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Reflexive juridification: procedural criteria for democratic legal mobilisation

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Abstract

When does legal mobilisation democratise institutions rather than instrumentalise them? Existing frameworks cannot answer this question: deliberative democracy theory evaluates political engagement without addressing legal mobilisation; socio-legal scholarship documents litigation's effects without providing normative criteria. This article develops reflexive juridification as a framework for evaluating democratic legitimacy across institutional domains. Democratic legitimacy, I argue, requires movements to fulfil three copulative requirements: communicative translation, functional differentiation and identity preservation. These requirements – grounded in Habermasian discourse theory and operationalised through comparative analysis of Chilean and United States cases – specify procedural standards for assessing how movements navigate political deliberation and legal interpretation simultaneously. Comparative analysis reveals that instrumental juridification emerges symmetrically across ideological orientations: progressive movements through the judicialisation of politics (Chile's Constitutional Convention), conservative movements through the politicisation of law (Dobbs). The framework advances interdisciplinary legal studies by providing normative criteria independent of ideological content, evaluating process rather than substance.

Keywords: legal mobilisation; democratic legitimacy; reflexive juridification; procedural criteria; constitutional litigation

1 Introduction

In June 2022, *Dobbs v. Jackson Women's Health Organization* overturned fifty years of constitutional precedent, culminating decades of strategic litigation within the conservative legal movement – coordinating case-building through organisations like *Americans United for Life* with judicial selection through networks including the *Federalist Society* – toward Supreme Court review. The pro-life movement achieved institutional transformation through the law – yet observers across the political spectrum recognised this victory as democratically problematic. Meanwhile, in Chile, two movements pursuing institutional change through legal channels produced starkly divergent outcomes. The LGBT+ movement, coordinated through organisations like *MOVILH* and *Fundación Iguales*, achieved marriage equality (2021) following the Inter-American Court's *Atala Riffe* ruling (2012), maintaining deliberative engagement with constituencies throughout a decade of litigation and parliamentary advocacy. Conversely, the student movement – which had democratically mobilised educational demands since 2011 – transformed during the *Constitutional Convention* (2021–23), where institutionalised leaders employed excessive legal-technical language that severed connections with grass-roots constituencies,

contributing to the draft constitution's 62 per cent rejection. These three trajectories – conservative judicial capture in the United States of America, progressive democratic success in Chilean LGBT+ mobilisation, progressive instrumental failure in Chilean constitutional politics – demand a theoretical explanation.

At first glance, the divergent outcomes might reduce to differential strategic capacity – some movements mobilise law effectively, others fail. Yet the evidence contradicts this intuition. Both the pro-life coalition and Chile's student movement achieved what socio-legal scholarship defines as successful legal mobilisation: sustained institutional engagement producing constitutional transformation. *Americans United for Life* coordinated judicial appointments across decades; student leaders employed legal-technical framing in constitutional drafting. Strategic success was not lacking. What was lacking was democratic legitimacy – a distinction that strategic efficacy cannot capture. The theoretical challenge thus becomes unavoidable: when movements achieve institutional transformation through legal channels, what distinguishes democratic from instrumental mobilisation? This question cannot be answered by documenting effects; it requires normative criteria that existing scholarship has not provided.

Scholarship addresses political deliberation and legal mobilisation as separate domains, yet movements operate across both simultaneously. Donatella della Porta (2009, 2020) provides robust normative criteria – deliberative capacity, communicative rationality, participatory inclusiveness – but these criteria evaluate democratic character exclusively in political forums: assemblies, legislative processes, public spheres. Legal mobilisation appears in her framework only as an instrumental tactic, not as democratic practice. Socio-legal studies fill this empirical gap, documenting how movements achieve transformation through judicial channels: strategic litigation produces policy change (McCann 1994; Scheingold 2004), constitutional claims expand citizenship (Cichowski 2007) and legal engagement catalyses democratic participation (Guinier 2008). Yet documentation is not evaluation – establishing that legal mobilisation produces effects does not distinguish legitimate from instrumental transformation. The inadequacy becomes visible through conservative mobilisation. *Americans United for Life* deployed the identical mechanisms across five decades: sustained institutional engagement, strategic appointments, rights-based framing, coordinated litigation (Greenhouse and Siegel 2012; Ziegler 2015). Dobbs achieved constitutional transformation. If existing frameworks cannot distinguish this outcome from LGBT+ success without invoking ideological criteria, they reveal their normative inadequacy. What remains absent are procedural standards operating cross-domain – criteria that assess how movements engage institutional spheres, applicable symmetrically across ideological orientations, evaluating process rather than substance.

This article argues that democratic legitimacy in legal mobilisation emerges through movements' capacity to integrate three procedural dimensions simultaneously. Reflexive juridification operationalises this claim. Movements achieve democratic transformation when they translate particular demands into universal validity – engaging both deliberative processes and legal framing without reducing one to the other; when they maintain functional differentiation between political and legal spheres – operating through distinct rationalities in legislative and judicial contexts; and when they preserve identity connections – sustaining the lifeworld foundations that ground institutional engagement in constituencies' moral experiences. These dimensions operate as an integrated whole: democratic character depends on navigating all three continuously, not on discrete fulfilment of separate conditions. Legitimacy is thus a sustained achievement, not a possessed property. Chile's LGBT+ movement exemplifies this sustained integration across its trajectory from Atala Riffo to marriage equality. The student movement's Constitutional Convention phase and the pro-life path to Dobbs both achieved transformation yet failed to maintain this navigation – through the mechanisms the framework identifies. This reconceptualisation provides interdisciplinary legal studies with procedural standards enabling normative evaluation across institutional domains.

The nature of the gap determines the character of its solution. Movements do not operate in single institutional spheres – they deliberate in legislatures and litigate in courts, often simultaneously. Yet existing scholarship bifurcates what practice integrates: deliberative theory evaluates political engagement without addressing legal mobilisation; socio-legal studies document legal mechanisms without providing normative criteria. This cross-domain gap cannot be resolved through additional empirical documentation; it requires normative theory capable of evaluating integration across differentiated rationalities. Habermasian discourse theory offers precisely this. The distinction between justification discourse – political deliberation about norm validity – and application discourse – legal interpretation determining norms for concrete cases – provides the conceptual architecture for analysing what movements actually do: navigate both rationalities while preserving democratic legitimacy. Jean Cohen and Andrew Arato extend this by theorising civil society's dual politics, explaining how movements engage both discourses without reducing one to the other. The gap is structural; the solution must be theoretical; this tradition provides it.

Existing scholarship documents what movements achieve; this framework evaluates how they achieve it. *How* determines *when*: procedural criteria assessing cross-domain navigation enable normative determination of when legal mobilisation democratises institutions. This marks a departure from existing approaches. Socio-legal studies document effects, map mechanisms, catalogue diversity – producing sophisticated description that nonetheless cannot ground normative evaluation. Documenting that mobilisation transforms institutions differs fundamentally from determining when such transformation achieves democratic legitimacy. The framework addresses this limit through the procedural requirements specifying how – not who or what – movements must engage institutional spheres. Communicative translation, functional differentiation and identity preservation provide observable standards that are simultaneously grounded in normative social theory and assessable through empirical indicators. This bridges what existing scholarship separates: normative criteria and comparative analysis. The remainder of this article develops and demonstrates this framework.

The article proceeds as follows. Section 2 situates the argument within existing scholarship and develops its theoretical foundations. Section 3 operationalises reflexive juridification through three requirements, grounding each in comparative case analysis. Section 4 establishes the framework's normative logic and scope conditions. Section 5 concludes.

2 Theoretical framework: from deliberation to cross-domain legitimacy

2.1 Deliberative democracy and its boundary condition

Among contemporary theorists, Donatella della Porta has defined with greatest precision how movements acquire democratic substance. Her analysis rests on a decisive premise: democracy depends not only on institutions but on the *communicative* quality of collective action. Drawing from Habermas, she conceives deliberation as a mechanism that converts protest into public reasoning – an exchange of arguments oriented toward mutual understanding (della Porta 2020). This approach grounds legitimacy in interactional procedures such as reciprocity, openness and critical listening – processes empirically visible in the horizontal assemblies and transnational forums she documents across Europe and Latin America. The result is a theory that explains how movements democratise political systems from below, establishing communicative rationality as the foundation of their democratic character.

