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Interview with Professor Martha Albertson Fineman

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Introduction

Martha Albertson Fineman, Robert W. Woodruff Professor at Emory School of Law in Atlanta, U.S, is a legal scholar within the fields of family law and feminist legal theory. In 1984 Fineman founded the *Feminism and Legal Theory Project*, which she is still director of. She has developed a theory on vulnerability and is facilitator of the *Vulnerability and the Human Condition Initiative* at Emory University. In June 2011 Fineman visited the Faculty of Law at Lund University, invited by the *Law and Vulnerabilities Research Program*.¹ This interview aims at introducing key aspects of Fineman's work on vulnerability.

Beginning her academic career in family law, Fineman argued the family is the most gendered institution.² Despite changes towards an egalitarian family, the family continues to serve its historic institutional role as the repository for inevitable dependencies.³ Suggesting a more nuanced understanding of dependency, Fineman divides the concept in two forms: inevitable and derivative dependency. Whereas the former is the dependency we experience as children, as elderly, or when becoming ill or disabled, the latter is the dependency of those who care for children, elderly, ill and disabled. This form of dependency is »socially imposed through our construction of institutions such as the family, with roles and relationships traditionally defined and differentiated along gendered lines«. ⁴

1 *The Law and Vulnerability Research Program* is initiated by Titti Mattson and Ulrika Andersson.

2 Fineman 2009, p. 49.

3 Fineman 2009, p. 59.

4 Fineman 2010, p. 264.

Fundamental to Fineman's scholarly work is a feminist critique of notions of equality, the liberal subject and prevailing anti-discrimination politics. According to Fineman, the current anti-discrimination doctrine assumes that discrimination is the discoverable and correctable exception to an otherwise just and fair system, characterized by values such as individual liberty and autonomy. Developing her work on dependency, Fineman raises the question: »if our bodily fragility, material needs, and the possibility of messy dependency they signify cannot be ignored in life, how can they be absent in our theories about equality, society, politics and law?«⁵

Moving beyond gender and other identity categories, Fineman uses the concept of vulnerability to »define the very meaning of what it means to be human«.⁶ Like dependency, vulnerability is universal, but unlike dependency, Fineman argues, vulnerability is constant. Human vulnerability arises from our embodiment, which carries with it the ever-present possibility of harm, injury and misfortune. However, vulnerability can manifest itself in both bodily and non-bodily forms, in the destruction of institutional or social relationships.

Fineman stresses, »while human vulnerability is universal, constant and complex, it is also particular«.⁷ With regard to the individual experience of vulnerability, we are positioned differently. According to Fineman there are two forms of differences: we have different forms of embodiment, such as physical, mental, intellectual differences, but we are also differently situated within webs of economic and institutional relationships. This form of difference, the institutional dimension, is where law and policy can, and should respond, Fineman argues. The possibility of harm cannot be eliminated, but society and its institutions can address potential harms through law and policy. However, »the counterpoint to vulnerability is *not* invulnerability, for that is impossible to achieve, but rather the *resilience* that comes from having some means with which to address and confront misfortune«.⁸ This component of the theory on vulnerability directs our attention to the institutions that can provide resilience. Finally Fineman's theory calls for a more responsive state: »the choice is whether or not the state is going to act to fulfill a well-defined responsibility to implement a comprehensive and just equality regime that ensures access and opportunity for all consistent with a realistic conception of the human subject«.⁹

5 Fineman 2010, p. 263.

6 Fineman 2010, p. 266.

7 Fineman 2010, p. 268.

8 Fineman 2010, p. 269, italics in original.

9 Fineman 2010, p. 274.

The Interview

Wegerstad: You call your current research a post-identity project. Could you explain what you mean by that?

