



1. Vulnerability and Children's Rights

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Abstract The main topic discussed in this volume is whether vulnerability theories bring any added value to children's rights discourses. A child-rights-based approach is based on an understanding of children as specifically vulnerable. Yet, such a conception of children's vulnerability has increasingly been called into question. The new dimension is that this is now being discussed from a legal perspective. In this chapter, we introduce several vulnerability paradigms and present subsequent chapters in the book.

Keywords children | rights | vulnerability | legal perspectives

1.1 INTRODUCTION

Children's rights and legal status have been the subject of discussion for decades.¹ Children are often considered a specifically vulnerable group, dependent on adults and in need of protection. As Lundy states, "Children's vulnerability is one of life's givens – at least in the eyes of adults."² Analysis of children's rights is often based on general assumptions about vulnerability and dependency and how this affects their rights and capacity: "Vulnerability is deeply entwined in the justification for and history of human rights."³

Children's rights are regularly discussed without any thorough analysis of what it means to be vulnerable, why and in what way children might be vulnerable, and

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- 1 See, for instance, Michael Freeman, *Magna Carta for Children? Rethinking Children's Rights* (Cambridge: Cambridge University Press, 2020), 13–18; Jens M. Scherpe and Stephen Gilmore, *Family Matters, Essays in Honour of John Eekelaar* (London: Intersentia, 2022), 1–27.
 - 2 Laura Lundy, "Vulnerability Should Not Eclipse Agency: Children's Perspectives on Their Own Lives," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 2.
 - 3 E. Kay M. Tisdall and Fiona Morrisson, "Vulnerability under COVID-19: Children's Human Rights under Lockdown," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025) chapter 5, last page.

whether or how this differs from the vulnerability of adults.⁴ Highlighting vulnerability without any such analysis risks leading to paternalistic interpretations of children's rights or ignoring other strengths, characteristics, and individual differences among children. It might also lead to questioning the relationship between images of the vulnerable child and those of the autonomous child.

This book examines and analyses assumptions about children's vulnerability from a northwestern European perspective. A common characteristic for most of the countries in northwestern Europe is a strong welfare state. The European perspective thus distinguishes itself from the United States. The legal understanding of children's rights and vulnerability will probably differ from perspectives from the Global South and East.

In the following chapters, different perspectives on children's rights, vulnerability, and capacity are presented, assessed, and discussed. The aim is to obtain insight into how vulnerability as an underlying norm and logic for children's rights is understood and exerts influence on rights and how this can affect the safeguarding of rights.⁵ Reynaert et al. write that critique can be "understood as a practice of questioning and analysing presuppositions underlying practices in the broad field of children's rights" and that such a critical approach means that basic assumptions fundamental to children's rights are not considered as "truths".⁶ Hence their attempt to "understand and interpret different social construction of children's rights, bringing into dialogue these different understandings and interpretations in order to comprehend better children's rights and how the children's rights framework can contribute to a greater respect for children".⁷ With different perspectives on vulnerability as a basis for critical reflections, the intention with this book is to contribute to new understandings on children and their rights.

The conception of children's vulnerability has increasingly been called into question.⁸ A view on children as specifically vulnerable might share similarities

4 Michael Freeman, *Magna Carta for Children?*, 64.

5 Didier Reynaert, Maria Bouverne-De Bieb and Stijn Vandeveld, "Between 'Believers' and 'Opponents': Critical Discussions on Children's Rights," *The International Journal of Children's Rights*, no. 20 (2012): 155–168, 166.

