

Article

## **Saving Democracy through Courts?**

### **The legal framing of civil society in their fight against democratic backsliding in Poland**

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#### **Abstract**

Legal mobilization is used by civil society actors to influence policies and create change by activating the law and engaging with courts. When civil society organizations and movements mobilize the law and seek to make societal changes, they not only have to pay attention to what legal claims they can make in courts but also to the political and socio-cultural context they operate in. In a context like Poland, the government is not only causing democratic backsliding but are also leading a strong Eurosceptic rhetoric. Mobilizing on issues of European standards such as liberal democracy, rule of law, and human rights are even at times claimed by the governments to work against national interests. This limits the legal and discursive tools of civil society. Faced with these constraints, how do organizations and movements frame their mobilization of the law to protect essential democratic features and which legal frames do they employ to win support not just in the courtrooms but also in the wider society? Through interviews and qualitative textual analysis, this paper examines Polish civil society organizations and movements' engagement with the law and how they in their fight against democratic backsliding try to frame European standards both as an integral part of Poland and as vital for the Polish society and its citizens. Through a socio-legal approach, the paper adds important insights to a burgeoning field that seeks to understand and explain how legal mobilization can be an alternative strategy against democratic backsliding in Europe.

**Keywords:** Democratic backsliding; European system; Legal mobilization; Legal framing; Poland; Civil society

#### **Introduction**

*“How law matters for social movements depends on when and under what conditions it is wielded” (Levitsky, 2015, p. 393)*

The democratic system has been under attack in Poland since 2015, which can be seen as part of a general global trend of democratic erosion (Diamond, 2006). The attacks has led to Poland being downgraded to a category of electoral democracy (Alizada et al., 2021). This is often referred to as democratic backsliding, which is the incremental and deliberate process of dismantling the democratic system through a governance technique of ‘autocratic legalism’ (Bermeo, 2016; Scheppele, 2018). Where autocratization performed through classical coup primed in the 20<sup>th</sup> century, *democracies* are today eroded deliberately by incumbents using the law, parliamentary majorities, and captures courts (Bugarič & Ginsburg, 2016; Castillo-Ortiz, 2019; Scheppele, 2018; Rohlfing & Wind, forthcoming). Autocratic legalism has destroyed the Polish democracy from within through those very institutions and laws that were meant to protect it by undercutting central democratic institutions, centralizing power in the executive, and removing check-and-balances and limiting society’s possibility for holding the government accountable (R. Daniel Kelemen & Pech, 2019; Pech & Scheppele, 2017; Sadurski, 2019). This means more precisely that *“electoral mandates plus constitutional and legal change are used in the service of an illiberal agenda”* (Scheppele, 2018, p. 548). Poland has as part of this turned its back on shared democratic ideals and seriously critiqued and questioned its commitments to European standards on rights and fundamental values. In a European context, this situation has often been discussed as a rule of law crisis with a focus on how the judiciary has been captured through judicial reforms

(R. Daniel Kelemen, 2020; Pech & Kochenov, 2019; Sedelmeier, 2014). This has led to a grave situation, where the independence of the judiciary can be seriously questioned, especially as the lack of a supermajority of the governing party, Prawo i Sprawiedliwość (PiS), has led them to increasingly rely on the Constitutional Tribunal to push their policies forward. It has, however, not been discussed enough how democratic backsliding also has tremendous negative impact on the organization and working of civil society. Funding restrictions, illegal surveillance, public harassment, and regulations of civils society organizations and movements are just some of the effects of backsliding, which are increasingly shrinking the civic space and limiting the tools available (Matthes, 2021; Rohlfig, 2022). What is important to keep in mind is that this is a one-sided trend that predominantly affects organizations and movements at odds with the governments, while government-loyal ones actually experience increased support (Kapronczay, 2017; Schreier, 2015; Rohlfig, 2022). This paper solely focuses on those that are either neglected or attacked by the government, as it manifests itself through their mission statements and concrete activism. Classical activism is often different forms of political mobilization, where contestation can take the form of in example protests or civil disobedience (Tarrow, 2012; Youngs, 2019). This is, however, not always an available or efficient method. As a result, organizations and movements will instead turn to the judicial arena, which is especially true for those who are politically disadvantaged (Brodie, 2002). Over the years, the legal arena has even become an alternative route when the political arena is not open for participation, with organizations and movements increasingly employing legal mobilization in pursue of their interests (see e.g. Lehoucq & Taylor, 2020; Meyer & Boutcher, 2007). Legal mobilization is both formal strategies such as litigations and other form of in-court activities as well as non-formal strategies such as right-centred campaigns and advocacy (Chua, 2019; Lehoucq & Taylor, 2020; Rohlfig, forthcoming). Both forms are conditional and framed by the context in which it unfolds, and the contested context of Poland, with its democratic backsliding, is therefore defining the type of legal activities possible (Gloppen, 2017). As McCann (2006, p. 35) describes it: “How law matters depends on the complex, often changing dynamics of the context in which struggles occur”. One important dimension of legal mobilization is how grievances and solutions are framed in a fashion that encourages support both in courtrooms and outside in the wider society (Snow et al., 1986). Law here functions a resource but also as a norm that shapes values and consciousness, which both enables and restraints legal mobilization (Edelman et al., 2010). Law can in other words aid civil society in their fight against democratic backsliding but it also sets “...rigid and enduring boundaries on the very words and discourses available to challengers in their attempt to produce and mobilize resonant cultural frames toward instrumental ends” (Pedriana, 2006, p. 1727). In a context where the idea of and commitment to democratic principles and European standards are criticised and questioned, how does civil society then frame their issues both when litigating in courts but also when engaging with society? As framing is affected by the context, the legal and cultural stocks, and the targeted audiences, organizations and movements must pay close attention to both the (counter-)frames used by the government and the Polish society’s “stock of meanings, beliefs, ideologies, practices, values, myths, and narratives” (Benford & Snow, 2000, p. 629). In other words, which frames can organizations and movements develop and

deploy to create resonance? With this the aim of the paper is to contribute to our understanding of legal framing in a contested context of democratic backsliding, adding to the socio-legal field that asks whether ‘law can protect democracy’ (Bugaric, 2019) and if courts can work as ‘bulwarks of democracy’ (Staton et al., 2019) when mobilized by civil society organizations and movements. The paper firstly presents a review of the relevant socio-legal literature and the theoretical foundation as it is placed within a constitutional-instrumental understanding of legal mobilization. It secondly briefly outlines the methods and data used before the analysis discusses how and which court-centred and society-wide frames are used by civil society in Poland, showing that a strong European sentiment amongst some judges and across society makes it possible to use both direct and indirect references to European standards despite the contested context and the hostile narratives created by the government.

### **How framing became a matter of socio-legal concern**

The study of legal mobilisation is an area well studied by different intellectual traditions. In its early stages, these traditions were distinct disciplines but legal mobilisation has increasingly been studied by bridging political science, law, and social movement studies. This interdisciplinarity has developed new perspectives and insights, at times even leading to a social movement turn in law or a cultural turn across the social sciences (Cummings, 2018). Classic legal mobilization literature can be seen as divided in an instrumental strand (e.g. Canon, 1999; Epstein, 1992; Rosenberg, 1991) that focused on the utility of litigation through a top-down approach and a cultural strand (e.g. Brigham, 1996; McCann, 1994; Silverstein, 1996) that was more concerned with the constitutive dimension of law and how it shapes the world we live in. Newer approaches have in a response to this divide sought to embrace both how law is thought of and how it is employed (for an overview see Barclay et al., 2011; Boutcher & Chua, 2018; Cummings, 2017; Levitsky, 2015). Legal mobilization has in this approach benefitted greatly from sociological research on how law is an agent of social change that influence culture whilst culture also mediate law’s societal impact (see e.g. Benford & Snow, 2000; McAdam et al., 1996). From a social-constructionist view on how civic activism requires a common identity and sense of shared grievances, framing became the concept used to describe how organizations and movements ‘organize experience and guide action’ through interpretive frames (Snow et al., 1986). Socio-legal scholars put law at the forefront of such interpretive frames, arguing that law is the resources *and* norms used to socially construct grievances and solutions. With legal framing, attention is given to how organizations and movements mobilize the law and how law constitutes the underlying cultural articulation objectives (Albiston & Leachman, 2015; Leachman, 2013; Pedriana, 2006a). Law is in effect both a resource to be used and a constitutive part of society (Gianella, 2017; Leachman, 2013). Legal framing has in addition both a formal and non-formal dimension; The former emphasizes the importance of legal institutions as important sites of political conflicts (see e.g. Pedriana, 2006), while the latter pays attention to how legal concepts and language are mobilizes outside courts (see e.g. Albiston & Leachman, 2015). Legal framing is important for making the court system receptive to right claims (Thierse & Badanjak, 2021). Framing should, however, also be

understood as a cultural stock of “...legal norms, rules, or discourses that structure practices in and beyond official legal institutions” (M. McCann, 2006a, p. 21). Both the formal and non-formal side to legal frames are importantly connected to the political and legal opportunity structures and how they can constrain or enable what framing is possible in which arenas. Formal requirements for standing determines the structural access to courts and a country’s commitment to European law define what legal claims can legitimately be made in courts (Andersen, 2016; Hilson, 2002; Lehoucq & Taylor, 2020; Pedriana, 2015; Vanhala, 2012, 2017). Studies have shown that what frames are successful in achieving societal changes vary (McCammon & Mcgrath, 2015) and is highly context dependent (McCammon et al., 2018). Where most research has studied democratic contexts (Harms, 2021; McCammon, 2012; McCammon & Beeson-Lynch, 2021; Vanhala, 2009) or autocratic contexts (Moussa, 2013; Yang, 2019), I am in this paper adding to a burgeoning field that in some form or shape deals with cases that are moving towards an autocratic governance practices (Chua, 2019; Moustafa, 2014; van der Vet, 2018).

