



**Ph.D. course University of Bergen
Thursday 17 August – Friday 25 August 2017**

Venue: CMI, Just Faaland seminar room, 3rd floor
Jekteviksbakken 31, Bergen, Norway



Effects of Lawfare

Courts and law as battlegrounds for social change

With an option of specialization in Effects of Lawfare concerning
Gender & Sexuality

We experience an accelerating juridification and judicialisation of societies and 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. 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 others 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 scholarly 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 more compelling answers to these questions.

The course combines lectures specifically designed for the course with participation in the lectures & round-tables of *the Bergen Exchanges on Law & Social Transformation*.

This year, the course offers two tracks.

- Track one takes a broad focus **on the strategic use of law across a range of fields** (transitional justice; gender and sexuality; health; land, water, criminal law, child rights).
- Track two emphasizes the use of law as a tool in contestations over issues of **gender & sexuality**.

The tracks will meet together for much of the course, but with occasional separate sessions, including for the presentations and discussion of the students' own work. For the Gender & Sexuality specialization, more of the readings have a gender or sexuality focus. Readings will be accessible on mitt.uib.no before the course starts and online discussion forums will allow students to discuss the course readings with their peers and course leaders.

Students will receive 3 ECTS for participating in the course (80% of seminars), submission of paper abstract (150-300 words), and presentation of their own work to the other participants. Students who submit a publishable journal article (4,000-6,000 words, with an additional reading list of 500 pages, which can be from the elective reading list) by 15 October 2017 are awarded an additional 7 ECTS. (Postdoctoral researchers and MA level students will be accepted if space permits).

The PhD course is free of charge and open to applicants from Norwegian and international institutions on a first-come first serve basis. Participants do, however, have to cover their own travel and accommodation costs, as there unfortunately are **no scholarships available**.

Course leaders: **Bruce Wilson** (University of Central Florida/CMI); **Camila Gianella** (CMI); **Siri Gloppen** (*LawTransform* Director & Comparative Politics, University of Bergen)

Lecturers: **Daniel Brinks** (University of Texas, Austin); **Lara Cortes** (Chr. Michelsen Institute); **Luciana G. Cunha** (FGV Law School); **Malcolm Langford** (University of Oslo/CMI); **Marta Machado** (FGV Law School, Sao Paulo); **Rashida Manjoo** (University of Cape Town); **Nicolas Orago** (University of Nairobi); **Rachel Sieder** (CIESAS Mexico/CMI); **Kathryn Sikkink** (Harvard University); **Getnet Tadele** (University of Addis Abeba); **Jeroen van der Sluis** (Philosophy of Science, UoB)

PhD course 17-26 August 2017

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

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

<i>8:30 - 9:00</i>	<i>Arrival, registration, coffee & tea</i>	
9:00 - 10:00	Welcome, introductions & course overview Introducing format for student presentations	Bruce Wilson
10:00- 11:30	Introducing Lawfare: Concepts, approaches	Bruce Wilson
<i>11:30- 12:30</i>	<i>Lunch</i>	
12:30 – 14:30	Responsible evidence appraisal	Jeroen van der Slujs
<i>14:03 - 15:00</i>	<i>Coffee & Tea Break</i>	
15:00 -17:00	<i>Public seminar:</i> “Abortion lawfare & the right wing in Brazil”	Lara Cortes Marta Machado Luciana Gross Cunha
<i>17:00 -</i>	<i>Informal Social Event</i>	

Friday 18 August: 8:45 – 17:00

<i>8:30 - 8:45</i>	<i>Coffee & Tea</i>	
8:45 - 9:00	Recap & introduction to the day	Bruce Wilson
09:00 - 10:00	Social movement theory: legal mobilization	Bruce Wilson
<i>10:00-10:15</i>	<i>Coffee & Tea Break</i>	
10:15 - 11:30	Conceptualizing lawfare effects - introduction lawfare effects: material, political and symbolic	Malcolm Langford
<i>11:30-12:30</i>	<i>Lunch</i>	
12:30 – 16:30	Studying Lawfare Effects (including political effects and backlash) Quantitative, qualitative and experimental methods for studying different types of lawfare effects (discussions of media content analysis through web-scraping/script-writing/Nvivo) Track 1: Examples and challenges from different fields (meeting room CMI 4 th floor) Track 2: Examples and challenges from the field of gender and sexuality (stay in meeting room CMI 3 rd floor)	Bruce Wilson & Malcolm Langford

Sunday 20 August: 9:00 – 15:00 + social event (Coffee from 8:30)

Lectures and student presentations in separate groups for Track 1 and Track 2.

