

INTEGRAL Season Three: Gender Justice and The Common Good

Bannan Institute, Ignatian Center for Jesuit Education, Santa Clara University

“Gender In/sight and the Common Good”

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THERESA LADRIGAN-WHELPLEY: Welcome to INTEGRAL, a podcast production out of the Ignatian Center for Jesuit Education at Santa Clara University; exploring the question: Is there a common good in our common home?

I’m Theresa Ladrigan-Whelpley, the director of the Bannan Institutes in the Ignatian Center and your host for this podcast. We’re coming to you from Vari Hall on the campus of Santa Clara in the heart of Silicon Valley, California. This season of INTEGRAL, we’re looking at the ways in which issues of gender justice intersect with our pursuit of the common good. Today, we’ll be exploring questions of gender justice from legal and advocacy perspectives, examining privilege and discrimination dynamics associated with gender expression and gender identity. We’ll also explore a new integrative approach to these issues, through a methodology called gender in/sight.

STEPHANIE WILDMAN: Society needs to acknowledge gender.

PATRICK LOPEZ-AGUADO: We can see the clear evidence of the dangers involved in socializing practices that tie masculinity to power.

SHARMILA LODHIA: While there is a long history of feminist activism in India and a vibrant advocacy community working to address gendered violence in the region, there was something different happening here.

SONJA MACKENZIE: We must build movements in solidarity with those whose equal dignity is unequally endangered as we address the pressing societal, moral, and ethical dimensions of gender justice.

MYTHRI JEGATHESAN: Do they see women as extractive commodities and subordinated clients to patriarchal patrons? Or do they see them in the context of their desires and aspirations for the future?

THERESA LADRIGAN-WHELPLEY: To unpack these issues, we're joined today by Stephanie Wildman and Adam Chang. Stephanie is Professor of Law, emeritus, at Santa Clara University who served for 13 years as director of the Law School's Center for Social Justice and Public Service, and was the founding director of the Center for Social Justice at the University of California at Berkeley School of Law. Stephanie's scholarship emphasises systems of privilege, gender, race, and classroom dynamics.

Adam Chang is an educator and community organizer, currently working as an of counsel with a Hawaii based law firm focusing on immigration law, and as a project director with the non-profit consulting firm, Social Change Consulting. Adam's past and present work engages refugee resettlement, LGBT civil rights, HIV prevention, and youth leadership.

Adam's pronouns are "she" or "he." Stephanie's pronouns are "she" or "her."

Welcome Stephanie and Adam!

STEPHANIE WILDMAN: Thank you Theresa.

ADAM CHANG: Thank you Theresa for having us today.

STEPHANIE WILDMAN: The New York Times recently asked, "Is gender flux a trend with legs or just a passing fancy?" Feminist theorists have long been wrestling with anti-sex discrimination doctrine and the role of gender within policies and practices. More recently, debates about gender roles have grown beyond the academy, into fora as diverse as state legislatures and social media. North Carolina enacted a bathroom law requiring patrons to use the bathroom that matched their sex assigned at birth. They repealed that law after a lawsuit and firestorm of social pressure, but enacted a subsequent restrictive law, which the American Civil Liberties Union and others are now challenging. President Trump announced that transgender people would be barred from serving in the military. His administration also rolled back federal protection that had previously required schools to

accommodate transgender students by allowing students to use facilities that corresponded with their gender identity.

Adam and I assert that to build supportive and inclusive communities, society needs to acknowledge gender and consider how gender dynamics influence daily interactions. Our project outlines a methodology we call “gender in/sight,” that seeks, first, to provide deeper understandings about gender, then, to examine the discrimination, exclusion, and privilege dynamics that surround it and, ultimately, to underline the presence of gender in daily life, ensuring that gender is “in sight.”

Not too long ago, Merriam-Webster’s online dictionary defined gender simply as: “[The] state of being male or female.” Their site offered a second definition, based on grammar, stating that gender fell into: “one of the categories (masculine, feminine, and neuter) into which words (such as nouns, adjectives, and pronouns) are divided in many languages.”