### **On the meaning of legal framing in contested contexts**

Frames are interpretations schemes formulated and used by organizations and movements to outline problems, propose solutions, and mobilize action (Snow et al., 1986). Constructing frames, *framing*, can be defined as “the conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action” (McAdam et al., 1996, p. 6). Framing processes hence condition how people view and understand their situation and these shared and socially constructed ideas are foundational for the mobilization (or support) of collective action. As Yang (2019, p. 479) describes it: “People must view their world from a particular perspective to take collective actions or engage in political contentions”. This means that frames are passive and structured parts of the world while simultaneously being actively constructed by civil society, ultimately making it a locus of conscience and contextual choices (Gamson & Meyer, 1996). Choices need to be made on how to best provide and utilise interpretations of the world, the issue at hand, and solutions to it (Snow et al., 1986). When engaged with legal mobilization, frames explicitly use legal language, concepts, and symbols to define and legitimate grievances, goals, and actions. Law thus serve as a ‘central meaning-making institution’ that provides organizations and movements with ammunition for their societal struggles (Pedriana, 2006a). It is inherently contentious as legal mobilization is the act of creating societal changes through frames that challenge the existing ones at the root of the problem (Gianella, 2017). Such legal frames often revolve around rights (Gianella, 2017; Harms, 2021; McCammon & Beeson-Lynch, 2021; Pedriana, 2006) but broader or more abstract law references are also examples of legal frames (Albiston & Leachman, 2015; Leachman, 2013).

Using law in activism is an explicit and conscious strategy invoking both formal institutional and informal tactics. Formal strategies are strategic litigations and court-related proceedings while informal tactics can be public right claims and a matter of ‘organizing, protesting, and negotiating’ outside courts (Chua,

2019a; Levitsky, 2015). While this might depict law solely as a tool, it is importance to stress the constitutive element of law, which shapes the “...very capacities to imagine social or political possibilities” (McCann, 2006, p. 21). Put differently, law is both a *normative principle* guiding movements and organizations and a *strategic resources*, that can be used for pursuing change (McCann, 2008; Scheingold, 2004). The idea that organizations and movements can mobilise the law for achieving societal changes hence builds on the concept of law as something that both structures the world we live in - and how we perceive of it - and as a pliable medium that can be used to reconfigure our world. Law is in other words both a source for collective action and a framework which can constraint or enable mobilisation (Jacquot and Vitale 2014). Pedriana (2006a, p. 1727) defines this as “...law’s dual resource value as instrumental incentives and penalties, on the one hand, and socially constructed legitimating scripts and schemas”. Frames are therefore actively developed and deployed by organizations and movements but are also conditioned by their surroundings. The purpose of frames is to mobilize constituents, garner bystander support, and demobilize antagonists by constructing shared understandings about a problematic issue or an unjust action of an authority and how it can be changed (Benford & Snow, 2000; Snow & Benford, 1988). Though framing is constrained by various contextual factors, as I will elaborate below, it is important to stress that organizations and movements are not passive actors blindly responding to externally-imposed opportunities and limits but are active in creating their own opportunities for legal mobilization (Harms, 2021; Vanhala, 2012). This means that framing is a deliberate strategic and dynamic process that are developed and deployed to achieve a specific purpose (Benford & Snow, 2000).

### ***About the law and cultural fit of legal frames***

Legal frames use law as a symbolic resource. References to law can transform symbolic claims into legal claims but it can also serve as a type of discursive toolbox, a form of *interpretive resources* as Pedriana (2006) calls it, that can help define grievances, identity, and objectives in the wider society outside of the courtroom. To put it differently, civil society needs to draw on both ‘legal stock’ and ‘cultural stock’ to activate the society’s images of what is unjust and what violates what ought to be (Zald, 1996). Organizations and movements must as a result build their frames in accordance with judicial rules and norms while also ensure a *cultural fit* in order for frames to create resonant (Andersen, 2006). This need not happen at the same time but is often done simultaneously at *different* sites (Benford & Snow, 2000; McAdam et al., 1996). I therefore differentiate between what I call court-centred and society-wide frames.

*Court-centred frames* direct the attention inside courts and the rules and norms, both written and unwritten, that determines what frames can be evoked. Legal framing is “an important prerequisite to gain access to courts and to make judges receptive to the claims advanced in quest for a codification” (Thierse & Badanjak, 2021, p. 77) but it is also limited by rules and norms of the judicial arena. This includes the constitutional principles, case precedent, and statutory law available at national or supranational level (McCammon & Beeson-Lynch, 2021). In the case at hand, such rules and norms are Polish law and European

law including the Convention on Human Rights, the Charter for Fundamental Rights, and EU treaties and soft laws. While this landscape of law gives organizations and movements a discursive toolbox to draw from, it also limits what interpretative schemas can be used as courts typically feel constrained by the established jurisprudence. As Hilson (2002) describes it: “If the only precedents you have to go on are all based on a privacy right, it will be difficult to persuade a court to reframe this into, say, an equal protection frame”. Court-centred frames must therefore to some extent conform to the legal ideology embodying the understanding about how law functions and what is legitimate legal behaviour (Leachman, 2013).

*Society-wide frames* moves the point of action outside the courtrooms and focus on how frames refer to law in the wider society. For legal mobilization to be capable of creating societal changes, frames should not only be accepted in legal institutions but must also be accepted within the broader political discourse and generate ‘resonance’ (Andersen, 2006; Snow & Benford, 1992). By using words, symbols, or concepts associated with the law, organizations and movements can strategically link “link together these legal concepts (and nonlegal ones) to convince others to support their cause” (Leachman, 2013, p. 29). Where court-centred frames are mostly limited by procedural rules and legal basis, society-wide frames is dependent on what is viewed as legitimate discourses and narratives in society (Stobaugh & Snow, 2010). Hilson (2002) uses the term ‘legal narratives’ to describe a decentred, non-instrumental, and social constructionist view of law different from its use inside courts. Though I agree with the idea of placing importance on the social construction of narratives centred on law, I disagree with the definition of it as non-instrumental. Using legal narratives, or society-wide frames as I call them, is as much a deliberate strategy as frames used in courts. Referring to specific articles in e.g. the EU Charter of Fundamental Rights can create understanding or maybe even legitimization in society for an organization or movement’s cause. For example, framing the issue of abortion not strictly as a women’s rights issue but as an issue related to health might be more compelling to some. Put differently, society-wide frames utilise the law with a close eye on the “extant stock of meanings, beliefs, ideologies, practices, values, myths, narratives, and the like” (Benford & Snow, 2000, p. 629).

### ***The contextuality of legal frames***

What legal frames organizations and movements can rely on have profound consequences for what they can achieve, which is highly context dependent. Just as framing processes are dependent on disputes within the organizations and movements, frames are also constructed in relation to the context they operate in. This paper solely deals with the latter aspect. It has been argued that courts are the only institutional site that can translate legal frames into legal claims, which must then be “authoritatively recognized, codified, and enforced by the state” (Pedriana, 2006, p. 1728). While it is true that courts have the unique right to decide on the legality of legislative acts or on when something is a violation, courts are not untouched by the society they reside in. Countries with high levels of constitutionalism and adherence to the rule of law would rarely be subject to radical changes to court procedures or the legal basis. This is, however, not the case for backsliding countries where judicial reforms and the commitment to supranational law are at the foreground of the democratic

backsliding. Poland has come to represent such an anti-constitutionalist trend, where the government increasingly claws back power from European courts, treaties, and norms and instead formulate their own interpretations of democratic principles and fundamental rights. This is not done by rejecting international and supranational law outright but is done with a reference to their own cultural peculiarities of constitutional identities (Halmai, 2018; R D. Kelemen & Pech, 2018). Landau calls this ‘abusive constitutionalism’ (Landau, 2013). In Poland, the PiS-government is seriously questioning - and even demonizing - norms, treaties, and case law from both the CJEU and the ECtHR (Rohlfing & Wind, forthcoming). This creates a context of contestation for those organizations and movements working for upholding democratic principles and fundamental rights. It means more precisely, that organizations and movements in opposition to the discourses of the government are in a conflict over what frames are prevailing – what has been called ‘the politics of significant’ (Hall, 1982/2005). In a context of democratic backsliding, civil society is not just in a framing contests over recognition of rights but more fundamentally over whether there should be a structure in place that guarantees rights in the first place. In effect, framing activities and the extent of their resonance are deeply affected by the cultural and political environment including the (counter-)frames of institutional elites and other opposing organizations and movements (Benford & Snow, 2000; McAdam et al., 1996). This seriously challenges what legal framing is available for civil society, both court-centred and society-wide frames. The former is concretely limited by the judicial reforms, where Polish courts are now closer to being ‘government agents’ ensuring legitimization of political acts rather than exercising independent judicial review of those acts (Castillo-Ortiz, 2019; Mayoral & Wind, 2021; Moustafa, 2014). This is also aided by a tradition of the Polish court system, rooted in a regional tendency, where ‘the letter’ always trumps ‘the spirit of the law’ (Matczak, 2020; Sadurski, 2019). This can limit the margin for interpretations when engaging with national courts. For the latter, the government’s actions are often claimed to be based on the will of the people (see e.g. Scheppele, 2018) while organizations and movements are described as traitors. This strong narrative that, on the one hand, legitimizes the government’s illiberal agenda, while it on the other hand paints opposing organizations and movements as being against the people. Organizations and movements at odds with the authorities must hence in their framing navigate the dominant narratives of society in order to “...recast or challenge prevailing definitions of the situation” (Zald, 1996: 268). This is necessary for mobilizing (support for) societal changes. As I show below, this has forced civil society to press their frames in creative and more forceful ways. It is also important to remember that civil society not only draw on the legal and cultural stuck of a society, they also actively add to it. A successful frame, either by way of winning a case in court or by mobilizing visible societal support on a topic, the legal frames used will create new possibilities for framing the problem for the future both in courts and in the broader society.