<i>8:30 - 9:00</i>	<i>Coffee & Tea</i>	
9:00-11:00	Project presentations from course participants Track 1: Examples & challenges from different fields (meeting room CMI 4 th floor) Track 2: Examples and challenges from the field of gender and sexuality (stay in meeting room CMI 3 rd floor)	Marta Machado Luciana Gross Cunha Getnet Tadele Nicholas Orago
<i>11:00 - 11:15</i>	<i>Coffee & Tea</i>	
11:15- 13:00		
<i>13:00 - 13:45</i>	<i>Lunch</i>	
13:45 - 15:00		
<i>15:00 – 22:00</i>	<i>Nature walk and informal social event (optional)</i>	<i>15:00 – 22:00</i>

Monday 21 August - Friday 26 August

Follow program for the Bergen Exchanges on Law & Social Transformation 2016

(see separate program)

There will also be **Ph.D. course sessions in the afternoons** where the two tracks normally will meet separately for lectures; to follow up the sessions of the day or to continue with the Ph.D. Student presentations:

Monday 21 August

14:30 – 16:00 Rashida Manjoo

Tuesday 22 August

15:30 – 17:00 Kathryn Sikkink

Wednesday 23 August

16:15 – 17:15: Daniel Brinks “Distributive effects of law & litigation”

Thursday 24 August

15:30 – 17:00 Rachel Sieder “Legal pluralism and indigenous rights”

Friday 25 August

14:00 – 16:00 Wrap up and Course evaluation

READINGS by day

(Black=all; blue=general track; red=gender&sexuality)

Thursday 17 August

- Comaroff, Jean & John (2007) "Law & Disorder in the Postcolony" *Social Anthropology* 15, 2 pp.133-157
- 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-Villegas, Mauricio "A Comparison of Sociopolitical Legal Studies" *Annual Review of Law and Social Science*, Vol. 12: 25 -44 (2016)
- Gloppen, Siri (2017): "Conceptualizing Lawfare" (Draft article, made available on mitt.uib)
- Gloppen, Siri. "Litigation as a strategy to hold governments accountable for implementing the right to health." *Health and Human Rights* 10(2) (2008): 21-36.
- Hirschl, Ran (2004) "Juristocracy – Political not Juridical" *The Good Society*, 2004, Vol.13(3), pp.6-11
- Van der Sluijs, Jeroen P., et al. "Exploring the quality of evidence for complex and contested policy decisions." *Environmental research letters* 3.2 (2008): 024008
- Van der Sluijs, Jeroen P. (2016). "Numbers running wild. The Rightful Place of Science: Science in the Verge". A. Benessia, S. Funtowicz, M. Giampetro et al. Tempe, AZ, *Consortium for Science , Policy & Outcomes*: 151-187.
- 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.

Friday 18 August

- Langford, Malcolm, César Rodríguez-Garavito, and Julieta Rossi, eds. *Social Rights Judgments and the Politics of Compliance: Making It Stick*. Cambridge University Press, 2017. Chapters 1,14
- McCann, Michael (2006), "Law and Social Movements: Contemporary Perspectives" *Annual Review of Law and Social Science* 2: 17-38
- McCammon, Holly J. and McGrath, Allison R. (2015), "Litigating Change? Social Movements and the Court System" *Sociology Compass* 9:2 128-139
- 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.
- Tsutsui, K., Whitlinger, C. and Lim, A. (2012) "International Human Rights Law and Social Movements: States' Resistance and Civil Society's Insistence" *Annual Review of Law and Social Science*, 8: 367-396
- Budlender, Steven, G. Marcus & N. Ferreira (2014) *Public interest litigation and social change in South Africa: Strategies, tactics and lessons* (Atlantic Philanthropies)
www.atlanticphilanthropies.org/app/uploads/2015/12/Public-interest-litigation-and-social-change-in-South-Africa.pdf
- Deva, Surya. "Public interest litigation in India: A critical review." *Civil Justice Quarterly* 28 (2009): 19-40.
- 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 "Litigating Coal: Systematic Study of Group-Based Legal Mobilization" (Draft paper 2016, will be made available on mitt.uib)

Marshall, Anna-Maria and Daniel Crocker Hale 'Cause Lawyering' *Annual Review of Law and Social Science*, Vol. 10: 301 -320 (2014)

Keck, Thomas M. "Beyond backlash: Assessing the impact of judicial decisions on LGBT rights." *Law & Society Review* 43.1 (2009): 151-186.

