

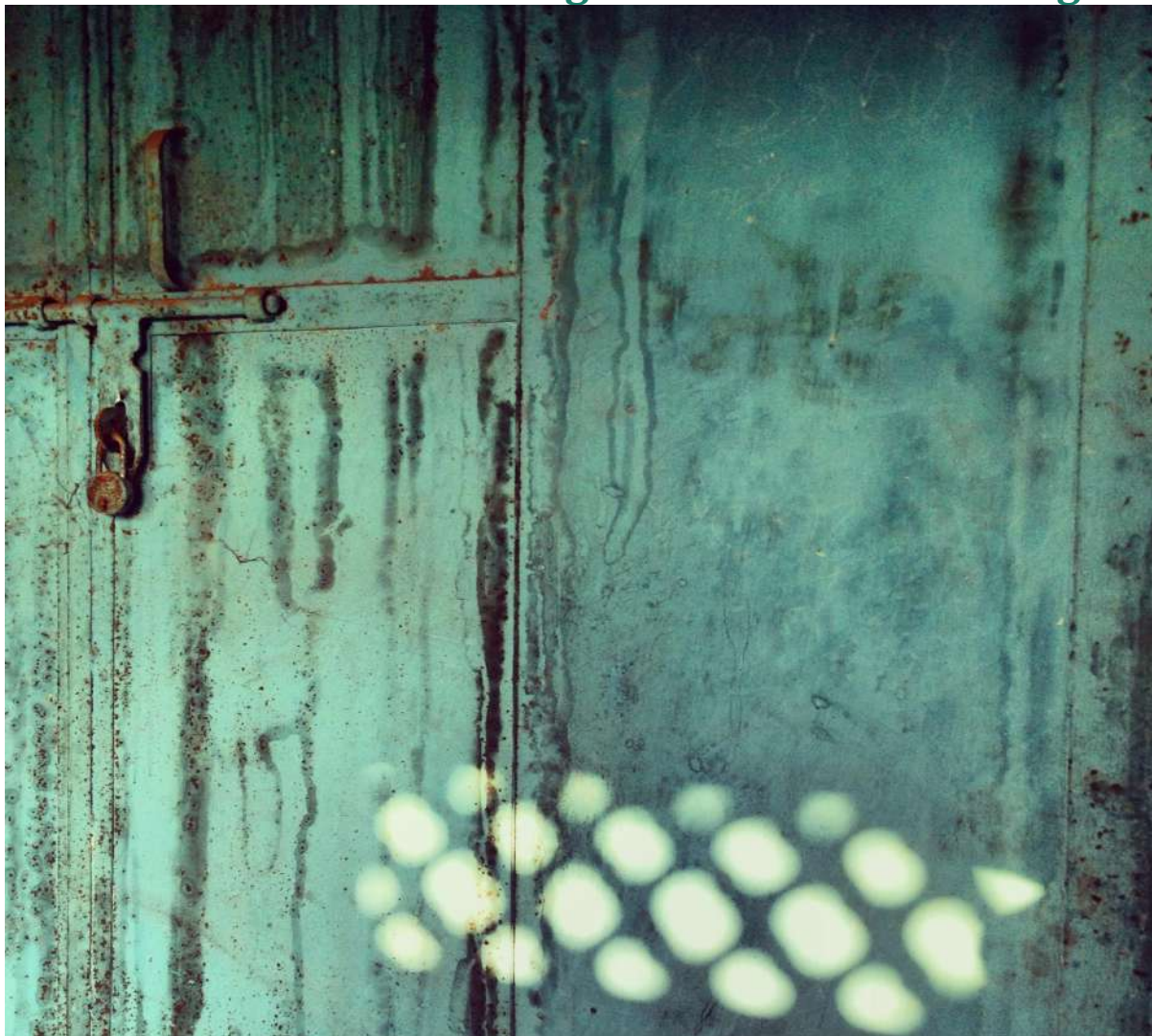


# Reading List

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 Tørraasen (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 ca 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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