



**Ph.D. course University of Bergen
Wednesday 15 August – Friday 24 August 2018**

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



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

With the option of taking this as a **General Course**
or with a specialization in Effects of Lawfare concerning
Health Rights - or - Rights of the Child

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 scholar 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 three tracks.

- Track one takes a broad focus **on the strategic use of law across a range of fields** (health; child rights; gender and sexuality; migration; natural resources, criminal law, poverty).
- Track two and three emphasizes the use of law as a tool in contestations over issues concerning **the rights of the child** or **health rights**

The three tracks will meet together for most of the course, but with some separate sessions, including for the presentations and discussion of the students' own work, and will have some separate readings. For the *Health Rights* and *Right of the Child* specializations, more of the readings will have a health/child rights focus, including for some of the joint and public (Bergen Exchanges) sessions where the topic is not health/child rights per se, but where this is nevertheless relevant. Readings will be distributed 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 2018 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 applicant from Norwegian and international institutions on a first-come first serve basis. Participants do, however, have to cover their own travel and accommodation costs.

Course leaders: **Siri Gloppen** (Comparative Politics, UiB); **Bruce Wilson** (University of Central Florida/CMI); **Camila Gianella** (CMI); **Marit Skivenes** (Administration and Organization Theory, UiB), **Alicia Yamin** (Georgetown University, USA) **Paola Bergallo** (Di Tella University, Buenos Aires)
Lecturers (tbc*): **Malcolm Langford** (University of Oslo/CMI); **Jeroen van der Slujs** (Philosophy of Science, UiB); **Daniel Brinks** (University of Texas, Austin).

PhD course 15-24 August 2018
Effects of Lawfare:
Courts and law as battlegrounds for social change

Wednesday 15 August: 9:00 – 16:00 (Registration, Coffee, from 8:30)

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| <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 | Siri Gloppen |
| <i>11:30- 12:30</i> | Lunch | |
| 12:30 – 1400 | Social & legal mobilization social movement theory | Bruce Wilson |
| <i>14:00 - 14:30</i> | <i>Coffee & Tea Break</i> | |
| 15:00 -16:30 | Conceptualizing lawfare effects – introduction lawfare effects: material, political and symbolic | |

Thursday 16 August: 9:00 – 17:00 (Coffee, from 8:30)

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| <i>8:30 - 9:00</i> | <i>coffee & tea</i> | |
| 9:00 - 11:30 | Methods for studying effects of lawfare – introduction (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) | |
| <i>11:30- 12:30</i> | Lunch | |
| 12:30 – 15:00 | Studying effects of lawfare – by track Track 1: Examples & challenges from different fields (meeting room CMI 4 th floor) Track 2 & 3: Examples & challenges from the fields of Right to health (meeting room CMI 3 rd floor) Rights of the Child (meeting room UIB Global) | |
| <i>15:00 – 15:30</i> | <i>Coffee & Tea Break</i> | |
| 15:30 -17:00 | <i>Public seminar:</i> XXXX (Irus Braverman?) | |
| <i>17:00 -</i> | <i>Informal Social Event</i> | |

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

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| 8:30 - 8:45 | <i>Coffee & Tea</i> | |
| 8:45 - 9:00 | Recap & introduction to the day | Bruce Wilson |
| 09:00 - 11:30 | Student presentations by track Track 1: Examples & challenges from different fields (meeting room CMI 4 th floor) Track 2 & 3: Examples & challenges from the fields of Right to health (meeting room CMI 3 rd floor) Rights of the Child (meeting room UIB Global) | |
| 11:30 -12:30 | <i>Lunch</i> | |
| 12:30 – 13:30 | Student presentations by track continued | |
| 15:00 – 15:30 | <i>Coffee & Tea Break</i> | |
| 14:00- 16:00 | Responsible evidence appraisal | Jeroen van der Slujs |

Sunday 19 August: Mountain Walk + Social Event

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| 15:00 – 22:00 | <p><i>Nature walk and informal social event (optional)</i></p> <p>If you want to join the mountain walk (with other participants at the Bergen Exchanges, you can either meet at CMI at 3pm or at Fløibanen at 3:30 After taking the funicular the group will walk to Siri's house (Sølvberget 22) for an informal social gathering</p> <p>You can also come directly to the house (for example by bus) at 6pm.</p> | 15:00 – 22:00 |
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Monday 20 August - Friday 24 August

Follow program for the Bergen Exchanges on Law & Social Transformation 2018
(see separate program for details on time, venue etc. for the different seminars)
 During the week of the Bergen Exchanges there will also be **Ph.D. course sessions in the afternoons (16:00 – 17:00)**

Monday 21 August:

Tuesday 22 August

Thursday 24 August

Friday 25 August: – certificates and course evaluation

READINGS

Reading list General Track per day

WEDNESDAY 15

Introducing Lawfare: Concepts, approaches

Articles

Domingo, Pilar. "Judicialization of politics or politicization of the judiciary? Recent trends in Latin America", *Democratization*, 11/1. (2004): 104-126.

