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Legal Struggles: A Social Theory Perspective on Strategic Litigation and Legal Mobilisation

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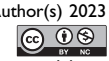

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Abstract
Social movements, NGOs and other political actors often mobilise the law for social change. Strategic litigation and collective legal mobilisation can be key instruments to face current political challenges like the climate crisis, human rights violations against refugees or the exploitation of workers along global supply chains. Although these struggles are framed by a societal context and have impacts on the political and juridical fields, the literature about legal mobilisation still does not decidedly engage with a social-theory-based perspective on such struggles. By developing the concept of legal struggles, the article proposes a conceptual framework to analyse both the ambivalence and the emancipatory potential of progressive struggles in the juridical field. Critical Theory, Materialist Theory and the Theory of Social Fields by Pierre Bourdieu are combined to investigate the specific form of collective legal struggles carried out in this arena. We examine repertoires and strategies of collective actors as well as the emancipatory potential of these mobilisation strategies. Our conclusions point to the structural

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distinctions and selectivities which define the juridical field in capitalist societies and also the conditions of possibility of political struggles using the law.

Keywords
legal mobilisation, strategic litigation, social theory, social movements, lawyers, hegemony

Introduction

There is a boom in strategic litigation worldwide. National and international courts have been intervening in central political issues of our times, for example in legal cases addressing reproductive rights in the USA and Poland, the rights of indigenous peoples, or in several cases of climate litigation (Agarwal, 2022; Szelewa, 2016). At the external borders of Europe, refugees, represented by lawyers and human rights organisations, are challenging the immigration policies of European Union (EU) member states to gain access to legal procedures (Pichl, 2021). Climate activists and environmental groups are turning to the law to force national governments to fulfil their obligations from the COP-Paris Agreement or to seek reparations for climate injustice (Setzer and Vanhala, 2019). At the core, these legal struggles address the multiple crises of 21st-century capitalism.

The mobilisation of law has long been part of the accepted repertoire of (juridical) political actors and social movements around the globe, especially in the US and the Global South. In Europe social movements resort to such strategies more and more frequently as well. The new boom of strategic litigation goes hand in hand with both a shift of social movement's strategies into the courts and subsequently with a transformation of traditional forms of political participation (Fuchs, 2013). By resorting to legal means movements aim at attracting public attention in the public sphere for marginalised issues while they try to achieve *political* victory before the courts. Independent of legal success, movements draw on the potential of changing the relations of forces in the political field (Lobel, 2004).

To better comprehend how these processes in the interlinkage of the political and juridical fields evolve, it is important to address some gaps in theories that are also seen in the scholarly discussion on collective legal mobilisation (Boukalas, 2013; Lehoucq and Taylor, 2020; Tarrow, 2012). Theorization and empirical research on strategic litigation could advance by engaging in debates about the state, hegemony and the law. It could also engage more firmly with the state of the art of critical research on social movements (Cummings, 2018; McCann, 2006), which refers both to the fluid processes of identity formation of social movements as a collectivity and to their autonomous and strategic relationships with legal and state institutions (Vestena, 2022). Furthermore, we propose that a combination of different critical social theory perspectives could advance our understanding of the emancipatory potential of the law, i.e., the question of what possibilities can be created by social struggles carried out through legal means.

Our contribution intends to propose a social-theory-based understanding of struggles *in* and *around* the law by bringing in a perspective that is critical of the capitalist relations of domination (*Herrschaftsverhältnisse*). Moreover, at the centre of our analysis is the

concept of 'struggle', which is a key category of social theory (Adorno, 1965/2018) and particularly important for the analysis of law since it underlines the fact that social contradictions and antagonistic interests are specifically expressed in the juridical field – a place of legal struggles – which is defined by its procedural logics and technical conditions (Bourdieu, 1987; Buckel, 2020: 242–244).

We follow a concept of society as represented in the critical theory of Max Horkheimer and Theodor W. Adorno and bring their understanding of society together with Antonio Gramsci's theory of hegemony and Pierre Bourdieu's contributions to the sociology of law to start the analysis of *struggles in* and *around the law*. We see a convergence within these three theoretical approaches, since, even employing a different terminology, Bourdieu's societal approach does share fundamental notions with Gramsci's theory of hegemony to the extent he understands social struggles as the motor of social change. The similarities between these two theoretical lenses are rooted in the way in which they draw on the work of Karl Marx and Friedrich Engels and their premise that the history of all society so far is the history of (class) struggle (Marx and Engels, MEW 4: 462). Against this background and expanding the idea of class struggles to the multidimensional antagonisms of our contemporary societies, we present a social-theory-based perspective which aims at sharpening the contours of such struggles and their actors in the juridical field. By doing so, we hope to shed light on the bigger question of the barriers and the emancipatory potential imprinted into processes of legal mobilisation.

In the following, we summarise the central contributions of the literature on strategic litigation and legal mobilisation to emphasise the similarities and differences to our conception (Section 2). We then present our assumptions concerning social and legal theory. In this section, we outline how the concept of struggle is crucial for a perspective of the society that places legal mobilisation into the interactions between the political and juridical fields (Section 3). In the following, we address two central dimensions of legal struggles – actors and strategies – and explain how we use a social theory perspective to reconceptualise their role in legal mobilisation (Section 4). We explain how their strategies can be understood by drawing upon our social theory-based framework in the highly ambivalent juridical arena (Section 5). In the last section, we conclude by underlining how our perspective can fruitfully contribute to the existing literature on legal mobilisation and the investigation of progressive legal struggles in the current context of growing authoritarianism (Section 6).

Strategic Litigation and Legal Mobilisation

In January 2020, activists of the Fridays for Future Germany movement (FFF) filed three constitutional complaints against German climate protection law with the Federal Constitutional Court. Luisa Neubauer, one of the founders of FFF in the country, explained to the press that the lawsuit 'is a logical addition to what happened on the streets of Germany last year'; the question 'is whether the federal government's inaction is compatible with the Basic Law' (Tagesspiegel, 2020).

Contemporary forms of strategic litigation in climate and environmental law exemplify why political strategies – in this case, demands for effective climate protection –

are shifting from genuine parliamentary debate and decision to the juridical field (Burgers, 2020). In some cases, social movements begin to pursue their strategies and goals on the legal terrain at the point when parliaments fail to address civil society concerns. A successful legal process carried out with public interest can be also viewed as bestowing public legitimacy and political clout to a cause: 'Understanding access to justice as central to, rather than illegitimate in, civil society and democracy changes the debate about the meaning and legitimacy of public interest law' (Albiston, 2018: 213). The particular case of the strategic litigation of the climate movement achieved concrete results: the German Federal Constitutional Court (*Bundesverfassungsgericht)* declared multiple articles of the Federal Climate Change Act as partially unconstitutional and the federal government had to strengthen the measures planned to achieve the goals of the Paris Agreement (BVerfG, Order of the First Senate of 24 March 2021–1 BvR 2656/18, paras. 1–270; see Krämer-Hoppe, 2021). Still at stake remain the questions of whether the *law* can change power relations in society and to what extent does such litigation contribute to broader emancipation from existing social relations of domination. The shifts of strategies into the juridical field have also re-initiated lively academic debates about strategic litigation and legal mobilisation, and their position within legal theory and critique. In recent years, this has sharpened the conceptual understanding of such legal procedures. In the following we systematise the diverse contributions to this debate, focusing on relevant findings about the actors involved in these struggles and their strategies. We take these contributions as a starting point for our social-theory-based perspective on legal struggles.

