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Researching legal mobilisation and lawfare

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Abstract

Law-based, civic-led advocacy has long been an important means for addressing rule of law deficits and problems of development and governance more generally. Authoritarian regimes, official and/or corporate foreign-based corruption and the structural limitations of formal rule of law mechanisms to deliver impartial justice have forced legal advocates to think creatively. This has resulted in some interesting examples of civic-led, law-based advocacy through both informal and formal structures, aimed at pursuing social justice. However, it is important to clearly distinguish legal mobilisation from illegitimate forms of legal instrumentalism, such as lawfare.

In this Working Paper, I set out some of my current research ideas in this area and in particular explain my approach to researching legal mobilisation, which I regard as a practice as well as a socio-legal concept and approach, with a particular emphasis on the use of law as a form of political legitimacy.

Keywords

Legal mobilisation, lawfare.

Researching legal mobilisation and lawfare[1]

1 Introduction

Legal mobilisation is both a practice as well as an analytical concept. Those engaged in the practice of legal mobilisation must weigh a wide and potentially intimidating range of strategic variables in deciding whether or not to pursue a particular, law-based strategy. A wide spectrum of law-based strategies is available, ranging from a public campaign (such as a consumer boycott) or more formal, court-based public interest litigation. It is virtually impossible to analyse the potential impact of using any of these strategies, or a combination of them, with any kind of precision, particularly in circumstances where the conventional balance of powers is fundamentally skewed, in all corners of the globe. Furthermore, the dynamics of law-based, civic-lid advocacy are not only manifested in a politically-legitimate form of governance, but can also be studied as a form of legitimate counterpower, also against other, illegitimate forms of legal instrumentalism, such as lawfare (Handmaker and Taekema 2019).

In this Working Paper, I first justify legal mobilisation as a specific area of research. Second, I present an analytical lens of legal mobilisation to explain both the strategic potential and limitations of legal mobilisation (as a practice), including litigation, to secure progressive structural change by way of legal transformation. Further, I make a conceptual distinction between legal mobilisation and lawfare and situate both in a discussion on legitimacy. For the purposes of this working paper, I wanted to present a full picture of the analytical frames I am working with. However, I acknowledge that these are separate discussions, work-in-progress and are being elaborated in different publication outputs.

My contention is that a multi-dimensional legal mobilisation lens can reveal the extent to which the courts and other means of civic-led, law-based advocacy are able to deliver social, economic, environmental and other forms of justice. This lens can also provide a nuanced explanation why inequalities are perpetuated and reinforced. Finally, I will highlight some of the empirical possibilities against which an analytical lens can be measured.

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[1] An earlier version of this Working Paper was originally presented at a Colloquium on 'Legal mobilisation in a world marked by populism and crisis', 12-13 June 2017 at Princeton University, USA, which was organised under the auspices of the EUR-Research Excellence Initiative on Integrating Normative and Functional Approaches to the Rule of Law and Human Rights (INFAR). For more information, see: https://www.iss.nl/en/research/research-projects/integrating-normative-and-functional-approaches-rule-law-and-human (Accessed 19.2.19).

2 Legal mobilisation as an area of research

Evaluating the potential of legal mobilisation has been under-studied as a research area, particularly in relation to its transformative character. The research in this area tends to be divided between two main strands. The first strand of legal mobilisation research draws largely on social movement theory to account for law-based advocacy, which focuses more on the aims, objectives and of a particular, law-based campaign, and also concerns mostly formal, court-based interventions. The second strand of legal mobilisation research focuses on how strategic or public interest litigation is justified and managed.

2.1 Social movements and law-based advocacy

In a session organised by Lisa Vanhala at the Law and Society Association's annual conference in Toronto in 2018, various scholars addressed the current state of legal mobilisation research, with a particular emphasis on social movements (LSA 2018). This session revealed three main points of discord in conceptualising legal mobilisation as an area of research from this particular angle. The first point concerned which *activities* constituted legal mobilisation; i.e. exclusively litigation-centred or as a broader set of claim-making? The second point was the *object* of legal mobilisation; i.e. who can be the target of a claim, and is it exclusively the state, or also private actors? The third point, somewhat related to the first, related more specifically to the *type* of claims that could be regarded as legal mobilisation; i.e. exclusively political claims, or also non-political claims?

Lisa Vanhala, one of the leading scholars in this area, discussed how a co-production of climate change mitigation and adaption strategies takes place, which mirrors a growth in climate change litigation across the globe. The growth of research in this area, she noted, can be regarded in three cumulative phases, the first being a recording of wins and losses in climate change cases being brought, the second being a more evaluative study of how these cases could potentially change policies or lead to more appropriate regulations and the third being a deeper study of how climate change litigation both more explicitly incorporated human rights and incorporated insights from technology studies.

