

# [She of the state has increased the](https://assignbuster.com/she-of-the-state-has-increased-the/)

[](https://assignbuster.com/)[Family](https://assignbuster.com/essay-subjects/family/), [Marriage](https://assignbuster.com/essay-subjects/family/marriage/)

She points out two major problems in the currentsetup. She suggests that everything in the current legal framework isconsidered in terms of formal equality. The other problem that she points outis that there is an Idea that state regulation should be restricted to only thepublic matters and regulation of the private matters should be left to thepeople themselves. She says that justice has been defined in very narrow termsregardless of the factors that can differ from individual to individual. But inthe eye of the law, everyone is treated the same irrespective of everyindividual’s circumstances.

She says that ? initially, feminists preferred thistreatment because the laws discriminated against the women and used to subduethem. But now ? formal equality has become an inadequate tool to deal with theproblem effectively. It does not rectify the underlying inequality which existsin the society. It is also incapable of providing any solution for challengingthis legal discrimination. The second major problem that Fineman points out isthe restraint that the state shows when it comes to the implementation of theequality laws in a practical world. States only regulate these laws within thepublic domain but do not interfere when it comes to the private sphere.

It isnot a good thing as commonly believed because there is no solution for thepeople suffering within the constraints of the private sphere.? This naïve or hesitant attitude of the state hasincreased the difference between those who suffer and those who they make tosuffer, and in this particular context between the dominant male gender and theoppressed female gender. Law at the moment is only acting to create theinstitutions and the laws for the public which comes in the realm of the publicsphere, for example, the law determines the creation and dissolution of theinstitute of marriage but does nothing to regulate that marriage on the basisof daily affairs. Fineman also points out that the bureaucracy is inefficientand corrupt. So it is important that everyone gets themselves educated andactively take part in the regulation of the private sphere on some level.

According to Fineman, the definition of vulnerabilityshould be changed. Everyone is vulnerable, vulnerability is an inevitableaspect of our lives universally found. Everyone is prone to injury because ourworld and society are organized in this way.

Regardless of where you live andwho you are, by the virtue of being a human being, you are exposed to beingvulnerable. Fineman also points out that the current system treatseveryone as a liberal subject. Her vulnerability thesis takes into accountpeople without capacity which liberal subject thesis does not. According toher, the law should primarily be designed for the vulnerable subject ratherthan being centered on formal equality. In my opinion, the understanding of legal frameworkprovided by Fineman in context of male domination in the society is very goodbut the antidote proposed by her to deal with the problem of patriarchy is quiteimpractical. She has a very deep understanding of what the problems of thelegal framework is and from the point of view of a woman affected by theproblems is also very accurate to a great extent. But there are a lot ofproblems in this theory due to which I think it will not be practical. The idea of formal equality that she describes in hertheory may be overlooking the individual needs and demands but there is no waythat the law can be structured in a way that every single person and peoplegroups in the society can be accommodated equally, this is simply logisticallyimpossible.

The real issue here is to raise the awareness regarding theinequalities of the system and then come up with an approach that minimizes theexploitation. Most of the modern world has adopted the democraticform of governments and in my opinion, it is the ideal system to get rid of thelegal baggage that we are carrying from the centuries gone by. According toFineman’s theory, men will never be able to understand the problems from theperspective of women because they cannot and do not go through the difficultiesand the problems that women have to go through. So the need of the hour here isto push for more and more gender equality in the legislature and judiciary. With time passing by, this approach will eventually lead to a moregender-neutral tone to the legal framework as it will incorporate the muchneeded feminine perspective of law. I totally disagree with the part of Fineman’s theorywhere she suggests that the state should regulate the affairs in the privatesphere because a lot of people are suffering outside the realm of the publicsphere.

In relation to the problems of women, it is true that there are a lotof aspects of the social institutions like the marriage where the women aregetting oppressed and there is little or no way for their suffering to bestopped. But it will be a total catastrophe if the state starts gettinginvolved in the private sphere. This approach will lead to infringement ofindividual rights like the right to privacy one day if not straight away. The solution in my opinion to this problem is not to let the stateadminister the life in a private sphere but rather the solution should be moreoriented towards making sure that people who are suffering in the privatesphere are legally heard when they decide to bring forth their problems. Legislation should be done which deals with the private sphere when privateindividuals decide to invoke it.