Actor and Strategy Concepts in the Research Debate

The research on strategic litigation predominantly focuses on advocacy and civil society organisations, mostly NGOs, that use the law to progressively transform society and protect individuals and collectives from human rights violations. These investigations highlight the political character of typical legal practices. Decisions about the appropriate legal path, the clients who are selected or rejected, and even hesitancy in wanting to conduct proceedings in the first place, all testify to a highly politicised dimension of the legal profession (Müller, 2011; Sarat and Scheingold, 2004). In the US, this has led to the political character of the professional activities of lawyers being discussed under a variety of terms, like public interest litigation, cause lawyering, movement lawyering, rebellious lawyering or critical lawyering (Cummings, 2017, 2018; Lopez, 1992; Pow, 2017; Sarat and Scheingold, 2004; Trubek and Kransberger, 1998). The debates are shaped by the historical experience of the US civil rights movement, in which human rights organisations such as the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Coloured People (NAACP) worked together with committed lawyers to fight for the movement's demands (Tushnet, 2005). In the discussion on cause lawyering, scholars and legal practitioners themselves reflect, for instance, on their responsibility and the implications of committed action in politicised legal cases (Sarat and Scheingold, 1998, 2001, 2006, 2008). Using an actor-centred focus, this line of research is dedicated to the biographies, networks and profiles of the lawyers who accompany and advance political processes. At the same time, such

research makes it possible to tell the story of relevant legal proceedings from the perspective of the actors who bring the lawsuits, thus revealing the invisible relationships and power dynamics that unfold beyond the domain of the legal matter (Irons, 2006). The concepts of critical and rebellious lawyering emphasise the supportive role and centrality of cooperation between lawyers, civil society organisations and social movements for legal cases which carry the potential for social transformation (Pow, 2017). Research in this field has helped to identify key preconditions that can lead to the success of progressive strategies in the juridical field. This sharpening of the term is also a response to the criticism that the cause-lawyering debate overly focuses on legal practices or the profiles of lawyers (Sarat and Scheingold, 1998: 9ff.). However, no definition or neologism can coherently and universally represent the various practices of strategic litigation without omitting important tactics, processes or actors.

In contrast to the debate on strategic litigation, the research strand on collective legal mobilisation is less concerned with defining terms and identifying prerequisites for a successful lawsuit. Researchers focus here rather than on concrete conditions, the surrounding institutions and the actors involved. This framework takes several points in time into account and analyses different stages of a legal procedure, also the phase before litigation arises and which specific legal opportunity structures can be favourable to the cause (Fuchs, 2013: 192; also Kocher, 2013). Empirical work in the German socio-legal debate (Kreher and Welti, 2017; Pichl, 2021; Vestena, 2022) has led to new reflections on modes of interaction in legal procedures. Recent research on law and collectivity has close parallels with the Anglo-American legal mobilisation approach since it includes how different notions of collectivity underly the law and investigates how collective subjects constitute collective identities during legal proceedings (Hensel et. al., 2020; Höllmann, 2020; Kocher, 2020; Mazukatow and Binder, 2020). The concept of the *Klagekollektiv* (litigation collective), as Hahn and von Fromberg (2021) term it, is an example of a research approach which calls for an examination of the role of collective actors in the initiation and conduct of leading cases. They also examine ways in which such actors transfer their interests, ideas, and concrete tactics to the juridical field. These approaches draw on both the pioneering work from the feminist sociology of law in Germany (Baer, 2004; Gerhard, 2001; Holzleithner, 2002) and US debates on law and social movements (Cummings, 2018; McCann, 1994, 2006; Sarat and Scheingold, 2006).

As research on legal mobilisation conceptualises the strategy of juridical actors as 'the promotion of an agenda that goes beyond the individual case' (Hahn, 2019: 23; transl.), it also engages with the emancipatory potential of juridical practices for the underlying social conflicts. The strategic turn to law means that the use of a legal process is one tactic within the framework of a broad mobilisation process (Cummings, 2018). Because of this embeddedness, its effects also reach into other societal arenas, including the political field through the scandalisation of social grievances and the promotion of new public discourses (Lobel, 2004). The extent to which the law can be a field where transformation processes can emanate from is though quite controversial. Research on the impact of strategic litigation varies widely in its assessment of the potential of the law (Sikkink, 2017). Engaged lawyers, for example, describe their strategic legal activities as being about 'directing judges to the questions that are crucial from the perspective

of fundamental human rights' (Burghardt and Thönnes, 2019: 69; transl.). In this context, a liberal understanding of the law as a mere instance of normative regulation of society sometimes assumes that social emancipation should confine itself to the further development or consistent application of the existing law. In contrast, approaches that focus on social movements also understand court proceedings as a stage for civil society protest (Graser and Helmrich, 2019; Lobel, 2004), where the mobilisation differs 'from purely social forms of protest in the nature of the argumentation, the underlying foundations and the beliefs' and yet promotes the same goals as those of activists (Graser and Helmrich, 2019: 35; transl.). Several pieces of research in the field of law and social movements share the diagnosis of research on legal mobilisation: social movements use the potential of the law for their social struggles (Cummings, 2017, 2018; Fuchs, 2013; Levitsky, 2015), and sometimes such struggles go beyond the imaginary of existing law. As early as the 1990s, social scientists called for an intensification of research that would bring social movements and legal mobilisation into close dialogue (McCann, 1994; Sarat and Scheingold, 1998).

Feminist sociology of law has long been concerned with precisely this: transferring the struggles of social movements to the juridical field. Indeed, historically speaking, many feminist movements have taken the strategic decision to resort to the law in order to pursue their concerns away from the blockades found in the political arena (Gerhard, 2001). However, legal success is not the ultimate goal, nor are the procedural conditions for such success the only aspect which is taken into account by such an approach. Rather, the feminist sociology of law analyses the role played by the law in assigning and consolidating gender roles and exclusion mechanisms (Elsuni, 2020) and what influence this has on the transformation of society towards emancipation. Marxist authors also criticise the limits of the law, explaining that social inequalities and capitalist structural principles, such as the pivotal role of the exchange of commodities and the guarantee of private property, cannot be effectively confronted by legal means (Baars, 2019; Mieville, 2006). In legal theory and critique, there has therefore always been a fundamental debate surrounding the emancipatory potential of juridically based strategies. From the ranks of Critical Legal Studies, it has been suggested that especially human-rights-based strategic legal mobilisation can contribute to processes of depoliticising social conflicts and, in the end, this strategy would strengthen the state as the central point of reference for social struggles (Frankenberg, 2020; Kennedy, 2008; Marks, 2011). Even though the critical discourse is dominated by the view that the law is a structural barrier to fundamental social change, many approaches also emphasise the emancipatory aspects of the juridical field, which can be explored by adopting a social-theory-inspired perspective on legal struggles.

Starting Points for a Social-Theory-Based Perspective on Legal Struggles

Definitions oriented to display and explain legal practices play a central role in academic debate about legal mobilisation. The current scholarship aims to systematically describe the diverse forms of legal action and to examine the specific preconditions that can lead such procedures to legal success. From our perspective, it is worthwhile drawing on this

work to provide a social-theory frame for legal-political practices and to ask why and in what way legal struggles are waged.