Vanhala's (2014 and 2018) research on legal opportunity structures has been a major contribution to the second category of legal mobilisation research. She draws on social movement theory, which recognises shifts in the balance of political power, whereby the potential of legal mobilisation can transform marginalised or weak groups into political powers.

McCann (2017) similarly regards litigation as a strategy. He has argued how it is important to study how litigation interacts with other strategies, and in particular how law frames the politics of social movements. Noting that one ought to be critical about their own research positionality, McCann observed at the LSA session that people should not be regarded as objects, rather they should be regarded as subjects, indeed reflexive agents. For example, this lack

of a critical-reflexive attitude on the part of lawyers can to some extent explain the crisis in international criminal justice (Handmaker 2018). Engaged practitioners also agree that a critically-reflexive positioning in relation to law is crucial. As noted by the Public Interest Litigation Project (PILP 2019) on their website: '(s)ometimes alternative routes to justice are blocked. Sometimes dialogue and lobbying are ineffective on their own. In these cases, legal action may be necessary'.

PILP has a broader understanding of strategic litigation than that of most legal advocacy organisations, incorporating various forms of law-based, civic-led advocacy, in addition to court-based litigation. However, while very conscious of the fact that strategic litigation relates to the aims, aspirations and strategies of broader social movements, PILP does not problematise this particular dimension. Similarly, critiques of organisations similar to PILP, such as a ground-breaking study by Sarat and Scheingold (1998) as well as Jason Brickhill's (2018) more recent collection of public interest litigation narratives in South Africa, tend to focus on the issues to which legal mobilisation addresses itself as well as its perceived impact and value; in other words, how legal mobilisation is justified and managed.

2.2 Justifying and managing legal mobilisation

Strategic litigation, according to organisations like PILP relies on legal action as a means to bring about certain social, political or legal changes. PILP emphasises that the goal of strategic litigation is not necessarily to win a case for a particular client, but to ascertain the impact a legal procedure can have in the broader interests of a community. For this reason, strategic litigation is frequently referred to as *impact litigation*.

Strategic litigation complements other ways of bringing about change; from lobbying and advocacy to community organising and protests. According to PILP, organisations like theirs should be an ally to activists, NGOs and grass roots organisations, which use a wider array of social mobilisation strategies. The start of a potential opportunity for strategic litigation – as for any form of activism – begins with a preliminary examination of what communities, activists, scientists, lawyers or NGOs perceive is posing a problem. In other words: what hurts and where? From this point, it needs to be considered whether litigation is indeed the best method to solve an issue, a question which requires understanding of the potential benefits and drawbacks of strategic litigation as a form of activism/intervention. If it is determined that strategic litigation should be pursued, what type of procedure is relevant and when is it regarded to be the best time? (Handmaker 2017: 4-5)

I have not come across literature that regards legal mobilisation as a broader concept (beyond litigation) of legitimate, law-based, civic-led advocacy, and I could find no studies that regarded legal mobilisation as a form of counterpower. Most studies on civic-led advocacy have focused on a global, agency-focused perspective with civil society actors and movements as primary units of analysis (Welch 2001; Albrow et al. 2008; Cohen et al. 2011 and Biekart 2013). Other studies of legal advocacy take a political ecology approach

that tend to – however understandably – negate law's jurisprudential value, regarding the mobilisation of law and legal process as a means for regulating relationships between different stakeholders (Fay 2013) or as a subject of micro-study (Scheffer 2005). While valuable, such analyses have paid limited attention to the structural factors that confront human rights advocates and have generally failed to address the agency of government or indeed corporate officials.

3 A legal mobilisation lens

Legal mobilisation as an analytical lens explains how interactions with the law can be productively combined with an approach based on legal pragmatism that, as Sanne Taekema notes, 'does not reduce law to an instrument to advance social goals (but) sees law as both a means and an end in itself', which is a 'complex relationship'. Taekema goes on further to explain that, just like legal mobilisation, law is both a theory and 'a practice which is characterised by a commitment to certain specifically legal ideals' (Taekema 2006: 35). In other words, there is an intrinsic relationship, though often a large gap as well, between the aspirations of law and the empirical realities of legal practice.

