



Do lawyers induce litigation? Evidence from Spain, 2001–2010



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ABSTRACT

There are important theoretical reasons to support the idea that lawyers induce litigation. However, estimating empirically that relationship is problematic given a standard endogeneity problem: if lawyers generate litigation, additional litigation attracts more lawyers. According to recent studies, Spain has more litigation and more lawyers per capita than most OECD countries. In this paper we test for the relationship between the number of lawyers and litigation in Spain by making use of instrumental variables, in the period 2001–2010. Specifically, we construct two groups of instrumental variables related to the number of law schools founded in Spain by 1968 and to the distance between the current provincial capitals to the historical capital of their university district (where it was possible to study law) in 1845. The results show that the number of lawyers has a positive effect on litigation. However, from our econometric analysis we do not find an obvious problem of simultaneity for the period considered. Policy implications are derived.

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1. Introduction

It is conventional wisdom that lawyers induce litigation.¹ There are good theoretical reasons to support such perception (Garoupa, 2008). With more lawyers, the market for legal services is presumably more competitive, which should lead to an expansion of supply, a decrease in prices and consequently more lawsuits.² Another possible reason is that legal services are credence goods (Dulleck and Kerschbamer, 2006) and it is expected that lawyers will use their information advantage to boost their business; more lawyers in the market should reduce information asymmetries (since potential clients can more easily compare performance) and therefore decrease uncertainty which, in turn, enhances willingness to litigate.³ A third reason is caused by the regulatory setup. Certain forms of compensation are usually not allowed (for

example, contingency fees are strictly prohibited in many jurisdictions⁴; champerty and maintenance doctrines in common law limit the possibility of a lawyer buying a claim from his/her client). In order to comply with such limitations, lawyers might need to diversify their portfolio of cases or work with more clients to achieve significant revenues in legal fees (see, among others, Baumann and Friehe (2012) and references therein). A market with more lawyers is likely to add to these distortions. Finally, the likely concentration and nature of the corporate (fundamentally transactional) market might induce many lawyers to operate in the personal market which is more prone to litigation (Hadfield, 2000).

Notwithstanding the economic theory, empirically, the relationship between the number of lawyers and litigation is problematic given a standard endogeneity problem. Lawyers are likely to induce litigation but, at the same time, additional litigation will attract more lawyers. Not surprisingly, empirical studies to determine the relationship between the number of lawyers and litigation are not common and struggle with finding appropriate instrumental variables. Some important studies find a positive relationship. For

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¹ There is a vast literature on possible determinants of litigation, including awards and procedural rules (the so-called economics of litigation). Our analysis focuses on lawyers.

² This is a standard application of demand theory.

³ Impacts of uncertainty on litigation depend on risk attitudes. For example, Hanssen (1999) suggests that litigation rates increase with greater uncertainty.

⁴ Following Palumbo et al. (2013), contingency fees are allowed by law in only 37% of the 35 legal systems (in 31 countries) covered by the OECD Civil Justice Project. According to the report, Spain is one of the countries that do not allow such contingency fees by law.

example, [Hanssen \(1999\)](#) on the U.S., [Ginsburg and Hoetker \(2006\)](#) on Japan or [Carmignani and Giacomelli \(2010\)](#) and [Buonanno and Galizzi \(2012\)](#) on Italy. Others find no relationship. For example, [Posner \(1997\)](#) on the U.S. and England and [Clemenz and Gugler \(2000\)](#) on Austria.

In this paper, we test for the relationship between the number of lawyers and litigation across the Spanish provinces for the period 2001–2010 by making use of instrumental variables. Spain is an interesting case to consider. To start with, among the countries for which the OECD Civil Justice project obtained information ([Palumbo et al., 2013](#)), Spain is the country with the third highest per capita litigation rate (after Russia and the Czech Republic and followed by Greece and Italy).⁵ The litigation rate was measured as the ratio of the number of new civil cases filed in a given year in relation to the population. Furthermore, Spain is the country (after Russia, the Czech Republic and Greece and followed by Italy) with the fourth highest litigation rate when measuring litigation as the number of new civil cases filed in a given year relative to GDP (measured in current PPP U.S. dollars). See [Fig. 1](#).

Furthermore, Spain also suffers from a relatively significant slowness of its civil judicial procedures: Spain holds the position 26 (out of a total of 35 legal systems) in its agility to resolve disputes before the first instance courts according to the recent OECD results ([Palumbo et al., 2013](#)). Even less favorable results can be found on the Doing Business (DB) Project of the World Bank in its “enforcing contracts” indicator. Spain ranked 52 among 189 countries covered in the report of 2014. These latter results show a significant lack of consistency with the level of development of the Spanish economy.

