

Welcome to the

2017 Bergen Exchanges on Law & Social Transformation

The *Bergen Exchanges on Law & Social Transformation* is a meeting place for scholars and practitioners who want to understand how law serves as an instrument of social change and how it shapes, and is shaped by power relations. Through a week of public discussions, we examine the strategic use of rights and law and how legal institutions function as arenas for political contestation (*lawfare*). The multi-disciplinary and international nature of the *Bergen Exchanges* makes it a unique space for developing better research strategies and methods to grasp the effects of law & lawfare. This includes 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 go to court or otherwise engage rights and law to advance their goals. Effects can take different forms. How legal strategies alter political dynamics, ideas and discourses may be as important for long term transformation as more immediate changes in laws, policies, or the distribution of resources. We also seek to better understand the functioning of legal and administrative institutions as they adjudicate, interpret and implement legal norms.

Topics in focus at the 2017 Bergen Exchanges include:

- **How law shapes and changes gender relations** - through abortion laws, migration laws, equality legislation, sexual and gender identity rights, criminalization of gender based violence and child marriage. And what is the currency of law in the political economy of gendered morality?
- **Effects of transitional justice processes.** How do transitional justice institutions (truth commissions, trials) travel? And what makes a good victim?
- **Child rights.** Is Norway fulfilling its international commitments? And how are child welfare services in different countries exercising discretion ‘in the best interest of the child’?
- **Law, democracy & authoritarianism.** What is the role of law in current processes of democratic backlash? How is law used to defend democracy - and to undermine it, for example through anti-terror, NGO-, libel- and “immorality” laws? And how can we study effects of law in authoritarian settings?
- **Law & inequality.** Does the human right to water help the poor? Has land reforms brought social justice? Does court involvement increase inequality – and how can we know?
- **What decides how judges rule** - for example in cases concerning speech rights - or rape? Can we reform courts to make judges more independent not only vis-à-vis the political branches and corrupt influences, but also from their own biases?
- **Law & society in Latin America**

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.**

In connection with the Bergen Exchanges, we have an annual, interdisciplinary **PhD course** on ***Effects of Lawfare***, which this year, in addition to the general track, offers a specialization in ***Gender, Sexuality & The Law*** (see special program). The PhD course is 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.no webpage. **To join our team of volunteers, contact us at info@lawtransform.no**

PROGRAM

2017 Bergen Exchanges on Law & Social Transformation

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

Special focus areas:

21-22 August

Gender, Sexuality & the Law

23-24 August

Effects of Transitional Justice

Unless otherwise noted all **the sessions are Roundtables** lasting 50 minutes with 10 minutes coffee breaks in between. The roundtables normally start with a prepared introduction and a moderated discussion between invited panelists before opening for plenary discussion. **To allow broad participation please keep questions short and sharp.**

Sessions are normally recorded. If this is a problem for you, please let us know.

Unless specifically noted, all events are **public** and participation is **free of charge**

If you have a visible or invisible **disability and require adjustments** to participate of this seminar on an equal basis with others, please let us know in advance.

[info@lawtransform](mailto:info@lawtransform.no)

21-22 August

Gender, Sexuality & the Law

Monday 21 August:

9:00-13:30

Formal opening of the 2017 Bergen Exchanges

- Key Note Address on **Gender, Sexuality and the Law**

- **Gender & Migration**

This session will present findings from an ongoing research project on gender and migration (Migma) which is based at the University of Bergen and affiliated with the LawTransform Migration Unit. The project findings will serve as the basis for a roundtable discussion.

- **Child marriage laws**

Why are child marriage practices so persistent, even in the face of legal changes? How should these practices best be understood and approached? What do we know about what does bring about change, decreasing the age and rates of early marriage (and pregnancy)? How, in the context of migration, do countries like Norway approach the child marriage among migrant – and how should this be done?

- **Domestic violence & the pitfalls of protection: Book Launch**

Introduction/book launch by **Torunn Wimpelmann**

Many countries establish shelters to protect victims of domestic violence – short term – but what are longer-term solutions? How can we effectively deal with safety issues? Torunn Wimpelmann discusses these problems, in her book ***The Pitfalls of Protection: Gender, Violence, and Power in Afghanistan***, based on extensive field. But the problem is not particular to one country or region. In Norway these problems are most acute for Muslim minority women who are difficult to 'hide' in a transparent society.