Originally, research on strategic litigation focused primarily on the court process itself and the traditional legal actors involved, such as lawyers, judges and NGOs (Cummings, 2018). This is also a reason why the scholarship in this field has been subject to criticism in certain academic debates and especially by politically committed lawyers (Kaleck, 2019a, 2019b). Although often interpreted as a synonym for strategic litigation, the concept of legal mobilisation already offered, in our view, a productive shift in perspective. It directs the focus of the debate to the network and other collective actors besides the legal process, or the 'parties behind the parties', as Blankenburg (1995: 120; transl.) calls the groups which offer support to litigants. Knowledge about the concrete organisational form of a collectivity at the point when it engages in a judicial strategy is revealing, and also needs to be taken into account to develop a societal conception of legal struggles. But even this approach has its limits. If it is true that the law reproduces social hierarchies and relations of domination, it is also important to acknowledge that such structures are found in the practices of progressive collective actors, even before they enter the juridical arena.

Lehoucq and Taylor (2020: 167) recently noted, 'that the empirical importance of social movements using legal strategies is clear, (but) scholars lack a systematic and theoretically coherent way to conceptualize legal mobilization'. In their typological analysis, they summarise, that 'scholars using the concept of legal mobilization have not always been self-conscious or transparent about their conceptual choices' (Ibid.: 182). In our view, a fundamental concept of society is required to complement the fruitful existing empirical research and theoretical approaches of legal sociology, and thus capture the multiple and interlinked political, economic and cultural factors influencing legal struggles. These are the dimensions that determine both the emancipatory possibilities and the limits of juridically based strategies considering the relational autonomy of the law vis-à-vis the social context (Adorno, 1965/2018; Buckel, 2020). Legal mobilisation does not take place beyond social constellations of power, nor is it self-perpetuating, certainly not the collective legal mobilisation that is created by progressive collectivities.

A Critical Perspective on Society and Struggle

Our basic assumptions about social theory are based on the concept of society by the older Critical Theory of the Frankfurt School, which Max Horkheimer set out in the programmatic paper 'Traditional and Critical Theory' (Horkheimer, 1975) and Theodor W. Adorno defended in his essay entitled 'Society' (2000). Both show what society under capitalist conditions *cannot be*: a society in which labour would be performed under common control, a social organisation congruent with the community and the available possibilities for self-realisation regarding all and each own needs, an association of free people (Horkheimer, 1975: 212–217). The capitalist mode of production of private appropriation, the disposability of people and things, and the hierarchical division of labour impose the toil of physical labour on some, while the wealth produced only directly benefits a small group of people. The *sociality* of these private activities, which are only carried out for the sake of profit, resumes itself in the exchange of things and

value. The producers create a societal relation that is the *unconscious result of their actions* (Adorno, 2000: 31). 'We are not aware of this, nevertheless we do it', as Marx (1909: 85) expresses similarly. In capitalism, one can only speak of society because through exchange a compulsory connection is formed which leaves no one out (Adorno, 2000: 29–30). At the same time in this very own social formation subjects are all interwoven and the network of society assumes a certain kind of independence vis-à-vis them: it is 'a reified context of entanglement' *(Verstrickungszusammenhang*) (Adorno, 2000: 57). Society is therefore not conditioned by an immediate, solidary, all-encompassing togetherness, but rather by a separation of all individuals, which fixes them in their antagonistic interests and at the same time binds them together in an abstract, imposed order (Adorno, 2000: 43). According to Horkheimer, the dynamics of this societal formation and its structurally contradictory character 'necessarily lead to a heightening of those social tensions which […] lead in turn to wars and revolutions' (Horkheimer, 1975: 226). In terms of the social division of labour, Critical Theory can therefore be understood as 'the intellectual side of the historical process' of emancipation (Horkheimer, 1975: 215) since it strives for a world in which people produce their forms of interaction consciously and thus democratically (Marx, MEW 3: 72). Such an analysis of society stands in sharp contrast to liberal paradigms, which suggest that legal mobilisation could contribute to overcoming unjust social conditions merely by applying the law. Following Horkheimer and Adorno the fundamental mode of society has to change in order to establish a truly democratic society for all. But both Horkheimer and Adorno were rather concerned with the general contradictions of the capitalist-bourgeois society than with struggles that arise from the very own contradiction of this society and could lead to social transformation. Following these assumptions about a society of imminent conflicts and contradictions, we turn our gaze to the struggles within this social formation arguing that legal struggles are a fundamental part of social struggles in general.

In regard to that, to develop a social-theory-inspired perspective on legal mobilisation, we want to clarify three aspects of the older Critical Theory perspective of society. *First*, the essential assumptions of its concept of society remain valid mainly due to the persistence of the capitalist mode of production, which has undergone worldwide spatio-temporal differentiation into specific types of capitalism. Against this background, it is important to broaden the central focus on the commodities exchange, which was for sure Marx's departing point at the rise of capitalist industrial relations, with a multi-dimensional understanding of relations of domination. This means that capitalist socialisation cannot be construed merely in terms of class society but must be understood as involving equiprimordial gender-specific, ethnic, race-based and colonial relationships of domination (Buckel and Oberndorfer, 2018). Accordingly, legal struggles are also conducted along these multi-dimensional axes of domination, for example, as legal struggles for female emancipation, cases of climate change litigation or legal mobilisation of workers along global supply chains.

Secondly, our *legal-theoretical* considerations follow from an understanding of capitalist society which advocates that the seemingly natural social context is not simply produced by the value form but rather requires further social forms or cohesion technologies (Buckel, 2020: 228–252). In addition to the exchange form, the political and the legal

form also process social antagonisms. These 'social forms' or technologies of cohesion are at the same time social relations and emerge from contingent and historical constellations of domination developing their respective relational autonomy over time. What they have in common is a shared mode of substitution, growing autonomy and the outward bond that they create between individuals. In the same way that, for example, commodity-producing work becomes abstract work, work *sans phrase*, concrete individuals are transformed into abstract legal subjects in the legal form (Buckel, 2020: 128). The legal subject seems to precede the law and merely to be regulated by it. The characteristics of the legal subject – equality, freedom, autonomy, accountability – appear as natural characteristics that should be secured using subjective rights.

Thirdly, and most importantly for our approach, we emphasise the importance of *struggles* in the analysis of social forms. Adorno already insisted that the process of socialisation does not take place beyond social conflicts and antagonisms and that the domination of people over people occurs by means of the exchange relationship (Adorno, 1965/2018: 14). Social forms are not structural determinants but are rather contested. They are, in the words of John Holloway, 'raging, bloody battlefields' (Holloway, 2002: 19). This means that not only the concrete configuration of social forms but the social forms themselves, in their capacity as modes of socialisation, are the object of societal struggles and can therefore be fundamentally transformed. The legal form may also be subject to change if, in the course of political transformation processes, other modes of relationships (Adamczak, 2017) emerge that can organise social coexistence differently. Bourdieu addresses the structural principles of capitalist societies (which – following the tradition of Critical Theory – we referred to as social forms) through his theory of social fields. Concerning the law, he, therefore, speaks of the juridical field. The concept of field, more evidently than that of form, includes the notion of struggle, which manifest itself in the controversies that define different positions in the field. The juridical field is thus 'the site of a competition for the monopoly of the right to determine the law' (Bourdieu, 1987: 817).