### **The Polish case**

Poland is by the measurement institute Varieties of Democracy, categorized as an electoral democracy and has globally been one of the most autocratizing countries in recent years (Alizada et al., 2021). These changes

have taken place since the governing party of PiS won the power back in 2015. The government introduced a substantial illiberal agenda, which among other things focused on judicial reforms, media control, shrinking of the civic space, and introduction of policies targeting the EU and fundamental rights, especially regarding women and LGBTQ+. As a result, one could convincingly argue that Poland is no longer a rule of law but a rule by law regime. Sadurski (2019, p. 16) has described changes in legal statutes and court reforms has engineered fundamental “*constitutional changes without having an electorate mandate to do so*”. Instead, by using a simple majority, amendments were made possible by being dressed up in law and legalese language and confirmed by the politically captured Constitutional Tribunal. This autocratic legalism has concretely lowered the retirement age of judges to get rid of those that were not loyal to the government, turned the Constitutional Court into a ‘fake court’, as Pech has put it (2020). The government has recently started to more actively marginalize both Parliament and Senate and instead use the captured Constitutional Court, the prosecutor's office, public media, and cherry-picked judicial institutions to get its policies adopted. For example, when the government was unsuccessful in changing the abortion law in parliament, they instead referred it to the Constitutional Court, which de facto banned abortion in a ruling from October 2020 (Pichlak, n.d.). Most recently, PiS has used the Constitutional Court to challenge the supremacy of EU law (Pech & Kochenov, 2019). Several of the illiberal actions of the government has been called unlawful by the European Court of Human rights or in breach with EU law as determined by the European Court of Justice (see e.g. case of Xero Flot w Polsce sp. Z o.o. v. Poland). We are in other words dealing with a country that a far from democratic and at odds with democratic principles and fundamental rights as otherwise enshrined in the European system.

## **Data and methods**

This paper builds on data collected through semi-structured interviews with staff members, volunteers, and activists of civils society organizations and social movements. The paper solely focuses on organizations and movements that are either neglected or attacked by the Polish government and therefore often viewed as in opposition – even if the organizations and movements themselves do not consider themselves in direct opposition to the government. A total of 21 interviews have been conducted over the course of 2021, *see table 1*. Organizations and movements have been identified based on their missions statements and outlined or observed activism. As McAdam (1996, p. 341) writes; “no component of a movement's overall framing work is more important in this regard than the tactical choices it makes and the actual activities in which it engages”. The interviews are triangulated with qualitative textual analysis of materials such as court briefs and judgements as well as statements, campaign material, and press releases from organizations and movements on their legal activities (Drisko et al., 2015). The textual material allows me to focus on the phrases and wordings of the legal frames while the interviews makes it possible to go beyond these written components and investigate the ideas and reflections, the thought-process so to speak, going into the framing process itself.



#	Main cause	Formal legal mobilization	#	Main cause	Formal legal mobilization
1	Democracy and rule of law	Yes	11	LGBTQ+	Yes
2	Human rights	Yes	12	Civic participation	No
3	Civic participation	Yes	13	Democracy and rule of law	Yes
4	Women's rights	Yes	14	Civic participation	Yes
5	Democracy and rule of law	Yes	15	Civic participation	No
6	Women's rights	Yes	16	Democracy and rule of law	Yes
7	Human rights	Yes	17	Women's rights	Yes
8	Human rights	Yes	18	Democracy and rule of law	No
9	Democracy and rule of law	No	19	LGBTQ+	No
10	Democracy and rule of law	No	20	Democracy and rule of law	Yes

**Table 1:** Overview of the causes of the interviewed organizations and movements and whether they are engaged in so-called formal legal mobilization by litigating, intervene as third parties, writing amicus briefs, or providing legal aid. Count of causes: Democracy and rule of law (7), Civic participation (4), Human rights (3), Women’s rights (2), LGBTQ+ (2).

## Analysis

Legal mobilization is by the Polish organizations and movements employed to create better conditions, influence concrete policies, and advance democratic values. For most, the aim is to fight against the democratic backsliding because they see a close connection between their grievances and the deterioration of democracy (Rohlfing, forthcoming). Organizations and movements frame their legal mobilisation around issues of right violations with references to the first and second generation of human rights, but they also try to develop frames with direct references to concerns about democratic backsliding. A main difference between the court-centred frames and the society-wide frames is the relations of power that structures the prevailing norms and discourse (Harms, 2021). As great parts of the judicial system have been captured by the government, the room of manoeuvre has been formally limited in courts with either government-loyal judges or judges who are afraid of the consequences for not following the government line. Arguments that might carry public support and resonate with values in the society, can be met with serious obstacles in courts and are hence not able to create change through legal mobilization. That the abortion ban was implemented despite 73 percent of the country opposing it, is a clear example of this (Neumeyer, 2021). The wider society is not captured the same way, as the government has never enjoyed an overwhelming majority. It is therefore not everybody that subscribes to the ideology of the government, in fact some opinion polls estimate that 40-50 percent support the opposition, which have a much stronger democracy and rights discourse (Kaczynski, 2021; Politico, 2022). There is further a very strong support for the EU, with 88 percent being in favour of membership (Spoecznej, 2021). Interesting, where only 48 percent are satisfied with the functioning of the Polish democracy, democracy in the EU is with 69 percent much higher rated (Eurobarometer, 2022). This indicates a deep societal appreciation for the EU and democracy, which civil society can, and do, play into. There is in other words a value foundation

in the society that are receptive to right-based, democracy-driven, and European aspiring messages. As previous studies have shown, Polish citizens have across political orientation displayed a consistent high support for democracy (Chiopris et al., 2021). The challenge is therefore to invoke these sentiments and to counter the strong narratives of the government. These narratives seek to change the definition of democracy and the understanding of fundamental rights. It also demonizes the European system and marginalized groups, often depicting them as dangerous and a threat. Such frames can make people feel fearful, which is a strong emotion that can make people forgo their commitment to universal rights and a democracy open to all. Challenging such frames is made difficult in the Polish context, firstly it can be difficult to challenge them in captured courts but also because alternative voices are sought silenced through restriction on the media and shrinking of the civic space. It is in this contested context that organizations and movements have to navigate when framing their grievances and how to solve them in their struggle to fight against the democratic backsliding. I will in the following dive deeper into how court-centred and society-wide frames are developed and deployed.

### **Court-centred frames**

There is a contradictory notion in civil society regarding mobilizing around European standards. Many organizations and movements find it very difficult to use arguments in court, which refer to the European standards. The experience is that such references are invalid in many Polish courts and will not lead to a positive outcome. In trying to protect human rights and rule of law, applying European standards in national courts are not always possible “under the current constitutional system of Poland because they [courts] don’t include that”<sup>1</sup>. Nonetheless, such references are still often made because organizations and movements at the same time feel it is the only way they can challenge not just individual right violations but the general structural issue of democratic backsliding. The strategy is therefore to not only consider what legal claims can be made in the concrete cases but also which court it is brought to and which judges will rule on the matter. “...depending on the case” references can be made to the European treaties and international conventions<sup>2</sup>. This should be understood in light of how Poland is described as a country with two legal systems, where the first is in line with European and human rights standards, while the other is a contaminated legal system that do not allow for European standards. Polish top courts, the Supreme Court and the Constitutional Tribunal are seen as contaminated with what civil society calls ‘fake judges’ or ‘neo judges’ who “...everyday are issuing more and more rulings that...violate human rights and because the court is not composed in accordance with rule of law”<sup>3</sup>. As a result, in some cases, references to European standards might be toned down while it in other cases is seen as an advantage. I will in the following examine the cases where formal legal mobilization use European references to understand how they frame such concepts. Attention is also given to how civil

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<sup>1</sup> Interview with lawyer, Polish non-governmental organization, Warsaw, October 2021

<sup>2</sup> Interview with board member, Polish non-governmental organization, Warsaw, October 2021.

<sup>3</sup> Online interview with legal analyst, Polish non-governmental organization, May 2021.

society frame their formal involvement with courts, as identified in two court-centred master frames: *'Courts as fight avenues for democracy'* and *'Polish system contaminated'*. Each of these have sub-frames, as illustrated in *figure 1*. These frames include direct references to the European legal stock of the European Convention on Human Rights, Charter on Fundamental Rights, the Treaty on the European Union, and European soft laws.

