% of vacancies for persons with disabilities.[22] Commentators often point as a striking element to the fact that no psychological test or assessment is made at any point during the selection process. [23]

Since 2003, the public competition has taken place in two phases: A written test aimed at assessing general legal knowledge, designed to reduce the number of candidates, and a second phase, composed of two oral exercises in which candidates literally recite before a jury five topics chosen at random. Both tests are purely memory-based. The oral phase is particularly formal and strict since it requires candidates to memorize more than 300 topics, each of which must fit into a predetermined amount of time, since the evaluation carried out by the examining committee has strict limits in terms of time and content. Candidates must "sing" by heart the topics that have been drawn for their exam within a record time which does not allow for any kind of digression. There is no practical exercise, case-study, nor any opportunity to assess argumentative capacities, the ability to write or develop ideas, to reason, or to discuss.

The selection system based on that specific type of exam has been broadly criticized ever since its very inception.[24] Essentially, it is generally noted that it only evaluates the capacity to memorize and repeat, leaving out important aspects which are essential for the development of judicial functions, and is therefore not suitable to attract and select the most fitting candidates. Moreover, the presumption of absolute objectivity that is attributed to the system as it was originally designed was rebutted by studies that show that the results of the competition are affected by various

[17]C.E., B.O.E. n. 103(3), 1969 (Spain) (explaining how "the law shall regulate the status of civil servants, entry into the civil service in accordance with the principles of merit and ability . . ." even though the judiciary is not part of the executive power, it is commonly understood that the requirements set out in the Constitution regarding civil servants in public administration apply equally to judges).

[18]C.E., B.O.E. n. 23(2), 1969 (Spain).

[19]L.O.P.J. 1985, 301 (Spain).

[20]Agreement of April 28, 2011 of the Plenary of the General Council of the Judiciary, which approves Regulation 2/2011 of the Judicial Career, B.O.E. 2011, 110 https://www.boe.es/eli/es/a/2011/04/28/(1)/dof/spa/pdf.

[21]L.O.P.J. 1985, 302.

[22]L.O.P.J. 1985, 301(8).

[23]Marta Poblet & Pompepu Casanovas, *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Spain, in* Recruitment, Professional Evaluation And Career Of Judges And Prosecutors In Europe, 185, 193, 214 (Giuseppe Di Federico ed., 2005). *See also* Jiménez Asensio, *supra* note 16, at 201.

[24]Raúl C. Cancio Fernández, *Apuntes histórico-constitucionales y de derecho comparado en torno al ingreso y formación en la judicatura española: un modelo reificante*, 20 Teoría y Realidad Constitucional 561, 585 (2022).

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random factors, as well as the existence of an important bias benefiting candidates coming from Madrid, where the whole process takes place.[25] Today, some of those elements have been mitigated by the introduction of the test phase that precedes the oral examinations.

However, the reasons for adopting the selection model inherited from the 19th century after the new constitution was passed seemed to rely on quite widespread and entrenched reasoning based on the "lesser evil" approach, as any alternative method of public competition would necessitate the application of criteria linked to technical discretion, which are often seen, for historical and sociological reasons, as a back door to arbitrariness or clientelism. The ghost of past arbitrariness, mistrust of the capacity to select judges in any other reasonable and objective way, and the well-entrenched system of selection that has become a symbol of identity within the judiciary, have petrified an outdated approach to the organization, contents, and methodology of evaluation of the public competition that at the moment of its enactment was already perceived as archaic.[26] Scholarly criticism,[27] as well as reports of a different nature,[28] have proliferated in recent decades, advocating for a revision of the selection system, strongly contesting the equation of a public competition exclusively based on memory with the selection of independent and impartial judges. As one commentator puts it, such a system does not lead to a neutral, but to a neutralized judge.[29] Not only is the system extremely formalized as to its method, but the material content subject to examination and the way of testing it enhances and legitimizes absolute reliance on legal positivism, impermeable to academic scholarship or intellectual debate.[30]

However, to date, that well-founded criticism has not led to significant reform. Part of this resistance comes from the actual satisfaction of a big part of the judiciary with the current system as a filter and as a provider of legitimacy. Beside the element of objectivity that emanates from the state exam, the hardship and length of the process leading to it serves as a vehicle to, arguably, select very specialized persons that have acquired a general overview of the entirety of the legal system, that have tested work capacity and extremely developed willpower, that have quite a sense

[25]Manuel F. Bagüés, *¿Qué determina el éxito en unas Oposiciones?* 1–44 (Fundación de Estudios de Economía Aplicada, Working Paper No. 2005-01, 2005), and Manuel F. Bagüés, *Las oposiciones: análisis estadístico* 59 Jueces Para la Democracia 25–35 (2007) (saying that other sociological elements, such as the large number of candidates coming from certain regions and most of all from the capital and the different regional preferences for public sector positions, may also influence these results).

[26]For an early criticism, see then director of the judicial school, Joaquín Salvador Ruiz Pérez, *La modernización de los sistemas de selección y perfeccionamiento de los funcionarios judiciales*, *in* Jornadas de estudio sobre el Consejo General del Poder Judicial (1983).

