# Chapter 5
# More than Utopia

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## Utopia and Religion[1]

It is possible to classify Martha Fineman's vulnerability theory[2] as provocative social criticism, but nothing more. To do so underestimates its significance. Fineman's vulnerability theory provides the theoretical justification for transforming social values to enable us to reshape public institutional forms and behaviors (see Fineman 2004, 277). In this chapter I explore this more ambitious quality of Fineman's vulnerability theory by discussing it in the context of the ancient tradition of utopian literature. The best utopian literature invariably offers biting criticism of the authors' societies, but it does more. The most significant utopian writers challenge the legitimacy of their societies' fundamental values. They imagine worlds different from their own, better worlds organized around values that transform the behavior of institutions and individuals. Anyone familiar with Fineman's vulnerability theory will recognize that this could also be a précis of her work.

To explore the relationship between the tradition of utopian literature and Fineman's vulnerability theory, I begin with Thomas More's *Utopia*, one of that genre's most influential books, and one that offers provocative comparisons to Fineman's work. For half a millennium, *Utopia* has been studied and embraced by radicals and reactionaries, atheists and religious zealots, philosophers and fools. The book has received sustained interest in part because More was a subtle but superb stylist; in part because of its biting critique of English society and institutions; in part because of its fantastic yet fascinating portrayal of a country providing a better life for its people than existed in any known society. It is More's vision of an "imagined place or state of things in which everything is perfect" (*New Oxford American Dictionary* 2005) that has had an "enormous influence ... on men's minds ... not only on socialist Utopians of the nineteenth century ... but on men of its own time, that is, the sixteenth century." By the middle of the twentieth century, *Utopia* was adopted by thinkers from across the spectra of social and political theory:

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Many claimed it: Catholics and Protestants, medievalists and moderns, socialists and communists; and a well-known historian has recently turned it over to the Nazis. Methods of legitimating claims vary widely, although most are necessarily based upon ideological interpretation of More's book. Over the past generation, however, in all of the welter of claim and counter-claim, one single interpretation has emerged to dominate the field ... "the Roman Catholic" interpretation of Utopia. (Elliott 1992, 181)

The Roman Catholic interpretation is useful and unavoidable. In *Utopia*, More rejected the dominant social, political, and economic theories of early sixteenth-century England and instead imagined an ideal society based upon universal religious truths. More's interpretation of Christian theology was the source of these universals, which he asserted were consonant with right reason, true pleasure, and justice—as realized in his Utopian society. When outsiders finally brought Christianity to their remote island, many Utopians embraced it as a religion that embodied the values that already guided life in their pre-Christian society (More 1992, 73). We learn this from More's storyteller, the explorer who brought Christianity to the island.

The storyteller was a man named Raphael Hythloday, a fictional crew member on most of Amerigo Vespucci's voyages to the New World. During his final voyage, Hythloday decided not to return to Europe with Vespucci, instead remaining in foreign lands to continue his travels of discovery, which eventually took him to Utopia, an ancient island country so isolated that it had been unknown in Europe throughout history (More 1992, 33). Hythloday recounts the story of his travels in dialogues with characters, some of whom were named after real Englishmen. The primary dialogist is named More. Hythloday's description of Utopia surprises, perhaps even shocks, More and the others. The Utopian economic system caused the greatest consternation.

Utopia was a communist paradise, and its economic structure was an essential element in making Utopia the best of all possible worlds. Private property and money both were abolished. No classes distinguished by wealth—or the lack of it—existed. Eliminating idle upper classes who lived unproductive lives meant that Utopians produced more food and other necessaries of life than they needed to survive. Universal social, economic, and productive equality generated a surfeit of goods shared by everyone. In such an economy of surplus and sharing, money was unnecessary.

Communism was central to the success of Utopia. Hythloday argued with a skeptical More that life in Utopia—when compared to other countries—teaches that

as long as you have private property, and as long as cash money is the measure of all things, it is really not possible for a nation to be governed justly or happily. For justice cannot exist where all the best things in life are held by the worst

citizens; nor can anyone be happy where property is limited to a few, since those few are always uneasy and the many are utterly wretched.

[...]

Thus I am wholly convinced that unless private property is entirely done away with, there can be no fair or just distribution of goods, nor can mankind be happily governed. As long as private property remains, by far the largest and best part of mankind will be oppressed by a heavy and inescapable burden of cares and anxieties. (More 1992, 28)

Like Fineman today, More imagined a society that was better because its institutions ensured a more equal distribution of assets that ameliorated the burdens and anxieties suffered by everyone, particularly the disadvantaged members of society. But Utopia's economic theories were not the sole reason it was perfect; so were its foundational values. Its communist economic model conformed both with natural justice and the divine justice preached by Jesus Christ. When they learned about Christ and his teachings, many Utopians embraced Christianity because "Christ had encouraged his disciples to practice community of goods, and that among the truest groups of Christians, the practice still prevails" (More 1992, 73). The principles upon which Utopia was based mirrored the true religion of Christ and not the corrupted Christianity practiced in Europe.[3]

The 500 years since More wrote *Utopia* have witnessed repeated failures of communist societies in Europe and the Americas. Many have been small, agrarian communities. Some have been nation states. This history is one obvious source of the commonly held idea that utopian schemes for social improvement like More's are "impossibly ideal, visionary, idealistic" (*Shorter Oxford English Dictionary* 2007) and doomed to fail in the real world.