In this regard, the socio-legal concept of legal consciousness is key. As Mark Hertogh (2004: 461) has argued, it is more than merely an aptitude, competence or awareness of the law; legal consciousness also relates to perceptions and images associated with the law and legal enforcement. Building on what Ewick and Silbey (1998) had argued earlier, legal consciousness concerns how one either: reveres the legitimacy of law and legal process (before the law); is sceptical or cynical of the legitimacy of law and legal process and/or distrusting of the way in which it is implemented (against the law) or adopts an instrumentalist view of the law, regarding it as a 'game' (with the law). It is this latter characterisation that is most relevant to legal mobilisation.

Furthermore, it is important to explore people's imagination and expectations of the law as against the views of professional lawyers who tend to 'ignore' this (Hertogh 2004: 459). Accordingly, there are two principal approaches in legal consciousness literature. The first approach, drawing more on literature from American scholars, asks as its key question 'how do people experience official law' or what is referred to by various authors as 'law in action' (Ibid: 475; Merry 1990; Ewick and Silbey 1998; Nielson 2004) . Law is regarded by the researcher as an independent variable (i.e. official law as defined by the researcher). This approach often reveals a 'persistent contradiction' of the ideal (values) behind law and the actual (values) embedded in a particular action. The second approach, drawing on mainly European researchers, asks as its key question: what do people experience as law. This is what socio-legal scholars commonly refer to as the *living law*. Law is thus regarded by the researcher as a dependent variable (socially-defined), focussing more on the people and their own norms, studying the problem from below (Ehrlich 1936). This approach, reveals a 'personalistic value orientation' that places a 'strong emphasis on the special circumstances of each individual citizen', whereby legitimacy is based not on official, state-published legal definitions, but on the extent to which public officials feel a close affinity for their neighbourhood and for the citizens around them Hertogh 2004: 477-478).

In the remainder of this section, I distinguish between legal mobilisation and lawfare, the former being the legitimate use of law to underpin political claims, the latter being the illegitimate / hegemonic use of law by state and/or

corporate bodies to suppress these claims and to persecute individual advocates and NGOs. I then explain the core function of legal mobilisation as a legitimate political claim. Finally, I present the sub-components of legal mobilisation, as an analytical approach / lens to evaluate law-based advocacy, including but not limited to strategic or public interest litigation.

3.1 Legal mobilisation vs. lawfare

Law can be mobilised by civic actors (as well as states and other actors) as a legitimate political claim. As a form of legal mobilisation, law and especially human rights can serve as a positive legitimating force, reinforcing social justice claims as 'an indispensable rhetorical tool against any form of dominance and attempted hegemony' (Hoffman 2003: 121).

However, in oppressive and imperialistic societies and political systems, or even in ostensibly liberal democratic regimes, law and even human rights can be a form of *lawfare*, taking negative, delegitimising and oppressive forms, justifying retrogressive policies and even reinforcing the hegemonic actions of states.

Obvious examples of lawfare include treatment by the United States of so-called enemy combatants or using law as *ex post facto* justification for torture or for foreign armed intervention (Akram 2010; Falk 2005). These forms of legal instrumentalism may even be expressed as well-intentioned, for example when the US government cynically invoked human rights terminology in order to construct a crisis and justify military intervention in countries abroad (Engle 2007). Other examples of lawfare include measures designed to suppress activists' free speech and expression, including by way of so-called Strategic Litigation Against Public Participation or 'SLAPP' suits (Murombo and Valentine 2011).

The term lawfare, however, is contested. A first set of commentators who describe progressive, rights-based articulation of the strategic use of law – from climate change advocacy to pro-Palestinian advocacy – positively conceptualise these forms of law-based advocacy as 'lawfare' and conflate it with what I regard as legal mobilisation (Gloppen and St. Clair 2012; Kearney 2010; Myers 2008; Fay 2013). However well-intended, I feel this conflation in terminology to be misplaced, not least because of how lawfare is instrumentalised by commentators and by *Alt-right organisations* as illegitimate forms of legal instrumentalism.

This brings me to a second set of commentators, who are vehemently opposed to legal mobilisation by civic actors against states and corporations have referred to 'lawfare' in a disparaging way, in some cases describing the nature of civic-led legal claims as 'legal jihad' (Goldstein and Meyer 2009; Steinberg 2011). Bayefsky (1995: 425) has focused on international institutions through which legal mobilisation claims are often made, referring to what she regards as 'the malignant nature of the United Nations human rights system'. This second set of commentators is often associated with organisations promoting an exceptionalist characterisation of international law, which reduce

international legal norms to narrow, nativist and otherwise parochial interpretations. These organisations include the *Lawfare Project*, *Middle East Forum*, *Legal Insurrection, UN Watch, NGO Monitor* and *Eye on the UN*. Luban has observed, somewhat colourfully, that groups like these who condemn law-based advocacy tend to suffer from 'a paranoid overreaction to perfectly legitimate legal challenges' (2008: 2021).