Fineman: Right. One of the things that have happened in the States is that we have a system that assumes that there is a fundamental egalitarian system already in place, and that there is equality of access, equality of opportunity. Americans are very fond of presenting ourselves in that way. But we do recognize some distortions to that system. And those distortions are based on various identity characteristics. There have historically been exclusions of people from access to public goods and to the public and political sphere because of gender, because of race, because of ethnicity, because of marital status. What has happened is that interest groups organized around those identity characteristics and fought for inclusion and sameness of treatment creating an anti-discrimination kind of system. What we now have is an anti-discrimination model and I am critical of that, not because discrimination is not a problem, because it still may be, but I think that today discrimination is not the predominate problem in the United States. There are much more systemic manifestations of inequality that are really the problem. Looking in terms of anti-discrimination allows people to believe that discrimination is the primary problem, and also that it can be discovered, addressed and remedied, and that it is the distortion to another wise totally equitable and fair system. An anti-discrimination approach masks the need for a more responsive state, a state that is more attuned to existing systems of privilege and works to lessen that and to make things in fact more egalitarian. What has happened in the United States is that you now have groups that compete with each other around 'who is most repressed?', 'who is most in need of redress?', and you have a hierarchy of identities. I think that while elimination of discrimination is necessary, we cannot stop there. In fact, the current identity-politics pit people, pit groups, against each other who should in fact be working together.

Selberg: You are engaged in two large projects, the *Feminism and Legal Theory Project* and the *Vulnerability and the Human Condition Project*. Which one is the most radical? And why is that, in what sense? And how are they linked together?

F: The feminist legal theory project began way back in the 1980's. It formally started in 1984, but I was doing feminist work before then, and I almost didn't get tenure because my work criticized formal equality and gender neutrality. I started the feminism and legal theory project to provide a supportive environment for people doing work that was not recognized in the academy. It was very radical at that time. In fact people did not get tenure, people did not get jobs, because they were

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doing feminist work. My generation is the generation that moved from thinking about women in the law, or women and the law, to feminist theory. And feminist theory, of course, is a critical theory. It's not just 'oh, how do we add women and everything is fine', but it's critical of institutional and other kinds of relationships. This was very radical in the 1980's. What happened, as often happens with critical discourse, is it gets absorbed into the institutions and domesticated. Or, it gets permanently marginalized. Now most law schools in the United States have at least one person who's doing feminist theory. To that extent, it now has become mainstream. So, radical to begin with certainly, but becoming less and less radical, and more and more accepted. All the work I did with the feminism and legal theory project has led to the vulnerability project. It's the result of my intellectual struggle with the idea of equality. I was thinking about substantive versus rule equality or result versus rule equality early on in my career, moved from that to think about theorizing dependency and from dependency to vulnerability. Now, I would say, the vulnerability project [is the most radical one] because it challenges the idea of autonomy that is part of law's deep structure, and in that way I think it's extremely radical.

W: When moving from feminist studies to the study of vulnerability, would you say that gender has become an outdated concept in your research?

F: Well, gender of course is relevant, but gender is relevant to lots of people, for example demographers, or fashion designers. Gender itself doesn't have any politics necessarily; feminism does. Gender is not irrelevant, and gender is the way that I entered into the whole study of vulnerability. A strength, I think, of the vulnerability project, is that vulnerability is presented as a universal. It is also particular. What it does is challenging the notion that you can separate out categories and deal with things through those categories, when in fact there are real problems with that approach. An Anti-discrimination approach focuses us on individuals, either individual characteristics that people possess, or can be the bases of claims that they make because they possess those characteristics, or individual actions in response to those characteristics, like discrimination. It focuses on individuals and individual actions rather than on institutional arrangements that can affect everyone.

W: You have edited two books on feminist legal studies. The first one in 1990 titled *At the Boundaries of Law: Feminism and Legal Theory*.¹⁰ The other was published 2010, titled *Transcending the Boundaries of Law: Generations of Feminism and Legal Theory*.¹¹ Twenty years have passed between these two publications. Could you tell us some-

10 Fineman 1990.

11 Fineman 2010.

thing about the relation between feminism and legal theory in the 1990's in comparison to the situation in 2010?

F: That volume [*Transcending the Boundaries of Law*] was the 25th anniversary of the feminism and legal theory workshop. Some of the people who were at the early workshops presented at this anniversary celebration. The book itself explains some of the transition. But there are a couple of significant things. We think about things more complexly, I think, than we did twenty-five years ago when we talk about feminist theory. It seemed far easier twenty-five years ago to think about possible solutions to the exclusion of women from institutions of power, than I think it is today. After 25 years, we have realized the problems are more difficult. That is a reason to move away from thinking about these things only in terms of gender and to start to really think about them more broadly, in terms of states' responsibilities and how society is ordered. It's thinking more broadly. The other thing that has happened – at least with American feminist theory – is that there are a lot of men in that volume; where in the initial collection the contributors were all women. There are a lot of men who now use feminist theory, which I think is wonderful. And the new book also has a whole section that is international in focus. Although right from the beginning we always had people from Canada and the UK, the Project has become more international over the 25-year period.

