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Justice or Lawfare? Process Tracing and Critical Discourse Analysis of the Sobornos Case Against Rafael Correa

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Research Article

Keywords: Ecuador, lawfare, judicial independence, process tracing, critical discourse analysis

Posted Date: November 16th, 2026

DOI: https://doi.org/10.21203/rs.3.rs-9485507/v1

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Additional Declarations: No competing interests reported.

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Abstract

This article analyzes the Sobornos 2012–2016 criminal case against former Ecuadorian President Rafael Correa using process tracing and Critical Discourse Analysis. The study addresses a central question in Latin American politics: whether high-profile anti-corruption prosecutions reflect legitimate judicial accountability or politically motivated persecution. Two competing explanations are evaluated: a fair and independent judicial process, and a politically instrumentalized prosecution aimed at electoral exclusion. The findings show that the hypothesis of a legitimate judicial process fails a key requirement due to evidence of limited judicial independence and documented irregular interactions between prosecutors and judges. In contrast, the alternative explanation is supported by multiple forms of evidence, including international institutional reactions and testimony indicating external pressure on judicial actors. The analysis concludes that both dynamics coexisted: corruption was present, but the judicial process exhibited features consistent with political instrumentalization aimed at proscribing Correa from electoral participation in 2021 elections. This distinction highlights the importance of separating empirical wrongdoing from procedural fairness in evaluating judicial outcomes.

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1. Introduction

On April 7, 2020, the Criminal Tribunal of Ecuador's National Court of Justice issued a guilty verdict against twenty individuals—among them former President Rafael Correa Delgado (2007–2017) and former Vice President Jorge Glas Espinel—for the crime of aggravated passive bribery, codified under Article 280.3 of the *Código Orgánico Integral Penal* (COIP). The sentence imposed was eight years' imprisonment, twenty-five years of political disqualification (subsequently reduced to eight on appeal), and an obligation to compensate the State in the amount of USD 14.7 million. The verdict was upheld on appeal on July 20, 2020, and on cassation on September 7 of the same year, becoming final in a remarkably compressed timeline of barely sixteen months from the opening of the prosecutorial investigation (Corte Nacional de Justicia del Ecuador, 2020a, 2020b).

Since then, the case has been subject to radically divergent interpretations. For its defenders, it constitutes a legitimate exercise in accountability against a systemic corruption structure documented with over 63,000 digital files and 130 evidentiary elements presented by the Attorney General's Office (Plan V, 2020). For its critics, it represents a paradigmatic case of *lawfare*—juridical warfare—aimed at politically disqualifying the most popular leader of the Ecuadorian left—who was expected to serve as the presidential running mate of Andrés Arauz—before the 2021 general elections (Vegh Weis, 2023).

The academic relevance of the case transcends its national particularities. Ecuador is embedded within a regional pattern where the Odebrecht scandal—the largest documented corporate corruption scheme in Latin America, involving USD 788 million in confessed bribes across twelve countries (U.S. Department of Justice, 2016)—triggered judicial proceedings against former presidents in Brazil, Peru, Colombia, Panama, and Ecuador. In the Brazilian case, the convictions

of Luiz Inácio Lula da Silva were annulled by the Supreme Federal Tribunal after determining the partiality of Judge Sergio Moro, reinvigorating the continental debate over whether these investigations served as instruments of justice or mechanisms of selective political elimination (Zanin et al., 2020). The case of Pedro Castillo in Peru and the prosecution of Sandra Torres in Guatemala further illustrate how the boundary between anti-corruption enforcement and political persecution remains deeply contested across the region.

The temporal and institutional parallels across these national cases are striking and merit systematic examination. In Brazil, Peru, and Ecuador alike, anti-corruption investigations intensified during or immediately after political transitions, involved prosecutors and judges with demonstrable links to the incoming political establishment, and produced convictions that effectively removed popular opposition leaders from electoral contention. In each case, the tension between accountability and instrumentalization has generated scholarly debate, but Ecuador's case has received comparatively less systematic academic attention than Brazil's *Lava Jato* operation. This relative scholarly neglect is disproportionate given that the Ecuadorian case offers several analytically advantageous features: the existence of multiple independent international institutional assessments (from Belgium, INTERPOL, and the UN), the subsequent confessions of a presiding appellate judge regarding external pressure, and the availability of the complete 494-page first-instance verdict for textual analysis.

The concept of lawfare itself has emerged as a contested but analytically productive category in Latin American political science. Critics argue that it functions primarily as a rhetorical device deployed by politicians facing legitimate prosecution to delegitimize judicial accountability (Helmke & Figueroa Schibber, 2022). Proponents contend that it captures a real phenomenon—the selective and politically timed weaponization of criminal law against political opponents—that

is distinct from ordinary corruption prosecution and requires its own analytical framework (Vegh Weis, 2023; Zanin et al., 2020). This article does not take an a priori position in this debate but rather subjects both interpretations to rigorous empirical testing through process tracing, allowing the evidence to adjudicate between them.

This article aims to bring methodological rigor to a debate frequently dominated by ideological positioning. To this end, it applies process tracing in its *explaining outcome* variant (Beach & Pedersen, 2019), which allows for the evaluation of rival causal hypotheses through the examination of diagnostic evidence within a single case. The analysis is complemented by a Critical Discourse Analysis (CDA) of the first-instance verdict, following Van Dijk's (1998, 2006) categories on the relationship between ideology, power, and discursive structures in institutional texts. The combination of these two methodological approaches—one focused on causal inference, the other on textual analysis—offers a more comprehensive analytical framework than either method alone could provide.

The remainder of this article is organized as follows. Section 2 presents the literature review and theoretical framework, covering the conceptual genealogy of lawfare, the epistemological foundations of process tracing, and the theoretical basis of Critical Discourse Analysis. Section 3 details the methodology, including case selection, the formulation of rival causal hypotheses, the operationalization of empirical tests, and the specific procedures employed for the discourse analysis of the verdict. Section 4 reports the results of the four process tracing tests. Section 5 presents the findings of the Critical Discourse Analysis. Section 6 offers a methodological synthesis discussing how the convergence of both methods strengthens the overall inferential architecture. Section 7 draws conclusions and identifies implications for future research and policy.

