Vulnerability, Precarity and Intersectionality: A Critical Review of Three Key Concepts for Understanding Gender-Based Violence in Migration Contexts

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Introduction

This chapter offers a theoretical framework for examining gender-based violence (GBV) in contexts of migration. Our theoretical quest is underpinned by three important questions: First, how to comprehend and interpret the complexities of the lived experience of GBV in contexts of migration? Second, how to best understand the gendered aspects of the different forms of violence that occur in contexts of migration, including forms of gender-based violence that are specific to these contexts? Finally, how to best theorise and analyse the responses and responsibilities of receiving states towards people who seek to enter new countries or regions?

To address these questions, we unpack key concepts and debates in theoretical discussions that are most relevant to understanding and analyzing the nexus of gender-based violence and migration. Specifically, we focus on the concept of vulnerability – primarily as it is elaborated by Martha Albertson Fineman (2004; 2008; 2010; 2017) – and its relation to associated ideas of precariousness, 'precarity' (Butler 2004, 2009, 2012; Turner 2006; Standing 2011, 2015) and intersectionality (Anthias and Yuval-Davis 1983; Collins 1986, 2000; Crenshaw, 1989, 1991). While there is little consensus around their meanings and application in practice, and whether or not they are mutually compatible, all three concepts feature to some extent in most feminist and mainstream policy and academic discourse relating to gender-based violence and migration. In this chapter, we argue that each concept has the potential to illuminate different, interrelated dimensions of the nexus of gender-based

violence and migration. Therefore, to better understand, interpret and propose effective policy responses to the issues that arise in this complex nexus, we posit that it is most productive to approach vulnerability, precarity and intersectionality as mutually interrogative categories of analysis within a wider critical feminist framework for addressing gender-based violence in contexts of migration.

Finally, we note that we use "migration contexts" in a broad way, considering "migration" as a complex, multi-causal, multi-stage, often non-conclusive and non-linear process. It includes a spectrum of forms from the "freely decided" economic or family migration to forced migration and asylum-seeking, producing a multitude of categories of migrants with differential legal/citizenship statuses and associated rights (e.g., Tastsoglou et al 2021; Freedman, 2016; Gerard and Pickering 2013).

In the next section, we start with a brief theoretical excursus on the concepts of vulnerability, precarity and intersectionality and associated debates. Next, we theorize the "structural level" in particular the responses and responsibilities of the state and institutions involved in receiving migrants and refugees, from the perspectives of our selected categories of analysis, vulnerability, precarity and intersectionality. We conclude with a critical analysis and posit particular interpretations of these important concepts, which, we argue, when taken together, comprise an incisive theoretical framework for investigating and understanding GBV in migration contexts, as well as informing formulation of more effective, context-specific remedial responses.

Vulnerability

The concept of vulnerability has seen a renaissance over the last two decades. Within this development, there is a tension between Fineman's approach, which calls for recognition of universal human vulnerability and a seemingly contrary tendency in policy and practice to focus on the vulnerabilities of particular groups. Hence, we have seen an increase in the use of vulnerability as a concept aimed at differentiating between those who are deemed to be in need of support and those who are not. From this perspective, being assigned the status of "vulnerable" has the potential to give access to resources and more secure statuses (Freedman 2019; Brown et al. 2017; Virokannas et al. 2018). For instance, Peroni and Timmer (2013) cautiously point to the benefits of the European Court of Human Rights' recognition of

asylum seekers as a "vulnerable group" (M.S.S. v. Belgium and Greece) (see Da Lomba, 2014, for a critical reading of this development). A metastudy of the use of vulnerability (Virokanna et al. 2018) found an overwhelming pattern of applying vulnerability only in terms of "vulnerable groups", most notably children/young people, elderly, and women in relation to certain "life situations" – e.g., motherhood/reproduction, survivors of war/conflict, women of colour, refugee women, women prisoners or rural women.

However, this "vulnerable group" approach has been criticised for being linked to the stigmatization, essentialization, paternalistic targeting and increased control and repression of those identified as vulnerable (Freedman 2019; Peroni and Timmer, 2013; Brown et al. 2017). Implicit in an understanding of vulnerability as pertaining (only) to particular groups is that vulnerability is a fixed property or, more specifically, a lack or deficiency of some groups and individuals compared to a presumed norm of "invulnerability". As Brown et al. (2017) characterize the situation: "while vulnerability has a deep discursive connection with connotations of empathy and compassion, and can be used in pursuit of enhanced support for certain individuals or groups, there is increasing attention to the ways in which it can also serve regulatory functions (…) when deployed in a normative way" (Brown et al. 2017).

Viewed through a Foucauldian lens, the "production" of some groups as vulnerable is further implicated in the governance of populations and the extension of state bio-power (Butler 2004, p. xv). FitzGerald (2016) also points to examples of the instrumentalization of vulnerability. For instance, regarding human trafficking in the context of immigration and border control in the UK, she argues that the stance of protecting assumed vulnerable trafficking victims has served to legitimate restrictive migration policies, with the aim of protecting the UK and its citizens against "undesirable people", under the pretext of protecting women victims of trafficking (see also Grøvdal and Bjørnholt, this volume who make the same point for Norway). Vulnerable groups discourse also fosters conditions whereby the instrumentalization of vulnerability can become the principal available mode by which certain migrants might become visible and have their needs met in the first instance (Tastsoglou et al, 2021), or in Butler's terms, achieve recognition as "livable subjects". Freedman (2019), for instance, notes the example of increased numbers of women choosing to travel alone to the EU to seek international protection, aware that they would be more likely to be defined as "vulnerable" than if they travelled in a group (p. 10). Critics have also pointed out the apparent paradox that the proliferation of policies, which ostensibly seek to

ameliorate vulnerability, come at the same time as "failures to adequately protect 'the most vulnerable' seem to have become a pervasive feature of the political landscape" (Brown 2017a, 423).