Gianella-Malca Camila (2017). Abortion Rights legal mobilization in the Peruvian Media 1990 - 2015. *Health and Human Rights Journal*; 19(1): 133 – 47

Gloppen, Siri (2018) Conceptualizing Lawfare: A Typology & Theoretical Framework

Social & legal mobilization

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).

Articles

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

McCammon, Holly J. and McGrath, Allison R. (2015), "Litigating Change? Social Movements and the Court System" *Sociology Compass* 9:2 128-139

McCann, Michael. (1996). "Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive...)." *Law & Social Inquiry* 21(2): 457-482.

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

Wilson, Bruce M., and Juan Carlos Rodríguez Cordero. (2006) "Legal Opportunity Structures and Social Movements The Effects of Institutional Change on Costa Rican Politics." *Comparative Political Studies* 39.3: 325-351

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>.

Conceptualizing lawfare effects - introduction

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

Wilson, Bruce M. and Olman A. Rodríguez L (2017). 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

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.

Gianella, Camila & **Yamin**, Alicia Ely. *Struggle and Resistance: Using International Bodies to Advance Sexual and Reproductive Rights in Peru*, Berkeley J. Gender L. & Just. (forthcoming 2018).

Keck, T. (2009). "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights." *Law & Society Review* 43(1): 151-185.

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.

THURSDAY 16

Methods for studying effects of lawfare – introduction

(including **political effects** and **backlash**)

Book Chapter

Merry, Sally Engle (2012). "Anthropology and Law." In *The SAGE Handbook of Social Anthropology*: 105

Articles

Engel, Stephen. (2013). "Frame Spillover: Media Framing and Public Opinion of a Multifaceted LGBT Rights Agenda." *Law & Social Inquiry* **38**(2): 403–441.

Saltelly, Andrea and Funtowicz, Silvio. "The Fallacy of Evidence –Based Policy". The Rightful Place of Science: Science in the Verge. A. Benessia, S. Funtowicz, M. Giampetro et al. Tempe, AZ, Consortium for Science , Policy & Outcomes: **31 – 70**.

FRIDAY 17

Responsible evidence appraisal

Articles

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

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.

MONDAY 20

HR and Fair Priorities in Health keynote and roundtable

Articles

Baltussen,R. M P Jansen, L Bijlmakers, N Tromp, Alicia Ely Yamin, O F Norheim. (2017) *Progressive Realisation of Universal Health Coverage: What Are the Required Processes and Evidence?*, 2(3) *BMJ Global Health* 1.

Daniels, N. (2000). "Accountability for reasonableness." *BMJ* 321: 1300-1301

Gruskin, S. and N. Daniels (2008). "Justice and Human Rights: Priority Setting and Fair Deliberative Process." *American Journal of Public Health* 98(9): 1573 - 1577.

Norheim, O. F. and B. Wilson (2014). "Health Rights Litigation and Access to Medicines: Priority Classification of Successful Cases from Costa Rica's Constitutional Chamber of the Supreme Court." *Health and Human Rights* 16(2).

Yamin, A. and O. F. Norheim (2014). "Taking Equality Seriously: Applying Human Rights Frameworks to Priority Setting in Health Human Rights Quarterly." *Human Rights Quarterly* 36(2): 296-324.

Political and Legal Determinants of sexual and reproductive health

Articles

Ahmed, Aziza, et al. (2011) "Criminalising consensual sexual behaviour in the context of HIV: consequences, evidence, and leadership." *Global public health* 6.sup3: S357-S369

Gianella Malca, C., M. Rodrigues de Assis Machado and S. Gloppen (2017). "Political determinants of Sustainable Development Goals." *The Lancet* 390(10112): 2545-2546.

Machado, Marta Rodriguez De Assis and Débora Alves Maciel (2017) "The Battle Over Abortion Rights in Brazil's State Arenas, 1995-2006". *Health & Human Rights Journal*, vol 19, 1.