The insights of the first generation of Critical Theory and the complementary concepts that we have suggested – i.e., the specificity of social forms and the own logic of each social field – can be fruitful for examining struggles *in* and *around* the law. Contrary to orthodox Marxist views, here the law is recognised as possessing its own materiality and meaning as a field – or a social form. It exhibits relational autonomy and thus a high degree of societal independence (Bourdieu, 1987; Buckel, 2020). This institutionalization of law is, however, highly ambivalent: When social struggles enter the juridical field, they are transformed in order to fit the autonomous logic of the law: legal procedures, legal doctrine and juridical subjectivation appear as mere legal techniques. Under this framework, social struggles evolve under the permanent risk of de-politicization, which means that the original conflict, once transformed into a legal struggle, cannot address the whole societal context anymore. But on the other hand, the logic of the juridical field produces at the same time new dynamics for the conflict at stake. In the juridical field, even powerful social groups (i.e., capitalist fractions, a hegemonic alliance of forces) cannot pursue their political and/or economic strategies towards subaltern groups unhindered (Buckel, 2020: 267–269). Even powerful actors must translate their interests into the logic of law. Social struggles are therefore less subjected to mere repression while carried out in the juridical

field. Especially due to this structural legal obstacle they can be strategically navigated by progressive actors to be a driving force for transformation in the face of crystallized hegemonic constellations (Abel, 1995; Hunt, 1990). In the name of subaltern actors, the ones who are not directly part of hegemonic struggles, their issues can be brought to courts and their voices made heard in the political field.

To make visible the social struggles in the midst of technocratic juridical language and logic, it is helpful to draw on the perspectives of Gramsci and Bourdieu, expanding their analyses of society to further conceptualise legal struggles. Gramsci's central concept of hegemony is a tool with which the forms of social and legal struggles in bourgeois societies can be analytically investigated. Gramsci was interested in understanding how the rule is organised through consensual agreement – albeit precarious and unstable – even among subjects from powerful classes and is only 'armoured' in the last instance by coercion (Gramsci, 1990/2012: PN 6, § 74, 763f.). This happens when social groups manage to generalise their interests by establishing a worldview and a norm of behaviour that conforms to it throughout the whole fabric of society (Gramsci, 1990/2012: PN 11, § 13, 1397). It becomes clear here that Gramsci's and Bourdieu's categories run in parallel. The latter speaks in the same context of a symbolic struggle over the construction of the legitimate view of the social world (Bourdieu, 1990/2014: 69). Law, an often overlooked terrain for the organisation of hegemony, provides a universalising infrastructure for the struggles for hegemony because, in Bourdieu's (1987: 848) words, it is the 'quintessential instrument of normalization' of symbolic power as 'it gives the seal of universality […] to a view of the social world' (Bourdieu, 1987: 845). Bourdieu understands symbolic power as the ability to create the things named in the first place (Bourdieu, 1987: 838). And this 'quasi-magical power' (Bourdieu, 1987: 839) of the law is precisely the result of the social struggles mediated through universality (Martin, 2019: 155). Its specific efficacy, however, presupposes that precisely this grounding in struggle, this element of arbitrariness, goes unrecognised: 'The tacit grant of *faith* in the juridical order must be ceaselessly reproduced. Thus, one of the functions of the specifically juridical labour of formalizing and systematizing ethical representations and practices is to contribute to binding laypeople to the fundamental principle of the jurists' professional ideology belief in the neutrality and autonomy of the law and of jurists themselves' (Bourdieu, 1987: 844). To understand how legal struggles evolve in more detail, in the following we investigate the role *actors* and their several *strategies* play within broader political controversies carried out in the juridical field.

The Actors in Legal Struggles

In legal struggles, collective demands for societal transformation can be carried out by multiple social groups where they encounter allies and support, but also opponents and resistance. Even though we recognise that the social relations of forces must be included in the analysis of the struggles to their full extent, we focus in this section on the findings of social movements studies and analyse especially progressive forces which act towards social emancipation by struggling for hegemony in the juridical field.

Collective and individual actors articulate demands for transformation by becoming aware of social ills in their everyday experiences and formulating appropriate coping

and resistance strategies (Cox, 2014). Issues affecting society as a whole, such as the climate crisis, are only critically addressed in public when social movements enable others to realise that this problem is significant for society and transcends individual interests. Collective experiences are an essential part of and one important precondition for social mobilisation working towards transformation (Barker, 2001; Krinsky, 2013, 2019). Nevertheless, social change is not driven just by social movements, but politically relevant concerns are mostly articulated from different subject positions, which leads likely to the formation of a social movement. This process is primarily contingent and defined by the context (Buckel, 2020; Vestena, 2022; Vey et. al., 2019). Having in mind that constitutive differences and conflicts also persist in collectively organised groups, various actors try collective repertoires of action, so that they gradually become characteristic of certain social movements or political collectivities (Cox, 2014; della Porta, 2013; Tilly, 2006).

Progressive social movements can resort to several political strategies, just as they take part in legal struggles. They can promote networking with other support groups or bring potential clients into contact with legal experts. Or they may also generate collective ideas about transformation, critique and utopias and combine them with concrete demands for rights into collective mobilisation slogans (McCann, 1994; Vestena, 2022; Wedeking, 2010). Legal actors translate the movement's concerns into legal arguments, provide specific knowledge for the preparation and conduct of lawsuits and thus strengthen the public resonance of the collectively articulated demands (Santos, 2018).

The development of collective struggles is related to the specific dynamics of each social field in the sense of Bourdieu (1987). Access to the field and rules of conduct within it determine the conceivable repertoires of action that not only constitute the field itself but also set the framework for struggles for the approval and legitimisation of collective demands. The legal field also specifically offers opportunities for the mobilisation of collective and supra-individual concerns (Kocher, 2013, Santos, 2018). Relevant actor networks improve the prospects of legal struggles and committed lawyers use their interpretation of the law to advance such concerns.

Social movements that emerge 'at the gates' (Tarrow, 2012) of the state and legal institutions are not able to access legal recourses directly. As laypeople, they neither have the specific knowledge necessary nor do they usually have the active right to represent themselves in legal proceedings (Bourdieu, 1987: 837). Particularly marginalised actors, such as migrants and indigenous peoples, are often rendered invisible in legal struggles as their voices are only brought into the juridical field by juridical actors, i.e., indirectly and without their own protagonism (Costa and Gonçalves, 2011). In certain cases, and depending on what procedural law allows, collective interests that are verbalised in social struggles can create a productive interplay between collective and juridical logic in a legal struggle. These interactions offer inspiration for progressive interpretations of the law by courts, which in turn revitalise their collective mobilisation (Vestena, 2019, 2022).

However, entering the juridical field of struggle requires adaptation to the rules of the game, which only juridically socialised actors master (Bourdieu, 1987: 817). Bourdieu describes such actors as 'professionals at symbolic work' (Bourdieu, 1987: 840); drawing on Gramsci, we speak of 'juridical intellectuals' (Buckel and

Fischer-Lescano, 2007; transl). Only these actors of the specific field, be they lawyers, judges or legal experts in general, can juridically translate the demands generated in social struggles and present them in the legal institutions. They have the necessary knowledge, especially of legal doctrine and procedural law, to be able to successfully conduct legal proceedings and out-of-court settlement negotiations. The divide between legal experts and laypersons or those who are not legal specialists is, in Bourdieu's view, constitutive of the juridical field – which is also an aspect of its relational autonomy. The field corresponds precisely to the relationship between social structure and the embodied practices of the actors who struggle for symbolic capital in this arena. And legal experts usually act to maintain this fundamental distinction (Bourdieu, 1987: 817–818). Regardless of this, the collective concerns nevertheless find their way into the juridical field, to the extent, they are forged by juridical intellectuals. This is a strategically important insight for the various progressive groups making demands – including social movements, trade unions, associations and NGOs – as well as for progressive organisations of all kinds, including the ones led by refugees or environmental activists.