Adam, what happened next?

ADAM CHANG: Merriam-Webster changed the definition of gender to: “[A] subclass within a grammatical class (as pronoun, noun, adjective, or verb) of a language that is partly arbitrary but also partly based on distinguishable characteristics (as shape, social rank, manner of existence, or sex) and that determines agreement with and selection of other words of grammatical forms.” Alternate definitions described gender as having two subparts for gender: the first being “sex” and the second being “the behavioral, cultural, or psychological traits typically associated with one sex.”

These basic definitions flag several significant problems. The first definition shared by Stephanie enshrines and perpetuates a narrow understanding of gender that does not account for the spectrum of gender experiences. The more recent definition corrects that problem in a sense, relegating the arbiter of gender to language. However, language often utilizes a binary male/female dichotomy. The dictionary further muddies the waters by equating gender and sex, a conflation that many courts and theorists also follow.

Historically, feminist theory, legal decisions, and common language have entwined “sex” and “gender.” While a connection exists between the two terms, equating sex and gender perpetuates the myth that gender is based on a strict and narrow concept of

anatomical sex - male or female. More recently, an expansive notion of “gender,” as well as recognition of its capacity to fluctuate, reveals the lie in this widespread cultural imagining of only two genders.

In this present discussion, we want to put “gender in/sight” in the context of anti-discrimination law and explain how it is a new frontier. Next, we will share stories of Eve and Aileen, hypothetical characters created from real-life encounters. Eve and Aileen do not fit into traditional notions of gender or sex, and we’ll use their stories as a means to consider the question, “what is gender?” and to explore some commonly used and misused terms. This discussion is not meant to be final or definitive, but rather to begin the gender conversation and to illustrate its complexity. We also introduce Panti Bliss, a self-described gender discombobulator, and then explore elements for developing “gender in/sight.” We hope that “gender in/sight” can become a daily practice of both seeing gender and making inclusive, community building decisions to foster greater understanding. Gender in/sight encourages consideration of gender in all of its parts: including gender expression, gender identity, and biology, rather than looking at these components in isolation.

STEPHANIE WILDMAN: So we are approaching a new frontier. The first significant federal antidiscrimination in employment statute, Title VII of the 1964 Civil Rights Act, named “sex” as a protected category. Professor of Law, Katherine Franke, offered a powerful critique, illustrating how in cases of transgender discrimination, sexual harassment, and workplace segregation, the separation of sex from gender disserved the goal of justice. Franke explained “sex discrimination jurisprudence should consider the role that the ideology of sexual differences plays in perpetuating and ensuring sexual hierarchy.” She observed that society views sex as a product of nature, while it understands gender as a function of culture. However, according to Franke, this “disaggregation of sex from gender” represented a central mistake of equality jurisprudence.

Law has been said to be the ability to think of two inextricably intertwined concepts and to separate them. In the context of sex and gender, many organizations and institutions have come to recognize gender as an umbrella term in which sex is one component of gender. Franke’s work has opened the door for a deeper legal analysis of

gender expression and gender identity, but Franke's acceptance that biological sexual differences are a given turns out not to be the case. For example, the law has not adequately addressed rights of an intersex person. The U.S. has not yet made appropriate accommodations for parents to leave the sex of their intersex babies as "undetermined." While in agreement with Franke that recognition of the social construction of gender is essential to overcoming gender-based discrimination, gender in/sight seeks to expound upon the nuanced elements of gender, recognizing both its connection to and separation from sex. The recognition that gender and sex are connected will further promote gender justice as Franke urges. But the recognition that they are discrete and may require distinctive treatment emerges as a new legal frontier.

ADAM CHANG: Now with these elements in mind, let's consider three stories to situate the gender in/sight conversation.

Consider, for example, Eve, an intersex baby assigned the sex "female" at birth after surgery has been done to "her" genitalia. When Eve is eight-years-old, she tells her parents that she is a boy, wishes to go by the name Evan, and wants people to refer to him using male pronouns. Evan is asserting that his gender identity is now "male." Evan's parents continue to buy him dresses and he refuses to wear them. Evan and his parents contest Evan's gender expression—how Evan should be able to express his gender to the outside world. As Evan gains awareness of gender terminology and definitions, he may determine that he is transgender (or genderqueer, or nonbinary, or something else altogether).