Poteat, T., D. Diouf, F. M. Drame, M. Ndaw, C. Traore, M. Dhaliwal, C. Beyrer and S. D. Baral (2011). "HIV Risk among MSM in Senegal: A Qualitative Rapid Assessment of the Impact of Enforcing Laws That Criminalize Same Sex Practices." *PLoS ONE*.

Tønnessen, Liv, and Samia al-Nagar.(2013) "The women's quota in conflict ridden Sudan: Ideological battles for and against gender equality." *Women's Studies International Forum*. Vol. 41. Pergamon.

(Mental) Health and Criminal Justice

Book Chapters

Winstone, Jane (2017) *Mental Health, Crime and Criminal Justice : Responses and Reforms*. Chapter 1...

Articles

Hirschtritt, M. E. and R. L. Binder (2018). "A reassessment of blaming mass shootings on mental illness." JAMA Psychiatry.

WEDNESDAY 22

Adolescent sexual and reproductive rights & health effects

Articles

Gianella Malca, C., M. Rodrigues de Assis Machado and M. A. Peñas Defago (2017). What causes Latin America's high incidence of adolescent pregnancy? Bergen, Chr. Michelsen Institute.

Patton, G. C., S. M. Sawyer, J. S. Santelli, D. A. Ross, R. Afifi, N. B. Allen, M. Arora, P. Azzopardi, W. Baldwin, C. Bonell, R. Kakuma, E. Kennedy, J. Mahon, T. McGovern, A. H. Mokdad, V. Patel, S. Petroni, N. Reavley, K. Taiwo, J. Waldfogel, D. Wickremarathne, C. Barroso, Z. Bhutta, A. O. Fatusi, A. Mattoo, J. Diers, J. Fang, J. Ferguson, F. Ssewamala and R. M. Viner "Our future: a Lancet commission on adolescent health and wellbeing." The Lancet 387(10036): 2423-2478.

Salam, R. A., A. Faqqah, N. Sajjad, Z. S. Lassi, J. K. Das, M. Kaufman and Z. A. Bhutta (2016). "Improving Adolescent Sexual and Reproductive Health: A Systematic Review of Potential Interventions." The Journal of Adolescent Health 59(4 Suppl): S11-S28.

Annual Lecture Sally Engle Merry "Vernacularization of rights & the quiet power of indicators"

Merry, Sally Engle (2011) Measuring the World: Indicators, Human Rights, and Global Governance: with CA comment by John M. Conley . Current Anthropology, Vol. 52, No. S3, (Supplement to April 2011), pp. S83-S95

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

FRIDAY 24

Corruption and Health

Articles

- DeJong, C., T. Aguilar, C.-W. Tseng, G. Lin, A. J. Boscardin and A. Dudley (2016). "Pharmaceutical Industry–Sponsored Meals and Physician Prescribing Patterns for Medicare Beneficiaries." *JAMA Intern Med* 176(8): 1114-1122.
- Paumgartten, F. J. R. (2016). "Pharmaceutical lobbying in Brazil: a missing topic in the public health research agenda." *Revista de Saúde Pública* 50: 70.
- Tringale, K. R., D. Marshall, T. K. Mackey, M. Connor, J. D. Murphy and J. A. Hattangadi-Gluth (2017). "Types and distribution of payments from industry to physicians in 2015." *JAMA* 317(17): 1774-1784.

Papers, articles and other resources from the web

- Holpuch, A. (2016) "Sugar lobby paid scientists to blur sugar's role in heart disease – report." *The Guardian*.
- Savedoff, W. (2007). *Transparency and Corruption in the Health Sector: A Conceptual Framework and Ideas for Action in Latin American and the Caribbean*. Washington DC, Inter American Development Bank.

READING LIST TRACKS

Reading list, Children's rights

Books

- Archard, D. (2004) *Children Rights and Childhood* (2nd ed.). London: Routledge
- Burns, K. Pösö, T. & Skivenes, M. (eds.) (2017). *Child Welfare Removals by the State: A Cross-Country Analysis of Decision-Making Systems*. New York, NY: Oxford University Press.
- Handbook on the CR from the EU Fundamental rights agency:
https://www.echr.coe.int/Documents/Handbook_rights_child_ENG.PDF
- Schapiro, T. (1999) What Is a Child. *Ethics*, 109(4), 715-738. (23 Pages)
- Skivenes, M. & Søvig, K. (2016.). "Judicial Discretion and the Child's Best Interest - The European Court of Human Rights on Child Protection Adoptions" in E. Sutherland

& L. Macfarlane (eds.) *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being*. Cambridge: Cambridge University Press.*

Book Chapters

Liefwaard, Ton, Doek, Jaap E. (Eds.) 2015. Litigating the Rights of the Child | SpringerLink. Chapter: 1, and chapters 11-15. VERY EXPENSIVE

Articles

Archard, D. & Skivenes, M. (2009). Balancing a Child's Best Interest and a Child's Views. *International Journal of Children's Rights*, 17 (1), pp. 1-21.