[27]See, in particular, Javier Hernández García & Alejandro Saiz Arnáiz, *La selección y formación inicial de los jueces en España: algunas reflexiones críticas para un debate necesario (aunque inexistente)*, 568 Actualidad Jurídica Aranzadi 1, 1–6 (2003); Jiménez Asenso, *supra* note 16; Alejandro Saiz Arnáiz, *La reforma del acceso a la carrera judicial en España: algunas propuestas* (Fundación alternativas, Working Paper No. 119, 2007); Alejandro Saiz Arnáiz, *La selección de los jueces en España: la oposición*, Revista del Poder Judicial, no. 93, 2012, at 52; M. L. Martínez Alarcón, *La selección en la carrera judicial en España*, Parlamento y Constitución. Anuario de las Cortes de Castilla La Mancha, no. 7, 2003, at 41–168; Carlos Gómez, Synthesis Document for the Standing Comm. on Judges for Democracy (Feb. 14, 2008) http://www.juecesdemocracia.es/wp-content/uploads/2017/01/La-reforma-del-acceso-a-la-carrera-judicial-Carlos-Gomez.pdf; José Pascual Ortuño Muñoz, *El acceso a la judicatura*, *in* Independencia Judicial y Estado Constitucional: El estatuto de los Jueces 113–29 (María Isabel González Pascual & Joan Solanes Mullor eds., 2016). For a review of the literature, Florencio Rodríguez Ruiz, *Modelos de juez desde la epistemología del derecho: Análisis de los fundamentos jurídicos de la selección y formación inicial de los jueces* (May 17, 2013) (Doctoral thesis, Universidad de Jaén) https://ruja.ujaen.es/jspui/bitstream/10953/534/1/9788484398011.pdf.

[28]*See, e.g.*, *Informe del grupo de trabajo de selección al Pleno del Consejo General del Poder Judicial*, Revista del Poder Judicial n. 93, 2012. Some proposals for reform also in the Libro Blanco de la Justicia, CGPJ 1998; Informe elaborado por Francisco Pleite, Luis Sanz Acosta & Rafael Herreros, *Access to the Judicial Career in Spain: Analysis of the Situation and Proposals for Improvement*, Francisco de Vitoria Judicial Association, http://www.ajfv.es/el-acceso-a-la-carrera-judicial-en-espana-analisis-de-la-situacion-y-propuestas-de-mejora/ (last accessed: May 26, 2023).

[29]*See* Gómez, *supra* note 27.

[30]*See* Jordi Jaria i Manzano, *Selección, perfil profesional y formación inicial de los jueces en España,* 3 Revista de Educación y Derecho 1, 11 (2010).

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of duty and whose desire to become a judge comes from an honest vocational calling, and who have a personality strong enough to face a selection panel composed of senior members of the judiciary. The system would therefore provide quite specific "human material" that would then be trained in the remaining abilities—reasoning, motivation, management, and human relations—during the two remaining years of training led by the Judicial School.

III. Training to Become a Judge: An Impactful Informal Institution

1. The Training Phase as a Judicial Institution

Paradoxically, the extremely formalized and formalistic process of public competition is preceded by a long and stringent phase of preparation that is entirely informal. There exists neither regulation nor an official system or general educational path provided by either public or private educational establishments leading to standardized preparation for the public competition, beyond some isolated attempts of limited geographical reach.[31] The entire preparation phase happens following an entirely informal process, which is however almost the only way to successfully face the state exam.

The system of training for the state exam is probably one of the most peculiar elements within the entire judicial system through which informality becomes institutionalized. One could argue that this informal institution does not, however, appertain in reality to the judiciary itself, as it takes place at its margins, before a candidate gains access to the judicial profession. However, we have identified it as a core informal institution *within* the Spanish judiciary for three reasons. First, even though the candidates are technically still at this stage outsiders to the judicial profession, the coaches are members of the judiciary in the overarching majority of cases. Second, this system constitutes by far the most relevant avenue for successfully passing the most important system of selection of judges—the open competition. Third, because almost inevitably all the members of the judiciary have ensured their access to the profession through this system, which serves, as will be commented on below, not only as a technical avenue to success in the state exam, but also as a vehicle for socialization of the new candidate in the judicial world in close connection with his or her coach—while this may, of course, not be true in every case, and it is not unusual for that connection to be lost rather quickly after the public competition.

2. The Training Phase as an Informal Institution

The level of generality, stability, and longevity of the system of preparation makes a genuine "institution" of the training phase. Participation in the training with the help of one of the "judges-coaches" is not an institution just in the sense of being part of the "rules of the game," in the sense famously put forward by North.[32] There is also an undoubtedly shared consideration of the training phase as *the* way to prepare for the public competition, and that understanding has for decades now been passed on to new generations of judicial candidates; the preparation phase is an integral part of the system, taken as a matter of fact.[33] The intergenerational element is particularly strong, as preparation for the state exam constitutes a sort of initiation ritual which serves to test the resilience and willingness of future judges and ensures their social integration into the judiciary. It also creates an element that distinguishes judges that have acceded to the judiciary through the traditional system from those who, in much less important numbers, have accessed the judiciary through systems of "lateral" access, and who have therefore not gone through the

[31] *See* Gómez, *supra* note 27 (mentioning the programs launched by the Universities of Santiago de Compostela and Granada and by the Centre d'Estudis Jurídics del Departament de Justicia de la Generalitat de Catalunya).

[32] *See* Douglass A. North, Institutions: Institutional Change and Economic Performance (1990).