Her work reveals that social movements democratise not through outcomes but through procedures of interaction that translate contention into public reasoning. Central to this account is the notion of *deliberative capacity* – an emergent property arising when participants engage in reason-giving exchanges oriented toward mutual understanding (della Porta 2009). This communicative rationality materialises in observable practices: dialogue, reciprocal listening and inclusive participation within horizontal assemblies, transnational forums and participatory

processes (della Porta 2013, 2020). These mechanisms transform protest into democratic learning, enabling movements to universalise particular claims without surrendering their plural voices. Crucially, these communicative processes produce institutional effects that della Porta identifies as indicators of democratic legitimacy: expanded participation beyond immediate constituencies, translation of particular claims into collective decisions recognised by broader publics and institutional influence achieved through public reasoning rather than strategic bargaining.

The strength of della Porta's framework lies in its internal coherence: by grounding democratic legitimacy in communicative interaction, it explains how movements without formal authority can justify universal norms through deliberation. Yet this coherence defines its limitation. Operating entirely within what Habermas terms justification discourse – processes through which citizens reason about the validity of norms – it cannot account for how legitimacy unfolds in application discourse, where norms acquire meaning through legal interpretation (Habermas 1996). The framework theorises law as an instrument of deliberation rather than a distinct practice of democratic reasoning. This boundary becomes empirically visible in contexts where courts, rather than assemblies, have articulated new rights and framings of citizenship – processes her model cannot systematically explain.

The relevance of this boundary emerges when examining empirical patterns where movements achieve transformation through judicial channels. In Chile, the student movement illustrates both possibilities: during its first phase, deliberative structures and judicial strategies jointly expanded constitutional rights to education, while later phases abandoned participatory practices despite progressive aims (Couso *et al.* 2010; Somma 2012). Similarly, LGBT+ movements achieved democratic transformation through rights-based interpretation before the Inter-American Court (Biland and Hersant 2025; Perricone 2020), whereas in the United States of America, the pro-life coalition's coordination of judicial selection with litigation strategy politicised law itself (Kolbert and Kay 2021; Teles 2008). These contrasts reveal a question della Porta's framework cannot address: when movements achieve outcomes through courts rather than assemblies – particularly when legislative channels remain blocked – how should we assess their democratic legitimacy? Socio-legal scholarship on legal mobilisation provides conceptual resources for addressing this question.

2.2 Democratic legitimisation via legal mobilisation

The transition from assemblies to courts marks a shift in how movements pursue democratic transformation. When legislative deliberation stalls or fails, collective claims increasingly enter judicial arenas governed by interpretive rather than communicative rationality. Socio-legal scholarship has documented extensively that legal mobilisation produces institutional effects comparable to those della Porta identifies in deliberative settings: expanded participation, translation of claims into institutional discourse and influence on policy outcomes (della Porta 2009, 2013). Courts emerge as relevant democratic channels rather than mere dispute-resolution mechanisms. Yet the procedural relationship between communicative legitimacy and legal interpretation remains inadequately theorised.

Socio-legal scholarship establishes that legal mobilisation achieves policy transformation (McCann 1994) through institutional effects that parallel deliberative processes. The concept of *demosprudence* reveals how judicial decisions catalyse ongoing public engagement, generating new constituencies of interpretation around contested norms rather than foreclosing participation (Guinier 2008, p. 17). *Constitutional litigation* expands citizenship boundaries by translating moral claims into rights discourse – creating institutional channels for collective identity formation (Cichowski 2007). *Legal activism* enables participation in institutional reasoning beyond electoral mechanisms, opening civic engagement channels through rights articulation (Handmakers and Taekema 2023). Together, these contributions reveal that courts function as relevant democratic arenas producing effects comparable to those della Porta identifies: expanded

participation beyond immediate constituencies, translation of particular claims into institutional discourse and influence achieved through public reasoning rather than strategic bargaining.

Movements navigate strategically between institutional forums when legislative deliberation stalls or fails. This navigation operates through systematic forum selection: movements alternate between legislative and judicial venues, adapting argumentative strategies to distinct institutional contexts while exploiting political opportunities (Anagnostou 2014). The procedural character of this navigation requires translating claims from deliberative to interpretive forms – tactical repertoires adapting to the specific rationalities governing each institutional arena (Botero *et al.* 2022). This strategic navigation reveals that movements mobilise law to achieve institutional transformation when deliberative channels prove insufficient, seeking through judicial forums the same effects that della Porta identifies in legislative contexts: expanded participation beyond immediate constituencies, rights articulation through institutional discourse and influence achieved through public reasoning.

This body of scholarship achieves substantial advances in documenting the institutional dynamics of legal mobilisation: it establishes what effects litigation produces, when movements turn to courts and how they adapt claims across institutional contexts. Yet the relationship between these empirical patterns and democratic legitimacy remains theoretically underdeveloped. Scholars themselves acknowledge that documenting effects and strategic contexts differs from theorising the procedural mechanisms through which legal mobilisation sustains or erodes communicative foundations. What remains absent are criteria determining when litigation constitutes democratic transformation rather than strategic instrumentalisation – standards assessing whether cross-domain navigation preserves the communicative rationality essential to legitimate institutional change or achieves comparable effects through procedures that compromise democratic coherence. This gap becomes particularly acute when examining movements across the ideological spectrum.

This body of research establishes that courts constitute relevant democratic arenas where movements produce institutional effects comparable to those emerging through deliberation. Yet the framework encounters an internal tension when confronting ideologically diverse mobilisations. If effects such as participation expansion, rights articulation and institutional engagement indicate democratic legitimacy, comparable effects across the ideological spectrum should indicate comparable validity. This implication proves troubling. Conservative legal mobilisation (Southworth 2008; Versteeg and Zackin 2016; Wilson 2013) makes the inadequacy explicit: movements employ institutional strategies comparable to progressive litigation – sustained judicial engagement, rights discourse, strategic forum navigation – yet observers recognise these mobilisations as procedurally problematic despite producing comparable effects. This reveals that documentation of institutional effects provides insufficient grounds for evaluating democratic legitimacy, exposing the need for procedural criteria independent of outcomes and applicable symmetrically across ideological contexts.

2.3 Conservative mobilisation and the symmetry problem

Socio-legal research provides comprehensive descriptive knowledge of legal mobilisation, documenting how movements navigate institutional forums, what effects litigation produces and when strategic engagement with courts emerges. This empirical apparatus is sophisticated, capturing complexity across ideologically diverse contexts. Yet what remains underdeveloped is normative knowledge: procedural criteria assessing when these documented processes maintain versus erode democratic legitimacy. The framework documents observable patterns – strategic forum selection, procedural translations, institutional effects – without theorising the standards distinguishing legitimate transformation from instrumental success. We possess rich empirical understanding of mechanisms and outcomes but lack evaluative resources for determining when

comparable processes operating across the ideological spectrum constitute democratically coherent versus procedurally compromised mobilisation.

Conservative legal mobilisation can be exemplified by *Americans United for Life*.¹ AUL's institutional trajectory – from professional advocacy organisation founded in 1971 through post-Roe evolution into public interest law firm – deployed strategies paralleling progressive litigation: sustained coordination across decades, rights discourse translating moral claims into legal arguments, model legislation enabling state-level restrictions and multi-forum navigation between state and federal venues (Flowers 2018; Ziegler 2015). The broader conservative legal movement combined AUL's litigation strategy with judicial selection coordinated through networks including the Federalist Society (Southworth 2008; Teles 2008). This decades-long campaign culminated in *Dobbs v. Jackson Women's Health Organization*, which overturned fifty years of constitutional precedent (Schneller *et al.* 2023). The mechanisms conservative mobilisation employs – professional advocacy, sustained institutional engagement, rights translation, forum selection – parallel those socio-legal scholarship identifies as achieving democratic effects (Versteeg and Zackin 2016). That such mechanisms produce policy transformation demonstrates their efficacy in generating institutional change, revealing nothing about the procedural character distinguishing legitimate from instrumental success. The critical question concerns whether movements maintain functional differentiation between political and legal rationalities or subordinate judicial interpretation to predetermined political objectives.

