



LAWFARE: HOW INSTRUMENTS OF DEMOCRACY ARE USED AGAINST THE DEMOCRATIC STATE ITSELF RIGHT

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SUMMARY

This article explores the concept of Lawfare and its application as a strategy to weaken democracies through the manipulation of the legal system for political ends. We analyze how, by replacing military force with judicial force, the Lawfare aims to delegitimize opponents and neutralize political leaders, generating a crisis of confidence in democratic institutions. The research adopts a qualitative approach, based on bibliographic review and case analysis, highlighting the threat that the Lawfare represents for the rule of law and democratic integrity. The conclusion points out that the use of Lawfare not only compromises justice, but also generates a cycle of discredit and social polarization.

Keywords: Lawfare, Democracy, Political Persecution, Judiciary, Rule of Law.

ABSTRACT

This article explores the concept of Lawfare and its application as a strategy to weaken democracies through the manipulation of the legal system for political purposes. We analyze how, by substituting military force with judicial measures, Lawfare aims to delegitimize opponents and neutralize political leaders, creating a crisis of confidence in democratic institutions. The research adopts a qualitative approach, based on a literature review and case analysis, highlighting the threat that Lawfare poses to the Rule of Law and democratic integrity. The conclusion points out that the use of Lawfare not only compromises justice but also generates a cycle of distrust and social polarization.

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1. INTRODUCTION

the term Lawfare, a combination of the words "law" and "warfare", was coined by Colonel Charles J. Dunlap Jr. in the 1970s to describe the use of law as a weapon in political and strategic disputes. Dunlap defines the concept as "the use or abuse of law as a substitute for traditional military means to achieve purposes operational" (DUNLAP, 2001, p. 35).

In democratic contexts, the Lawfare is characterized by the manipulation of the Judiciary to persecute, neutralize or delegitimize political opponents, compromising the system of justice and weakening democratic institutions. In this way, the Lawfare is employed not as a tool of justice, but as an instrument of repression and political coercion.

A recent example of this practice is the case of the suspension of the Amazon Radar, determined by the court at the request of Mayor David Almeida, in Manaus. Known for his investigative journalism and criticism of municipal management, the news portal was the target of a court decision to suspend it on the grounds that its publications could harm the image of the mayor. This case illustrates how the Lawfare can be used to silence voices dissonant and critical, manipulating legal proceedings to embarrass the media and control the public narrative.

The work *How Democracies Die*, by Levitsky and Ziblatt (2018), offers an analysis of this type of tactic, claiming that the destruction of democracy often occurs through institutional. The authors point out that "the erosion of modern democracies occurs not because military coups, but by the systematic use of institutional measures to restrict the power of the opposition and maintain political domination" (LEVITSKY; ZIBLATT, 2018, p. 102).

The practice of Lawfare is one of those subtle and seemingly legitimate strategies that distorts the law and undermines public trust in institutions, promoting polarization and legal uncertainty. This article examines how the Lawfare operates in democracies

contemporary, evaluating their impacts on the political system and discussing the implications of the practice in neutralizing adversaries and delegitimizing the Judiciary.

2. THEORETICAL FRAMEWORK

The understanding of Lawfare and its implication for democracy depends on the analysis theoretical and exploration of fundamental works that discuss the use of law as an instrument of power. The concept of Lawfare was developed by Charles Dunlap Jr., who pointed out how the law can be used in a perverse way to achieve objectives that, in other circumstances, would be accomplished by military means. Dunlap argues that by manipulating the legal system, it is possible to destabilize political opponents without the need for confrontation direct, creating an environment where law becomes an instrument of oppression (Dunlap, 2001).

Brian Tamanaha, in *On the Rule of Law* (2004), describes how the manipulation of law threatens the very basis of justice. According to Tamanaha, the function of law in a democracy must ensure impartiality and equity, but the use of Lawfare subverts these premises. This practice corrupts the credibility of the judicial system by turning it into a tool of persecution. In fragile democracies, where the separation of powers is already limited, the Lawfare finds a fertile field to flourish, compromising the balance and system integrity.

In the context of fragile democracies, Levitsky and Ziblatt (2018) highlight how the use of institutional instruments for partisan purposes represents a subtle but deep, for democracy. The Lawfare is one of those practices that, when using the law, weakens institutions and contributes to the erosion of public trust. *The Counter Revolution: Liberal Europe in Retreat*, by Jan Zielonka (2018), complements this analysis when addressing the rise of regimes that use democratic and legal methods for their own ends authoritarian, using the Judiciary to sustain power.