[33] *See* Renate E. Meyer, *A Processual View on Institutions: A Note from a Phenomenological Institutional Perspective*, *in* INSTITUTIONS AND ORGANIZATIONS: A PROCESS VIEW 37 (Trish Reayet al. eds., 2019) (exploring the concept of institutionalization).

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state exam. The use of judicial coaches during the preparation period therefore constitutes a clear instance, in the terms used by Helmke and Levitsky, of "socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels."[34] Indeed, there is no official channel for communication and enforcement of the coaching system beyond the shared understanding that the practical consequence of not having a judicial coach is probable failure on the judicial exam.

3. The Components of the Informal Institution

Training for the state exams entails an effort of epic dimensions. The already mentioned peculiar character of the public competition, including not only the examination method itself but also its contents, makes "preparation" for the exams a very long, time-consuming, and stressful process. The average time that candidates take to memorize the content for the exam ranges from three to five years, with full dedication—which means studying for over eight to ten hours a day.[35]

The bulk of the training for this intensive and time-consuming operation is entirely in private hands, with no more control or coordination than the establishment of a common program of topics by the Commission of Selection of the General Council of the Judiciary (CGPJ).[36] There is no regulation concerning training for the state exam. Historically, this process has been developed in a manner completely detached from formal legal education in universities, and has been monopolized by members of the judicial profession themselves, acting privately, and offering their services as private coaches or tutors. Distrust of universities in this regard is firmly entrenched, as they are seen in the judicial world as providers of insufficient legal education.[37] In spite of the existence of some private academies, preparation for the exam is predominantly managed through the almost institutionalized system of training by private tutors or coaches that are themselves practicing judges or prosecutors.

4. Democratic Concerns

The informal character of this private coaching raises several concerns from the point of view of its effects on the formation of a democratic judiciary, since it deeply affects the composition of the judiciary and has an important impact on the shaping of judicial culture.

First, the training phase, its organization, and requirements lack transparency. The system of training by the limited number of academies that exist is not the avenue with the best reputation. Candidates are naturally led to resorting to recommended coach-judges. There is no single, accessible open list of those such coaches, no official and general register of judicial coaches and no quality control. Historically, access to those preparators was facilitated through personal connections, such as through former law professors or family acquaintances. Some of the coaches advertise themselves, often under pseudonyms or anonymously, on the internet, but access usually happens through private recommendation or through the intermediary of judicial associations. There is not even an official number of available tutors that could help in an assessment of the availability of tutors and their number of pupils, but only rough estimates. The lack of transparency about the quality and costs of available coaches makes it a very imperfect market which hinders the equal access of candidates to quality training.

[34]Gretchen Helmke & Stephen Levitsky, *Informal Institutions and Comparative Politics: A Research Agenda*, 2 PERSPS. ON POL. 725, 727 (2004).

[35]*See, e.g.*, Rafael Jiménez Asensio, *El acceso a la judicatura en España: evolución histórica, situación actual y propuestas de cambio, in* EL ACCESO A LA FUNCIÓN JUDICIAL 115–249 (Rafael Jiménez Asensio, 2001) (describing the process by various commentators).

[36]General Council of the Judiciary, *General Information*, PODER JUDICIAL ESPAÑA, https://www.poderjudicial.es/cgpj/es/Servicios/Acceso-a-la-categoria-de-Juez-a/Informacion-general/ (last accessed Aug. 27, 2023).

[37]*See* Gómez, *supra* note 27.

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Second, the economic regime of the system presents serious problems from the point of view of the barriers imposed by the costs, which are borne exclusively by candidates, but also from the ethical point of view of some of the judges and prosecutors involved in coaching activities.

Indeed, a major problem attached to the training regime is that the system is almost monopolized by practicing judges and prosecutors. The only explicit regulation regarding the "coaching regime" is Article 344 of Regulation 2/2011 on the Judicial Career, which states:

> Coaching for access to the public function, which entails the incompatibility to take part in the bodies that select candidates, will only be considered as an activity excluded from the regime of incompatibilities when it does not entail more than 75 hours per year and when it does not entail noncompliance with the hours of public hearing. If the activity to which this Article refers requires a dedication that surpasses 75 hours, it is necessary to request a previous declaration of compatibility.[38]

The regime of incompatibilities is regulated in Articles 326 et seq. of that regulation. Whereas the coaches included in the databases of associations often comply with those requirements and have requested the declaration of compatibility, the fact that the system relies on self-assessment of working time makes it possible that a considerable number of coaches have not requested that declaration.

Dissatisfaction with the salary level is widespread amongst members of the judiciary, and not without reason.[39] Regardless of the fact that a declaration of compatibility is compulsory only when a coach reaches 75 hours of dedication to this activity, the most controversial point is that this activity has historically often been undeclared for tax purposes. The issue reached the media when candidates interviewed by newspapers reported the common practice of paying cash every month, and the fact that bank transfers were often not accepted or receipts for payment issued.[40] The fact that judge-led coaching is for its greatest part a component of the underground economy has been *vox populi* for many years and raises serious concerns for obvious reasons. For the coachers it entails serious ethical concerns. As far as the candidates are concerned, they are socialized through their first contact with the judicial world by means of a mentoring system that is paid for often literally under the table. However, in spite of this clear widespread practice, the system has been tolerated for decades by different authorities including the General Council of the Judiciary.