More's mythical Utopia was not so fragile. It was the most stable of societies, thriving for millennia after King Utopus founded it. Utopia survived in part because its social institutions aggressively regulated and channeled citizens' actions until they conformed in every detail with the values of social equality, justice, and personal responsibility. Unlike most actual communal utopian experiments, fictional Utopia thrived because of the remarkable virtues of its people, virtues that were inculcated, enhanced, and reinforced by Utopia's social institutions.

First among their virtues was work. Utopians were superb and disciplined workers. One occupation was mandatory for all—farming—although some people labored in the fields for only a small portion of their working lives (More 1992, 32). In addition to farming, everyone learned a trade "such as wool-working, linen-making, masonry, metal-work, or carpentry" (37). The Utopians' work

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3   More 1992, at 27 ("But preachers, like the crafty fellows they are, have found that men would rather not change their lives to conform to Christ's rule, and so ... they have accommodated his teachings to the way men live, as if it were a leaden yardstick ...").

ethic—enforced by official pressure when necessary—meant that "no one sits around in idleness and ... everyone works hard at his trade" (ibid.). As a result, Utopians actually worked fewer hours per day than did residents of England and Europe. Because everyone labored diligently at productive labor,

> no one has to exhaust himself with endless toil from early morning to late at night, as if he were a beast of burden. Such wretchedness, really worse than slavery, is the common lot of workmen in all countries except Utopia. Of the day's twenty-four hours, the Utopians devote only six to work. (ibid.)

Utopians had free time each day to devote to activities other than work, but even in recreation they were disciplined and productive. Each person could decide what to do during the specific hours prescribed by the society for recreation, as long as "he does not waste them in roistering or sloth, but uses them busily in some occupation that pleases him. Generally these periods are devoted to intellectual activity." Yes, when they were not laboring in the fields, Utopians preferred to improve their minds or increase their skills rather than waste time on frivolous forms of recreation. For example, Utopians had "established the custom of arising before dawn to attend lectures" (ibid.). In the evenings, they devoted precisely one hour to recreation, typically devoted to some productive activity like gardening in good weather, or to playing music or other uplifting activity in bad (ibid.).

Utopians did not waste time with recreational vices common throughout history. "[T]here is no chance to loaf or kill time ...; no taverns, or alehouses, or brothels; no chances for corruption ... . Because they live in the full view of all, they are bound to be either working at their usual trades, or enjoying their leisure" (ibid., 45). Not surprisingly, socially unproductive games like "gambling with dice" were not permitted (ibid., 38).

Some critics have argued that More intended *Utopia* to be a satire (Ackroyd 1998, 174–6) and the historical record suggests that More and his humanist friends may have engaged in a tongue-in-cheek "conspiracy" to fool credulous readers into believing that Hythloday's stories were true (Adams in More 1992, 108–33). Regardless of More's actual intentions, his portrayal of Utopians lends itself to parody. Although Utopia was an authoritarian state, it was inhabited over the millennia by the most virtuous, sober, well-behaved people in history—real or imagined.

Their lives were ordered and regulated and endlessly productive. Like Mary Poppins, they were "practically perfect in every way." Imagining what living in Utopia would actually be like, I am reminded of Mark Twain's description of the biblical heaven: "[T]he human being's heaven has been thought out and constructed upon an absolute definite plan; and that this plan is, that it shall contain, in labored detail, each and every imaginable thing that is repulsive to a man, and not a single thing he likes!" (Twain 1909).

More's caricature of an ideal citizenry is one source of the idea that utopias are idealistic and unrealistic fantasies.[4] More's communist Utopia thrived where others failed because its people exhibited virtues rare even among individuals in the actual world, and even more rarely exhibited by a country's entire population. It is not that people lack the capacity to live selflessly and for the collective good. Many individuals exhibit those qualities, at least for portions of their lives. But to claim that the population of a country can live according to those values day after day, life after life, century after century, asks us to ignore what we know of the actual world. From this perspective, it is easy to understand how some might view More's portrayal of Utopians as an elaborate spoof.[5]

But I think another interpretation is more consistent with the book's contents, and with what we know of More himself. *Utopia* presents More's attempt to imagine a society in which the values he prizes most are embodied in its institutions and its people's behaviors. More's imaginative recreation of the world revealed the society in which he would have lived had he possessed the godlike power to create it.

