



# Reading List

Ph.D. course University of Bergen

## 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. These should preferably be selected from the list of supplementary readings (to be extended) but can also be other relevant sources.

## WEDNESDAY (12 August): Introducing lawfare

### 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. 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.

Rodríguez Garavito, C. (2011). "Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America." *Texas Law Review* 89: 1669-1698.

Rodríguez Garavito, C. "[Ethnicity.gov](#): Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields." *Indiana Journal of Global Legal Studies* 18 (1):263-305.

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

Sieder, Rachel and Barrera, Ana (2017) *Women and Legal Pluralism: Lessons from Indigenous Governance Systems in the Andes*. J. Lat. Amer. Stud.

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.

### 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 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 Courts : Tools for strategic advocacy*. Women's Link Worldwide, 2018

## THURSDAY (13 August): Studying effects

### 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.

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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*.

Khan, Khadija. "Intersectionality in student movements: Black queer womxn and nonbinary activists in South Africa's 2015–2016 protests." *Agenda* 31.3-4 (2017): 110-121.

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*

## **FRIDAY (14 August)**

#### 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

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. *International Ethical Guidelines for Health-related Research Involving Humans*, Fourth Edition. Geneva. Council for International Organizations of Medical Sciences (CIOMS); 2016.

Saltelli A., Ethics of quantification or quantification of ethics?, *Futures* (2019), doi: <https://doi.org/10.1016/j.futures.2019.102509>

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## Supplementary readings

(choose 500 pages for your supplementary reading list - alternatively )

- Sabel, Charles, and William Simon. (2004). "Destabilization Rights: How Public Law Litigation Succeeds." *Harvard Law Review* 117:1016.
- 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.
- 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](https://cdn2.sph.harvard.edu/wp-content/uploads/sites/5/2013/09/Synthesis-paper-PoN_Final1.pdf)
- Namita Wahi et. al., Land Acquisition in India: A Review of Supreme Court cases from 1950 to 2016. <http://cprindia.org/research/reports/land-acquisition-india-review-supreme-court-cases-1950-2016>
- Namita Wahi 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>
- Namita Wahi, "Property" in Choudhry, S., Khosla, M., & Mehta, P. B. (Eds.). (2016). *The Oxford handbook of the Indian constitution*. Oxford University Press.
- De, Rohit. *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Vol. 7. Princeton University Press, 2018.
- 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>
- Handmaker, Jeff. "Researching legal mobilisation and lawfare." *ISS Working Paper Series/General Series* 641.641 (2019): 1-19.
- 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)
- 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
- Dugard, J and M Langford (2011) "Art or Science: Synthesising Lessons from Public Interest Litigation and the Dangers of Legal Determinism", 27(1) *SAJHR* pp 39-64
- Dugard, J "Forging space for pro-poor change: The use of strategic litigation by the Socio-Economic Rights Institution of South Africa (SERI) to advance equality"
- Carmela Murdocca "Ethics of Accountability: *Gladue*, Race, and the Limits of Reparative Justice", *Canadian Journal of Women and the Law*, Volume 30, Number 3, 2018: 522-542.
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Sherene H. Razack "Gendered Racial Violence and Spatialized Justice: The Murder Pamela George", *Canadian Journal of Law and Society*, Volume 15, Issue 2, August 2000: 91-130.

Arretche, Marta (Ed.). *Paths of Inequality in Brazil. A Half-Century of Changes*. Springer, 2019

Flynn, A., Warren, D. T., Wong, F.J., Holmberg, S. R.. *The hidden rules of race: Barriers to an inclusive economy*. Cambridge University Press: Cambridge, UK, 2017..

Douglas S. Massey, *American Apartheid: Segregation and the Making of an American Underclass*

Acemoglu, D., Naidu, S., Restrepo, P., & Robinson, J. A. . "Democracy, redistribution, and inequality". In *Handbook of income distribution* (Vol. 2, pp. 1885-1966). Elsevier, 2015

Heller, Patrick, and Peter Evans. "Taking Tilly south: durable inequalities, democratic contestation, and citizenship in the Southern Metropolis." *Theory and Society* 39.3-4 (2010): 433-450.

Elizabeth Jelin, Renata Motta, Sérgio Costa. *Global Entangled Inequalities. Conceptual Debates and Evidence from Latin America*, 1st Edition, Routledge, 2017

Barbara Fritz, Lena Lavinas, *A Moment of Equality for Latin America?* Routledge, 2015

Lewis, A. E., & Diamond, J. B.. *Despite the Best Intentions: How Racial Inequality Thrives in Good Schools*. Oxford University Press, 2015..

Young, I. M. . *Justice and the politics of difference*. Princeton University Press, 1990.

Williams, Kimberlé Crenshaw. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color". In: Martha Albertson Fineman, Rixanne Mykitiuk, Eds. *The Public Nature of Private Violence*. New York: Routledge, 1994

Kimberlé Crenshaw. *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis* (with Sumi Cho and Leslie McCall), 38(4) *Signs: Journal of Women in Culture and Society* 785, 2013.

Kimberlé Crenshaw. *Framing Affirmative Action*, 105 *Michigan Law Review First Impressions* 123, 2007.

Kimberlé Crenshaw. *An Intersectional Critique of Tiers of Scrutiny: Beyond "Either/Or" Approaches to Equal Protection* (with Devon W. Carbado), 129 *The Yale Law Journal Forum* 108, 2019.

Patricia Hill Collins. *Intersectionality as Critical Social Theory*. Durham: Duke University Press, 2019.

Walter Johnson. *Ferguson's Fortune 500 Company*. 2015.  
<https://www.theatlantic.com/politics/archive/2015/04/fergusons-fortune-500-company/390492/>