*'Courts as fight avenues for democracy'* is built on the idea that grievances should be dealt with in courtrooms and not in the political arena. Courts are seen as "...the speed bumps on the way to illiberal democracy or to the authoritarian and totalitarian system of government"<sup>4</sup>. Staton et al. (2019, p.7-9) share this believe of courts serving as "a backstop against any legislative effort that might undermine basic democratic principles" but also warns that attacks on the judiciary can "...eliminate the courts as a source of constraint". Courts becomes a fight avenue when civil society mobilize them to enforce democratic principles and fundamental rights (Bugarcic, 2019). For human rights organizations, litigations before courts have always been part of their DNA but following the democratic backsliding of Poland even organizations and movements unfamiliar with such a formal or institutionalized use of the law have started to turn to courts (Chua, 2019; Rohlfing, forthcoming). This turn is in part driven by a growing notion among civil society that it is a waste of time to engage with policy-makers since they are not interested in what civil society has to say: "...they don't care what I'm talking to them about. They ignore my recommendations, ignore the stuff I bring to them"<sup>5</sup>. Courts are instead seen as a forum to direct both individual, collective, and nationalistic claims (Leachman, 2013). A majority of organizations and movements use this type of legal mobilization not so much to create change by winning cases but to create public awareness about the issues. Leachmann (2013) emphasises that this form of 'formal law' may only be a secondary goal as greater importance is given to the effect is can have to invoke the law, such as public acceptance, participation, and publicity.

Individual claims are used, when organizations litigate on behalf of individual clients regarding violations of said client's rights. References to European standards are done by evoking articles of the Charter of Fundamental Rights, the European Convention on Human Rights og European law in Polish courts or by advocating for Polish courts to make judicial references to the European Court of Justice. As one interviewee describes it; "We sometimes try to encourage the Polish courts to ask a preliminary reference to the ECJ, and then we would be a participant of the proceedings before ECJ as well"<sup>6</sup>. The aim of individual claims are to ensure individuals legal protecting but this is often part of a bigger strategic litigation plan. One example of this is the initiative of the Justice Defence Committee, made up of twelve leading civil society organizations with the sole purpose of advancing litigations in a frame of how individual violations are symptoms of a structural problem in Poland<sup>7</sup>. Many organizations and movements hence see individual rights violations as an

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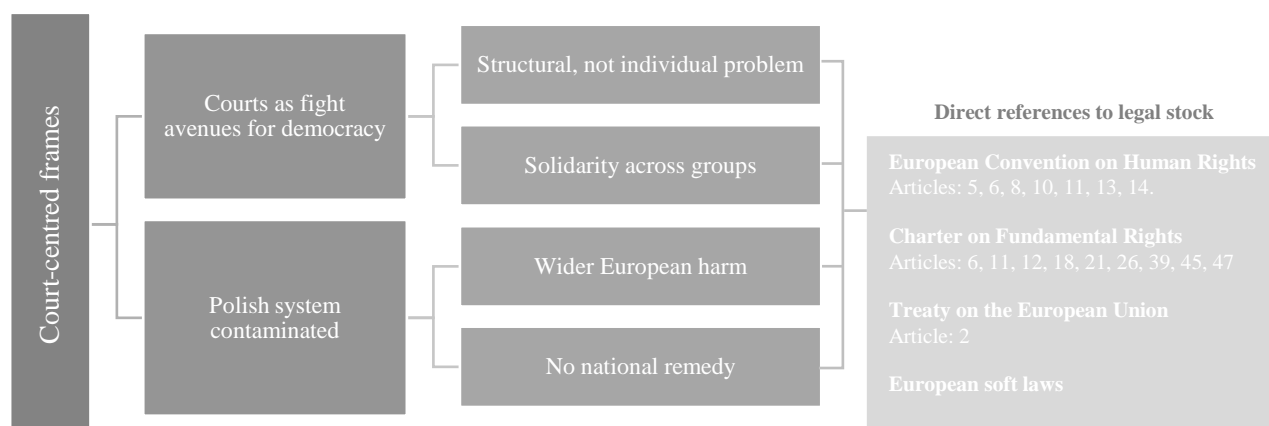
<sup>4</sup> Interview with activist and former judge, Polish civic think tank, Warsaw, October 2021

<sup>5</sup> Online interview with vice director, Polish non-governmental organization. May 2021.

<sup>6</sup> Online interview with lawyer, Polish non-governmental organization. May 2021.

<sup>7</sup> Online interview with legal analyst, Polish non-governmental organization, May 2021.

element of a greater scheme. This *'structural, not individual problem'* can be seen as a diagnostic framing that aims to define the problem as one of wider societal importance caused by the government. The first master frame therefore often take a more collective form. Women's rights groups and LGBTQ+ groups are especially evoking concepts and norms of anti-discrimination to solve collective wrongs. Leachman (2013) argues that collective frames are particularly strong in contexts with a powerful countermovement – or as I frame it in the Polish case, in a contested context. What is interesting is that these groups do not refer to themselves as different from the rest of the society, unlike what is the dominant view in the literature (see e.g. McCammon et al., 2007; Pedriana, 2006). Instead they actively refer to other discriminated and marginalized groups to construct and legitimize frames about a general violation of people's rights; "If we are together, then we fight together for everything"<sup>8</sup>. I refer to this as a frame of *'solidarity across groups'*, which can be seen as a frame extension. By mutually including and promoting each other's causes, organizations and movements can extend the reach of their frames and mobilize greater support (Benford & Snow, 2000; Little, 2016).



**Figure 1:** Overview of the court-centred frames and their use of direct references to the European legal stock

The frame of *'Polish system contaminated'* is linked to issues of societal harm, where organizations and movements have develop what can be defined as a nationalistic frame. What is interesting about this master frame and its sub-frames, is that there have been a significant frame transformation (Pedriana, 2006; Snow et al., 1986a). This is caused by two main factors. Firstly, the problem is no longer viewed as a strictly Polish problem but as a wider European problem. This frame of *'Wider European harm'* rests on the notion that it is not only about "...the situation in Poland, it contaminates the entire European legal system"<sup>9</sup>. This seems to be a strong notion shared amongst civil society and independent judges, which has only increased in support as the democratic situation has worsened in Poland. This has legitimized an increasing turn to the European system; "the awareness of the European institutions are among us"<sup>10</sup>. Secondly, with the recognition that the

<sup>8</sup> Interview with founder and chair, Polish non-governmental organization, Warsaw, October 2021

<sup>9</sup> Interview with board member, Polish non-governmental organization, Warsaw, October 2021.

<sup>10</sup> Online interview with previous legal staff member, Polish non-governmental organisation. April 2021.

European system is interconnected with the struggles in Poland, new solutions have been formulated as described below:

*“In the past, no one would ask the Court of Justice of the European Union about the independence of justice in Poland, because everyone would ask the Constitutional Tribunal, why would you ask CJEU? The CJEU has always been perceived as a court which deals with cases concerning like business activities, tax law and so on...No one perceived CJEU as a court which will help us to protect the rule of law standards, the ECHR maybe, but not CJEU. But this has changed after the paralysis of the Constitutional Tribunal”<sup>11</sup>*

This frame of ‘no national remedy’ has grown from the experience that it is pointless to only refer to the Polish Constitution, when it can so easily be manipulated by the government and misinterpreted, as civil society deems it, by politically captured courts. As McCammon & Beeson-Lynch (2021) argue, a hostile climate in the broader political context will translate into resistance in courts, making it difficult for organizations and movements to find remedy. Fundamental European values are therefore a key point of references used to define grievances as “...a problem inherent in the structure of government” (Leachman, 2013). This nationalistic frame hence link issue of right violations with Poland’s democratic backsliding and its rule of law crisis. Arguments of this frame highlights how the government’s illiberal agenda and its capture of the judiciary means it becomes difficult to protect rights but also to challenges policies on their compliance with European standards since such arguments are no longer valid in courts. One example, are women’s rights. With the government’s conservative policies towards women, (some) courts and judges are not recognising the suffering of women who are deprived of access to abortion. In these cases it is not enough to make references to European standards in Polish courts and organizations and movements turn instead directly to the European courts, especially the ECHR. What is interesting is that normally the Admissibility Criteria must be fulfilled, which includes the obligation to exhaust domestic remedies as stipulated in Article 35 (European Council/European Court of Human Rights 2021). In special circumstances, complainants can forego this criteria, if domestic remedies are found to either not exist, the procedure is unduly delayed or not fair, or the domestic remedy cannot redress the alleged violation. Women’s rights organizations have therefore bridge issues of the right to abortion with rule of law problems, arguing with this framing that they cannot rely on national courts. This creative and innovative way of framing is argued to be common found in contested contexts (McCammon et al., 2007; McCammon & Beeson-Lynch, 2021; Yang, 2019). These formal ways of legal mobilization, where organizations and movements take to the courts, are often combined with informal legal mobilization outside of courtrooms. This combination informs long-term strategies and can generate new legal stock from which other activities can draw arguments from<sup>12</sup>.