The internal and external dimensions that surround the juridical field are connected by the practices of juridical intellectuals, such as politically engaged lawyers. Their experience of professionalisation allows them to provide two-way translations. In cooperation with collective actors, they can strategically interpret the social power relations and the economic circumstances and thus transform collective interests into an actionable demand. Together with the broader network of actors, they determine the best choice of tactics for making progress with a political demand; this may also involve the non-juridical sphere (Santos, 2018).

Furthermore, they mediate connections to collective actors from their position in the juridical field. They remain in constant dialogue with those directly affected by various forms of violations and other members of the mobilisation network. They moderate the interaction of lay people with legal institutions by also engaging in activist milieus and providing various resources for social movements (Falbo and Ribas, 2017; McCann, 2006; Pichl, 2021, Tushnet, 2005). Politically committed lawyers and other legal experts act together with collective actors but also independently of them (Sarat and Scheingold, 2006). They take on the demanding challenge of using their expertise to support social movements and other actors without jeopardising their decision-making autonomy or voice. Even if legal support networks exist, a politically organised collectivity, in the sense of a nexus of actors from different movements, has to overcome great barriers when it comes to mobilising the law for social transformations. As part of the capitalist whole of social forms and relations, the strategic selectivities (Jessop, 1990: 209) in the juridical field commonly do not work in favour of projects aiming to transcend capitalist modes of production and socialisation. Therefore, the interaction between organised collectivity and the legal arena is never free of contradictions. The existence of a relational autonomy of the law is a necessary condition to contain the bare exercise of domination and power without legal justification. However, it does not grant outright protection of the rights of subaltern movements.

The experience of the women's movement in Germany illustrates this ambivalent relationship. As Ute Gerhard (2018: 165) discusses regarding the first feminist wave in the 1970s, the clear anti-institutional orientation of the movement not only reflected their radical claim to autonomy but also demonstrated their great scepticism regarding the

masculine and reified structure of the law. In a similar vein, the civil rights movement was also marked by fiercely contradictory views vis-á-vis the law and its role in the maintenance of commodified relations in capitalist societies (Edwards, 1935; Kilpatrick, 1935). Given historical experiences of this kind, a similar distrust of the law can also be expected from current social movements. However, the productive results of past legal struggles prove that the juridical universalising structure and legal formalised procedures can indeed offer a 'juridical reservoir of argumentation' under specific conditions that also allow counter-hegemonic interests to flourish (Buckel, 2008). The relational autonomy of the law not only prevents the most powerful social forces from gaining direct access to this terrain. It also allows those in weaker positions who know how to make use of the various legal resources (for example, the human rights discourse, financial support for movements and organisations, or the existence of legal clinics at universities with experts to support progressive legal strategies etc.) to mobilise the law in their interests. The fact that social movements choose to enter the juridical field despite their awareness of its ambivalence and the corresponding risks is not new (Buckel, 2008; Müller, 2011; Nour Sckell, 2020). *Lay* social movements have always used a range of different tactics for their causes. Depending on the favourability of the context, legal tactics are not an uncommon element of their collective repertoires. We examine this dimension of strategy setting with regard to the emancipatory potential of legal struggles.

Legal Strategies and the Emancipatory Potential of Legal Struggles

To address the question of emancipation, which implies, as discussed in section 3, that social transformation cannot be limited to the juridical field alone, the capitalist division of labour and the intertwined racist, sexist and hierarchical relations of domination must be questioned at the same time. For doing so, we adopt a dialectical understanding of the structural ambivalence of the legal form. While we highlight the function of the law in the protection of subaltern groups and the democratic process, we also share critical objections raised about the specific individual logic of the legal form.

Both Gramsci and Bourdieu shared the same insight on this matter. According to Gramsci's *philosophy of praxis*, it is key that, within the framework of social struggles, the subalterns to some extent work through their everyday understandings to recognise the potential of changing their own social situation (Bellermann, 2021: 90ff.; Mustè, 2021). In legal struggles, such praxis experience is difficult for the subalterns to gain because in the juridical field they are normally dispossessed of their active status and have to be represented by legal experts. Bourdieu, as Martin (2019: 157; transl.) states, was also fully aware that 'because of its double selectivity' the law is 'not neutral in relation to social relations of domination', which is why he considered the 'possibility of the fundamental transformation of social relations through the law to be a jurist's ideology'.

But what emancipatory potential do legal struggles have at all against the background of these fundamental objections? Law is indeed a privileged terrain of struggle. Progressive forces cannot ignore the juridical field because, as the paradigmatic form of symbolic power in bourgeois societies, it is embedded in the state apparatus in

which fundamental consensus about the 'nature' of the good order is organised and produced (Bourdieu, 2014: 20). If progressive forces were to avoid legal struggles, then the ruling social forces alone would influence the production of this worldview, supported as it is by the symbolic power emanated from the juridical arena. In capitalist societies there is no outside struggle; acceptance of what exists at the same time confirms it.

Subaltern actors, often set aside by legal experts, can at the same time use the dialectic character of the legal form not only to seek protection from powerful social groups or the state, but they can also contribute with their claims to landmark decisions which in turn have the potential to produce impacts on the relations of forces in the political field (Buckel, 2015; Vestena, 2022). Legal struggles of refugees and migrants against the European border regime are good examples of it. Migrants from Somalia and Eritrea brought lawsuits against Italy before the European Court of Human Rights (ECtHR) to claim against push-back operations led by Italy in the Mediterranean Sea. The judgement of the ECtHR prevented EU member states from completely closing their borders and forced them to allow access to asylum procedures on the territories of the external member states of the European Union (ECtHR, Hirsi Jamaa et al./Italy, Judgement from 23 February 2012, Application number 27765/09; see also Buckel, 2015). Although this jurisprudence by the ECtHR is in a state of erosion as the court has been now legitimating push-back operations with problematic arguments (Schmalz and Pichl, 2020), the legal mobilisations, in this case, show a potential legal struggles can have: If subaltern actors succeed in feeding their concerns into the juridical field and are thus able to gain access to the asymmetrical balance of compromise of the hegemonic consensus (Gramsci), then the symbolic power of law (Bourdieu) renders their position a powerful factor in struggles over hegemony – which play out in the juridical arena. It is important to point out that even successful legal struggles often lead to new rounds of struggles in different social fields. Legal struggles as in every socio-political controversy are embedded in historical conjunctures of victories, defeats and ceasefires.

Legal struggles and the conjuncture they evolve, succeed or fail include a 'history of subaltern social groups'; a 'trace of autonomous initiative', as Gramsci (1999: 206–207) writes. Thus, in the legal sphere, juridical intellectuals provide the subaltern actors with access to a public forum in which they can make visible the ways they are affected by relations of domination, albeit fragmentarily and in line with the juridical form. For example, when lawyers include testimonies and reports by clients in their pleadings, they give weight to the perspectives of the subalterns. The legal representations achieved in this way are then 'recording secretaries of history', as Bourdieu (1987: 840) describes them. Subaltern actors from the Global South, who are for example affected by the impacts of the climate crisis, can confront the large energy companies with their concerns and demands in administrative court proceedings in Germany and use legal procedures to advocate for an end to coal power, as occurred in the case of the Peruvian farmer Saúl Luciano Lliuya, who is suing the German energy company RWE.[1] Bourdieu (1987: 817) argues that 'the body of law constantly registers a state of power relations. It thus legitimizes victories over the dominated, which are thereby converted into accepted facts'. Through the law, a symbolic power unfolds that powerful groups and executive state organs cannot simply ignore. The fact that the courts allow such legal struggles at all, and in some cases even make progressive decisions, is therefore not primarily

related to the consciousness of the judges as some interventions of the early Critical Legal Studies suggest (Kennedy, 2008). It has more to do with the successful mobilisation of the law and strategies able to create new hegemonic views, which are then inscribed in the legal argumentation or, in other words, in the debates about jurisprudential symbolic power.