In making a distinction between legal mobilisation and lawfare, I do of course recognise that states can potentially mobilise law in a progressive way and that civic and corporate actors can instrumentalise law in an oppressive manner. However, my primary emphasis in this paper is on the potential of civic-led legal mobilisation, which is both constrained by, and yet can also be a counter-hegemonic force against oppressive state power. Moreover, the strategic use of law by civic actors against powerful interests is regarded as a legitimate intervention to try and counter the illegitimate exercise of power by states, corporations or individuals who regard themselves as *above the law*.

3.2 Legal mobilisation as a legitimate political claim

Legal mobilisation involves the strategic use of law by civic actors to advance human rights, social justice and especially equality as a legitimate political claim. Legal mobilisation as a practice, including the pursuit of human rights and justice through the courts, is never a straightforward activity; it is regarded, more often by social scientists, and even by some lawyers, as a highly political act (Abel 1995; Gready 2004; De Feyter et al. 2011). As Abel's (1995: 5) study of anti-apartheid legal struggles in South Africa vividly illustrated, law is a form of 'politics by other means'. According to Abel, law can be effectively wielded as a *shield* (in order to protect individuals from abuse by the state) or as a *sword* (by oppressive regimes against perceived enemies of the state). For example, civic advocates have, accordingly, worked together with socially concerned lawyers, either in defence of individuals, or in lodging civic-led criminal complaints against alleged corporate or individual perpetrators, and also in challenging repressive government policies.

Legal mobilisation involves direct or indirect challenges to a state or its agents who are alleged to be responsible for human rights violations, whereby the subjects (civic actors) become engaged in various interactions with the claimed perpetrators of these violations. Accordingly, those engaged in law-based, civic-led advocacy have mobilised the law in different ways, which include: to end individual impunity for international crimes, to seek damages against companies and individuals and to challenge oppressive government polices by way of administrative review.

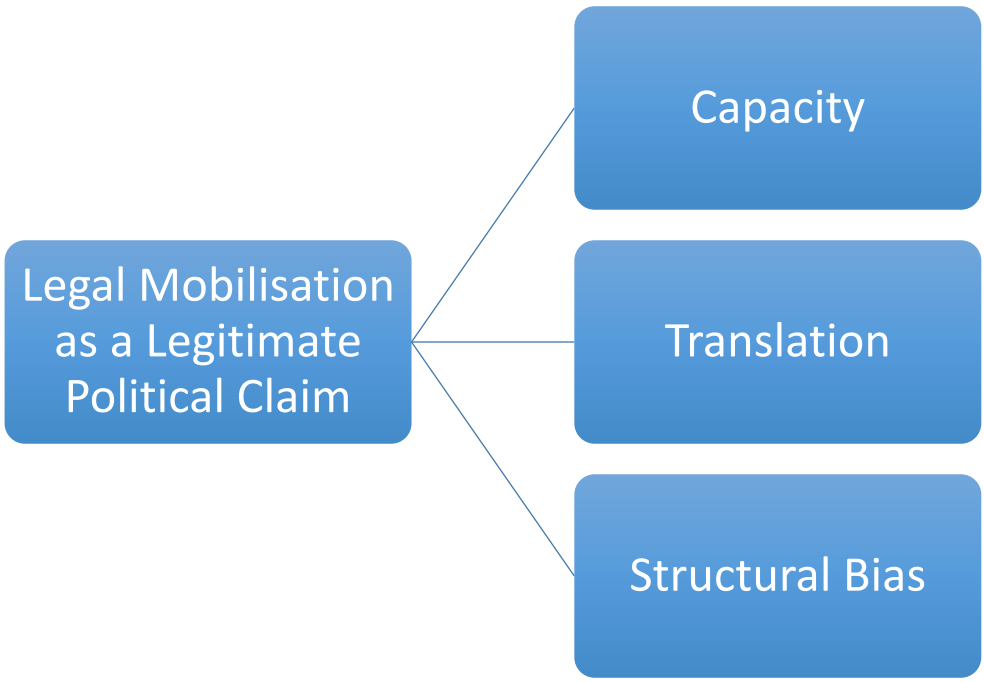
Understanding the legal mobilisation concept as a legitimate means of claiming rights furthermore requires a critical appreciation of three additional elements, namely: the capacity of civic actors involved in legal mobilisation, the role of these civic actors as translators and the inherent structural bias of law and legal institutions. In the next section, I will discuss these three elements and develop a generalisable explanation of how civic-led, law-based advocacy,

or legal mobilisation, can hold states, corporations or individuals accountable for violations of human rights.

