



INTRODUCTORY ESSAY

Populism, non-state actors and right-wing legal mobilization in Europe

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Abstract

This article serves as an introduction to the special issue on ‘Populism and Right-Wing Legal Mobilization in Europe’. We point to the dependence of populists in power on non-state actors: populist governments have ideological and political reasons to need the support of civil society’s right-wing representatives and have the financial and institutional means to strengthen those organizations. We then map right-wing legal mobilization in Europe based on the analyses in the special issue. By right-wing legal mobilization, we understand the organized efforts, resources, and strategies employed by individuals, groups, or organizations with conservative or right-leaning ideologies to embody their values in positive law and its interpretation. The text concludes with a dynamic normative framework to assess this type of mobilization. Drawing on recent contributions from comparative constitutional law, human rights, and socio-legal studies, we argue that the analysis and evaluation of right-wing legal mobilization could be based on a comprehensive analysis of three bundles of issues: (1) the relationship between mobilizing actors and the courts, as well as the local standard of judicial independence, (2) the relation of right-wing argumentation to systemic linkages and historical trajectories of human rights, (3) the redistributive effect (economic and symbolic) and the potential success of such mobilization on the legal capacities of other actors who may have opposing interests. From this perspective, the problematic part of right-wing legal mobilization in the context of populism is, therefore, not its ideological, conservative character but its influence on the rule of law to gain strategic advantage. In the process, the very idea of the rule of law and the related issue of civic agency may be compromised.

Keywords: legal mobilization; populism; non-state actors; right wing

1 Not only governments

Since the right-wing populist rise in Europe (especially in the Central and Eastern part of it), constitutional and human rights scholars have used terms such as ‘abusive constitutionalism’ (Skąpska 2019), ‘constitutional breakdown’ (Sadurski 2019), ‘the rule of law crisis’ (Drinóczi & Bień-Kacała 2021), ‘anti-constitutional populism’ (Krygier 2022), ‘abusive constitutional borrowing’ (Dixon & Landau 2019, 2021b), but also ‘anti-gender mobilization’ or ‘gender equality policy backsliding regarding human rights’ (Graff & Korolczuk 2022; Kováts & Põim 2015; Krizsan & Roggeband 2018; Roggeband & Krizsán 2020). Authors using such concepts agree that populist movements, namely movements that appeal to political rhetoric dividing the social field into essentially good ‘people’ and an essentially corrupt ‘elite’ (Müller 2016), increasingly and more strategically use the law. Populist movements, once in power, change the constitution and the system to introduce institutional arrangements that maximize their chances of victory in the next electoral cycle at the expense of the sustainability of liberal democracy. This is done mainly by court-packing, followed by

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abusive judicial review: changing the composition of the court by choosing new, ideologically favorable judges and instrumental usage of courts to achieve constitutional change (Dixon & Landau 2021a; Kosař & Šipulová 2023; Śledzińska-Simon 2018). This constitutional practice is often done in an anti-democratic way that runs counter to the values of liberal constitutionalism (Dixon & Landau 2021b; Krygier 2022; Pinelli 2011). These analyses, primarily conducted within the framework of comparative constitutional law, concentrate on governments and parliaments as the principal actors. However, while these remain at the center of the observed changes, they are not the only agents actively participating in populist legal transformations.

Populism in Europe is often referred to as mainly right-wing because of its moralizing nature based on the privileging view of the traditional family and homogenous nation as morally pure and fully united. It is no surprise then that the rise of populism is often accompanied by the emergence of campaigns, which have included mobilizations against liberal-oriented policies connected with immigrants, LGBTQ+, and reproductive rights, as well as sex and gender education in schools (Paternotte & Kuhar 2018; Ayoub & Stoeckl 2024). Such anti-gender campaigns contributed to the electoral success of populist political parties, and concurrently, populists elevated the visibility of such campaigns and the actors involved (see, e.g. Korolczuk & Graff 2018; Kováts & Petó 2017; Kuhar & Paternotte 2017). This is why we can treat the relationship between right-wing populists and non-governmental fundamentalist organizations as a political symbiosis. Through this relationship, populism gains social support, and right-wing organizations gain resources and new opportunities.