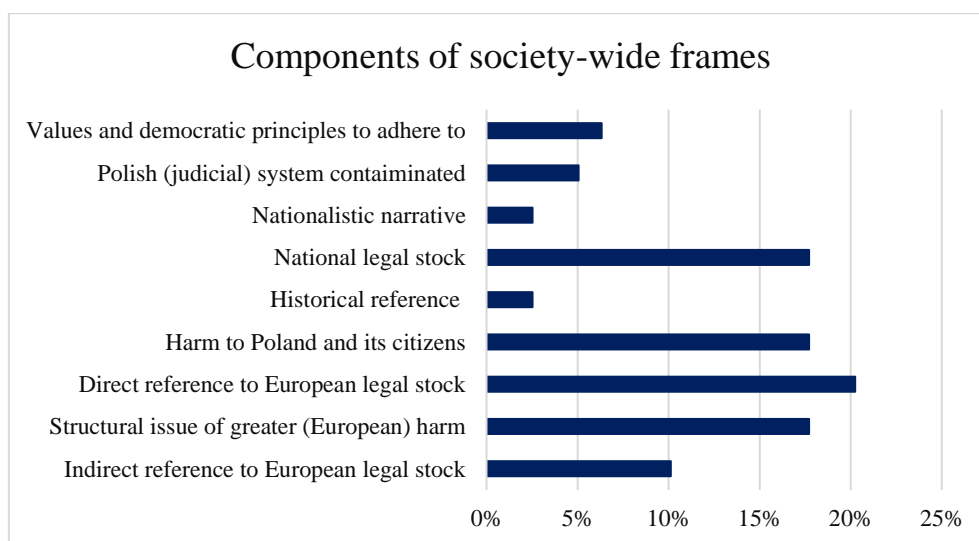
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<sup>11</sup> Online interview with lawyer, Polish non-governmental organization. May 2021.

<sup>12</sup> Online interview with vice director, Polish non-governmental organization. May 2021.

## Society-wide frames

Society-wide frames are often developed and deployed in close connection with in-court activities as court cases are used as a stepping-stone to gain attention. When cases are brought to courts, the public discussions can get even more visible (Rohlfing, forthcoming). As McCann (2006, p. 26) argues, formal legal actions can “...expose systemic vulnerabilities and render legal claims sensible or salient to aggrieved citizens”. But society-wide frames are not playing the second fiddle, so to speak, as these frames also work to gain support and society-wide legitimacy, and hence create public pressure, for the actions in courts. The frames are in other words complimenting each other<sup>13</sup>. I have based on this identified two society-wide master frames: ‘*Saviour frame*’ and ‘*Relatability*’. Each of these have sub-frames, as illustrated in *figure 3*. The frames include both direct and indirect references to the European legal stock of both the European Convention on Human Rights, Charter on Fundamental Rights, and European law. *Figure 2* shows which frame components are used in statements and press releases from organizations and movements. It shows how direct references are a main component but also that they use components that stress how democratic backsliding is structural issue of harm to the Polish society but also to Europe. National legal stock is interestingly also often referred to but almost exclusively in direct reference to European standards. As I will discuss below, this is part of a strategy to define Poland and European standards as two sides to the same coin.



**Figure 2:** Components of the society-wide frames in textual material from organizations and movements. Author’s own elaboration.

The ‘*saviour frame*’ plays into a strong nationalistic feeling in the society – which is not unique to Poland but also part of a global tendency stressing national identitarian values (Lustig & Weiler, 2018; Wind, 2021). Poland has at the same time a general high public support of the EU, which is a sentiment actively used by organizations and movements. The framing strategy therefore present the European standards as a natural part

<sup>13</sup> Online interview with legal analyst, Polish non-governmental organization, May 2021.

of Polish society and that these should be seen as a helpful tool to maintain the Polish way of life when the government is endangering it. For instance, when talking about concrete violations, organizations and movements mention *both* the articles of the Polish Constitution and articles in the Charter of Fundamental Rights or European Convention on Human rights. This draws a clear connection between Polish and European standards, which is also a way to challenge the government's counter-frame that there is fundamental incompatibilities between Poland and the European system. It also seeks to challenge the government's portrait of civil society as traitors and foreign agents unfamiliar with the traditions and values of Poland. Human rights organizations in general but especially women's rights and LGTBQ+ have been labelled with such words. The government depict them as "enemies that are actually a threat" to society<sup>14</sup>. As an interviewee said "our lawyer always repeat that authoritarian regimes operate on fear, and we want to show that we are not afraid"<sup>15</sup>. As with the court-centred frames, organizations and movements therefore seek to amplify thematic issues by connecting them to democratic backsliding and arguing that is the real danger to the Polish society (Benford & Snow, 2000). Built into this sub-frame of '*European standards are the Polish way of life*' is also an emphasis that commitment to the European system comes with responsibilities. This is used to create an understanding that the benefits of for instance the European open market and the possibility to work or study abroad in return requires a commitment to shared principles. People eagerness "to become European citizens"<sup>16</sup> is activated and translated into an understanding that it means adhering to democratic principles. Special attention is given to the younger generations, who has grown up in a democratic state committed to the European system; "the young kids are brought up in European values and this is why they join us"<sup>17</sup>. It is easier to create resonance in this segment of the society, which also echoes a general believe in civil society that the Polish democracy can only truly be saved by the young generations; "I think this is very important, that we are trying actively to kind of increase the engagement of youth on social issues"<sup>18</sup>.

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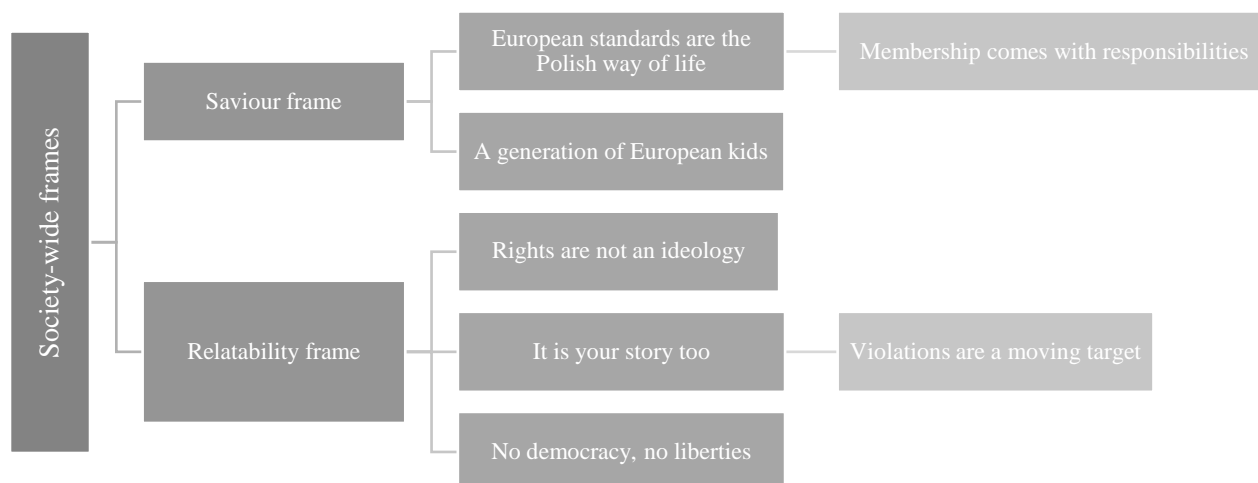
<sup>14</sup> Interview with activists, Polish non-governmental organization, Warsaw, October 2021.

<sup>15</sup> Group interview with founders, Polish non-governmental organization, Gdansk, October 2021

<sup>16</sup> Interview with activist and former judge, Polish civic think tank, Warsaw, October 2021

<sup>17</sup> Interview with founder and chair, Polish non-governmental organization, Warsaw, October 2021

<sup>18</sup> Online interview with activist, Polish non-governmental organization, December 2021



**Figure 3:** Overview of the society-wide frames

The *'relatability frame'* can be seen as a process of translating the court-centred activities to make them easier understandable for a wider audience, but also to make them relatable for people who not necessarily thought of individual right violations as a bigger structural problem. Public statements, open letters, briefs, and reports, mostly shared online via social media, often contain direct references to court cases, rulings from European courts, and European standards. To legitimize their claims, organization and movements also put much effort into highlighting that “we support human rights, rule of law, and democracy, no matter who is ruling the country”<sup>19</sup>. This can be seen as a form of *'rights are not an ideology'* frame, aimed at creating greater resonance across political opinions. By mobilizing broad public support, it can be used as a way to create allies amongst politicians like when the civil rights movement broadened “the electoral basis of civil rights advocacy” (McAdam, 1996, p. 341). Shifting popular attitudes towards abortion have for instance led to Poland’s main opposition party, Civic Platform, changing their abortion policies (Neumeyer, 2021).

The merits of using rights-based arguments for reaching goals is also widely appreciated in civil society but in order for them to generate wide resonance, organizations and movements actively frame in a fashion of *'it is your story too'*. Organizations and movements seek to emphasize that anybody can be a victim of discrimination and that violations comes in many shapes and forms. One way this is done, is through frame articulation focusing on relatable aspects and things that unite people (Benford & Snow, 2000; Pedriana, 2006a). People needs to feel that this could just as well as happen to them or someone they know. Part of the task when mobilising the law is therefore about “...finding suitable cases”<sup>20</sup>, for instance by searching for stories of violations in newspapers. This strategy has multiple purposes, though, as it is likewise about building a big caseload for strategic litigation. This makes it possible to show that there are systematic violations happening in Poland, and that though these violations are like a coat of many colours they all have one thing in common: they breach both Polish and European standards. For this purpose, it is important the frames use

<sup>19</sup> Interview with board member, Polish non-governmental organization, Warsaw, October 2021.