Monday 18:00 (in "Egget" – followed by reception in Knut Fægri's hus):

- **When gender harms - what can law do about it?**

Femicide, "partnerdrap", honor killings, widow burning, witch trials – in all societies there are gendered killings, triggered by violation of gender norms, or being somebody's woman or. In Latin America **#NiUnaMenos**, the 'not one less' movement challenges what is seen as a cultural strain of aggressive hypermasculinity driving and allowing high levels of violence against women in the region, despite protective laws. What are the institutional solutions to the problem of gender based violence? A common strategy has been to use the law to criminalize gender violence, increase penalties, put more people in jail. Is this effective? Is the criminal law the best tool? Or do we need to approach these problems by other means, such as gender education in schools? Is there a need for an international convention on violence

against woman, and, if so, what should it look like? And what is the most feasible approach to getting it in place

Tuesday 22 August

9:00-13:30

- **Abortion Rights Lawfare in Latin America – methods and findings**

This roundtable presents findings from a 3 year LawTransform research project, led by **Rachel Sieder** analyzing the strategic use of rights and law in the contentious battles over abortion rights in Latin America. Access to legal abortion is severely restricted in most of the region and the project focuses on movement and countermovement patterns and dynamics, and considers the various effects of this lawfare between opposing groups. The effects of lawfare on abortion deserve special attention on account of the implications for gender relations, the dignity, health, autonomy and wellbeing of vulnerable groups, and for social policy. The project case studies analyze battles over legal abortion and the counter-progressive use of courts and other government institutions, focusing on the nature, form, causes and consequences of such lawfare. The cases include Argentina, Brazil, Colombia, Mexico, Peru, and El Salvador and two studies analysing regional and global dimensions and trends of lawfare around abortion and women's health rights. Findings indicate: a growing importance of trans-/international forums and organizing; a retreat from moral/religious framings in battles over abortion and a growing importance of rights; and backlash dynamics that are not uni-linear, and differ significantly from patterns suggested by research on the USA.

- **Abortion Rights Lawfare: comparative perspectives**

Abortion rights are contested in all regions of the world, and activists on all sides use courts – domestic as well as international – as well as the legislative arena and the streets to fight their cause. This session brings together experts on struggles over abortion rights from the Americas, Africa, Europa and India, to discuss the similarities and differences in how these struggles in and out of court play out in the different cultural and political contexts.

- **International drivers of anti- sexual & reproductive rights lawfare**

Abortion rights are contested in all regions of the world, and activists on all sides use legal strategies and arenas to advance their goals. We know that strategies are developed, spread and enabled through dense international networks, but in particular with regard to the “anti’s” these networks remain opaque.

EADI panel:

- **The Political Economy of Sexuality and Abortion**

Across the globe, “morality” issues such as homosexuality and abortion have become high stake politics, constituting rallying points for political mobilization and contestation in the political branches as well as in the courts. Abortion related questions play a central political role in Latin America, issues of same sex relations do the same on the African continent. In the USA both issues have been highly politicized for decades, and in several European countries, they are recurring in the political debate, recently quite dramatically in Poland. Why is this so? Some see this mainly in religious terms, and particularly as a result of American evangelical churches gaining increased global influence. Others point to the strategic value, the political currency of these highly morally charged issues. Political leaders – from Russia's President Putin, Uganda's President Museveni and Nicaraguan president Daniel Ortega, to Donald Trump – have found homophobia and resistance to ‘gender ideology’ and reproductive rights highly effective tools for creating alliances, diverting attention and

mobilizing political support. This roundtable will analyze the political economy of sexuality and abortion around the globe.

14:30 – 15:00

- **“Poster” session: Politicization of gender & sexuality in African media**

This short session present findings from a pilot study of the debates on homosexuality in African newspapers as part of the LawTransform project on Political Determinants of Sexual and Reproductive Health in Africa (GLOBVAC).

Tuesday 18:00 /EADI event

- **Law & Society in Latin America:** book launch & debate

The increasing judicialization of politics and social struggles in Latin American over the past decades – from demands for transitional justice, and indigenous constitutions, to judicialized environmental conflicts and an ‘epidemic’ of health right litigation – is also reflected in the scholarship in and on the region. But while the body of literature dealing with legal institutions and processes is growing, both within law and the social sciences, it is still a fragmented field. The **Handbook on Law and Society in Latin America**, edited by Rachel Sieder, Karina Ansolabehere and Tatiana Alonso is the first attempt by central social-legal scholars in the region to give a comprehensive overview and analysis of the state of Latin American law and society scholarship. The publication of the volume in mid-2017, offers a great occasion for scholars interested in the Latin-American region – and in the role of law in development processes more broadly – to gain knowledge into this dynamic field.

This event – which serves as a joint book launch and round-table – will be organized in three parts. First the book’s editors and authors will present snapshots from the book and discuss the main contributions of the socio-legal literature towards the understanding of Latin American society and politics.

In the second part, we zoom in on the issue of what makes judgments stick, an issue that is increasingly in focus in the law & society literature in Latin-America and beyond, and that is the subject of another recent book **Social Rights Judgments and the Politics of Compliance: Making It Stick**. (CUP 2017) edited by Malcolm Langford, César Rodríguez-Garavito, and Julieta Rossi.