The hypothetical of Eve and Evan reveals the complexity of gender. Many people come to know and identify with their gender at a young age. Sometimes that gender identity aligns with the sex a person was assigned at birth. Other times it does not. This hypothetical illustrates that gender is personal and lies along a spectrum. When families and society are too restrictive about a person's gender identity, psychological, emotional, mental, and physical harm can develop.

STEPHANIE WILDMAN: In another example, let's consider a young person given the name Aileen at birth who may later identify as a transgender male, Alan. Or Alan may find that being a transgender male is too restrictive for his gender identity. Suppose that Alan as a

teenager identifies as agender (or gender neutral) and now prefers gender-neutral pronouns like they/them/theirs or xe/xem/xyr, [zee/zem/zeer] instead of male (or female) pronouns. Alan may determine that the restrictions placed on men and women in society relating to how they should dress, talk, or act, is not a way of life that they want to participate in or perpetuate. As a young adult, Alan's gender identity may be genderqueer. The key takeaway here is the importance and significance of humans being able to perceive and name themselves because it is vital to that person's well-being. With an increased understanding of gender, society should encourage Alan to have the freedom to explore their own gender identity.

ADAM CHANG: In our work together, Stephanie and I introduced a drag queen named Panti Bliss. Ms. Panti Bliss describes herself as a performer and sometimes accidental gay rights activist. She identifies her chosen profession as "gender discombobulation." In her stage persona, she spoke to an audience, following a stage play about Irish workers, about her own middle class background, which did not insulate her from experiencing oppression. In her monologue, she described waiting to cross a street when suddenly a passing car hurled a milk carton at her and yelled "fag."

PANTI BLISS [audio clip]: Now, it doesn't really hurt. I mean, after all, it's just a wet carton and, in many ways, they're right - I am a fag. So it doesn't hurt, but it feels oppressive, and when it really does hurt is afterwards, because it's afterwards that then I wonder and worry and obsess over, "What was it about me? I mean, what did they see in me? What was it that gave me away?" And, I hate myself for wondering that. It feels oppressive and the next time that I'm standing at a pedestrian crossing, I hate myself for it, but I check myself to see what is it about me that gives the gay away and I check myself to make sure that I'm not doing it this time.

STEPHANIE WILDMAN: Later in her talk, Ms. Panti Bliss related her experience of being censored for using the word "homophobic" to describe people who actively campaign for gay people to be treated as lesser members of society.

PANTI BLISS [audio clip]: ...what homophobia is, and about who is allowed to identify it. Straight people have lined up, ministers, senators, barristers, journalists have lined up to tell me what homophobia is and to tell me what I am allowed to feel oppressed by. People who have *never* experienced homophobia in their lives, people who have *never* checked themselves at a pedestrian crossing have told me that unless I am being thrown into prison or herded onto a cattle truck then it not homophobia, and *that* feels oppressive.

STEPHANIE WILDMAN: She continues to bemoan this censorship and the pervasiveness of homophobia in all of our lives. She doesn't exempt herself.

PANTI BLISS [audio clip]: Almost all of you are probably homophobes. But, I'm a homophobe. I mean, it would be incredible if we weren't - I mean, to grow up in a society that is overwhelmingly and stiflingly homophobic and to somehow escape unscathed would be miraculous. So, I don't hate you because you're homophobes. I actually admire you, I admire you because most of you are only a bit homophobic. And to be honest, considering the circumstances, that is pretty good going. But, I do sometimes hate myself. I hate myself because I check myself when standing at pedestrian crossing. And, sometimes, I hate you for doing that to me.

STEPHANIE WILDMAN: In identifying the role that oppression plays in her own life, her self-oppression as she struggles with a societal norm that seeks to make her a lesser member of society, Ms. Panti Bliss reveals the harm and injury that society imposes on all of us. Gender In/sight seeks to provide a path toward healing that injury and preventing that harm, enriching our ability to seek a common good.