The degree of institutionalization of the economic regime of the training period and of the corporativist resistance to any change are epitomized by the recent response to the regulatory attempt to regularize the situation with regard to the preparation regime made by prosecutors—they access the profession through the same public competition as judges. In July 2022, a Decree by the Attorney General was passed obliging prosecutors to declare whether they undertake tasks of coaching candidates to become either judges or prosecutors.[41] The conservative Association of Prosecutors immediately challenged the decree before the High Court of Madrid, which suspended its applicaton.[42]

[38]Agreement of April 28, 2011, of the Plenary of the General Council of the Judiciary, which approves Regulation 2/2011 of the Judicial Career (B.O.E. 2011, 110) (Spain). Translation by the author.

[39]*See* Case C-49/18, Escribano Vindel v. Ministerio de Justicia, ECLI:C:2019:106 (Feb. 7, 2019), https://curia.europa.eu/juris/liste.jsf?num=C-49/18 (demonstrating how the matter has reached even the ECJ but with no success).

[40]Marcos Pinheiro, *Los testimonios de los opositores que pagan en B a jueces y fiscales*, El Diario.es (Aug. 24, 2021), https://www.eldiario.es/politica/testimonios-opositores-pagan-b-jueces-fiscales-principios-mes-da-sobrecito_1_8200893.html. *See* Jordi Pérez Colomé, *El negocio libre de impuestos de los altos funcionarios,* El Diario.es (Jan. 5, 2017, 4:27 PM), https://elpais.com/politica/2016/12/13/actualidad/1481641635_298347.html (indicating that in 2017, out of 5,502 active judges, only 38 had asked for authorization to undertake coaching tasks, and that back then, the General Council of the Judiciary could not "remember" any sanction ever being applied).

[41]Decree of July 24, 2023 of the State Attorney General (B.O.E. 2023, 168) (Spain).

[42]Tribunal Superior de Justicia de Madrid, Order granting interim measures, 365/2022, of September 29.

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Beyond the legal implications of this regime, the economic regime of the training period, its informality and lack of public control or support clearly has a bearing on the natural selection of the candidates which comes not only from the fact that preparation costs an average of 200 to 300 euros a month—in a country where the modal gross monthly wage is about 1,500 euros,[43] but also that candidates are for the most part recent graduates with no income, who have to be entirely supported by their families for an average of four years.[44] The intensity of the preparation regime leaves one no chance of even combining preparation with part-time or student jobs. Socially, the judicial candidate is generally regarded as isolated and completely immersed in the "preparation" process.[45]

There have been occasional episodes of public support through public scholarships for the preparation period, but those have been interrupted for long periods.[46] Some of them were provided for the Autonomous Communities and were therefore limited to their residents by requirements including as regards length of residence and proof of choice of future destination in the territory of the funding Community.[47] In recent years, judicial associations have tried to fill that vacuum, creating their own funding programs, or providing access to free coaches. However, they have often needed the support of financial institutions—the most famous one being funded by the Banco Santander,[48] which is not quite desirable in terms of judicial independence or impartiality for obvious reasons, Banco Santander itself being a credit institution often involved in litigation.

The recent pressure from judicial associations[49] has led to the resuscitation of a scholarship program, that first took place in 2022, stating as its main objective the "democratization of access to the judicial profession."[50] However, the fact that the existence of the regime of public support is neither legally binding nor regulated at the legislative level makes this support highly dependent on parliamentary majorities and turns it into a matter of political preference of the government at a given point in time. Moreover, this system of scholarships requires candidates to provide justification of their costs related to training, with a receipt of some kind issued by the coach. This may provide an incentive to resurface undeclared work by some coaches, but it can also discourage

[43]Instituto Nacional de Estadística Press Release, Annual Salary Structure Survey (June 20, 2023), https://www.ine.es/prensa/ees_2021.pdf (noting the last available official statistics of 2021).

[44]Asociación Juezas y Jueces para la Democracia, *Propuesta de Bases para el Otorgamiento de Becas destinadas a la preparación de oposiciones a las carreras judicial y fiscal* (Dec. 2020), http://www.juecesdemocracia.es/wp-content/uploads/2020/12/PROPUESTA-DE-JJpD-DE-BASES-BECAS-PARA-OPOSICIONES-A-LAS-CARRERAS-JUDICIAL-Y-FISCAL-AÑO-JUDICIAL-2020-2021-1.pdf (stating that some recent reports estimate 25,000 euros as the average cost of preparing for the state exam).

[45]*See* Gomez, *supra* note 27, at 16 (commenting on the social impact of this preparation period).

[46]The last program dates back to Order JUS/1873/2008, of June 23, by which prosecutors are appointed to the students of the Center for Legal Studies (B.O.E. 2008, 157) (Spain), with 120 scholarships, also proposing credits for candidates.

[47]See the program for 40 scholarships by the Pais Vasco, ORDEN de 22 de septiembre de 2021, de la Consejera de Igualdad, Justicia y Políticas Sociales, por la que se convocan y regulan, para el ejercicio 2022, las ayudas destinadas a preparar el acceso a las Carreras Judicial y Fiscal, y al Cuerpo de Letrados de la Administración de Justicia (B.O.P.V. 2021, 207) (Spain), https://www.euskadi.eus/bopv2/datos/2021/10/2105278a.pdf (explaining that there is also a program in Cataluña, information on which is available at https://cejfe.gencat.cat/ca/detalls/noticia/obert_termini_beques_judicial_fiscal).