In general, populists need a ‘backup’ for two reasons. First, populist ideology, or ‘populist reason’ as the political philosopher Ernesto Laclau would name it, remains democratically oriented (Laclau 2005). At least on a rhetorical level, populists appeal to ‘the people’ as a source of political authority. In the populist imaginarium, this privileges elections and thus prevents the creation of a completely closed political system. Populists can try to minimize the chances of losing, but the possibility of change remains. The second reason (Kelemen & Blauburger 2017) concerns the international and institutional context in which populism operates. Modern states are linked by networks of interdependence regulated by international organizations that guard their stability. Introducing a drastic change in the political system can be seen as a threat to those networks, which can provoke reactions from these organizations, such as sanctions, exclusion, or direct intervention (de Mesquita & Downs 2006). The European Union, the most prominent actor here, prevents—or at least slows down—a simple centralization and monopolization of power and tempers the transformative ambitions of regional populist governments (Kelemen & Blauburger 2017). Economic and political dependence on the other Member States, and the principles of democracy and pluralism embodied in the European Treaties mean that populist politicians operate under a system of division of power and checks and balances. They may try to circumvent or bend this system, but they must consider it seriously. For example, populists will not directly say they are ‘against’ human rights but, rather, rephrase their liberal understanding in a communitarian and conservative language (Kocemba & Stambulski 2023), which is why populists may behave like chameleons, adapting to the colors of the surrounding environment (Bugarič 2022). Both factors—democratic orientation and international and European safeguards against the monopolization of power—condition populism to have an interest in seeking and sharing agency in legal transformations with non-state actors. By actively cooperating or tolerating the private actors who share the basic parameters of populist right-wing ideology, such governments gain arguments of legitimacy, and social anchorage for their actions.

Populist powers have not only ideological and political reasons to need the support of those outside of government but also the financial and institutional means to strengthen right-wing, non-governmental organizations. Although these actors have existed and been active for some time (Bob 2019; Southworth 2008, 2018), the takeover of power by populist leaders creates a new, more favorable condition for influencing the public sphere and law (Cumplings 2023). Thanks to redistributive policies (system of grants and subsidies), a populist government can support the

activities of right-wing non-governmental organizations financially and increase their capacities. The ideologically motivated selection of judges to high courts makes them more receptive to right-wing legal arguments regarding rights to marriage, termination of pregnancy, LBGTQ+ rights, border control, freedom of speech, or freedom of religion or conscience. Together, populist control over the legislative process and institutional pressure on the regular courts expand their abilities to influence the legal reality. In response, non-state actors gain new resources and tools of mobilization.

Given that populism has also acquired a legal character in addition to its political dimension, such mobilization can be considered primarily legal. As populism ‘mimics’ or ‘parasitizes’ liberal democracy, the right-wing mobilization it unleashes employs the instrumentality of liberal legal mobilization. Populism in power opens new windows of opportunity for existing and facilitates new waves of right-wing legal mobilization. Only by analyzing this new form of legal action, emerging at the intersection of populist legality and the activism of right-wing, non-governmental organizations, will we be able to recognize and understand the full scope of the threat to the rule of law and human rights presented by contemporary populism. Such analysis might also help us understand why, despite electoral defeats, as in Poland or the USA, populism can retain its political vitality and agency.

2 Mapping right-wing legal mobilization in Europe

The classical definition of legal mobilization provided by Zemans is that ‘the law is mobilized when a desire or want is translated into a demand as an assertion of one’s rights’ (Zemans 1983). Equally broad is Vanhala’s definition; legal mobilization is ‘a means of seeking social change through legal norms, discourse, or symbols’ (Vanhala 2021). Studies in this volume emphasize that legal mobilization can be understood as transformative attempts conducted by acting primarily in a formal legal sphere. The legal sphere intermingles with the social and political spheres. Actions taken in these spheres can influence each other. Thus, strategic action should include not only the desired consequences in all the spheres but also their temporal dynamics. This is because ‘particular strategies are possible or successful in certain contexts, and under certain conditions’ (de Búrca 2022), and ‘in taking legal action, a different type of audience must be addressed, different tools must be employed, and a different language must be “adopted”’ (Vanhala 2010). From the legal side, the outcome (social and political change) is achieved by the snowball effect obtained through the accumulation of formal legal claims, procedures, norms, instruments, channels, and institutions (de Búrca 2022, 6). But change can happen in the opposite direction, from social and political to legal. For example, political actions can set an ideological course towards new legal solutions, and legal expertise can support political strategy. Just as an act directed at a political audience may appeal to moral categories such as good and evil, or the political division into enemy or friend, so acts directed at a legal audience appeal to the division between what is legally required and what is indifferent or not allowed. It is this dichotomy that structures the arguments within legal mobilization. In specific cases, this argumentation and its rhetorical or performative power are closely linked to the social and political context. For example, the particular conditions of the issue at the case’s core might determine if legal mobilization will be court-oriented or policy-oriented. The context can also determine the type of agents who undertake such mobilization or the scope of media attention the mobilization receives.

