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Published in:

Journal of Human Rights Practice

Publication status and date:

Published: 01/02/2023

DOI (link to publisher):

[10.1093/jhuman/huac068](https://doi.org/10.1093/jhuman/huac068)

Document Version

Publisher's PDF, also known as Version of record

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Citation for the published version (APA):

Handmaker, J. (2023). Introduction to the legal mobilization special focus. *Journal of Human Rights Practice*, 15(1), 1-65. <https://doi.org/10.1093/jhuman/huac068>

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Introduction to the legal mobilization special focus

Jeff Handmaker* 

Abstract

For many of us who study, or practice legal mobilization, the image of a duck-rabbit can be regarded as a metaphor of the very different world views and vocabularies that legal scholars and legal practitioners as well as social scientists and social activists use in explaining and practising law-based advocacy. Conventional, siloed approaches by academics and practitioners alike are common, though hardly desirable. We feel that rather than ask which vocabulary is more important, it is imperative to focus on the process of how people can understand each other, irrespective of the language and terms they are using. Moreover, we are curious why it is important to make such distinctions in conceptualizing and analysing the context of law-based advocacy and the many forms that legal mobilization adopts.

Keywords: legal mobilization; lawfare

Are lawyers and activists involved in public interest litigation, human rights campaigns or social justice protests ‘doing politics’ or are they ‘doing law’? Is it necessary or even valid to make a sharp distinction between the two, interwoven as they are; and what would be the analytical and practical value in so doing?

Martti Koskenniemi, a prominent critical legal scholar and veteran international diplomat, helps us navigate this delicate terrain. Fond of artistic imagery, he reproduced Wittgenstein’s iconic duck-rabbit image for a chapter in [Handmaker and Arts \(2019\)](#), regarding it as a metaphor of how one should embrace inter-disciplinarity, primarily in relation to conversations between scholars of law and of politics. [Koskenniemi \(2019: 27\)](#) explained that the relationship is primarily a pedagogical dilemma:

Through socialisation, we learn with whom we should speak, with the duck or with the rabbit, in Duckalese or in Rabbit. The relationship between politics and law is like that. The two are not out there, in the world, but in here with us, as part of our conceptual vocabularies, institutions and systems of expertise, each equally capable of describing the whole world.

For many of us who study, or indeed practice legal mobilization, the image can be regarded as a metaphor of the very different world views and vocabularies that legal scholars and legal practitioners as well as social scientists and social activists use in *explaining* and *doing*

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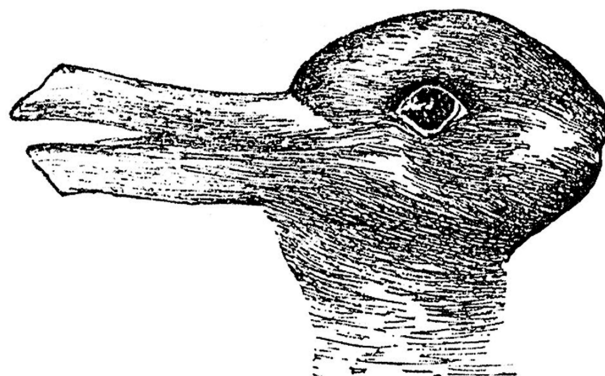


Figure 1. Jastrow (1899), Duck-Rabbit Illusion, to visualize the interplay of law and politics [Wittgenstein \(1953\)](#).

law-based advocacy. Conventional, siloed approaches by academics and practitioners alike are common, though hardly desirable. We feel that rather than ask which vocabulary is more important, it is more valuable to focus on the process of how people can understand each other, irrespective of the language and terms they are using. Moreover, we are curious why it is important to make such distinctions in conceptualizing and analysing the context of law-based advocacy and the many forms that legal mobilization adopts ([Figure 1](#)).

1. Princeton workshop on legal mobilization in times of crisis

Legal mobilization has been a subject of study for some time, noting in particular the work of [Galanter \(1974\)](#), [Zemans \(1982\)](#), [Abel \(1995\)](#), [McCann \(2004\)](#), [Gready \(2004\)](#), [Goodale and Merry \(2007\)](#), [Gloppen and St. Clair \(2012\)](#), [Madlingozi \(2014\)](#) and [Vanhala \(2017\)](#).

Inspired by this early scholarship and the experiences that many of us have had as legal practitioners, we held a workshop at Marx Hall at Princeton University in June 2017.¹ An international group of 20 lawyers and scholars came together to address three, overlapping goals, namely:

- a) to better understand legal mobilization (LM), both as an academic concept and approach, and as a strategy for advocates;
- b) to stimulate a relevant research agenda on LM that is informed by current, pressing challenges faced by legal advocates; and
- c) to share strategies for LM in light of contemporary political crises.

In exploring how research and practice on legal mobilization could be more relevant, we harvested a range of ideas. First, it was clear that there was a general need for academics who felt that there was no debate about climate or racial justice to weigh in on the political considerations, without worrying about losing their independence. Second, both practitioners and scholars agreed on the need to cultivate a long-term view, to promote self-reflection and learning, including by those affected by these issues. For example, what happens after a case is won or lost? How can research on intersectionality approaches help advance a social justice movement? How can one translate the meaning of a case to the community an organization is supporting? How to avoid harm, for example to children when they haven't been engaged or briefed properly?

¹ See: <https://lapa.princeton.edu/content/legal-mobilization-time-political-crisis-europe-and-north-america> (referenced 10 January 2023).

