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## Martha Fineman, More Transformative Than Ever

Michèle Alexandre

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# MARTHA FINEMAN, MORE TRANSFORMATIVE THAN EVER

*Michèle Alexandre\**

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## INTRODUCTION

Nancy Polikoff once urged: “Read Martha Fineman.”<sup>1</sup> This is an admonishment as urgent now as it was when Polikoff published her essay titled *Why Lesbians and Gay Men Should Read Martha Fineman*.<sup>2</sup> Although Polikoff focused her analysis on the disproportional place marriage held, at the time, in LGBTQ activism,<sup>3</sup> these three simple words capture eloquently the tremendous debt society and legal scholarship owe to Fineman. This is a debt resulting from her transcendent contributions and push for structural reforms in her work and life—a debt that obligates any justice seeker to educate themselves by digging deep into Fineman’s work.

Very few sources or body of work provide more depth than Fineman’s work,<sup>4</sup> and even fewer incorporate such thorough documentation of the failing

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<sup>1</sup> Nancy D. Polikoff, *Why Lesbians and Gay Men Should Read Martha Fineman*, 8 AM. U. J. GENDER SOC. POL’Y & L. 167, 176 (1999).

<sup>2</sup> *Id.*; see also Carlos A. Ball, *This Is Not Your Father’s Autonomy: Lesbian and Gay Rights from a Feminist and Relational Perspective*, 28 HARV. J.L. & GENDER 345 (2005); Barbara J. Cox, *Marriage Equality Is Both Feminist and Progressive*, 17 RICH. J.L. & PUB. INT. 707 (2014); Suzanne A. Kim, *Skeptical Marriage Equality*, 34 HARV. J.L. & GENDER 37 (2011); Douglas NeJaime, *Before Marriage: The Unexplored History of Nonmarital Recognition and Its Relationship to Marriage*, 102 CALIF. L. REV. 87 (2014).

<sup>3</sup> See Polikoff, *supra* note 1.

<sup>4</sup> See MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* (2004) [hereinafter FINEMAN, *THE AUTONOMY MYTH*]; MARTHA ALBERTSON FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* (1991); MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) [hereinafter FINEMAN, *THE NEUTERED MOTHER*]; see also Martha Albertson Fineman, *Cracking the Foundational Myths: Independence,*

equality-based antidiscrimination structures. Adding to these gifts, Fineman goes even further by providing transformative avenues for changing and rebuilding the same institutions which inadequacies she so deftly laid bare. Consequently, it is no surprise that vulnerability theory today—the natural offshoot of Fineman’s dependency theory and criticism of formal antidiscrimination structures—transforms and unifies across disciplines. From Leeds to Amsterdam to everywhere in the United States, scholars and equity activists are galvanized to implement vulnerability in their fields and their own locales.

Fineman’s vulnerability project encompasses her brilliance, her unabated dedication to equity, and, equally as important, her faith in the human potential. Those are the qualities that inspired so many of us to return time and time again to her<sup>5</sup> and her work for implementation strategies.<sup>6</sup> Those qualities brought us to countless sessions of uncomfortable conversations, eager to grapple with the hard task of changing structures to honor human dignity.

To read Fineman closely is, of course, to fall in love with her rigor and her incisive deconstruction of complex problems. To work with Martha is to fall in love with her spirit, her intellectual generosity, and her wholesale commitment to a better world. And, those who have worked with her, who have used her

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*Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL’Y & L. 13 (2000) [hereinafter Fineman, *Cracking the Foundational Myths*]; Martha Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 HARV. L. REV. 727 (1988); Martha Albertson Fineman, *Equality Across Legal Cultures: The Role for International Human Rights*, 27 T. JEFFERSON L. REV. 1 (2004); Martha Albertson Fineman, *Evolving Images of Gender and Equality: A Feminist Journal*, 43 NEW ENG. L. REV. 437 (2009); Martha Albertson Fineman, *Feminism Legal Theory*, 13 AM. U. J. GENDER SOC. POL’Y & L. 13 (2005); Martha L.A. Fineman, *Masking Dependency: The Political Role of Family Rhetoric*, 81 VA. L. REV. 2181 (1995); Martha Albertson Fineman, *Progress and Progression in Family Law*, 2004 U. CHI. LEGAL F. 1 (2004); Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1 (2008) [hereinafter Fineman, *The Vulnerable Subject*]; Martha Albertson Fineman, *Vulnerability, Resilience, and LGBT Youth*, 23 TEMP. POL. & C.R. L. REV. 307, 318 (2014) [hereinafter Fineman, *Vulnerability, Resilience, and LGBT Youth*].