[48]*See* Asociación Profesional de la Magistura, *Call for Aid for the Preparation of Oppositions to the Judicial Career APM Banco de Santander: 2021–2022 Academic Year*, APMNACIONAL (July 30, 2021), https://apmnacional.es/actualidad/convocatoria-ayudas-a-la-preparacion-de-oposiciones-a-la-carrera-judicial-apm-banco-de-santander-curso-2021-2022/.

[49]Asociación Juezas y Jueces para la Democracia, *Propuesta de Bases para el Otorgamiento de Becas destinadas a la preparación de oposiciones a las carreras judicial y fiscal* (Dec. 2020), http://www.juecesdemocracia.es/wp-content/uploads/2020/12/PROPUESTA-DE-JJpD-DE-BASES-BECAS-PARA-OPOSICIONES-A-LAS-CARRERAS-JUDICIAL-Y-FISCAL-AÑO-JUDICIAL-2020-2021-1.pdf (explaining that in 2020, the progressive judicial association, Asociación Juezas y Jueces para la Democracia, presented a proposal to the Ministry of Justice requesting scholarships for candidates).

[50]Order JUS/377/2022, of April 27, which establishes the regulatory bases for the granting of finaical aid for the preparation of oppositions for entry into the Judicial and Prosecutor Careers (B.O.E. 2022, 104) (Spain).

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candidates from applying for scholarships in the event that a coach does not agree to provide proof of payment for his or her services.

Third, the social and formative side effects of this informal process are not to be understated, as they deeply shape judicial culture.[51] The tasks of the coach or tutor, even though carried out within this informal framework, are extremely formal in character; they are to listen with a chronometer to the subjects which are recited by the candidate. Material input is often limited to annotations to a previously acquired manufactured handbook which does not fulfill academic standards and is merely designed to contain the required contents of each subject in a period of time that fits within the number of minutes allocated for the exercise of the competition. On some occasions, coaches take a more active role, completing materials and updating them. Even if the influence of coaches after the candidate has successfully passed the competition process is not comparable at any rate with systems where supreme court judges themselves play a role in the selection,[52] the informal role of judge-coaches beyond this formal formative capacity can hardly be overstated. As Manzano puts it, "they are the first filter, gate-keepers to the access to the profession and in some way, sponsors if their candidates, always in a non-transparent manner."[53] In sum, even if the system does not result in a situation of patronage, it serves as a vehicle to transmit a judicial culture and makes of the coach an influential reference point for the new judge, at least during the early years of his or her judicial career.

The social, and in some instances, psychological, costs for candidates are tremendous. Candidates are cut off from the "real" world to embark on a gigantic effort that stretches for years with no guarantee of success, their only professional or formative contact being limited to a coach, and sometimes, a small number of pupils of that same person.[54] The personality, method, and approaches of the coach become the only point of reference for the candidate, who will follow him or her for at least the initial part of his or her ensuing professional life.

Furthermore, a system that relies on strong personal ties and connections makes the candidate vulnerable to the character and personal influence of the coach.

5. The Effects of Informality in Judicial Training

The training period that precedes the open competition for access to the judiciary having been identified as an informal judicial institution, the different elements of which it is made up and how it unfolds in practice have revealed important concerns. The problematic character of those elements is to a great extent tied to their informality. Informality here runs counter to the legally designed objectives of the formal avenue of access to the judiciary, which endeavors to create an objective system which filters candidates only on the basis of the criteria of merit, ability, and equal access to the public function.

Taken at face value, the preparation phase serves as an "auxiliary" informal judicial institution,[55] since there is no formal competing system offering an alternative. However, in

[51] *See* Gomez, *supra* note 27 (noting the broader social and psychological effects on candidates of the disproportionate efforts required to pass the judicial exam also at the personal level, as often candidates detach from society and lose touch with social reality).

[52] *See, e.g.*, the examples given by Andrea Pozas-Loyo & Julio Rios-Figueroa, *Anatomy of an Informal Institution: The "Gentlemen's Pact" and Judicial Selection in Mexico, 1917–1994*, 39 INT'L POL. SCI. REV. 647–61 (2018).

[53] Jordi Jaria i Manzano, *Selection, Professional Profile, and Initial Training of Judges in Spain*, 3 EDUC. & L. REV. 1, 27 (2010) (referring to Alejandro Saiz Arnáiz, *La reforma del acceso a la carrera judicial en España: algunas propuestas* 31–32 (Fundación alternativas, Working Paper No. 119, 2007)).

[54] *See* Javier Hernández Garcia, *El modelo de selección de jueces en España: algunas reflexiones*, JUECES PARA LA DEMOCRACIA, http://www.juecesdemocracia.es/wp-content/uploads/2017/01/6Ponencia-Escuela.pdf (last accessed May 26, 2023) (discussing the serious consequences have been described as producing professional "anti-values," or *contravalores*, since social isolation and limited professional contact during the training phase produce conceptions that are not compatible with a socially oriented legal process).

[55] In the terminology of Helmke & Levitsky, *supra* note 34.