The studies in this special issue deal with right-wing legal mobilization in Europe in the context of populism. The papers focus on the role of non-state actors in populist regimes, analyzing their agency, strategies, and the legal tools they use. By right-wing legal mobilization, we understand the organized efforts, resources, and strategies employed by individuals, groups, or organizations with conservative or right-leaning ideologies to embody their values in positive law and its

interpretation. In the process, such agents use legal tools, institutions, and concepts based on liberal and progressive political ideas like human rights or constitutional review. Often, this mobilization appeals to a vision of ‘real’ or ‘natural’ law, in which authority is combined with a homogeneous vision of the community and which is contrasted with its corrupt and degenerate contemporary use by liberal elites.

Since the concept and practice of legal mobilization itself originates in American legal culture, its right-wing edition can also be rooted there, creating transatlantic legal alliances. Opening this collection, Ann Southworth’s article ‘US Conservative Advocacy Organizations and Right-Wing Legal Mobilization in Europe’ traces the history of right-wing advocacy groups, highlighting their strategies for influencing law, funding, and infrastructure, including the links between the American conservative legal movement and European organizations and the roots of transnational networks of lawyers and their agendas. Such movement turned out effective in ‘using the powerful language of constitutional rights and working with extensive networks of party leaders, politicians, activists, and interest groups’. As the author points out, European religious organizations, seeing the successes of their American counterparts in litigation, ask them for legal aid. Consequently, the American organizations began to establish branches in Europe with the aim to resist further European integration and to stop European courts from implementing liberal and left-wing values.

The actions of right-wing actors alone are not enough to make their mobilization effective. This requires a judicial public that is receptive to their arguments. As we suggested above, contemporary populists in power tend to fill judicial institutions with hand-picked candidates who share their ideological leanings. In her article, ‘The Populist Supreme Court in Poland’, Katarzyna Krzyżanowska analyses the appointment of the Supreme Court judges in Poland, chosen by the populist Law and Justice party in a controversial process influenced by populist politicians. This is not a typical legal mobilization because it is carried out ‘within the legal system by the judges and aims to challenge some doctrinal views strategically and to legitimize the status of unlawfully elected judges, which consequently destabilizes the legal system’. Nevertheless, it opens up a wide range of possibilities for increasing the receptiveness of the legal system to right-wing interpretations. In her article, Krzyżanowska presents a complex picture of an illiberal turn. Through an analysis of judicial discourse and selected cases, she seeks to answer the questions of what influence the training of judges has had and how these judges have been prepared for legal mobilization, and ‘if and how the court-packing makes it more responsive to the legal mobilization of the conservative Christian organization *Ordo Iuris* and helps the governing party maintain its power’. She argues that populism in Poland is tempered by formal legal education that all judges undergo, which limits the possibility of right-wing legal transformations.

Another structural change introduced by populism in power is the control, or limiting, of the capacities for action of non-sanctioned, non-governmental organizations. Using Hungary as an example, Fruzsina Gárdos-Orosz and Zoltán Szente in their text ‘The role of populist NGOs in building a populist democracy in Hungary’ show how populist aligned non-state actors have been allowed to operate and grow and used as tools to legitimize populist regimes. The article illustrates how financial links between certain NGOs and the Hungarian government result in a lack of independence and a change in the functions of these organizations. This also poses a dilemma for right-wing organizations: relying too much on populist power deprives them of the possibility to act autonomously.