<sup>20</sup> Online interview with legal analyst, Polish non-governmental organization, May 2021.



components that are simple and capable of generating broad appeal. Women’s rights movements and organizations are especially stressing how it is difficult for them to get support from the wider society because opinions about abortion and the role of women in society are highly polarised; “Nobody says abortion is great...you are working with a subject that people find difficult to talk about”<sup>21</sup>. This is further complicated due to the powerful presence of the Catholic Church that has only increased its political influence under the current PiS-government<sup>22</sup>. Moreover, effort is being put into showing that actions of the governments are increasingly targeting not only the usual suspects. This ‘*violations are a moving target*’ frame is at times even constructed with historical references to both the Second World War and the time under Soviet rule. This is a deliberate choice as there is a strong collective remembrance of both in the Polish society. This can be seen as a form of transformative framing, where historical meanings are used for new purposes. Such references were for instance in play, when Wanda Traczyk-Stawska, a famous veteran from the Warsaw Uprising, was invited to speak at the demonstration against the Constitutional Tribunal’s ruling challenging the supremacy of EU law. Traczyk-Stawska famously said: “This is our Europe and nobody is going to take us out of it”, a sentiment amplified by organizations and movements referring to the ruling as Polexit.

Lastly, the thematic issues, such as women’s rights and LGBTQ+ rights, are often not perceived as a matter of concern for the wider society as there is “...not enough reflection, not enough recognition of those problems, not enough discussions”<sup>23</sup>. Organizations and movements are therefore increasingly linking thematic issues with issues of democratic backsliding and the rule of law crisis. Even if “you have something guaranteed in law”<sup>24</sup>, in practice they are not being respected when a country is backsliding. This seem to be a general trend in civil society, where, in example, traditional human rights-based organizations also use the same strategy. This has developed what can be defined as a ‘*no democracy, no liberties*’ frame. By reframing grievances and by modifying the legal frames used, organizations and movements can gather more support and reach an audience otherwise not reachable. A very good example is the massive protests all across Poland in the autumn of 2020 when the Constitutional Tribunal de facto banned abortion (Rohlfing, 2021). These protests were the biggest Poland had seen since the end of the 1980s and gathered both traditional women’s rights advocates and people who had never before concerned themselves (actively) with women’s rights. Under slogans such as ‘I wish I could about my government’ and ‘the so-called ruling of the Tribunal’, the constitutional court’s role in realizing the government’s political goal of an abortion ban was actively used to show that the questions was not only about the right to abortion but also about the democratic state of Poland. Civil society also stood united and made clear references to each other’s struggles and their interconnectivity under a bigger framing of that without democracy there are no liberties. As with similar tactics from court-centred frames, this can be seen as a frame extension (Benford & Snow, 2000; Pedriana, 2006). Where Harm finds that organizations and

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<sup>21</sup> Online interview with coalition coordinator, Polish non-governmental organization. April 2021.

<sup>22</sup> Online interview with coalition coordinator, Polish non-governmental organization. April 2021.

<sup>23</sup> Online interview with vice director, Polish non-governmental organization. May 2021.

<sup>24</sup> Online interview with vice director, Polish non-governmental organization. May 2021.

groups sometimes need to “seek out niches and cracks in the field to vie for change rather than target the core assumptions and distribution of power”, the frames developed and deployed in the Polish case clearly shows that frames increasingly targets the power structures and not only issues on individual harm.

## Conclusion

Civil society organizations and movements at odds with the PiS-government in Poland operates in a contested context created by the governments deliberate dismantle of the Polish democracy. This democratic backsliding is framed by a strong narrative criticizing and questioning democratic principles, fundamental rights, and European standards. Organizations and movements mobilizing on such issue are as a result often depicted as traitors and foreign agents working against the national interest of Poland. Faced with these frames of the government, civil society employs different framing strategies to define thematic, such as women’s rights and LGBTQ+ rights, and individual rights violations as part of bigger structural issues caused by the government’s illiberal agenda. This is actively framed as an issue for Poland and its citizens but also for the European system. References to European standards, whether indirect or direct, are in addition a key component of both court-centred and society-wide frames. This directly challenges the government’s narratives. This can be argued to be possible because it fits the cultural sentiments and values in the society, which is predominately in favour of the European system and is concerned with the state of the Polish democracy. Examples described in this paper have shown that the legal frames of organization and movements do resonate in the wider society but are at times met with obstacles inside courtrooms – this ultimately comes down to a difference in the level of political capture of the institutions versus the society. Whether these legal frames, as part of organizations and movements’ legal mobilization, in the end will succeed in saving the Polish democracy is outside the scope of this paper. I nonetheless dare to argue that the fact that civil society managed to change the political opposition’s abortion policies and orchestrate the biggest protests seen since the 1980s, goes to show that when “citizens are organized, they can resist rights’ violations through various forms of civic action” (Bugarcic, 2019, p. 448). It can of course be discussed if this is due to legal mobilization and the concrete frames at play or if it is other aspects, but as more and more organizations and movements turn to the law, legal frames become a vital instrument in the fight against democratic backsliding.

## References

- Albiston, C. R., & Leachman, G. M. (2015). Law as an Instrument of Social Change. *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, 542–549. <https://doi.org/10.1016/B978-0-08-097086-8.86133-4>
- Alizada, N., Cole, R., Gastaldi, L., Grahn, S., Hellmeier, S., Kolvani, P., Lachapelle, J., Lührmann, A., Maerz, S. F., Pillai, S., Hindle, G., Ilchenko, N., Kalafati, D., Pernes, J., von Römer, J., & Lindberg, S. I. (2021). *V-Dem Data and Management Team*. [www.v-dem.net](http://www.v-dem.net)
- Andersen, E. (2016). Out of the Closets and into the Courts. In *Out of the Closets and into the Courts*. <https://doi.org/10.3998/mpub.17550>
- Andersen, E. A. (2006). Out of the closets and into the courts: Legal opportunity structure and gay rights litigation. In *Out of The Closets and into The Courts: Legal Opportunity Structure and Gay Rights Litigation*. University of

- Michigan Press. <https://doi.org/10.5860/choice.43-0616>
- Barclay, S., Jones, L. C., & Marshall, A.-M. (2011). Two spinning wheels: Studying law and social movements [Article]. *Special Issue Social Movements/Legal Possibilities*, 54, 1–16. [https://doi.org/10.1108/S1059-4337\(2011\)0000054004](https://doi.org/10.1108/S1059-4337(2011)0000054004)
- Benford, R. D., & Snow, D. A. (2000). Framing Processes and Social Movements: An Overview and Assessment. <https://doi.org/10.1146/ANNUREV.SOC.26.1.611>, 26, 611–639.
- Bermeo, N. (2016). On Democratic Backsliding [Article]. *Journal of Democracy*, 27(1), 5–19. <https://doi.org/10.1353/jod.2016.0012>
- Boucher, S. A., & Chua, L. J. (2018). Introduction: Law, Social Movements, and Mobilization across Contexts. *Law and Policy*, 40(1). <https://doi.org/10.1111/lapo.12097>
- Brigham, J. (1996). *The Constitution of Interests* [Book]. NYU Press.
- Brodie, I. (Ian R. (2002). *Friends of the court the privileging of interest group litigants in Canada* [Book]. State University of New York Press.
- Bugaric, B. (2019). Can Law Protect Democracy? Legal Institutions as “Speed Bumps.” *Hague Journal on the Rule of Law* 2019 11:2, 11(2), 447–450. <https://doi.org/10.1007/S40803-019-00127-W>
- Bugarič, B., & Ginsburg, T. (2016). The assault on postcommunist courts. *Journal of Democracy*, 27(3), 69–82. <https://doi.org/10.1353/JOD.2016.0047>
- Canon, B. C. (1999). *Judicial policies implementation and impact* (C. A. Johnson (Ed.); 2nd ed.) [Book]. CQ Press.
- Castillo-Ortiz, P. (2019). The illiberal abuse of constitutional courts in Europe. *European Constitutional Law Review*, 15(1), 48–72. <https://doi.org/10.1017/S1574019619000026>
- Chiopris, C., Vanberg, G., & Nalepa, M. (2021). A wolf in sheep’s clothing: Citizen uncertainty and democratic backsliding. In *American Political Science Association Meeting*. [https://www.researchgate.net/publication/348754770\\_A\\_WOLF\\_IN\\_SHEEP’S\\_CLOTHING\\_CITIZEN\\_UNCERTAINTY\\_AND\\_DEMOCRATIC\\_BACKSLIDING](https://www.researchgate.net/publication/348754770_A_WOLF_IN_SHEEP’S_CLOTHING_CITIZEN_UNCERTAINTY_AND_DEMOCRATIC_BACKSLIDING)
- Chua, L. J. (2019a). Legal Mobilization and Authoritarianism [Article]. *Annual Review of Law and Social Science*, 15(1), 355–376. <https://doi.org/10.1146/annurev-lawsocsci-101518-043026>
- Chua, L. J. (2019b). Legal Mobilization and Authoritarianism. *Annual Review of Law and Social Science*, 15, 355–376. <https://doi.org/10.1146/annurev-lawsocsci-101518-043026>
- Cummings, S. L. (2017). *Law and Social Movements: An Interdisciplinary Analysis*. [https://doi.org/10.1007/978-3-319-57648-0\\_9](https://doi.org/10.1007/978-3-319-57648-0_9)
- Cummings, S. L. (2018). The Social Movement Turn in Law. *Law and Social Inquiry*, 43(2), 360–416. <https://doi.org/10.1111/lsi.12308>
- Drisko, J., Maschi, T., & Drisko, J. W. (2015). *Qualitative Content Analysis of a single chapter of a monograph in OSO for personal use. Content Analysis Qualitative Content Analysis*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780190215491.001.0001>
- Edelman, L. B., Leachman, G., & McAdam, D. (2010). On law, organizations, and social movements. *Annual Review of Law and Social Science*, 6. <https://doi.org/10.1146/annurev-lawsocsci-102209-152842>
- Epstein, L. (1992). *The Supreme Court and legal change : abortion and the death penalty* (J. F. Kobyłka (Ed.)) [Book]. University of North Carolina Press.
- Eurobarometer. (2022). *Standard Eurobarometer 96 - Winter 2021-2022*. <https://europa.eu/eurobarometer/surveys/detail/2553>
- Gamson, W. A., & Meyer, D. S. (1996). Framing political opportunity. In D. McAdam, J. D. McCarthy, & M. N. Zald (Eds.), *Comparative Perspectives on Social Movements* (pp. 275–290). Cambridge University Press. <https://doi.org/10.1017/CBO9780511803987.014>
- Gianella, C. (2017). Abortion Rights Legal Mobilization in the Peruvian Media, 1990–2015 on JSTOR. *Health and Human Rights*, 19(1), 133–147. <https://www-jstor-org.ep.fjernadgang.kb.dk/stable/90007921?sid=primo&seq=1>

