

subpoena power to great effect), that show employees adjusting their ratings of crap to please clients. “I spoke to Osmin earlier,” one Moody employee wrote to a Chase banker, “and confirmed that Jason is looking into some adjustments to his methodology that should be a benefit to you folks [Chase].”

There’s the bankruptcy report on Lehman showing that the firm engaged in an Enron-style, off-the-balance-sheet shell game with \$50 billion in liabilities. Examiner Anton Valukas concluded that the shady accounting gave “rise to colorable claims against the senior officers who oversaw and certified misleading financial statements.”

There’s also the case of Countrywide Financial, once the nation’s largest mortgage lender, whose top three officers are subject to an SEC suit for fraud and insider trading. From 2005 through 2007, while Countrywide assured its investors that it “managed credit risk through credit policy, underwriting, quality control and surveillance activities,” its founder and CEO, Angelo Mozilo, was privately e-mailing his underlings about the swiftly declining underwriting standards at the firm. Of Countrywide’s “pay-option” mortgages, which worked like credit cards with minimum payments, he wrote, “In all my years in the business, I have never seen a more toxic product.” Many other examples have been brought to light, and no doubt thousands more are hiding in trash folders of traders up and down Wall Street.

Since looting is precipitated by a failure of the state, it occupies a somewhat hazy moral space: when the law has broken down, who’s to judge those who seize all they can? In retrospect, the great bubble years have a kind of sick lawless euphoria to them. When the starving citizens of New Orleans grabbed food and water from supermarkets to survive, they were met with martial law. Those from Wall Street who have looted sums large enough to rebuild New Orleans from the ground up, however, have been spared the indignity of facing basic criminal sanctions.

That must change. On April 28 Marcy Kaptur sent a bipartisan letter from sixty-two House members calling on the Justice Department to begin a criminal investigation of Goldman Sachs.

About a year or so ago I attended a meeting of progressives discussing the financial crisis. One participant insisted loudly and with great agitation that we “need to put people in jail!” At the time I thought he was being theatrical and impetuous. But now I think he got it exactly right.

CHRISTOPHER HAYES

Calvin Trillin, Deadline Poet

A Bipartisan Memo From Congress to Wall Street

It’s understood by worldly folks.

To others it seems funny

That we pretend to hate your guts

But still accept your money.

Garzón on Trial

When Spain’s Supreme Court voted on March 25 to proceed with a case against investigative magistrate Baltasar Garzón for “judicial prevarication,” or knowingly overstepping his judicial authority, it set the stage for a high-stakes battle in which the heirs of a violently repressive political party may well unseat a democratic judge for daring to take seriously the complaints of that same party’s victims.

COMMENT

Garzón, 54, who sits on Spain’s Criminal Court, has earned international fame for his groundbreaking, high-profile criminal cases against prominent figures across the political spectrum—from the late Chilean dictator Augusto Pinochet and Osama bin Laden to Basque terrorists and Bush administration officials. But the star judge now finds himself on the other side of the bench, facing a possible twenty-year suspension that in effect would end his career.

Brought against Garzón by extreme right-wing splinter groups, the case rests on arcane and nearly inscrutable legal minutiae, such as the lawfulness of indicting the dead or whether kidnappings from seventy years ago can be considered ongoing crimes, immune to a statute of limitations. In Spain’s judicial system, investigative magistrates enjoy extraordinary autonomy, and they often function as both prosecutors and judges, choosing and building their own cases and assuming responsibility for everything from fact-gathering and interrogation to preventive detention. Taking full advantage of this autonomy in pursuing Spain’s doctrine of universal jurisdiction—which stipulates that the nation’s domestic courts may try foreigners for international crimes of unusual gravity regardless of where they were committed—Garzón has, in the past dozen years, further expanded the investigative magistrate’s reach. In so doing he has revolutionized international law by redefining the terms of legal accountability for world leaders. His pioneering efforts have ensured, for example, that Donald Rumsfeld and Henry Kissinger have to think twice before boarding a plane to Europe.

But Garzón’s boldness has also led Supreme Court Justice Luciano Varela to allege that the “superjudge,” as he is often dubbed in the media, has overplayed his hand. This case asserts that Garzón exceeded his legal authority when, in October 2008, he began to investigate as crimes against humanity the torture, forced disappearance and murder of some 114,000 Spanish civilians by supporters of Gen. Francisco Franco during the country’s civil war (1936–39) and the early years of Franco’s dictatorship. The 1977 amnesty law that laid the foundation for Spain’s peaceful transition to democracy after the general’s death in 1975 had long prevented legal prosecution of such acts. But Garzón, who focused on the deeds of Franco and thirty-four members of the dictator’s government, claimed that crimes against humanity were not covered by the country’s “pact of forgetting.”