<sup>5</sup> I am aware that I interchangeably use Fineman and Martha in this Essay. Fineman is used here when referring specifically to Martha Fineman as the pioneering and world-renowned scholar. I do sometimes revert to “Martha” when speaking of Martha’s far-reaching legacy as a mentor, a friend, and a passionate champion of growth and human kindness.

<sup>6</sup> See Christine P. Bartholomew, *Redefining Prey and Predator in Class Actions*, 80 BROOK. L. REV. 743 (2015); Angela P. Harris, *Vulnerability and Power in the Age of the Anthropocene*, 6 WASH. & LEE J. ENERGY CLIMATE & ENV’T 98 (2014); Stu Marvel, *The Evolution of Plural Parentage: Applying Vulnerability Theory to Polygamy and Same-Sex Marriage*, 64 EMORY L.J. 2047 (2015); Saru M. Matambanadzo, *Embodying Vulnerability: A Feminist Theory of the Person*, 20 DUKE J. GENDER L. & POL’Y 45 (2012); Martha T. McCluskey, *Constitutional Economic Justice: Structural Power for “We the People,”* 35 YALE L. & POL’Y REV. 271 (2016); Ani B. Satz, *Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property*, 16 ANIMAL L. 65 (2009); Ani B. Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, 83 WASH. L. REV. 513 (2008).

work, and who have built on her frameworks know the value of Polikoff's advice for current and future equity scholars. Are you passionate about gender and LGBTQ equity? Read Martha Fineman.<sup>7</sup> Might you be struggling to find a framework for better fulfillment of the promise of disability and non-ableism movements? Read Martha Fineman.<sup>8</sup> Interested in economic equity and transformative enforcement of corporate governance rules? Read Martha Fineman.<sup>9</sup> Or, are you focused on the subjugating operations of global trade and markets? Read Martha Fineman.<sup>10</sup>

In these times, especially as social movements and legal scholarship continue to collide more closely, this advice remains urgent. The recent waves of social discussions, currently interrogating power structures and acknowledging the impact of sexual violence in all spheres, are necessary and welcome. To be clear, we have experienced these movements periodically. It is, in fact, through these past experiences that we have learned that collective angst and national conversations can lead to social transformation. However, when it comes to gender equity and antidiscrimination goals, that potential will remain unfulfilled if Polikoff's advice is not heeded by new generations.<sup>11</sup> Failing to read Fineman's work carefully, for example, has helped to maintain dissensions and prevent useful coalitions among equity activists. Current movements like #metoo<sup>12</sup> and Project: Time Off<sup>13</sup> should take heed and learn from these past failures. Follow Polikoff's advice. Read Martha Fineman. Her work helps scholars map out the interconnected webs of power structures that, from slavery–

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<sup>7</sup> See Fineman, *Vulnerability, Resilience, and LGBT Youth*, *supra* note 4; Martha L. Fineman & Anne Opie, *The Uses of Social Science Data in Legal Policymaking: Custody Determinations at Divorce*, 1987 WIS. L. REV. 107 (1987).

<sup>8</sup> For example, JaeWon Kim, the first professor of disability law at Sungkyunkwan University, credits Fineman for “help[ing] shape [his] work today.” Holly Cline, *A Global “Uncomfortable” Conversation: Professor Martha A. Fineman Develops Paradigm*, EMORY LAW., Summer 2012, at 28, 29–30.

<sup>9</sup> “Martha T. McCluskey, professor of law at [SUNY] Buffalo Law School, was inspired by Fineman's work and is applying the vulnerability theory to her project on economic inequality and the law, specifically critiquing the free-market focus of law and economics.” *Id.* at 29.