2. Literature Review and Theoretical Framework

2.1. Lawfare: Conceptual Genealogy and Operationalization for Latin America

The concept of *lawfare* has a complex genealogy that predates its Latin American application. Dunlap (2001) originally defined it as the use of law as a weapon of war in the context of U.S. military operations. Comaroff (2001) and Comaroff and Comaroff (2006, 2007) reframed it from legal anthropology as the resort to legal instruments and the violence inherent in law to commit acts of political coercion, distinguishing between *hegemonic lawfare*—exercised by powerful states—and *insurgent lawfare*—deployed by weak actors against power. Kittrie (2016) added the distinction between instrumental lawfare (use of legal tools to achieve effects equivalent to military intervention) and asymmetric exploitation lawfare (leveraging normative asymmetries in armed conflicts).

Jones (2016) contributes a critical perspective from legal geography, arguing that lawfare signals an intensification of the relationship between law and war in late modernity that requires careful examination of the historical geographies of both phenomena to avoid ideological oversimplification. Vegh Weis (2023), in the most comprehensive systematization of the concept for Latin America, proposes an operational definition that articulates three dimensions: (a) *psychological warfare*, which constructs the defendant's guilt through media before trial; (b) *judicial warfare*, which instrumentalizes criminal proceedings for purposes of political elimination; and (c) *media warfare*, which amplifies accusations to produce the political death of the opponent. Vegh Weis observes that Latin American lawfare operates as a functional substitute for the classic coup d'état: it produces the legal and political death of the adversary without resorting to military force, preserving democratic appearances.

The Progressive International report (2023) documents this pattern in Brazil, Ecuador, and Guatemala, identifying common elements: cooperation between prosecution and media, judges dependent on the executive branch, accelerated procedural timelines coinciding with electoral calendars, and strategic use of pretrial detention or political disqualification. The report's comparative framework is particularly valuable because it identifies structural similarities across cases that might otherwise appear nationally idiosyncratic, suggesting that lawfare in Latin America operates through institutionally recognizable mechanisms rather than ad hoc political interference.

The Brazilian case provides the most extensively documented precedent. The conviction of former President Lula da Silva was subsequently annulled by the Supreme Federal Tribunal after leaked messages between Judge Sergio Moro and prosecutors revealed systematic coordination that violated the adversarial structure of criminal proceedings. Crucially, the annulment did not declare Lula innocent of corruption; rather, it determined that the trial had been conducted by a partial judge whose coordination with the prosecution compromised the fundamental fairness of the proceedings (Zanin et al., 2020). This distinction—between factual guilt and procedural legitimacy—is central to the analytical framework of the present study and constitutes one of the most frequently misunderstood aspects of the lawfare debate in public discourse.

For operationalizing the distinction between legitimate prosecution and lawfare, this study adopts the criteria proposed by Zanin, Martins, and Valim (2020): (i) use of the criminal justice system for political-electoral purposes; (ii) manipulation of procedural timelines; (iii) violation of due process guarantees; (iv) illicit cooperation between prosecution and adjudicator; and (v) practical effect of electoral disqualification of the accused. These five criteria provide a structured analytical framework that moves beyond purely normative assessments of whether a prosecution is

politically motivated. Importantly, these criteria are designed to be empirically verifiable rather than dependent on subjective assessments of prosecutorial intent, which makes them particularly well-suited for process tracing methodology.

2.2. Process Tracing: Epistemological Foundations and Variants

Process tracing is a case study method that enables strong causal inferences within an individual case by tracing the causal mechanisms that link causes to outcomes (Beach & Pedersen, 2019). Unlike comparative methods, which infer causality from cross-case covariation, process tracing examines diagnostic evidence *within* the case to determine whether the theorized links of the causal chain are present or absent. As Beach (2016) argues, what is traced are not simply intervening variables but the components of a causal mechanism understood as a system of interacting parts that transmits causal forces from X to Y.

Beach and Pedersen (2019) distinguish three fundamental variants: *theory-testing* (verifying whether a theoretical mechanism operates in a given case), *theory-building* (inductively inferring a mechanism from empirical evidence), and *explaining outcome* (constructing a minimally sufficient explanation of the observed outcome in a specific case). This study employs the third variant, as the objective is not to test a general theory of lawfare but to determine which of two rival explanations best accounts for the concrete outcome: Correa's conviction.

The inferential logic rests on Bayesian reasoning: each piece of evidence updates the posterior probability of the rival hypotheses as a function of its probative power (Bennett, 2008). Collier (2011) systematized four types of empirical tests according to their confirmatory and eliminatory capacity, whose application to the present case is detailed in Section 3. Mahoney (2012) complements this logic by arguing that the strength of process tracing resides in its capacity to

work with causal process observations whose probative value is independent of the number of observations, which fundamentally distinguishes it from statistical inference. This methodological feature makes process tracing particularly well-suited for analyzing high-profile judicial cases where the unit of analysis is singular but the available diagnostic evidence is rich and varied.

2.3. Critical Discourse Analysis of Judicial Texts: Theoretical Foundations

Critical Discourse Analysis (CDA), as theoretically developed by Van Dijk (1998, 2006, 2008), Fairclough (1995, 2003), and Wodak (2001), studies how linguistic structures reproduce, legitimize, or challenge power relations. Van Dijk defines CDA as a type of research that studies primarily how the abuse of power, domination, and inequality are produced, reproduced, and resisted through text and talk.

In the judicial domain, sentencing discourse fulfills specific functions: it describes proven facts, subsumes conduct under criminal types, and justifies the decision. When a verdict exceeds these functions—incorporating political value judgments, moral characterizations of the defendant unrelated to the criminal type, or emotional language improper to technical discourse—what Mayr (2004) terms discursive excess occurs, indicative of a latent function distinct from the jurisdictional one. For the analysis of judicial vocabulary, this study employs the categories proposed by Van Dijk (2006): (a) *lexicalization*—choice of evaluative rather than neutral terms; (b) *presupposition*—content presented as given that constitutes undemonstrated premises; (c) *hyperbole*—rhetorical amplification exceeding the descriptive; (d) *actor categorization*—discursive construction of identities; and (e) *epistemic modality*—degree of certainty with which statements that should be hypotheses are presented. The integration of CDA with process tracing allows for a methodological triangulation that strengthens the overall inferential architecture:

process tracing identifies the causal dynamics of the case, while CDA examines whether the verdict's own textual features are consistent with independent judicial reasoning.