Some of the clues are obvious. More the author concludes the book by having the narrator More summarize his responses to Hythloday's account of Utopia:

> [T]hough he was a man of unquestioned learning, and highly experienced in the ways of the world, I cannot agree with everything he said. Yet I confess there are many things in the Commonwealth of Utopia that I wish our own country would imitate—though I don't really expect it will. (More 1992, 85)

The message is straightforward. More the realist recognizes, with obvious regret, that England will not become Utopia. More the religious idealist wishes that his imagined better world would become real. One suspects that he chose the dialogic literary form to protect himself from just those charges—that his criticisms of England and his proposals for change reflected his true hopes and beliefs. If confirmed, these charges amounted to treason and heresy, crimes punishable by torture and death in the sixteenth century.

By having the fictional Hythloday explain how another land was superior to England, More the author distanced himself from criticism of his home country, then increased the distance by having the narrator More object to some of Hythloday's claims (More 1992, 108). Within the dialogue, More rejected arguments that private property must be abolished before "mankind [can] be happily governed"

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4  Fineman herself uses the term to connote this idea: "the current politics in the United States are such that substantive equality arguments are likely to be *banished to the realm of utopian visions*" (Fineman 2003, 227; emphasis supplied).

5  Perhaps most pointedly, More was introduced to Hythloday in Belgium by Peter Giles, a fellow humanist and friend with whom More corresponded about *Utopia*, and who may have participated in a ruse claiming that *Utopia* was a travelogue, not a myth. See Adams 1992, 109–12, 123–5.

because in a private property regime "by far the largest and best part of mankind will be oppressed," arguing instead that individual pursuit of economic gain in a world of scarce resources was essential (ibid., 28):

> "But I don't see it that way," I replied. "It seems to me that men cannot possibly live where all things are in common. How can there be plenty of commodities where every man stops working? The hope of gain will not spur him on; he will rely on others, and become lazy. If man is driven by want of something to produce it, and yet cannot legally protect what he has gained, what can follow but continual bloodshed and turmoil, especially when respect for magistrates and their authority has been lost? I for one cannot conceive of authority existing among men who are equal to one another in every respect." (More 1992, 29)

These are arguments familiar to anyone living in a private property regime, which Hythloday acknowledges. But Hythloday's response also provides another clue to More's real purpose:

> "I'm not surprised," said Raphael, "that you think of it in this way, since you have no idea, or only a false idea, of such a state. But you should have been with me in Utopia, and seen with your own eyes their manners and customs as I did—for I lived there more than five years and would never have left, it had not been to make that new world known to others. If you had seen them, you would frankly confess that you had never seen a people so well governed as they are." (ibid.)

This passage could be nothing more than a literary character's script, but I think it is something else. Throughout the book Hythloday's role is to give voice to More's vision of the ideal society. Here Hythloday expresses the utopian's vision: *I have seen it!* Because he has. Utopia was the product of More's imagination. He transcribed what he saw when he imagined a just society embodying his Christian ideals. More was more than a satirist here; he was a social critic offering a radical vision of a better society.

This passage suggests another motive, as well. Having "seen with [his] own eyes" the Utopians "manners and customs," Hythloday, like a Christian missionary, was impelled to leave a society where he wished to remain to spread the good word, "to make that new world known to others." More was not merely imagining how the world could be remade; he was proselytizing a message of reform and salvation.

When contemplating whether More intended not only to provoke discourse but also to incite social change, it is worth remembering that More wrote at a time when the prospect of finding unique societies in remote places was not a fantasy for Europeans; it was an exciting new reality. More was born into the last generation of educated Europeans who came of age before fifteenth-century European explorers reached the new lands of the Western Hemisphere. More was fifteen when Columbus returned from his first voyage to the New World, and in the following decades

European explorers had repeatedly sailed west across the Atlantic and returned with reports of magnificent and terrifying places inhabited by unknown peoples, living according to exotic customs, mores, and rules. In the early years of European discovery, nothing could have stimulated the imaginations of Europeans more than fantasizing about these remote and unknown lands. It is far from implausible to imagine More could conjure up a society separated from the history and the sins of Europe not merely as a metaphor but also with the hope that, somehow, his dream could become real, if only because others believed that it was real.

Some of More's contemporaries did, in fact, believe that Utopia existed, that Hythloday had lived there for five years, and More was only reporting the facts of another expedition of discovery (Adams in More 1992, 108–33). Most surprising, perhaps, was that the arguments for abolishing private property and establishing a communist social, political, and economic regime received favorable responses from numerous educated, conservative, and privileged readers (ibid., 115–22).

Perhaps More viewed these readers as fools, unable to detect a good joke when they read it, but perhaps not. Recall More's wistful concluding sentence: "I confess there are many things in the Commonwealth of Utopia that I wish our own country would imitate—though I don't really expect it will" (More 1992, 85). Was More suggesting that such a society was possible, if not in England, then elsewhere? We do not know, but if ever a fantasy like Utopia could be taken seriously, it would have been Europe in the early sixteenth century.