S: I'm curious as to your conceptualization of power. You mention in your work on vulnerability »systems of disadvantage that are almost impossible to transcend« and »inequities woven into the systems in which we are all mired«¹² and that we should focus »not only on individuals, but also on institutions – the structures and arrangements that can almost invisibly produce or exacerbate existing inequality«.¹³ I want to learn more about your conceptualization of power. And also; what forms of inequality and subordination cannot at all be compensated by law or attacked by legal strategies? And how should these remaining problems be resolved?

F: I have always said that law is a very crude and inadequate instrument with which to attack social problems. Many think that law is very good in its formal sense, coming in and codifying changes that have already occurred as a result of politics and social movements and a variety of other things. But if law attempts to move too far ahead of where people are and where politics are, what you will have is backlashes. Certainly in the United States we see that with racial integration and *Brown v. Board of Education*. We also saw that with *Roe v. Wade* and access to abortion. Today, you continue to have massive resistance to abortion, although integration, I

12 Fineman 2010, p. 257.

13 Fineman 2010, p. 275, fn 77.

think, has worked its way through the system fairly well. Law, formal law, law from elites, can get too far ahead of culture and popular will. That is why it is important to look at law much more comprehensively than just the statutes and the case law and even legal scholarship, but actually try to look at how law operates on the ground, how legal concepts are implemented. So, for example, with abortion, while you have a formal and a constitutional right to abortion, if you actually look at how it gets played out, there are many states where there are no abortion providers. So, the right, the formal law, is not the reality for many people because access is not there. So, when I think about law, I think about it in that very broad sense. In that way, you think about the implementation process, you think about the individuals, the institutions involved in bringing law to people and realizing law. In that way, law is everywhere. One of the things that the vulnerability theory addresses is the relation of law and state responsibility. It is through law that all societal institutions are brought into existence – this realization is what allows the claim that there is a state responsibility to see that those institutions then operate in a way that is equitable and not unduly privileging some groups compared to others. So... all of that and power [laughs]. What I see in terms of power on an individual and institutional level is political and social, capital – the ability to act affirmatively in regard to your own and others interests and to have access to the state and its institutions. All of that confers power. There's certainly power in the context of coercive power that the state has and the power to legitimate certain kinds of arrangements that the state has and can ultimately enforce through police and other kinds of coercive force. So, power comes in multiple forms. And just like law, it's everywhere.

W: The family has been of central focus in your research career. Would you say that the family is the roots of gender inequality? Or, rather, how is inequality generated?

F: The roots [laughs]? This is really my intellectual journey. The first part of my work was looking inside of the family and talking about the arrangements between husbands and wives, men and women, parents and children. It was concerned with the family and how the family operated. My realization was that you can't have an egalitarian family imposed through formal law. That would not work if, in fact, you did not have corresponding changes in other societal institutions. My first book was *The Illusion of Equality*, which looked inside the family.¹⁴ My second book was *The Neutered Mother, the Sexual Family and Other 21st Century Tragedies*, which began to look at the role that the family was assigned in American society.¹⁵ The family, I argued, was the repository for dependency. Instead of looking just within the family I started to look at the societal function the family was assigned, and the expecta-

14 Fineman 1991.

15 Fineman 1995.

tions that surrounded family relationships, and how they were reflected in law. The next step was *The Autonomy Myth*, which placed that family alongside of other societal institutions, and argued that we shouldn't think about separate spheres, public and private, family and market or whatever, but instead realize that institutional relationships were symbiotic.¹⁶ You need corresponding and complementary changes in market and state institutions, if, in fact, egalitarian changes in the family are to be possible. It's not that the family is the root of gender inequality, but the family reform cannot be the only approach to remedying gender inequality. As long as the other institutions surrounding the family don't change, you can never have gender equality within the family. So, that's where my early work has taken me and, from there, to the notion of vulnerability.