Struggles for hegemony and emancipation not only take place by mobilising the law when initiated by social movements, NGOs or other political actors. The genuine legal doctrinal debate itself takes place in the *discursive space* of the juridical field, in which divergent legal actors, the juridical intellectuals, compete for the interpretation of the law. Legal interpretation materialises itself as a 'juridical discourse society' (Buckel, 2013: 72f.); it can be traced back to societal struggles to the extent that by contributing with their interpretations of the law, juridical intellectuals also discursively legitimise different hegemonic projects.

The literature about strategic litigation and especially the legal doctrinal discourse often overlook the contested character of the legal interpretation when their focus is solely directed to the proceedings and court decisions. Bourdieu draws attention to an important aspect that makes it quite clear that such legal debates and decisions are linked to broader social struggles: 'Among the specifically symbolic effects of the law, particular attention must be paid to the effect of what might be termed "officialization", the public recognition of normality which makes it possible to speak about, think about, and admit conduct which has previously been tabooed' (Bourdieu, 1987: 846). Bourdieu describes this using the example of legal struggles for equal rights for homosexuals, but the remark also applies to other cases, such as the struggles against the EU border regime where pro-migration movements challenged the territorially limited understandings of human rights of the European executive authorities. However, the law cannot generate this 'officialization' effect on its own. 'These visions only call forth what they proclaim – whether new practices, new mores or especially new social groupings – because they announce what is in the process of developing' (Bourdieu, 1987: 839). Only when social struggles for new practices that are 'in the process of developing' are transferred to the law they can profit from the symbolic effect of officialization set in motion. The juridical field is part of the social world or, with Adorno, of society. If the political, economic and ideological relations of forces do not shift simultaneously or overlap, if, above all the social division of labour between classes, genders and the global North and South is not transformed, the law cannot in principle move beyond these structures. This is the intrinsic barrier to emancipation. The legal form is itself a result of the capitalist division of labour; the juridical intellectuals, with their monopoly on interpreting the law, are on the side of intellectual labour – and not of the manual – as well as they reproduce social distinctions which form their own field of action, the juridical arena.

Having the structural ambivalence of the legal field in mind, it is also fundamental to understand how legal logic functions and can be productive for progressive social movements. Whilst simultaneously being aware of its contradictions helps to comprehend why conservative, authoritarian and right-wing movements pursue their interests through historical and current strategic litigation. By initializing backlash jurisprudence against successful progressive legal struggles from the past, reactionary actors strive for the revision of fundamental rights worldwide, for example, the right to privacy of persons who can be

pregnant or the right of self-determination concerning the decision to carry out an abortion (Dobbs v. Jackson Women's Health Organization, No. 19-1392, 597 U.S. (2022). In Germany extreme right-wing and authoritarian parties, organisations and movements are increasingly seeking to extend their influence through litigation (Austermann, et al., 2022). The fact that reactionary groups also carry their interests resorting to the legal form clearly shows the characteristic hegemonic power of the juridical field. At the same time, beyond every critique on the insufficient potential of the legal arena to transform society as a whole, it is paramount for progressive forces and social movements to keep engaging in legal struggles. This could be a strategy to prevent backsliding jurisprudence. It can mean even more; those progressive social forces can appropriate themselves – even temporarily – of the universalising structure of the juridical field and gain more favourable positions in their struggles. Having achieved new strategic starting points, they can keep acting collectively towards the transformation of the relations of domination which define the uneven and hierarchical social relations of capitalist societies.

Conclusion

Our social-theory-based approach has several implications for the existing empirical analysis of strategic litigation and legal mobilisation. When we examine legal struggles, we adopt a perspective that embraces the whole of society and the interactions between the political and juridical fields. As Bourdieu argues, contrary to Michel Foucault: 'We can no longer ask whether power comes from above or from below. […] Rather, we must take account of the totality of objective relations between the juridical field and the field of power and, through it, the whole social field' (Bourdieu, 1987: 841). Legal struggles are legally and socially constituted beforehand in historical, social and spatial contexts. Research needs to focus on what precedes the concrete legal proceedings, so as to reveal the reasons why actors shift their strategies to the law and the political and cultural conditions under which they do so. Moreover, social conflicts are transformed when they enter the law, in that they are, in a sense, *alienated within* the legal logic and procedures. They must therefore first be decoded in their political dimension. Examination of social and political struggles also makes clear which subaltern interests and desires cannot be directly translated into law and are thus excluded from the litigation proceedings. We are aware that the problem of overcomplexity confronts this broad view of social and legal struggles. However, to better grasp the potentials and limits of emancipation processes for actors who carry their struggles in the juridical field, we suggest, on the one hand, analysing how different strategies resorted by different actors can be subsumed in contending *projects for hegemony* (Buckel et al., 2017). On the other side, we plea for a detailed analysis of *legal discursive contention*, considering that the disputes over the 'prevailing legal opinion' (in German: *die herrschende Meinung)* define and even crystalize socially mobilised and collectively articulated interpretations of the law. An overview of legal struggles must consider both aspects and also position the related controversies in their respective socio-economic conjunctures.

This social-theory-inspired conceptual perspective is fruitful to better comprehend the political character of legal struggles and also understand that its emancipatory potential

can only unfold in the realm of broader social transformation processes. The realisation that struggles are a constant in capitalist societies should not however cause the impression that struggles are an anthropological or ontological constant of human societies, which would certainly be an incoherent reified view in the face of our societal assumptions. We rather would conclude by emphasising that the enduring contested nature of social relations is an expression of the diverse relations of domination of capitalist societies. In our view, identifying this and making it visible is a central task of critical scholarship as we learned from the first generation of the Critical Theory. In an emancipated and free society, no one would have to 'struggle' anymore. Rather the better argument, the conviction and understanding, the insight that every individual's freedom fundamentally depends on the freedom of all others, could become reality. It would be a classic fallacy to assume that because little or no progress has yet been made in this direction of social change, nothing will change at all (Adorno, 2005: 155). 'Every individual trait in the nexus of deception is nonetheless relevant to its possible end' (Adorno, 2005: 148).

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1. See all the current court documents at https://www.germanwatch.org/en/14198.

References

Abel RL (1995) Politics by other means: law in the struggle against apartheid, 1980–1994.

Adamczak B (2017) *Beziehungsweise Revolution: 1917, 1968 und kommende*. Berlin: Suhrkamp.

Adorno TW (1965/2018) Gesellschaft. In: *Soziologische Schriften, Vol.1*. Berlin: Suhrkamp, pp.9–19.

Adorno TW (2000) *Introduction to sociology*. Stanford: Stanford University Press.

Adorno TW (2005) Progress. In: *Critical models: interventions and catchwords*. New York: Columbia University Press, pp.143–160.

Agarwal S (2022, March 3) The Rise of Climate Litigation. The Harvard Law School Forum on Corporate Governance. https://corpgov.law.harvard.edu/2022/03/03/the-rise-of-climate-litigation/ (accessed 10 December 2022).