<sup>10</sup> Fineman, *The Vulnerable Subject*, *supra* note 4.

<sup>11</sup> See Kimberlé W. Crenshaw, *Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality*, 46 TULSA L. REV. 151 (2010); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN'S L.J. 303 (2005); see also AUDRE LORDE, *The Master's Tools Will Never Dismantle the Master's House*, in SISTER OUTSIDER: ESSAYS AND SPEECHES 110, 110 (1984) (“It is a particular academic arrogance to assume any discussion of feminist theory without examining our many differences, and without a significant input from poor women, Black and Third World women, and lesbians.”).

<sup>12</sup> See ME TOO., <https://metoomvmt.org> (last visited Apr. 9, 2018).

<sup>13</sup> See PROJECT: TIME OFF, <https://www.projecttimeoff.com> (last visited Apr. 9, 2018).

Jim Crow to today, have prevented, until now, a #metoo-type movement.<sup>14</sup> Similarly, it is Fineman's eloquent mapping out of our interconnected dependencies and vulnerabilities that unify us. This is so whether such vulnerabilities are caused by violently aggressive power structures or whether they are simply part of the human condition. Fineman's work pushes us to dig deeper into the record, to find more connected stories that could resist existing power structures' instincts to divide. In that way, any harm done to any member of society—whether domestic workers, field hands, farmers, sex workers, enslaved women of the past and today, nonconforming men, or “otherly”<sup>15</sup> identified—also becomes part of our stories and part of our motivation to change these structures.

Fineman's work serves as a repository of detailed investigations that can dismantle the tacit and overt assumptions of nearly every power structure. This is powerful at any time, but in this moment, it is a treasure. In both the Feminism and Legal Theory Project and the Vulnerability and the Human Condition Initiative, she has also personified the quintessential facilitator of healing uncomfortable conversations around hard issues.<sup>16</sup> She has done so nationally and around the world for decades.

Decades before the word “feminism” resurfaced as Merriam Webster's selected word of the year for 2017,<sup>17</sup> Martha Fineman relentlessly wrote about power, its perpetuation in the private and public spheres, state responsibility and complicity in perpetuating debilitating realities for caretakers and those connected to them—children, the disabled, and the elderly, among others. Specifically, Fineman has educated generations about the conditions that caretakers face and the need to recognize mutual dependency in all spheres.<sup>18</sup> She rang the alarm on inefficient antidiscrimination legal structures.<sup>19</sup> More radically and in unprecedented fashion, Fineman advocated for holistic and equitable valuation of all aspects of their labor, well before it was fashionable.<sup>20</sup>

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<sup>14</sup> See CRYSTAL N. FEIMSTER, *SOUTHERN HORRORS: WOMEN AND THE POLITICS OF RAPE AND LYNCHING* (2009).

<sup>15</sup> MICHÈLE ALEXANDRE, *SEXPLOITATION: SEXUAL PROFILING AND THE ILLUSION OF GENDER* 9 (2015) (defining “otherly”).

<sup>16</sup> See *The Feminism and Legal Theory Project*, EMORY L., <http://law.emory.edu/faculty-and-scholarship/centers/feminism-and-legal-theory-project.html> (last visited Mar. 3, 2018); *The Vulnerability and the Human Condition Initiative*, EMORY U., <http://web.gs.emory.edu/vulnerability/index.html> (last visited Mar. 3, 2018).

<sup>17</sup> John Patrick Pullen, *And Merriam Webster's Word of the Year for 2017 Is . . .*, TIME (Dec. 12, 2017), <http://time.com/5059818/merriam-webster-word-of-the-year-2017-feminism/>.

<sup>18</sup> FINEMAN, *THE AUTONOMY MYTH*, *supra* note 4.

<sup>19</sup> See Fineman, *Vulnerability, Resilience, and LGBT Youth*, *supra* note 4.

<sup>20</sup> FINEMAN, *THE NEUTERED MOTHER*, *supra* note 4.