3. Methodology

3.1. Case Selection and Sources

Sobornos 2012–2016 constitutes a paradigmatic case (Flyvbjerg, 2006) for studying the tension between anti-corruption justice and lawfare for three reasons: (a) it involves a former president with high popularity and intense political polarization; (b) it is embedded within the continental Odebrecht network, enabling comparisons with Brazil and Peru; and (c) it has generated divergent pronouncements from international bodies (Belgium, INTERPOL, the UN, the United States) that function as privileged diagnostic evidence.

The selection of a single case for in-depth analysis follows the logic articulated by Flyvbjerg (2006) in his defense of case study research against the misunderstanding that one cannot generalize from a single case. Paradigmatic cases are chosen not for their typicality but for their capacity to illuminate broader theoretical dynamics. The Sobornos case illuminates the structural tension between anti-corruption enforcement and political instrumentalization of justice in ways that are analytically generalizable to other Latin American contexts, even though the specific details are unique to Ecuador. The methodological advantage of single-case process tracing over large-N comparative analysis is precisely its capacity to identify causal mechanisms operating within the case, rather than merely establishing correlational patterns across cases (Mahoney, 2012).

Primary sources consulted include: (i) the complete first-instance verdict (494 pages), available through the portal of the *Procuraduría General del Estado*; (ii) the official communiqué of the

National Court of Justice on the verdict; (iii) official designations by the U.S. Department of State; and (iv) Belgium's extradition resolutions. Secondary sources comprise investigative journalism reports (Plan V, Periodismo de Investigación, La Fuente, Mil Hojas), indexed academic articles, and reports from international organizations. The triangulation of official judicial documents with international institutional pronouncements and investigative journalism provides a robust evidentiary base for process tracing. A complete inventory of journalistic sources consulted, with links and content summaries, is provided in Appendix A.

3.2. Formulation of Rival Causal Hypotheses

Hypothesis 1 (H1): Legitimate justice. The verdict results from an independent judicial process, grounded in sufficient material evidence, which correctly determines Correa's participation in a bribery scheme. Causal mechanism: Real corruption during the administration (X) → Evidence gathering following political alternation (M1) → Merit-based prosecutorial investigation (M2) → Trial before independent judges (M3) → Legally grounded conviction (Y).

Hypothesis 2 (H2): Lawfare. The verdict is the product of a politically instrumentalized process designed to electorally disqualify Correa. Causal mechanism: Moreno–Correa political rupture (X) → Restructuring of the judiciary through the CPCCS-T (M1) → Appointment of a dependent Attorney General (M2) → Accelerated trial before temporary judges (M3) → Conviction coinciding with the electoral calendar (Y).

3.3. Operationalization: Empirical Tests

Following Collier's (2011) typology, four tests are designed with differentiated predictions for each hypothesis. The *straw-in-the-wind* test examines whether the political context of the case's opening is more consistent with routine law enforcement or with a politically timed intervention. The *hoop test* evaluates a necessary condition: the institutional independence of the adjudicating judges. If the judges lacked independence, H1 cannot be sustained regardless of the underlying facts. The *smoking gun* test searches for direct evidence linking the outcome to one of the two hypothesized causal mechanisms—such as documented coordination between prosecution and bench, or international institutional assessments of the proceedings' fairness. Finally, the *doubly decisive* test requires evidence so compelling that it simultaneously confirms one hypothesis while eliminating the other: specifically, direct and incontrovertible documentary proof of Correa's personal ordering of bribery payments.

Table 1

Matrix of Empirical Tests (based on Collier, 2011)

Test Type	Evidence Sought	Prediction H1	Prediction H2
Straw-in-the-wind	Political context of case opening	Case arises from citizen complaint or fortuitous discovery	Case arises after political rupture and judicial restructuring
Hoop test	Institutional independence of judges	Career judges with no nexus to executive power	Temporary judges appointed after restructuring
Smoking gun	Prosecution–bench communications / international recognition	No improper contacts; international endorsement	Judge–prosecutor emails; political asylum; INTERPOL rejection; UN alerts
Doubly decisive	Strength of direct evidence against Correa personally	Incontrovertible direct documentary evidence	Conviction based on indirect inferences; exculpatory evidence denied

3.4. Methodology for Critical Discourse Analysis

The CDA component of this study follows a three-stage analytical procedure applied to the first-instance verdict (494 pages), with particular attention to the sections containing the tribunal's legal

reasoning and factual determinations regarding Rafael Correa's individual liability (primarily sections 8.5 and 8.6 of the verdict).

Stage 1: Identification of key argumentative passages. The verdict was read in its entirety, and passages where the tribunal establishes the causal link between Correa and the bribery scheme were identified and extracted. These passages are the most analytically significant because they constitute the points where the tribunal must connect the general evidence of corruption to Correa's specific criminal responsibility—the weakest link in the evidentiary chain, as established in Section 4.4.

Stage 2: Coding and categorization. The extracted passages were coded using Van Dijk's (2006) five analytical categories: lexicalization, presupposition, hyperbole, actor categorization, and epistemic modality. Each instance was classified according to whether it performed a strictly juridical function (describing facts, subsuming conduct under criminal types, or justifying the legal decision) or an extra-juridical function (political characterization, moral judgment, or rhetorical amplification). The coding was informed by Fairclough's (2003) framework for analyzing nominalization and modality in institutional texts, and Wodak's (2001) strategies for identifying intensification and mitigation patterns.

Stage 3: Pattern analysis and triangulation. The coded instances were analyzed for systematic patterns. The epistemological claim is not that any individual discursive feature constitutes conclusive proof of bias, but rather that the cumulative co-occurrence of multiple extra-juridical discursive features across the verdict's key argumentative passages reveals a discursive orientation that exceeds neutral adjudication. The CDA findings were then triangulated with the process tracing results: if both methods independently point toward compromised judicial impartiality—

one through institutional and procedural evidence, the other through textual evidence—the convergence substantially strengthens the overall inferential architecture.