Albiston C (2018) Democracy, civil society, and public interest law. *Wisconsin Law Review* 2018 (2): 187–214.

Austermann N, et al. (eds) 2022 *Recht gegen Rechts. Report 2022*. Frankfurt am Main: Fischer.

Baars G (2019) *The corporation, law, and capitalism. A radical perspective on the role of law in the global political economy*. Boston: Brill.

Baer S (2004) Geschlecht und Recht – zur rechtspolitischen Steuerung der Geschlechterverhältnisse. In: Meuser M and Neusüß C (eds) *Gender mainstreaming. Konzepte – Handlungsfelder – Instrumente*. Bonn: Bpb, pp.71–83.

Barker C (2001) Class struggle and social movements. In: Barker C, et al. (ed) *Marxism and social movements*. London: Brill, pp.39–61.

Bellermann J (2021) *Gramscis politisches Denken*. Stuttgart: Schmetterlingsverlag.

Blankenburg (1995) *Mobilisierung des Rechts. Eine Einführung in die Rechtssoziologie*. Berlin: Springer.

Boukalas C (2013) Politics as legal action/lawyers as political actors: towards a reconceptualisation of cause lawyering. *Social & Legal Studies* 22(3): 395–420.

Bourdieu P (1987) The force of law: toward a sociology of the juridical field. *The Hastings Law Journal* 38(5): 805–853.

Bourdieu P (2014) *Über den Staat. Vorlesungen am Collége de France 1989–1992*. Berlin: Suhrkamp.

Buckel S (2008) Feministische Erfolge im transnationalen Recht: Die juridische Aufarbeitung des japanischen Systems sexueller Sklaverei. *Leviathan* 36(1): 54–75.

Buckel S (2015) The rights of the irregularized: constitutional struggles at the southern border of the European Union. In: Jansen Y, Celikates R and De Bloois J (eds) *The irregularization of migration in contemporary Europe. Detention, deportation, drowning*. London/New York: Rowman & Littlefield, pp.137–151.

Buckel S (2020) *Subjectification and cohesion. Towards the reconstruction of a materialist theory of law*. London: Brill.

Buckel S and Fischer-Lescano A (2007) Hegemonie im Globalen Recht - zur Aktualität der gramscianischen Rechtstheorie. In: Buckel S and Fischer-Lescano A (eds) *Hegemonie gepanzert mit Zwang: Zivilgesellschaft und Politik im Staatsverständnis Antonio Gramscis, Staatsverständnisse*. Baden-Baden: Nomos, pp. 85–104.

Buckel S, Georgi F, Kannankulam J, et al. (2017) *The European Border Regime in crisis. Theory, methods and analyses in critical European studies*. Available at: https://www.rosalux.de/en/publication/id/38197/the-european-border-regime-in-crisis (accessed 10 November 2021).

Buckel S and Oberndorfer L (2018) Dirty capitalism. *Krisis. Journal for Contemporary Philosophy* 2: 41–43.

Burgers L (2020) Should judges make climate change law? *Transnational Environmental Law* 9(1): 1–21.

Burghardt B and Thönnes C (2019) Die Gesellschaft für Freiheitsrechte. In: *Graser A and Helmrich C (Hrsg.) Strategic Litigation*, Baden-Baden: Nomos, pp.65–71.

Costa S and Gonçalves G (2011) Human rights as collective entitlement? Afro-descendants in Latin America and the Caribbean. *Zeitschrift für Menschenrechte* 2011(5): 52–71.

Cox L (2014) "A whole way of struggle?": Western Marxisms, social movements, and culture. In: Baumgarten B, Daphi P and Ulrich P (eds) *Conceptualizing culture in social movement research*. New York: Palgrave Macmillan, pp.45–66.

Cummings SL (2017) Law and social movements: an interdisciplinary analysis. In: Klandermans B and Roggeband C (eds) *Handbook of social movements across disciplines*. New York: Springer, pp.232–270.

Cummings SL (2018) The social movement turn in law. *Law & Social Inquiry* 43(2): 360–416.

della Porta D (2013) Repertoires of contention. In: *The Wiley-Blackwell encyclopedia of social and political movements*. New Jersey: Wiley, pp.1–3.
Edwards N (1935) A critique: the courts and the Negro separate school. *The Journal of Negro Education* 4(3): 442–455.
Elsuni S (2020) Feministische Rechtstheorie. In: Buckel S, Christensen R and Fischer-Lescano A (eds) *Neue Theorien des Rechts, 3 ed*. Tübingen: Mohr Siebeck, pp.225–242.
Falbo R and Ribas L (2017) Advocacia e lutas emancipatórias: o que há de político na advocacia? *Revista Direito e Práxis* 8(1): 507–555.
Frankenberg G (2020) Partisanen der Rechtskritik: critical legal studies etc. In: Buckel S, Christensen R and Fischer-Lescano A (eds) *Neue Theorien des Rechts, 3ed*. Tübingen: Mohr Siebeck, pp.171–188.
Fuchs G (2013) Strategic litigation for gender equality in the workplace and legal opportunity structures in four European countries. *Canadian Journal of Law and Society* 28(2): 189–208.
Gerhard U (2001) *Debating women's equality: toward a feminist theory of law from a European perspective*. New Haven: Rutgers University Press.
Gerhard U (2018) *Für eine andere Gerechtigkeit: Dimensionen feministischer Rechtskritik*. Frankfurt am Main: Campus.
Gramsci A (1999/2012) *Selections from the prison notebooks*. London: ElecBook (quoted with the reference to the German translation of the "Gefängnishefte" – GH – and respective number).
Graser A and Helmrich C (eds) (2019) *Strategic litigation: Begriff und Praxis*. Baden-Baden: Nomos.
Hahn L (2019) Strategische Prozessführung. *Zeitschrift für Rechtssoziologie* 39(1): 5–32.
Hahn L and von Fromberg M (2021) Klagekollektive als "watchdogs". Zeitschrift für Politikwissenschaft 31: 217–239.
Hensel I, Springmann V and Sußner P (2020) Geschlechtergerechtigkeit als kollektive Praxis: Geschichte – Gegenwart – Utopie. *Kritische Justiz* 53(4): 425–431.
Holloway J (2002) *Change the world without taking power*. London: Pluto Press.
Holzleithner E (2002) *Recht Macht Geschlecht: Legal Gender Studies; eine Einführung*. Vienna: WUV.
Horkheimer M (1975) Traditional and critical theory. In: Horkheimer M (ed.) *Critical theory: selected essays*. New York: Continuum, pp.188–243.
Höllmann J (2020) Recht und Geschlecht in Treffen für selbständige Frauen* – Wenn die Kollektivierung von Rechtswissen zu einer Ressource für Gleichstellung wird. *Kritische Justiz* 53(4): 432–444.
Hunt A (1990) Rights and social movements: counter-hegemonic strategies. *Journal of Law and Society* 17(3): 309–328.
Irons P (2006) *A people's history of the supreme court*. New York: Penguin Books.
Jessop B (1990) Regulation theories in retrospect and prospect. *Economy and Society* 19(2): 153–216.
Joseph J (2005) *Social theory. A reader*. Edinburg: Edinburg Press.
Kaleck W (2019a) *Law versus power: our global fight for human rights*. New York: OR Books.
Kaleck W (2019b) Seizing opportunities and broad strategy both essential in human rights litigation. OpenGlobalRights. https://www.openglobalrights.org/seizing-opportunities-and-broad-strategy-both-essential-in-human-rights-litigation/.
Kennedy D (2008) The critique of rights in critical legal studies. In: Brown W and Halley J (eds) *Left legalism/left critique*. New York: Duke University Press, pp.178–227.
Kilpatrick WH (1935) Resort to courts by negroes to improve their schools a conditional alternative. *The Journal of Negro Education* 4(3): 412–418.
Kocher E (2013) Barrieren der Rechtsmobilisierung. In: Welti F (ed.) *Rechtliche Instrumente zur Durchsetzung von Barrierefreiheit*. Kassel: Kassel University Press, pp.73–78.