Right-wing legal mobilization is not only a domestic issue but also a European and international issue. In their text ‘How conservative groups fight liberal values and try to “moralize” the European Court of Human Rights’, Gaetan Cliquennois, Simon Chaptel, and Brice Champetier explain how conservative and right-wing actors use liberal instruments for illiberal and populist gains in the European Court of Human Rights. Their article shows the tension between the strategies of liberal and Christian conservative interest groups to shape the orientation of the ECHR case law. Right-wing actors mobilize more through the use of third-party

intervention than by direct litigation. Their goal is not to advance but to alter and reverse the direction of European human rights jurisprudence in the domains of the protection of life, family, and sexuality, as well as counter-terrorism policies. The article shows that this, because of the liberal direction of human rights, is happening slowly and gradually. First, conservative NGOs use the mere acceptance of their admission as evidence of its jurisprudential validity. They then want to obtain at least preferential dissenting opinions to use them again in subsequent cases. The article also traces how these attempts to influence European jurisprudence and standards go hand in hand with efforts to influence the nomination of European judges. This is happening through public reports denouncing the alleged ties between some ECHR judges and liberal interest groups, while trying to build their own connections. As the authors indicate, these efforts are subordinated to a larger project to ‘obtain judicial recognition of their moral constructs and moral arguments through their litigation efforts’.

The actions of right-wing, non-state actors cannot fail to affect the dynamics of legal mobilization and trigger counter-mobilizations. In ‘Mapping the potentials and pitfalls of using European law for strategic litigation against illiberal reforms’ Pola Cebulak maps the potential uses of EU law against populist reforms, focusing on strategic litigation. The author proposes a framework combining the concept of an illiberal regime with legal mobilization in the EU context. Focusing on illiberal reforms, that is, ‘public measures, at EU or national level, producing effects for the right-holders’ that reflect illiberal ideology, allows the paper to focus on the perspective of the actors who are resisting these reforms and the toolbox of EU law that they might use. The paper recognizes the courts as the leading defenders of European liberal democracy. At the same time, the author notes that those actors need contextual support from political institutions at the national and EU level, as well as the transnational legal community and civil society.

The collection closes with Paul Blokker’s text ‘Using liberal-legal tools for illiberal gains: the European Court of Human Rights and legal mobilization by conservative right-wing actors’ on right-wing actors’ interventions at the European Court of Human Rights, focusing primarily on the Polish ultraconservative NGO *Ordo Iuris*. The author notices an increased usage of legal instruments and legal claims by conservative, faith-based actions, contrasting with the traditional and dominant liberal paradigms focused on advancing justice for minority groups, extension of rights, and emancipation. He poses the question about the ideological conditions of access to legal mobilization. Using a socio-legal perspective, Blokker argues that populist movements have a more complex relation to law than just abusive or destructive positions; their legal and constitutional practice cannot be reduced to a simple dichotomy of being for or against the rule of law or human rights. Observing the growing importance of religious movements, the author calls for a rethink of the concept of civil society. He points out that other alternatives to the dominant liberal movements also play an increasing role, often using precisely the same legal instruments. Blokker’s analysis leads to the conclusion that conservative actors’ legal mobilization relies on the promotion of a restrictive interpretation of existing rights, limiting the diffusion of new rights, and calling for the interruption of the further extension of rights.

3 Towards a dynamic analytical framework

The discussion on contemporary populism allows us to distinguish at least three possible ways of framing of right-wing legal mobilization that emerge from considerations of comparative constitutional law, human rights, and socio-legal studies. This alone testifies to the level of complexity of contemporary populism, whose dynamic and consequences cannot be reduced to a single research strand.

The first approach is dominant in populist, comparative constitutional law studies and tends to focus on the judiciary (Castillo-Ortiz 2019; Sadurski 2019; Skąpska 2019; Kosař *et al.* 2019; Dixon & Landau 2019, 2021b; Drinóczi & Bień-Kacała 2021; Kovalčík 2022; Krygier 2022;).

Populism is supposed to ‘abuse’ the principles of liberal constitutionalism to reconfigure the relationship between the individual and public authority and value the community at the expense of the individual. In addition, following European courts, the problem is mainly reduced to a ‘crisis of the rule of law,’ understood as a populist threat to judicial independence (Mańko 2023). In this optic, which is focused on the courts and the actions of judges and legal academics, the detailed consequences of the ‘populist takeover’ of the judiciary for citizens’ everyday life and horizontal rights may fade away. A pragmatic consequence may be here the lack of civic interest and the technicization of the issue of judicial selection or judicial qualifications. Since the issue of judicial independence is presented in a formal, technical manner, mainly to the legal profession, the citizen’s voice can be secondary and excluded from a discussion requiring legal expertise.