4. Results of Process Tracing

4.1. Straw-in-the-Wind Test: Political Context of the Case's Opening

The observed temporal sequence is as follows. Lenín Moreno assumed the presidency in May 2017 as a candidate of the Alianza PAÍS movement, led by Correa. Weeks later, the political rupture between them occurred. In February 2018, Moreno convened a referendum that, among other measures, eliminated indefinite reelection and created a Transitional Council of Citizen Participation and Social Control (CPCCS-T). The CPCCS-T, chaired by Julio César Trujillo—who publicly declared he would do everything possible to send Correa to prison—proceeded to remove and replace judges, members of the Judiciary Council, and oversight officials nationwide. Diana Salazar was designated Attorney General by this transitional council in April 2019. One month later, on May 3, 2019, the Attorney General's Office opened the *Sobornos* investigation following the publication by the digital portals Mil Hojas and La Fuente of the document known as *Receta de Arroz Verde 502*.

This sequence is consistent with H2: the case does not precede the judicial restructuring but follows it. The CPCCS-T's restructuring was itself highly controversial: it removed over 300 public officials across the judiciary, oversight agencies, and electoral bodies, effectively reconstituting Ecuador's institutional landscape within a period of months. Critics characterized it as a democratic renewal of institutions captured by the Correa administration; opponents described it as a politically motivated purge designed to install allies in key positions. The fact that the Attorney General's Office opened the Sobornos investigation within weeks of Salazar's appointment by this transitional body is a temporal coincidence that the *straw-in-the-wind* test cannot resolve.

However, the *straw-in-the-wind* test cannot, by definition, confirm or eliminate either hypothesis. The temporal correlation could alternatively be explained because the political alternation enabled the investigation of facts that the previous administration had shielded (consistent with H1). It is worth noting that the Odebrecht scandal generated judicial proceedings across the region during this same period, suggesting that the timing may partially reflect a broader continental dynamic rather than exclusively domestic political manipulation. Moreover, the digital evidence that triggered the investigation—the *Arroz Verde* documents—had been in journalistic circulation for some time before the formal investigation was launched, which suggests a degree of evidentiary independence from the political restructuring. The key question is not whether the investigation had an evidentiary basis but whether its institutional context ensured procedural fairness. **Result: evidence favoring H2, without definitive elimination of H1.**

4.2. Hoop Test: Institutional Independence of the Adjudicators

For H1 to pass the *hoop test*, it is a necessary condition that the judges who intervened in the case enjoyed sufficient institutional independence. The observed data are as follows. The first-instance tribunal was composed of Judges Iván León (rapporteur), Iván Saquicela, and Marco Rodríguez. The appeals tribunal comprised David Jacho, Dilza Muñoz, and Wilman Terán. The cassation tribunal consisted of Associate Justices Javier de la Cadena, Milton Ávila, and José Layedra. Of these nine judges, seven were temporary or interim, appointed following the restructuring executed by Moreno through the CPCCS-T. A temporary judge lacks tenure stability, does not enjoy the protections of irremovability that shield permanent appointees, and faces structural incentives to align with the political power that appointed them.

The UN Special Rapporteur on the Independence of Judges, Diego García-Sayán, issued four formal calls regarding this case—an extraordinary number in the practice of the United Nations

system. In July 2021, he expressed concern regarding allegations of possible violation of objective judicial independence through interference by other branches of power and noted that the verdict may have been motivated by the 2021 electoral calendar. These communications from the UN Special Rapporteur carry significant weight as diagnostic evidence because they represent an independent institutional assessment specifically focused on judicial independence—the precise variable under examination in this test.

Additionally, in 2024, revelations substantially altered the evidentiary landscape. Wilman Terán—a member of the appeals tribunal that upheld the conviction—declared before the National Assembly that Attorney General Salazar sent emissaries to pressure him, and that the former president of the National Court, Iván Saquicela, told him he was required to uphold the verdict. Furthermore, emails were discovered between Judge Iván León (first-instance rapporteur) and an official of the Attorney General's Office who forwarded a file titled "PROCESADO CORREA" (Defendant Correa) with instructions for aggravating the defendant's procedural situation.

Result: H1 does not pass the hoop test. The absence of institutional independence among the adjudicators is fatal for the legitimate justice hypothesis, as it constitutes a minimum necessary condition—*sine qua non*—that is not met. This does not mean that H1 is entirely false: corruption may have existed as an empirical phenomenon. But the *specific judicial process* does not satisfy the minimum standards of a fair trial as articulated by the European Court of Human Rights, the UN Human Rights Committee, and the Inter-American Court of Human Rights. The distinction between factual guilt and procedural fairness is central to the rule of law: a conviction obtained through a compromised process cannot be considered legitimate regardless of the underlying conduct.

International jurisprudence on judicial independence provides clear standards against which the Ecuadorian case can be evaluated. The UN Basic Principles on the Independence of the Judiciary (1985) establish that judges shall decide matters impartially, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter. The European Court of Human Rights has developed a two-part test for judicial independence: subjective impartiality (absence of personal bias) and objective impartiality (existence of sufficient guarantees to exclude any legitimate doubt). In the present case, the objective impartiality criterion is manifestly not satisfied. The combination of temporary judicial appointments made by a transitional body controlled by the executive, documented communications between the prosecution and the bench, and a presiding appellate judge's subsequent confession of external pressure would fail any reasonable application of the objective impartiality standard.

It is important to note that the hoop test's failure for H1 does not automatically validate H2 in its entirety. In the Bayesian framework of process tracing, the elimination of one hypothesis increases the posterior probability of the rival hypothesis, but only to the extent that the rival hypothesis is consistent with the observed evidence across all four tests. The hoop test's failure does, however, establish a foundational finding: whatever the underlying facts may be, the process through which they were adjudicated was institutionally compromised. This finding is independent of one's political assessment of Correa's presidency or the Odebrecht scandal more broadly.

