

WELCOME TO THE
Bergen Exchanges
on Law & Social Transformation

22 - 26 August 2016



Venue: Bergen Resource Centre for International Development, Jektviksbakken 31, Bergen

Researching law as an instrument of social change

Welcome to the

2016 Bergen Exchanges on Law & Social Transformation

The *Bergen Exchanges on Law & Social Transformation* is an annual interdisciplinary and international meeting place for scholars who want to understand the interplay between law and social change: how rights and law serve as political tools; how legal institutions function as arenas for political contestation – and, not least, it is a space for jointly developing better research strategies and methods to grasp and securely establish the effects of *lawfare* in its various forms. In doing so, we care about a broad range of effects: how legal strategies alter political dynamics, ideas and discourses, as well as material effects in terms of changes in legal norms, policies, and distribution of resources, goods and burdens. We seek to improve our understanding of the consequences of “state lawfare”, the use of legal instruments by governments to shape societies – whether through constitutional change, international treaties, statutes or regulations – as well as “insurgent lawfare” from below, by social actors who engage in litigation and other legal strategies to advance their goals. And we seek to better understand the functioning of legal and administrative institutions as they adjudicate, interpret and implement legal norms.

This year's Bergen Exchanges focuses on: the **legal determinants of inequality**; lawfare by and related to **migrants & refugees, sexual & gender minorities, and children**; the effects of **policing, criminal law and incarceration; judicial independence**; and lawfare over **natural resources (land, water) and climate change**. Questions that will be discussed include: Who are able to successfully use the courts to advance their cause? Does judicialization increase inequality? Who benefits from freedom of speech? What makes judiciaries independent – and how can we know? What makes them responsive to marginalized groups? Do we need to reshape the legal regime relating to refugees in the face of current challenges from war and climate change? What are the health effects of criminal law (such as criminalization of abortion and homosexuality)? Which land regimes provide the best conditions for indigenous peoples? Does a human right to water make a difference? Can litigation be a way to better climate policies? – and how should we as researchers deal with the inevitable scientific uncertainty when providing evidence for policy makers?

The lectures, roundtables and panels bring together scholars and practitioners from all over the world, many linked to the *LawTransform* Centre as Global Fellows, Associates and collaborators on research projects. **The events are open to everyone free of charge**, but for practical reasons it would be very helpful if you could contact us at info@lawtransform to let us know what you would like to take part in – or if you want to join our team of **volunteers**!

In connection with the Bergen Exchanges, we also have an annual, interdisciplinary **PhD course** on “Effects of Lawfare” (see special program). This is also free of charge and open to applicant from Norwegian and international institutions on a first-come first serve basis (but out-of-town applicants have to cover their own travel and accommodation costs, as there are no scholarships available). Information is available at the www.lawtransform webpage.

Researching law as an instrument of social change

www.lawtransform.no

PROGRAM (*preliminary)

Venue: **Bergen Resource Centre for International Development**, Jektviksbakken 31, Bergen

Pre-Exchanges events:

PhD Course “Effects of Lawfare”

Thursday 18 August - Friday 26 August (by application, see separate program)

Workshop “Political Determinants of Sexual and Reproductive Health in Africa”

Saturday 20 August - Tuesday 24th (closed workshop, see separate program)

Sunday 21 August:

15:30 Sight seeing & Nature walk

18:00 Social Event (by invitation)

Monday 22 August : Inequality & the Law

9:00 – 10:15

Opening

9:30

Key Note Address by Roberto Gargarella

Can courts pursue social justice while respecting democracy?

Since ‘dialogic constitutionalism’ emerged in Canada in 1982 court around the world have developed similar and improved dialogic practices to promote democratic debate through judicial intervention. Advocates of deliberative democracy and critics of traditional forms of judicial review have hoped that these dialogic mechanisms would help enforce social rights and social justice in a democratic manner – but to what extent has this materialized? The lecture critically analyzes the scope and limits of the practice of dialogic constitutionalism as it has emerged over the past decades, and asks how it can be improved.

10:30 – 12:15

2016 Chr. Michelsen Prize Lecture & Roundtable

10:30

Prize Lecture by Francesca Refsum Jensenius

“Can electoral quotas advance social justice – and how do we know?”