I offer these speculations to raise the possibility that More was contemplating real solutions to the terrible conditions suffered by the poor and the dispossessed in England, conditions that inspired *Utopia*.[6] Most tellingly for this chapter, he was not concerned with the problems of the wealthy, the titled, the landed, but instead with conditions that made most Britons vulnerable to poverty, injury, disease, starvation, and despair. These conditions were made worse by the social, economic, and political injustice inherent in English society. Large numbers of people were executed for theft but

> [s]imple theft is not so great a crime that it ought to cost a man his head, yet no punishment however severe can withhold a man from robbery when he has no other way to eat [but] it would be much better to enable every man to earn his own living, instead of being driven to the awful necessity of stealing and then dying for it. (More 1992, 10)

Equally unjust was the landed aristocracy's mistreatment of their tenants. Hythloday offered a lengthy and detailed criticism of the economic, social, and legal injustices of English society, particularly those produced by the enclosure

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6   On the feasibility of More's proposals, it is noteworthy that one "remarkable thing about Utopia is the extent to which it adumbrates social and political reforms which have either been actually carried into practice, or which have come to be regarded as very practical politics" (Chambers 1992, 137).

movement. Indolent and self-indulgent landowners—nobles, the gentry, and even the clergy—raised their tenants' rents to exorbitant levels (More 1992, 137). When even these rents failed to satisfy their greed, they enclosed "every acre for pasture" to raise sheep for the lucrative wool markets. Not satisfied by taking the land traditionally used by the lower classes for farming, some even destroyed the tenants' homes and villages and claimed that land as well (ibid.):

> Thus one greedy, insatiable glutton ... may enclose many thousand acres of land within a single hedge. The tenants are dismissed and compelled, by trickery or brute force or constant harassment, to sell their belongings. By hook or by crook these miserable people—men, women, husbands, wives, orphans, widows, parents with little children, whole families (poor but numerous, since framing requires many hands)—are forced to move out. They leave the only homes familiar to them, and they can find no place to go. Since they cannot afford to wait for a buyer, they sell for a pittance all their household goods .... When that little money is gone (and it's soon spent in wandering from place to place), what remains for them but to steal, and so be hanged ...or to wander and beg? .... They would be glad to work, but they can find no one who will hire them. (More 1992, 12)

The tragic consequences of English inequality supplied the rationale for Utopia, a society designed to eradicate as many of the horrors of English life as could be done by changing social, political, and economic structures, rules, and incentives. From this perspective, it is not farfetched to view *Utopia* not solely as fantasy, but also as an attempt to imagine social reforms for the real world. The economic organization, in particular, was designed to supplant a world in which after

> a barren year of failed harvests, when many thousands of men have been carried off by hunger, ... if ... the barns of the rich were searched, I dare say positively enough grain would be found in them to have saved the lives of all those who died from starvation and disease, if it had been divided equally among them. Nobody really need have suffered from a bad harvest at all. (More 1992, 83)

This begins to appear to be less a utopian fantasy than an attempt to imagine how to remake social institutions and values to solve problems inherent in More's own society. His diagnoses and remedies both anticipate ideas and arguments upon which Fineman's vulnerability theory rests.

## Utopia and Reality

Fineman's writings developing her vulnerability theory are more straightforward than More's utopian tract. She does not use fictive dialogues or mythical islands to obscure her personal beliefs or the practical goals of her work. Fineman's policy goals are unambiguous:

To richly theorize a concept of vulnerability is to develop a more complex subject around which to build social policy and law; this new complex subject can be used to redefine and expand current ideas about state responsibility toward individuals and institutions. In fact, I argue that the vulnerable subject must replace the autonomous and independent asserted in the liberal tradition. 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. (Fineman 2008, 1–2)

Even this succinct summary reveals similarities with More's utopian project, similarities that become more apparent when Fineman develops her thesis. First, like More, Fineman begins by reimagining how social institutions can be redesigned to create a more just society. Second, Fineman's imagined just society, like More's, offers comfort, security, and opportunity for its vulnerable members by eliminating entrenched advantages that benefit a privileged minority. Utopia was an egalitarian society. Much of Fineman's work is devoted to demonstrating that vulnerability theory can lead us to a better society in which the state and its institutions are responsible for ensuring substantive equality for everyone. Third, like More, Fineman's better society requires transformation of the fundamental values by which we envision the just society and the successful individual. Finally, like More, she imagines a society that emphasizes our interdependence, not our autonomy. I will discuss each of these elements of vulnerability theory, but first I want to point out fundamental distinctions between the utopian projects of these two authors.

First is the issue of genre. Perhaps the most popular utopian literature is fiction, and it is possible to conceive of utopian literature as consisting solely of famous fictional works like More's. Obviously, Fineman's work does not qualify for inclusion in that category. But if we use the more accurate and comprehensive concept of literature—"writings"—then Fineman's work fits comfortably within the extensive library of nonfictional utopian treatises. We may be most familiar with utopian fiction, but examples of its nonfiction manifestations are plentiful and important. It is possible to imagine an ideal society situated in reality, and not in myth.