- Gloppen, S. (2017). *Conceptualizing Lawfare: A Typology & Theoretical Framework*.  
[https://www.academia.edu/35608212/Conceptualizing\\_Lawfare\\_A\\_Typology\\_and\\_Theoretical\\_Framework](https://www.academia.edu/35608212/Conceptualizing_Lawfare_A_Typology_and_Theoretical_Framework)
- Hall, S. (2005). The rediscovery of ‘ideology’: return of the repressed in media studies. In T. Bennett, J. Curran, M. Gurevitch, & J. Wollacott (Eds.), *Culture, Society and the Media* (pp. 61–95). Routledge.  
<https://doi.org/10.4324/9780203978092-9>
- Halmi, G. (2018). Silence of transitional constitutions: The “invisible constitution” concept of the Hungarian Constitutional Court. *International Journal of Constitutional Law*, 16(3), 969–984.  
<https://doi.org/10.1093/ICON/MOY067>
- Harms, L. (2021). Claiming Religious Freedom at the European Court of Human Rights: Socio-Legal Field Effects on Legal Mobilization. *Law & Social Inquiry*, 46(4), 1206–1235. <https://doi.org/10.1017/LSI.2021.33>
- Hilson, C. (2002). New social movements: The role of legal opportunity. In *Journal of European Public Policy* (Vol. 9, Issue 2). <https://doi.org/10.1080/13501760110120246>
- Kaczynski, P. M. (2021). Ruling PiS party support drops to 30% – EURACTIV.com. *Euractive*.  
[https://www.euractiv.com/section/politics/short\\_news/ruling-pis-party-support-drops-to-30/](https://www.euractiv.com/section/politics/short_news/ruling-pis-party-support-drops-to-30/)
- Kapronczay, S. (2017). War on NGOs in Eastaern Europe. *Sur International Journal on Human Rights*, 14(26), 109–118. <https://www.proquest.com/publiccontent/docview/2075502523?pq-origsite=primo>
- Kelemen, R. Daniel. (2020). The European Union’s authoritarian equilibrium.  
<https://doi.org/10.1080/13501763.2020.1712455>, 27(3), 481–499.  
<https://doi.org/10.1080/13501763.2020.1712455>
- Kelemen, R. Daniel, & Pech, L. (2019). The Uses and Abuses of Constitutional Pluralism: Undermining the Rule of Law in the Name of Constitutional Identity in Hungary and Poland. *Cambridge Yearbook of European Legal Studies*, 21, 59–74. <https://doi.org/10.1017/CEL.2019.11>
- Kelemen, R D., & Pech, L. (2018). *Working Paper: Why autocrats love constitutional identity and constitutional pluralism – RECONNECT* (Reconnect). <https://reconnect-europe.eu/featured/why-autocrats-love-constitutional-identity-and-constitutional-pluralism/>
- Landau, D. (2013). Abusive constitutionalism [Article]. *U.C. Davis Law Review*, 47(1), 189.
- Leachman, G. (2013). Legal Framing. *Studies in Law, Politics, and Society*, 61, 25–59. [https://doi.org/10.1108/S1059-4337\(2013\)0000061005](https://doi.org/10.1108/S1059-4337(2013)0000061005)
- Lehoucq, E., & Taylor, W. K. (2020). Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies? *Law & Social Inquiry*, 45(1), 166–193. <https://doi.org/10.1017/LSI.2019.59>
- Levitsky, S. R. (2015). Law and Social Movements: Old Debates and New Directions. In *The Handbook of Law and Society*.
- Little, W. (2016). Chapter 21. Social Movements and Social Change – Introduction to Sociology – 1st Canadian Edition. In W. Little (Ed.), *Introduction to Sociology*. Rice University.  
<https://opentextbc.ca/introductiontosociology/chapter/chapter21-social-movements-and-social-change/>
- Lustig, D., & Weiler, J. H. H. (2018). Judicial review in the contemporary world—Retrospective and prospective. *International Journal of Constitutional Law*, 16(2), 315–372. <https://doi.org/10.1093/ICON/MOY057>
- Matczak, M. (2020). The Clash of Powers in Poland’s Rule of Law Crisis: Tools of Attack and Self-Defense. *Hague Journal on the Rule of Law* 2020 12:3, 12(3), 421–450. <https://doi.org/10.1007/S40803-020-00144-0>
- Matthes, C.-Y. (2021). Safeguarding Democracy and the Rule of Law by Civil Society Actors? The Case of Poland. In *Illiberal Trends and Anti-EU Politics in East Central Europe* (pp. 263–281). [https://doi.org/10.1007/978-3-030-54674-8\\_11](https://doi.org/10.1007/978-3-030-54674-8_11)
- Mayoral, J. A., & Wind, M. (2021). Unleashed dialogue or captured by politics? The impact of judicial independence on national higher courts’ cooperation with the CJEU. *Journal of European Public Policy*.  
<https://doi.org/10.1080/13501763.2021.1974925>
- McAdam, D. (1996). The framing function of movement tactics: Strategic dramaturgy in the American civil rights movement. In D. McAdam, J. D. McCarthy, & M. N. ald (Eds.), *Comparative Perspectives on Social Movements* (pp. 338–356). Cambridge University Press. <https://doi.org/10.1017/CBO9780511803987.017>
- McAdam, D., McCarthy, J. D., & Zald, M. N. (1996). *Comparative Perspectives on Social Movements: Political*

- Opportunities, Mobilizing Structures, and Cultural Framings. In D. McAdam, J. D. McCarthy, & M. N. Zald (Eds.), *Comparative Perspectives on Social Movements*. Cambridge University Press.  
<https://doi.org/10.1017/CBO9780511803987>
- McCammon, H. J. (2012). *The U.S. women's jury movements and strategic adaptation a more just verdict* [Book]. Cambridge University Press.
- McCammon, H. J., & Beeson-Lynch, C. (2021). Fighting Words: Pro-Choice Cause Lawyering, Legal-Framing Innovations, and Hostile Political-Legal Contexts. *Law & Social Inquiry*, 46(3), 599–634.  
<https://doi.org/10.1017/LSI.2020.33>
- McCammon, H. J., Hearne, B. N., McGrath, A. R., & Moon, M. (2018). Legal Mobilization and Analogical Legal Framing: Feminist Litigators' Use of Race–Gender Analogies. *Law & Policy*, 40(1), 57–78.  
<https://doi.org/10.1111/LAPO.12095>
- McCammon, H. J., & McGrath, A. R. (2015). Litigating change? Social movements and the court system. *Sociology Compass*, 9(2). <https://doi.org/10.1111/soc4.12243>
- McCammon, H. J., Muse, C. S., Newman, H. D., & Terrell, T. M. (2007). Movement Framing and Discursive Opportunity Structures: The Political Successes of the U.S. Women's Jury Movements [Article]. *American Sociological Review*, 72(5), 725–749. <https://doi.org/10.1177/000312240707200504>
- McCann, M. (2006a). Law and social movements: Contemporary perspectives. In *Annual Review of Law and Social Science* (Vol. 2). <https://doi.org/10.1146/annurev.lawsocsci.2.081805.105917>
- McCann, M. (2006b). Law and Social Movements: Contemporary Perspectives [Article]. *Annual Review of Law and Social Science*, 2(1), 17–38. <https://doi.org/10.1146/annurev.lawsocsci.2.081805.105917>
- McCann, M. (2008). Law and Social Movements. In S. Austin (Ed.), *The Blackwell Companion to Law and Society* (pp. 506–522). Blackwell Publishing Ltd. <https://doi.org/10.1002/9780470693650.CH27>
- McCann, M. W. (1994). *Rights at work : pay equity reform and the politics of legal mobilization*. [Book]. University of Chicago Press.
- Meyer, D. S., & Boutcher, S. A. (2007). Signals and spillover: Brown v. Board of Education and other social movements. *Perspectives on Politics*, 5(1). <https://doi.org/10.1017/S1537592707070077>
- Moussa, M. Ben. (2013). Online Mobilization in Times of Conflict: A Framing–Analysis Perspective. *Arab Media and Society*, 17.
- Moustafa, T. (2014). Law and courts in authoritarian regimes. In *Annual Review of Law and Social Science* (Vol. 10). <https://doi.org/10.1146/annurev-lawsocsci-110413-030532>
- Neumeyer, J. (2021). Poland's Abortion Ban—and the Women's Strike—One Year On. *Foreign Policy*.  
<https://foreignpolicy.com/2021/11/08/poland-abortion-ban-women-strike-catholic-religion-progressive-politics/>
- Pech, L. (2020). Dealing with 'Fake Judges' under EU Law – RECONNECT. In *Reconnect*. <https://reconnect-europe.eu/blog/dealing-with-fake-judges-under-eu-law/>
- Pech, L., & Kochenov, D. (2019). Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid. In *Reconnect*. <https://reconnect-europe.eu/wp-content/uploads/2019/06/RECONNECT-policy-brief-Pech-Kochenov-2019June-publish.pdf>
- Pech, L., & Scheppele, K. L. (2017). Illiberalism within: Rule of law backsliding in the eu. *Cambridge Yearbook of European Legal Studies*, 19, 3–47. <https://doi.org/10.1017/CEL.2017.9>
- Pedriana, N. (2006a). From Protective to Equal Treatment: Legal Framing Processes and Transformat...: EBSCOhost. *American Journal of Sociology*, 11(6), 1718–1761. <https://web-s-ebsohost-com.ep.fjernadgang.kb.dk/ehost/pdfviewer/pdfviewer?vid=0&sid=ad32bad8-4590-4863-a488-6ad8094815ae%40redis>
- Pedriana, N. (2006b). From protective to equal treatment: Legal framing processes and transformation of the women's movement in the 1960s. *American Journal of Sociology*, 111(6). <https://doi.org/10.1086/499911>
- Pedriana, N. (2015). From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s1. <https://doi-org.ep.fjernadgang.kb.dk/10.1086/499911>, 111(6), 1718–1761. <https://doi.org/10.1086/499911>
- Pichlak, M. (n.d.). Abortion, Constitution and the Role of Constitutional Court: Lessons from Poland -