William C. Banks, in *Law as a Weapon of War* (2006), warns that the strategic use of the right to neutralize opponents creates a form of repression that goes unnoticed under

the disguise of legality. This use of the Judiciary as a political tool is what characterizes the Lawfare, bringing serious consequences for democracy.

To understand the phenomenon of Lawfare, the theoretical foundation is based on the works of Charles Dunlap Jr., Brian Tamanaha, Steven Levitsky and Daniel Ziblatt, and William C. Banks.

3. THE INSTRUMENTALIZATION OF LAW AS A TOOL OF CONTROL

In a democracy, law must be the ultimate expression of justice and impartiality, ensuring equity and fair application of laws. However, when distorted to meet specific interests and used as a political weapon, the law loses its function primary and begins to act as a mechanism of repression and control. The concept of Lawfare expresses precisely this instrumentalization of the Judiciary, where the law, instead of ensuring justice, is manipulated to attack opponents, sustain specific interests and preserve status quo of certain spheres of power.

A clear example of this practice is Operation Lava Jato in Brazil. Although the operation has exposed several cases of corruption and generated a wave of changes in the political system Brazilian, sharp criticism has emerged regarding its selective approach. Such criticism argue that, by focusing on certain political leaders and ignoring others, the Brazilian Judiciary ended up being instrumentalized to achieve specific political objectives, promoting the delegitimization of important figures. This process resulted in a crisis of confidence public in the justice system, where the population began to question the impartiality and integrity of the actors involved in law enforcement.

In the United States, similar practices are evident in investigations aimed at prominent political figures. William C. Banks (2006) notes how judicial sanctions replace military pressures, transforming the Judiciary into a battlefield for political objectives. In situations where the Judiciary acts for political manipulation purposes, the

law ceases to be an instrument of justice and begins to serve as an extension of power coercive of the State.

Tamanaha (2004) points out that “law loses its function of guaranteeing justice when it is used to pursue and control opponents” (TAMANAHA, 2004, p. 70). Thus, instead of protect society and promote the balance of power, the law is distorted, serving to reinforce existing power structures.

This distorted use of the Judiciary as a political weapon characterizes Lawfare in contexts democratic, establishing a scenario in which justice no longer responds to the interests of population, but to those who control the judicial institutions. Such distortion undermines the foundations of democracy and reinforces the public perception that the judicial system, when manipulated, is not a pillar of protection, but a tool of social control.

3.1. DISCUSSION

The instrumentalization of the Judiciary for political control purposes is not a new practice, but the idea of Lawfare emerges as a modernized concept aligned with the challenges that democracies face in the 21st century.

The term, derived from the combination of “law” and “warfare”, reflects the use of law as a strategic resource of war against political adversaries. Instead of resorting to explicit methods of repression, Lawfare exploits the legal apparatus to mask practices persecutory with the appearance of legality and impartiality.

According to Tamanaha (2004), this selective use of the Judiciary sacrifices impartiality “in the name of specific interests” (p. 75), which transforms the Judiciary into a true battlefield, distorting the fundamental function of law as a guarantor of justice and balance.

Levitsky and Ziblatt (2018) argue that democracies are subject to erosion when leaders and institutions resort to legal mechanisms to maintain power, even if these methods are ethically questionable. Lawfare, therefore, has an insidious facet: by acting within the limits of the law, it makes it difficult to identify and criticize abuses, since actions are carried out with an appearance of legality.

This disguise makes legal abuses less visible and more acceptable to society, creating an environment where the population, often unable to discern between a fair trial and a disguised political attack, finds itself shrouded in distrust and disbelief in the system.

Lawfare contributes to a cycle of discredit, in which the Judiciary, when seen as partial and manipulable, loses its legitimacy before society. Public trust in judicial system is fundamental to the maintenance of democratic order, as it is the Judiciary which guarantees the protection of rights and the resolution of conflicts in a fair and impartial manner.

When this trust is eroded, an institutional vacuum emerges that fuels the polarization and intensifies social divisions. This scenario creates a vicious cycle: the more the Judiciary is manipulated, the greater the public disbelief and skepticism towards institutions. Lawfare, therefore, not only damages the image of the Judiciary, but threatens the very stability of democracy by compromising faith in the institutions that should protect it.

Cases in Brazil and the United States illustrate the harmful effects of Lawfare. In Brazil, Operation Lava Jato exemplifies how justice can be used selectively to target certain political figures, promoting an anti-corruption narrative that ended serving as a means to marginalize certain groups and leaders.