4.3. Smoking Gun: Evidence of Improper Coordination and International Recognition

The *smoking gun* test requires direct evidence linking the outcome to the hypothesized causal mechanism. The following pieces of evidence function as smoking guns for H2:

(a) The emails between the rapporteur judge and the Attorney General's Office, mentioned above, which document improper coordination between accuser and adjudicator. (b) Belgium's grant of political refuge to Correa in March 2022, explicitly determining that the proceedings against him were manifestly contrary to the right to a fair trial and refusing to cooperate with Ecuadorian justice on grounds that the proceedings were political in nature. (c) INTERPOL's triple rejection of red notice requests against Correa, citing the political character of the case and the appearance of denial of justice. (d) The four formal calls by the UN Special Rapporteur. (e) Terán's 2024 declarations regarding direct pressure to uphold the verdict. (f) The opinions of international jurists such as Baltasar Garzón and Eugenio Raúl Zaffaroni, who have characterized the case as lawfare in documented academic forums.

In the opposite direction, there also exists partial smoking gun evidence for H1: the U.S. Department of State designated Correa and Glas as ineligible to enter U.S. territory due to significant corruption in October 2024, and former Comptroller General Carlos Pólit was sentenced to ten years in U.S. federal courts for receiving over USD 10 million in Odebrecht bribes. The twenty-three convictions of Ecuadorian officials under the Foreign Corrupt Practices Act (FCPA) in U.S. jurisdictions suggest that the corruption facts during Correa's administration are not entirely fabricated. However, it is critical to note that the U.S. designation concerns Correa's conduct during his tenure in office broadly, not the specific proceedings or evidentiary standards of the *Sobornos* case. The existence of corruption within a government does not, by itself, validate a particular prosecution against its head of state.

The evidentiary weight of the U.S. designations and convictions merits careful calibration. While they establish that corruption was a systemic feature of governance during the Correa era, they do not address the specific question at the heart of the *Sobornos* case: whether Correa personally

directed or instigated the bribery scheme. The FCPA convictions involved officials who directly received or facilitated payments, not the head of state. The State Department's designation under Section 7031(c) of the Foreign Operations Appropriations Act is an administrative determination, not a judicial finding, and does not require the evidentiary standards applicable in criminal proceedings. Therefore, while this evidence supports the general proposition that corruption existed, it does not resolve the specific question of Correa's personal criminal liability that the Ecuadorian proceedings purported to establish. **Result: strong smoking guns for H2, with partial smoking gun for H1.** The coexistence of direct evidence for both hypotheses is consistent with the possibility that real corruption was processed through an instrumentalized trial—a conclusion that the Brazilian precedent corroborates.

4.4. Doubly Decisive Test: Direct Material Evidence Against Correa

A *doubly decisive* test would resolve the competition between hypotheses: if direct and incontrovertible documentary evidence existed showing that Correa specifically ordered the collection of bribes, H1 would be confirmed and H2 substantially eliminated. Analysis of the verdict reveals that the direct evidence against Correa personally is notably weak compared to the solidity of the general case against other co-defendants.

The only direct financial link is a deposit of USD 6,000 in his checking account at Banco del Pacífico—a trivial amount for a scheme that the tribunal quantifies at USD 7.8 million—which Correa himself claims corresponds to a loan, for which he asserts to possess supporting receipts. No recording, email, message, or document signed by Correa ordering payments exists. The conviction rests on the theory of psychic influence (*influjo psíquico*): Correa instigated through his position of power, without the need to prove a specific order. The defense repeatedly requested a graphochemical analysis of Pamela Martínez's notebook—to determine whether it was written

on the dates alleged or subsequently—which was systematically denied. Martínez herself acknowledged before the tribunal having written it in 2018, from memory, during a flight. The systematic denial of exculpatory evidence requests raises serious due process concerns that compound the independence issues identified in the hoop test. **Result: no doubly decisive evidence is identified.** The material evidence is consistent with a corruption scheme during Correa's administration but does not establish his direct personal participation with an evidentiary standard that would reasonably eliminate doubt. The psychic influence theory, from the perspective of the principle of criminal legality and the dogmatics of instigation (Roxin, 2014, § 26, nm. 4–8), presents considerable doctrinal problems.

4.5. Consolidated Results

Table 2 summarizes the results of the four process tracing tests applied to both rival hypotheses.

Table 2

Consolidated Process Tracing Results

Test	Result for H1 (Justice)	Result for H2 (Lawfare)
Straw-in-the-wind	Compatible (alternation enabled investigation)	Compatible (case follows judicial restructuring)
Hoop test	NOT PASSED (temporary dependent judges; judge–prosecutor emails; UN alerts)	Passed (judges appointed post-restructuring; Terán confirms pressure)
Smoking gun	Partial (U.S. convictions; State Dept. designation; Odebrecht confession)	Strong (judge–prosecutor emails; Belgium asylum; 3x INTERPOL rejection; 4 UN alerts; Terán confessions)
Doubly decisive	Not available (no incontrovertible direct evidence against Correa)	Not available (corruption in entourage partially externally verified)

5. Critical Discourse Analysis of the Verdict

The examination of the first-instance verdict's text reveals linguistic patterns that exceed the descriptive and subsumptive function proper to judicial discourse. Five significant discursive

phenomena are identified, systematized through the analytical categories of Van Dijk (2006), Fairclough (2003), and Wodak (2001). The analytical approach follows the three-stage procedure described in Section 3.4.

5.1. Evaluative Lexicalization: "Autocrat"

The verdict describes Correa as having exercised his functions as Constitutional President controlling the five functions of the Ecuadorian State (Executive, Legislative, Judicial, Electoral, and Transparency) in the manner of an autocrat. The term *autocrat* is not a criminal law concept: it does not appear in the typification of bribery (Art. 280 COIP), is neither an element of the objective nor subjective type, and its inclusion serves no subsumptive function. It is a political judgment on the form of government, improper in a criminal verdict. Following Van Dijk (2006, p. 126), this lexicalization reveals an ideological Us/Them polarization where the defendant is constructed as a negative political category, not merely as the perpetrator of a crime. The use of such politically charged terminology in a judicial decision designed to establish criminal liability suggests that the tribunal was engaging in political characterization rather than strictly legal reasoning.

5.2. Hyperbole and Intensification Strategy

The tribunal states that Correa went to the extreme of defrauding his role as President of the Republic, within society, violating the very institutionality of the Ecuadorian Government as such. The cumulative syntactic structure constitutes what Wodak (2001) terms an *intensification strategy*: multiple subordinate clauses that progressively amplify gravity, creating a rhetorical effect that exceeds factual description. The expression violating the very institutionality presupposes that all institutionality was violated, which is an unproven generalization functioning

as a presupposition in Van Dijk's (1998) sense: what is a debatable evaluation is presented as established fact.