Another noteworthy difference is that Fineman's ideas do not rest upon religious faith, and certainly not on More's sixteenth-century Catholicism. Her theories rest instead upon secularized values including justice, fairness, and empathy. Like More, she engages in the essential utopian task of imagining how the world could be different, but, rather than turn to theology for inspiration, Fineman's work is rooted in values and methods common to contemporary critical theory. For example, one of Fineman's self-imposed missions is to expose post-Enlightenment values of autonomy, self-sufficiency, and market efficiency

as ideological myths that obstruct accurate understanding of the world.[7] Like a theologian explaining sin and its sources, this is a basic task for a critical theorist:

> Much of critical theory—from Marx and Engels to Althusser and Barthes—has equated ideology with *false consciousness* …. In order to disclose our social reality it was first deemed necessary to *expose our ideological fantasies.* One of the first steps in such disclosure was to demystify the ways in which ideology alienates human consciousness by attributing the origin of value to some illusory absolute outside the human. (Kearney 2004, 75)

Fineman attacks "illusory absolutes" like the Lockean "philosophy of liberal individualism" and the "liberal subject" who embodies that ideal, two foundational conceptions in the social and political traditions of the United States (Fineman 2008). Fineman reports accurately that this Lockean

> liberal subject informs our economic, legal, and political principles. It is indispensable to the *prevailing ideologies of autonomy, self-sufficiency, and personal responsibility*, through which society is conceived as constituted by self-interested individuals with the capacity to manipulate and manage their independently acquired and overlapping resources. (Fireman 2008, 10)

To establish the primacy of the vulnerability model and its related concept of dependency, Fineman first must demystify these post-Enlightenment ideals as inaccurate depictions of reality that harm individuals and society. The "vulnerable subject" will not replace the "liberal subject" as the organizing principle for our social and political institutions until these dominant values are delegitimized, or at least eroded. Fineman's most important task is to establish that vulnerability is the better device for explaining human existence and for constructing a just society.

This is the point where Fineman's work transcends mere social criticism. Her concepts of vulnerability and the vulnerable subject may be part of a utopian reimagining of the world, but they offer a succinct and remarkably practical model for radical reorganization of American society. Eschewing More's fictions, Fineman focuses on this place, the United States. Her imagined utopian society will not be in some remote location; it will not be at the margins of human life. Her better society will be this one remade. Recall how Fineman defines the scope of her project: "a reimagining … *to attain a more equal society than currently exists in the United States*' (Fineman 2008, 2). As we will see, her vision of that society is utopian, but there can be no doubt it is focused on the heart of America.

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7   More similarly argued that Utopia's just society rested upon mutual dependence, not individual autonomy. After More the narrator tried to justify basing a society on "market efficiency," Hythloday rebutted these arguments by protesting that he would not have believed communism would be so successful had he not seen it with his own eyes (More 1992, 29).

Fineman argues with devastating clarity why the universality of human vulnerability dictates that our dominant ideology of individual autonomy must be replaced. Her construction of vulnerability as both universal and particular provides a powerful secular model for reconstructing a society that extols individual acquisitiveness and control of social goods into one that thrives because its forms and norms rest on notions of interdependency.

Vulnerability provides a powerful mechanism for reordering social values and society because it arises

> 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. (Fineman 2008, 9)

The core of her argument rests upon this undeniably accurate insight—that we live under the constant threat of harm. Vulnerability is not our only reality, but it is one shared by all who are born. We all face the ultimate experience of vulnerability—we all die. And before that, everyone faces the threat of physical damage from injury or disease. Our physical existence is constantly at risk from

> disease, epidemics, resistant virus, 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 fires. These are "natural" disasters beyond our individual control to prevent. (Fineman 2010, 267)

Because of its universal nature and the costs it imposes on us individually and collectively, human vulnerability is a logically powerful heuristic device for social organization. Vulnerability, particularly of the poor and dispossessed, served as a fundamental principle for More's *Utopia*, of course. His distress about the precarious lives of most Britons helped motivate him to create that imaginary world. Fineman shares that ideal of organizing a society that offers support and security to its most vulnerable people, those possessing the fewest coping resources. But focusing on the most vulnerable people opens the door for the potent political objection that vulnerability is not universal, it is experienced only by some people, at some points in their lives, and many of these individuals are members of politically unpopular and stigmatized groups. Fineman addresses this objection by adding a second powerful element to her theory.