Legal mobilisation research demonstrates that movements transform policy through coordinated institutional mechanisms producing observable outcomes (McCann 1994). *Americans United for Life* achieved precisely this: *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade*, eliminating the constitutional right to abortion (Schneller *et al.* 2023). The mechanisms AUL deployed across five decades were systematic: litigation coordination building toward Supreme Court review, judicial appointment strategies synchronised with case progression, professional legal advocacy creating institutional infrastructure, rights-based framing translating moral claims into *fetal personhood* arguments and strategic forum navigation between state legislatures and federal courts (Flowers 2018; Greenhouse and Siegel 2012; Southworth 2008). These produced the anticipated outcome – constitutional precedent reversal through legal interpretation. What such documentation cannot evaluate, however, is procedural integrity: whether appointment coordination maintained judicial independence, whether strategic judge selection preserved interpretive autonomy, whether synchronised timing between political appointments and litigation strategy compromised institutional boundaries. The framework identifies mechanisms employed and outcomes achieved but provides no criteria assessing whether transformation emerged through democratic processes or instrumental subordination of legal interpretation to political objectives.

Legal mobilisation scholarship documents comprehensively how movements operate, what outcomes they achieve and when mobilisation emerges. What remains absent are normative

¹The conservative legal movement in the United States of America operates as an organisational ecosystem with functionally differentiated actors. Scholarly reconstructions distinguish three principal organisational types: (1) professional networks coordinating judicial selection, exemplified by the Federalist Society (Teles 2008; Hollis-Brusky 2015); (2) public interest law firms pursuing strategic litigation, including Alliance Defending Freedom and the American Center for Law and Justice (Southworth 2008); and (3) specialised advocacy organisations combining model legislation with litigation coordination (Ziegler 2015). *Americans United for Life*, founded in 1971 – predating *Roe v. Wade* – represents this third type: its institutional contribution centres on drafting model legislation adopted by state legislatures and coordinating amicus strategies, rather than judicial selection per se. Mississippi's Gestational Age Act (2018), which generated *Dobbs v. Jackson*, derived substantially from AUL's model legislation (Flowers 2018). This organisational profile makes AUL analytically appropriate for examining litigation coordination mechanisms, while judicial appointment strategy – coordinated primarily through Federalist Society networks – constitutes a distinct organisational function within the broader movement ecosystem. The framework's procedural evaluation addresses how this ecosystem's combined mechanisms maintained or violated functional differentiation, rather than attributing all functions to any single organisation.

procedural criteria determining when these empirically documented processes constitute democratic legitimation versus instrumental success. Distinguishing these represents analytical sophistication: democratic character does not inhere in institutional change via law but emerges through procedural configurations preserving functional boundaries across differentiated rationalities. Without such criteria, scholarship cannot assess whether comparable mechanisms sustain communicative foundations or achieve effects through instrumental colonisation – evaluating strategic efficacy yet unable to distinguish democratic from procedurally compromised transformation. Developing normative standards requires conceptualising legitimacy as emerging through procedural integration across institutional domains. Habermasian distinctions between justification and application discourses, extended through Cohen and Arato's theory of civil society's dual politics, provide analytical resources for theorising how movements maintain democratic character when navigating differentiated institutions – mechanisms observable across ideological contexts yet evaluable through procedural standards independent of substantive outcomes.

2.4 Habermasian resources: justification, application and dual politics

Distinguishing democratic from instrumental mobilisation requires normative criteria assessing procedural integrity across institutional rationalities. Habermasian discourse theory provides such criteria through the distinction between justification discourse – deliberative reasoning about norm validity in political contexts – and application discourse – interpretive determination for concrete cases in legal contexts (Habermas 1996). Cohen and Arato's civil society theory extends this by conceptualising how movements integrate both rationalities without colonisation (Cohen and Arato 1992). These analytical resources enable evaluating whether movements maintain communicative foundations in political deliberation while preserving interpretive autonomy in legal adjudication, applicable symmetrically regardless of ideological orientation. The following paragraphs develop each component's evaluative utility for operationalising procedural standards.

Justification discourse constitutes the rationality through which actors reason about norm validity – determining which principles merit recognition as universal law (Habermas 1996). It operates in political and legislative contexts through communicative interaction: reciprocal argumentation, inclusive deliberation and openness to revision through better reasons. Movements engage this rationality by universalising particularistic moral claims – translating lifeworld experiences into principles resonating beyond immediate constituencies while subjecting them to deliberative scrutiny. The framework provides analytical standards for evaluating political mobilisation: whether movements maintain universalisability, dialogical openness and reason-responsiveness. Della Porta theorises precisely this communicative rationality in deliberative assemblies (della Porta 2009, 2013), yet justification discourse alone cannot assess movements engaging legal interpretation, which requires evaluative standards for a distinct rationality operating through norm application rather than validity deliberation.

Just as justification discourse addresses political contexts, application discourse addresses legal contexts through distinct rationality – both necessary for comprehensive evaluation (Habermas 1996). Application discourse asks a different question: not norm validity but which valid norms apply appropriately to concrete cases. It operates in judicial settings through interpretive reasoning: determining appropriateness for specific circumstances, maintaining systemic coherence, preserving institutional autonomy. Movements engage this rationality when specifying universal principles through litigation – translating abstract provisions into determinate rights. This provides standards assessing whether legal mobilisation preserves interpretive integrity or instrumentalises reasoning for political ends – analytical resources enabling evaluation socio-legal frameworks cannot provide, distinguishing democratic juridification from instrumental colonisation of legal interpretation.

Cohen and Arato extend Habermas by theorising civil society as a mediating sphere between the communicative practices of everyday social life (lifeworld) and formal institutional arrangements (system), enabling movements to engage both rationalities without colonisation – when one rationality instrumentally subordinates the other, the procedural integrity problem that scholarship cannot assess (Cohen and Arato 1992). Their dual politics framework conceptualises movements’ capacity to protect these communicative foundations while transforming institutions through both justification (political) and application (legal) discourses. This provides analytical resources for assessing when cross-domain engagement maintains procedural integrity – preserving communicative foundations in deliberation while maintaining interpretive autonomy in adjudication. Reflexive juridification constitutes the successful integration of both rationalities – communicative-deliberative (justification) and reflexive-interpretive (application) – without mutual colonisation. This directly addresses the normative gap identified: where socio-legal research documents how movements mobilise law and what institutional effects emerge, reflexive juridification provides criteria determining when these mechanisms constitute democratic legitimisation. Section 3 operationalises this through three copulative requirements specifying observable conditions under which movements maintain democratic character across institutional domains – enabling evaluation of precisely when the mechanisms literature documents operate democratically versus instrumentally, independent of ideological content or strategic success.

3 Reflexive juridification: three copulative requirements

3.1 Conceptual foundation

The analytical disjunction between deliberative democracy frameworks and socio-legal mobilisation studies – examined throughout Section 2 – reveals a theoretical necessity: conceptualising movements’ democratic legitimacy across institutional spheres. Reflexive juridification addresses this necessity by reconceptualising movements’ democratic character as emerging through the integration of communicative-deliberative rationality in justification discourse (Habermas 1992, pp. 214, 370) with reflexive-interpretive rationality in application discourse (Habermas 1992, pp. 214, 370), rather than their separation into distinct domains (Cohen and Arato 1992, pp. 564–70). Unlike frameworks privileging either deliberative participation or legal mobilisation exclusively, reflexive juridification theorises democratic legitimacy as emerging through movements’ capacity to navigate both rationalities while preserving communicative foundations.