Although the operation has generated advances in the fight against corruption, many critics claim that it was directed in a way that compromised the political balance, favoring the rise of new power groups while weakening the democratic system. This use

selective approach to law promoted widespread distrust in institutions and left a mark lasting discredit in the Judiciary.

In the United States, where investigations against prominent political figures are recurring, Lawfare also emerges as a divisive practice, manipulating the legal apparatus to shape the political landscape. William C. Banks (2006) argues that the use of sanctions judicial measures as a substitute for military pressures exemplifies the transformation of the Judiciary into a political battlefield. Here, lawsuits are selectively applied to restrict the activities and influence of certain leaders, promoting an environment of hostility and distrust in democratic institutions.

In both contexts, Lawfare not only affects the Judiciary, but also exerts a direct influence on the polarization of society. By instrumentalizing the law for purposes politicians, the legal system is distorted, and its essence – which is to guarantee justice for all – is compromised. This phenomenon undermines the pillars of democracy by subverting the State of Law, transforming it into a means to support specific interests, rather than represent the interests of the people.

Consequently, Lawfare creates fertile ground for the strengthening of regimes authoritarian, where justice becomes subordinate to the will of those in power, undermining the public trust and limiting the potential of democracy to be a truly representative and impartial.

A recent example that illustrates this practice is the case of the suspension of the Radar portal Amazônico, in Manaus. Known for his investigative journalism and criticism of the government municipal, the portal was the target of a court decision that determined its suspension, at the request of the Mayor David Almeida.

7

Under the justification that the publications could harm the mayor's image, the court ruling sparked debate over the use of Lawfare as a tool to silence voices dissonant and critical, manipulating the Judiciary to embarrass the media and control the narrative

public. This case exemplifies how Lawfare can be used to limit freedom of expression and strengthen the control of governments over public opinion.

The limitation of Lawfare constitutes a serious violation of the Constitutional Order with regard to the fundamental right to freedom of expression, guided by the free manifestation of thought, according to Art. 5º, IV of the CRFB/88. And also, a very serious violation of freedom of the press, which does not require a license to exercise the right, according to Art. 5º, IX of the CRFB/88.

In this regard, the confidentiality of the source must be protected in the professional exercise of the journalist, the professional should not be threatened, nor should his fundamental rights be restricted from giving up their sources on any news, the press has its relevant importance in democracy, according to Art. 5º, XIV of the CRFB/88.

3.2. CONCLUSION

THE Lawfare represents a growing threat to modern democracies, especially in contexts where the judicial system lacks full independence or where there is intense political polarization. By transforming the law into a weapon of political war, the Lawfare subverts the principles of justice and impartiality, using legal processes as tools of persecution and neutralization of adversaries. This practice weakens the credibility of the Judiciary and compromises the function of democratic institutions, generating a crisis of public confidence in the justice system.

Studies by Dunlap, Tamanaha, Levitsky and Ziblatt, and Banks indicate that instrumentalization of law for political control purposes puts the integrity of democratic processes. By manipulating the legal system to create a façade of legality, the Lawfare insidiously weakens democracy, preventing free debate and plurality of ideas.

Levitsky and Ziblatt (2018) point out that modern democracies can be corroded internally when judicial institutions are used to undermine the opposition, rather than promote justice and defend the rights of citizens.

The effects of Lawfare are deep and widely documented in democracies across around the world, from developing countries to established powers. In Brazil, for example, Operation Lava Jato brought to light the ambiguity between justice and political persecution, questioning the ethical and institutional limits of the judicial system. In the United States, the use of the Judiciary as a means of pressuring political leaders highlights how even systems robust democracies may be susceptible to Lawfare.

In order to mitigate the harmful effects of Lawfare, it is essential to strengthen the independence and transparency of democratic institutions, particularly the Judiciary. Measures such as the adoption of strict codes of conduct for judges and prosecutors, the creation of external control mechanisms of the Judiciary, and the encouragement of institutional dialogue between powers are essential to preserve the integrity of the democratic system. Furthermore, an active and vigilant civil society can play a crucial role in protecting democracy, denouncing abuses and demanding accountability for acts of manipulation of the law.

Finally, it is important to emphasize that, in a healthy democracy, law must be a tool of justice and not a weapon to eliminate the opposition. The fight against Lawfare requires a joint effort between government, civil society and international institutions, so that can build a political environment where the rule of law prevails over vested interests individuals and justice can be guaranteed to all.

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