

The State of Vulnerability: How Knowledges of Harm Limit State Intervention

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Since the 1980s, “vulnerability” has emerged as a key logic shaping contemporary governance. Scholars have observed that states label individuals “vulnerable” to justify state protection and support on the basis of their heightened risk of psychological trauma, criminal victimhood, and other forms of social harm (Brown, Eccelstone, and Emmel 2017; Laperrière, Orloff, and Pryma 2019; Sweet 2023). Paige Sweet’s recent work on the crime victims’ movement argues that “trauma and vulnerability tether the demand for state-sponsored service programs to the state’s responsibility to protect good citizens from bad Others” by “hybridizing welfare and penal state capacities” (2023:1685). She traces how a gendered and racialized construction of the white woman crime victim, who is vulnerable to trauma, authorized the expansion of welfare programs, but within the institutions and logics of the carceral state. However, vulnerability discourse is deployed in myriad institutions that crisscross the “many hands of the state” (Morgan and Orloff 2017; Laperrière, Orloff, and Pryma 2019) to warrant the provision of state resources to a variety of citizens (and non-citizens). In the United States, it is used to adjudicate asylum cases, justify treatment instead of punishment for veterans who have committed crimes, and validate workers’ disability claims. The capacious use of “vulnerability” across these diverse institutional domains necessitates attention to how state actors develop specialized expertise to assess and respond to the vulnerability of individuals in different organizational contexts.

As Brown, Eccelstone, and Emmel (2017) point out, the determination of risk has become a key practice of constructing vulnerability, particularly in sites where vulnerability legitimates intervention and social control. Importantly, these risk discussions not only highlight how vulnerable groups may be exposed to harm--- what Brown, Eccelstone, and Emmel (2017) refer to as a *risk to*--- but also a *risk from* these groups to the larger social body (Harrison and Sanders 2006; Molenaar and Van Praag 2022). “Vulnerable” does not always equate passive or innocent victimhood— those identified as vulnerable can be both “at risk” of harm but also pose a “risk to” the broader social community that must be managed through state intervention. In this way, risk often semantically sutures the identification of structural inequalities (such as poverty and discrimination) to the consequences for people not directly impacted. For instance, in their analysis of the application of vulnerability to migrant workers in the context of the COVID-19 crisis, Molenaar and Van Praag (2022) found that discussions of migrants’ poor and often overcrowded working conditions were linked to their framing as a threat to larger health security. Such accounts give rise to questions about how vulnerability materializes across different fields of policy and practice, and if and how these differences mediate the shares of state provision and governance (Brown 2011).

What is vulnerability; how does the state “know” it; and what does vulnerability enable the state to do? Drawing from our research in three different sites of state deployment of vulnerability discourses: asylum, veterans courts, and disability, we argue that vulnerability, as an object of knowledge, emerges within “specific organizational spaces where different epistemic cultures come together to form unique and hybridized ways of knowing” vulnerability, or what Vogler

has termed “epistemic logics” (Vogler 2021:12). Across these “unique and hybridized” definitions, vulnerability signals the state’s implicit recognition of macro structural conditions that are the upstream causes of individual need and risk, while determining what “counts” as an individual’s exceptional vulnerability that should be mitigated through micro-level interventions. In this way, the state bounds vulnerability, transforming it into an individual condition that can be evaluated and acted upon through extant state institutions.

In each of our cases, professionals within these institutions develop discrete standards to identify certain individuals as exceptionally vulnerable, thereby limiting the scope of the state’s responsibility to respond to widespread structural, population-level vulnerability that otherwise would threaten to strain limited resources, expand labor rights, excite fears of excess migration, and expose the far-reaching consequences of state-sanctioned violence. Thus, while the move towards vulnerability raises hopes of eschewing individualistic, risk-based policy intervention, we contend that the demand for and organizationally-limited mobilization of expertise at the meso-level ultimately channels practice and procedure towards limited and often disciplinary interventions.

