

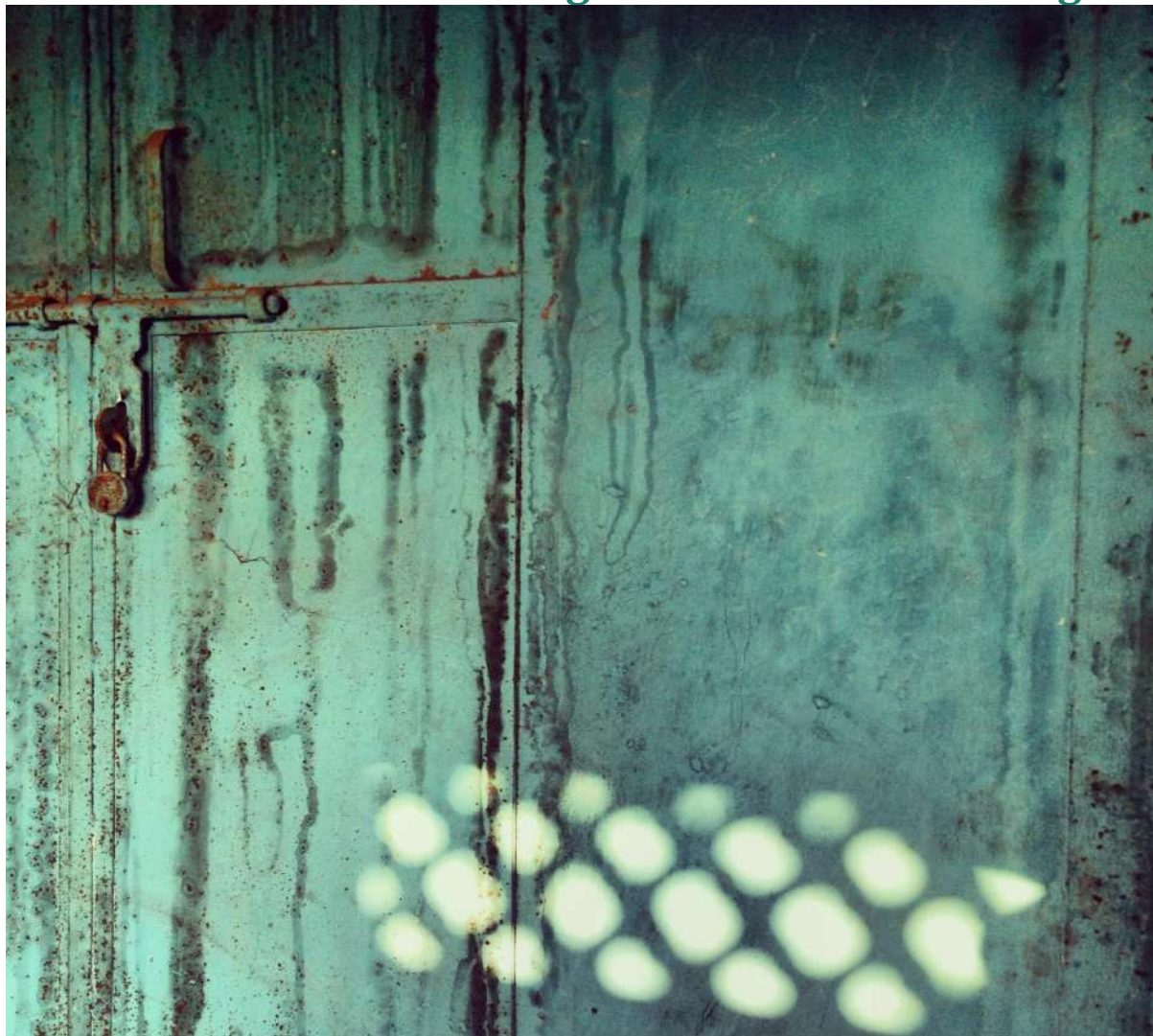


# Reading List

Ph.D. course University of Bergen (AORG908-H21)

## Effects of Lawfare

Courts and law as battlegrounds for social change



# Core readings

In addition to the core readings, you should make a personal reading list of at least 500 pages. We recommend selecting these from the list of supplementary readings (to be provided).

## Introducing lawfare. Social and legal mobilization

### Articles

Brinks, Daniel M., Varun Gauri, and Kyle Shen. "Social rights constitutionalism: negotiating the tension between the universal and the particular." *Annual Review of Law and Social Science* 11 (2015): 289-308. McCammon, Holly J.