Universal vulnerability

In contrast to "vulnerable group" centered uses of the concept, a more radical definition of vulnerability takes as its point of departure the premise that vulnerability is a universal, inevitable, and constant human condition (Turner 2006, Fineman 2008; Mackenzie et al. 2014). Rejecting "the impoverished legal subject of Locke and liberal thought with its characteristics of autonomy and independence" Fineman (2013, 31) calls on critical legal scholars to argue for an alternative conception of the legal subject that is "flexible, powerful, and able to incorporate a panoply of circumstances and positions." In doing so, she draws on feminist theorizations of care and dependency (Kittay 2020 [1999]; Tronto 2003; 2013, Fineman, 2004), as well as feminist economics and other critical perspectives, that reject the assumption of the self-interested, rationally calculating "economic man" as the defining feature of human behaviour and source of the contractual view of society and social relations (Wærness 1984; Ferber and Nelson 1993; 2020; Folbre 2001, Fineman and Dougherty 2005).

In Fineman's conceptualisation, "the human condition is one of *universal* and *continuous* vulnerability" (Fineman 2017, 134, emphasis added). It "carries with it the imminent or ever-present possibility of harm, injury, or misfortune" (Fineman 2010, 30) through external and internal forces, including the passing of time and eventually death. In this respect, Fineman's assumption of universal vulnerability resembles arguments made by Judith Butler regarding precarious life (2004), discussed below. However, while vulnerability is universal and constant, Fineman argues, it is also experienced differently, depending on the particularities of individual embodiment and positions "within webs of economic and institutional relationships" and "the quality and quantity of resources we possess or can command" (Fineman 2010, 30). Although society cannot eradicate vulnerability, it can and does mediate, compensate, and lessen the consequences of vulnerability. Importantly, the counterpoint to vulnerability is not invulnerability but resilience. As Fineman describes it, "resilience ... provides an individual with the means and ability to recover from harm, setbacks and the misfortunes that affect our lives" (2017, 149). Resilience is acquired over time within social structures and institutions (family, market, or state); it depends on the quantity and quality of

the resources we have access to and shapes our capacity to take advantage of opportunities and cope with adversity. It follows that unequal access to societal structures or unequal allocations of privilege and power within social structures diminishes resilience (2017, 147).

Precariousness and Precarity

In parallel with increased engagement with the concept of vulnerability there has been a similar growth in writing that develops ideas of precariousness and precarity. As Turner notes (2006, p. 32), discussions of both vulnerability and precariousness reflect an attempt to develop a contemporary theory of the state "without the limitations of a utilitarian and rational theory of social contract based on self-interest". There are two principal currents of theorizing in relation to precariousness and precarity. The first, exemplified by Judith Butler's *Precarious Life* (2004) and subsequent writings (2009, 2012), is fundamentally concerned with exposing and disrupting discursive processes of recognition and disavowal through which some come to count as subjects (2009, p. iv) - as "normatively human" (2004, p. xv) - and others do not. Such recognition is the condition of a "livable life" and a "grievable death". In contrast to Fineman's and Turner's reading of ontological vulnerability as arising from the embodied dependency of each human being, Butler foregrounds universal vulnerability to violence: "anything living can be expunged *by will* or by accident; and its persistence is in no sense guaranteed" (Butler, 2009, p. ii; emphasis added). While Butler recognizes that political, social and economic institutions are "designed in part to minimize [such] conditions of precarity", her theorization of precarity is principally concerned with revealing how "certain populations" – of which some categories of migrant and refugee are exemplars – do not enjoy the safeguards offered by such institutions (2009, p. ii). From this perspective, precarity as a category of analysis illuminates "*ways of distributing vulnerability*", differential forms of allocation that make some populations more subject to arbitrary violence than others" (2004, p. xii; emphasis added). These differential forms of resource allocation reflect the processes of boundary creation and intersections of privilege and disadvantage for various populations.

The second current focuses on precarity as induced by political-economic arrangements in advancing global capitalism. As such precarity is conceptualized as an outcome of capitalist development (Della Porta et al., 2015), a labour condition (Kallenberg 2009; Vosko 2000) and even a class identity (the "precariat", Standing 2011). It is associated with various

dimensions of health status deterioration for the impacted populations (Barlow et al., 2015; Consonni and Merler, 2013; Fanourgiakis, 2016; Bouhamam et al., 2012; Fernandez and Noel, 2008, Schiltz et al., 2007). More specifically, from the mid 1970s onwards, under the impact of the oil crisis and consequent stagflation, global capitalism initiated new fiscal and monetary policies, including labour restructuring with "flexible" and casual work arrangements, and retrenchment of social services (Della Porta et al., 2015). These "new" policies and practices were ideologically supported by neo-liberal ideas of free trade, market deregulation, privatization, individual responsibility and austerity (Dyer-Witheford, 2015; Standing, 1999). However, in the same current, other scholars have argued that in fact precarity has always been the capitalist "norm" (Betti 2016), with "precarious work" constituting a permanent feature of certain sectors such as domestic and care work, agriculture, hospitality, retail and construction (Mitropoulos 2005:3). Last but not least, others have demonstrated the global interlinkages of precarity as well as labour mobilities associated with them. For example, Sassen (2001) and Parrenas (2001) have argued that the capitalist labour markets of the "North" are intertwined with and give rise to the precarious labour in "global care chains" of women from the global "South" with socio - economic reconfiguration of the North intensifying such movements (Tastsoglou et al, 2021). There is a strong gender dimension in such precarity (Freedman, 2012) intersecting with race and multiple other social divisions (Harney, 2013).