3.3 Legal mobilisation as an analytical tool

Accordingly, as a (legitimate) form of counterpower, to analyse the interplay between civic actors engaged in legal mobilisation, and the state institutions, or its agents, against whom the mobilisation is aimed, I develop three theory-based propositions. The first proposition is that civic actors have a capacity to challenge the state, which enhances their legitimacy to mobilise (international) law, derived from various normative developments in human rights (Handmaker and Arts 2018). While the *legal* capacity of civic actors to bring claims is largely uncontested – although the space for bringing these claims is arguably shrinking – the *political legitimacy* that this legality confers is crucial to counter claims that advocates are abusing legal process. The second proposition is that civic actors engaged in legal mobilisation act as translators of global rules into a locally relevant context. The third proposition is that international law's inherent structural bias truly matters in understanding the strategic potential for law-based advocacy, both in terms of the institutions against which legal mobilisation is directed as well as the substantive law that forms the basis of legal claims (Ibid: 13).

Figure 1
LM Analytical Framework



Source: Handmaker 2019

3.3.1 Civic actors have the capacity to challenge the state

The capacity of civic actors to promote and, in limited circumstances, impose state, individual and indeed corporate accountability towards national and international legal obligations through legal mobilisation has been shaped by structural changes in international normative frameworks and by associated political developments.

While capacity is also about mobilising technical and other resources: people, money, and public support, as part of my analytical lens, capacity it about having legal standing to bring a formal claim, or asserting that capacity against a set of legal-normative expectations owed to individuals and groups, especially in relation to human rights law.

According to the latter, the legal capacity of civic actors has emerged in what Ignatieff (1999) has termed a global human rights revolution, with juridical, advocacy and enforcement dimensions, though of a distinctly liberal nature (Ignatieff and Gutmann 2001). The liberal character of this revolution is problematic, as it has reflected a gradual reduction in the role of the state to police human rights violations, leaving the primary responsibility for enforcing rights claims to individuals. Mutua (2001, 2013) has referred to these developments as producing both a human rights movement and *corpus* that have in turn been accompanied by a range of attendant biases, most notably a Eurocentric orientation.

These biases notwithstanding, developments in the human rights field have broken new ground for social-justice advocates, extending the normative scope of human rights law to address a wide range of social justice issues (Donnelly 2003; Higgins 1994). These normative developments have been matched by a corresponding increase in civic participation, and expanded use of accountability mechanisms in human rights advocacy (Risse, Ropp and Sikkink 1999; Korey 1998). Civic actors are, consequently, active participants in international and national legal processes, who in some cases skilfully combine litigation with other forms of civic mobilisation, including interactions with the media, traditional sources of authority and global solidarity networks (Handmaker 2009: 28-41).

Civic participation in legal process, and particularly the ability of civic actors to invoke national and international law and institutions, has indeed profoundly shifted the civic-state relationship, though by no means replaced it. The liberal democratic state and its institutions remain of primary significance, both as instruments for realising social justice and for repression.

3.3.2 Civic actors are translators

Drawing on their legal capacity to challenge the state, civic actors that are engaged in legal mobilisation fulfil a crucial mediating role in the translation of international legal norms into local contexts. It's always a challenge to translate one set of norms and values to another. In relation to international law, translators must possess what Merry has described as a double consciousness

of the content of international law and the circumstances in which it is framed and enforced at the international level, as well as the relevant local / national context in which these international norms find expression (Merry 2006; Goodale and Merry 2007). This does not mean that those who are unfamiliar with international law and institutions are not in a position to bring a claim against the government, but it does mean that cases will less likely be reflected in international and comparative legal discourses.

Measuring legal translation focuses on the social processes of human rights, which matter much more than whether rights are of a universal or culturally-relative character (Merry 2006: 39). One model of translation that Merry describes is *replication*, whereby the transnational norm sets the basis, while 'distinctive content and structure' provides local context; in other words, international norms are 'thinly adapted' to the local, contextual circumstances (Ibid: 44). A concrete example here would be a global campaign to end statelessness, whereby local language and customs are invoked to explain the purposes of the global campaign to a church congregation in Johannesburg (LHR 2016). Another model of translation is hybridity, in which case the global model interacts more deeply with the local context, producing what are referred to as 'hybrid institutions'; in other words, the international model is 'thickly shaped by local institutions and structures' (Merry 2006: 46). A concrete example here would be Court Users Committees in the Zomba Judicial District of Malawi, which makes strong reference to international law in terms of its values and norms, but enhances its legitimacy through the involvement of traditional leaders, community-based organisations and other non-state actors that guide the need for and implementation of procedural reforms in the local judicial system (DeGabriele and Handmaker 2005: 168).