5.3. Epistemic Modality: Absolute Certainty over Inferences

The verdict employs epistemic modality of absolute certainty for statements that are, strictly speaking, inferences: the evidence was *incontrovertible* in determining that Correa caused a group of public officials to form the resolution to commit the crime of aggravated passive bribery. The adjective *incontrovertible* presents as apodictic certainty what the argumentative structure itself reveals as inference: the tribunal has no direct evidence that Correa caused the criminal resolution in others but rather infers this from his position of power. Fairclough (2003, p. 164) identifies this phenomenon as the nominalization of a complex and hypothetical process into a factual entity. This epistemic overreach is particularly significant because it occurs precisely at the weakest point in the tribunal's evidentiary chain—the causal link between Correa's presidential authority and the specific criminal acts of his subordinates.

5.4. Construction of the Enemy Through Clandestine Codes

The verdict highlights that within the corruption framework, Correa had his own codes: SP (Señor Presidente), RCD (Rafael Correa Delgado), RC (Rafael Correa), and A1, with the objective of concealing his identity. The inclusion of the codes serves a narrative function: it constructs the image of a clandestine actor operating in the shadows, reinforcing the interpretive framework of a criminal organization. However, the use of codes in internal governmental communications is not an indicator of criminal activity; it is common practice in governmental and corporate environments worldwide. The selection of this detail and its prominent position in the verdict reveal what Van Dijk (2006) terms *strategic information structuring*: elements reinforcing the criminality narrative are highlighted while those that might nuance it are minimized.

5.5. "Psychic Influence" as Rhetorical Construction

The most significant discursive finding is the construction of the concept of psychic influence (*influjo psíquico*) as a bridge between the absence of direct evidence and the need for conviction. The tribunal establishes that Correa caused a group of public officials—through psychic influence—to form the resolution to commit the criminal act. This construction performs three simultaneous discursive operations. First, it converts the defendant's hierarchical position into proof of guilt (*petitio principii*): being president and having subordinates becomes, in itself, the criminal mechanism. Second, the expression psychic influence—a concept from German criminal dogmatics on instigation—is employed without the technical rigor it demands: instigation requires, according to the predominant doctrine, a specific communicative act directed at generating the criminal resolution in another (Roxin, 2014, § 26, nm. 4–8); it is not constituted by the mere existence of a power relationship. Third, the insertion between em-dashes presents the causal mechanism as a parenthetical aside, a minor detail, when in reality it is the central and weakest element of the argumentation. This rhetorical minimization of the conviction's most vulnerable logical element is a textbook example of what Fairclough (2003) identifies as strategic backgrounding of problematic assumptions.

5.6. Consolidated Results

Table 3 summarizes the results of the Critical Discourse Analysis of the Verdict

Table 3

Summary of Critical Discourse Analysis of the Verdict

Discursive Phenomenon	**Expression in Verdict**	**CDA Analytical Category**
Evaluative lexicalization	"Autocrat," "corruption framework"	Ideological Us/Them polarization (Van Dijk, 2006); non-subsumptive political judgment

Hyperbole	"Violating the very institutionality of the Ecuadorian Government as such"	Intensification strategy (Wodak, 2001); presupposition as established fact
Apodictic certainty	"Incontrovertible" applied to inferential conclusions	Absolute epistemic modality over inferential claims (Fairclough, 2003)
Enemy construction	Codes "SP," "RCD," "RC," "A1"	Strategic information structuring (Van Dijk, 2006)
Causal nominalization	"Through psychic influence" as parenthetical	Petitio principii; nominalization of hypothetical process (Fairclough, 2003; Roxin, 2014)

6. Discussion: Methodological Convergence and Synthesis

The central analytical contribution of this study lies not only in the individual findings of each method but in the convergence between them. Process tracing and Critical Discourse Analysis operate on different analytical planes—the former examines institutional and procedural evidence to evaluate causal hypotheses, while the latter examines the textual properties of the verdict itself to assess whether its linguistic features are consistent with independent judicial reasoning. The fact that both methods, applied independently, point toward the same conclusion substantially strengthens the overall inferential architecture through methodological triangulation.

Process tracing establishes, through the hoop test, that the institutional conditions for a fair trial were not present: the judges lacked independence, the prosecution coordinated improperly with the bench, and multiple international bodies assessed the proceedings as politically compromised. These findings identify the *procedural context* in which the verdict was produced. CDA then examines the *textual product* of that context—the verdict itself—and reveals that its linguistic features are precisely those that would be expected from a tribunal operating under political pressure rather than from one exercising independent judgment. An independent tribunal does not need to characterize the defendant as an "autocrat," does not need hyperbolic amplification to describe criminal conduct, does not need to assert apodictic certainty over inferences, and does not need to minimize the central weakness of its own argument through parenthetical insertion.

The convergence is methodologically significant because each method addresses the other's potential limitations. Process tracing alone might be criticized for focusing exclusively on institutional context without examining whether the verdict's reasoning was nonetheless sound. CDA alone might be criticized for imposing subjective interpretations on textual features that could be read differently. Together, however, the convergence creates a reinforcing dynamic: the procedural irregularities identified through process tracing provide the institutional context that explains the discursive irregularities identified through CDA, and the discursive irregularities provide textual corroboration that the procedural irregularities actually affected the tribunal's reasoning.

The failure of H1 on the *hoop test* is the methodologically most decisive finding. In the Bayesian logic of process tracing, a failed hoop test drastically reduces the posterior probability of the hypothesis (Beach & Pedersen, 2019). Without verifiable judicial independence, the process cannot be qualified as legitimate justice *regardless of whether the investigated facts are true*. This point is crucial and frequently misunderstood in public debate: to affirm that lawfare occurred is not equivalent to affirming that no corruption existed. It is equivalent to affirming that the judicial process was not impartial.