Cichowski, Rachel A. "Women's rights, the European Court, and supranational constitutionalism." *Law & Society Review* 38.3 (2004): 489-512.

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.

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. (2005) "Courting Disaster: Looking for Change in All the Wrong Places." *Drake L. Rev.* 54: 795.

Sabel, Charles, and William Simon. (2004). "Destabilization Rights: How Public Law Litigation Succeeds." *Harvard Law Review* 117:1016.

### Book Chapters

Epp, Charles R. (1998) *The rights revolution: Lawyers, activists, and supreme courts in comparative perspective*. Chicago: University of Chicago Press. (Chapters 1,2,11)

McCann, Michael (2008) *Litigation and Legal Mobilization*. *The Oxford Handbook of Law and Politics*. Edited by Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington

### Papers, articles, pre-prints and other resources from the web/in file register

Gloppen, Siri (2018) *Conceptualizing Lawfare: A Typology & Theoretical Framework* (CMI/LawTransform working paper)

Roa, Mónica with Barbara Klugman (2018) *Seeking Social Change in the CourtsDa: Tools for strategic advocacy*. Women's Link Worldwide, 2018

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## Courts as battlegrounds and actors of social change

Castagnola, Andrea. (2017) «Introduction» in Andrea Castagnola *Manipulating Courts in New Democracies: Forcing Judges Off the Bench in Argentina*. Routledge, 2017.

Epstein, Lee, and Stefanie A. Lindquist, eds. *The Oxford handbook of US judicial behavior*. Oxford University Press, 2017. (Chapters 14, 15, 16, 17)

### **Papers, articles, pre-prints and other resources from the web/in file register**

Brinks, Daniel M, Sandra Botero and Ezequiel Gonzalez-Ocantos (forthcoming) "Introduction" in Brinks, Botero and Gonzalez-Ocantos *Broken Promises? Taking stock of the Judicialization of Politics in Latin America* (Cambridge University Press)

Skaar, Elin, Pilar Domingo, Siri Gloppen and Marianne Tøraasen (forthcoming) «Stuying Women on the Bench in Fragile States» (*Law & Society Review*)

## Studying effects of lawfare

### **Articles**

Brinks, Daniel M, and Varun Gauri. (2014)"The law's majestic equality? The distributive impact of judicializing social and economic rights." *Perspectives on Politics* 12.02: 375-393.

Crenshaw, Kimberle. "Mapping the margins: Intersectionality, identity politics, and violence against women of color." *Stan. L. Rev.* 43 (1990): 1241

Jjuuko, Adrian (2020) «Chapter 1: LGB Strategic Litigation and Social Change» in Juuko, *Strategic Litigation and the Struggle for Lesbian, Gay and Bisexual equality in Africa* (accessible at: [https://www.lawtransform.no/wp-content/uploads/2020/10/Strategic\\_litigation\\_wCover-j6uuzr-1.pdf](https://www.lawtransform.no/wp-content/uploads/2020/10/Strategic_litigation_wCover-j6uuzr-1.pdf))

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

Merry, Sally Engle (2015) Quantification and the Paradox of Measurement: Translating Children's Rights in Tanzania. *Current Anthropology*, Vol. 56, No. 2 (April), pp. 205-229

### **Book Chapters**

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

### **Papers, articles and other resources from the web**

Chilton, Adam S., and Mila Versteeg. 2016. "Rights Without Resources: The Impact of Constitutional Social Rights on Social Spending." In *Law and Economics Research Paper Series*. University of Virginia School of Law - <https://ssrn.com/abstract=2857731>

Center for Economic and Social Rights (2012). *The OPERA Framework Assessing compliance with the obligation to fulfill economic, social and cultural rights*

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## Research ethics

### Articles

- Amon, J. J., et al. (2012). "Human Rights Research and Ethics Review: Protecting Individuals or Protecting the State?" PLoS Med 9(10).
- Davies, D. and J. Dodd (2002). "Qualitative Research and the Question of Rigor." Qualitative Health Research 12(2): 279-289.
- Fontes, L. A. (2004). "Ethics in Violence Against Women Research: The Sensitive, the Dangerous, and the Overlooked." Ethics & Behavior 14(2): 141 - 174.
- Van der Sluijs, Jeroen P., et al. (2008) "Exploring the quality of evidence for complex and contested policy decisions." Environmental research letters 3.2 : 024008