Right-wing legal mobilization is an issue that increasingly engages human rights scholars. Gráinne de Búrca and Katharine G. Young, in a recent contribution, indicate that, although basic legal meanings such as human rights have always been open to interpretation, what the contemporary right-wing movements do is develop ‘misappropriations’ of these rights. They understand it as ‘the deployment by a particular set of actors of a range of strategies and arguments (. . .) advanced in the language of protecting “human rights,” but generally seeking to reverse or undo previous human rights developments and commitments’ (de Búrca & Young 2023, 207). The authors point out that its exclusionary nature helps distinguish right-wing legal mobilization from conventional legal disagreement. The ‘misappropriation’ of human rights involves the use of these rights ‘in the service of ends which are exclusionary, repressive, or anti-pluralist in character, highly retrogressive or reversing of previous commitments, and evasive of external monitoring or accountability’ (de Búrca & Young 2023, 205). This concept is built on examples of the ‘New Global Right’ and mainly legislative development in countries such as Russia, Turkey, Uganda, Brazil, and the US of the Donald Trump era. This may raise the question of its applicability in the context of European populism, which is not based on direct physical coercion and violence and subordinate legislation but rather on the gradual institutional and judicial-oriented exclusion of the possibility of dissent. Furthermore, the very concept of misappropriation is a normative one, based on a division between the original and legitimate users of human rights in the form of minority and marginalized groups and usurpers. It emphasizes the exclusionary nature of the latter’s actions and is thus a conceptual shift from the level of legal concepts (the meaning and scope of human rights) toward their real effects (exclusionary effects). However, the question of criteria for identifying and indicating the limits of exclusion remains open. Right-wing activists perceive and define themselves as marginalized groups in liberal society who do not have equal access to dignity distribution channels. They see their conservatism and religiosity as discriminatory criteria in modern society. If they have such a belief, what normative rationale would preclude them from reaching for the concepts and tools offered by human rights discourse? Especially if the actions to compensate for the lack of access to dignity are only legal-judicial and not physical violence. As some researchers point out, there is a real need for a redistributive political economy behind populism (Dixon & Suk 2018; Rodrik 2018).

The third approach is presented by scholars such as Jeff Handmaker and Sanne Taekema, who have recently proposed a more socio-legal normative framework for legal mobilization (Handmaker & Taekema, 2023). The authors propose distinguishing between the use of legal mobilization by civil actors and such use by state actors, with the latter referred to as ‘lawfare’. Legitimate legal mobilization, undertaken by a civic actor, aims to realize some vision of justice and social change. Illegitimate lawfare, undertaken by state institutions and governments, seeks to limit the possibility of accessing the legal tools for such change. Although Handmaker and Taekema’s proposal grew out of a sociological-descriptive view of the law, nevertheless, because of its pragmatic nature, it contains concrete criteria that actors judging legal mobilization, like judges, can use. The first is procedural. If the process is initiated by a weaker actor who, apart from the legal claim, has no other political or economic resources, then that legal mobilization will be more legitimate than if it is undertaken by an actor with significant financial and political

resources who works to counter or limit procedural possibilities of his opponents. The second is substantive. If the aim of legal mobilization is the redistribution of social resources, such as economic goods or access to the public sphere, or the inclusion of marginalized groups, then such an action will be more legitimate than a mobilization-lawfare, where the aim is the petrification of asymmetric social relations. The limitation of this conception is its actor-oriented character. Because of its focus on the type of actors and the relationship of their mutual interests in connection to the broader social resources, this perspective tackles the problem of dominant powers' instrumental use of law. At the same time, because of this focus on the actor, the problem of the law itself as a structural factor-agent is fading somewhat. In other words, sometimes dominant actors do not need to use the law to stop the possibility of change, but such change is very limited because of the very structural properties of the law itself (Lindt 2020; Molavi 2024).