We can argue that precarity in a migration context, refers first to e*conomic precarity.* The capitalist labour markets of the "North" mobilize workers from the "South," in search of "livable lives", to enter informal economic activities and occupations that are gendered, raced and class-based (Castles, 2015). Moreover, the economic precarity is transformed into a h*yper-precarity* (Lewis and Waite, 2015), leading to super-exploitation (Coppola et al., 2007), as economic marginalization interacts and compounds the absence or limited citizenship status and associated rights, gender inequality and other social divisions underlying experience and identity. Furthermore, increased securitization or raising of borders against the "others" (Harney 2013) and immigration controls can be seen as "producing" illegality (Anderson 2010: 306; Freedman 2019; Hodge, 2019; De Genova 2002) in a migration context.

In conclusion, the precarity scholarship conceptualizes precarity as politically-induced and socio-economically differentiated precariousness in which different population groups are

rendered differentially vulnerable by political actions that involve hierarchization and othering (Lorey 2011). Precarization is the governance process by which precariousness is effected and unevenly distributed (Lorey 2011). Common in all understandings of precarity is that the ensuing vulnerability, contingency, and risk are, in fact, produced by material political and social structures as well as related discursive practices. Precarity ultimately refers not to individual or group identities but to precarious situations produced by such structures and practices.

Intersectionality and Migration: Countering False Universalism, Essentialism and Identity Politics

Following decades of post-second wave feminist debate, it is now well-established in contemporary feminist thinking that women cannot be viewed through an essentialist lens, as a homogenous group with a "natural" shared identity, experience or agenda. Rather, the common point of departure of feminist projects that accept this premise is that gender power relations which typically disadvantage women and gender minorities persist in all societies *and* interweave with other forms of social divisions to distribute power and resources in context-specific ways, conferring greater disadvantage or advantage on some groups relative to others. Gender inequalities, intersecting with other hierarchies of power, privilege and inequality, are embedded in the organization of societal institutions and structures and also manifest on the level of interpersonal relations, experiences and identities. There is less consensus in scholarship around whether some social divisions, identities and experiences take priority over others; the nature of intersectional dynamics; the relationship and relative importance of "identities" versus the structures and forces that limit the life chances of particular groups; and whether intersectionalities refer to fixed social divisions and identities or fluid and ever-changing historical processes. Broadly speaking, however, an intersectional *feminist* perspective entails recognition that different women experience gender-based disadvantage or oppression differently and remedial legal and policy responses must take account of this reality. Further, applying an intersectional lens to migration contexts demands that we foreground examination of how differences in location vis-à-vis geographical and political borders interact with gender and other forms of power relations.

Intersectionality as an idea has precursors in US black feminist thought (Davis 1983, Collins 1986, hooks 1984) and black women's studies and 'women of color' writings (Hull et al.

1982, Smith 1983, Anzaldua and Moraga 1983, Lorde 1984), as well as in critical race theory as an offshoot of critical legal studies (Crenshaw et al. 1995). Hill Collins underlines that although "Intersectionality as a knowledge project remained unnamed as such" until the 1990s, in the 1980s the phrase "race, class and gender" was its precursor (Hill Collins 2015, p. 9). Intersectionality also has parallel antecedents in black British feminism (e.g., Amos and Parmar 1984), which similarly emerged in the 1980s challenging the exclusions of white feminisms, and black women's organizing, which also grappled with differences among black women in relation to the focus and strategy of the movement (Brixton Black Women's Group 1984).

Since the term "intersectionality" was coined by Kimberlé Crenshaw (1989, 1991), it has attracted extraordinary levels of attention among feminist and equality-oriented academics and policy practitioners looking for ways of thinking about and addressing gender and other social inequalities that are inclusive and non-oppressive. The global diffusion of the concept was given particular impetus by a decade of transnational mobilization to advance recognition of "women's rights as human rights" through engagement with a series of post-Cold War UN world conferences starting in the early 1990s on themes ranging from sustainable development, population and human rights to gender equality and antiracism (Reilly 2009). The conference series culminated in the World Conference against Racism, Racial Discrimination and Xenophobia and other forms of Intolerance in Durban in 2001 (WCAR). During the WCAR preparatory process Crenshaw's concept of intersectionality was actively taken up and subsequently became very influential in UN discourses, particularly in framing "gender" and "race" as interrelated loci of discrimination (Crenshaw 2000, Lee and Powell 2002).