## General Track sessions:

### Articles

- Dugard, J (2016) "Testing the Transformative Premise of the South African Constitutional Court: A Comparison of High Courts, Supreme Court of Appeal and Constitutional Court socio-economic rights decisions, 1994-2015", 20(8) The International Journal of Human Rights pp 1132-1160
- Gianella Malca, C. and A. Yamin (2019). "Struggle and Resistance: Using International Bodies to Advance Sexual and Reproductive Rights in Peru." Berkeley Journal of Gender, Law, and Justice
- Machado, Marta Rodriguez de Assis; Maciel, Débora Alves. The Battle over Abortion Rights in Brazil's State Arenas, 1995-2006. *Health and Human Rights Journal*, [s.l.], vol. 19, p. 119-131, jun. 2017. <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/13/2017/06/Machado.pdf>
- Shen-Bayh, Fiona. "Strategies of repression: judicial and extrajudicial methods of autocratic survival." *World Politics* 70.3 (2018): 321-357
- Sieder, Rachel and Barrera, Ana (2017) Women and Legal Pluralism: Lessons from Indigenous Governance Systems in the Andes. J. Lat. Amer. Stud.

### Book Chapters

- Dugard, J T Madlingozi and K Tissington (2015) "Rights-compromised or rights-savvy?: The use of rights to advance socio-economic struggles by Abahlali baseMjondolo, the South African shack-dwellers' movement" in H Alviar, K Klare and L Williams (eds) Social and Economic Rights in Theory and Practice: A critical assessment (New York: Routledge)
- Lépinard, Éléonore, and Ruth Rubio Marin (2018) "Introduction: completing the unfinished task?: gender quotas and the ongoing struggle for women's empowerment in Europe." In Lépinard and Rubio-Marín, eds. *Transforming gender citizenship: The irresistible rise of gender quotas in Europe*. (Cambridge University Press)

### Papers, articles, pre-prints and other resources from the web/in file register

- Arriola, Leonardo et al. (2021) "LGBT litigation and social change in Kenya" (paper)
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- Brinks, Daniel, Arkaja Singh and Bruce Wilson (2021) "Elevating the Right to Water to a Human Right – does it make a difference to poor peoples' access to water?" (paper, introduction to special issue)
- Gloppen. Siri, Thalia Gerzo and Nic van de Walle (2022) "Legal Mechanisms of Democratic Backlash in Africa" in Arriola, Rakner and van de Walle *Democratic Backlash in Africa* (paper, forthcoming Oxford University Press)
- Gloppen Siri and Rachel Sieder "Interview fieldwork & observational methods in constitutional law" in Langford and Law *Research Methods in Constitutional Law*, (paper, forthcoming EE Elgar)
- Nabaneh, Satang (2020) Introduction in "Power Dynamics In The Provision Of Legal Abortion: A Feminist Perspective On Nurses And Conscientious Objection In South Africa" (PhD Thesis, University of Pretoria)
- Wahi , Namita and Ankit Bhatia, The legal regime and political economy of land rights of Scheduled Tribes in Scheduled Areas of India"  
<http://cprindia.org/research/reports/legal-regime-and-political-economy-land-rights-scheduled-tribes-scheduled-areas>

## Child Rights Track sessions:

### Articles:

- Archard, D., & Skivenes, M. (2009a). Balancing a Child's Best Interests and a Child's Views. *The International Journal of Children's Rights*, 17(1), (1–21).  
<https://doi.org/10.1163/157181808X358276> (21 pages)
- Archard, D., & Skivenes, M. (2009b). Hearing the child. *Child & Family Social Work*, 14(4), (391–399). <https://doi.org/10.1111/j.1365-2206.2008.00606.x> (8 pages)
- Breen, C., Krutzinna, J., Luhamaa, K., & Skivenes, M. (2021). Family Life for Children in State Care: An Analysis of the European Court of Human Rights' Reasoning on Adoption Without Consent. *The International Journal of Children's Rights*, 28(4), (715–747).  
<https://doi.org/10.1163/15718182-28040001> (32 pages)
- Burns, K., Križ, K., Krutzinna, J., Luhamaa, K., Meysen, T., Pösö, T., Sánchez-Cabezudo, S. S., Skivenes, M., & Thoburn, J. (2019). The Hidden Proceedings – An Analysis of Accountability of Child Protection Adoption Proceedings in Eight European Jurisdictions. *European Journal of Comparative Law and Governance*, 6(1), 339-371).  
<https://doi.org/10.1163/22134514-00604002> (32 pages)
- Kilkelly, U. (2019). The UN convention on the rights of the child: Incremental and transformative approaches to legal implementation. *The International Journal of Human Rights*, 23(3), (323–337). <https://doi.org/10.1080/13642987.2018.1558974> (14 pages)
- Macfarlane, L. (2021). A new welfare test for family court cases: Plus ça change..? *The Journal of the Law Society of Scotland*, March, (24–25). <https://edition.pagesuite-professional.co.uk/html5/reader/production/default.aspx?pubname=&edid=dc838b72-68f3-4abe-9c42-65baf679ce43> (2 pages)
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O'Mahony, C. (2019). Child Protection and the ECHR: Making Sense of Positive and Procedural Obligations. *The International Journal of Children's Rights*, 27(4), (660–693).  
<https://doi.org/10.1163/15718182-02704003> (33 pages)