At the same time, Spain presents one of the highest number of lawyers measured in per capita terms.⁶ In fact, we observe a high level of competition among lawyers in Spain, which at the eyes of some commentators could explain general low fees ([Ciarreta Antuñano et al., 2009](#)). Not surprisingly, recent legal reforms to make access to the profession more difficult have been interpreted as a reaction to the large number of lawyers and general low fees.

In our view, Spain is an interesting case of study in terms of recent reforms. On the one hand, the Spanish Congress passed the “Law on Access to the Professions of Barrister and Solicitor of the Courts” in 2006.⁷ This law, which came into force five years later (in November 2011), introduced a number of additional requirements for those aiming to practice lawyering. The new candidates must pass a graduate (or master) degree in law, have a mandatory work experience (a period of two years without a formal salary) and pass a national bar exam evaluating their qualifications. This reform limited, at least in theory, the access to the legal profession (before, it was only necessary to hold a university degree in law and no bar exam existed). The reform was based, according to the preamble of the law, on the following goals: to achieve a higher quality of legal service, to comply with the comparative experience of other countries which introduced such restrictions and the need to standardize the formal requirements in Spain with those of other

European countries. Interestingly there is no reference whatsoever to the Spanish high litigation rates as a reason for reform.⁸

At the same time, the legal market has been affected indirectly by the passing of the so-called “Omnibus Law” of 2009.⁹ The law relaxed some restrictions in the following areas: advertising of professional services and simultaneous exercise of two or more professions. It also reduced the power of professional associations to establish indicative fee scales. This last, relatively minor, change should be complemented by in-depth global reform of all professional services under a new “Professional Services Act” to be adopted in the future.

Summing-up, international comparisons show that Spain has a significantly high litigation rate as well as more lawyers per capita than most OECD countries. Our article studies the extent to which these observations are related. More particularly, are lawyers in Spain inducing high rates of litigation?

In order to answer this question, we construct a new dataset. Thus, in our study we focus on a topic and on a period of important reforms for which our empirical results based on our original dataset inevitably have policy implications (although we are not testing the consequences of these reforms on the legal profession, but rather analyzing the period before these reforms took place).

The correlation between the number of lawyers per capita and litigation is high (0.6806) and has the expected sign in the relevant period, 2001–2010. However, given the probable endogeneity problems, correlations are interesting but do not provide for much inference. Consequently, we develop adequate econometric techniques to address this issue and show more accurate relationships between the number of lawyers per capita and litigation. Essentially, we use two groups of instrumental variables, one related to the number of law schools founded in Spain by 1968 and one related to the distance between the current provincial capitals to the historical capital of their university district (where it was possible to study law) in 1845. Estimations using both OLS and instrumenting the relevant independent variable (lawyers per capita) are provided in this article.

The paper is structured as follows. Section 2 summarizes the institutional environment and presents the database. Section 3 explains the empirical strategy. Section 4 presents the results. Section 5 concludes with a discussion of the empirical results.

2. Institutional environment

2.1. Measuring the number of lawyers and litigation in Spain

Lawyers should join a bar association in order to practice in Spain. Thanks to the records of each bar association we have reconstructed the number of lawyers practicing Law in each geographical location and every year. According to the results, there are more than 160,000 lawyers in Spain. Before 2011, they all went to law school for four or five years at the end of which they registered with the provincial¹⁰ bar association (*Colegio de Abogados*) and could start practicing law.¹¹ Most, of course, went through some training

⁵ These countries (or legal systems) were Australia, Austria, Belgium, the Czech Republic, Denmark, England and Wales (UK), Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Northern Ireland (UK), Norway, Poland, Portugal, Russia, Scotland (UK), the Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, and Turkey.

⁶ With the cautions that are always required when comparing data of different countries, according to the CEPEJ (see report of the [CGAE, 2013](#)), Spain holds the seventh position (out of 27 countries) in the number of lawyers per capita in the European Union (well above France, which holds position 20 and Germany which holds position 10).

⁷ Law 34/2006 of October 30th.

⁸ The reform seems to be widely supported by the Spanish population, while according to the [CGAE \(2012\)](#) 85% of Spaniards demand that additional training is required to become a lawyer. This result contrasts with the apparent satisfaction of Spanish citizens with the lawyers according to the same source. That level of satisfaction has received a high mark (6.9).

⁹ Law 25/2009 of December 22nd, on the adaptation of various statutes to the Law on Free Access to Service Activities.

¹⁰ Some provinces in Spain have more than one bar association. For instance, in the province of Asturias there are two bars, one in Oviedo (the capital of the province) and one in Gijón (the bigger city in the province). Sub-provincial data have been adequately merged in our analysis.

¹¹ Under the so-called Bologna higher education reforms, the undergraduate degree has been reduced to four years in all cases (now called *grado en derecho*).

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