6 Didier Reynaert et al., "Between 'Believers' and 'Opponents,'" 155–168, 156.

7 Didier Reynaert et al., "Between 'Believers' and 'Opponents,'" 155–168, 156.

8 Jonathan Herring, *Vulnerability, Childhood and the Law* (Oxford: Springer, 2018); Jonathan Herring, "Vulnerability and Children's Rights," *International Journal for the Semiotics of Law*, vol. 36 (November 2022): 1509–1527; Lucinda Ferguson, "The Jurisprudence of Making Decisions Affecting Children: An Argument to Prefer Duty to Children's rights and Welfare," in *Law in Society: Reflections on Children, Family, Culture and Philosophy: Essays in Honour of Michael Freeman*, eds. Alison Diduck, Noam Peleg and Helen Reece (Leiden: Brill Nijhoff, 2015), 141–189.

with how other groups believed to lack sufficient capacity, independence, or resources are described as particularly vulnerable. Martha A. Fineman challenges such a view where a vulnerable population or group “operates as a proxy for need and dependency and renders those within it susceptible to monitoring and supervision” and offers an alternative theory.⁹ Fineman sees vulnerability as “inherent in the human condition”; this leads to a need for a responsive state “built around the recognition of the vulnerable subject”.¹⁰ Fineman’s theory reflects her background as an American law and society scholar working with critical legal theory and feminist jurisprudence. Influenced by her thoughts, this book is an attempt to go deeper into the connection between children’s rights and vulnerability within a northwestern European context and from a children’s rights viewpoint.

Our analysis is based on a variety of methods and perspectives. Several chapters are built on empirical studies, including interviews with children, online surveys, research on and with children, and interviews of professionals working with children. Some chapters adopt a traditional doctrinal character, while others take on a more theoretical or critical approach. Some use vulnerability theories to form critical reflections on a traditional rights-based view of vulnerability. Others are more positive about seeing children as a particularly vulnerable group and advocate for children’s rights based on this understanding. Most of the chapters are based on a variety of research methods.

This book addresses a range of fundamental questions about children’s rights and vulnerability. One crucial question is whether and how vulnerability theory provides added value to the understanding of children’s rights. Another question is whether children in general should be described as specifically vulnerable, or if there are any risks with this view. Related to this, a question also arises about whether certain groups of children are more vulnerable than others. These groups may include migrant children, children with disabilities or health issues, or children of different ages or with different identities and/or genders. And further, what are the risks of not being defined as vulnerable?

A deeper understanding of these questions may contribute to the safeguarding of children’s rights.

9 Martha Albertson Fineman, “Beyond Identities: The Limits of an Antidiscrimination Approach to Equality,” *Boston University Law Review*, vol. 92(6) (December 2012): 1713–1770, 1748.

10 Martha Albertson Fineman, “Equality, Autonomy, and the Vulnerable Subject in Law and Politics”, in *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*, eds. Martha Albertson Fineman and Anna Grear (New York: Taylor & Francis, 2013), 13–27, 13.

1.2 THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

The CRC was adopted by the UN General Assembly in 1989 and is regarded worldwide as an extremely important instrument in advancing the legal position of children. The fact that the CRC has been almost universally ratified – the United States being an exception – lends the Convention moral and legal strength. The indivisibility and interdependence of all rights give the CRC a genuine and comprehensive child rights approach. Article 1 of the CRC defines children as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. Thus, the Convention, and the rights within it, encompasses a broad group in divergent situations and phases of childhood, and with unique needs. Still, the reference to children as all under 18 years old reflects the view that it is necessary to have special rights to this broad and divergent group. General human rights might not suffice to safeguard their needs.

The research front is closely and inextricably connected to the CRC.¹¹ Still, the necessity of further developing the theoretical understanding of children’s rights is worth investigating, reflecting on, and rethinking.