Crenshaw's conceptualization of intersectionality did not start as an "academic enterprise" but from an activist perspective, "trying to make sense out of why it was the case that certain issues in … [antiracist and women's] movements tended to always disappear" (Berger and Guidroz 2010, p. 63). Black women's experience of domestic violence in the USA was one such issue. Crenshaw's efforts to obtain statistics on arrest rates for domestic violence by neighbourhood in Los Angeles (and implicitly by "race") were opposed by women's organisations who feared that this data would undermine their efforts to present domestic violence as a universal problem for all women, and by men of colour in civil rights movements who feared if released such statistics could undermine their struggle against

police brutality (Berger and Guidroz 2010, p. 64). This example illustrates well what Crenshaw means when she claims that the "specific experiences of ethnically or racially defined women are often obscured within broader categories of race or gender" and why it is essential to build knowledge "from the ground up" in order to make visible instances of "intersectional vulnerability" (Crenshaw 2000). Importantly, therefore, Crenshaw's conceptualization was intended to challenge forms of "identity - based politics" that asserted the homogeneity of a group's identity by falsely universalizing from a particular perspective – in this case the perspectives of certain "white women" and "black men" who used their relative privilege in a specific context – in ways that ignored the experiences of those who were both women and black.

Contrary to Crenshaw, Fineman (2008; 2010; 2017) cautions against approaches that foreground particular vulnerabilities of specific groups, which from her perspective undermine a universal understanding of vulnerability and the case for "state policy and law ... [that is comprehensively] responsive to human vulnerability" (2017, p. 134). Significantly, Fineman contends that such a responsive state cannot be achieved "through intersectionality and multiplicities of identities" (Fineman cited in Kohn 2014, p. 8). From her perspective, targeting of subgroups according to particular characteristics (e.g., poverty, illness, age) and classifying them as differently or particularly vulnerable accentuates a narrow concept of equality and invariably stigmatizes those individuals (Fineman 2010; 2017, p. 147). Instead, Fineman proposes "vulnerability analysis", which focuses not on identities but on structures, through a critical analysis of the "distribution or allocation of resources and the structures within which they are produced" and asking, is "institutional, and not individual, functioning inadequate?"

Fineman's insistence on the adequacy of institutional and policy responses to vulnerability, and her objective to avoid stigmatization of vulnerability labelling, are compelling strengths of her theory. However, pitting "universal vulnerability" against "particular intersectionality" suggests an unnecessary binary. The major contribution of the concept of universal vulnerability is to make clear the need for a responsive state that is capable of providing the infrastructure and policies required to ameliorate vulnerability and foster an equitable society. It is possible to embrace this pivotal dimension of Fineman's theory while rejecting her aversion to attending to difference as a source of particular "vulnerable life situations", which

any credible vulnerability analysis must also take into account in its call for effective state and policy responses to enhance resilience.

Nira Yuval-Davis's theory of "situated intersectionality" (2015) offers a way to do this. Yuval-Davis shares Fineman's critical stance vis-a-vis the fragmentizing and essentializing tendencies of identity politics, but without resort to a universalism that eschews difference. On the contrary, "situated intersectionality" retains a primary commitment to researching, revealing and understanding difference and its associated complex inequalities as a vital step in challenging and transforming them. Anthias and Yuval-Davis (1983) first presented their version of intersectionality, as an analytical framework for theorizing the "interrelationship of ethnic and gender divisions". The authors argued that the prevailing lens of black feminist thought of the 1980s — the "triple oppression" of race, gender and class —was too narrow and failed to capture how in "concrete social relations" race, gender and class are "enmeshed in each other" and how "the *particular intersections* involved *produce specific effects*" (Anthias and Yuval-Davis 1983, p. 63; emphasis added). That is, they cautioned against reductionist understandings of identity and underlined the imperative *of context-specific analysis* to reveal the specific, varying effects produced by different intersectional configurations. Of particular relevance to this volume, Anthias and Yuval-Davis explicitly include migration status and the diversity of women's migration experiences to demonstrate the limitations of an abstract "race, gender and class" lens that cannot account for such nuanced positions. Understanding the complexities of anti-immigrant discourse and practice, for example, also requires an understanding of how "nation" and "ethnicity" operate with gender to control women in any given context (p. 70).

Building on this, Yuval- Davis has elaborated her theory of "situated intersectionality" (2015), which also resonates with writing on precarity and precariousness. Yuval-Davis is especially concerned with avoiding the pitfalls of essentialism. Similar to Fineman, she refutes versions of intersectionality that engender a "kind fragmented identity politics" (p. 93), whereby, for example, instead of prioritizing "women" or "blacks", proponents focus on the concerns of "black women." This runs the risk of "reifying and essentialising social boundaries" rather than analysing them and understanding how they work in practice (p. 93). Instead, Yuval-Davis argues, to harness the transformative, analytical potential of intersectionality, it ought to be understood as a generic approach, applied to "all people and

not just to marginalized and racialized women, with whom the rise of intersectionality theory is historically linked" (p. 93).

On Yuval-Davis's view, intersectionality is ultimately a theory of complex social stratification and inequality; it is concerned with analyzing the distribution of power in society while not reducing the complexity of power constructions to a single social division, such as "class", "gender" or "race" (p. 94). She identifies three facets of social analysis to be considered: first, people's positioning along socio-economic grids of power; second, their experiences and sense of identity and belonging; and third, their normative value systems. These facets are interrelated but not reducible to each other (p. 95). This means that each facet must be studied independently in order to understand, as far as possible, what is happening in any given context. In contrast, the logic of identity politics is to make assumptions about all facets on the basis of one. Situated intersectionality, therefore, calls for particular attention to be paid to the "geographic, social and temporal locations" (p. 95) of the individual and collective actors who we seek to understand. As such it is especially relevant to the study of power relations in contexts of migration, not least in relation to gender-based violence.