Bagattini, A. & Macleod, C. (2015) *The Nature of Children's Well-Being: Theory and Practice*. Springer Netherlands. (262 pages)

Dworkin, G. (1963) Judicial Discretion. *Journal of Philosophy*, 60(21), 624-638. (pages 14)

Skivenes, M. (2010). Judging the child's best interests: rational reasoning or subjective presumptions? *Acta Sociologica*, 53 (4), pp. 339-353.

Papers, articles and other resources from the web

Luhamaa, K. (2015): Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia, Finland and Russia. PhD thesis. https://www.researchgate.net/publication/281459348_Universal_Human_Rights_in_National_Contexts_Application_of_International_Rights_of_the_Child_in_Estonia_Finland_and_Russia

Reading List Health Track

Articles

Abajobir, A. A., Abate, K. H., Abbafati, C., Abbas, K. M., Abd-Allah, F., Abdulkader, R. S., . . . Zodpey, S. (2017). Measuring progress and projecting attainment on the basis of past trends of the health-related Sustainable Development Goals in 188 countries: an analysis from the Global Burden of Disease Study 2016. *The Lancet*, 390(10100), 1423-1459. doi:10.1016/S0140-6736(17)32336-X

- Atun, R., Weil, D. E. C., Eang, M. T., & Mwakyusa, D. (2010). Health System strengthening and tuberculosis control. *The Lancet*.
- Bergallo, P. (2011). "Courts and Social Change: Lessons from the Struggle to Universalize Access to HIV/AIDS Treatment in Argentina." *Texas Law Review* **89**: 1611-1641.
- Gianella-Malca, C., Ugarte Gil, C., Caro, G., Aylas, R., Castro, C., & Lema, C. (2016). TB in Vulnerable Populations: The Case of an Indigenous Community in the Peruvian Amazon. *Health and Human Rights Journal*, *18*(1).
- Navarro, V., C. Muntaner, C. Borrell, J. Benach, Á. Quiroga, M. Rodríguez-Sanz, N. Vergés and M. I. Pasarín (2006) "Politics and health outcomes." *The Lancet* **368**(9540): 1033-1037.
- Rumbold, B., R. Baker, O. Ferraz, S. Hawkes, C. Krubiner, P. Littlejohns, O. F. Norheim, T. Pegram, A. Rid, S. Venkatapuram, A. Voorhoeve, D. Wang, A. Weale, J. Wilson, A. E. Yamin and P. Hunt (2017) "Universal health coverage, priority setting, and the human right to health." *The Lancet* **390**(10095): 712-714.
- Yamin, Alicia Ely & Boulanger, Vanessa. (2014). Why Global Goals and Indicators Matter: The Experience of Sexual and Reproductive Health and Rights in the Millennium Development Goals. *Journal of Human Development and Capabilities*, *15*(2-3), 218-231. doi:10.1080/19452829.2014.896322
- Yamin, Alicia Ely, Neil Datta, and Ximena Andion, *Behind the Curtain: The Roles of Transnational Actors in Legal Mobilization Over Sexual and Reproductive Rights*, Geo. J. Gender & L. (forthcoming 2018).
- Yamin, Alicia Ely.(2017) *Taking the Right to Health Seriously: Implications for Courts and Health Systems*, 39 Hum. Rts. Q. 341, 341-368 (2017).

Papers, articles and other resources from the web

- Fukuda-Parr, S., Yamin, A. E., & Greenstain, J. (2013). *Synthesis Paper - The Power of Numbers: A Critical Review of MDG Targets for Human Development and Human Rights*. Retrieved from https://cdn2.sph.harvard.edu/wp-content/uploads/sites/5/2013/09/Synthesis-paper-PoN_Final1.pdf
- World Health Organization (2014). Making fair choices on the path to universal health coverage. Final report of the WHO Consultive Group on Equity and Universal Health Coverage. Geneva, World Health Organization.

World Health Organization (2017) Advancing the right to health: the vital role of law.
Retrieved from
http://www.who.int/healthsystems/topics/healthlaw/health_law-report/en/