

Feminist Critique of Rights – Feminist Perspectives in Legal Theory

MONDAY, 8 JULY 2019

CONVENORS:

Michelle Cottier (University of Geneva)

Vagias Karavas (University of Lucerne)

Anne Kühler (University of Zurich)

ABSTRACT:

Feminist perspectives and critique have strongly influenced our thinking on basic concepts of legal thought such as the concept of law, autonomy, liberty, universal norms, human rights and the legitimacy of rights-based theories or rationality in legal discourse. But in return, feminist legal theory and critique, as expressed e.g. in constructionist and poststructuralist theories, have also been criticised for undermining the very idea of norms and rejecting the validity of moral principles as grounds for justifying or criticising political action and social structures.

The aim of this workshop is to explore feminist perspectives in legal thought, to reconstruct current debates and to examine their influence and achievements in legal theory. In the light of this, the workshop proposes to assess the challenges the feminist legal theory and the critique of rights faces, revolving around fundamental questions such as the possibility of universal norms or moral principles.

PROGRAMME:

- 14.00-16.00** Michelle Cottier, Vagias Karavas, Anne Kühler, **Introduction**
Nadja El Kassar, **'The Significance of Relational Autonomy in Normative Discourse'**
DISCUSSION
Cécile Huber, **'Feminist Psychoanalytical Legal Theory: What is the Law of the Mother?'**
DISCUSSION
- 16.00-16.30** **COFFEE BREAK**
- 16.30-18.30** Bérénice Schramm, **'Rekindling the hermeneutical circle: a post/de-colonial feminist epistemology of interpretation in international law'**
DISCUSSION
Elisabeth Holzleithner, **'Critical Legal Gender Theory and the Challenge of Illiberal Reconstruction of Nation States'**
DISCUSSION
CLOSING DISCUSSION

SPEAKERS (IN ALPHABETICAL ORDER):

Nadja El Kassar

Dr. phil., Postdoctoral Scholar, Swiss Federal Institute of Technology in Zurich (ETH Zürich)

Paper Title: “The Significance of Relational Autonomy in Normative Discourse”

Abstract: Feminist philosophers over the last years have established relational autonomy as a fruitful concept that challenges traditional notions of autonomy and proves valuable in understanding current issues of autonomy. In my talk I explicate the significance of relational autonomy in normative discourse. In the first part I trace the development of the concept relational autonomy and detail the distinction between procedural and substantive, as well as causal and constitutive conceptions of relational autonomy. In the second part I turn to cases in which relational autonomy is a key for understanding the situation at hand. Relational autonomy is particularly productive for understanding individual action and decision in a social context. Focusing on the case of reproductive autonomy I show how the concept relational autonomy shapes normative discourse.

Elisabeth Holzleithner

University Prof. Dr., University of Vienna

Paper Title: Critical Legal Gender Theory and the Challenge of Illiberal Reconstruction of Nation States

Abstract: Feminist approaches in law and governance have gained some traction in the past decades. The idea is to use law in an emancipatory fashion: Gender equality and freedom from physical, including sexual assault, have become important areas of legal activism. According to EU law, Gender Mainstreaming is an inevitable tool for legal reform in Member States of the European Union, and Gender Agents in government institutions play an indispensable role in the development and implementation of the respective measures. As Janet Halley and others have observed, “Governance Feminism” has become quite a success. This success takes on an ambivalent note, however, when measures fit all too seamlessly into an illiberal steering towards the prohibitive, using criminal or administrative law. Measures against sexual assault, sex trafficking and domestic violence come to mind. Some commentators have even diagnosed a “new abolitionism” (Elizabeth Bernstein) or a turn to “carceral feminism” (Karen Engle). The presentation is going to explore whether and in what ways such developments have taken place and what is problematic about them, with a particular focus on the issue of sexual assault. From there, conclusions for Critical Legal Gender Theory will be drawn. The aim remains to actualize the emancipatory potential of the law and to explore what that means, especially in light of the deep divisions within feminist approaches to law and legal theory.

Cécile Huber

LLM-Student, Goethe University Frankfurt and MA-Student, University of Basel

Paper Title: "What is Maternal Law?"

Abstract: Psychoanalytical legal philosophy and feminist legal theory often address, even though for different purposes, the paternal dimension of law. In this presentation I aim to move beyond this dimension by giving an overview of theories of maternal law, systematizing their distinct features. By doing so, I will explore the limits and chances of finding an answer to the title-giving question. For this, I first look at matriarchal research, which begins with J.J. Bachofen's "Mutterrecht" in the 19th century and was received and criticized by second-wave feminists. Second, I discuss three recent psychoanalytical approaches that concern the law of the mother, namely by Juliet Mitchell, Amber Jacobs, and Geneviève Morel, and discuss how they could inform the critical endeavour of feminist jurisprudence. Finally, I take a look at care ethics since a caring maternal morality seems to constitute a promising approach to be translated into "law in the books". To conclude, I argue that feminist philosophy of law can successfully draw on the presented theories of maternal law for the analysis, the criticism and the future of the law and of norms.

Bérénice K. Schramm

PhD, Postdoctoral Scholar, Université du Québec à Montréal, Centre d'études sur le droit international et la mondialisation (CÉDIM) and Centre for Gender Studies, School of Oriental and African Studies (SOAS) University of London

Paper Title: "Rekindling the hermeneutical circle: a post/de-colonial feminist epistemology of interpretation in international law"

Abstract: Since the end of the XIXth century, understanding understanding has been the task of the European pluridisciplinary tradition of hermeneutics. As most famously exposed by Hans-Georg Gadamer in his seminal opus, *Truth and Method*, hermeneutics seeks to challenge the two notions, thereby offering a genuinely epistemological and radical take on understanding. Yet its in-built radicality has historically been dismissed or under-explored while it in fact echoes feminist, postcolonial and decolonial critiques of knowledge production. The present communication will therefore attempt at unearthing the eurocentric classical hermeneutics' radical potential while challenging its deep-seated gender and race biases. It will do so by taking stocks of the often overlooked "exemplarity" of legal hermeneutics, and in particular of international legal hermeneutics. In this radical perspective, rekindling the hermeneutical circle translates into realizing (and obtaining) a better understanding of the world, that is another, and perhaps the first and foremost way to better serve justice to our postcolonial worlds.