In tandem with the three facets of social analysis that attend to micro level experiences, Yuval-Davis's situated intersectionality framework posits four macro "domains" that produce social inequalities in global perspective (p. 98). The first relates to variations in the legitimacy of and modes in which states govern, draw and regulate politically-defined boundaries, which have far reaching implications for those living within and seeking to cross them. The second domain foregrounds differentials in how economic, social, cultural and political goods are "produced, reproduced and distributed" to people and groups within these boundaries (p. 98). The third domain encompasses various "political projects of belonging", such as nationalism, religion, cosmopolitanism and so forth, which traverse conventional political boundaries, structure social "positionings" and afford differential access to social capital of different types (p. 98). Lastly, Yuval-Davis clusters familial, intergenerational and informal networks concerned with "social, biological and symbolic reproduction", as the fourth domain in which social inequalities are produced (p. 98).

Approached as a comprehensive analytical framework along these lines, situated intersectionality encompasses the core concerns of intersectionality theory as articulated by

Crenshaw (1991, p. 1124), to "[explore] the various ways in which race and gender intersect in shaping structural, political and representational aspects of violence against women of color". At the same time, it expands the scope and levels of analysis of the intersectionality lens to deepen understanding of context-specific complexities of multifaceted inequalities and the forms of resilience and agency that are possible in the situations being studied.

Both vulnerability and precarity theories deal with the ways in which structures and related discursive practices generate and sustain inequalities and oppressions, which pave the way for gender-based violence. Fineman's conceptual point of departure, "universal vulnerability," offers a vantage point from which to observe and identify particular and situational vulnerabilities of groups, while it foregrounds the agency and responsibility of the state and institutional structures in remedying such vulnerabilities. Precarity theories, regardless of their analytical focus on forms, consequences or groups affected, recognize the uneven spread of vulnerability and risk as a result of institutional structures and discursive practices. As both approaches understand institutional structures (including states) as a principal means of reducing or eliminating vulnerabilities, a discussion of the role of institutions and states is warranted. This is what we turn to in the next section. The vulnerability approach, as more encompassing, is our starting point in this investigation. We draw upon precarity and intersectionality to flesh out or redress problems and gaps in the vulnerability theoretical edifice.

The Role of Institutions and the State

For Fineman, vulnerability as a universally shared human condition is the *moral* basis for society and the main argument for social institutions and states. Further, she argues that recognition of inevitable human dependency demands "more equitable distribution of institutional responsibility for ensuring the provision of essential care … shared across social institutions" – especially state institutions (Fineman 2017, 139). Fineman insists that the fact that societal institutions are implicated in "maintaining and extending inequality is the very reason that we need a more active state … responsive to that reality" (Fineman 2008, p. 2). A vulnerability analysis, therefore, starts by asking if state institutions have acted "in ways that are consistent with [the state's] obligations to support a vital and robust equality regime… in which individuals have a true opportunity to develop … resilience in the face of their

vulnerabilities?" (Fineman 2008, p. 20). This means the state has a duty "to actively assume broad societal responsibility in regard to ensuring equality for its citizens *and others to whom it owes obligation*" (2010, p. 256; emphasis added). Although Fineman does not enter into a debate about the limits of "citizenship", she does not restrict state responsibility to the notion of citizenship; rather state responsibility applies to all citizens and others residing within a state's territory. The implications are potentially wide-ranging: from this view of state responsibility, resonating with ideas of substantive equality in human rights thinking (Fredman 2019), a state would not only need to ensure that the people under its jurisdiction are not subject to harms arising from discrimination or exploitation but it should also address what caused or facilitated offending practices in the first place, and endeavour to avoid them re-occurring.

In contrast to Fineman's relatively benign view of the responsive state, warnings against the dangers inherent in relying on state institutions are abundant in sociological, Marxist and feminist critiques of state institutions (Butler and others, 2016). Alert to the biases of state power experienced by black women in the United States, Richie (2012) criticizes the universalist feminist approach to justice and its reliance on the legal justice system for failing the most marginalized. Virokannas and others (2018) warn of the prospect of the intrusive or authoritarian "responsive state" and the potential to exacerbate vulnerability (e.g., by impeding autonomy, undermining trust, etc.). Fouladvand and Ward take the critique of paternalism one step further as they argue that vulnerability theory "may obscure the ways in which states do not merely fail to respond to vulnerability but positively use situational vulnerability as a tool to control or exploit their populations" (2019, p. 42).

Bryan Turner (2006) interprets these tensions in terms of the Hobbesian paradox whereby "we need a strong state to protect us, but state power is often the cause of human rights failures" (ibid. p. 33). He addresses this paradox in his sociological theorisation of universal vulnerability. Turner (2006) begins, as does Fineman, with the corporeal origins of vulnerability. He posits:

> [O]ur ontological vulnerability includes the idea that human beings of necessity have an organic propensity to disease and sickness, that death and dying are inescapable …. [and as a result] human beings are involved in various relationships of dependency throughout the lifecycle. (p. 29)