ADAM CHANG: So with our listeners, we now want to delve into Gender In/sight. The inspiration for Gender In/sight began in the work of Margalynne Armstrong and Stephanie Wildman, naming color insight as an alternative to colorblindness in thinking about race and recognizing that colorblindness serves to maintain a status quo that privileges whiteness. Gender, unlike race, does not labor under a societal norm that suggests the necessity of keeping it invisible. But the unnamed norms of gender conversation do serve to keep important aspects of gender submerged and privilege cisgender individuals.

Gender in/sight encourages consideration of gender in all of its parts: expression, identity, and biology, rather than only considering the parts in isolation. The elements of gender in/sight, that help us with looking at gender in its fullness include: first, looking at context, including the language used in the conversation; second, “asking the other question”; third, examining privileges associated with gender and sexuality, such as male privilege, heterosexual privilege, and cisgender privilege; next, “finding the me” in the gender conversation; and finally, rebuilding a gender framework that is inclusive while recognizing nuanced differences.

So We turn first to Context and Pronouns. In many parts of the world, the use of pronouns provides an important context for gender-based conversations. Conversing and interacting with a gender-expansive or gender-neutral person can be as simple as recognizing the person’s chosen pronouns for themselves. The interaction need not be awkward or complicated and does not require a significant shift in culture or language. Existing culture and language simply needs to be broadened to be inclusive. Use of pronouns like they/them/their were previously seen as only plural, but to foster gender neutral language, plural referents for the singular are on the rise. When in doubt, observe how others refer to a person. It is also appropriate to model your own name and pronouns in a new setting when making a self introduction; this signals to others that you are conscious and inclusive of gender minority people.

STEPHANIE WILDMAN: Second we think about asking the other question. Gender in/sight recognizes important identity category issues that intersect with gender, as explained by Law Professor Mari Matsuda’s caveat to “Ask the Other Question.” Professor Matsuda describes the inextricable link between forms of oppression. Matsuda reminds us that it is easy to see the racism in the murder of Vincent Chin by white, out of work autoworkers who thought that this Chinese American man was Japanese and responsible for their loss of jobs. They hurled racial epithets as they bludgeoned him. But Matsuda challenges us to consider, where is the sexism in that conduct? How are boys reared in this culture to imagine acts of aggression like that homicide? And to ask, where is the homophobia in that act, in a culture that teaches a macho meaning to the phrase “real

man” and which glorifies some forms of violence. A benefit of “Asking the other question” is that it can serve as a coalition-building strategy.

The third component of Gender/insight focuses on Privileges. Perhaps the most recent development in gender conversations is the growing recognition and naming of cisgender privilege. The term cisgender remains unfamiliar to many. The phrase simply identifies people who identify their gender as identical to the one assigned to them at birth.

To provide an example of cisgender privilege – a cisgender person is rarely misgendered and typically does not have their gender policed by strangers. Recalling the predominance of gender signification throughout society, that goes mostly unnoticed and unquestioned, from bathrooms, to sections in stores for clothing and toys, to assumptions made in emergency room admissions, one begins to see the many obstacles that a transgender or nonbinary person might face.

Imagine that you are someone questioning your gender, transitioning to be accepted as male, female, or identifying as neither. When you are in a public building, like a courthouse, what bathroom will you use? Bathrooms were a big issue in the political battle to pass an equal rights amendment. The specter of women and men using the same restrooms created an uproar. And bathrooms are still an issue. But it is hard to see why the binary sex-segregation of bathrooms has such cultural purchase. Airplane bathrooms can be used by anyone. Restaurants increasingly offer single room restrooms with no gendered door. New buildings could accommodate the need for a gender-neutral restroom. Existing facilities with multiple stall, sex-segregated bathrooms could offer options, some gendered and some not. What other privileges do you observe or experience in the world around you?