What is vulnerability?

In each of our cases, state actors broadly recognize that structural forms of vulnerability affect almost everyone in a given population, but those assessed as eligible for services, rights, and/or special protections must prove an established type of exceptional individual vulnerability. Thus, vulnerability is often operationalized as an individual’s personal and heightened risk within an already risky structural social situation that state actors acknowledge as beyond their jurisdiction. Vulnerability expertise works to determine whose vulnerability is routine or expected based on normalized forms of structural inequality versus exceptional vulnerability due to an individual’s unique situation and status. As polysemous objects of knowledge located within interstitial institutional spaces, vulnerabilities must be workable within their organizational settings, assembling knowledges and means of assessment that are known and accepted by established fields yet resonate with broader audiences.

In the asylum case, courts often draw on general state knowledge in the form of the US State Department Human Rights Reports but then must apply those broad findings to individuals while striving to avoid statements like “conditions for LGBTQ people are bad in all of Congo,” as this is seen as potentially opening the “floodgates.” Thus, vulnerability must be constructed as individual, even as the forms of knowledge drawn on to define vulnerability suggest structural vulnerability for groups of people.

In Social Security disability courts and the provision of ADA-mandated reasonable accommodations, disability is constructed as vulnerability with reference to dependence and loss of labor capacity. For whom is loss of labor capacity perceived as vulnerability? Historically, male breadwinners were the gendered “default users” of state policies, but throughout the 1980s, the number of women applicants caught up with men (Social Security Administration 2019). Women’s applications, however, today, are denied at significantly higher rates than men’s disability applications, perhaps signalling an enduring interpretation of disability as vulnerability to loss of paid labor associated with male breadwinners (Low et al. 2020). When adding an intersectional lens, white employees’ workplace disability accommodation requests are granted

at higher rates than Black and Latinx employees' workplace accommodation requests (Fuentes et al. 2024; Hyseni et al. 2024). Black feminist scholarship has repeatedly found that Black men and women's labor continues to be regarded as compulsory, even in the face of impairment (Bailey and Mobley 2019). This distinction is particularly striking between Black women and white women. If white women's claims are denied due to an expectation that they can be (acceptably) dependent on a male breadwinner's income, Black women are expected to work without accommodations or without recognition of disability in patterns reflecting scholarship on racialized historical patterns in women's paid labor force participation and equal rights.

Working definitions of vulnerability for criminalized veterans are the result of ongoing political contestation around the figure of the veteran and what they (often an explicit "he") are owed by the state. On one hand, it is unlikely the contemporary, all-volunteer military force would exist without the promise of its robust social safety net, the guarantee of care if one is made vulnerable in the context of military service. On the other hand, the DOD has tightly limited and controlled these resources, particularly the (important and substantial) provision of disability and retirement benefits for veterans who can source their injuries to military service. That demonstrating vulnerability is a core avenue for veterans to obtain from the state what they were promised at enlistment has made it a core site for veteran advocacy, organizing, and political agitation.

Veterans Treatment Courts, often advocated for by veterans advocacy groups and representatives from the VA, have made criminal behavior part of the meaning-making of veteran vulnerability. Veterans Treatment Courts often operate as probation courts, in which veterans agree to periods of intensive supervision and treatment to either avoid incarceration or receive a less severe criminal record. In instituting close relationships between the courts and the Department of Veterans Affairs, Veterans Treatment Courts became the newest sites for the VA, places where veterans in trouble can be found and (coerced into) medical and mental health interventions. But doing so extends the definitional conflict over who should receive access to scant resources, while rewriting its terms through the logics and practices of criminal courts. In this setting, a core state "resource" is a sentencing incentive: while all vets in Veterans Treatment Courts receive some services, only some receive the very significant legal incentive of leaving the court without a criminal record. As per legislation passed in 2021, the most significant incentives are reserved for veterans who can demonstrate, in an adversarial hearing, that their crime is a direct result of military service. While such a determination is not provable in the most formal of terms, its adjudication simultaneously elides the sorts of structural circumstances that may also generate crime (and indeed propel people into military service in the first place).