The third part, leading scholars in the field, from Latin America as well as from the US and Europe, will discuss the future for law and society research in the region. Based on advances made in the literature and the social and political developments in the region, what are the remaining challenges for socio-legal scholarship in and on Latin America? And should the focus be regional, or are these issues better addressed by cross-regional comparisons?

Wednesday 23 Aug.: Law, Democracy & Authoritarianism

9:00-13:30

EADI panel:

- **Understanding the Backlash against Democracy in Africa**

Many African countries are leading the global charge in clamping down on democracy, adopting legal restrictions on key civil and political rights that form the basis of democratic rule, including freedoms of association, speech, and information; the ability to choose political leaders; rule of law with recourse to independent courts; and rights and freedoms related to reproduction and family life, gender equality, sexual orientation and gender identity. Domestically, the restrictions privilege some social groups at the expense of other groups and contribute to a rise in political inequality. This trend has coincided with increasing social and economic inequalities as well as an increase in social unrest and outward migration. Internationally, the African democratic backlash challenges global actors who have pressured developing countries to politically liberalize in the post-Cold War period. Yet, we have insufficient understanding of why this democratic backlash is happening, what the implications are, and which responses are effective under different conditions. In this panel, we invite panelist to reflect on the timing and causes of the backlash against democracy in Africa. Did it start recently, or is it simply a result of a correction of the overoptimistic assessments of the 1990s? What contributed to the withdrawal of the third wave of democratization on the continent? What role has domestic elites played in this development, and which rights have been targeted? And what has been the role of the international community in the backlash? The panel invites both papers that are looking at concrete country cases across time and papers that look regional and continental trends. Academic panel with open call for papers.

- **How to Strangle Civil Society – and to resist?**

Across the world we see a clampdown on organizations reporting on human rights, and a much used strategy in the repertoire of coercive measures is to introduce new NGO-legislation tightening the conditions for organizations that are considered political, including restrictions on foreign funding. Cases include Russia, India, Egypt, Angola, Kenya and many other. How is this affecting the democratic processes in these societies, and what are the strategies for countering this development.

- **Researching law in authoritarian settings**

While rule of law may be a central feature of democracy, law – and rule by law – is also central in authoritarian states. Most of our thinking about law is focused on democratic societies, as are most methods for doing legal and socio-legal research. To research law and legal institutions' functioning and effects in authoritarian settings presents a range of special challenges. In this session experienced scholars discuss what these challenges consist of and how they can be negotiated

- **Human Rights in the USA under the Trump Administration**

Will include an introduction by **Douglas Johnson** (Director, Carr Center for Human Rights Policy, Harvard Kennedy School) on **The use of torture in the US**

Special focus 23-24 August

Effects of Transitional Justice

Wednesday 23 Aug. 14:30 – 16:00

EADI panel:

- **Gender and Transitional Justice: How are gendered crimes and injustices dealt with in transitional justice processes?**

Transitional justice mechanisms have become the norm rather than the exception in post-conflict or post-authoritarian settings. Whereas transitional justice processes were largely nationally driven in the 1980s and part of the 1990s, international involvement in finding solutions for how to address past gross and systematic human rights violations has become increasingly common and the processes have evolved in several respects: International law has gained importance for how transitional justice measures (such as criminal prosecution, truth commissions, reparations and amnesty laws) are established and implemented, and lines between transitional justice and general development goals – such as the right to health, access to justice and reduction of inequality – are becoming increasingly blurred. Yet, scholars have argued that the strong links between transitional justice and gender equality have been overlooked and underdeveloped in both theory and practice. In this panel, we invite panelists to reflect on how and in which ways transitional justice processes can be used as a tool for advancing gender equality. Where and how have transitional justice measures been geared towards addressing violations against women committed during periods of authoritarianisms or internal armed conflict? Do truth commissions specifically address violence against women in their reports? Do truth commissions include a gender perspective in their recommendations? Are reparations formulated to address women's issues in particular – sexualised violence, rape, health, landownership, to mention but some examples? We invite theoretical as well as empirical contributions and encourage young scholars who are working on these issues to apply.