This lecture is based on the work that won Francesca Refsum Jensenius the 2016 Chr. Michelsen Prize for the best work in development studies. The material is part of *Social Justice through Inclusion: The Consequences of Electoral Quotas in India* (forthcoming with Oxford University Press), her book manuscript about the longest-standing electoral quota systems in the world: The reserved seats for the Scheduled Castes (SCs, Dalits, India's former

`untouchables') in India's state assemblies. In this book, she combines evidence from various quantitative datasets from the period 1971–2007, archival work, and in-depth interviews with politicians, civil servants and voters across India in 2010 and 2011, to explore the effects of this extensive quota system, how the impact has changed over time, and how the various consequences relate to each other. She argues that the institutional design of the quota system has played an important role in incentivizing the integration of SCs into all the main political parties, while at the same time prevented the emergence of group representatives — understood as SC politicians acting for the interest of their group. In this lecture she will talk about key findings from the book, with a focus on how the institutional design of this quota policy both shapes its effects and can help us study these effects empirically.

11:00 Roundtable: **Researching Law & (in)Equality**

Law – ranging from constitutions and international human rights treaties, to anti-discriminations laws and tax regulations – are tools by which societies seek to address unwanted inequalities. But at the same time these and other forms of law create and reinforce social inequalities in multitudes of ways – and countries with ambitious pro-equality laws, are among the most unequal societies. How can we investigate and establish the various ways in which law shapes the production of social equality and inequality? This roundtable brings together scholars who approach these questions from different angles and through different methods.

12:30 – 13:30 Roundtable: **Who benefits from Speech Rights?**

Freedom of speech is a fundamental human right and a cornerstone of democracy – but are all speakers equal? A new comparative research project looks into which actors that are likely to bring cases against the state claiming that their right to free speech has been infringed - and whose claims are likely to succeed. This roundtable is hosted by a new FrittOrd project on Speech Rights.

- Introduction by **Malcolm Langford** (UiO) in conversation with **Tom M. Keck** (Syracuse University) & **Anine Kierulf** (UiB)

13:30 – 14:30

Lunch

14:30 – 18:30

Project Workshop: Sexual & Reproductive Rights Lawfare

14:30 – 16:00

PhD Course Session

19:00 Evening event & informal reception at Knut Fægris hus:

Can law heal? On legal determinants of inequalities in health and rights-based approaches to health reform

Law shapes our health in innumerable ways. It influences health systems and policies, and thus who gets healthcare, for what, when and how – and who gets a say when health policies are designed and implemented. Law are central to whether patients can demand and in fact get the services that they are entitled to. The law also influences which drugs are developed, and by whom, for whom and at what price. At a more fundamental level, the law is integral to the social systems that shape the living conditions that are so crucial for our health: access to clean water and sanitation; to food, housing and education. This roundtable will discuss the legal determinants of (ill) health, and the case for rights based approaches reform of health systems and –policies. This event is hosted by the Norad/LawTransform project on “Implementing the right to health in health service delivery”.

Tuesday 23 August

9:00 – 13:30 Sexual & Reproductive Rights Lawfare

9:00 – 10:45 Roundtable:

Identity, politics and law in global battles over homosexuality

Why do we see an upsurge around the world in court cases concerning same sex intimacy – from decriminalization of sodomy to marriage equality? This roundtable presents findings from a LawTransform/UiB project on “Sexual & Reproductive Rights Lawfare: Global Battles”. The project examines the use of courts and law in battles for and against rights concerning sexual orientation, gender identity and abortion in different parts of the worlds. It seeks to understand both what drives these cases into the courts and what the effects are of fighting such battles through legal cases rather than in the parliamentary arena. This roundtable zooms in on the part of the project that deals with the current politicization of homosexuality on much of the African continent, and will discuss both how this differs across the region and in comparison to similar battles in other regions of the world.

11:00 – 12:10 Roundtable:

Criminalizing immorality how to study political drivers and backlash effects?