Three copulative requirements constitute reflexive juridification, each addressing a necessary dimension for maintaining democratic legitimacy across institutional spheres. Communicative translation (universalisation across discourses) requires movements to preserve dialogical universalisation when engaging both justification and application discourses, reformulating particular demands through communicative rationality while determining specific rights through interpretive framing practices. Functional differentiation (institutional autonomy) ensures movements maintain distinct rationalities across political and legal spheres without mutual colonisation. Identity preservation (lifeworld connections) demands movements sustain lifeworld connections despite institutional engagement, preventing technocratic alienation while achieving institutional transformation. These requirements operate copulatively: all three must be fulfilled simultaneously, as violation of any produces instrumental rather than reflexive juridification – institutional transformation achieved through democratic illegitimacy.

Each subsequent subsection operationalises one requirement through theoretical exposition complemented by brief empirical illustrations. Three paradigmatic cases provide this empirical grounding: Chile’s LGBT+ movement (2012–21) demonstrating democratic juridification when all requirements are fulfilled, the Chilean student movement demonstrating trajectory shift from democratic success (2011–15) toward instrumental juridification through institutional insertion in the Constitutional Convention (2021–23), and the United States pro-life movement

culminating in *Dobbs v. Jackson* (2022) illustrating instrumental juridification from a conservative orientation. This approach develops conceptual distinctions through empirical anchoring while reserving systematic normative evaluation for Section 4's comparative analysis.

Critically, the framework identifies instrumental juridification symmetrically: progressive movements exhibit it via technocratic institutionalisation (student movement Constitutional phase), while conservative movements exhibit it via politicisation of law (Dobbs). Democratic legitimacy requires procedural integrity independent of strategic outcomes or ideological alignment, enabling evaluation of left and right mobilisation through identical criteria.

3.2 Communicative translation

Communicative translation – the first requirement for reflexive juridification – operates through the simultaneous integration of two interdependent translational dimensions: deliberative universalisation and legal framing. Through deliberative universalisation, movements reformulate particularistic grievances into public arguments achieving resonance through communicative rationality, employing political language that universalises moral claims beyond immediate constituencies (Cohen and Arato 1992, pp. 564–70; della Porta 2009; Habermas 1992, pp. 370–71). Simultaneously, through legal framing, movements translate these demands into the vocabulary of legal rights, expanding their audience reach by enabling broader institutional and societal recognition through juridical categories that identify and diagnose local problems as universal legal claims (Benford and Snow 2000; Eder 2011; McCann 1994; Pedriana 2006). Critically, both dimensions prove mutually constitutive: deliberative universalisation without legal framing fails to achieve broader audience engagement beyond political spheres, while legal framing without deliberative grounding operates instrumentally rather than communicatively. Democratic legitimacy emerges when both translational operations preserve communicative foundations – maintaining dialogical openness to counter-arguments and narrative coherence between lifeworld experiences and institutional representation. Translation fails when either dimension operates strategically: through instrumental legal framing severing deliberative foundations, or through excessive technicality alienating constituencies from their juridical representation.

Chile's LGBT+ movement exemplifies communicative translation fulfilled through both translational dimensions operating interdependently. In deliberative universalisation, the movement reformulated discrimination experiences through '*diversidad familiar*' (family diversity) – a political concept that connected LGBT+ demands with broader societal transformations in family structures and social pluralism, achieving resonance beyond LGBT+ constituencies by engaging religious and conservative counter-arguments while maintaining dialogical modification, evidenced by strategic progression from civil unions to marriage equality (Biland and Hersant 2025; Somma *et al.* 2021). In legal framing, the movement translated these moral claims through '*derecho al matrimonio*' (right to marriage) grounded in '*igualdad constitucional*' (constitutional equality) – juridical categories that reframed family diversity as a problem of fundamental rights, liberties and equal constitutional protection, thereby expanding audience reach beyond political deliberation by enabling institutional recognition through rights-based argumentation, particularly leveraging the Inter-American Court's Atala Riffo ruling (2012) to establish domestic constitutional frameworks (Contesse 2016). Both dimensions preserved communicative foundations while contributing distinct yet complementary functions: deliberative argumentation connected particular experiences with societal modernisation narratives, while legal framing embedded these experiences within constitutional rights architecture. This dual operation demonstrates how movements fulfil communicative translation when both translational dimensions operate genuinely rather than instrumentally.

The Chilean student movement during its initial mobilisation phase (2011–16) demonstrates communicative translation fulfilled through both translational dimensions. In deliberative universalisation, '*educación como derecho social*' (education as social right) emphasised access and

equality, connecting student debt experiences with broader social justice frameworks and achieving coalitional resonance beyond immediate constituencies through mobilisation with unions, teachers and middle-class sectors (Donoso 2013; Somma *et al.* 2021). In legal framing, ‘derecho constitucional a la educación’ (constitutional right to education) provided juridical substance by not only translating the political problem but specifying its constitutional-legal content for public policy: juridically reframing access problems caused by market logics as fundamental rights violations requiring constitutional reform, thereby enabling institutional actors to identify both the political grievance and its specific juridical-constitutional pathway for policy intervention (Donoso and von Bülow 2017). Both dimensions operated communicatively: deliberation maintained dialogical engagement across constituencies, while legal framing preserved narrative coherence between lived educational debt experiences and constitutional rights categories. This case illustrates how legal framing adds substantive technical-juridical content to deliberative universalisation, specifying not merely universal resonance but concrete institutional-legal frameworks for democratic transformation.

The United States pro-life movement, coordinated substantially through *Americans United for Life* (AUL), demonstrates communicative translation violated across both dimensions. In deliberation, ‘sanctity of life’ articulated local religious grievances yet failed genuine universalisation: the movement neither engaged affected constituencies – particularly pregnant persons bearing regulatory costs – nor modified absolutist positions through dialogical exchange, maintaining particularistic religious content rather than achieving communicative resonance (Greenhouse and Siegel 2012; Ziegler 2015). In legal framing, AUL’s ‘prenatal personhood’ under Fourteenth Amendment equal protection operated instrumentally rather than communicatively: designed explicitly to bypass Roe’s viability framework through strategic litigation – evidenced by Mississippi’s Gestational Age Act generating *Dobbs v. Jackson* (2022) – legal framing transposed local religious demands directly into constitutional change rather than providing juridical substance derived from deliberative universalisation (AUL 2018; Flowers 2018). Both dimensions failed to translate particular grievances communicatively, instead instrumentally translocating local demands to institutional transformation without preserving dialogical character or narrative coherence. This illustrates how movements violate communicative translation when employing political and legal mechanisms not to universalise but to institutionalise particularistic demands directly.

Communicative translation fulfilment becomes observable when movements demonstrate four interconnected characteristics, each with corresponding failure modes. Movements achieve universalisability by resonating beyond immediate constituencies while preserving particular content – illustrated by LGBT+ ‘family diversity’ and Students ‘social right’ – whereas particularism confines demands locally or abstraction severs concrete connections (Dobbs sanctity rhetoric). They maintain dialogical openness through counter-argument engagement and reflexive modification – evidenced by LGBT+ progression and Students coalitions – whereas strategic closure maintains imperviousness to contestation (Dobbs pattern). Legal framing provides juridical substantiation specifying institutional pathways beyond political universalisation – Students constitutional content exemplifies this – whereas instrumental translocation transposes demands without communicative translation (Dobbs prenatal personhood). Finally, bidimensional coherence emerges when both dimensions operate genuinely rather than strategically. These operational criteria enable Section 4 to distinguish democratic from instrumental juridification through empirically observable standards derived from comparative case analysis.