In response to this universal human condition, Turner theorizes social institutions as "bridges between humans and their physical environment", created to mitigate corporeal and psychological vulnerabilities (p. 29). His account of the state's role in ameliorating vulnerabilities retains a central commitment to liberal "legal institutions that underpin the rule of law, civil liberties and human rights"– in which he emphasizes the imperative of meaningful social and economic rights – as "fundamental in providing some degree of security in this precarious environment" (p. 29). Turner's theory expressly recognises "institutional precariousness" (p. 32) as a social fact no less than human vulnerability. Presupposing neither a benevolent nor a dominating state, he posits a "dynamic and dialectical relation between institutional precariousness and ontological human vulnerability … [in which] institutions need to be continuously repaired and redesigned, and human rights need to be constantly reviewed in the light of their misapplication, misappropriation and failures"(p. 32). Fineman (2010, p. 273) similarly recognizes that society's institutions are "riddled with their own vulnerabilities" and "often operate to exacerbate ... our individual vulnerability", which requires acceptance of "monitoring, evaluating, updating, and reforming our societal institutions when necessary." However, as human rights legal scholar Paul Hunt (2016) has cautioned in relation to implementation of the human right to health, "while effective ... monitoring is important, it is not the same as accountability" (p. 123). From this perspective, Turner's theory complements and rebalances Fineman's approach, in which she purposefully focuses on theorising the "human" as distinct from the "rights" aspects of "human rights" (2010, p. 255). Turner's contribution to vulnerability theory expands the role of "rights" by foregrounding human-rights based actions that seek accountability for abuses or misuses of state power as part of a sociological process of achieving amelioration of vulnerabilities through state institutions.

The theory of the state implicit in vulnerability theory has a bearing on how inequalities of different types are understood and addressed within a vulnerability paradigm. Fineman recognises "two relevant forms of individual difference" and associated inequalities (2017, 144). One relates to embodiment and the second to embeddedness "in social institutions and relationships" (2017, 144). Embodied differences are "physical variations exemplified in anti-discrimination laws" (2017, 144). In contrast, Butler's precarity approach does not posit ontological vulnerability; its starting point is where the latter has become a social fact entailing threat, risk and thus vulnerability, i.e. precarity. Hence, her approach foregrounds

how precariousness is distributed unevenly among human populations as a result of social institutions and related discursive practices.

From this perspective, Fineman's principal quarrel is not with essentialism, as it is with Butler, but with the conventional equality paradigm, which only permits "unequal or differential treatment" in narrowly-framed circumstances to address "past discrimination or present stereotyping", particularly by state actors (2017 p. 134). Fineman characterizes this state of affairs as the imposition of "fictitious equality", which militates against "equitable treatment" (as distinct from equal treatment) in situations of "inescapable or inevitable inequality" (e.g., in parent-child or employer-employee relations) (2017, 135). Bjørnholt (2013) builds on this insight to criticize the fiction of the "gender neutral" family and associated labour policies in Norway that disadvantage women in practice. Instead of individually-focused ideas of equality, vulnerability analysis begins with a focus on the "distribution or allocation of resources and the structures within which they are produced" and by asking, as earlier mentioned: is "institutional, and not individual, functioning inadequate"? (Fineman 2017, 147).

Fineman's second concept of "embedded difference" captures different manifestations of structural inequality insofar "every society is composed of individuals differently situated within a web of economic, social, cultural and institutional relationships that profoundly affect our destinies..." (2017, 145). This aspect of Fineman's conceptualisation of vulnerability, based on embedded difference, brings her theory closer to Butler' precarity paradigm, as well as neo-Marxist accounts of socio-economically and politically induced precariousness. From Fineman's perspective, seeking social justice in the face of such unequal outcomes, requires the state to "monitor a given institution in a way that is responsive to human vulnerability" and to answer the question: "can the differences in treatment be justified?" (2017, 145). However, critics would say that this assumes a benevolent state that does not go far enough to recognise and respond to the role of the state in reproducing structural inequalities and/or perpetrating abuse.

In response, as Turner's sociological vulnerability theory clarifies, it is not necessary to begin with a premise of a benevolent *or* oppressive state. Fineman's and Turner's recognition of the vulnerability of institutions imply that state institutions have the potential to be benevolent, oppressive, or both, depending on who is encountering what parts of the state and under what conditions. As noted above, vulnerability analysis begins by asking about the adequacy of

institutional, as opposed to individual, functioning. This necessarily applies to state and societal institutions. Turner's formulation incorporates into vulnerability theory a more specific approach to institutional vulnerability and state responsibility that speaks to those who are skeptical of Fineman's benevolent responsive state. Specifically, by invoking human rights monitoring processes as the mechanism through which state institutions are scrutinised, it both admits a role for activism and collective action in vulnerability theory and highlights the problem of trusting "the state" to hold itself to account for instances of rights "misapplication, misappropriation and failure".

A Critical Lens on Vulnerability Theory

In the preceding sections we have highlighted key strengths as well as critical gaps and weaknesses in the theorization and practical application of vulnerability as a conceptual tool to inform research and understanding of GBV in migration contexts. In doing so, we considered how the vulnerability framework, developed by Martha Fineman, in particular relates to theories of precarity and intersectionality. Based on our review, in this section we highlight two broad deficits in Fineman's vulnerability theory and possible ways to address them. The first concerns the pervasive tendency for the concept of vulnerability to be applied only to those deemed to belong to "vulnerable groups" and the implications this has for reinforcing essentialist thinking and undermining autonomy and agency. The second concerns the view that "vulnerability theory" and "intersectionality theory" are incompatible on the supposed basis that the former, to be an effective universal paradigm, must reject the latter, which on this view, is understood as an expression of fragmentizing identity politics.

