

**PhD course University of Bergen**

**Effects of Lawfare:  
Courts and law as battlegrounds for social change**

**Thursday 18 August – Friday 26 August**

**Centre on Law & Social Transformation**

Jekteviksbakken 31, Bergen

CMI, 3 etg. Just Faaland møterom

One of the most central developments over the past three decades is the accelerating juridification and judicialisation of societies and of politics. In all parts of the world and at all levels, from the global to the local, increasingly complex webs of legal norms and institutions regulate our societies and lives. At the same time courts and law have become increasingly important as arenas for political struggles. Constitutional reforms and international treaties aim to transform social dynamics from above, among other through new and stronger protection of citizens' rights, while individuals and groups engage in legal mobilization from below to seek justice for their cause. In either case dense networks of international activists and experts are ready to engage with and aid local actors, creating a dense global network of actors, legal norms, and adjudicative institutions. In this context, it is urgent to better understand law as a political field. Does this turn to rights and law have a transformative potential? Does it provide institutional spaces for the voices of marginalized groups to be heard and tools that can provide political leverage? Or does it, rather demobilize and depoliticize struggles in ways that exacerbate unequal power-relations and marginalization dynamics? These are urgent issues on which there are deep disagreements in the literature. The course offers an introduction to the debates on the potential and limits of law as an instrument of social change, and opportunities to engage with some of the foremost scholars in the field, and international research projects currently seeking better answers to these questions.

The course is a mixture of lectures specifically designed for the course, participation in research-project workshops and open round-tables that form part of the Bergen Exchanges on Law & Social Transformation. Students will also have an opportunity to present their own work. Students will receive 3 ECTS for participating in the course. Students who submit a publishable journal article (with an additional reading list of 500 pages, which can be from the elective reading list) by 15 October 2016 are awarded an additional 7 ECTS. (MA level students will be accepted if space permits)

**Course leaders:** Camila Gianella (Comparative Politics/CMI); Bruce Wilson (Professor, University of Central Florida/CMI); Siri Gloppen (Professor Comparative Politics and *LawTransform* Director) **Lecturers include:** Andrea Castagnola (Postdoctoral Fellow,

Department of Comparative Politics); **Tom Keck**, (Syracuse University), **Alicia Yamin** (Harvard University), **Elin Skaar** (CMI), **Malcolm Langford** (University of Oslo/CMI).

**PhD course University of Bergen**  
**Effects of Lawfare: Courts and law as battlegrounds for social change**

**Thursday 18 August: 9:00 – 17:00** (Registration, Coffee, from 8:30)

- Introducing Lawfare, course overview
- Legal mobilization and courts as battlegrounds for social change
- Social movement theory: legal mobilization and impact
- Legal and political opportunity structures:
- “Fire in the Blood” movie & discussion
- INFORMAL SOCIAL EVENT

**Friday 19 August: 8:45 – 17:00** (Coffee from 8:30)

- Judicial behaviour and everyday life of courts
- Effects of lawfare
- Research strategies and methods for measuring lawfare effects.  
Health, Transitional justice, effects on courts
- *Ph.D Student Presentations*

**Sunday 21 August : 8:45 – 15:00 + social event** (Coffee from 8:30)

- Morality Lawfare
- Backlash
- Research strategies /methods for measuring politicization/backlash
  - LGBT-rights; Abortion; Health;
  - Experimental methods
- NATURE WALK
- SOCIAL EVENT

**Monday 22 August - Friday 26 August**

**See program for the Bergen Exchanges 2016**

In addition, there will be PhD course sessions in the afternoons to follow up the sessions of the day and continue PhD Student presentations.