Vulnerability is universal, but it also is particular. Although all humans are vulnerable,

[b]ecause we are positioned differently within a web of economic and institutional relationships, our vulnerabilities range in magnitude and potential at the individual level. [H]uman vulnerability is also particular; it is experienced uniquely by each of us and this experience is greatly influenced by the quality and quantity of resources we possess or can command. (Fineman 2008, 10; see also Fineman 2010, 263–4, 266)

This definition of vulnerability, as universal and particular, serves several instrumental purposes for Fineman. Its universal nature supplies a grand theory of human existence that challenges the hegemony of the "autonomy myth" and also justifies Fineman's earlier work offering in its place a *dependency* model for organizing society (Fineman 2004, 277). By recognizing that dependency is the result of universal vulnerability, Fineman's theory washes away the stigma associated with dependency in a culture that exalts self-sufficiency. It rebuts claims minimizing the significance of dependency because it is temporary (childhood), episodic (disability caused by injury or disease, followed by recovery), or experienced only by some people, at least at any point in time. Because all humans are vulnerable, all have at least the potential to become dependent, and in fact all humans are dependent on others at points in their lives—childhood being only the most obvious example.

Vulnerability's *universality* makes it an powerful concept for social organization, but its *particularity* fuels Fineman's arguments for reconceiving our social values and institutions to support the poor, the weak, the powerless, and the despised, just as More imagined happened in Utopia. Fineman argues, for example, that our commitment to the ideal of the liberal subject has produced theories of equality and equal protection too "weak … to correct the disparities in economic and social wellbeing among various groups in our society …. It does not provide a framework for challenging existing allocations of resources and power" (Fineman 2008, 3). Vulnerability theory does provide such a framework for social reform.

Individuals possess different abilities, of course, but Fineman focuses upon the power of social institutions to distribute assets—physical (material goods, wealth, and property), human (education and healthcare), and social (networks of relationships) assets (Fineman 2010, 271–2). By arguing that the state must be actively involved in distributing these assets, Fineman rejects the political ideal of a restrained state that allows individuals to succeed and fail on their own. Just as More demystified the economic and political structures in England, Fineman demystifies the institutions and values that support the restrained state.

The fact that people "are positioned differently within a web of economic and institutional relationships" means that, to some extent, the game is rigged (Fineman 2010, 10). "Privileges and disadvantages accumulate across systems and can combine to create effects that are more devastating or more beneficial than the weight of each separate part" (ibid., 15). One inevitable result is that "systems of power and privilege … interact to produce webs of advantages and disadvantages" (ibid., 16). A person's "resilience in the face of vulnerability" depends in no small

part on the extent to which she has accumulated (perhaps inherited) physical, human, and social assets (ibid., 14).

The robust concept of equality Fineman advocates demands that we do not simply accept as inevitable that our institutions must continue to distribute assets according to the values currently dominant in our culture. At least to the extent that state authority is required for the creation and ongoing operation of institutions—as is true with corporations, schools, and hospitals—then the state must insure that these entities distribute assets in ways consistent with the public values she advocates, like equality and justice, rather than simply permit actions driven by the private values, like the profit motive, to dictate how distributions are carried out. The responsive state must replace the restrained state.

This means that the state and its institutions no longer would acquiesce in unequal distributions of these "public" assets, so that some are disadvantaged and others are privileged. The responsive state would be responsible for overcoming "existing systemic inequalities" resulting from the actions of its asset-conferring institutions (Fineman 2010, 272). The responsive state would provide medical care for all who needed it, just like More's sixteenth-century Utopia, where "the sick are carefully tended, and nothing is neglected in the way of medicine or diet which might cure them. Everything is done to mitigate the pain of those who are suffering from incurable diseases."[8]

This example suggests yet again that it is not unfair to conclude that More's attention was directed to the real world in which he lived, both in his critique of his society and even in his proposed recreation of society to better serve the needs of its most vulnerable subjects. No conjecture is required when we examine Fineman's writings. Her goal is not merely to imagine a society that cares better for its people; it is to change the place where she lives, now. Ironically, the primary obstacle to achieving that goal may be another universal for our species—human nature.

## Utopia and Human Nature

Many would accept the derisive characterization of a utopia as a place inhabited by exemplary people "where few of us would feel quite happy; yet we go on using the word 'Utopia' to signify an easy-going paradise, whose only fault is that it is too happy and ideal to be realized" (Chambers 1992, 137). It is reasonable to conclude

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8 More 1992, *supra* note 3 at 60. People suffering in agony from an incurable condition are urged to commit suicide by family, friends, the Senate, and the priests, "who are interpreters of God's will which ensures that it will be a holy and pious act." The primary purpose is to ease incurable suffering, but in a society devoted to interdependence and social responsibility, these advisors "remind him that he is now ... a burden to himself and to others ..." The decision rested entirely with the patient, however, who continued to receive care even though he had become a nonproductive social burden.

that the architect of such a plan must be an optimist about human nature. Who but an optimist would propose that an entire people could live lives of probity, order, decency, and modesty, without desiring to acquire personal property, in an ordered, secure, and supportive society?

I think this critique misunderstands More and the concept of human nature underlying *Utopia*. The book reveals that More was a pessimist about human nature, and not merely because he doubted that Utopian reforms would be adopted in his England. The perfect world he imagined limited individual freedom and required submission to society's commands. Utopia was an authoritarian society relying on strict rules to channel human behavior into socially acceptable forms. Utopia prescribed what work people did, where they lived and when they lived there, what time they ate dinner, and when they were allowed an hour of free time. False pleasures like gambling, drinking, and idleness were prohibited, and constant monitoring of each person's behavior ensured that they maintained tidy lives of muted conformity.