Revaluing Autonomy and Agency in Vulnerable Life Situations

To counter the predominant pattern of applying vulnerability only to "vulnerable groups", Virokannas and others (2018) recommend that efforts to implement Fineman's universalistic version of vulnerability should focus on "vulnerable life situations" and not on specific groups or individuals, while also being be cognizant of the potential of welfare services, as state institutions, to both *reduce* and *(re)produce vulnerability*. This approach is echoed in literature on bioethics research and vulnerability wherein it is increasingly recognised that

vulnerability must be understood as "context-dependent and dynamic and not a static definition aimed at targeting and permanently labelling certain groups" (Wild 2012, 95).

Nina Kohn underlines the negative implications for autonomy of vulnerable group logic, observing that "current applications of the theory tend to proceed in a manner that is less critical and less nuanced than might otherwise be possible" (Kohn 2014, 4). She argues that Fineman's own analysis of old-age policies demonstrates the theory's weaknesses of reverting to a group-based approach and tending to "promote excessively paternalistic laws and policies" (2014, 4). Specifically, Kohn criticizes Fineman's advocacy of special "protections" for *all* older adults (e.g., vis-à-vis management of financial affairs) and the creation of "new laws that … socially construct differences based on chronological age" (2014, 12) as unduly limiting individual autonomy. This reflects a general bias among Fineman-inspired vulnerability theory proponents who prioritise "safety and security" over autonomy and fail to recognise autonomy as an independent value or as "instrumental for supporting safety and security" (Kohn 2014, 14). Ultimately, Kohn asserts, for vulnerability "to be an effective and appropriate trigger for special protection … it must be defined in relation to a particular threat" (Kohn 2014, 23). This requires focusing on the relationship between an individual and their environment.

Catriona Mackenzie speaks to this point. Also sympathetic to vulnerability theory, Makenzie locates the problem in Fineman's "conflation of autonomy with a libertarian conception of autonomy". While she agrees with the critique of the libertarian concept of autonomy defined as "the rhetoric of maximal choice, personal responsibility, and the minimal state" (2014, 37), Mackenzie disagrees that autonomy should be discarded altogether. She argues:

> [I]n my view autonomy – understood as both the capacity to lead a self-determining life, and the status of being recognised as an autonomous agent by others – is crucial for leading a flourishing life in contemporary liberal democratic societies. It is a mistake therefore to reject the value of autonomy altogether…" (Mackenzie 2019, 147).

Instead, Mackenzie elaborates a relational concept of autonomy, arguing that "[o]ne of the central aims of relational autonomy theory is to explain how gender and other kinds of social oppression, such as racial oppression, can threaten a person's social status as an autonomous

agent and can impair the development or exercise of the capacity for autonomy" (Mackenzie 2019, 147).

Regarding collective agency, a review of vulnerability literature by Brown and others (2017, 498) raises concerns that the term vulnerability is "creeping further into understandings of the relations between state and citizen, with implications for citizenship, such as [a] diminished view of the human subject, erosion of collective movements and expansion of state-sponsored social control." The rise of vulnerability as a cultural metaphor has also been linked to a decline in political optimism about social and economic progress, and a corresponding individualistic "therapeutic" turn in left/liberal agendas for social justice (Frawley 2015). The lack of scope for collective agency and engagement with the political are serious limitations of vulnerability theory, which tends to deal with individuals and groups in their relations with institutions/states as objects of policy intervention rather than as political and civic subjects.

This raises the question: who shall hold the state to account and push it to become more responsive in non-oppressive ways? If we look to the development and history of human rights, this "push" has depended on the mobilization and collective agency of civil society, in particular, women's and anti-racist movements, among others (Reilly 2007, 2011; Weldon and Htun 2013). In this regard, Turner (2006) provides a valuable amendment to vulnerability theory, firstly, by reaffirming the indispensable role of civil liberties in facilitating individual and collective action to hold the state to account; and secondly, by recognizing – as part of a necessary political-sociological process – collective agency and engagement to continually "repair and redesign" precarious state institutional and policy responses to human vulnerability.

Intersectionality and Identity Politics: Breaking the Link

Fineman's vulnerability theory emphasizes structure and social functioning of institutions as determining the allocation of power and privilege, and considers identity-based categories (such as gender, sexuality and "race") as secondary aspects in this process. From this perspective, she presents her account of vulnerability theory as a "post-identity" approach to social justice. However, Fineman unduly discounts the importance of circulating norms in mobilizing people to resist, accept or ignore – for good or ill – the intersectional effects of

group positions and identities. For example, analysing policing and racial profiling in the USA, Frank Rudy Cooper (2015) argues that although "vulnerability theory helps us challenge the state to address the harm of racial profiling ... [a] theory of privilege is [also] necessary to understand why elites allow racial profiling to continue. I thus argue for revising vulnerability theory [to acknowledge] the *ways identities and privileges influence social practices*" (Cooper 2015, 1346, emphasis added).