As we have indicated, each of the concepts discussed above is an important contribution and moves the debate forward, but it also has its limitations. A solution may be to propose a more dynamic view, combining all three perspectives. The analysis and evaluation of right-wing legal mobilization could be based on a comprehensive analysis of three bundles of issues. The first concerns the relationship between mobilizing actors and the courts, as well as the local standard of judicial independence. The second bundle is related to the relation of right-wing argumentation to systemic linkages and historical trajectories of human rights. The third relates to the redistributive effect (symbolic and economic) and the potential success of such mobilization on the legal capacities of other actors who may have opposing interests. In this context, mobilization undertaken under conditions of absence or limited judicial independence, built on the arbitrary recognition of individual rights as supreme without regard to their systemic relations and resulting in limited access to remedies and legal tools of dissent for opponents, will be less legitimized than mobilization undertaken under contrary parameters. At the same time, each of these bundles may be realized differently in specific circumstances. This dynamic framing could be applied broadly and is not just about a right-wing type of legal mobilization. It also has a legal orientation instead of simply an ideological one. It concerns the more formal dimension of legal mobilization and not so much the political ideas behind it or its potential effects on the shape or content of the political community. The proposed framework relates to the idea of the rule of law. It derives from the recognition that at the heart of legitimate legal mobilization is the idea of agency, the equal access to present one's case about the rules of collective life. In other words, rule of law is not only jurist-centric but also citizen oriented ideal (Merdzanovic, Nicolaidis 2021). This ideal may be criticized as materially counterfactual (because of inequalities in the distribution of social resources), but it has a formal dimension, which might have some value in itself. It makes it possible, with reference to the famous distinction between rule by law and the rule of law, to distinguish analogously between mobilization by law and mobilization of law. The former implies a mobilization aimed at petrifying existing social hierarchies and introducing new inequalities, and the latter implies a framework for the continued possibility of questioning current social relations and political change. The structure of legal procedures, embodied in rules such as the legalism of officials' actions, the adversarial character or impartiality, provides an opportunity to raise one's voice and the chance of success (Waldron 2011; Taekema 2013). In this respect, the problematic part of right-wing mobilization in the context of populism is, therefore, not its ideological, conservative character but the prior modification of the legal rules to gain a strategic advantage. European populism in power transforms the rules of the legal mobilization game. It maximizes possibilities of selected right-wing actors and reduces the structures of opportunities for counter-mobilization. In the process, a civic agency can be drastically limited and even lost. The extent of such transformation is gradual: from slight asymmetry to making impactful opposition practically impossible. In the extreme end, the very idea of agency and influence behind legal procedures disappears.

4 Conclusion: going back to the politics of rights?

Since its beginning, rights, including human rights, have been entangled with power relations and have had a simultaneous inclusionary and exclusionary character (Moyn 2011). Critical legal scholars tend to indicate rights were involved not only in the creation of accountability but also in the lack thereof (Douzinas 2007; Veitch 2007). The inherent, double logic of the rights discourse is also pointed out by socio-legal researchers. Stuart A. Scheingold in classical work on US law, first published in 1974, indicates that the ‘politics of rights’ is an expected phenomenon resulting from the fact that law has not only an institutional but also a symbolic dimension (Scheingold 2004, Silverstein 2003). Citizens believe in the ‘myth of rights’, i.e. a direct link between litigation and social change. Other political actors exploit this myth and try to use it instrumentally to ‘nurture political mobilization.’ Scheingold thus reverses the classic pattern: it is not political mobilization that leads to a change in the law but a change in the law that leads to political mobilization. Clifford Bob, in a recent book, ‘Rights as Weapons’, claims that rights ‘may not only help achieve liberation but also end up justifying or facilitating oppression’ (Bob 2019, 3). The author provides a range of examples of how powerful forces have engaged in invasions, coups, and even torture in the name of ‘rights’. Bob argues that those who advocate a ‘liberal’ understanding of human rights are unable to use the category of rights exclusively for themselves and prevent others from using ‘rights’ to promote opposing agendas. Because rights are essential tools of politics, they can be used by any side in a conflict, and any political cause can be wrapped in a rights frame. In this optic, the right-wing mobilization described in this volume is not unusual but another stage in the collective learning process and debate about the relationship between rights and power, constitutionalism and democracy, and law and the political. What is new is the type of actors at the forefront of this new wave of mobilization and the potential change in the ideological content of rights. Right-wing organizations use legal mobilization to challenge and transform human rights and European standards. Organizations with the support of populist governments seek social change through the extensive usage of legal norms, discourse, and symbols. Drawing on the experience of the American and ‘Global Right’, they have learned how to use legal actions and tools, sometimes even more efficiently than liberal and human rights organizations that mastered these tools over the last decades. In consequence, institutions such as constitutional courts and constitutional litigation, designed to protect liberal rights and freedoms, may be used to restrict them. This is also a learning process. Successes of right-wing organizations spur the activities of their liberal, rule-of-law-oriented legal (academic and judicial) counterparts. Previously, rather abstract categories like ‘constitution’ and ‘rule of law’ were becoming political ideas capable of mobilizing countermovement, dissent, and protest. This dynamic has the potential to influence European and global legal culture more profoundly in the times to come. What kind of political mobilization it will facilitate and what lasting social change will be associated with it is yet to be seen.