The comprehensive character of the CRC and its worldwide scope have some weaknesses. Like all international legal agreements that are reached by consensus, the CRC can be characterised as an “incompletely theorized agreement”.¹² This has led to discussions and different views on the underlying values, principles, and character of children’s rights.¹³ The conceptual foundation and moral justification of children’s rights are often linked to the notion of human dignity

11 Michael Freeman, *A Magna Carta for Children?*; Jaap E. Doek, “The Human Rights of Children: An Introduction,” in *International Human Rights of Children*, eds. Ursula Kilkelly and Ton Liefwaard (Springer, 2019), 3–29; Alexandra Timmer, Moritz Baumgärtel, Louis Kotzé and Lieneke Slingenberg, “The Potential and Pitfalls of the Vulnerability Concept for Human Rights,” *Netherlands Quarterly of Human Rights*, vol. 39(3) (September 2021): 190–197; J.H.H.M. Dorscheidt, J.E. Doek, ed., *Children’s Rights in Health Care* (Leiden: Brill Nijhoff, 2019); J.E. Doek, “Children’s Rights in Health Care and the General Principles of the CRC,” in *Children’s Right to Health Care*, eds. J.H.H.M Dorscheidt, and J.E Doek (Leiden: Brill Nijhoff 2019), 48–70.

12 John Tobin, “Justifying Children’s Rights,” *The International Journal of Children’s Rights*, vol. 21 (2013): 395–441, 395; Cass R. Sunstein, “Practical Reason and Incompletely Theorized Agreements,” *Current Legal Problems*, vol. 51(1) (December 1998): 267–298; Rosalind Dixon and Martha C. Nussbaum, “Children’s Rights and a Capabilities Approach: The Question of Special Priority,” *Cornell Law Review*, vol. 97(3) (2012): 549–593, 549.

13 J.E. Doek, “Children’s Rights in Health Care”; Michael Freeman, *A Magna Carta for Children?*

and vulnerability.¹⁴ However, the most innovative change brought about by the CRC was the inclusion of participation rights in an attempt to uphold autonomy, which can be seen as an important factor of human dignity. This shift in the view on children from being merely vulnerable and dependent to being autonomous is central to recognising children as rights holders.

Reynaert explains how both “the childhood image of the incompetent child and the autonomous child were embedded” in the CRC, “translated as protection and participation rights.”¹⁵ Furthermore, we would add that the image of the vulnerable child, also embedded in the Convention, adds another dimension to the incompetent child with protection rights. Vulnerability seems to cover more than just lack of competence.

The CRC Committee first mentions “vulnerability” in General Comment no. 2. First, it is explained how children, compared to adults, are “particularly vulnerable to human rights violations” because their opinions are rarely taken into account, they have no vote or access to political process, and they lack access to justice.¹⁶ Second, the concept describes children believed to belong to the most vulnerable and disadvantaged groups, such as children in care or detention; minority and indigenous groups; children with disabilities or living in poverty; refugee, migrant, and street children; and children with special needs in areas such as culture, language, health, and education.¹⁷ Although the focus mainly seems to be on the second comment, this two-dimensional concept of vulnerability can also be retrieved in other General Comments.¹⁸

14 Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights,” *Metaphilosophy*, vol. 41(4) (July 2010): 465–480; David Archard, *Children: Rights and Childhood* (London: Routledge, 2004); Conor O’Mahony, “There Is No Such Thing as a Right to Dignity,” *International Journal of Constitutional Law*, vol. 10(2) (June 2012): 551–574, Randi Sigurdson, “Children’s Right to Respect for Their Human Dignity,” in *Children’s Constitutional Rights in the Nordic Countries*, eds. Trude Haugli, Anna Nylund, Randi Sigurdson and Lena R.L. Bendiksen (Leiden: Brill Nijhoff, 2020), 19–36.

15 Didier Reynaert, Maria Bouverne-De Bieb and Stijn Vandeveld, “Between ‘Believers’ and ‘Opponents’: Critical Discussions on Children’s Rights,” *The International Journal of Children’s Rights*, no. 20 (2012): 155–168, 158.

16 UN Committee on the Rights of the Child, *General Comment no. 2 (2002) The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, CRC/GC/2002/2, (November 15, 2002), para. 5.