In the past decade we have seen an increase in politicization and the use – and threat of using – the criminal law to combat what is construed as “immoral behavior”. In much of Africa this has in particular been related to homosexuality and, to a lesser extent abortion. Attempts by domestic and international actors to push for more liberal laws seem to have triggered a backlash. How can we, as researchers, best capture and understand the driving forces and dynamics of these social and political processes? Which approaches and research methods are best suited? This roundtable is hosted by the new LawTransform/CMI project on “Political determinants of sexual and reproductive health”

12:20 – 13:30 Roundtable:

Studying health effects of criminal law

All societies use criminal law in ways that - intentionally and unintentionally, directly and indirectly – affect the health of both those who are incarcerated and the broader population. The criminalization of abortion that we see in many countries, is one of the uses of criminal law that potentially has severe health consequences. So is the criminalization of undesirable or “immoral” sexual behavior – ranging from rape, sexual violence and transmission of HIV and other STDs, to sex-work and consensual sex between adults of the same gender. But how can we securely establish such health effects? Which forms of health effects can we reliably measure, and how? Which research methods are most appropriate, and which data are available? This roundtable is hosted by the new LawTransform project on “Political determinants of sexual and reproductive health”

13:30 – 14:30 Lunch CMI cantina

14:30 – 15:30 Roundtable:

Assessing socio-economic effects of incarceration

Both those arguing for and against the use of prison sentences for various crimes use economic arguments and reference to socio-economic effects to support their position – but what do we know about the social and economic consequences of incarcerating offenders – and how can we know? What are the appropriate measures for assessing this? This roundtable takes at the point of departure a project undertaken by Katrine Vellesen Løken

and colleagues as part of a new project investigating socio-economic effects of incarceration in Norway, using register data (NFR-young researcher grant).

- Introduction: **Katrine Vellesen Løken** (UiB) in dialogue with **Linda Grøning** (UiB)

15:30 – 18:30

Project Workshop:

Political determinants of Sexual and Reproductive health

15:30 – 17:00

Phd Course Session

19:00

Evening event & informal reception at CMI

Roundtable:

Threats to the independence of the judiciary – cross-regional perspectives

Courts are growing increasingly powerful all over the world. While independent and robust courts can secure democratic governance and protect citizens' rights and wellbeing, dependent and weak judiciaries exacerbate injustice and inequality. Courts have validated - and prohibited - presidential re-elections in Latin America; supported - and condemned - military coups in Asia; enforced - and sanctioned - asylum practices in Europe; and legalized - or criminalized - same-sex relations in Africa. Even though the lack of judicial independence and integrity for a long time has been on the agenda in fragile democracies; there is an increasing interest on this topic also in consolidated democracies. What are the similarities between fragile and consolidated democracies with regard to the threats to judicial independence? How different are problems of judicial corruption and lack of independence? Which are the most common strategies whereby politicians seek to manipulate the judiciary? And how can this situation be improved in the future?

- Introduction by **Andrea Castagnola** in dialogue with **Roberto Gargarella** (Universidad Torcuato Di Tella, Argentina), **Jørn Øyrehagen Sunde** (UiB, Norway) **Sofie Schütte** (CMI, Norway) and **Edge Kanyongolo** (University of Malawi) who will share their experience and knowledge from Latin American, Scandinavian and African cases

Wednesday 24 August

9:00 – 10:30

Lecture **Responsible evidence appraisal**

by **Jeroen van der Slujs** (UiB)

The rapid increase in the use of evidence to legitimise decisions reflects a pervasive idea that more science equals better policies. Often, decision makers become mired in contested evidence, beset by uncertainties and contradictions. In critical challenges, whether climate change, global pollinator collapse, or migration, science is expected to provide conclusive facts and is often used instrumentally to suppress disputes. The concept of evidence is in flux and increasingly subjected to fundamental questions about its nature, quality and functions. Meanwhile, emerging modes of evidence production add to controversies on what counts as valid evidence. The relation between governance and the underlying evidence has itself become problematic, reflecting ongoing changes in knowledge production and use. This lecture will explore the problems with the use and abuse of evidence for governance and will sketch pathways to more responsible practices of evidence appraisal and use.