ADAM CHANG: Now Stephanie gives us a lot to consider in regards to gender and privilege, which is a great segue to the next element, Finding the “me” in gender discourse.

To avoid stereotyping when applying gender in/sight requires looking at a person and not a typecast of a gendered role or gendered assumptions about that person. Emphasizing the importance of breaking down stereotypes as to race, law professor Jerome Culp described

telling his students that he was the son of a coal miner and that he had attended Harvard Law School. He explained: "I am the son of a poor coal miner," and that this "has informational content that has a transformative potential much greater than my curriculum vitae. *Who we are* matters as much as what we are and what we think." Seeing the individual - the me (in one's self and in others) - enables the observer to transcend stereotypes. This step can lead to empathy with the experiences of "the other," rather than stereotyping that person, and foster a deeper understanding of the role of privilege in all of our lives. "Finding the me" emphasizes the importance of the growing trend of individuals self-identifying their gender.

Finally, we imagine Rebuilding a new multi-faceted legal gender framework in the United States. A significant number of states now recognize gender identity as a protected category; therefore, new social and legal understandings of gender are called for and in the process of emerging. Gender in/sight challenges everyone to consider whether societal practices and laws are, in fact, inclusive of all genders and gender identities.

Gender remains a societal construct. But, if gender is a social construct, and if society creates and enforces gender norms, what does a person do if they do not fit into their designated "box?" Here, the definition of gender as biology, identity, and expression becomes helpful. It empowers the individual (and those who interact with the individual) to understand that gender comprises (at least) these three components, and that society should respect a person's own understanding of their gender, regardless of existing social constructs and gender norms.

STEPHANIE WILDMAN: Before we conclude, I want to revisit the theme for this podcast series, which asks "Is there a common good in our common home?" I am indebted to several thinkers, but especially Kristin Heyer and Theresa Ladrigan-Whelpley for my ideas about the meaning of a common good. Thomas Aquinas believed that right relationship with God required a commitment to the common good of the community and of creation. But the idea of a common good is not unique to Catholic social thought – Harkening back to ancient Greek philosophy, Aristotle urged that the good of the community should guide

individual's actions. Modern Social Justice advocates have questioned whether access to law is a public good that should be provided to all. The Jewish tradition urges "justice, justice shall thou pursue."

In doing more research into the Catholic idea of a common good, I learned that scholars emphasize the need for dialogue, inviting creative engagement and questioning around this idea of a common good. So thinking about gender in/sight and this idea of common good, what struck me immediately is that questioning is central to several key aspects of gender in/sight.

ADAM CHANG: Stephanie, I completely agree, I think that looking at context and pronouns invites us to question assumptions we make about others, while asking the "other" question roots gender insight firmly in the dialogic process to deepen insight. Questioning and observing privilege does the same.

STEPHANIE WILDMAN: Finding the "me" also illuminates the tension between the individual and a greater good. John Coleman has said: "the dignity of persons can be realized only in community; genuine community, in its turn, can only exist where the substantial freedom and dignity of [each] human person is secured." Gender in/sight provides a path for ensuring the individual dignity that a multi-faceted gender framework can provide. Finding a common good requires freedom for each of us to be the fullest member of society that we can be.

THERESA LADRIGAN-WHELPLEY: Thanks for listening to INTEGRAL, a Bannan Institute podcast of the Ignatian Center for Jesuit Education at Santa Clara University. Special thanks to Stephanie Wildman and Adam Chang for their contribution to today's episode. For more from today's guests, see their article, *Gender In/Sight: Examining Culture and Constructions of Gender*, available in Volume 18 of the Georgetown Journal of Gender and the Law. Coming up next week is Sonja Mackenzi, who will be exploring the rights and advocacy efforts of children in relation to gender justice and the common good.

Technical direction for INTEGRAL was provided by Fern Silva and Tim Rose. Our Production Manager is Kaylie Erickson. Our Production Assistant is Manuel Sanchez.

Thanks to Mike Whalen for advisory and editorial support. You can find us on the web at scu.edu/integral, or subscribe via iTunes, SoundCloud, Stitcher, or Podbean.