3.3 Functional differentiation

Functional differentiation requires movements to respect institutional autonomy when translating moral expectations into systemic transformation through offensive politics. Social movements, as carriers of moral expectations formed through lifeworld communication, engage dual politics:

Cohen and Arato (1992, pp. 492–563) demonstrate how movements simultaneously defend communicative foundations while offensively pursuing institutional change. This offensive institutionalisation confronts a critical structural reality: modern institutional systems operate through functionally differentiated spheres – political and legal – each governed by distinct rationalities. Political institutions operate through justification discourse, determining norm validity via communicative consensus in legislative processes (Habermas 1992, pp. 214–37). Legal institutions operate through application discourse, determining norm application via interpretive procedures in judicial contexts. Democratic legitimacy emerges when movements maintain this differentiation: engaging legislative transformation through political rationality while simultaneously pursuing judicial interpretation through legal rationality, preserving the autonomy of each sphere. Differentiation fails bidirectionally when movements violate institutional boundaries: judicialisation displaces political deliberation with legal rationality, while politicisation subordinates judicial independence to political imperatives. Reflexive juridification thus demands respecting distinct institutional rationalities while achieving transformation across both domains.

Chile's LGBT+ movement maintained functional differentiation through institutionally appropriate strategies across both spheres. In legislative processes, the movement employed political rationality – coalition-building with progressive parties, public deliberation on family diversity, parliamentary advocacy achieving the Civil Union Act (2015) and marriage equality (2021) through communicative consensus (Biland and Hersant 2025). In judicial processes, the movement employed legal rationality – strategic custody litigation following the Inter-American Court's *Atala Rifo* ruling (2012), constitutional challenges to discriminatory family law provisions, establishing anti-discrimination frameworks through interpretive procedures (Contesse 2016; Somma *et al.* 2021). Both strategies preserved institutional autonomy: legislative advocacy operated through justification discourse without bypassing deliberation via litigation, while judicial engagement operated through application discourse without subordinating courts to political mandates. Critically, when judicial rulings proved narrow or deferred to legislative authority, the movement accepted these institutional boundaries, redirecting advocacy through parliamentary channels rather than challenging judicial independence. This pattern demonstrates functional differentiation fulfilled: movements engaging distinct institutional rationalities appropriate to each sphere while respecting their autonomous decision-making processes.

The Chilean student movement's trajectory demonstrates how functional differentiation can shift across mobilisation phases. During 2011–16, the movement maintained distinct rationalities across institutional domains: legislative deliberation in Congress determined normative validity through political arguments – 'public, free, quality education', 'end to profit-making' – producing the Inclusion Law (2015) and Gratuity Law (2016) (Donoso 2013), while Constitutional Tribunal review determined constitutional applicability through interpretive reasoning, adjudicating conflicts between the right to education (Art. 19 N°10) and teaching liberty (Art. 19 N°11), ultimately determining that the former 'channels' the latter when market logics threaten educational access (TC Rol 2787–2015). Each sphere operated through appropriate rationality without mutual colonisation. Movement leaders subsequently underwent what literature identifies as party-movement institutionalisation² (Donoso 2021; Somma and Donoso 2022) – a transformation constituting systemic colonisation in analytical terms, whereby former social movement actors adopted bureaucratic-technical rationality that displaced communicative foundations. This process culminated in the Constitutional Convention (2021–22), where institutionalised ex-leaders produced excessively technical proposals characterised by what scholars term 'progressive maximalism' (Aurenque 2022; Noguera 2023), imposing specialised

²Following 2011–16 mobilisation, student leaders formed political parties – *Revolución Democrática* (founded 2012, legalised 2016), *Convergencia Social*, *Comunes* – coalescing in *Frente Amplio* coalition (2017), subsequently entering Congress and Constitutional Convention (2021–22).

constitutional doctrine without deliberative engagement. The constitutional proposal's 62 per cent rejection (September 2022) evidenced this functional differentiation failure.

The pro-life movement demonstrates functional differentiation violated from a conservative orientation through politicisation of law.³ Organisations including *Americans United for Life* developed multi-jurisdictional strategies combining legislative advocacy with judicial pathway construction (Ziegler 2015): state legislatures deliberated gestational restrictions through political argumentation about fetal personhood and prenatal rights, with *Mississippi's Gestational Age Act* (2018) prohibiting abortion after fifteen weeks providing pathway to Supreme Court review. However, while legislative sphere maintained appropriate political rationality, the pathway to judicial review was shaped by systematic coordination between litigation strategy and judicial selection. As documented by scholars analysing the conservative legal movement, this decades-long strategy explicitly aimed to 'fill vacancies on the lower federal courts and the Supreme Court with judges who believed that *Roe* was wrongly decided' (Kolbert and Kay 2021, p. 16; see also Southworth 2008; Teles 2008). The 2017–20 appointments consolidated a Court majority whose position on *Roe* was known in advance, subordinating judicial independence to a coordinated political-legal strategy. *Dobbs v. Jackson Women's Health Organization* (2022) overturning *Roe v. Wade* exemplified this process: while the decision itself articulated constitutional reasoning through originalist interpretation, the institutional pathway – coordinating case timing with compositional control – introduced political rationality into what application discourse requires as autonomous interpretive determination. This politicisation of law – coordinating political selection of interpreters with predetermined interpretive outcomes – constitutes functional differentiation failure symmetric to the student movement's judicialisation.

Movements demonstrate functional differentiation by maintaining sphere-appropriate rationalities: political argumentation for determining normative validity through legislative deliberation, legal reasoning for adjudicating constitutional applicability through judicial interpretation. Observable indicators include employing distinct strategies across forums while respecting institutional autonomy – accepting judicial independence without bypassing deliberation via litigation, maintaining political deliberation without imposing constitutional technicisation. Violations emerge bidirectionally with ideological symmetry: judicialisation colonises deliberative forums through legal-technical rationality (student Constitutional Convention), while politicisation subordinates judicial independence through strategic coordination of selection and interpretation (pro-life movement trajectory). The LGBT+ case illustrates fulfilment through

³The characterisation of conservative legal mobilisation as 'politicization' reflects this framework's procedural criterion rather than substantive disagreement with pro-life positions. AUL's own institutional documents reveal the analytical basis for this assessment. In 1987, attorneys affiliated with AUL published *Abortion and the Constitution: Reversing Roe v. Wade Through the Courts* (Horan, Grant and Cunningham, eds.), explicitly articulating a 'grand design' requiring 'patient deliberation, exhaustive research' toward developing 'a new theory of constitutional jurisprudence that could subsume *Roe*'s entire rationale' (documented in Kolbert and Kay 2021, pp. 14–16). The strategy's final element focused on 'filling vacancies on the lower federal courts and the Supreme Court with judges who believed that *Roe* was wrongly decided and who were willing to forsake the traditional doctrine of precedent' (Kolbert and Kay 2021, p. 16). This explicitly articulated coordination between judicial selection (political sphere) and interpretive outcomes (legal sphere) constitutes what Habermasian analysis identifies as colonisation: introducing political rationality into application discourse. The procedural violation lies not in seeking legal change – which progressive movements also pursue – but in the explicit subordination of judicial interpretation to a predetermined political objective achieved through compositional control of the court. A counter-factual clarifies the distinction: had the post-2020 Court analysed *Dobbs* and concluded that *stare decisis* considerations outweighed originalist arguments, AUL's documented strategy would not have accepted this as legitimate interpretation – revealing that the objective was the outcome, not the interpretive process. The framework applies symmetrically: the Chilean student movement's Constitutional Convention phase (Section 3.2) demonstrates equivalent violation from progressive orientation through judicialisation – subordinating constitutional deliberation to movement-partisan objectives. Democratic legal mobilisation requires maintaining functional differentiation regardless of ideological orientation. Conservative movements can operate reflexively when they preserve this differentiation – as AUL's pre-2016 incrementalist strategy more closely approximated, pursuing restrictions within the *Casey* framework rather than seeking to replace the constitutional regime entirely.

maintained differentiation between legislative advocacy and constitutional review; conversely, student and pro-life trajectories reveal symmetric failures demonstrating that movements fulfilling communicative translation (Requirement 1) nevertheless produce instrumental juridification when violating functional boundaries. These operationalised criteria enable Section 4's systematic evaluation, establishing democratic legitimacy requires maintaining institutional autonomy regardless of ideological orientation.

