EWI Marie Curie Seminar Series

SEMINAR
ON THE WORK OF
MARTHA FINEMAN
ROBERT W. WOODRUFF PROFESSOR OF LAW
EMORY UNIVERSITY LAW SCHOOL

MAY 21, 2010,
Room L532 James Joyce Library Building
UNIVERSITY COLLEGE DUBLIN

ALL WELCOME
For more information about this lecture series or about the Egalitarian World Initiative and the EWI Marie Curie Transfer of Knowledge Programme
Please contact Dr Richard O’Leary,
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Schedule

9.30am  Welcome & Opening Remarks by Prof. Martha Fineman

10.00am  Panel I

Chair: Fiona de Londras, UCD School of Law


Tanya Ní Mhuirthile, University College Cork: “Realising Gender Recognition: Rendering the Vulnerable Visible or Further Vulnerabilisng the Invisible?”

11.15am  Coffee break

11.30  Panel II

Chair: Roja Fazaeli, TCD School of Religions and Theology

Angela O’Connell, Global Women’s Studies Project, NUI Galway: “Vulnerable Standpoints: Using a Vulnerability Framework for a Feminist Standpoint Project”


13.00  End

Format

All speakers will have 20 minutes to present their papers followed by a discussion. Some people (hopefully most) will have sent me a paper in advance that I can circulate to you asap for reading prior to the seminar. This need only be a short paper. The papers will be followed by discussion within the group, which will be made up of the seminar attendees and some members of the faculty of the School of Social Justice. The seminar is an informal event designed to create a space for discussion and network formation between early career academics working in areas connected to Prof Fineman’s research.

In 'Evolving Images of Gender and Equality', Martha Fineman, inspired by the Vermont Constitution's Common Benefits Clause, begins to think a legal sense of equality as a 'universal resource', available to all who inhabit a particular legal community, irrespective of other identities. Other identities will neither ground special state benefits nor justify state oppression. Fineman is touching here on the relationship between jurisdiction, in the sense of standing before the law, and equality. She wishes that subjects' standing to make effective legal claims about equality - about shares in common benefits - were always a given. If her wish came true, there would be no need to prove belonging to a privileged group as a precursor to making such claims. In this respect, Fineman's work has something in common with ideas of legal citizenship and legal community emergent in the recent work of Karen Knop, Etienne Balibar and others who want to imagine a space at law within which migrant and religious 'strangers' can stand to make claims on a legal community in spite of political exclusion and irrespective of non-state affiliations.

But once we accept political outsiders' standing to make claims to common benefits before law - once we can take it for granted - we have have to consider what those claims might consist in.

My (developing) argument is that the promise of law's citizen (or law's Vermonter) lies in the 'voice' which she has before the law precisely because she is no longer hamstrung - at least in this space - by an ascribed 'identity'. My interest is in her capacity to use that voice to speak at law about religious identity and its material and other consequences. Her claims will not obtain any particular power by virtue of being religious claims as such. But it seems to me that she must be able to make some claims about religion, about its relationship to the common benefits she claims and about the relationship of her religious identity to her legal citizenship. Reading Ayelet Shachar's 'Multicultural Jurisdictions' together with Fineman's earlier work on the distributive functions of marriage law, and its relationship to social transformation and to the myths of autonomy, the contracting subject and the public/private divide, I mean to argue that a legal approach to Muslim litigants' claims about family which scrupulously excludes consideration of religious doctrine from deliberation is flawed. It tends to undercut the gains of 'equality as common benefit' by reproducing the very power relations which this new equality seeks to avoid in other jurisdictions. Equality as common benefit must hold out the possibility, not only of equality of outcomes but of open reasoning processes leading to reasons developed in common.

As a final, and related thought, I want to speculate about the flexibility of Martha Fineman's equality as common benefit. Is the legal Vermonter confined to the role of making her case for a share in one of a set of already agreed common benefits? Or may she make more radical claims which critique or re-envision the content of those benefits? Is legal citizenship passive or active?

'Realising Gender Recognition: Rendering the Vulnerable Visible or Further Vulnerabilising the Invisible?' Tanya Ní Mhuirthile, Law Faculty, UCC

This paper aims to examine laws categorisation of bodies with a particular focus on the intersex body. Historically, the law recognised the existence of intersex people and permitted them to self select the manner in which they interacted with the law. In
the nineteenth century, a shift towards legal recognition of bodies as either male or female is apparent. Concurrently, advances in medical knowledge began to 'disappear' intersex people from social and legal consciousness. In modern times, intersex is considered to be a medical condition and often, irreversible medical and/or surgical interventions are performed on very young children to reconstruct their bodies along apparently male or female lines.