Through her model and scholarship, she provides a wealth of resources into which we continuously delve. Her insights and deep analysis of the conditions and systematic exclusion faced by caretakers reverberate today.<sup>21</sup>

The current moment proves more than ever that these issues have not gone away. Culturally, the debates rage around systematic inequality, disproportionate burdens on women, and unequal pay.<sup>22</sup> Chronic violence on vulnerable bodies is still prevalent.<sup>23</sup> In spite of this, institutional frames seem unable to abandon old harmful structures and habits. For example, while public figures might lose status when national scrutiny lands on abuses allegedly committed by them, there still lacks adequate dissection of the institutions that tolerated these behaviors for so long. In that sense, recent revelations around sexual assault could have been plucked from any moment in the last forty years. Additionally, women and other vulnerable groups' struggles for economic opportunities are ongoing. Women of various social and income backgrounds still face substantial hurdles in the job market, particularly after taking time to care for children.<sup>24</sup> That pattern still impacts women and others fully engaged in caretaking at a highly disproportionate rate.<sup>25</sup> The same is true for the disproportionate risk of death women and non-conforming bodies routinely face in domestic settings or private encounters.

Nonetheless, what did change in the last forty years is that we now have the foundations that Fineman laid. This is tremendously exhilarating. Fineman's canon, her continued implementation of vulnerability theory, and the practice of uncomfortable conversations all create space for discourse that crosses beyond cultural, class, and racial lines. These foundations provide tools that foster transformative collaborations for equity activists and scholars. Widespread cross-generational engagement with Fineman's insights would inevitably elevate the vibrant cultural discourse occurring today.

The breadth and depth of Fineman's work are such that it would be impossible to discuss all the layers of her ongoing legacy in this short Essay. For

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<sup>21</sup> *Id.* at 9.

<sup>22</sup> See Milia Fisher, *Women of Color and the Gender Wage Gap*, CTR. FOR AM. PROGRESS (Apr. 14, 2015, 7:00 AM), <https://www.americanprogress.org/issues/women/reports/2015/04/14/110962/women-of-color-and-the-gender-wage-gap/>.

<sup>23</sup> See *Facts and Figures: Ending Violence Against Women*, UN WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> (last updated Aug. 2017).

<sup>24</sup> See Jennifer Preston, *Helping Women Get Back in the Game*, N.Y. TIMES (Mar. 17, 2014), <https://www.nytimes.com/2014/03/18/education/helping-women-get-back-in-the-game.html>.

<sup>25</sup> See Debra D'Agostino, *Fighting Caregiver Discrimination*, FORBES (Aug. 30, 2010, 2:45 PM), <https://www.forbes.com/2010/08/30/caregiver-discrimination-work-law-forbes-woman-leadership-children/>.

the sake of brevity, I confine my discussion to three points. Specifically, the foundations laid by Martha's work reverberate culturally and globally in three ways: (1) valuation of invisible labor, (2) normalization of uncomfortable conversations, and (3) universalization and destigmatization of vulnerability. While I focus solely on these key contributions, I could go on forever about the breath and scope of Fineman's influence and the impact of her mentorship. To trace Martha's impact is to embark on an exhilarating scholarly, as well as personal, journey.

#### I. FINEMAN'S SCHOLARLY LEGACY IN PRACTICE AND CONSTANT MOVEMENT: VALUATION OF INVISIBLE LABOR

Somewhere, there is a woman, with children, trying to make a living. She has done all that society has told her is expected: a daughter; maybe a wife; married, divorced, or maybe single. Yet, yearning for more, she continues to knock on doors for a better job, a better wage, to no end. No job prospects. Time off while having her three children created too big a gap. In job interviews, she receives circular arguments from would-be bosses about needing experience, when experience would only come by giving her a chance. Meanwhile, the children's care and health, household maintenance, and family support—all falls on her.

Fineman deeply understood this plight. Through her breakdown of dependency,<sup>26</sup> she not only rung the alarm for the detrimental impact shouldered by women and vulnerable groups, but she questioned the state and demanded responsibility from it. As Fineman later stated, the state actively participated in the negligence and devaluation of caretaking.