10:45 – 12:00

Roundtable: **Trans-Gender Lawfare**

In June 2016 Norway passed new legislation for the change of legal gender, whereby the country went from being one of the most restrictive places in Europe - where people who wanted to change their legal gender had to undergo sex affirming surgery - to becoming one of the most liberal. All that is required now is a request from anyone above 16 years of age. What is the significance of this change in the law? And how is the Norwegian development in comparative perspective?

12:15 – 13:30

Roundtable:

Child Rights in Norway: Implementation and Effects

Norway is a party to the international Convention on the Right of the Child, which obliges the government to see to it that the best interest of the child is taken into account in all relevant legislation and policy. But how is this implemented in practice? This roundtable is part of a Redd Barna/ University of Oslo/ LawTransfrom project headed by Malcolm Langford.

- Introduction by **Malcolm Langford** in dialogue with **Marit Skivenes** and **Karl Harald Søvig**

13:30 – 14:30 Lunch CMI cantina

14:30 – 15:30

Roundtable: **Building databases for empirical legal studies**

Numerous law and court related databases have been developed in recent years - over constitutions, laws, judgments, and various aspects of court cases and litigation processes. But too often these are ad hoc, poorly constructed, poorly utilized and discontinued. How can we best develop good databases to serve a useful instruments for qualitative as well as quantitative research, and that enable us to integrate them in ways that allow others to utilize what we have collected?

Introduction by Malcolm Langford

15:30 – 16:30 *Phd Course Session*

18:00-19:30:

Annual Lecture on Law & Social Transformation

Charles Epp

(University of Kansas)

Venue: **Bergen Litteraturhus**

Epp is the author of one of the most cited books in law & society scholarship:

The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective and highly acclaimed books on ***Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*** and ***Pulled Over: How Police Stops Define Race and Citizenship***.

Followed by Reception for invited auests

Thursday 26 August: Migration & Lawfare

9:00 – 10:15 Panel:

Irregular Migrants and Mobilization for Rights in European Countries

The OECD estimates that there may be from 5 to 8 million irregular, or undocumented, migrants in Europe. These are individuals without a residence permit authorizing them to regularly stay in their country of destination. Once in an unregulated status, migrants are systematically denied their fundamental rights. How, then, do they mobilize to strengthen these rights? How do undocumented children claim rights? And what has the impact of the current political crises on refugee issues been on the opportunity for campaigning for status regularizations? Drawing on research among irregular migrants in Norway, Sweden and four other EU countries,

- **Synnøve Bendixsen, Anna Lundberg and Nando Sigona** meet to discuss these topical issues.

10:30 – 11:30 Lecture by Susan Banki:

A Theory of Refugee Homeland Activism: Precarity, Social Movements & Resource Deprivation

Refugees dissatisfied with the conditions in their home countries often continue to agitate for change when they arrive in countries of neighbouring refuge, such as refugees from Myanmar living in Burma, or refugees from Bhutan living in Nepal. How might we come to understand the shapes and modes of such activism? Concepts in the literatures of precarity, social movements, and migration offer us some answers. This talk considers the question of refugee homeland activism from a theoretical perspective but draws on empirical examples from the two aforementioned populations to flesh out these ideas.

12:00 – 13:30 Panel:

Mobilizing in Exile: Syrian Refugee and Diaspora Mobilization

After five and a half years of conflict, the situation in Syria is worsening: there is increased fighting and violence on the ground and no clear road map to peace. More than five million Syrians have fled their country to seek safety in neighboring countries and beyond. How do these exiles mobilize for political change in their home country? What are the responses of host states as well as the homeland to such mobilization?

- **Maja Janmyr** will explore homeland engagement among Syrian refugees in Lebanon while **Espen Stokke** discusses Syrian diaspora mobilization in the UK and US. **Emma Jørum** shares her research on homeland response to anti-regime mobilization among Syrians in Sweden.

13:30 – 14:30 Lunch CMI cantina

14:30 – 15:30 Roundtable; **Precarious rights of LGBT refugees**

Many countries, including Norway, grant asylum rights to people who have to flee their home country due to their sexual orientation or gender identity (lesbian, gay, bisexual and trans people). But how does this work in practice? How is "at risk" understood and determined in the context of LGBT refugees?