- Constitutionalism and Politics. In *Constitutionalism and Politics*. European University Institute. Retrieved October 23, 2021, from <https://blogs.eui.eu/constitutionalism-politics-working-group/abortion-constitution-and-the-role-of-constitutional-court-lessons-from-poland/>
- Politico. (2022). *POLITICO Poll of Polls — Polish polls, trends and election news for Poland – POLITICO*. Politico. <https://www.politico.eu/europe-poll-of-polls/poland/>
- Rohlfig, R. H. (2021). I Wish I Could Abort My Government. Chapter in: *Årets Høst af Indsigter 2020*, 21:34
- Rohlfig, R. H. (2022). Methods of shrinking civic space and its consequences - Actions undertaken as part of the democratic backsliding in Hungary and Poland. *Civil Society and the fight Against Democratic Backsliding in Europe (Report)*. Nyt Europa.
- Rohlfig, R. H. (forthcoming). Does democratic backsliding motivate or limit legal mobilisation? A case study of social movements and civil society organisations' (lack of) engagement with legal activism in Hungary and Poland.
- Rohlfig, R. H. & M. Wind (forthcoming). Autocratic Legalism and the Measures of Democracy - The cases of Hungary and Poland.
- Rosenberg, G. N. (1991). *The hollow hope : can courts bring about social change?*. [Book]. University of Chicago.
- Sadurski, W. (2019). *Poland's constitutional breakdown* [Book]. Oxford University Press.
- Scheingold, S. (2004). The Politics of Rights. In *The Politics of Rights*. University of Michigan Press. <https://doi.org/10.3998/MPUB.6766>
- Scheppele, K. L. (2018). Autocratic Legalism [Article]. *The University of Chicago Law Review*, 85(2), 545–584.
- Schreier, C. (2015). *25 years after : mapping civil society in the Visegrád countries* (C. Schreier (Ed.)) [Book]. Lucius et Lucius. <https://doi.org/10.1515/9783110509380>
- Sedelmeier, U. (2014). Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession. *JCMS: Journal of Common Market Studies*, 52(1), 105–121. <https://doi.org/10.1111/JCMS.12082>
- Silverstein, H. (1996). *Unleashing rights* [Book]. University of Michigan Press.
- Snow, D. A., Rochford, E. B., Worden, S. K., & Benford, R. D. (1986a). Frame Alignment Processes, Micromobilization, and Movement Participation. *American Sociological Review*, 51(4). <https://doi.org/10.2307/2095581>
- Snow, D. A., Rochford, E. B., Worden, S. K., & Benford, R. D. (1986b). Frame Alignment Processes, Micromobilization, and Movement Participation. *American Sociological Review*, 51(4), 464. <https://doi.org/10.2307/2095581>
- Snow, D., & Benford, R. D. (1988). Ideology, Frame Resonance and Participant Mobilization. In B. Klandermans, H. Kriesi, & S. G. Tarrow (Eds.), *From structure to action : comparing social movement research across cultures* (pp. 197–218). JAI Press. [https://www.researchgate.net/publication/285098685\\_Ideology\\_Frame\\_Resonance\\_and\\_Participant\\_Mobilization](https://www.researchgate.net/publication/285098685_Ideology_Frame_Resonance_and_Participant_Mobilization)
- Snow, D., & Benford, R. D. (1992). Master Frames and Cycles of Protest. In A. D. Morris & C. M. Mueller (Eds.), *Frontiers in social movement theory*. New Haven : Yale University Press. [https://www.researchgate.net/publication/246773271\\_Master\\_Frames\\_and\\_Cycles\\_of\\_Protest](https://www.researchgate.net/publication/246773271_Master_Frames_and_Cycles_of_Protest)
- Spolecznej, C. B. O. (2021). *Fundacja CBOS - trendy - stosunek do integracji z UE*. Centrum Badania Opinii Społecznej. [https://www.cbos.pl/PL/trendy/trendy.php?trend\\_parametr=stosunek\\_do\\_integracji\\_UE](https://www.cbos.pl/PL/trendy/trendy.php?trend_parametr=stosunek_do_integracji_UE)
- Staton, J. K., Reenock, C., Holsinger, J., & Lindberg, S. (2019). *Can Courts be Bulwarks of Democracy?* <https://www.nytimes.com/2016/12/16/opinion/sunday/is-donald-trump-a-threat-to-democracy>.
- Stobaugh, J. E., & Snow, D. A. (2010). Temporality and frame diffusion: The case of the creationist/intelligent Design and Evolutionist Movements from 1925 to 2005. In *The Diffusion of Social Movements: Actors, Mechanisms, and Political Effects*. <https://doi.org/10.1017/CBO9780511761638.004>
- Tarrow, S. G. (2012). *Strangers at the gates : movements and states in contentious politics* [Book]. Cambridge University Press.
- Thierse, S., & Badanjak, S. (2021). Legal Mobilization as an Oppositional Strategy: From Individual Activation to Collective Action. In S. Thierse & S. Badanjak (Eds.), *Opposition in the EU Multi-Level Polity* (pp. 75–98).

- Palgrave Pivot, Cham. [https://doi.org/10.1007/978-3-030-47162-0\\_5](https://doi.org/10.1007/978-3-030-47162-0_5)
- van der Vet, F. (2018). “When They Come for You”: Legal Mobilization in New Authoritarian Russia [Article]. *Law & Society Review*, 52(2), 301–336. <https://doi.org/10.1111/lasr.12339>
- Vanhala, L. (2009). Disability Rights Activists in the Supreme Court of Canada: Legal Mobilization Theory and Accommodating Social Movements. *Canadian Journal of Political Science/Revue Canadienne de Science Politique*, 42(4), 981–1002. <https://doi.org/10.1017/S0008423909990709>
- Vanhala, L. (2012). Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK. *Law and Society Review*, 46(3). <https://doi.org/10.1111/j.1540-5893.2012.00505.x>
- Vanhala, L. (2017). Is Legal Mobilization for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organizations in the United Kingdom, France, Finland, and Italy: *Https://Doi-Org.Ep.Fjernadgang.Kb.Dk/10.1177/0010414017710257*, 51(3), 380–412. <https://doi.org/10.1177/0010414017710257>
- Wind, M. (2021). The Backlash to European Constitutionalism. Why we should not embrace the identitarian counter wave - Groupe d'études géopolitiques. *REVUE EUROPÉENNE DU DROIT*, 3. <https://geopolitique.eu/en/articles/the-backlash-to-european-constitutionalism-why-we-should-not-embrace-the-identitarian-counter-wave/>
- Yang, S. (2019). In the Name of the Law: Legal Frames and the Ending of the Occupy Movement in Hong Kong. *Law & Social Inquiry*, 44(2), 468–490. <https://doi.org/10.1017/LSI.2018.15>
- Youngs, R. (2019). Civic Activism Unleashed. In *Civic Activism Unleashed*. <https://doi.org/10.1093/oso/9780190931704.001.0001>
- Zald, M. N. (1996). Culture, ideology, and strategic framing. In D. McAdam, J. D. McCarthy, & M. N. Zald (Eds.), *Comparative Perspectives on Social Movements* (pp. 261–274). Cambridge University Press. <https://doi.org/10.1017/CBO9780511803987.013>