These constraints were necessary because people are inherently flawed—burdened with the original sins of Adam and Eve and the "mark" of their son Cain (Marius 1984, 166). This was the true import of More's Christian worldview.[9] In his world, Christ and the Church might save people from their sins, and complying with the rules of right reason and proper behavior might do the same in Utopia. But in both settings rigid institutional rules and punishments were needed to rein in the sinful nature of humankind.

If More had been an optimist about our human nature, those fortunate enough to live in his perfect society would have shunned sin, crime, or faithless conduct. But even Utopia was burdened with divorce, adultery, heresy, and criminal acts which could trigger harsh penalties. And criminal liability was not limited to the most heinous acts, or to *malum in se* crimes. A Utopian became a criminal by leaving "his district without permission" (More 1992, 45). When he was captured, he was "brought back as a runaway, and severely punished. If he is bold enough to try it a second time, he is made a slave" (ibid.). Utopians had to stay in their assigned districts to make it easy for the community to call on them to perform their assigned work for the commonweal. People who indulged in unregulated travel could not be found, allowing them to shirk their obligations to the collective. This was a crime against the society's well-being; it was a crime that Utopia would not tolerate.

Utopia's most significant limitation on freedom of thought and belief had similar instrumental functions. More has been praised for imagining a country that embraced religious toleration, where no state religion was established and where people were free to pursue and arrive at their own religious destinations (More 1992, 72–3). After King Utopus conquered the island and imposed his

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9   One commentator has noted that "More simply did not believe that all the evil men do can be ascribed to the economic arrangements of society … More's pessimism was ineradicable because it was part and parcel of his Christian faith" (Hexter 1992, 148).

ideas of the good society on its people, he "left the whole matter open, allowing each individual to choose what he would believe," with one noteworthy limitation (ibid., 74–5). "The only exception he made was a positive and strict law against any person who should sink so far below the dignity of human nature as *to think that the soul perishes with the body, or that the universe is ruled by mere chance, rather than divine providence*" (ibid., 75, emphasis added).

Like the rules requiring people to remain in their home districts, this religious restriction served an instrumental function. "Who can doubt that a man who has nothing to fear but the law, and no hope of life beyond the grave, will do anything he can to evade his country's laws by craft or break them by violence, in order to gratify his own private greed" (ibid.). Fear of punishment for eternity is needed to force people to behave properly on earth. Without fear of eternal unpleasantness, apparently everyone will violate laws, sometimes by violence, simply to satisfy their "private greed."

This was not a scheme that an optimist about human nature would devise, particularly for a society offering the greatest physical security and religious liberty that More could imagine. But Utopia's perfection resulted from the imposition of rules, not from individual freedom. Even when he imagined the ideal society, More concluded that some people were so flawed that they had to be controlled.

Social critics are often cynics, and anyone reading Fineman's *The Autonomy Myth* (Fineman 2004) with its extensive catalogue of the defects in American ideals and the damage caused in their name might consider her a pessimist about the inherent nature of people. By arguing for a more activist "responsive state," Fineman inevitably countenances the expansion of government authority. Like More's utopian schemes, her proposals would lead toward an authoritarian state. By placing faith in authoritarian policies and structures rather than in individual freedom, Fineman, like More, could be revealing a pessimistic attitude about human nature.

Fineman is aware of the criticism that her proposals could produce an autocratic state, but offers only a cursory—and rather utopian—response. She asks her readers to open their minds to—to imagine—the possibility of a non-authoritarian responsive state (Fineman 2010, 274).

Fineman's decision to sidestep this issue could have a number of explanations, and the one most relevant here is that, unlike More, Fineman is a human nature optimist. She does not need to address this issue because she believes that people can create activist, responsive states that are not authoritarian. She benefits, of course, from living in a constitutional democracy where ultimate power ostensibly rests with the people and not with a hereditary aristocracy. She benefits from living in a society where she can publish controversial ideas without fearing she will be subjected to anything more than criticism from those who disagree. She need not camouflage her personal views with fictions, and it may well be that had he written in this setting More would have appeared to be more of an optimist than was possible within an authoritarian sixteenth-century monarchy. It could be that living in a constitutional democracy makes the difference. Whatever the cause,

close examination of Fineman's proposals suggests that optimism about human nature undergirds her work.

Fineman's optimism about human nature is confirmed by her belief that people will read her writings, have the capacity to understand her theories, have the intelligence to agree with them, and possess the commitment to social justice needed to bring them to fruition. More's Utopians did not create their ideal world, their conquering founder King Utopus did. Without him, they would not have adopted their operative values, implemented them with social rules and institutions, or even have completed practical tasks, like planning their cities. Fineman does not expect a great monarch to create a better world; she expects that the people can and will act to achieve that end.