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reality, the preparation phase operates in a way as a "competing" institution,[56] deforming, or at least strongly modifying, the apparently egalitarian and objective system of the public competition. Lack of transparency, together with the uncertainty of economic support and the high price of the process, creates a natural barrier to entry for candidates from the lowest income families or families with no ties at all with legal professionals, or, simply, for candidates that do not want to be supported in that way for several years in their adult life. If it is widely acknowledged that access to the judicial profession is not captured by the elite or by rich families, it is also apparent that such access almost invariably necessitates quite considerable family support and sacrifice for those belonging to medium or low-income families.[57]

The preparation system may be regarded as a mere subproduct of the approach chosen for the format and content of the public competition. However, at the end of the day, even though, technically speaking, there are no requirements for participating in the open competition for access to the judicial function besides the very general requirements established by the Organic Law of the Judiciary, the preparatory phase constitutes an obstacle, not only by reason of its technical difficulty, but also for its lack of transparency, economic cost, lack of public support and organization, and the personal sacrifices it entails. The link between the public competition and the preparation period, depicted as a "gigantic waste of human capital,"[58] is, however, firmly entrenched and not currently subject to any process of reconsideration at the institutional level.

The overall impact of this system on the composition of the judiciary and judicial culture is huge. It is indeed hardly an overstatement to affirm that the education, training, as well as selection mechanisms of judges have a crucial impact on the global quality of justice.[59] Recruitment impacts the overall profile and characteristics of the judiciary, the type of judge, and the very conception of her own role.[60] From this point of view, the impact of the informal institution just described is both supports an extremely formalized system that reproduces an extreme approach to positivist legalism, and at the same time makes more inaccessible and inegalitarian a system that is formally designed to be the opposite.

D. The Judicial School: Quality Training Without Genuine Selective Capacity

Some of the problematic aspects of the training period, at least those affecting its formative and educational shortcomings, are in theory addressed by the establishment of the Judicial School. The overall understanding of the impact of the training period on the selection and formation of members of the judiciary would therefore not be complete without this important element being addressed. However, as we will explain in this section, many of the positive aspects that the training period in the Judicial School could have are strongly mitigated by the limited effect that this part of the selective process has in practice. Here again, the prominent place of the state exam leads to informal reluctance regarding the role of the Judicial School as part of the system of selecting future judges, resulting in this institution having a very limited role as a selective mechanism.

The Judicial School has been in place since 1940,[61] but it is only recently that it has been endowed with real content and means. It is often reported that the previous model of the Judicial

[56]Helmke & Levitsky, *supra* note 34. See also for a similar classification, Andrea Pozas Loyo & Julio Ríos Figueroa, *Informal Institutions and* de facto *Judicial Independence: The Missing Link Toward Efficacy*, 29 Política y Gobierno, 1, 1–27 (2022).

[57]*See* General Council of the Judiciary Report on the Statistical Data of the Judges in Practice, at 23 (describing how the most recent statistics from the Judicial School report that, of the judicial candidates for the year 2023–2024, 94.89% of the candidates were economically supported by their parents and only 5.84% of the candidates received scholarships).

[58]Gabriel Doménech Pascual, *A favor de un MIR jurídico*, 3 Informaciones 90, 109–110 (2021).

[59]*See* Guarnieri, *supra* note 12, at 26.

[60]*See* Guarnieri, *supra* note 12, at 23. *See* also Samuel Spáč, *Recruiting European Judges in the Age of Judicial Self Government*, 19 German L.J. 2077 (2018).

[61]*See* Asensio, *supra* note 16, at 201.

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School merely required attendance at different courses in a very limited period of time and was perceived as a decompression and socializing time before taking up judicial functions. The current model dates back to 1994, when the Ley Orgánica del Poder Judicial (LOPJ) introduced the Judicial School, which started functioning in 1997. The period of training in the Judicial School is designed as a very valuable period of education when candidates for judicial office are exposed to more suitable methodologies and contents in a structured, institutionalized manner. Indeed, the judges that have passed the state exam are still not members of the judiciary: They need to successfully pass a training period at the Judicial School.

As just mentioned, therefore, in theory the Judicial School is part of the selection process, which comprises both a formal period of education at the School and a period of internship. However, a further element of informality makes the practice deviate from the legal design: There appears to be a consensus that real selection has already taken place through the extremely harsh state exam, which already provides judicial candidates with the legitimacy to become judges.[62] As a result, it is also perceived that the performance of candidates in the Judicial School should not play a major role in the selection process. The filtering capacity of the Judicial School phase is depicted as extremely weak.[63] The Judicial School seems to have a real impact only on the final ranking of future judges, which is translated in terms of priority in the choice of their first placement, and that continues to influence their professional position throughout their careers.[64]

The fact that the Judicial School is essentially in practice deprived of a genuine selective function is correlated to the extraordinary effort that it takes to succeed in the public competition phase and the very high consideration that this merits within the judiciary. It would be seen as unacceptable that, after having completed such a titanic quest, a candidate was failed at the Judicial School stage. Be that due to empathy toward candidates or to the self-perpetuating inertia of the system, the reality is that only in extremely rare occasions has a candidate failed Judicial School,[65] even though the law contemplates that possibility.[66] What can happen, at most, is that candidates who fail are offered the chance to repeat one of the phases of Judicial School—that may be repetition of internship due to the fact that in this more practical period, difficulties related to social abilities and conflict management may resurface for the first time.