3.3.3 The relevance of structural bias

Translating social justice concerns into legal rights through legal mobilisation requires a keen appreciation of institutional structures and substantive law, which heavily condition civic efforts to hold states accountable to international human rights norms and tends to favour powerful and elite interests (Handmaker and Arts 2018: 235). Accordingly, the third component of my legal mobilisation framework applies what Koskenniemi (2009: 9) has referred to as the concept of 'structural bias' of global governance institutions, which refers to 'the way in which patterns of fixed preference are formed and operate inside international institutions' and tend to favour elite interests. Koskenniemi (2011: 9-12) further argues that structural bias emerges as a consequence of international law's fragmentation, meaning that international law is not the homogenous system it once was, but has evolved into 'a wide variety of specialist vocabularies and institutions'; these include humanitarian law and human rights, which are some of the more recent, and highly-contested of these vocabularies. On the one hand, Koskenniemi observes, the rhetoric of rights is said to have lost its 'transformative effect' through over-legalistic explanations and is, correspondingly, 'not as powerful as it claims to be' (Ibid: 133).

The structural bias of law is just as prevalent at the national level, which Galanter (1974) has observed tends to systematically favour elite sections of society, categorised as repeat players who make frequent use of the legal system (and particularly litigation) in order to shape the law and secure their interests.

This three-dimensional prism forms an analytical basis for assessing the potential of legal instrumentalism, whether as a lens to assess socially-progressive forms of legal mobilisation or as a contrasting lens to oppressive forms of lawfare. This lens forms an analytical basis for assessing the potential of legal mobilisation to lead to social transformation, in relation to a potentially very wide range of case studies.

4 Empirical possibilities for applying a legal mobilisation analytical lens

The case studies against which a legal mobilisation lens, and the concept of lawfare can be applied is potentially limitless. Earlier research I conducted of law-based civic advocacy have been applied to very different contexts, including the protection of migrants and refugees in post-apartheid South Africa through litigation and other law-based tactics (Handmaker 2009; Dugard et al. 2011). Another study concerned the mobilisation of migrants' rights in Chile (Mora and Handmaker 2014).

Another potential topic I intend to study includes law-based and in some cases transnational advocacy strategies on behalf of refugees and migrants, where the global North and global South become blurred. This includes examples of legal mobilisation for refugees and migrants in transit countries, such as South Africa, as well as legal mobilisation for migrants in once hospitable countries, such as the United States and the Netherlands. There are also numerous examples of lawfare, by which governments seek to limit, deter or even criminalise migrants and the choices they are able to make to move to another country and settle there. The resulting narratives that emerge from these ostensibly different migration regimes create the possibilities for law-based transnational migrant advocacy that transcends national boundaries and draws legitimacy from international law as well as the far-reaching mandates of intergovernmental agencies such as the United Nations High Commissioner for Refugees and International Organisation for Migration.

A second potential topic against which I intend to apply this analytical lens, together with my colleague Margarethe Wewerinke (2014) include transnational, law-based advocacy – from broad-based popular movements to the courts – to mitigate and adapt to climate change, drawing on ground-breaking judicial precedents in the Philippines, the Netherlands and Pakistan. These include legal mobilisation strategies of a range of transnational civic actions, including Greenpeace International, Earthrights, Friends of the Earth, Urgenda, Law of Nature Foundation and other organisations, where human rights have been successfully interwoven into global campaigns and litigation strategies. Further examples of lawfare abound in this area, where states and especially corporations seek to harass, restrain and in multiple other ways, for example through SLAPP suits designed to prevent environmental advocates from pursuing advocacy on environmental harm and climate change.

A third topic against which I intend to apply the analytical lens of legal mobilisation are efforts to hold corporations accountable for violations of international law, and especially human rights violations abroad (for example in countries experiencing military conflicts and/or authoritarian regimes). Again, examples of lawfare are evident, whereby states have created an enabling environment for corporations to act with impunity. These include the ability of corporations to make compensation claims against other states and individuals who have hindered their business activities through, for example, regulatory measures or consumer boycotts. A further dimension of this is to relate legal mobilisation, as a concept, against a framework of business ethics.

In analysing such a diverse range of case studies, my contention is that the broader interplay between civic actors and the government in the context of legal mobilisation to hold states accountable to their international human rights obligations can to a large extent be understood in general terms, applying common conceptualisations of social justice across different themes and geographies. Making such a broad claim requires an engagement not just with the vertical orientation of law (rights-based obligations owed by states towards individuals), but also with the horizontal orientation of law that regulates relationships between private individuals and potentially also self-enforcement mechanisms such as national human rights institutions.