Garzón began his inquiry in response to the pleas and legal briefs made by family members of Franco’s victims, many of whose bodies still lie in unmarked graves throughout the country. In so doing he initiated an intricate legal game that is ultimately a proxy for the longstanding and divisive ideological battle over Spain’s recent past. The charges against Garzón were

first brought by Manos Limpias (Clean Hands), an ultraconservative public-servant trade union created in 1995, largely to pose legal obstructions to investigations of Franco-era crimes. Another right-wing organization, the newly created Asociación Libertad e Identidad, soon became the second plaintiff. Any doubts about the case's political meaning, regardless of its legal complexity, were erased when the original plaintiffs were joined by the Falange Española, Franco's own Fascist (and the dictatorship's only legal) party, which in the 1930s and '40s was responsible for much of the killing denounced by Franco's victims.

Garzón is usually assigned a leftist role within Spain's internal disputes, but he has routinely irritated people of all political stripes. He is a postideological idealist, a legal crusader who in his own country tirelessly pursues corrupt socialists and conservatives alike and, beyond his national borders, defends Muslims tortured at Guantánamo while also confronting Al Qaeda.

It is no surprise that Spanish and international conservatives have displayed a visceral contempt toward Garzón, but the left, too, has tried to thwart his brand of judicial activism—especially when it threatens to embarrass those in power. Socialist Prime Minister José Luis Rodríguez Zapatero has resisted Garzón's efforts to try former Bush officials. The Obama administration, which has resisted similar efforts, seems to prefer forgetting past American misdeeds to opening politically inconvenient old wounds. Indeed, while NGOs such as Human Rights Watch and Amnesty International, and global judicial leaders ranging from Carla Del Ponte to Juan Guzmán Tapia, have come out in strong support of Garzón—as did tens of thousands of Spaniards in mass demonstrations on April 24—the US government has kept notably silent.

Whether the charge against Garzón will hold up remains to be seen. In a public letter to the Spanish attorney general, the American Bar Association suggested that “amnesties for crimes against humanity are inconsistent with a State's obligations to protect human rights, including the right of access to justice,” and supported Garzón's case against the Francoists. Indeed, even if Garzón did exceed his jurisdiction in opening an investigation on behalf of Franco's victims, the Supreme Court's decision to prosecute him rather than simply strike down his decisions is unsettling and reveals the rot in Spain's judicial system. Because the country chose amnesty over accountability, Franco's institutions were left largely intact, and the courts were never fully cleansed. Several of the judges handling the charges against Garzón are in fact old enough to have sworn loyalty to the dictator.

Doubts about the Supreme Court's impartial handling of Garzón's case reached a new level on April 21, when Justice Varela, noting that the plaintiffs' briefs against Garzón included confusions of judgment and fact and unwarranted references to Garzón's personal life, did not dismiss the charges but instead sent the briefs back to the plaintiffs along with detailed instructions for editorial cleanup. Varela's stunning departure from judicial precedent led some legal experts to suspect that the Supreme Court, perhaps to avoid further international embarrassment, might be maneuvering to remove the Falange Española from the trial altogether—a suspicion seemingly confirmed two days later when Varela decided to expel the Falange as a plaintiff. On

April 28 Varela announced that he is considering a request for his recusal from the case.

Regardless, for the time being, Garzón is suspended, his career in jeopardy, his future in doubt. But whether or not he practices law again, the outcome of his case—the very existence of which cautions any judge who would consider investigating the Franco years—will undoubtedly, and profoundly, affect those who have sought reparation in Spain. It will resonate far beyond Spain's borders as well, touching the lives of many more seeking justice around the world, for it bears directly on a fundamental moral dilemma whose resolution seems increasingly uncertain as the twenty-first century unfolds: to what extent can international treaties on human rights—not to mention broad global agreement about the importance of investigating crimes against humanity—be taken seriously?

Thirty-five years dead, with an already impressive array of victims, perhaps Franco isn't finished yet.

GEOFF PINGREE AND SEBASTIAAN FABER

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🔊 The SEC has filed a civil suit against Goldman Sachs for its role in exacerbating the subprime mortgage crisis. On this week's **The Breakdown** (“The SEC Has Charged Goldman Sachs With... What?”), Christopher Hayes discusses the case with economist Simon Johnson.

➤ A complete Census count will help stabilize the economy over the next decade, writes Afton Branche in **Reaching the Hard-to-Count**. It's critical that everyone, including the undocumented, be counted.

➤ Budget cuts and layoffs spurred protests at dozens of universities on March 4. In **An Educated, Escalated Movement**, Clarissa León asks, What's next for the student movement?

➤ Rebecca Solnit reports on the good news about the otherwise very bad news on climate change, in **350 Degrees of Inseparability**.

➤ Larry Summers, President Obama's top economic adviser, is awfully loose with the truth, writes William Greider in **Professor Pants-on-Fire**.