Lemaitre, Julieta and Rachel Sieder "The Moderating Influence of International Courts on Social Movements: Evidence from the IVF Case Against Costa Rica"

Greenhouse, Linda, and Reva B. Siegel. "Before (and After) Roe v. Wade: New Questions About Backlash." *The Yale Law Journal* (2011): 2028-2087.

Henderson, J. T., M. Puri, M. Blum, C. C. Harper, A. Rana, G. Gurung, N. Pradhan, K. Regmi, K. Malla, S. Sharma, D. Grossman, L. Bajracharya, I. Satyal, S. Acharya, P. Lamichhane and P. D. Darney (2013). "Effects of Abortion Legalization in Nepal, 2001–2010." *PLoS ONE*.

Sunday 20 August – read all the other students' abstracts

Monday 21 August

Langford, Malcolm, César Rodríguez-Garavito, and Julieta Rossi, eds. *Social Rights Judgments and the Politics of Compliance: Making It Stick*. Cambridge University Press, 2017. Chapters 1,14

Price, Richard S., and Thomas M. Keck. "Movement Litigation and Unilateral Disarmament: Abortion and the Right to Die." *Law & Social Inquiry* (2015).

Wilson, Bruce M. and Olman A. Rodríguez L Costa Rica: understanding variations in compliance. Chapter 4 in Langford et al eds. *Social Rights Judgments and the Politics of Compliance: Making It Stick*. Cambridge University Press, 2017

Albarracín, Mauricio. (2011). "Social Movements and the Constitutional Court: Legal Recognition of the Rights of Same Sex Couples in Colombia." *Sur. International Journal* 8(14) (2011): 7-31.

in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Sieder.pdf>

Mir-Hosseini, Ziba. "Criminalizing sexuality: zina laws as violence against women in Muslim contexts." *SUR-Int'l J. on Hum Rts.* 15 (2011): 7.

Rubio-Marín, Ruth, and Wen-Chen Chang. "Sites of constitutional struggle for women's equality." *Routledge Handbook of Constitutional Law* (2013): 301.

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

Tuesday 22 August

Yamin, Alicia Ely and Paola Bergallo, "Narratives of Essentialism and Exceptionalism: The Challenges and Possibilities of Using Human Rights to Improve Access to Safe Abortion" in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Yamin-Editorial.pdf>

Bergallo, Paola. "The Struggle against Informal Rules on Abortion in Argentina." in Cook, Rebecca J., Joanna N. Erdman, and Bernard M. Dickens, eds. *Abortion law in transnational perspective: cases and controversies*. University of Pennsylvania Press, 2014.

- Cabal, Luisa and Suzannah Phillips "Reproductive Rights Litigation: From Recognition to Transformation in Langford et al eds. *Social Rights Judgments and the Politics of Compliance: Making It Stick*. Cambridge University Press, 2017 p 399-435
- Gianella, Camila "Abortion Rights Legal Mobilization in the Peruvian Media, 1990-2015" in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Gianella.pdf>
- González Vélez, Ana Cristina and Isabel Cristina Jaramillo "Legal Knowledge as a Tool for Social Change: La Mesa por la Vida y la Salud de las Mujeres as an Expert on Colombian Abortion Law" in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Gonzalez.pdf>
- Machado, Marta Rodriguez De Assis and Débora Alves Maciel "The Battle Over Abortion Rights in Brazil's State Arenas, 1995-2006 in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Machado.pdf>

Wednesday 23 August

Sikkink, K. & H.J. Kim 'The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations' *Annual Review of Law & Social Science* Vol.9: 269-285 (2013)

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.

Thursday 24 August

- Lemaitre, Julietta and Sandvik, Kristin Bergtora (2015) "Shifting Frames, Vanishing Resources, and Dangerous Political Opportunities: Legal Mobilization among Displaced Women in Colombia" *Law & Society Review* 49:1 5-38
- Merry, Sally Engle. "Anthropology and Law." In *The SAGE Handbook of Social Anthropology* (2012): 105.
- Sieder, Rachel, and John Andrew McNeish, "Introduction" in Sieder and McNeish, eds. *Gender, Justice and Legal Pluralities: Latin American and African Perspectives*. Routledge, 2013.