References

Abel, R. (1995) *Politics by Other Means: Law in the Struggle Against Apartheid, 1980-1994*, New York: Routledge.

Akram (2010) 'Do Constitutions Make a Difference as Regards the Protection of Fundamental Human Rights?', in pp. 89-109, M. Frishman and S. Muller (Eds.), *The Dynamics of Constitutionalism in the Age of Globalisation,* The Hague: Hague Academic Press.

Albrow, M, Anheier, H, Glasius, M., Price, M. and Kaldor, M. (Eds.) (2008), *Global Civil Society 2007/8: Communicative Power and Democracy,* London: Sage.

Bayefsky, A. (1995) 'Israel and the United Nations' Human Rights Agenda: The Inequality of Nations Large and Small' *Israel Law Review* 29: 424-458.

Biekart, K. (Ed.) (2013) 'Civic Driven Change' [Special Issue], *Development and Change: Forum* 44.

Brickhill, J. (2018) *Public Interest Litigation in South Africa*, Johannesburg: Juta.

Cohen, D. de la Vega, R. and Watson, G. (2011) *Advocacy for Social Justice: A Global Action and Reflection Guide*, Bloomfield: Kumarian Press.

De Feyter, K., Parmentier, S. and Timmerman, C. (Eds.) (2011) *The Local Relevance of Human Rights,* Cambridge: Cambridge University Press.

Degabriele, J. and Handmaker, J. (2005) 'Justice for the People: Strengthening Primary Justice in Malawi' *African Human Rights Law Journal* 5(1): 148-170.

Donnelly, J. (2003) *Universal Human Rights in Theory and Practice,* Ithaca: Cornell University Press.

Dugard, J., Handmaker, J. and J. Klaaren, (Eds.) (2011), 'Public Interest Litigation' [Special Issue] *South African Journal on Human Rights*, 27(1).

Ehrlich, E. (1936) *Fundamental Principles of the Sociology of Law,* Cambridge: Harvard University Press, latest reprinted edition in 2017 by Routledge (London).

Engle, K. (2007) "'Calling in the Troops": The Uneasy Relationship Among Women's Rights, human rights, and humanitarian intervention' *Harvard Human Rights Journal* 20: 189-224.

Ewick, P. and Silbey, S. (1998) *The Common Place of Law,* Chicago: University of Chicago Press.

Falk, R. (2005) 'Legality and Legitimacy: The Quest for Principled Flexibility and Restraint'. *Review of International Studies* 31: 33–50.

Fay, D. (2013) 'Neoliberal conservation and the potential for lawfare: New legal entities and the political ecology of litigation at Dwesa–Cwebe, South Africa' *Geoforum* 44: 170-181.

Galanter, M. (1974), 'Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change *Law and Society Review* 4: 95-160.