The partial smoking gun for H1—the U.S. federal court convictions and the State Department designation—prevents entirely discounting the existence of real corruption. The most epistemologically robust conclusion is therefore an uncomfortable synthesis: real corruption existed during Correa's administration—consistent with the continental Odebrecht pattern and with documentary evidence—but the judicial process was politically instrumentalized in its timing, conduct, and scope to achieve Correa's disqualification before the 2021 elections, and no evidence personally implicates the president with the standard required in criminal proceedings. The Lula

precedent—where the corruption investigated during his government was real but the proceedings were annulled for the presiding judge's partiality—offers the most instructive parallel. Unlike Brazil, in Ecuador there has not yet been a judicial or international body that has reversed the proceedings, though the path to the Inter-American Commission and Court of Human Rights remains open.

This synthesis—that corruption and lawfare can coexist—challenges both sides of the prevailing political debate. Those who defend the verdict as pure justice must account for the overwhelming evidence of compromised judicial independence documented in the hoop test and the smoking gun analysis. Those who dismiss all allegations against the Correa administration as fabricated must account for the U.S. federal convictions, the Odebrecht confessions, and the voluminous digital evidence. The analytical framework developed here—distinguishing between underlying empirical reality and procedural legitimacy—provides a more nuanced account that acknowledges complexity rather than imposing false binaries.

The comparative dimension of this finding deserves emphasis. The pattern identified in Ecuador—real corruption prosecuted through compromised proceedings—is not unique to a single political context or ideological camp. It reflects a structural vulnerability of judicial systems across Latin America where the independence of the judiciary remains institutionally fragile and where political transitions frequently involve the reconstitution of judicial personnel. This structural vulnerability means that even well-founded anti-corruption investigations can be discredited by procedural irregularities, creating a paradoxical situation where genuine accountability efforts may ultimately undermine the rule of law they purport to defend. Future policy design for anti-corruption frameworks in the region must take this paradox seriously, incorporating institutional safeguards that protect judicial independence specifically during periods of political transition.

7. Conclusions

The rigorous application of process tracing and critical discourse analysis to the *Sobornos 2012–2016* case allows for four principal conclusions, accompanied by their theoretical implications.

First, the hypothesis of legitimate justice (H1), understood as an independent judicial process conforming to international due process standards, does not satisfy the minimum necessary conditions. The institutional dependence of the adjudicators, the documented improper communications between prosecution and tribunal, the confessed pressures on judges, the four calls by the UN Special Rapporteur, Belgium's grant of political asylum, and INTERPOL's triple rejection configure a framework of procedural anomalies incompatible with the notion of a fair trial.

Second, the lawfare hypothesis (H2) presents greater overall plausibility but does not explain the phenomenon in its entirety. The convictions of Ecuadorian officials in U.S. federal courts—where Ecuador's domestic political context does not operate—Odebrecht's confession before the DOJ, and the voluminous digital evidence (63,000 files) suggest that corruption during Correa's administration is not a total fabrication. The analytical distinction between *corruption as empirical fact* and *fair trial as procedural requirement* is fundamental and constitutes this article's central theoretical contribution. Corruption existed within Correa's government, but personally implicating the head of state lacks adequate evidentiary support.

Third, the analysis of judicial discourse confirms that the verdict operates in a register exceeding the jurisdictional function. The political lexicalization (autocrat), the hyperbole (violating the very institutionality), the apodictic certainty over inferences (incontrovertible), and the discursive construction of psychic influence as a bridge between the absence of direct evidence and the

conviction reveal a text that seeks to persuade politically, not merely to ground juridically. These findings are consistent with the theoretical frameworks of Van Dijk (2006), Fairclough (2003), and Mayr (2004).

Fourth, the *Sobornos* case constitutes an empirical contribution to the theoretical debate on the relationship between anti-corruption enforcement and lawfare in Latin America. It confirms that both phenomena are not mutually exclusive but potentially coexistent, and that the category of lawfare—correctly operationalized according to the criteria of Zanin, Martins, and Valim (2020) and Vegh Weis (2023)—has explanatory power for cases where the political instrumentalization of legal proceedings does not necessarily negate the existence of real underlying facts that are distorted in political debate by extending criminal liability beyond the sphere of personal responsibility. This finding has implications for comparative law and policy in the region, suggesting that future anti-corruption frameworks must incorporate stronger safeguards for judicial independence precisely to prevent legitimate investigations from being discredited through procedural irregularities.

The limitations of this study include the impossibility of accessing the totality of the digital files mentioned in the verdict, reliance on journalistic sources for reconstructing Terán's declarations, and the absence of a definitive pronouncement by the IACHR or the Inter-American Court. Additionally, this study focuses exclusively on the Sobornos case and does not examine other judicial proceedings against Correa or his associates, which might reveal different dynamics. The CDA component, while systematic, necessarily involves interpretive judgments about the functions of specific linguistic choices; alternative readings of the same textual features are possible, though the convergence of multiple independent discursive indicators strengthens the overall analysis.

Future research could complement this analysis with interviews of procedural actors, computational analysis of the complete verdict text (494 pages) using natural language processing tools to identify systematic patterns of discursive excess across all sections, comparative studies with the cases of Lula (Brazil), Toledo (Peru), and Martinelli (Panama), and monitoring of proceedings before the UN Human Rights Committee in Geneva. A particularly productive avenue would be a large-N comparative study applying the Zanin, Martins, and Valim (2020) criteria systematically across all post-Odebrecht prosecutions in Latin America, which would test whether the patterns identified in this single case are generalizable across the region.

More broadly, this study contributes to the growing body of scholarship on the relationship between democratic governance, anti-corruption enforcement, and the rule of law in Latin America. The uncomfortable synthesis reached here—that corruption and lawfare can coexist within the same case—has implications for how scholars, policymakers, and civil society organizations approach anti-corruption reform. Effective anti-corruption frameworks require not only investigative capacity and prosecutorial independence but also, and perhaps more fundamentally, robust guarantees of judicial independence that can withstand the pressures generated by politically sensitive cases. Without such guarantees, even well-founded anti-corruption efforts risk producing procedural injustice, ultimately undermining the very institutional integrity they purport to defend.

Statements and declarations

Competing Interests

The authors declare no competing interests, financial or non-financial, directly or indirectly related to the work submitted for publication.

Funding

This research received no external funding from any agency, organization, or institution.