Taking into account the length of time that the Judicial School has been functioning in its current setup, it could be argued that the deprivation of the selective function of the Judicial School has crystalized into an informal practice. This mid-way informal institution reinforces the judicial institution of the pre-competition training phase, but on this occasion, it does not have any auxiliary function, again taking the conceptual framework of Helmke and Levitsky as a point of reference,[67] but rather a clear function of competing with the formal design of the role of the Judicial School through the applicable legislation. Depriving the Judicial School of its selective function places the whole burden of the selection process on the public competition phase and amplifies the problems linked to the training period that leads to the successful accomplishment of that phase. Again, informality counteracts the legal design that aims to compensate for the extremely formal content of the public competition phase by means of a phase where other valuable aptitudes for judicial candidates should not only be taught, but also evaluated as conditions to be fulfilled in order to be successfully appointed as a member of the judiciary.

[62]Manzano, *supra* note 53, at 7 (mentioning one author who even speaks about the "deactivation" of the "cuarto turno" through this amendment in 2003).

[63]Manzano, *supra* note 53, at 7.

[64]Asensio, *supra* note 16, at 208.

[65]Inquiries reveal that this has happened in recent times only twice, and then in rather serious and extreme situations.

[66]The legal provisions of the LOPJ provide for the possibility of repeating the training once if one has failed the first time.

[67]Helmke & Levitsky, *supra* note 34.

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E. Reluctance Toward Lateral Access

Like the Judicial School, there is another crucial element of the system of judicial selection that is designed to counteract the rigidity of the predominant state exam-based selection system. Indeed, lateral access—meaning access to the judiciary from other legal professions through a simplified procedure—is possible under the current legal framework. However, the preeminence of the state exam system has led to widespread reluctance to follow this avenue of access to the judiciary, limiting its potential democratizing effects in the system of judicial selection and into judicial legal culture.

Historically, the choice of the system of public competition through state exams as the predominant avenue for access to the judicial function has led to a strongly rooted belief that that system is the only one that guarantees protection against politization or nepotism.[68] As noted above, when the public competition system was established in the Constitution of 1869, its Article 94 also provided for an alternative avenue for access to the judiciary through the so-called "fourth turn" or *cuarto turno*, whereby a quarter of the magistrates could be appointed by the King. This first experience of the application of a system of lateral access to the judiciary, served however, to perpetuate the previous general system of clientelism. This led in turn to a widespread mistrust of any element of flexibility that would allow the incorporation of political judgement into the new system based predominantly on the state-exam, a system that precisely wanted to replace a previous situation pervaded by clientelism. Consequently, the initial mismanagement[69] of lateral possibilities of access to the judiciary led to its stigmatization for more than a century.[70]

Moving from the first precedents to the current legal system, the new legal framework after the 1978 Constitution, inaugurated by the LOPJ of 1985, legally provided for three different avenues of lateral access: The third turn, entry level; the fourth turn, senior judge; and the fifth turn, Supreme Court judge, which however, have hitherto developed quite differently.

Lateral access at the *entry level* was initially provided for by the LOPJ of 1985 as a democratizing innovation that should have broadened the sociological profile of judges by opening a third of judicial vacancies up to other legal professions. That is why it was called the "third turn" or *tercer turno*. The legal design of this avenue for lateral access enabled legal professionals with a minimum of six years' experience to attain the entry level category within the judiciary. Access through this system was accompanied by a training period in the Judicial School alongside the judges who had passed the public competition. This system was, however, met with widespread reluctance as it was seen as a circumvention of the state exam. Major criticism was expressed by members of the Asociación Profesional de la Magistratura, the conservative judicial association, which openly advocated for the elimination of this avenue of lateral access.[71]

This corporate reluctance led to a great extent to the failure and elimination of this avenue of lateral access. In spite of the fact that selection procedures were regularly opened, many of the places reserved for this system were often left vacant, and so, increasing the vacancies opened for the "real" candidates through public competition. The informal but widespread reluctance of the judicial world to accept lateral access to the entry level led first to a reduction in the vacancies reserved for this avenue of lateral access in 1994, and later ended up eliminating it altogether since the legislator struck it out in the 2003 reform. The reticence is obvious if one looks at the numbers. Taking 1999 as an example, 75 vacancies were announced, and from the 280 applicants accepted

[68]*See* Rafael Jiménez Asensio, *El acceso a la judicatura en España: evolución histórica, situación actual y propuestas de cambio*, in Rafael Jiménez Asensio, El acceso a la función judicial: estudio comparado 115, 119.

[69]Mismanagement and abuse were openly acknowledged in the preamble to the Real Decreto of 22 December 1902. Maria Cristina, *Presidencia del Consejo de Ministros,* Gaceta de Madrid 25–26 (Jan. 2, 1902), https://www.boe.es/gazeta/dias/1902/01/02/pdfs/GMD-1902-2.pdf.

[70]Asensio, *supra* note 15, at 51.

[71]Giuseppe Di Federico et al., Recruitment, Professional Evaluation, and Career of Judges and Prosecutors in Europe, in Recruitment, Professional Evaluation, and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands, and Spain 192 (Giuseppe Di Federico ed., 2005).

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out of the 330 applications overall, only 11 vacancies were filled.[72] The process ended with the complete repeal without any explanation of this means of lateral access by the legislature in 2003.

With the repeal of the "third turn," two avenues for lateral access remain open now: Access to the category of senior judge, as well as directly to the Supreme Court. The latter avenue for lateral access seems to be widely accepted as it affects only access to the Supreme Court, affects a limited number of positions—one fifth of the vacancies, which is why this avenue of access is called the "fifth turn"—and allows for access by legal professionals, often law professors, with very high reputations.