[A]n impoverished sense of equality is embedded in our current legal doctrine. We understand equality in terms that are formal, focused on discrimination, and inattentive to underlying societal inequities. Second, the view that the proper role of the state is one of restraint and abstention is politically powerful. Even self-identified progressive social reformers are suspicious of the state; the rhetoric of non-intervention prevails in policy discussions, deterring positive measures designed to address inequalities. Further, we idealize contract and correspondingly reify individual choice in ways that mask society's role in perpetuating inequality. The fact that societal institutions play a significant role in maintaining and extending inequality is the very

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<sup>26</sup> Fineman, *Cracking the Foundational Myths*, *supra* note 4, at 17–19.

reason that we need a more active state, one that is responsive to that reality.<sup>27</sup>

The notion of the human spirit as inherently vulnerable and dependent is one that is revolutionary for legal scholarship. In a field where harm is only understood based on formal concepts and identification of key characteristics, from the beginning of her career, Fineman demanded that we focus on the toll of the state's willful blindness of market biases' detrimental impact on vulnerable bodies and spirits.<sup>28</sup> To fully understand Martha's bravery and avant-garde proposition in the 1980s, one must place it in the context of a jurisprudence in which hierarchies and fitting into the established structures were still *de rigueur*. These hierarchies exist still today. For example, antidiscrimination doctrines mandate that women are best able to prove discrimination when comparing privileges, perks, and treatment received by men in the same position as them.<sup>29</sup> In the absence of that showing, it continues to be difficult for laws to meaningfully eradicate and weed out discriminatory behaviors. This is starkly evident in gender discrimination claims involving grooming standards or pregnancy-related policies.<sup>30</sup> In other words, in cases where dominant cultural understanding sees fewer bases for comparison with men, legal protections against harm completely disappear.

The fact that grooming cases are still a fixture of today's landscape,<sup>31</sup> unresolved with any finality by the jurisprudence, demonstrates the radical nature of Martha's theory of dependency and her acknowledgment of the body as inherently fragile. With these concepts, Martha dared to abandon the squabbles over pittance and scraps among marginalized individuals fostered by the limits of formal antidiscrimination laws. Instead, she injected into legal discourse detailed depictions of the dependency and interconnectedness known and experienced by us all. In so doing, she argued for recognition of the inherent fragility of the human experience.<sup>32</sup> To recognize this fragility is to refute the hierarchy-based legal construct for allocating rights. To embrace this mutual dependency is to recognize a common struggle against the institutions that prey on our varied forms of dependencies, instead of helping to make us whole.

Based on Martha's theory of dependency, the law's pattern of comparing marginalized individuals to dominant groups became limited. It did so because

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<sup>27</sup> Fineman, *The Vulnerable Subject*, *supra* note 4, at 2.

<sup>28</sup> See Fineman, *Cracking the Foundational Myths*, *supra* note 4.

<sup>29</sup> See Suzanne B. Goldberg, *Discrimination by Comparison*, 120 YALE L.J. 728 (2011).

<sup>30</sup> See *id.*

<sup>31</sup> See, e.g., *Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104 (9th Cir. 2006) (en banc).

<sup>32</sup> See Fineman, *The Vulnerable Subject*, *supra* note 4, at 12.



Martha made it painfully clear that such comparison led to the ultimate avoidance by the state of its responsibility to care for all.<sup>33</sup> By piercing the myth of an invincible and perennially self-reliant citizenry, Martha flipped the word dependency from a negative into a universal state of being. Furthermore, she moved us away from viewing the law's sole role as provider of access to equality<sup>34</sup> to understanding that all are harmed and connected when groups or individuals are unable to fully live up to their potential. Thus, participation in the shunning of another's fragile body might lead to the shunning of one's own body at a later date.

## II. UNCOMFORTABLE CONVERSATIONS AND SITES OF TRANSFORMATION AND COLLABORATION

One of the programs Martha created with the Feminism and Legal Theory Project is the "Uncomfortable Conversation" series.<sup>35</sup> With that, Martha quickly became known as the creator of safe spaces and a facilitator of difficult, and at times, "uncomfortably" tense exchanges. Generations of scholars have been touched by these series. They have gone to implement that same framework in their own spaces and institutions, thereby advancing the ball. I joined the Feminism and Legal Theory Project in 2005 and was immediately enthralled by Martha's commitment to truth, rigor, and alliance-building in these conversations. She achieved these goals by creating safe spaces for disparate views and perspectives to come together to grapple with hard issues. The premise of those conversations was always that progress would only come from honest conversations, pushes and pulls, addressing of misinformation, calling out biases—all with the understanding that the common space was so sacred that no one could take the interactions personally. Martha knew that true rigorous intellectual exchange and commitment to equity require honesty. She embodied those qualities and inspired all of us to do the same.