Compliance with ethical standards

Ethics Approval

This study relies exclusively on publicly available. No human participants were recruited or directly involved by the authors, and no biological material was used. Accordingly, no institutional ethics review was required.

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Appendix A: Inventory of Journalistic Sources Consulted

The following table provides a complete inventory of the investigative journalism sources consulted for this study, organized by outlet. These sources were used as secondary evidence for reconstructing the factual timeline and for triangulation with official judicial and institutional documents.

Table A1

Journalistic Sources: Outlet, Title, URL, and Summary

Outlet	Title	URL	Summary
Plan V	Caso Sobornos: Las 130 evidencias de la Fiscalía	https://planv.com.ec/historias/caso-sobornos-130-evidencias-la-fiscalia/	Detailed inventory and analysis of the 130 evidentiary elements presented by the Attorney General in the Sobornos trial, including digital files, financial records, and witness testimonies.
Plan V	La percepción sobre la corrupción en Ecuador tuvo una leve mejoría en 2020	https://planv.com.ec/historias/politica/la-percepcion-sobre-la-corrupcion-ecuador-tuvo-una-leve-mejora-2020/	Analysis of Transparency International's Corruption Perceptions Index for Ecuador, contextualizing the Sobornos verdict within broader public attitudes toward corruption.
Periodismo de Investigación	El millonario capítulo oculto de Arroz Verde	https://periodismodeinvestigacion.com/2020/05/31/el-millonario-capitulo/	Investigative report revealing undisclosed financial flows within the Arroz Verde scheme, detailing amounts and intermediaries not covered in the official prosecution.
Periodismo de Investigación	Metida de mano en la justicia — Arroz Verde	https://periodismodeinvestigacion.com/2019/07/28/metida-de-mano/	Investigation documenting allegations of executive interference in the judiciary during the Arroz Verde investigation, including the appointment of judges and prosecutors.
Mil Hojas	Receta de Arroz Verde 502 (original publication)	https://periodismodeinvestigacion.com/tag/arroz-verde/page/2/	Original digital publication of the Arroz Verde documents that triggered the Sobornos investigation, containing financial spreadsheets and internal communications attributed to Correa's political movement.
La Fuente	Arroz Verde documents (co-publication with Mil Hojas)	https://lafuente.com.ec/	Co-publication of the Arroz Verde documents with supporting analysis of the financial flows documented therein, providing context for the subsequent prosecutorial investigation.
Primicias.ec	Rafael Correa sentenciado a ocho años de cárcel por sobornos	https://www.primicias.ec/noticias/politica/tribunal-declara-culpable-cohecho-rafael-correa/	News coverage of the first-instance verdict, including details of the sentence, the tribunal's reasoning, and initial reactions from legal experts and political actors.

Primicias.ec	Bélgica advierte que no aceptará una extradición de Rafael Correa	https://www.primicias.ec/noticias/politica/belgica-no-aceptara-extradicion-rafael-correa/	Report on Belgium's formal refusal to extradite Correa, including the Belgian authorities' assessment that the Ecuadorian proceedings lacked guarantees of a fair trial.
Primicias.ec	Caso Sobornos: fallo de la CC abre el camino hacia cortes internacionales	https://www.primicias.ec/noticias/politica/fallo-abre-camino-correa-cortes-internacionales/	Analysis of the Constitutional Court's ruling exhausting domestic remedies, enabling Correa's defense to pursue the case before the Inter-American human rights system.
Diario Expreso	Caso Sobornos: Wilman Terán acusa a la fiscal Diana Salazar de presionar sentencia	https://www.expreso.ec/actualidad/caso-sobornos-wilman-teran-acusa-fiscal-diana-salazar-presionar-sentencia-203677.html	Coverage of appellate Judge Terán's public declaration that Attorney General Salazar sent emissaries to pressure him into upholding the conviction.
El Universo	Cuatro años después de que Terán votó a favor de la sentencia, el exjuez tiene 'dudas'	https://www.eluniverso.com/noticias/politica/wilman-teran-corrupcion-caso-sobornos-2012-2016-cohecho-pasivo-agravado-tribunal-de-apelacion-corte-nacional-de-justicia/	In-depth report on Terán's evolving position regarding the verdict he helped uphold, including his expressions of doubt about the fairness of the proceedings four years later.
SWI swissinfo.ch	Bélgica rechaza la extradición de Rafael Correa solicitada por Ecuador	https://www.swissinfo.ch/spa/bélgica-rechaza-la-extradición-de-rafael-correa-solicitada-por-ecuador/47573788	International wire coverage of Belgium's extradition refusal, including statements from Belgian judicial authorities on the political nature of the Ecuadorian proceedings.
SWI swissinfo.ch	Baltasar Garzón afirma que la condena a Correa buscaba impedir su candidatura	https://www.swissinfo.ch/spa/baltasar-garzón-afirma-que-la-condena-a-correa-buscaba-impedir-su-candidatura/48051426	Report on Spanish judge Baltasar Garzón's public characterization of the Sobornos conviction as lawfare designed to prevent Correa's electoral participation.
Las Afueras	Ecuador bajo sospecha del Relator Especial de la ONU	https://www.lasafueras.info/opinio/1864-ecuador-bajo-sospecha-del-relator-relator-especial-de-la-onu-para-la-independencia-de-magistrados-y-abogados	Analysis of the UN Special Rapporteur's formal communications to Ecuador regarding concerns over judicial independence in the Sobornos case.
Infobae	Los detalles de la condena en EE.UU. contra el ex contralor Carlos Pólit	https://www.infobae.com/america/america-latina/2024/10/02/los-detalles-de-la-condena-en-estados-unidos-contra-el-ex-contralor-ecuatoriano-carlos-polit/	Coverage of the U.S. federal court conviction of former Ecuadorian Comptroller General Carlos Pólit for receiving over USD 10 million in Odebrecht bribes.
Tierra de Nadie	Fiscales tortuga: la corrupción que investigan en EE.UU. pero en Ecuador no	https://tierradenadie.ec/fiscales-tortuga-la-corrupcion-que-investigan-en-estados-unidos-pero-en-ecuador-no/	Investigative piece comparing the pace and scope of corruption investigations in U.S. versus Ecuadorian jurisdictions, highlighting cases prosecuted abroad but neglected domestically.