A third idea was to promote dialogue between practitioners and scholars about how to share experiences of cases won or lost. In particular, it was felt that there should be more fora for exchanging ideas transnationally, including in relation to legal mobilization strategies that do not necessarily have a domestic litigation, plus mobilization formula. Moreover, thematic-specific, country-comparative expert meetings and conferences could be organized, involving practitioners, NGOs and legal scholars, where, for example, different organizations' methodologies could be shared with other NGOs in Europe, Britain, Switzerland, South Africa and elsewhere. Fourth, we agreed that organizations needed to know how to evaluate and explain the eventual outcome of strategic litigation, including how to respond to the media.

In the meantime, there has been a veritable explosion of scholarship on this topic. We have appreciated how this journal has served as an important platform for these discussions, including contributions by [Oomen \(2013\)](#), [Santos \(2018\)](#), and [Coulibaly, Claeys and Berson \(2020\)](#).

However, as [Lehoucq and Taylor \(2020\)](#) also noted in their review, there is often fundamental disagreement among scholars about what 'legal mobilization' is understood to mean and whether there should be a conceptual distinction from other uses of law. A group of us felt that a more far-reaching conversation was necessary, and we decided to embark on a new and more ambitious research project. This project was hosted by the Netherlands Institute of Advanced Studies in Social Sciences and the Humanities (NIAS) in the 2020/21 academic year.² Unfortunately, the project fell right in the middle of the Covid pandemic when much of the world was in lockdown and we mostly participated online, though for some this period provided an opportunity for deeper reflections.

2. NIAS theme group on legal mobilization: law-based advocacy

The joint research project at NIAS that was funded by the Netherlands Royal Academy of Arts and Sciences comprised a group of five researchers, with a more focussed agenda. We concentrated on two things. First, we applied interdisciplinary methods and drew on legal practice to critically analyse the *potential* of law-based advocacy. Second, we explored how law has been used as a form of illegitimate lawfare (usually by states and corporations), and as a form of legitimate legal mobilization (usually by civic actors). In both respects, we problematized the *function* of legal mobilization (a socio-legal question) and its perceived *value* in relation to legal doctrine (a legal-philosophical question).

More specifically, research by Margaretha Wewerinke-Singh explored the value and function of applying human rights litigation, particularly to address climate justice problems. Research by Frederiek de Vlaming explored the potential value and function of litigating breaches of international humanitarian law (war crimes) in multiple and diverse settings, while Daphina Misiedjan analysed the perceived value of law by different groups, and in particular indigenous movements and how this can function to protect the rights of nature.

Three other outcomes of this project were incorporated into this *Special Focus on Legal Mobilization*.

One key outcome of the NIAS project was a comprehensive literature review led by Thandiwe Matthews, which comprises the first contribution to this *Special Focus*, on 'Interrogating the Debates Around Lawfare and Legal Mobilization'. Reflecting on numerous contributions to the legal mobilization debate, Matthews shows 'how the law can function as a tool that simultaneously facilitates or impedes the advancement of a just and equitable society'.

Jeff Handmaker's research, in collaboration with Sanne Taekema, and leading to a second contribution in this *Special Focus*, is entitled 'O Lungo Drom: Legal Mobilization as

² See: <https://nias.knaw.nl/themegroup/legal-mobilization-analyzing-law-based-advocacy/> (referenced 10 January 2023).

Counterpower'. In the article, which also builds on earlier work published in this journal by Huijbers and Loven (2019), a comprehensive legal mobilization analytical frame is applied to explain legal advocacy to support the Roma, Sinti and Traveller communities in the Netherlands. It is argued that there are essential differences between the concepts of lawfare and legal mobilization, and that the potential of legal mobilization can be generally explained.

Finally, Jackie Dugard's research sought to understand the true value and function of rights-based mobilization and explored a new angle on prevailing theory regarding the power of rights. This led to the third contribution in this *Special Focus*, entitled 'Water Rights Struggles in Johannesburg and Detroit Revisited: Looking Beyond Courts at the Politics and Power of Rights-Based Legal Mobilization in a Neoliberal Global Order: A "Powerpack" Analysis'. She shows how 'legal mobilisation resonates with multidimensional and metamorphic (power-from) power that constitutes a cogent form of politics with considerable radical promise'.

After the NIAS experience, we took the project further, recognizing the urgent importance of not only *understanding* (as researchers), but also *supporting* practitioners engaged in issues as pressing as climate justice, racial justice and socio-economic justice. This required a new, and even bolder approach to research and societal engagement.

3. A legal mobilization platform

As the five researchers in this group, along with others, we co-established in 2022 what we call the *Legal Mobilization Platform*, a non-hierarchical/non-patriarchal space of co-creation involving a large, interdisciplinary and international group of both scholars and practitioners.³ The work of the LMP centres on the question: how can we understand and strategically strengthen various forms of legal mobilization, and those who engage in it, in order to address key accountability challenges at the local and global levels, in ways that are impactful, legitimate and supportive of the rule of law, and ultimately contribute to systemic justice?

Through this *Special Focus* and other contributions of the Platform, we look forward to engaging with these questions further, cultivating a broader conversation around the potential role of law in mobilizing for systemic justice, both as an academic project and as a community of praxis. Whether we principally identify ourselves as ducks or rabbits is not so relevant; it is clear that we have common goals and hence need to have a shared conversation.

Acknowledgements

I am grateful for the contributions by Thandiwe Matthews, Sanne Taekema and Jackie Dugard to this Special Focus as well as feedback provided to us by the journal's anonymous reviewers.

Conflict of Interest

Jeff Handmaker is a member of the Project Advisory Council of the Public Interest Litigation Project (PILP).

Funding Statement

This work was supported by a fellowship to Jeff Handmaker (2020–21) by the Netherlands Institute for Advanced Studies of the Royal Netherlands Academy of Arts and Sciences.

3 For more information, see: www.iss.nl/LMP (referenced 10 January 2023).

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