The course will close with an evaluation session in the afternoon of

**Friday 26 august , ending at 17:00.**

## Readings

- Brinks, Daniel M, and Varun Gauri. "The law's majestic equality? The distributive impact of judicializing social and economic rights." *Perspectives on Politics* 12.02 (2014): 375-393.
- Dyevre, Arthur (2010) "Unifying the Field of Comparative Judicial Politics: Towards a General Theory of Judicial Behaviour," *European Political Science Review* 2, 297-327
- Epp, Charles R. *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective*. Chicago: University of Chicago Press, 1998 (Chapters 1,2,11).
- García, Helena Alviar, Karl Klare, and Lucy A. Williams, eds. *Social and Economic Rights in Theory and Practice: Critical Inquiries*. Routledge, 2014. (295 pp)
- Greenhouse, Linda, and Reva B. Siegel. "Before (and After) Roe v. Wade: New Questions About Backlash." *The Yale Law Journal* (2011): 2028-2087.
- Haglund, LaDawn, and Robin Stryker, eds. *Closing the Rights Gap: From Human Rights to Social Transformation*. Univ of California Press, 2015. Chapter 4: Varun Gauri and Daniel Brinks: "Impacts of Legal Strategies for Claiming Economic and Social Rights"; Ch. 13. Siri Gloppen "Studying Courts in Context"
- Keck, Thomas M. "Beyond backlash: Assessing the impact of judicial decisions on LGBT rights." *Law & Society Review* 43.1 (2009): 151-186.
- Langford, Malcolm, Jackie Dugard et al. "Concluding Perspectives" in , Langford et al eds. *Socio-economic Rights in South Africa: Symbols Or Substance?*. Cambridge U Press 2013.
- Merry, Sally Engle. "Anthropology and Law." In *The SAGE Handbook of Social Anthropology* (2012): 105.
- Mir-Hosseini, Ziba. "Criminalizing sexuality: zina laws as violence against women in Muslim contexts." *SUR-Int'l J. on Hum Rts.* 15 (2011): 7.
- Motta, Sara C., and Alf Gunvald Nilsen, "Social Movements and/in the Postcolonial: Dispossession, Development and Resistance in the Global South" in Motta & Nilsen, eds. *Social movements in the global south: Dispossession, development and resistance*. Palgrave Macmillan, 2011. (pp1-34)
- Mæstad, O., L. Rakner and O. L. M. Ferraz (2011). Assessing the Impact of Health Rights Litigation: A Comparative Analysis of Argentina, Brazil, Colombia, Costa Rica, India and South Africa. In A. Yamin and S. Gloppen. *Litigating Health Rights*, Harvard University Press: 273-303.
- Narain, Arvind. "Brazil, India, South Africa: Transformative Constitutions and Their Role in LGBT Struggles." *SUR-International Journal On Human Rights* 11.20 (2014).
- Price, Richard S., and Thomas M. Keck. "Movement Litigation and Unilateral Disarmament: Abortion and the Right to Die." *Law & Social Inquiry* (2015).
- Rodríguez Garavito, C. (2011). "Beyond the Courtroom: The Impact of Judicial. Activism on Socioeconomic Rights in Latin America." *Texas Law Review* 89: 1669-1698.
- Rosenberg, Gerald N. "Courting Disaster: Looking for Change in All the Wrong Places." *Drake L. Rev.* 54 (2005): 795.
- Sieder, Rachel, and John Andrew McNeish, "Introduction" in Sieder and McNeish, eds. *Gender, Justice and Legal Pluralities: Latin American and African Perspectives*. Routledge, 2013.
- Skivenes, Marit, et al., eds. *Child Welfare Systems and Migrant Children: A Cross Country Study of Policies and Practice*. Oxford University Press, 2014. (Chapters 1, 3 and 13)
- Wilson, Bruce M., and Juan Carlos Rodríguez Cordero. "Legal Opportunity Structures and Social Movements The Effects of Institutional Change on Costa Rican Politics." *Comparative Political Studies* 39.3 (2006): 325-351.

### \*\*\*\*\* Elective Readings \*\*\*\*\*

- Ahmed, Aziza, et al. "Criminalising consensual sexual behaviour in the context of HIV: consequences, evidence, and leadership." *Global public health* 6.sup3 (2011): S357-S369.

- Bergallo, Paola. "Courts and the Right to Health: Achieving Fairness Despite 'Routinization' in Individual Coverage Cases?" Yamin, Alicia Ely y Siri Gloppen (comps.), *Litigating Health Rights: Can Courts Bring More Justice to Health* (2011).
- Bishin, Benjamin G., et al. "Opinion Backlash and Public Attitudes: Are Political Advances in Gay Rights Counterproductive?" *American Journal of Political Science* (2015).
- Bob, Clifford. *The global right wing and the clash of world politics*. Cambridge University Press, 2012. (Chapters 1, 3., 4 and 7)
- Charles Ngwenya & Ebenezer Durojaye "Strengthening the protection of sexual and reproductive health and rights in the African region through human rights: An introduction" in Charles Narrain, Arvind. "Rethinking Citizenship A Queer Journey." *Indian Journal of Gender Studies* 14.1 (2007): 61-71.
- Ngwenya, Charles G. "Conscientious Objection to Abortion and Accommodating Women's Reproductive Health Rights: Reflections on a Decision of the Constitutional Court of Colombia from an African Regional Human Rights Perspective." *Journal of African Law* 58.02 (2014): 183-209.
- Ngwenya & Ebenezer Durojaye (eds) *Strengthening the protection of sexual and reproductive health and rights in the African region through human rights*. Pretoria: PULP (2014) Chapter 1.
- Brinks, Daniel M. "The Judiciary and the Rule of Law in Latin America." *Routledge Handbook of Latin American Politics* (2014): 61.
- Brinks, Daniel M., and William Forbath. "Social and Economic Rights in Latin America: Constitutional Courts and the Prospects for Pro-Poor Interventions." *Tex. L. Rev.* 89 (2010): 1943.
- Dugard, Jackie. "Civic action and legal mobilisation: the Phiri water meters case." *Mobilising Social Justice in South Africa: Perspectives from Researchers and Practitioners* (2010): 71-99.
- Epp, Charles R. "The legal complex in the struggle to control police brutality in India." In *Fates of Political Liberalism in the British Post-colony*, ed. Terence C. Halliday, Lucien Karpik, and Malcolm M. Feeley (2012): 91-111.
- Epp, Charles R., Steven Maynard-Moody, and Donald P. Haider-Markel. *Pulled Over: How Police Stops Define Race and Citizenship*. University of Chicago Press, 2014.
- Mir-Hosseini, Ziba. "Muslim women's quest for equality: Between Islamic law and feminism." *Critical inquiry* 32.4 (2006): 629-645.
- Keck, Thomas M. *Judicial Politics in Polarized Times*. University of Chicago Press, 2014.
- Tønnessen, Liv, and Samia al-Nagar. "The women's quota in conflict ridden Sudan: Ideological battles for and against gender equality." *Women's Studies International Forum*. Vol. 41. Pergamon, 2013.
- Vanberg, Georg. "Constitutional Courts in Comparative Perspective: A Theoretical Assessment." *Annual Review of Political Science* (2015).
- Yamin, A., and Siri Gloppen. "Litigating Health Rights." *Can Courts Bring More Justice to Health: Harvard* (2011).