Martha saw early on how important truth-telling was for the ultimate unraveling of oppressive systems and patterns. What was also clear in these gatherings was that the ultimate goal, no matter the discipline, was full understanding and liberation of the human spirit from the rigid social restrictions that shackled it on so many levels.

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<sup>33</sup> See generally *id.*

<sup>34</sup> See generally *United States v. Virginia*, 518 U.S. 515 (1996); *Craig v. Boren*, 429 U.S. 190 (1976).

<sup>35</sup> *The Feminism and Legal Theory Project*, *supra* note 16.

Martha's uncomfortable conversations were key sites and stages where connections were vibrantly apparent. Scholars of all hues and awareness met regularly under her guidance and tutelage only to be challenged and pushed for more, to create work more relevant, more poignant and everlasting. It forced all in the room to face realities and biases that they ignored. To be part of Martha's conversations, one had to be willing to be spiritually honest, admit when legal constructs failed, and admit when more was needed—more awareness, more knowledge, more collaboration with other colleagues working on opposite subject matters. From disability, to gender, to the environment, to tax, to securities, to labor, nothing was off limits, if application and connections were made clear.

Then, as it is now, Martha's probing and interrogation of all of our work demonstrated a commitment to something greater than the sum of our parts. The uncomfortable conversations achieved transcending work from all fields. These conversations are only one of numerous ways in which Martha has dedicated her career and heart to bringing lived realities to the forefront of feminist legal scholarship. Martha represents true feminism in action. In each of her works, she dares to challenge institutions and structures, and to shed light on the plights of every day individuals. She has challenged our concepts of family, assumptions about labor, the operation of institutions, and even more, the state itself. She has held the state accountable for its failings and for stagnation. And, all the while, she has mentored generations and scores of feminist scholars.<sup>36</sup>

### III. THE VULNERABILITY PROJECT: REVOLUTIONARY AND DEEPLY REDEMPTIVE

Martha's current project, the implementation of vulnerability theory, is the natural offshoot of her dissection of dependency. It is also her most far-reaching and socially transformative project. Social and legal recognition of vulnerability as universal are the exciting propositions of the twenty-first century. Accepting the universal nature of vulnerability changes everything. It pushes back against built-in instincts to duplicate existing power structures because it asks everyone to reconsider old ineffective methodologies. It is by its nature uncomfortable and

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<sup>36</sup> For example, "Fionnuala D. Ní Aoláin is the Dorsey & Whitney Chair in Law at the University of Minnesota Law School and a professor of law at the University of Ulster's Transitional Justice Institute in Belfast, Northern Ireland. She describes Fineman as 'a bedrock of support,' who helped her transition through various stages of her career and research. 'Martha is deeply wise and extraordinarily generous with her wisdom,' Ní Aoláin says. Ní Aoláin commends Fineman for creating a network for women scholars through the [FLT] Project and conferences focused on vulnerability theory, and it is 'a model that has proved to be as influential on scholars as her theories.'" Cline, *supra* note 8, at 30.

liberating. What is radical about Martha's calling on state responsibility to care for vulnerability and be aware of dependency as unavoidable is that it liberates all from having to pretend to believe in inherent autonomy. If fully adopted, vulnerability theory could overhaul the stagnant antidiscrimination system.

As Martha states, thinking of the "vulnerable subject" brings clarity and deep understanding of needed solutions for all connected in society. She says of the vulnerable subject:

Far more representative of actual lived experience and the human condition, the vulnerable subject should be at the center of our political and theoretical endeavors. The vision of the state that would emerge in such an engagement would be both more responsive to and responsible for the vulnerable subject, a reimagining that is essential if we are to attain a more equal society than currently exists in the United States.