Gloppen, S. and St. Clair, A. (2012) 'Climate Change Lawfare' *Social Research* 79: 899-930.
Goldstein, B. and Meyer, A. (2009) 'Legal Jihad: How Islamist Lawfare Tactics are Targeting Free Speech'. *ILSA Journal of International and Comparative Law* 15: 395-410.
Goodale, M. and Merry, S. (2007), *The Practice of Human Rights: Tracking Law Between the Global and the Local*, Cambridge: Cambridge University Press.
Gready, P. (2004) *Fighting for human rights,* New York: Routledge.
Handmaker, J. and Taekema, S. (2019) 'Legal Mobilisation as Counterpower: Explaining the Potential of Law-Based, Civic-Led Social Justice Interventions', *Work-in-Progress*, Erasmus University Rotterdam.
Handmaker, J. and Arts, A. (Eds.) (2018) *Mobilising International Law for 'Global Justice'* Cambridge: Cambridge University Press.
Handmaker, J. (2018) 'The Legitimacy Crisis Within International Criminal Justice and the Importance of Critical, Reflexive Learning' In B. Jessop & K. Knio (Eds.) *The Pedagogy of Economic, Political and Social Crises: Dynamics, Construals and Lessons,* London: Routledge, pp. 189-206.
Handmaker, J. (2017) *Legal Mobilisation in a World Marked by Populism and Crisis"*, 12-13 June, Colloquium Report, Princeton, N.J.
Handmaker, J. (2014) 'Migrants′ Citizenship and Rights: Limits and Potential for NGOs′ advocacy in Chile' In T. Truong, D. Gasper, J. Handmaker and S. Bergh, (Eds.) *Migration, Gender and Social Justice: Perspectives on Human Insecurity* Heidelberg: Springer, pp. 281-290.
Handmaker, J. (2009) *Advocating for Accountability: Civic-state Interactions to Protect Refugees in South Africa* Antwerp: Intersentia.
Hertogh, M. (2004) 'A "European" Conception of Legal Consciousness: Rediscovering Eugene Ehrlich', *Journal of Law and Society* 31(4): 457-481.
Higgins, R. (1994) *Problems and Process: International Law and How to Use It,* Oxford: Oxford University Press.
Hoffman, F. (2003) 'Human Rights and Political Liberty' *International Legal Theory* 9: 105–122.
Ignatieff, M. (1999) *Whose Universal values? The Crisis in Human Rights,* Amsterdam: Stichting Praemium Erasmianum.
Ignatieff, M. and Gutmann, A. (2001) *Human Rights as Politics and Idolatry* Princeton, N.J.: Princeton University Press.
Kearney, M. (2010) 'Lawfare, Legitimacy and Resistance: The Weak and the Law' in Ardi Imseis (Ed.), *Palestine Yearbook of International Law, Volume 16* Leiden: Brill, pp. 79-130.
Korey, W. (1998) *NGOs and the Universal Declaration of Human Rights: 'a curious grapevine'* New York: Palgrave Macmillan.
Koskenniemi, M. (2009) 'The Politics of International Law – 20 Years Later' *European Journal of International Law* 20: 7-19.
Koskenniemi, M. (2011) *The Politics of International Law*, Oxford: Hart, 133.
LHR (2016) *Childhood Statelessness in South Africa* Pretoria: Lawyers for Human Rights.
LSA (2018) 'Conceptualising Legal Mobilisation', Panel Session on 9 June 2018, Toronto: Law and Society Association Annual Meeting.
Luban D. (2008) 'Lawfare and Legal Ethics in Guantanamo' *Stanford Law Review* 60: 1981-2026.
McCann, M (ed.) (2017) *Law and Social Movements*, London: Routledge.
Merry, S. (2006) 'Transnational Human rights and Local Activism: mapping the middle' *American Anthropologist* 108: 38-51.

Merry, S. (1990) *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans,* Chicago: Chicago University Press.
Murombo, T. and Valentine, H. (2011) 'Slapp Suits: An Emerging Obstacle to Public Interest Environmental Litigation in South Africa', *South African Journal on Human Rights*, 27(1): 82-106.
Mutua, M. (2013) *Human Rights: a Political and Cultural Critique,* Philadelphia: University of Pennsylvania Press.
Mutua, M. (2001) 'Savages, Victims and Saviors: the Metaphor of Human Rights' *Harvard Human Rights Law Journal* 42: 201-245
Myers, E. (2008) 'Conquering Peace: Military Commissions as a Lawfare Strategy in the Mexican War' *American Journal of Criminal Law*, 35: 201-240.
Nielson (2004) 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment' *Law and Society Review* 34(4): 1055-1090.
PILP (2019) 'About PILP', Public Interest Litigation Project, Amsterdam, at: https://pilpnjcm.nl/en/about-pilp/ (Accessed: 19.2.2019)
Risse, T., Ropp. S. and Sikkink, K. (1999) *The Power of Human Rights: International Norms and Domestic Change,* New York: Cambridge University Press.
Sarat, A. and Scheingold, S. (1998) *Cause Lanyering: Political Commitments and Professional Responsibilities*, New York: Oxford University Press.
Scheffer, T. (2005) 'Courses of Mobilisation: Writing Systematic Micro-histories on Legal Discourse'. In: Travers, M. and Banakar, R. (Eds.) *Theory and Method in Socio-legal Research*, Oxford: Hart, pp. 75-89.
Steinberg, G. (2011) 'The Politics of NGOs, Human Rights and the Arab-Israel Conflict' *Israel Studies* 16: 24-54.
Taekema, S. (2006) 'Beyond Common Sense: Philosophical Pragmatism's Relevance to Law' *Retfærd: Nordisk Juridisk Tidsskrift* 29 (2006): 22-36.
Vanhala, L. (2018) 'Is Legal Mobilisation for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organisations in the United Kingdom, France, Finland and Italy', *Comparative Political Studies*, 51(3): 380-412
Vanhala, L (2014) *Making Rights a Reality? Disability Rights Activists and Legal Mobilisation*, Cambridge: Cambridge University Press.
Welch, C. (2001) *NGOs and Human rights: Promise and Performance*, Philadelphia: University of Pennsylvania Press.
Wewerinke M. (2014), The Role of the UN Human Rights Council in Addressing Climate Change, *Human Rights & International Legal Discourse* 8(1): 10-35.