S: You write: »These harms are not located in the body itself, but in the interruption or destruction of institutional or social relationships. [...] Economic and institutional harms can accumulate in a vulnerable individual life, compounding the situation and experience of vulnerability and resulting in greater harm. [...] In addition to creating disadvantaged families, negative economic and institutional harms may cluster around members of a socially or culturally determined grouping who share certain societal positions or have suffered discrimination based on constructed categories used to differentiate classes of persons, such as race, gender, ethnicity, or religious affiliation.«¹⁷

On the one hand you talk about harms not located in the body but in social relationships, on the other hand you talk about that how human bodies are vulnerable. And I want to relate this to notions from the field of gender studies where the view is upheld that the body can also be, as such, a social construction, and that the line between the flesh and the society is blurred. So, does your theory on vulnerability come with a view on the boundaries of the human body in this respect?

F: I actually think that there is an intellectual, theoretical and conceptual problem with a lot of what goes on in gender studies today. I mean, I certainly understand and incorporate in my work the idea of social construction, it is hard to deny. But it seems to me it's also hard to deny that there is a reality to our bodies and that embodiment itself is a reality. We will all die, okay [Laughs]? It's essentialism, yes, but it is true. I think that moving away from that is part of this obsession with identities and the obsession with the differences. I like to be provocative and get people's attention. So one of the reasons why I started up with the notion of vulnerability as a universal – *we are all constantly vulnerably* – is simply to confront that, what I think is a misreading and a simplistic anti-essentialism that you see in a lot of gender stud-

16 Fineman 2004.

17 Fineman 2010, p. 268.

ies. I'm going to start off with the reality of our materiality, our bodily materiality, our embodiment and ask 'Where do we go from there?'. It doesn't deny social constructions: we all die, but the death rituals or the meaning of death is complicated by social relations, religion and so on, but still, at the bottom, there is this shared vulnerability. One of the vulnerability theory's strength is that within the idea of embodiment itself, which is the universal, it also recognizes that there are particularities and differences. It's both a universal theory and has a particular manifestation. There are two different concepts of particularity that I think are relevant, one I am more interested in than the other. The first is that we are differently embodied. We have different physical characteristics, we have different levels of intelligence, some of us are able-bodied, and others aren't. Those are the kinds of ways we are differently embodied, right. We all are embodied, just differently embodied. I'm less interested in that than I am in the second form of difference, which is that, we are all differently situated in webs of social and economic and other institutional relationships. It's that part of the theory that I'm really interested in and where I think the strength of the vulnerability analysis is. It does not stick us in the first kind of particularity in embodiment, the differences in our characteristics. Rather, it moves us, at least me [laughs], to look at institutional arrangement. Regardless of those particularities, I ask where are we situated within, what I call, overlapping systems that produce resources and assets that allow us to handle our vulnerabilities, our particular but shared vulnerabilities. That is the political part of this project – that is where I think the strength of the theory lies. It pulls us away from that individual to look at the institutional arrangements. Because that is how you can begin to understand how systems of privileging work and expose them. Using a vulnerability analysis allows us to ask different questions and consider different sorts of things, than if we are forced back into identity categories.

W: You called this the political part of your project. What are the limitations on legal scholarship in relation to the political?

F: I actually had this discussion with one of your professors in the context of the NORMA project, because she said it was only descriptive. You can try as hard as you want to make something only descriptive, but it is what it is, independent of what you are trying to do. Americans tend to think of power and politics as pervasive and it's hard to think about neutral information in that context. I don't believe in such a thing so I have no trouble at all saying [my work is political]. In fact, what I have trouble with are the people who say that their work is not political, that seems to me a very hard claim to defend.

S: You write: »A focus on the state and its institutions, as well as privilege and disadvantage, would certainly change the nature of the legal inquiry [...] It would

move courts beyond only assessing whether individuals or groups with designated characteristics have been subjected to animus and discrimination. The vulnerability paradigm calls on courts to be also receptive to claims that look beyond identity, and to assess the distribution of assets and the possibilities of resilience that suggest structural disadvantage and/or privilege. Under a vulnerability approach, the task is [...]«¹⁸ Against the backdrop of this, I want to ask you about the implications of your theory. What should the legal scholar that agrees with your perspective do? What kind of work would one engage in?