The paper questions whether law contributes to the invisibility of intersex. In particular, it asks whether legal recognition of intersex would enable the creation of space to facilitate the postponement of surgery until the intersex person could participate in the decision whether to undergo surgery or not. Alternatively, it considers whether legal recognition is perfunctory to the point of purposelessness. Finally, the paper investigates whether adopting a vulnerability approach to the question of legal recognition of intersex might produce a framework for legal recognition which acknowledges the lived experience of intersex people and respect their inherent human dignity.

**Vulnerable Standpoints: Using a Vulnerability Framework for a Feminist Standpoint Project**  
Angela O'Connell. PhD candidate, Global Women's Studies Programme, NUI Galway.

Fineman’s vulnerability thesis invites us to investigate “the structures our society has and will establish to manage our common vulnerabilities” (Fineman 2008: 1), focusing on the web of intersections between those structures and individual lives. I wish to explore how the vulnerability approach can provide a liberal feminist framework to inform a standpoint research project on a contemporary instance of marginalisation. Such a synthesis suggests a promising way to deconstruct institutions that create privileges and perpetuate inequalities. And by starting the enquiry from the experiences of those who are negatively affected by the policies and practices of particular institutional structures, the political potential of the research is enhanced (cf Harding’s “strong objectivity” thesis).

Although simple identity politics has now been replaced by a more sophisticated intersectionality approach, Fineman argues that some theorists of intersectionality still mistakenly focusing on the identities of those who are suffering from discrimination and inequality. Fineman proposes instead that it is their relationship to the institutions, i.e. their place in the web, which creates their identities and results in their marginalisation (Fineman 2008: 16). Adopting a vulnerability framework thus addresses those charges of essentialism which have plagued standpoint theory from its inception, and also allows standpoint to move beyond its Marxist roots to contribute valuable tools to a liberal feminist approach to knowledge production. Taking as a starting point the experiences of disadvantage described by the women who took part in my research – ten lesbian couples trying to create families with children – my thesis sets out to explore the institutions whose policies and practices produce and perpetuate the discrimination and inequalities they describe in their narratives. My thesis focuses particular attention on the intersections between the women’s experiences of family and the hegemonic heterosexual marital family (enshrined in the Irish Constitution) as debated in the processes of two contemporary Irish public consultations, adoption and assisted reproduction.

**’Equality in Difference’: Positioning and Perspective of Women in Processes of Contentious Politics**  
Melanie Hoewer, PhD Candidate, John Hume Institute for Global Irish Studies
This paper sets out to explore the gender dimension the process of ethno-national mobilisation and contentious politics in Chiapas (Mexico). It builds upon new approaches to the study of identities in the process of mobilisation and transformation, building a bridge between ethnic or ethno-class mobilisation, and gender mobilisation, with power as a key variable.

The empowerment of women through their organisation within the community and active involvement in the struggle has a significant impact on the inclusion of gender equality in the protest agenda of social movements. However the development of these processes is context-dependent. Analysing those processes urges us to take into consideration social economic and cultural differences between women and hence the pluralism that exists within the category women. This impacts significantly on the way equality or inequality is addressed and framed within social movements. In ethno-national movements the framing of ethnic identity impacts upon the way and extend to which gender power structures change.

**How far towards equality? A vulnerabilities approach to the rights of disabled people** Eilionoir Flynn, Mary Keogh & Noelin Fox

This paper will explore the application of Fineman’s vulnerability thesis in the context of the barriers to participation experienced by disabled people. It will address three central issues:

1. The role of the State in promoting the substantive equality of disabled citizens
2. The potential of the vulnerability thesis in bridging the gap between positive and negative rights
3. A holistic approach to disability discrimination based on vulnerability theory

In particular, this paper will focus on the multi-faceted nature of discrimination and analyse Fineman’s guidance on how the State might redress this through investigating the systemic reasons for disadvantage and exclusion. It will also consider the effectiveness of providing legal remedies based on the vulnerabilities of individuals (assessed through environmental, social and cultural factors) rather than based on membership of a particular minority group.