References

- Ayoub P and Stoeckl K** (2024) *The Global Fight Against LGBTI Rights How Transnational Conservative Networks Target Sexual and Gender Minorities*. New York: New York University Press.
- Bob C** (2019) *Rights as Weapons: Instruments of Conflict, Tools of Power*. Princeton: Princeton University Press.
- Bugaric B** (2022) Populist Constitutionalism – Between Democracy and Authoritarianism. In *Anti-Constitutional Populism*. Cambridge: Cambridge University Press, pp. 27–66.
- Castillo-Ortiz P** (2019) The illiberal abuse of constitutional courts in Europe. *European Constitutional Law Review* **15**, 48–72.
- Cummings S. I.** (2023) Lawyers in backsliding democracy. *UCLA School of Law, Public Law Research Paper* **112**, 513.
- de Búrca G** (2022) *Legal Mobilization for Human Rights*. Oxford: Oxford University Press.
- de Búrca G and Young K. G** (2023) The (mis)appropriation of human rights by the new global right: an introduction to the symposium. *International Journal of Constitutional Law* **21**, 205–223.
- de Mesquita B. B and Downs G. W** (2006) Intervention and democracy. *International Organization* **60**, 627–649.
- Dixon R and Landau D** (2019) 1989–2019: from democratic to abusive constitutional borrowing. *International Journal of Constitutional Law* **17**, 489–496.