3.4 Identity preservation

Identity preservation theorises movements' defensive dimension of dual politics – maintaining lifeworld identity connections while engaging institutions offensively through translating local experiences into political deliberation and legal rights vocabularies. These dimensions affect each other fundamentally: offensive institutional engagement can either preserve constituencies' moral meanings by keeping concepts anchored in lived experiences or sever them through abstraction into technical instrumentalisations disconnected from lifeworld grounding. Democratic juridification occurs when institutional concepts – despite transformation into political and legal languages – retain experiential resonance: framings remain recognisable to constituencies as moral vocabularies expressing their everyday injustices rather than becoming purely juridical-technical abstractions divorced from social meanings. The critical distinction concerns whether concepts circulate bidirectionally between institutional and lifeworld spheres, returning to movements as socially meaningful language constituents recognise from lived experiences, or become one-directional translations serving institutional agendas without maintaining anchored meanings. Three dimensions operationalise this anchoring: *participatory structures* persist beyond institutionalisation, ensuring democratic accountability rather than bureaucratic hierarchy; *institutional framings* preserve experiential grounding, maintaining concrete lifeworld meanings rather than abstract technicalities; and *concepts* retain bidirectional circulation, remaining socially recognisable moral language. Violations manifest when institutionalised actors adopt systemic logics severing constituency communication (elite capture), employ concepts lacking experiential resonance – technical-abstract meanings without lifeworld anchoring (technocratic alienation) or artificially homogenise civil society's complex moral landscape, instrumentalising agendas under framings constituents cannot recognise from their fragmented lived experiences (organisational co-optation).

The LGBT+ movement exemplifies identity preservation when constituencies recognise their lifeworld experiences in institutional framings. Concepts like 'family diversity', 'equal dignity' and 'constitutional right to family' maintained experiential anchoring – constituents recognised their everyday struggles against discrimination and exclusion in these legal-political vocabularies rather than experiencing them as abstracted technical languages (Biland and Hersant 2025). Organisations including *MOVILH* and *Fundación Iguales* preserved participatory structures while engaging institutions, ensuring framings resonated beyond the juridical sphere as moral languages grounded in lived injustices. Extra-institutional mobilisation continued alongside institutional strategies – Pride marches, visibility campaigns, grass-roots organising – demonstrating concepts remained socially meaningful within communities, not merely instrumental legal tools (Contesse 2016). Identity preservation manifested through this sustained resonance: constituencies' broad-based support for marriage equality (2021) reflected continued recognition of their moral expectations in institutional framings, evidencing concepts circulated bidirectionally between institutional engagement and lifeworld meanings without severing anchored connections.

The student movement's Phase 2 trajectory demonstrates identity violation through party bureaucratisation severing constituency connections.⁴ Institutionalised ex-leaders adopted

⁴Phase 1 (2011–16) maintained identity preservation through horizontal assemblies, participatory decision-making and grass-roots structures (Donoso 2013), fulfilling Requirements 1–3 simultaneously during the mobilisation phase.

political system logics operating through party structures rather than participatory assemblies, disconnecting from the movement base that sustained Phase 1 mobilisation (Donoso 2021; Somma and Donoso 2022). Constitutional Convention (2021–22) culminated this disconnection through what scholars term ‘progressive maximalism’ (Aurenque 2022): concepts like ‘plurinational state’, ‘comprehensive social rights system’ and ‘regional autonomy’ carried technical-abstract-legal meanings lacking concrete experiential grounding in constituencies’ everyday lifeworld. These framings functioned as political-juridical vocabularies without social resonance – constituents could not recognise their lived injustices or moral expectations in maximalist terminologies divorced from experiential anchoring (Noguera 2023). Critically, the Convention instrumentalised social rights agenda under artificial simplification that all civil society demanded these progressive framings, rather than translating fragmented constituencies’ actual diverse moral expectations from varied lived experiences – a Habermasian reduction of social complexity serving institutional agenda. The Constitutional proposal’s 62 per cent rejection evidenced this severed anchoring: constituencies rejected it precisely because its concepts became purely technical languages unrecognisable from their lifeworld, demonstrating identity preservation failure despite offensive institutional engagement.

The pro-life case reveals copulative logic through satisfied identity preservation co-existing with violated functional differentiation. The movement maintained anchored meanings via grass-roots networks – church communities, Crisis Pregnancy Centers, state chapters – ensuring ‘sanctity of life’, ‘protection of the unborn’ and ‘prenatal rights’ preserved experiential resonance in constituencies’ religious-moral convictions rather than becoming technical abstractions (Ziegler 2015). Framings circulated bidirectionally: institutional vocabularies returned to communities as recognisable moral languages expressing faith-based values constituents experienced through religious lifeworld. Extra-institutional mobilisation continued parallel to judicial engagement – March for Life, church activism – demonstrating concepts retained social meanings beyond legal instrumentalisation. Constituencies recognised themselves in institutional framings because concepts remained anchored in religious-moral worldviews. Yet identity preservation alone is insufficient: strategic court appointments violating Requirement 2 through judicial politicisation produced instrumental juridification despite maintained lifeworld connections. This demonstrates a fundamental principle: democratic legitimacy requires satisfying all three requirements copulatively – movements cannot achieve democratic juridification through identity preservation when functional differentiation fails, establishing that requirements function as integrated necessity rather than disaggregated dimensions.

Identity preservation becomes observable when institutional concepts maintain experiential anchoring – constituencies recognising themselves in legal framings that return to communities as comprehensible moral vocabularies (McCann 2008; Pedriana 2006) – through persistent participatory decision-making (della Porta 2009) and extra-institutional mobilisation continuing parallel to institutional engagement (Cohen and Arato 1992). Failure modes emerge through elite capture where institutionalised leaders adopt systemic logics severing constituency communication (Eder 2011), technocratic alienation producing concepts lacking experiential grounding or artificial simplification homogenising civil society’s complex moral expectations (Habermas 1992). While existing literature documents these mechanisms empirically, this framework explains when and why they constitute democratic legitimacy: these three requirements – communicative translation, functional differentiation and identity preservation – operate as copulative dimensions of reflexive juridification rather than sequential stages. Democratic legitimacy emerges through movements’ capacity to navigate between institutional transformation and grass-roots connection simultaneously. Movements fulfilling requirements partially produce instrumental juridification strategically effective but democratically illegitimate.

These three requirements – communicative translation universalising particular demands through deliberative and legal framing, functional differentiation maintaining distinct institutional rationalities without mutual colonisation and identity preservation anchoring institutional

concepts in lifeworld experiences – operate as copulative dimensions of reflexive juridification rather than sequential stages. Democratic legitimacy does not emerge from excellence in any single dimension but exclusively through their simultaneous fulfilment, as each requirement addresses a distinct threat: particularistic instrumentalisation (Requirement 1), institutional colonisation through bureaucratisation (Requirement 2) and technocratic disconnection from constituencies (Requirement 3). The democratic character of legal mobilisation thus depends fundamentally on movements' capacity to navigate between institutional transformation and grass-roots connection – achieving institutional change that reflects communicative foundations while maintaining differentiation preventing instrumental colonisation of either sphere by the other. Partial fulfilment produces instrumental juridification regardless of strategic success or actors' subjective perceptions of democratic authenticity. Section 4 examines the scope conditions under which this framework operates, identifies boundary cases beyond its analytical reach and articulates its theoretical contribution to understanding democratic legitimacy in functionally differentiated societies.

4 Normative logic and scope conditions

4.1 Why three requirements: structural necessity

Why do precisely three requirements constitute necessary and sufficient conditions for democratic legitimacy in legal mobilisation? The answer resides in recognising that movements navigating between political and legal institutions while maintaining lifeworld connections face three structurally distinct forms of colonisation. Particularistic moral content from lifeworld may institutionalise without genuine universalisation. Political rationality may subordinate legal autonomy, or conversely, legal-technical rationality may subordinate political deliberation. Systemic bureaucratic logics may sever institutional engagement from communicative foundations. Each colonisation form requires a specific procedural safeguard – communicative translation, functional differentiation, identity preservation – that other requirements cannot provide.