Friday 25 August

- 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.
- 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)

General track readings:

Gender & Sexuality track readings

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.
- Comaroff, Jean & John (2007) "Law & Disorder in the Postcolony" *Social Anthropology* 15, 2 pp.133-157
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- Greenhouse, Linda, and Reva B. Siegel. "Before (and After) Roe v. Wade: New Questions About Backlash." *The Yale Law Journal* (2011): 2028-2087.
- Henderson, J. T., M. Puri, M. Blum, C. C. Harper, A. Rana, G. Gurung, N. Pradhan, K. Regmi, K. Malla, S. Sharma, D. Grossman, L. Bajracharya, I. Satyal, S. Acharya, P. Lamichhane and P. D. Darney (2013). "Effects of Abortion Legalization in Nepal, 2001–2010." *PLoS ONE*.
- Keck, Thomas M. "Beyond backlash: Assessing the impact of judicial decisions on LGBT rights." *Law & Society Review* 43.1 (2009): 151-186.
- Lemaitre, Julieta and Rachel Sieder "The Moderating Influence of International Courts on Social Movements: Evidence from the IVF Case Against Costa Rica" in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Sieder.pdf>
- Machado, Marta Rodriguez De Assis and Débora Alves Maciel "The Battle Over Abortion Rights in Brazil's State Arenas, 1995-2006" in *Health & Human Rights Journal*, vol 19, 1, 2017. <http://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Machado.pdf>
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- Rubio-Marín, Ruth, and Wen-Chen Chang. "Sites of constitutional struggle for women's equality." *Routledge Handbook of Constitutional Law* (2013): 301.
- 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

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.
- Anagnostou, Dia, ed. *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-level European System*. Bloomsbury Publishing, 2014.
- 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)
- 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.
- Cepeda-Espinosa, M. J. (2011). "Transcript: Social and Economic Rights and the Colombian Constitutional Court." *Texas Law Review* 89: 1699-1705.
- Charles Ngwená & Ebenezer Durojaye "Strengthening the protection of sexual and reproductive health and rights in the African region through human rights: An introduction" in Charles Cook, Rebecca J., Joanna N. Erdman, and Bernard M. Dickens, eds. *Abortion law in transnational perspective: cases and controversies*. University of Pennsylvania Press, 2014
- Domingo, Pilar. "Judicialization of politics or politicization of the judiciary? Recent trends in Latin America", *Democratization*, 11/1. (2004): 104-126.

- Dyevre, Arthur (2010) "Unifying the Field of Comparative Judicial Politics: Towards a General Theory of Judicial Behaviour," *European Political Science Review* 2, 297-327
- Ferraz, Octavio Luiz Motta. "Harming the poor through social rights litigation: lessons from Brazil." *Tex. L. Rev.* 89 (2010): 1643.
- García, Helena Alviar, Karl Klare, and Lucy A. Williams, eds. *Social and Economic Rights in Theory and Practice: Critical Inquiries*. Routledge, 2014. (295 pp)
- Gargarella, Roberto P. Domingo & T Roux (eds) *Courts and Social Transformation* (Ashgate 2006)
- Gloppen, Siri & Asun L. St Clair. "Climate Change Lawfare." *Social Research* 79.4 (2012): 899-930.
- Gloppen, Siri. "Public Interest Litigation, Social Rights, and Social Policy." *Inclusive States. Social Policy and Structural Inequalities*, Washington: World Bank (2008): 343-367.
- Gloppen, Siri. "Studying Courts in Context" Ch. 13. in Haglund and Stryker, eds. *Closing the Rights Gap: From Human Rights to Social Transformation*. Univ of California Press, 2015.
- Grewal, Sharanbir, and Erik Voeten. "The Politics of Implementing European Court of Human Rights Judgements." Available at SSRN 1988258 (2012) 41 page
- Haglund, LaDawn. "Robyn Stryker, eds. 2015." *Closing the Rights Gap: From Human Rights to Social Transformation*. University of California Press (2015)
- Helmke, G. & Rios-Figueroa, J. (eds.) (2011), *Courts in Latin America* (Cambridge University Press).
- Hilson, Chris (2002), "New social movements: the role of legal opportunity" *Journal of European Public Policy* 9:2 238-255
- ieder, Rachel, and John Andrew McNeish eds. *Gender, Justice and Legal Pluralities: Latin American and African Perspectives*. Routledge, 2013.
- Keck, Thomas M. *Judicial Politics in Polarized Times*. University of Chicago Press, 2014.
- Langford, M., Cousins, B., Dugard, J., and Madlingozi, T. (eds.) (2014), *Socio-Economic Rights in South Africa: Symbols or Substance?* (Cambridge: Cambridge University Press)
- Langford, Malcolm and Anna F.S. Russell (eds) *The Human Right to Water: Theory, Practice and Prospects* Cambridge University Press, 2017
- Langford, Malcolm, César Rodríguez-Garavito, and Julieta Rossi, eds. *Social Rights Judgments and the Politics of Compliance: Making It Stick*. Cambridge University Press, 2017
- Langford, Malcolm. *Social rights jurisprudence: Emerging trends in international and comparative law*. Cambridge University Press, 2008.
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