Calls for vulnerability theory to take account of identity power relations (Cooper 2015), for vulnerability analysis to focus on "vulnerable life situations" (Virokannas et al. 2018), and, if formulating targeted protections, to address particular threats (Kohn 2014) signpost the route to reconciling vulnerability and intersectionality theory in ways that eschew counterproductive identity politics and essentialist logic. Ultimately, they are an argument for making context - specific vulnerability analysis the most important part of vulnerability theory. Moreover, Yuval-Davis's theory of situated intersectionality suggests a particularly apt matrix for applying vulnerability analysis along these lines in relation to GBV in contexts of migration. As noted above, this envisages micro analysis that attends to the socio-economic position of individuals, their sense of identity and belonging, and their values. On the macro level, situated intersectionality encompasses interrogation of the operation of state borders, as well as processes of distribution of economic, social and cultural goods (also central to precarity theory), political projects of belonging (including issues of agency within these), and familiar and informal networks, as loci of inequality.

Yuval-Davis' framework is compatible with Fineman's objective to map the "allocation of resources and the structures within which they are produced" and, in this context, to scrutinize the adequacy, or not, of institutional functioning to foster resilience (Fineman 2017, 147). At the same time, at micro level, by taking seriously and respecting individuals' sense of identity and belonging in vulnerable life situations *and* critiquing political projects of belonging that might exploit the same, situated intersectionality suggests how we might approach identity in vulnerability analysis, in research and activism, without resorting to false universalism or essentialism. Further, situated intersectionality aligns with both neo-Marxist and post-structuralist theorisations of precarity. Like the former, it is centrally concerned with revealing inequalities at macro level in the distribution of power and resources within "nation states" and transnationally. Yuval-Davis' own interrogation of the interaction of gender and nation addresses myriad forms of structural violence affecting women, in or from the global

"South" in particular ways, from sex tourism (1997, p. 52) to orientalist varieties of feminism that focus disproportionately on "harmful cultural practices" such as FGM or polygamy (p. 118). At the same time, situated intersectionality is compatible with interpretive post-structuralist analyses that focus, as Judith Butler does, on how discursive processes create precarious subjects and justify material precarity.

Conclusion

The advantages of deploying a modified vulnerability approach in migration and GBV research are several. First, it places the spotlight firmly on the institutional contexts, environment, situations and social relations, in which migrant and refugee women and others affected by GBV find themselves, and requires us to examine the adequacy or not of institutional and policy responses. By placing the emphasis squarely on the role of socio-economic and political institutions in the distribution, aggravation and mitigation of vulnerability, it has the capacity to fully incorporate the insights of the precarity approach, which deals directly with addressing politically induced vulnerability. However, in focusing on institutions, it is reasonable to ask if the philosophical assumption of universal human vulnerability is strictly necessary to the deployment of vulnerability analysis, which focuses on the state's responsibility to foster justice and equality. Arguably, it is not necessary to agree with Fineman's particular formulation of the universally vulnerable subject (and its rejection of intersectionality) to harness the usefulness of vulnerability analysis of institutions.

Second, Fineman's vulnerability analysis, deployed through a lens of situated intersectionality that reveals inequality, injustice and harm as the result of institutional arrangements, is especially useful in analysing the relation between the individual, state and society. Moreover, it shifts the responsibility and the blame from the victim to the institutions that partly produce or facilitate the conditions that give rise to harms, while also failing to respond adequately to them. Further, vulnerability analysis may be applied both at the institutional level and at the individual level. This potential is evidenced by Bjørnholt (2013), for example, in a detailed analysis of the role of Norwegian state policies in the (re)production and remedying of gender inequality and in a recent examination of individual victimization over the life course, which brings into focus institutional contexts, responses and responsibilities (2019).

Third, a vulnerability approach that revolves around context-specific vulnerability analysis and targeted interventions devised in relation to a specific threat, is especially relevant to the migration context, which presents an array of specific threats at various stages of the migration/refugee journey. Such threats require that the autonomy and agency of migrants are respected and that appropriate state and institutional protections are afforded, in variable degrees, to ameliorate the particular vulnerable life situation they are in. For example, when crossing borders without authorization, hiring facilitators for such crossings, relying on fellow travellers for protection that state authorities cannot provide, experiencing overcrowding in camps, or being left with only their own sparse resources living with their abusers or caring for small children and other dependents. These are all situations that can render migrants vulnerable to GBV and requiring appropriate state or other institutional protection, both as a matter of justice and as means of underpinning resilience of migrants to enable them to address their vulnerable situation in ways that work for them. The protection offered would not and should not abolish their agency even as they continue to make all kinds of hard and sometimes impossible "choices". For example, women seeking international protection who take contraception pills while crossing Sub-Saharan Africa on their way to European "safety" know full well what to expect and yet have to make this impossible "choice" (Tastsoglou et al, 2021).

In summary, an expanded and heuristic vulnerability approach has the potential to effectively inform and organise empirical research on migration and GBV and to be a compelling interpretive framework in the field. However, marked pitfalls need to be avoided. These include essentialism that encourages reified understandings of vulnerable groups without agency. At the same time, false universalism that obliterates relevant differences between groups must be equally avoided. Differences in identity and experience map onto context-specific, consequential social, economic and political inequalities, which vulnerability analysis should reveal. This cannot be achieved without an intersectional lens that deploys the insights of situated intersectionality in particular, which comprehends the centrality of gender to our understanding of the operation of borders in migration research, whether geographic, political, economic, social or cultural. It is also imperative to guard against an undervaluation of autonomy as an independent value and a source of resilience, as well as an overly optimistic or benign view of the state. Finally, when employing a vulnerability

approach it is vitally important to recognise the historical and continuing role of social movements mobilizing in a sustained way to achieve migrants' rights and citizenship.

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