F: I think that you would look at the way in which law is structuring individual, institutional relationships and power relationships. For example, Ani Satz has used the vulnerability theory to look at what kinds of rules or laws we should have in regard to animals. Her work has been picked up by a group of physicians and others in the United States and they are now framing animals as vulnerable subjects rather than talking about animal rights as a way to think about reform. Ani Satz is also a disability scholar and she has used the vulnerability theory to generate a notion of fragmentation. She looks at how rules regarding disability and employment are all fine and well but they stop there and they don't consider the way disability operates in the context of challenges in the home or transportation. We take human lives and we fragment them, we don't think about human vulnerability and embodiment across the life span. Ben [Benjamin] Reiss, who is an English professor, has also used the vulnerability theory. At West Virginia Tech, a student shot many other students and faculty members. Reiss talked about the response to the shootings, which was to ask English teachers to identify students who wrote particular violent short stories in creative writing classes so that there could be surveillance of those students. Ben used the vulnerability theory to say that was the wrong institutional response; instead, what should have happened was that these institutions should have been more responsive to the student's needs at various points. It was taking the focus away from individual pathology to what should be appropriate institutional responses when you know that there may be individuals who have certain set of problems. What a vulnerability approach does is look at the way the relationships are organized. With employment, for example, we should think about who is privileged, who is disadvantaged and are those privileges and disadvantages warranted. I'm not so sure that courts will be the primary institutions doing this. One of the ways I like to think about the vulnerability project more broadly is that it involves a legislative mandate. It's an ethic for governing. It is the realization of state responsibility which transcends the judicial system.

18 Fineman 2010, p. 274-275, fn 77.

W: When resilience is given from the state; isn't also a power relation created?

F: No, the state is not giving resilience. Resilience comes from the societal institutions that give us assets or resources. If you look at the theory there are five different kinds of assets. There are the obvious ones like physical or material goods that determine your quality of life; for example money, furniture, houses. The access to and accumulation of material goods are governed by laws, the banking system and the financial regulations deal with those resources. Human capital, which Sen and Nussbaum would talk about as capabilities, is another set of resources. Here we are talking about educational systems and certain kinds of employment systems that come into play. The third kind of resources or assets that give us resilience are relational resources. Here would be placed the institution of the family, but also the coming together in other groups like labor unions or other kinds of affiliations or associations. Then there are resources that we get from the environment in which we find ourselves. Our location within a natural environment can give us certain resources or assets with which to confront our vulnerability, or not! The fifth kind of resources are existential resources: the things that come from religion or systems of aesthetics that give us a notion of our place in the world, belonging and belief. The resilience that an individual has comes from a combination of education, employment, family relationships, other affiliations and associations; all those things allow us to deal with our inherent vulnerability. It's our position within those multiple and overlapping institutions that grants us the resources, that place us differently, and that's what interests me. So, when we look at the educational system, we look at it very broadly, in terms of its function being not only education, but also providing resilience. Within the way it is organized, how is it functioning, whom is it privileging? How is it actually operating?

I put identity in relational assets. Identity does not disappear, but it becomes a relational asset, like belonging to a family or a group: you can identify with a gender, you can identify with a racial or an ethnic group. That is a resource; that is not worthless. It becomes an asset and it becomes one of the aspects of resilience.

S: I wonder: what groups are there? I am angling at your saying we all share the bodily experience and that we all are going to die and so forth. But then I wonder; whose vulnerability should be in focus for reform?

F: Well, I want to move away from »whose« – 'isn't women that are most oppressed', 'is it African-Americans who are most oppressed', or 'is it indigenous people that are most oppressed' – to think about institutions that can be open to everyone, as far as is possible. Not looking at the problems in terms of identity or categories.

S: If, when creating institutions, we had to choose between ameliorating this kind of vulnerability, or that kind of vulnerability, excuse my simplification, how can one make this decision? If we want to re-allocate resources...

F: We want to restructure the system so they would operate in a way that is more egalitarian and open, and not in a way that is privileging. We have an educational system, we have employment systems, we have a medical system, we have a financial system, and these are all in operation and already conferring resources on individuals. So, the question has to be; is that the best allocation?

W: Does your theory on vulnerability give an answer to that question?

F: The best allocation of resources would be in terms of the greatest common benefit. Its core is this radical notion of equality. The state, when it acts through these institutions, has a responsibility to act in the common benefit and not for the privilege of a person or a group of people. If it is going to privilege some individuals or groups, then it must be able to justify that privilege, in other words privilege has to be transparent and justified.

S: You write: »while human vulnerability is universal, constant and complex, it is also particular. While all human beings stand in a position of constant vulnerability, we are individually positioned differently. We have different forms of embodiment and also are differently situated within webs of economic and institutional relationships.«¹⁹ I wonder how your work is related to other contemporary modes of explaining societal differentiation. What do you consider useful in the field of identity politics?