15:30 – 18:30

Project Workshop:

Land rights & inclusive sustainable development in India

15:30 – 17:00

PhD Course Session

Evening panel, UiB Law School Aud4 & Social Event in CMI cantina

19:00

Quo Vadis Refugee Convention?

Faced with a so-called *refugee crisis*, European politicians, practitioners and scholars discuss whether the 1951 Refugee Convention is in need of reform. Many of the arguments and questions have been raised previously, for example during the Balkan war, but today, the context differs. We are seeing the highest number of refugees ever, with 65, 3 million people fleeing their homes. Refugees are produced by conflict and persecution throughout the world, with the war in Syria as the largest source – but people are also forced to migrate due to climate change, natural disasters and poverty. As a result, and unlike during the Balkan War, the vast majority of refugees in Europe now come from non-European countries, and for some their refugee status is unclear. Key refugee receiving countries such as Lebanon and Jordan have not ratified the Refugee Convention, while Turkey retains fundamental limitations in its ratification. Moreover, the United Nations refugee agency (UNHCR) is in chronic deficit as the willingness to provide the necessary finances is decreasing. In this context, not only do we hear calls for reform of the Refugee Convention and refugee regulation as a whole, but fundamental principles, such as of *non-refoulement* (not forcing refugees or asylum seekers to return to a country in which they are liable to be subjected to persecution), are under pressure.

Why is it imperative to change the Refugee Convention now? And what should that change entail? What is most important; refugee protection and the fulfilment of fundamental human rights, or the sovereign state's capacity to control the movement of people across its borders? Is it possible to balance the two? And what does effective refugee protection really mean? States are represented through political leaders, but how do we include refugee voices?

This meeting seeks to contribute to the important, but often polarized debate on how to improve the system of refugee regulation. The issue requires long-term commitment, and continued discussion, even when the current influx of Syrian refugees to Europe decreases.

Friday 26 August: Lawfare over Natural Resources

9:00 – 10:15

Panel:

Land rights & inclusive sustainable development in India

Land rights are contested in all parts of the world, and not least so government acquisition of land (on behalf of the state or private interests) for purposes of the common good and socio-economic development. In India, large scale infrastructure – mines, dams, ports and roads – have severely infringed the land rights of tribal peoples in ecologically vulnerable forest areas across the subcontinent. The rules protecting the rights and interests of vulnerable population groups and ecosystems differ between and within state, and a key question is which rules are more adequate in balancing the concerns required for inclusive, sustainable development. This session presents findings from a LawTransform/CMI/CPR project on “Land Rights and Inclusive, Sustainable Development within India's Federal System”

10:30 – 11:45 Roundtable:

Water, development-induced displacement & rights based resistance

Water is a vital, valuable and highly contested natural resource. The international society has recognized this by affirming the human right of all to access safe drinking water and sanitation, but still contests over valuable water resources place the livelihoods of millions at risk across the world. Can rights and legal institutions serve as effective instruments for poor people to use in their struggles for vital interests, or is this a hollow hope?

12:00 – 13:15 Roundtable: **Climate Change Lawfare**

Courts are increasingly used as sites of struggle over climate change policies and in December 2015, the Paris agreement on climate change brought about a new role for national courts with its novel legal architecture to deal with global economic and environmental problems. Since there is no one legally binding set of emissions reduction rules for all states, and no global court where to take breach cases to, the new pact - based on voluntary national commitments - brings domestic courts to the front. They are to ensure governmental compliance with their promises and protection of citizens' rights to sustainable development and a healthy environment.

One of the most famous cases in which courts have been used in struggles over domestic climate change policies is the Dutch *Urgenda* case, where citizens took the government to court for failing to adopt and implement policies that would allow the country to meet its climate change obligations. In June 2015 they won in the Hague district court. Other European and global south countries are preparing similar cases. How suitable is litigating as an instrument to advance responsible climate change policies?

13:15 – 13:30 **Closing of the Bergen Exchanges 2016**

13:30 – 14:30 ***Lunch CMI cantina***

14:30 – 16:00 ***PhD course – closing and evaluation***