

The Human Condition And the Liberal Order

Author : Sean Coyle

Date : November 30, 2011

Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 **Emory L. J.** 251 (2010), available at [SSRN](#).

Have philosophers of the liberal political order been correct in their understandings of the human condition? Moral arguments for liberalism have sometimes been difficult to separate from a standpoint from which liberal order appears as the archetype for social order generally: the human condition in its most exalted and successful form. Certain features of the Kantian legacy have provided much intellectual nourishment for liberal thinkers. Kant tells us: *sapere aude!* Lean not on others, but become autonomous! Neo-conservatives have seized upon this aspect of Kant's thought, celebrating liberal society's facilitation of the autonomous agent. Socialists, forced to engage with a liberal order that has triumphed over their deepest dreams, have emphasized a different dimension of Kant's legacy, centring upon his ideas of equality and of justice.

Taking as its starting point ideas of equal protection under the United States Constitution, Martha Fineman's article offers a criticism of recent writing in liberal theory for failing to understand the human condition in the right way. The most pressing characteristic of the subject of liberal politics is not autonomy, but vulnerability. One might say that neo-conservatives and those on the liberal left have misunderstood the nature of human vulnerability. For conservatives, vulnerability is connected with unfreedom. Full of ideals of personal liberty, they insist that as the state increases its organization of the welfare of the private sphere, people will become less resilient. Individuals must learn to stand on their own two feet if society is not to produce a class of dependent people. They have a point. Individuals will only become masters of their situation if they are allowed to create their own arrangements. Human freedom is a more ingenious solver of problems than the government's legislative schemes. But liberal society itself does not equal the defeat of acquisitive and competitive instincts in human nature. Indeed, liberal society is unimaginable without a market that is also free to operate in uneven and cruel ways. The same neo-conservative philosophies thus also increase vulnerability, leading many to curse the inhumanity of a faceless system (the market) which remains harshly indifferent to their needs.

Socialists rightly criticize conservatives for their failure to respond to vulnerability. Many of the things that make people vulnerable (economic poverty, health, treatment of minority groups) do not abate in the face of increased opportunity. A social philosophy which leaves people to sink or swim will not render vulnerable individuals more resilient in the face of their vulnerabilities, nor force them to become resilient enough to overcome them. Autonomy for Kant was never a condition of being that human beings actually manifest, but an aspirational condition that we everywhere fail to manifest. Is it wise to found a politics upon a character (the autonomous subject) that does not exist? Socialists connect vulnerability with *injustice*. Following their instinct for greater organization, they demand that help must be available to those who are powerless to take charge of their situation. Difficult to argue with, there is however no doubt that this creates new focuses for dependence. Socialists frequently confuse vulnerability with welfare need. Alleviating the effects of certain forms of vulnerability, socialists have therefore encouraged people to become vulnerable in other ways, reliant on systems of support over which they have no meaningful control.

These arguments about the organization of liberal society are constantly at risk of equating liberal order with the removal of vulnerabilities. For conservatives, nothing matters more than the elimination of structures which inhibit freedom. The defeat of this last enemy will allow men to escape all others: surely no one who is the author of his own situation can be afflicted by vulnerabilities? More aware of the enormous range of human vulnerabilities, socialists prefer to put the power of the state behind the effort to mitigate them. Vulnerabilities are directly, rather than indirectly,

politicized. Equality is the primary consideration: if vulnerabilities cannot be eliminated, they can at least be neutralized. But socialists may then foster a dream which propagates beyond the confines of socialist ideologies: the idea of the 'ideally just society'. Everything will be put into the balance! Conservatives and socialists both see vulnerability in all too structural terms. Vulnerability is not natural but 'done to us'. The right structure – or absence of structure – will overcome it.

Fineman's article reminds us of the important truth that vulnerability is a permanent feature of the human condition. A politics genuinely attuned to the realities of the vulnerable subject must do more than create modifications to the operation of the market. Its efforts must be directed not simply at the removal of disadvantage or inequality, but must learn to deal with the effects of 'systems of disadvantage that are almost impossible to transcend.' (257) It must understand that autonomy is experienced unevenly, an aspiration that 'cannot be attained without an underlying provision of substantial assistance, subsidy, and support from society and its institutions'. (260) Liberals who are serious about the merits of liberal society must do more to cultivate autonomy. They must come to realize that the success of their political ideals rests upon 'a more active and responsive state.' (id.)

In one sense, the development of a more responsive state is not the answer to the problem. Desperately necessary for addressing the growing 'welfare vulnerabilities' experienced in the West, a more interventionist philosophy for the state leaves society vulnerable to the danger that liberals have feared above all others: authoritarianism. Flying from the cruelty and indifference of invisible hands, we risk falling into the hands of protective institutions which (in Kant's view) 'everywhere' place 'restrictions on freedom', and in the presence of which there is no end to the abuses to which we are vulnerable. Fineman is very aware of the problem (274), but wonders whether it is possible to work toward a conception of an active state in non-authoritarian terms. For myself, I remain pessimistic about this possibility. It would depend upon a means of overcoming another, equally ingrained and ineradicable dimension of the human condition to which Fineman is perhaps less sensitive: the presence of selfish and brutal instincts (in traditional Christian terms humanity's 'Fallen' nature, which Augustine aptly calls the *libido dominandi*), which operate everywhere to subvert or corrupt even the best human motives and achievements. Political theory since the medieval period has lacked a proper sense of the extraordinarily narrow limits within which human efforts (especially collective ones) can meet with success. Fineman shares with most liberals a much more optimistic sense of what can be achieved. Her analysis is nevertheless relentlessly honest and challenging of what liberals have achieved. It raises important questions that many liberals have neglected or otherwise deflected by their analysis. Most of all, it reframes debates about equality and liberal justice in a new and fresh and urgent way. The importance of its vision should not be underestimated.

Cite as: Sean Coyle, *The Human Condition And the Liberal Order*, JOTWELL (November 30, 2011) (reviewing Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 **Emory L. J.** 251 (2010), available at SSRN), <http://juris.jotwell.com/the-human-condition-and-the-liberal-order/>.