A Global ‘Uncomfortable’ Conversation
Professor Martha A. Fineman develops paradigm
by Holly Cline

“Society has a responsibility to structure its institutions for the benefit of all. Recognizing this claim would allow us to be a nation of laws in which the same rules apply for all, unaffected and uninfluenced by our station or status in life.” —Professor Martha Albertson Fineman

Robert W. Woodruff Professor of Law Martha Albertson Fineman started the Feminism and Legal Theory Project at the University of Wisconsin in 1984 to create a forum for interdisciplinary feminist scholarship, addressing legal and societal issues.

“In the beginning, my colleagues and I were feeling our way—using feminist theory to take a critical stance that went beyond just adding women,” Fineman says. “We started to look at gender and the role it played in structuring institutions and relationships in society, particularly in regard to the family and workplace.”

Now at Emory, the FLT Project holds four workshops and “uncomfortable conversations” each year, as well as hosting visiting scholars from around the world.

In recent years, scholars from China have discovered the project, and several are translating Fineman’s work into Mandarin.

Visiting scholars participate in workshops, give presentations and work with students and faculty. They are attracted to Emory Law because of Fineman’s reputation as an innovative and important scholar and teacher.

A feminist journey
Fineman’s recent scholarship has expanded beyond gender to focus more broadly on the concepts of dependency and vulnerability in challenging the narrowness of a same-ness-of-treatment or an antidiscrimination approach to inequality.

Her work might be labeled “post-identity,” and she believes “the promise of equality cannot be conditioned upon belonging to any identity category, nor can it be confined to only certain spaces and institutions... equality must be a universal resource, a radical guarantee that is a benefit for all.”

As she wrote in “Evolving Images of Gender and Equality: A Feminist Journey,” published in the New England Law Review in 2009, “gender increasingly has become the door through which I enter the discussion about equality, not the entire focus of my inquiry, but merely the beginning.”

Under the theory she is developing as part of Emory University’s Vulnerability and the Human Condition Initiative, Fineman would replace the autonomous, independent liberal legal subject with the “vulnerable subject” as the referent for making law and policy.

“Both dependency and vulnerability are inherent in the human condition, but this reality and its implications are too often ignored or concealed in the theories developed by legal, political, economic and social policy scholars,” she says.

“While dependency is episodic—mostly found in the very young, very old and those incapacitated, vulnerability is universal and constant, fundamental in our shared humanity. While vulnerability is a universal reality, it is individually experienced as we are located within different material and social realities, as well as specific institutional contexts,” Fineman says.
Recognizing societal institutions play a role in providing the “resilience” that mediates, compensates or relieves vulnerability, Fineman calls for a more responsive state under the current law; one that pursues reforms to address systemic and structural privilege and disadvantage.

According to Fineman, the current dominant idea of an autonomous, self-sufficient liberal subject in U.S. law ignores structural inequalities and blames individuals for failure.

“The Vulnerable Subject reflects a realistic legal subject—one who is perceived as constantly vulnerable to biological, institutional and environmental challenges throughout life. One that experiences periods of profound dependency on others and institutions,” Fineman says.

Applying Fineman’s idea of a vulnerable subject to the legal system would mandate greater attention to structural disadvantages and the need to remedy entrenched systems of disparity currently present in our institutions.

“It’s exciting to be developing a new paradigm—one that provokes students and scholars to engage in new ways to think about law, society and state responsibility,” Fineman says.

Perpetuating thought
When the Barnard Center for Research on Women dedicated its 37th Annual Conference this year to vulnerability, organizers acknowledged Fineman’s “pioneering work on vulnerability, including [her] leadership at Emory’s Vulnerability and the Human Condition Initiative” was one of their inspirations for the conference.

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.

“Fineman’s work on vulnerability has been formative in this project, especially because its shift in the foundational premises of law from an autonomous subject to a vulnerable subject also shifts our premises about the role of government in economic policy.”

JaeWon Kim, Sungkyunkwan University’s first professor of disability law, came to the United States to study...
international and human rights law. Ten years into teaching, he met Fineman, who was extremely influential upon his research on women and society.

“Martha’s books are widely circulated in the Korean law school, and I was familiar with her theories and ideas,” Kim says. “Under her supervision, I had the opportunity to learn more about FLT, jurisprudence and vulnerability theory, which has helped shape my work today.”

“Throughout our relationship, Martha has always been willing to mentor my development. She has given of her time and ideas to selflessly help me develop as a scholar and person, and I have the greatest respect not only for her scholarship but for her humanity.” — Haesook Kim, associate professor of sociology and chair of Asian studies, Long Island University

Through incorporating vulnerability theory into his courses in Seoul, South Korea, Kim seeks to help others understand the need for more substantive equality under Korean law.

Anna Grear, senior lecturer in law at Bristol University in the United Kingdom, also considers Fineman a mentor. She discovered Fineman’s work on vulnerability while writing a book, which deploys “embodied vulnerability” in the context of building a critique of corporate human rights discourse.

“Martha’s coinage of the term ‘the vulnerable subject,’ in particular, produces a trope, or a way of speaking about the subject of law and politics that has immense heuristic, critical and transformative power,” Grear says.

Grear is developing a theory of legal subjectivity and reformulating the relationship between human rights and the environment. She plans to bring these concerns together with reflection upon indigenous epistemologies when she joins the University of Waikato, New Zealand, as associate professor.

“Martha, more than any one other scholar, is behind the genesis of a ‘field’ of engagement that we can call ‘the vulnerability thesis,’” Grear says. “She has generously created a space at Emory where scholars working on this idea can come together and continue to build an important global conversation concerning the role of vulnerability in re-imagining human futures.”

Haesook Kim, associate professor of sociology and chair of Asian studies at Long Island University, has benefited from the “global conversation” started by Fineman’s work. Kim is 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.

Kim met Fineman at Columbia University while working on her PhD dissertation. FLT Workshops and Fineman’s mentoring provided Kim with a strong feminist theoretical background, which she credits with helping develop her last 20 years of work.

“Starting from At the Boundaries of Law to the development of the dependency theory, Martha’s journey to demystify the myth of autonomy was pivotal in my development as a scholar,” Kim says. “She expanded the concept of vulnerability into the larger framework of a universal and constant human condition.”

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.”

“Martha’s generosity as a networker and as a facilitator, her constant provision of visiting scholarships, symposia,

“Martha has an extraordinary capacity for mentoring. She’s an embracive mentor—deeply entwined in our academic and scholarly careers. She goes beyond the traditional role of mentor, reading work and inviting us to present at conferences. Martha’s core is intellectual influence. She’s a towering intellectual figure. She lives through the ideas and the way she’s reshaped the way we think about law.” — Fionnuala D. Ní Aoláin, Dorsey & Whitney Chair in Law, University of Minnesota Law School; professor of law, University of Ulster’s Transitional Justice Institute

conferences and the like, is a truly outstanding contribution—as is her willingness to think broadly, generously and creatively about this important concept,” Grear says.

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