How does the state assess vulnerability?

In each case, professionals develop specific forms of knowing what is and is not exceptional individual vulnerability. Applying Vogler's concept of "epistemic logics," we identify continuities in how the state "knows" vulnerability by attending to its various constructions at the "interstices" of different fields with their own established logics. For example, in LGBTQ+ asylum cases, state and human rights knowledges are combined with anthropological and sociological and legal knowledges to determine why an individual's sexuality and/or gender identity renders them vulnerable. In making these individualized determinations, immigration adjudicators may draw on a range of expertise and knowledges, ranging from human rights reports to anthropologists and other academics to legal practitioners and judicial rulings. Expert

witnesses that are called to testify in these hearings may be called upon to do the difficult work of connecting the structural to the individual—that is, connecting vulnerability to risk. This may take the form of painting an entire country as “risky” and therefore making the case that a member of this vulnerable group would not be safe anywhere except the United States. Or they may attest to characteristics of the individual that position them as uniquely vulnerable vis-a-vis the group in question (i.e., LGBTQ people). This might entail connecting dots between an applicant’s gender presentation (e.g., is he an effeminate man?) and cultural assumptions about queerness (e.g., does that effeminacy make him identifiable as or assumed to be queer?). Such a discursive move connects individual risk to structural vulnerability and is the key to a successful asylum claim.

In disability, biomedical diagnoses and exams, social work, and employer attestations are brought together to assess whether an individual can be expected to work. If an individual is deemed employable, disability service professionals determine what reasonable accommodations best mitigate the risk of exiting the labor force and becoming “dependent” on state resources. In SSDI disability claims, claimants seek to validate their disability by furnishing biomedical and social proof of impairment, function, and employability. SSDI is often reactive support to people who are already excluded from paid labor. Thus, SSDI vulnerability expertise focuses more on validating that a claimant is indeed so “vulnerable” as to not be able to independently complete major life activities (primarily paid employment), rendering them dependent on state support to survive. “Reasonable” accessibility accommodations provided through the ADA and temporary leaves promised by FMLA, on the other hand, are more proactive attempts to mitigate risk of long-term disability-related labor force departure and vulnerability to dependence. But in both ADA and FMLA, professionals interpreting and responding to accommodation or leave requests are typically not state actors. Thus, the professionals with primary jurisdictional authority to interpret the law changes between different forms of disability services. SSDI courts embed decision-making in the federal judicial system, whereas the implementation of ADA and FMLA often relies on human resource administrators, working for private employers to interpret and implement the law.

In Veterans Treatment Courts, vulnerability is assessed through collaboration of a “treatment team” of probation officers, clinicians from the VA, judges, and defense attorneys and prosecutors. In determining who is a good fit for the court, and designing a pattern of treatment and supervision for them, these court actors draw on best practice guidance produced by an organization called Justice for Vets, an offshoot of a larger organization promoting the expansion of treatment courts. These best practices promote the use of validated, standardized criminal risk/needs assessments to determine eligibility and practice. Thus, vulnerability in this case is yoked to, and indeed inseparable from, the prediction of committing crime in the future.

What does vulnerability do for the state?

As the state produces knowledges about the vulnerability of different populations, it signals an awareness of structural insecurity and oppression, while circumventing responsibility for those conditions. Professionals working for and with the state to evaluate vulnerability bring together different epistemic logics, constructing vulnerability as a flexible individualized state that can be managed through the tools of their specific professional fields. Thus, vulnerability is identified by context-specific markers of exceptional trauma, risk, or impairment in an individual rather

than by knowledge about the shared harm experienced by an entire social group. Ultimately, then, vulnerability expertise is often produced to match the needs and priorities of organizations that manage the responsibilities of the state at micro and meso scales, even when vulnerability logics purport to address harms produced at the macro-level.

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