Here is how she imagines such a people-driven reform process would happen:

> The realization that disadvantage is produced independent of racial and gender bias in many—but of course not all—instances provides an important political tool. Mobilizing around the concept of shared, inevitable vulnerability may allow us to more easily build coalitions among those who have not benefitted as fully as others from current societal organization. If we begin to operate from this perspective, institutional arrangements will be the targets of protest and political mobilizations, and interest groups need not be organized around differing identities. (Fineman 2010, 15)

Only a person optimistic about human nature would imagine that this combination of intellectual understanding, sustained and effective action, and self-interested altruism can be forged into a political movement capable of reinventing our society's institutions and its foundational values, stories, and myths. Fineman's belief that people can and will comprehend, organize, act, and ultimately prevail over the existing systems is the core of her proposal for implementing her ideas. This optimistic view of human nature may turn out to be an essential weakness in Fineman's theory.

The problem is not with her conception of vulnerability as a universal element of human existence. After studying her arguments, no honest reader could disagree with that claim. Rather the problem appears in her discussion of the competing values, myths, and theories she wants to replace. Her arguments underestimate their significance, and therefore their power, as elements of human nature.

Unlike vulnerability, which is "universal, inevitable, enduring aspect of the human condition" (Fineman 2008, 8), Fineman declares that the competing theory of autonomy "is not an inherent human characteristic, but must be cultivated by a society" (Fineman 2010, 260). Fineman contrasts her core concepts—vulnerability, equality, dependence—with those that she challenges—which I will refer to as collectively as independence or autonomy—by treating the former as universal attributes of human experience and the latter as socially constructed, arbitrary cultural phenomena. She argues that we should and can abandon our socially constructed values and replace them with universal realities. It is not too difficult

to imagine that many people would willingly abandon culturally created, arbitrary values in order to organize our society according to the demands of our universally shared vulnerability.

The problem is that the concepts Fineman challenges are not just cultural innovations. They, too, can be considered universal in human nature, albeit in ways that differ from vulnerability. Consider autonomy; unquestionably, its American form is socially constructed, as are the forms it takes in other cultures. But that is the point; the drive for independence emerges in cultures around the world because it is a fundamental part of human nature. Just as most of us need (and desire) connections with society, its institutions, and its people, most of us also have some level of need for freedom from the constraints all societies impose.

It may be that vulnerability is more universal in human experience and human nature than is the need for autonomy. Virtually everyone becomes sick and suffers injuries at different points in their lives; of course we all die. In contrast, the importance of individual autonomy varies widely among societies and among individuals. We can rationally conclude, as Fineman does, that vulnerability is more universal and should be the centerpiece of our social systems. But this is just part of the story. Just as vulnerability is *particular*, affecting each of us in different ways at different points in our lives, so is the desire for autonomy. It varies among individuals and cultures, but it appears almost everywhere.

Similar analyses apply to each of the other values Fineman criticizes. Most relevant to this chapter is the desire to accumulate private property and social distinction. Rules governing private property are socially constructed, but that does not mean the desire to own property does not originate in human nature. The desire for individual distinction, for honors, accolades, and high social status—and for the accompanying material benefits—takes many different forms, but it appears in some form in virtually every human society.

The emphasis American society places on individual autonomy, high social status, and the private possession of wealth is defined and expressed in cultural terms, but the underlying impulses are universal. This reality does not mean that Fineman's proposals for reconstructing society are invalid or that vulnerability is not a universal characteristic of human existence.

It does mean, however, that it will be harder to persuade American society to replace the "liberal subject" with the "vulnerable subject" as a core concept around which society is organized. Fineman acknowledges that the Lockean values she challenges pose a powerful barrier to the adoption of her ideas, but she diminishes their power by characterizing them as social artifacts, not human universals like dependency and vulnerability. The barrier erected by individualistic materialism is higher if these values are inherent in human nature, as I believe they are. If the individualism and acquisitiveness emblematic of contemporary American society are not merely social creations, they will not disappear with the creation of new rules and institutions based upon substantive theories of equality. To replace them as America's foundational values requires a critique, implemented by social activism, that openly confronts this element of our humanity. Like good utopians,

we can imagine a world in which that has been accomplished. Like Thomas More's Utopia, that better America may exist only there, in our imaginations.

But Fineman has imagined more than a mythical world like More's Utopia. Like More, she has written a muscular criticism of her society that challenges the legitimacy of its fundamental values. Like More, she has imagined a better society organized around values that transform how institutions treat individuals. But, unlike More, her better world is not so perfect that it can exist only in the creator's mind. Fineman imagines a better society created in the existing world, by living people employing the social and political processes available in American society. Fineman imagines more than a utopia—she imagines a better reality. If she can incorporate our innate need for autonomy into her theory of interdependence based on vulnerability, she may succeed in imagining a just society for the real world.

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# Vulnerability

## Reflections on a New Ethical Foundation for Law and Politics

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