F: It is really important to realize that there are two different kinds of differences, the first are the individual differences, but what I've been talking about are the institutional differences, the location within the institutional arrangements. The first mentioned is the difference that I am really not that interested in. This particularity can be because of individual characteristics, for example differences in intelligence and differences in gender, but to me those differences are not really the ones where we should be focusing our attention. That they exist is fine, but I think in terms of social policy, in terms of social organization, in terms of state responsiveness, aside from discrimination, which would be located in the first type of difference, our attention should be on the differences in institutional access, operation, and arrangements. Individuals, regardless of their individual characteristics, may be positioned

19 Fineman 2010, p. 286-287.

within these webs of institutional arrangements differently in regard to the resilience they can gain from the ways these institutions are structured. A strength of the vulnerability analysis is that it is not stuck on individual characteristics or actions – we can move on to institutional arrangements. I am not saying that there are not differences among individuals, but the differences that I care about are the difference in access to institutions that give us assets and resources.

S: Is there room in your theory for exploitation?

F: Well, it starts from a notion that there is already exploitation of our vulnerability – what I call the mobilization of fear when we are faced with the reality of our vulnerability. Will people continue to make bad decisions? Yes. Will people in positions of authority and power try to manipulate things using our vulnerability as a basis for fear? Yes. It seems to me that susceptibility to manipulation and exploitation is as much a part of the human condition as anything else, but transparency and openness will help. And, in fact, an important part of the vulnerability theory addresses the vulnerability of institutions. It is not only individuals who are vulnerable, but also institutions. They are vulnerable to corruption, to capture, to decay. Vulnerability is the possibility that things can go wrong, and that can happen to institutions as well as to individuals. An appreciation of the complex manifestations and political implications of vulnerability will allow more intelligent and productive responses by individuals and institutions.

W: I want to go back to what you said about marriage and sexual affiliation. In your contribution to *Feminist and Queer Legal Theory*,²⁰ you describe a tension between sexuality and care: On the one hand the family is constructed as sexual, an entity built on and arising from the sexual affiliation of two adults. On the other hand the family functions as the repository for inevitable dependency, caring for children, elderly and the sick, which you call the burdens associated with intimacy and its maintenance. Could you perhaps elaborate on this?

F: I actually think this is a really good collection, even though it's mine! It came out of a successful workshop of the Feminist Legal Theory Project. There is a tension between feminist theory and queer theory in the United States. On one side there are feminist theorists, particularly feminist theorists who are in the law and society tradition and are doing a lot of sociological sorts of work, might be considered in a European context to be socialist feminists, or interested in welfare state sorts of issues. On the other side there is queer theory, which is all about sexuality. This book

20 Fineman 2009.

is an attempt to actually lay out the various positions on this tension between feminism and queer theory.

W: The subtitle of *Feminist and Queer Legal Theory is Intimate Encounters, Uncomfortable Conversations*. Would you say that the conversations now are more comfortable?

F: No! Less comfortable! Early on with the Feminism and Legal Theory Project I was talking about single motherhood and the attacks on lone motherhood in the United States, including suggestions that their children be taken away and put in orphanages. I was arguing privacy for single mothers. Barbara Woodhouse accused me of setting up a situation where children could be abused. I was so angry at her! Because, here I was, talking about mothers and thinking what they needed was protection for themselves and their children. And here she was saying, you are just going to let mothers physically abuse their children. So, instead of staying really furious, which I was, I decided that we should have an uncomfortable conversation. I invited her and other child advocates to come and talk to feminists and women's advocates. We agreed on so much, but at the intersection of issues such as divorce and custody and abuse and neglect of children there was this clash. So we had our uncomfortable conversation around those issues and it was a great model. An uncomfortable conversation gives people with shared interests space to talk about where they disagree with each other and to criticize each other's work and criticize each other's positions. It is really important to have those debates occur in the academy, and quite often they don't because people only associate with people who believe and think the same way that they do, which never helps to get things resolved or moved forward.

S: Could I perhaps come back to notions of the political and political change? You write »In recent years in America, the possibilities for a robust and expansive vision of equality seem to have eroded, worn away by the ascendancy of a narrow and impoverished understanding of autonomy«.²¹ I want to ask why you think that has happened.