Annual Lecture on Law & Social Transformation

Kathryn Sikkink

(Harvard University, USA)

Evidence for Hope: Making Human Rights Work in the 21st Century

18:00 Bergen University Aula

Panel debate

What now? Strategies for human rights activism & defense in populist times

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Thursday 24th August

9:00-13:30

- **Transitional Justice in Latin America - book launch:**

The book - Co-edited and co-authored by **Jemima García-Godos, Cath Collins, and Elin Skaar** addresses current developments in transitional justice in Latin America – effectively the first region to undergo concentrated transitional justice experiences in modern times. Using a comparative approach, it examines trajectories in truth, justice, reparations, and amnesties in countries emerging from periods of massive violations of human rights and humanitarian law. The book examines the cases of Argentina, Brazil, Chile, Colombia, Guatemala, El Salvador, Paraguay, Peru and Uruguay, developing and applying a common analytical framework to provide a systematic, qualitative and comparative analysis of their transitional justice experiences. More specifically, the book investigates to what extent there has been a shift from impunity towards accountability for past human rights violations in Latin America. The book assesses how the quality, timing and sequencing of transitional justice mechanisms, along with the context in which they appear, have mattered for the nature and impact of transitional justice processes in the region. This session will also have a focus on **how transitional justice travels**. To what extent have the lessons learned from the TJ protagonist region of Latin America travelled to the rest of the world? How has the changing international context – specifically international law and regional and international courts, like the Inter-American Court of Human Rights and the International Court of Justice (ICC) influenced this development? What are the main challenges for countries still in conflict, like the Middle East, with respect to human rights violations?

- **'Beyond Words' project on truth commission recommendations**

The transformative potential of truth commissions (TCs) arguably lies most directly in the body of recommendations put forward in the report. TC recommendations usually include reforms in the legal, political and social fields, and reparations of various kinds. The list is often extensive. The tendency over time has been towards longer list of recommendations. This in itself raises questions about expectations and the possibility of implementation. In general, implementing TC recommendations clearly faces many obstacles. The implementation record is generally poor. Nonetheless, implementation has not been systematically examined, either within a case or across cases. Moreover, the relationship between the nature of recommendations, aspects of the political and socio-economic environment into which they are introduced, and implementation has largely been neglected in the scholarly literature. This panel presents findings from a three years research project on the implementation record of the recommendations made by 13 truth commissions, established since the early 1980s in 11 Latin American countries: Argentina, Brazil, Chile, Ecuador, El Salvador, Guatemala, Haiti, Panama, Paraguay, Peru, and Uruguay.

- **Constructing a victim**

Who can be a proper victim? How victims are represented in academic work as well as in media raises the issue of agency. Sometimes the "ideal victim profile" can deny victims agency, and hamper their political involvement. This is not least the case in relation to Transitional Justice processes where transitional justice mechanisms many times create narrow victims profiles. (But also relevant for other cases – refugees and migrants, rape trials, aids litigation etc. etc.)

Thursday 24th August 18:00 – 20:00

- **Evening event: What decides how judges rule?**

This session will look what we know about what influences how judges rule in different types of cases – including as politically sensitive and gendered cases such as of rape and freedom of expression – and what are the most effective ways of securing judicial independence in a context where this is increasingly under threat internationally.

Friday 25 August: Law & Inequality

9:00-13:30

- **Law & Prejudice**

What triggers prejudice against particular population groups, such as Roma, or LGBTIQ people? Can experiments help us understand when and how this triggered - and the role that law does and might play in these processes?

- **Land, Law & Inequality – towards a new research agenda**

Land remains a main source of livelihood and wealth - and of social conflict and inequality. This is exacerbated as population pressures, development needs and climate change increase the competition for scarce resources, often threatening already marginalized groups depending on the land. Property rights to land and natural resources have been fiercely contested for centuries, and are in some cases actively used as a tool for redistribution but with limited success. In this session we present the findings from the recently completed LawTransform project on **Lands rights & inclusive sustainable development in india**, which investigates the social effects of diverse legal regulations of land in Indian states, and use this as the basis for a broader discussion on how to theorize and research the role and effects of land rights in the current global context.

- **Can water rights bring water to the poor? Book & project launch**

Water is a vital, valuable and highly contested natural resource. The international society has recognized this by, in 2010 affirming the independent 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. A new book on *The Right to Water* edited by **Malcolm Langford** (Cambridge UP April 2017) investigates the development of the human right to water and in this session we both hear about the findings from this work and launch a new 4 year LawTransform research project on *Elevating water rights to human rights: Has it strengthened marginalized peoples' claim for water?*

- **Implementing Child Rights in Norway**

Results from book project edited by **Malcolm Langford, Marit Skivenes and Karl Harald Søvig** on implementation of the rights of the child in Norway. A special focus is on the rights of migrant children. On paper, the rights of migrant children seem well protected in Norway and elsewhere but in practice their rights are often compromised as migration and asylum policies

are tightened. This session will discuss some of the main challenges faced by child migrants and asylum seekers, but in relation to the asylum process – including in relation to age assessments – and in relation to the integration process.

-- this and the evening session leads up to Bergen Exchange 2018 where child rights will be a main focus, including as a PhD special track.

Friday 18:00 Project Launch & reception, at Bergen Literature House

- **Launch of new ERC project on “Professional Discretion and the Child’s Best Interest in Child Protection”**

The project is directed by **Marit Skivenes**
who also heads the LawTransform Child Rights Unit

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