...  
... Vulnerability... opens up new avenues for critical exploration.

Vulnerability initially should be understood as arising from our embodiment, which carries with it the ever-present possibility of harm, injury, and misfortune from mildly adverse to catastrophically devastating events, whether accidental, intentional, or otherwise. Individuals can attempt to lessen the risk or mitigate the impact of such events, but they cannot eliminate their possibility. Understanding vulnerability begins with the realization that many such events are ultimately beyond human control.

Our embodied humanity carries with it the ever-constant possibility of dependency as a result of disease, epidemics, resistant viruses, or other biologically-based catastrophes. Our bodies are also vulnerable to other forces in our physical environment: There is the constant possibility that we can be injured and undone by errant weather systems, such as those that produce flood, drought, famine, and fire. These are "natural" disasters beyond our individual control to prevent.<sup>37</sup>

One cannot overstate the radical and timely nature of this contribution. Deliberate reframing of justice in terms of awareness and computation of human frailty is revolutionary in a legal system like ours, where laws are driven by restrictive ideas of just deserts and inherent independence. Vulnerability doctrine is perfect for our time. It drastically abandons the myths of individuality—that have limited law for so long—at a time when we restlessly

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<sup>37</sup> Fineman, *The Vulnerable Subject*, *supra* note 4, at 2, 9.

yearn for new avenues. By reclaiming and reframing the term vulnerability, Martha removes the artificial categories present in formal equality doctrines.<sup>38</sup> She creates meaningful possibilities for all—for able bodies, those with disabilities, persons with different orientation and identity, women, men, and children. It connects them all. It removes the stigma of disability, and makes otherness an illusion.

In *The Autonomy Myth*, Fineman acutely assessed: “The myths about autonomy, independence and self-sufficiency for both individuals and for families have only been able to flourish and perpetuate themselves because dependency has been hidden within the family. . . . [T]he state has a responsibility to mediate the structural inequality built into our ‘free’ market system.”<sup>39</sup>

In addition to pushing for constant repositioning and deeper understanding when analyzing the law, vulnerability framing demands that gender activists question their own positions relating to others and that they continuously try to reframe and test their own perspectives.

In other words, gender activists, too, are called by Martha to question their assumption about the marginalized or the other. The ultimate goal and result for legal scholars, activists, and jurists is to see themselves as arguing for parts of themselves, for people whose realities and vulnerability intersect with theirs—instead of merely arguing on behalf of a group. In that way, activists and scholars will reposition themselves too, not merely as people generously devoting their time to a cause, but as essential participants in safeguarding, ultimately, their own health and human dignity.

The ongoing Vulnerability Project that Martha now conducts around the world, unsurprisingly, achieves this on a magnified scale. I have had the joy to participate in Martha’s projects both in the United States and internationally. The common denominator, each time, remains her intellectual rigor and absolute commitment to educate generations after generations about the transcendental role of vulnerability. Like others, I have been galvanized by the vulnerability project. In scholarship, I applied vulnerability theory to argue for the abandonment of toxic gender binaries in American jurisprudence.<sup>40</sup> In personal interactions and activism, it inspires me to seek common ground and pockets of

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<sup>38</sup> Fineman, *Equality Across Legal Cultures*, *supra* note 4.

<sup>39</sup> FINEMAN, *THE AUTONOMY MYTH*, *supra* note 4, at 53–54, 264.

<sup>40</sup> ALEXANDRE, *supra* note 15.

fragility in others for deeper understanding and, ultimately, lasting collaborations.