Requirement 1 prevents particularistic colonisation occurring when lifeworld moral content institutionalises without undergoing communicative translation. Movements carry particularistic expectations from specific constituencies, yet democratic legitimacy requires translating these into arguments achieving broader resonance through deliberative universalisation and juridical framing grounded in universal principles. Pro-life mobilisation exemplified particularistic colonisation: 'sanctity of life' retained religious content without dialogical modification through engagement with affected parties, maintaining imperviousness to counter-arguments rather than achieving communicative universalisation. Simultaneously, 'prenatal personhood' framing operated as strategic translocation – transposing theological commitments directly into constitutional doctrine through litigation designed to bypass rather than engage deliberative channels (Flowers 2018; Ziegler 2015). This dual failure demonstrates how movements instrumentalise law when particularistic content colonises institutional norms without the translation Requirement 1 demands.

Requirement 2 prevents bureaucratisation through bidirectional institutional colonisation – when political rationality subordinates legal autonomy or legal-technical rationality subordinates political deliberation, destroying the functional differentiation necessary for democratic engagement across spheres. Judicialisation occurs when bureaucratic-technical rationality colonises political contexts: legal expertise and specialised constitutional doctrine displace communicative argumentation, transforming deliberation into technical exercises. Students' Constitutional Convention exemplified this: maximalist proposals employing juridical technicalities subordinated political deliberation to legal-technical rationality, imposing bureaucratic expertise that severed deliberative exchange from communicative foundations (Aurenque 2022).

This constitutes colonisation from the legal sphere into the political sphere. Conversely, politicisation constitutes colonisation operating in the opposite direction.

Politicisation occurs when strategic political rationality colonises legal adjudication, subordinating interpretive autonomy to particularistic objectives. Functional differentiation – essential for dual politics (Cohen and Arato 1992) – requires that the legal sphere maintains autonomy from political imperatives: adjudication determines norm application through interpretive reasoning independent of strategic coordination with political actors. When movements instrumentalise judicial composition to achieve substantive outcomes lacking deliberative support, they violate the institutional differentiation enabling democratic legitimation across spheres. Pro-life mobilisation exemplified this: coordination of judicial selection during 2017–20 with litigation timing subordinated interpretive independence to political strategy aimed at overturning established precedent through court composition rather than deliberative persuasion (Kolbert and Kay 2021; Teles 2008). Both directions – judicialisation imposing technical rationality on to politics, politicisation imposing strategic rationality on to law – violate functional differentiation by instrumentalising one institutional sphere's autonomy for particularistic ends.

Requirement 3 addresses dual politics' defensive dimension – not secondary protection but constitutive maintenance of the communicative process providing movements' normative validity. This reconceptualises defence: not guarding something pre-existing but actively sustaining communicative coordination as ongoing achievement. Habermas establishes that lifeworld reproduces through communicative action – when institutional engagement operates via administrative power or technical expertise rather than intersubjective understanding, coordination mechanisms shift from communicative to systemic, producing colonisation (Habermas 1996). Cohen and Arato demonstrate that the defensive dimension proves constitutive: offensive institutional transformation derives democratic legitimacy from sustained communicative foundations; severing this anchoring eliminates the normative basis distinguishing democratic from instrumental success (Cohen and Arato 1992). Students Phase 2 exemplified defensive failure: leaders adopted party-bureaucratic coordination displacing communicative processes with administrative logics (elite capture), while constitutional proposals functioned as technical vocabularies imposed on to rather than exchanged with constituencies – concepts like plurinacionalidad operated without experiential circulation, severing institutional engagement from lifeworld meanings (Eder 2011; Noguera 2023). These three requirements constitute democratic transformation's structure itself, not external assessment criteria. Movements navigate between institutional change and grass-roots connection through copulative integration: translation bifurcates moral expectations across political and legal rationalities, differentiation maintains autonomy preventing colonisation, preservation sustains the communicative dynamic anchoring both. Partial fulfilment violates this integrated phenomenon – transformation without communicative maintenance, or preservation without institutional differentiation, constitute structurally incomplete navigation.

4.2 Procedural independence from ideology

The copulative structure establishes a procedural criterion operating independently of ideological content or strategic outcomes. That democratic legitimacy emerges through integrated fulfilment of three requirements – rather than inhering in particular actors, institutions or substantive achievements – means movements' validity derives from maintaining communicative processes sustaining this integration. This procedural character addresses a foundational question confronting socio-legal scholarship: *how do movements lacking formal authority achieve legitimate institutional transformation?* Their democratic validity emerges not through formal-authoritative foundations they lack but through communicative validity – carrying moral expectations from lifeworld requiring universalisation for legitimate change. The criterion evaluates whether movements sustain communicative coordination enabling copulative integration – translating

without particularism, differentiating without colonisation, preserving without disconnection – or instrumentalise these processes through systemic logics. Democratic legitimacy thus operates through procedural maintenance of communication, applicable symmetrically regardless of ideological orientation.

The comparative pattern demonstrates this procedural independence through violations operating bidirectionally yet symmetrically across ideological orientations. Colonisation threatens in both directions – judicialisation subordinating political deliberation to legal-technical rationality (Students Phase 2), politicisation subordinating legal adjudication to strategic political coordination (pro-life) – but the fundamental democratic failure proves identical: displacing communication with systemic logics as the coordination mechanism. When movements organise institutional engagement through bureaucratic expertise or strategic power rather than communicative action, they instrumentalise the normative foundation providing their democratic validity regardless of ideological content or colonisation direction. Judicialisation replaces communicative deliberation with technical-administrative rationality, politicisation replaces interpretive reasoning with strategic-political coordination – both substitute systemic media for intersubjective understanding as the mechanism integrating collective action with differentiated institutions. Democratic legitimacy requires sustaining communication across these institutional spheres, not achieving particular substantive outcomes or operating from specific ideological positions. The criterion thus applies symmetrically: evaluating whether movements maintain or displace communicative foundations independently of their political orientation.

This procedural character prevents two analytical errors pervading existing scholarship. First, assuming all legal mobilisation inherently democratises – empirically false, as instrumental juridification demonstrates movements achieve institutional transformation through colonisation rather than communicative integration. Second, evaluating mobilisation through ideological alignment with the evaluator's substantive commitments – normatively inadequate, as democratic legitimacy cannot depend on external moral standards applied selectively. The procedural criterion evaluates communicative processes instead: whether movements sustain translation, differentiation and preservation through intersubjective coordination or displace these with systemic rationalities. This enables identifying illiberal mobilisation procedurally – not through ideological rejection but as mobilisation instrumentalising institutional spheres by breaking functional differentiation through judicialisation or politicisation, displacing communicative foundations regardless of actors' self-understanding. Critically, the communicative criterion operates independently of actors' sincere perceptions: Students' leaders and pro-life activists genuinely believed their practices embodied democratic participation, yet both violated procedural integrity by substituting systemic coordination for communicative action. Democratic legitimacy thus emerges through maintaining communication as the normative foundation, assessed through procedural standards transcending movements' subjective self-perception of democratic authenticity.

4.3 Scope conditions

The procedural criterion established operates contextually rather than universally, requiring specific institutional configurations enabling reflexive juridification as a structural possibility. This framework does not constitute a general theory of social movements but rather analyses democratic legal mobilisation under determinate scope conditions. Reflexive juridification requires functional differentiation between political and legal spheres, civil society autonomy enabling dual politics and sufficient temporality capturing sustained mobilisation patterns. These conditions characterised the contexts analysed – Chile's post-authoritarian democracy and the United States' constitutional system – enabling the paradigmatic evaluation conducted in Section 3. Subsequent paragraphs specify each condition's institutional requirements and analytical implications.