- Dixon R and Landau D** (2021a) Abusive judicial review: abusive borrowing by and of constitutional courts. In Dixon R. and Landau D. (eds.), *Abusive Constitutional Borrowing: Legal globalization and the subversion of liberal democracy*. Oxford: Oxford University Press.
- Dixon R and Landau D** (2021b) *Abusive Constitutional Borrowing: Legal globalization and the subversion of liberal democracy*. Oxford: Oxford University Press.
- Dixon R and Suk J** (2018) Liberal constitutionalism and economic inequality. *University of Chicago Law Review* **85**, 369.
- Douzinas C** (2007) *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. London: Routledge-Cavendish.
- Drinóczi T. and Bień-Kacala A** (2021) *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*. London: Routledge.
- Graff A and Korolczuk E** (2022) *Anti-Gender Politics in the Populist Moment*. London: Taylor & Francis.
- Handmaker J and Taekema S** (2023) O Lungo Drom: legal mobilization as counterpower. *Journal of Human Rights Practice* **15**, 6–23.
- Kelemen R. D and Blauburger M** (2017) Introducing the debate: European Union safeguards against member states' democratic backsliding. *Journal of European Public Policy* **24**, 317–320.
- Kocemba K and Stambulski M** (2023) Populism and the politics of human rights: the case of Poland. In *Law, Populism, and the Political in Central and Eastern Europe*. London: Birkbeck Law Press, pp. 90–115.
- Korolczuk E and Graff A** (2018) Gender as “Ebola from Brussels”: the anticolonial frame and the rise of illiberal populism. *Signs: Journal of Women in Culture and Society* **43**, 797–821.
- Kosař D, Baroš J and Dufek P** (2019) The twin challenges to separation of powers in Central Europe: technocratic governance and populism. *European Constitutional Law Review* **15**, 427–461.
- Kosař D and Šipulová K** (2023) Comparative court-packing. *International Journal of Constitutional Law* **21**, 80–126.
- Kovalčík M** (2022) The instrumental abuse of constitutional courts: how populists can use constitutional courts against the opposition. *The International Journal of Human Rights* **26**, 1160–1180.
- Kováts E and Pető A** (2017) Anti-gender discourse in Hungary: a discourse without a movement. In R. Kuhar & D. Paternotte (Eds.), *Anti-gender campaigns in Europe: Mobilizing against equality*. London, New York: Rowman & Littlefield International, pp. 117–134.
- Kováts E and Póim M** (2015) *Gender as symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilization in Europe*, Foundation for European Progressive Studies.
- Krizsan A and Roggeband C** (2018) Towards a conceptual framework for struggles over democracy in backsliding states: gender equality policy in Central Eastern Europe. *Politics and Governance* **6**, 90–100.
- Krygier M** (2022) Introduction: anti-constitutional populism. In Czarnota A., Krygier M. and Sadurski W. (eds.), *Anti-Constitutional Populism*. Cambridge: Cambridge University Press, pp. 1–24.
- Kuhar R and Paternotte D** (2017) *Anti-Gender Campaigns in Europe: Mobilizing Against Equality*. London, New York: Rowman & Littlefield.
- Laclau E** (2005) *On Populist Reason*. London, New York: Verso.
- Lindt A** (2020) Transnational human rights litigation: a means of obtaining effective remedy abroad? *Journal of Legal Anthropology* **4**, 57–77.
- Mañko R** (2023) *ECJ case law on judicial independence: A chronological overview*, European Parliamentary Research Service. Retrieved from Policy Commons.
- Merdzanovic A and Nicolaidis K** (2021) *A Citizen's Guide to the Rule of Law: Why We Need to Fight for the Most Precious Human Invention of All Time*. Stuttgart: Ibidem Verlag.
- Molavi, M.** (2024). Collective legal mobilisation: exploring class actions in Sweden and Canada. *Nordic Journal of Human Rights* **42**, 32–51.
- Moyn S** (2011) *The Last Utopia: Human Rights in History*. Cambridge, MA: Harvard University Press.
- Müller J.-W** (2016) *What is Populism?* Philadelphia: University of Pennsylvania Press.
- Paternotte D and Kuhar R** (2018) Disentangling and locating the “global right”: anti-gender campaigns in Europe. *Politics and Governance* **6**, 6–19.
- Pinelli C** (2011) The populist challenge to constitutional democracy. *European Constitutional Law Review* **7**, 5–16.
- Rodrik D** (2018) Populism and the economics of globalization. *Journal of International Business Policy* **1**, 12–33.
- Roggeband C and Krizsán A** (2020) Democratic backsliding and the backlash against women's rights: Understanding the current challenges for feminist politics. *UN Women Discussion Papers*.
- Sadurski W** (2019). *Poland's Constitutional Breakdown*. Oxford: Oxford University Press.
- Scheingold, S.A.** (2004). *The Politics of Rights: Lawyers, Public Policy, and Political Change*. Ann Arbor: University of Michigan Press.
- Silverstein H** (2003) The symbolic life of law: The instrumental and the constitutive in Scheingold's *The politics of rights*. *International Journal for the Semiotics of Law* **16**, 407–423.
- Skąpska G** (2019) Abuse of the constitution as a means of political change: sociological reflections on the crisis of constitutionalism in Poland. *Polish Sociological Review* **208**, 421–438.

- Śledzińska-Simon A** (2018) The rise and fall of judicial self-government in Poland: on judicial reform reversing democratic transition. *German Law Journal* **19**, 1839–1870.
- Southworth A** (2008) *Lawyers of the Right: Professionalizing the Conservative Coalition*. Chicago & London: Chicago University Press.
- Southworth A** (2018) Lawyers and the conservative counterrevolution. *Law & Social Inquiry* **43**, 1698–1728.
- Taekema S** (2013) The procedural rule of law: examining Waldron’s argument on dignity and agency. *JRE* **21**, 133.
- Vahnala L** (2021) Legal Mobilization. Retrieved from <https://www.oxfordbibliographies.com/view/document/obo-978019756223/obo-9780199756223-0031.xml>
- Vanhala L** (Ed.) (2010) Introduction: legal mobilization and accommodating social movements. In *Making Rights a Reality?: Disability Rights Activists and Legal Mobilization*. Cambridge: Cambridge University Press, pp. 1–47.
- Veitch S** (2007) *Law and Irresponsibility: On the Legitimation of Human Suffering*. Abingdon, UK: Routledge.
- Waldron J** (2011) The rule of law and the importance of procedure. *Getting to the Rule of Law* **3**, 4–5.
- Zemans F. K** (1983) Legal mobilization: the neglected role of the law in the political system. *American Political Science Review* **77**, 690–703.