### Books & Chapters:

Archard, D. (2003). *Children, Family and the State*. Ashgate.  
<https://contents.bibsys.no/content/075460554x> (190 pages)

Berrick, J. D., Gilbert, N., & Skivenes, M. (In press a). Child protection systems across the globe – an introduction. In J. D. Berrick, N. Gilbert, & M. Skivenes (Eds.), *International Handbook of Child Protection Systems* (Chap.1). Oxford University Press. (33 pages) → *Pre-print provided*

Berrick, J. D., Gilbert, N., & Skivenes, M. (In press b). Emerging trends and the way forward for protection of children. In J. D. Berrick, N. Gilbert, & M. Skivenes (Eds.), *International Handbook of Child Protection Systems* (Chap. 46). Oxford University Press. (49 pages) → *Pre-print provided*

Kilkelly, U., & Liefwaard, T. (2018). International Children's Rights: Reflections on a Complex, Dynamic, and Relatively Young Area of Law. In *International Human Rights of Children* (Chap. 26, pp. 617–627). Springer. [https://doi.org/10.1007/978-981-10-4184-6\\_23](https://doi.org/10.1007/978-981-10-4184-6_23) (10 pages)

Kriz, K. (2020). Introduction. In K. Kriz (Ed.), *Protecting Children, Creating Citizens: Participatory Child Protection Practice in Norway and the United States* (Chap 1, pp.1-25). Policy Press. <https://policy.bristoluniversitypress.co.uk/protecting-children-creating-citizens> (25 pages)

Sutherland, E. E., & Barnes Macfarlane, L.-A. (2016). Introduction. In E. E., Sutherland, & L.-A., Barnes Macfarlane (Eds.), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (pp. 1-17). Cambridge University Press. <https://doi.org/10.1017/9781316662977> (18 pages)

Sutherland, E. E. (2016). Article 3 of the United Nations Convention on the Rights of the Child: The Challenges of Vagueness and Priorities. In E. E., Sutherland, & L.-A., Barnes Macfarlane (Eds.), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (Chap. 1, pp. 21-50). Cambridge University Press. <https://doi.org/10.1017/9781316662977> (29 pages)

Falch-Eriksen, A., & Backe-Hansen, E. (2018). Child Protection and Human Rights: A Call for Professional Practice and Policy. In A., Falch-Eriksen, & E., Backe-Hansen (Eds.), *Human Rights in Child Protection: Implications for Professional Practice and Policy* (1<sup>st</sup> ed.)(Chap. 1, pp. 1-14) . Palgrave Macmillan.  
<https://www.palgrave.com/gp/book/9783319947990> (14 pages)

Pösö, T., Skivenes, M., & Thoburn, J. (2021). Introducing the field of adoption from care. In T., Pösö, M., Skivenes, & J., Thoburn (Eds.), *Adoption from Care: International Perspectives on Children's Rights, Family Preservation and State Intervention* (Chap 1., pp. 1-16). Policy Press. <https://policy.bristoluniversitypress.co.uk/adoption-from-care> (16 pages)

Pösö, T., Skivenes, M., & Thoburn, J. (2021). Making sense of adoption from care in very different contexts. In T., Pösö, M., Skivenes, & J., Thoburn (Eds.), *Adoption from Care: International Perspectives on Children's Rights, Family Preservation and State Intervention* (Chap 15., pp. 249-265). Policy Press. <https://policy.bristoluniversitypress.co.uk/adoption-from-care> (16 pages)

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