Functional differentiation between political and legal spheres constitutes a scope condition emerging from structural presuppositions of the literatures this framework synthesises rather than arbitrary delimitation. Socio-legal studies documenting legal mobilisation – strategic litigation, forum selection between legislative and judicial venues, distinct legal framing strategies – empirically presuppose that differentiated institutional spheres exist for movements to navigate. Della Porta’s deliberative framework and Habermasian theory presuppose normatively that informally organised civil society actors communicate differentially within formally differentiated institutions. This scope condition thus reflects the structural prerequisites both literatures assume: constitutional democracies with judicial review where courts maintain autonomy from the political branches, enabling distinct institutional rationalities. Contexts lacking this separation – authoritarian systems where judiciaries operate as political instruments – fall outside both literatures’ analytical reach. Section 3’s violations proved detectable because Chile and the United States of America possess institutional differentiation, enabling assessment of whether movements preserve or instrumentalise functional boundaries these literatures presuppose.

This differentiation presupposes civil society autonomy enabling movements to operate as the informal actors both literatures theorise. Socio-legal scholarship’s documentation of mobilisation – movements organising constituencies, coordinating multi-year campaigns, building advocacy networks – empirically presupposes organisational autonomy independent of direct state control or market determination. Deliberative theory (della Porta) and Cohen and Arato’s framework presuppose normatively that civil society actors maintain independence enabling dual politics: defensive protection of communicative foundations alongside offensive institutional engagement. Contexts lacking this autonomy – authoritarian systems with complete repression, corporatist arrangements fully co-opting civil society or total commodification eliminating communicative spaces – fall outside both literatures’ analytical scope. The movements analysed possessed such autonomy, enabling the sustained organisational capacity maintaining lifeworld connections while transforming institutions. This condition proves necessary because identity preservation evaluates whether institutional engagement sustains lifeworld anchoring that civil society autonomy structurally enables.

The two conditions jointly presuppose constitutional democracies maintaining institutional separation between legislative and judicial functions alongside autonomous civil society space independent from direct state control or complete market determination – exemplified through Chile’s post-transition institutional design and the United States’ constitutional architecture. Movements’ informal organisation through communicative coordination produces inherently cyclic patterns. Contentious politics scholarship demonstrates movements operate through mobilisation-demobilisation cycles (Tarrow 2011) rather than permanent institutional presence, reflecting their organic communicative character distinct from bureaucratic organisations. This cyclic nature requires procedural assessment across trajectories: evaluating whether movements sustain communicative connection with constituencies while transforming institutions throughout phases of intensification and latency – democratic legitimacy as continuous procedural achievement, not static institutional status. Students’ trajectory exemplifies temporal assessment necessity, demonstrating legitimacy shifts requiring longitudinal evaluation. These scope conditions emerge from literatures’ structural presuppositions delimiting contexts where reflexive juridification constitutes an analytically evaluable phenomenon: assessing whether institutional engagement maintains rather than severs the grass-roots communicative foundations providing movements’ democratic validity.

5 Conclusions

This article addressed a theoretical disjunction pervading interdisciplinary legal studies: how social movements maintain democratic legitimacy when operating simultaneously across political

and legal institutions governed by distinct rationalities. Deliberative democracy frameworks, exemplified through della Porta's comprehensive analysis, establish movements' democratic character through communicative practices in justification discourse yet structurally exclude legal mobilisation from democratic legitimisation; conversely, socio-legal scholarship documents extensively how movements achieve institutional change through strategic litigation but lacks normative criteria distinguishing democratic transformation from instrumental success. This analytical gap proves consequential beyond academic taxonomy: movements increasingly transform democratic institutions through constitutional courts rather than legislatures alone – particularly where deliberative channels remain blocked – yet existing frameworks cannot evaluate when such engagement maintains versus erodes the communicative foundations essential to democratic legitimacy. Reflexive juridification resolves this disjunction by reconceptualising democratic legitimacy as emerging not through privileging either rationality but through movements' demonstrated capacity to integrate both – communicative-deliberative rationality in justification discourse with reflexive-interpretive rationality in application discourse – while preserving the functional differentiation preventing mutual colonisation.

Reflexive juridification operates through three copulative requirements constituting democratic transformation itself rather than external evaluative criteria. Communicative translation (Requirement 1) demands movements achieve universalisation through integrated bidimensional engagement: deliberative argumentation expands resonance beyond immediate constituencies while legal framing provides juridical substance specifying institutional pathways, both preserving narrative coherence between lifeworld experiences and institutional representation. Functional differentiation (Requirement 2) ensures this bidimensional translation maintains institutional integrity by requiring distinct rationalities across spheres – political deliberation operating through justification discourse to determine normative validity, constitutional review operating through application discourse to determine applicability – each preserving autonomy without mutual colonisation. Identity preservation (Requirement 3) sustains the communicative foundations enabling both prior dimensions by demanding institutional concepts circulate bidirectionally: framings return to constituencies as recognisable moral vocabularies rather than technical abstractions, ensuring movements maintain lifeworld connections despite offensive institutional transformation. These requirements operate copulatively as integrated structure rather than disaggregated dimensions – democratic legitimacy emerges exclusively through their simultaneous fulfilment, as violation of any single requirement produces instrumental juridification regardless of strategic success, ideological orientation or actors' subjective democratic self-perception.

The framework's normative contribution establishes procedural criteria applicable symmetrically across ideological orientations, resolving the theoretical challenge illiberal mobilisation poses for democratic legitimacy. Democratic legitimacy depends fundamentally on how movements mobilise law rather than who mobilises or what substantive outcomes emerge – procedural integrity in institutional engagement, not strategic success or ideological correctness, determines democratic validity. Violations manifest bidirectionally with perfect symmetry: judicialisation displaces political deliberation with legal-technical rationality, while politicisation subordinates judicial interpretation to strategic-political coordination; both instrumentalise institutional spheres through the identical mechanism of displacing communication with systemic logics as the foundation coordinating collective action. This procedural character prevents two fundamental analytical errors: first, assuming legal mobilisation inherently democratises – empirically falsified by instrumental juridification where movements achieve transformation through colonisation rather than communicative integration; second, evaluating legitimacy through ideological alignment – normatively inadequate as democratic validity cannot derive from substantive outcomes or evaluators' political commitments. Democratic legitimacy requires sustaining communication as the normative foundation coordinating institutional engagement, assessed through procedural standards independent of whether movements pursue progressive

redistribution or conservative restoration. Movements may genuinely believe their practices embody democratic authenticity yet violate procedural integrity by substituting systemic coordination for communicative action – demonstrating that sincerity proves insufficient when engagement operates through instrumental rather than communicative rationality.

This reconceptualisation advances interdisciplinary legal studies through three theoretical implications. First, democratic transformation requires reflexive integration rather than single rationality: movements cannot achieve legitimacy through deliberation alone or litigation alone but exclusively through navigating both institutional logics simultaneously – demonstrating that functionally differentiated societies demand correspondingly differentiated democratic practices. Second, operationalisation transforms normative theory's analytical capacity: where scholarship previously documented mechanisms of legal mobilisation without evaluating democratic legitimacy, this framework provides procedural criteria enabling systematic adjudication – distinguishing empirically when observed mechanisms constitute democratic transformation versus instrumental success. Third, democratic character proves to be a sustained achievement rather than a possessed property: movements maintain legitimacy through continuous procedural fulfilment across mobilisation phases, as legitimacy depends on ongoing practices rather than organisational attributes. Two research trajectories emerge as particularly productive: examining how institutional architectures facilitate or obstruct movements' copulative integration, and identifying temporal conditions enabling sustained functional differentiation despite pressures toward colonisation. These questions reveal reflexive juridification's generative potential – establishing conceptual foundations for theorising democratic legitimacy in complex institutional environments. Law's democratic power emerges not through deliberation or adjudication operating separately but through their reflexive integration, sustained by movements that preserve communicative foundations while navigating the functional differentiation constitutive of modern institutional life.

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