Kocher E (2020) Recht oder Nicht-Recht: Eine Wahl zwischen Gleichheit und Freiheit? Zum Stand der feministischen Rechtstheorie. *Kritische Justiz* 53(4): 481–494.
Krämer-Hoppe R (2021) The climate protection order of the federal constitutional court of Germany and the north-south divide. *German Law Journal* 22(8): 1393–1408.
Kreher S and Welti F (2017) *Soziale Rechte und gesellschaftliche Wirklichkeiten*. Kassel: Kassel University Press.
Krinsky J (2013) Marxism and the politics of possibility: beyond academic boundaries. In: Barker C, et al. (ed.) *Marxism and social movements*. London: Brill, pp.103–121.
Krinsky J (2019) Fields and dialectics in social movement studies. *Social Movement Studies* 20(2): 174–192.
Lehoucq E and Taylor W (2020) Conceptualizing legal mobilization: how should we understand the deployment of legal strategies? *Law & Social Inquiry* 45(1): 166–193.
Levitsky S (2015) Law and social movements. In: *The handbook of law and society*. New Jersey: John Wiley & Sons, pp.382–398.
Lobel C (2004) Courts as forums for protest. *UCLA Law Review* 52: 477–561.
Lopez GP (1992) *Rebellious lawyering: one Chicano's vision of progressive law practice*. Boulder: Westview Press.
McCann M (1994) *Rights at work: pay equity reform and the politics of legal mobilization*. Chicago: University of Chicago Press.
McCann M (2006) Law and social movements: contemporary perspectives. *Annual Review of Law and Social Science* 2(1): 17–38.
Marks S (2011) Human rights in disastrous times. In: Crawford J and Koskienniemi M (eds) *The Cambridge companion to international law*. Cambridge: Cambridge University Press, pp.309–326.
Martin D (2019) Symbolische Gewalt. Überlegungen zur Analyse von Staat und Recht in der herrschaftskritischen Soziologie Pierre Bourdieus. In: Kretschmann A (ed.) *Das Rechtsdenken Pierre Bourdieus*. Weilerswist: Velbrück, pp.145–163.
Marx K (1978/1909) *Capital, Vol. 1. Here referred to the German abbreviation of the Marx-Engels-Werke as MEW (1978)*. Berlin: Dietz Verlag.
Mazukatow A and Binder B (2020) Imagination und Recht. Rechtsbezogene Wissenspraktiken aus geschlechtertheoretischer Perspektive. *Kritische Justiz* 53(4): 457–467.
Miéville C (2006) *Between equal rights: a Marxist theory of international law*. London: Haymarket Books.
Mustè M (2021) *Marxism and philosophy of Praxis. An Italian perspective from Labriola to Gramsci*. Basingstoke: Palgrave MacMillan.
Müller U (2011) Professionelle Direkte Aktion. Linke Anwaltstätigkeit ohne kollektive Mandantschaft. *Kritische Justiz* 44(4): 448–464.
Nour Sckell S (2020) Bourdieus juridisches Feld. In: Buckel S, Christensen R and Fischer-Lescano A (eds) *Neue theorien des rechts. 3 ed*. Tübingen: Mohr Siebeck, pp.243–262.
Pichl M (2021) *Rechtskämpfe. Eine Analyse der Rechtsverfahren nach dem Sommer der Migration*. Frankfurt am Main/New York: Campus.
Pow V (2017) Rebellious social movement lawyering against traffic court debt. *UCLA Law Review* 64: 17701827.
Santos C (2018) Mobilizing women's human rights: what/whose knowledge counts for transnational legal mobilization? *Journal of Human Rights Practice* 10(2): 191–211.
Sarat A and Scheingold SA (2004) *Something to believe in. Politics, professionalism, and cause lawyering*. Stanford: Stanford University Press.
Sarat A and Scheingold SA (2008) *The cultural lives of cause lawyers*. Cambridge: Cambridge University Press.
Sarat A and Scheingold SA (eds) (1998) *Cause lawyering: political commitments and professional responsibilities*. Oxford: Oxford University Press.

Sarat A and Scheingold SA (eds) (2001) *Cause lawyering and the state in a global era*. Oxford: Oxford University Press.

Sarat A and Scheingold SA (eds) (2006) *Cause lawyers and social movements*. Stanford: Stanford Law and Politics.

Schmalz D and Pichl M (2020) Unlawful. may not mean rightless. The shocking ECtHR Grand Chamber judgment in the case N.D. and N.T. Available at: https://verfassungsblog.de/unlawful-may-not-mean-rightless/ (accessed 10 November 2021).

Setzer J and Vanhala LC (2019) Climate change litigation: a review of research on courts and litigants in climate governance. *WIRES Climate Change* 10(3): e580f.

Sikkink K (2017) *Evidence for hope: making human rights work in the 21st century*. Princeton: Princeton University Press.

Szelewa D (2016) Killing 'unborn children'? The Catholic church and abortion law in Poland since 1989. *Social & Legal Studies* 25(6): 741–764.

Tagesspiegel (2020, 01/15) "Bundesverfassungsgericht soll über Klimaschutz urteilen". https://www.tagesspiegel.de/politik/fridays-for-future-undandere-klagen-bundesverfassungsgericht-soll-ueber-klimaschutz-urteilen/25435460.html (accessed 10 November 2021).

Tarrow S (2012) *Strangers at the gates: movements and states in contentious politics*. Cambridge: Cambridge University Press.

Tilly C (2006) *Regimes and repertoires*. Chicago: Chicago University Press.

Trubek D and Kransberger E (1998) Critical lawyers. Social justice and the structures of private practice. In: Sarat A and Scheingold SA (eds) *Cause lawyering: political commitments and professional responsibilities*. Oxford: Oxford University Press, pp.201–226.

Tushnet M (2005) *The NAACP's legal strategy against segregated education, 1925–1950*. Chapel Hill: The University of North Carolina Press.

Vestena CA (2019) Rechtliche Institutionen als Vermittlungsort der 'Politik der Straßen': eine Auseinandersetzung mit der Rechtsprechung der Krise in Portugal. *Forschungsjournal Soziale Bewegungen* 32(2): 248–261.

Vestena CA (2022) *Das Recht in Bewegung. Kollektive Mobilisierung des Rechts in Zeiten der Austeritätspolitik*. Weilerswirst: Velbrück.

Vey J, Leinius J, Hagemann I (2019) Poststrukturalistische perspektiven auf soziale bewegungen. Grundzüge einer forschungsperspektive. In: Vey J, et al. (ed.) *Handbuch Poststrukturalistische Perspektiven auf soziale Bewegungen Ansätze, Methoden und Forschungspraxis*. Bielefeld: transcript, pp.17–36.

Wedeking J (2010) Supreme court litigants and strategic framing. *American Journal of Political Science* 54(3): 617–631.