F: It's the result of a lot of what the right wing has been doing. I think there is a return to Social Darwinism in the United States. What you see are certain periods in American history where there was in fact a radical notion of equality and certainly the American constitution, when it was written in the eighteenth century, had a radical notion of equality, one focused on the common benefit. Of course then the relevant citizen was a white male propertied person. We have expanded the equality

21 Fineman 2010, p. 258.

beyond that individual, but we have lost the radical aspect of that equality that existed initially. You see moments in history, such as Franklin Roosevelt and the New Deal, which were a pull back from an essentially simplistic form of self-reliance and self-sufficiency – the glorified frontier man or the George Bush cowboy. You also have the era of Lyndon Johnson with his Great Society and the War against Poverty – movements in American society where there was a push towards egalitarianism in a more fundamental sense. But those moments have really been overtaken by this autonomy myth – the notion of the independent individual, the belief in American exceptionalism, and a rejection of the »Nanny State«, which is very sexist, of course. Also there are notions of American masculinity, tied up with the military. The right wing pulls on that. If you look at the Republican Party today it is so far to the right, people like Richard Nixon would be considered socialist under the current right wing propaganda. It is really stunning to see how far right everything is going. They have been trying for the last thirty years to dismantle what tattered remnants of the welfare state we still have in the United States. They are going after programs like Medicare and Social Security, programs that ten years ago you couldn't even talk about reforming or doing away with. I think they do it, in part, successfully because they managed to pit groups of people against each other. They have managed to insinuate that 'the welfare state is really only about African-Americans', even though it is not. They also imply 'something is being taken away from you, white male American, because we have given rights to women and we have given rights to ethnic minorities'. At a seminar the other day, when people talked positively about anti-discrimination laws and mainstreaming, I asked: Who is left out? Those who are left out are going to be the ones who organize against and use identity differences to pit people against one another.

W: When you say who is left out I think about: who is becoming a citizen? Who gets the privilege of having a citizenship? For example, undocumented migrants, how do they fit into your theory on vulnerability and the responsive state, as they don't have a state to turn to?

F: I don't think there's a way in which you could look at vulnerability internationally and in terms of international relations, I don't do that right now, but I think you could look at it that way. You could look at the exploitation of countries for natural resources, whether it's Africa or South America. There's a way you could understand these relationships and why it is that we privilege free movement of capital but not free movement of labor.

S: When I read your work on vulnerability and the description of the outcome, if you were to design society, I recognize to some extent the Nordic welfare state regime, what it tells us about itself. The Nordic welfare regime was created by the

labor movement, in alliance with socialist feminists. You want the same outcome for the United States, but the labor movement is not there, quite simply! Your work; is it a suggestion to create this, but without the labor movement?

F: Hm, without the labor movement... The labor movement might not be formal unions, but there are certainly, as recent events in Wisconsin and elsewhere in the United States have shown, a labor sympathy, or a labor involvement. I predict that Sweden and other Nordic countries, are going to, if they don't already, feel the same sorts of pressure. The United States is further along in terms of what it will mean to confront the power of global capitalism than are some other societies. You know, global capitalism is designed on the American model and it is implemented through organizations like the World Bank and the International Monetary Fund. And the way that they think about capital and corporate entities, and the way they define governmental responsibilities according to fiscal and economic and efficiency grounds are factors all countries will face. The kinds of inequalities we see in the United States are, it seems to me, produced by that form of capitalism.

W: Are you pessimistic about the future?

F: I get very depressed sometimes, especially when I look back over thirty years and think a lot of things have changed, and a lot of things have not changed at all, and sometimes you pour all of your energy into a project, and ask if it really matters, everything that you have done? One time, when I was feeling this way, Ann Snitow looked at me and said 'Martha, we are in the middle of a revolution that began with the Enlightenment! Not at the end of it – we are in the middle of it'. [Laughter] I guess you have to think that what we do today, hopefully it will make things better for people fifty years, or a hundred years from now. I think this is one of the problems with a lot of scholarship; that people think that they can come in and have a grand theory and solve the problems, and not realize that it's an ongoing process and that change occurs slowly over a long period of time. You have to look and see that the trajectory is in the right direction, and that's actually what worries me about the United States right now. We have a serious recession and a very weak president who is not fighting back. So a lot that has been slowly gained over the past sixty-seventy years is being lost, one step after another. A lot is being thrown away at this point. So, then I guess I am depressed! [Laughter].

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