To truly understand vulnerability as universal—as Martha has demonstrated—is to build collaborative forces across all lines. These coalitions, in turn, will be better positioned to demand more of states and global governments than individuals have ever dared to demand before. As she posits:

[V]ulnerability is—and should be understood to be—universal and constant, inherent in the human condition. The vulnerability approach I propose is an alternative to traditional equal protection analysis; it is a “post-identity” inquiry in that it is not focused only on discrimination against defined groups, but concerned with privilege and favor conferred on limited segments of the population by the state and broader society through their institutions. As such, vulnerability analysis concentrates on the structures our society has and will establish to manage our common vulnerabilities. This approach has the potential to move us beyond the stifling confines of current discrimination-based models toward a more substantive vision of equality.<sup>41</sup>

It asks us to expect more of each other and of governments. It demands that we all work to better society at large. Martha teaches this by educating new scholars and encouraging implementation of vulnerability as a theory across the world.<sup>42</sup> Not one to rest, she incessantly travels to lead workshops and meet new cohorts to expose them to the healing potential of this paradigm shift.<sup>43</sup>

Thanks to Martha’s work, we now are witnessing a vibrant discourse around gender issues—one that has not occurred in over two decades. Young, old, and in between are engaging with one another on a large scale around issues of consent, vulnerability, and identity. They are also questioning the complicity of

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<sup>41</sup> Fineman, *The Vulnerable Subject*, *supra* note 4, at 1.

<sup>42</sup> See Alex Greenwood, *Martha Fineman Delivers Inaugural Lecture for Centre for Law and Social Justice*, U. LEEDS SCH. L. (Oct. 7, 2015), <http://www.law.leeds.ac.uk/news/2015/martha-fineman-delivers-inaugural-lecture-for-law-and-social-justice>; *Fineman Receives Honorary Juris Doctor from Sweden’s Lund University*, EMORY L.: NEWS CTR. (June 3, 2013), <http://law.emory.edu/news-center/releases/2013/06/fineman-honorary-degree-lund-university.html#.Wml6bJM-fVo>; *Professor Martha Fineman*, U. BIRMINGHAM, <https://www.birmingham.ac.uk/research/activity/ias/distinguished-visiting-fellows/2015/fineman.aspx> (last visited Feb. 28, 2018).

<sup>43</sup> See, e.g., Cline, *supra* note 8, at 30 (noting that Anna Grear was “developing a theory of legal subjectivity and reformulating the relationship between human rights and the environment . . . [at] the University of Waikato, New Zealand”); see also *id.* (noting Haesook Kim’s discussion of the benefits of the “global conversation” started by Fineman’s work and explaining that Kim is an “associate professor of sociology and chair of Asian studies at Long Island University . . . [and was] writing a book, *Winds of Change*, which examines the entry of women into the exclusive male profession of law in Korea from 1952 to 2009”).

the state in perpetuating and promoting harm against the most fragile. Martha not only set the stage for this growth and cultural engagement decades ago, but she actively continues to facilitate it today. As such, Martha Fineman's work is one that grows, expands, and remains applicable in a multilayered fashion with each generation. For these reasons, her frameworks lend themselves to the dissemination of key ideals that remain relevant no matter the time or context.

#### CONCLUSION

Most importantly, in all my years working with Martha, I have come to love her as a pure and open heart. Martha is tireless because she has unadulterated care for justice work. As brilliant as we all know her to be, the exercise for her is not solely academic. It is one of love. All who work with her understand this early on. She mentors tirelessly and checks in during various stages of our lives. She is love in action. We love her joy and glow when she discusses her sons and her family, just as much as we love her commitment to scholarship and social change.

Her generosity of spirit serves as a lasting model for all in the academy. As we continue the national discourse on gender today, I am comforted to know of thousands of Martha's students and mentees around the world willing and equipped to conduct uncomfortable conversations capable of transforming our culture. I am heartened to witness the increasing awareness and depth of understanding facilitated by Martha's work. I remain hopeful that vulnerable individuals of all shapes, abilities, and identity will find common grounds, and will collaborate to destroy institutional inequality. The foundations for that reality, for the hope that such collaborations and awareness might bring, were actively and deliberately laid by Martha Fineman over the course of decades.

All who have worked with her know her to be a warm and caring friend. Martha is the mentor who calls you when you are sick, travels by train to attend a friend's and colleague's funeral, and helps celebrate wonderful professional accomplishments, as well as the personal ones, with equal zeal and love. Yes, so much could be shared by all of us about the joy of having Martha as a friend. That legacy and the love she has imparted to all of her mentees leave an indelible mark. We, too, have all gone on to mentor and love like Martha showed us: prioritizing collaboration, human development, and protection of human dignity at all costs.