The most relevant element of lateral access to the judiciary available today, both because of its numbers and because of its potential effect in the diversification of the composition of the judiciary, is that of access to the category of senior judge, commonly known as the "fourth turn." This system allows for one in every four vacancies that open within the category of magistrate or senior judge to be filled by professionals that come from legal professions outside the judicial one—other civil servants, university professors, and practicing lawyers. Some of these vacancies are, at the same time, reserved for judicial secretaries. The requirement is a legal background of long duration—more than ten years. The selection system is based on the evaluation of the candidate's merits, and there is a quite strict and formalized system for that evaluation. The second step in the process is the preparation of a legal opinion. Preparation for that part of the selection procedure is also in the hands of judicial coaches. Potential candidates also go through a personal interview, and, if successful, need to complete a training phase at the Judicial School containing training at the school and an internship phase.[73]

In essence, the system of the fourth turn provides a very valuable avenue for diversification in the composition of the judiciary, allowing access to the judiciary of other legal professionals with proven experience, and, therefore, contributing to the diversification of the composition of a judiciary. This is all the more necessary in a system that primarily relies on access through a state exam sat by recent law graduates with no previous legal professional experience. However, in practice, this avenue of lateral access faces several problems that could fit into a pattern of informality. First, even though it is numerically already very limited due to legal imperatives, one out of four places being available for senior judges, practice has limited it even more: The General Council of the Judiciary has systematically opened many fewer positions than it should have.[74] Furthermore, the stringent selection requirements of this option are not entirely attractive to legal professionals, who are already highly qualified. An additional, even though more subtle, difficulty is that, even if more successful in terms of recruiting that its little brother, the third turn, the fourth turn also faces opposition. The fact that it allows for entry to the senior judge level is perceived as a threat to the traditional system, where promotion is exclusively tied to seniority. Some sectors still perceive the fourth turn as a vehicle for professional intrusiveness.

The reluctance toward lateral access, at least in some sectors, is maybe far from reaching the level of an informal institution or even practice. It is rather an attitude of reticence that permeates through the formal selection processes whenever possible, for example by opposing the creation of positions, their offer, by leaving seats vacant, or by lobbying for legislative change. Be that as it may, the threat of this manyfold reluctance toward lateral access ends up supporting the legitimacy of the informal institution of the training phase, and, in a way, aims to protect it.

[72]Di Federico et al., *supra* note 71, at 193.

[73]For information provided by the General Council of the Judiciary, including examples of the case studies used in the past, see General Council of the Judiciary, *General Information*, Poder Judicial España, https://www.poderjudicial.es/cgpj/es/Servicios/Acceso-a-la-categoria-de-Juez-a/Informacion-general/ (last accessed Aug. 27, 2023).

[74]According to recent estimations of the Minister of Justice, there should have been 300 more positions offered through this system since 2013. *See* Europe National Press, *Justice says that the CGPJ Violates the Law by not Summoning 300 Positions of Judges for the Fourth Shift Since 2013,* Europa Press (Nov. 10, 2022, 6:43 PM), https://www.europapress.es/nacional/noticia-justicia-dice-cgpj-incumple-ley-no-convocar-300-plazas-jueces-cuarto-turno-2013-20221110151747.html.

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F. Conclusion

Preparation to become a judge is for obvious reasons a key element in the composition of the judiciary—education and training, as parts of the system of selection of judges, have a crucial impact in the overall quality of a justice system. This Article has shown how, in Spain, this crucial component of the judicial system is fraught with informality to the point that it conforms an informal judicial institution. This is not only due to its generalization, resilience, and endurance, but also because of its relevant impact on the social and self-perception of the judiciary. The impact of the judicial training through coaching as an informal institution is quite controversial, as it raises quite serious democratic concerns: It lacks transparency; it imposes important economic barriers to potential candidates; and it has a longstanding impact on judicial culture, in terms of how law is understood and how new members of the judiciary become socialized in their profession. Informality plays an important part in the problematic character of the training period, introducing elements that run counter the legally defined objectives of merit, ability, and equality that the system of selection of judges is deemed to pursue. The impact of the informal institution of the coaching period of judges reinforces, on the one hand, a very formalized system which is epitomized in the state exam, but on the other hand, it turns that very system more inaccessible and inegalitarian, contrary to its legally defined objectives.

Certainly, the legal design of the system of judicial training and judicial selection has foreseen two crucial elements to counterbalance the centrality of the state exam and the very limited formative value of the training period through coaches. First, there is today a mandatory phase of training at the Judicial School. Second, the law contemplates the possibility of accessing the judiciary through avenues of lateral access available for other legal professionals. However, in practice, the Judicial School is essentially deprived of a genuine selective function. This informal practice performs a competing function with the legal design of the role of the Judicial School and contributes to reinforce the selective monopoly of the state exam, therefore amplifying the problems linked to the training period that leads to successfully accomplishing it. Similarly, lateral access to the judiciary is rather a patch than a true alternative for judicial recruitment, due to the historical and continuing reluctance to it in different sectors of the judiciary.

To answer our opening question, "what does it take to become a judge in Spain?," we can only answer: A lot. And rightly so, for the exercise of judicial functions requires a serious and exigent selection process. However, and regardless of the shortcomings of the selection system itself, if getting to the doorstep of judicial selection is already filtered through quite a troublesome and opaque informal phase, we cannot but conclude that this lot is not always functional to the righteous objectives of the law.

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