17 CRC/GC/2002/2, para. 15.

18 UN Committee on the Rights of the Child, *General Comment no. 3 (2003) HIV/AIDS and the Rights of the Child*, CRC/GC/2003/3 (March 17, 2003); UN Committee on the Rights of the Child, *General Comment no. 4 (2003) Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4 (July 1, 2003); UN Committee on the Rights of the Child, *General Comment no. 14 (2013) On the Rights of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, para. 1)*, CRC/C/GC/14 (May 29, 2013); UN Committee on the Rights of the Child, *General Comment no. 25 (2021) On Children’s Rights in Relation to the Digital Environment*, CRC/C/GC/25 (March 2, 2021).

What seems clear is that the term “vulnerability”, when used by the CRC Committee, is not only a question of lack of competence – it affects the very reason that children have their own human rights. In addition, vulnerability is often a question of children in difficult situations, children at risk of discrimination, and children at higher risk of having their rights violated than others (be they adults or other children), perhaps when an intersectionality lens could have been more useful. The “vulnerable child” as understood by the CRC Committee often seems to be the “discriminated child”.

1.3 UNIVERSAL, SOCIETAL, AND INDIVIDUAL VULNERABILITY

1.3.1 Universal Vulnerability Theory

“Without vulnerability, there would be no need for healthcare, or law, or ethics.”¹⁹

The legal theorist Martha A. Fineman has developed the concept of the vulnerable subject in which “to be human is to be vulnerable.”²⁰ This entails looking at all humans – not just particular groups, such as children – as vulnerable. Her theory is an alternative to the liberal theory of rights and seeks to replace “the rational man of liberal thought” with the vulnerable subject.²¹ Fineman’s theory is founded on a different perspective on vulnerability than that on which the CRC seems to build.

In vulnerability theory, the body is asserted as a universal concept, and this is where theory should begin.²² By beginning with the body, its inevitable dependency is exposed.²³ Fineman has stated:

We are vulnerable. Our vulnerability arises from the material and ephemeral nature of the body itself and is constant throughout life. Vulnerability is also universal—it is the human condition. Vulnerability, therefore, is not a characteristic of only some individuals or groups, nor does it differ in quality or degree from

19 Mary Neal, “The Idea of Vulnerability in Healthcare Law and Ethics: From the Margins to the Mainstream,” in *Embracing Vulnerability: The Challenges and Implications for Law*, eds. Jonathan Herring and Daniel Bedford (Routledge, 2020), 91–113, 91.

20 Martha A. Fineman, “Reasoning from the Body: Universal Vulnerability and Social Justice,” in *A Jurisprudence of the Body*, eds. Chris Dietz, Mitchell Travis and Michael Thomson (Palgrave Socio-Legal Studies, 2020), 17–34, 19.

21 Martha A. Fineman, “Vulnerability and Social Justice,” *Valparaiso University Law Review*, vol. 53(2) (Winter 2019): 341–370, 342.

22 Fineman, “Reasoning from the Body,” 17–34, 18.

23 Fineman, “Reasoning from the Body,” 17–34, 18.

one individual or group to another. We are all always vulnerable—there is no position of invulnerability.²⁴

By this, Fineman's legal subject ("the imagined, ordinary being around whom law and policy are formed") is different from the traditional liberal subject, who is autonomous, independent, and self-sufficient.²⁵ At the individual level, we are positioned differently, and Fineman expresses that human vulnerability is also particular: "it is experienced uniquely by each of us and this experience is greatly influenced by the quality and quantity of recourses we possess or can command".²⁶

Fineman argues that states would be more responsive to the realities of people if the vulnerable-subject approach were adopted.²⁷ Still, according to Fineman, "the foundational difference between the manner in which equality is understood in the United States and how it is understood in much of the rest of the world arises from the recognition and acceptance in other countries that human need and vulnerability are not only an individual responsibility but also a state responsibility".²⁸

In the Nordic welfare state model, the state, in accordance with human rights standards, takes more responsibility for the vulnerability of its citizens than in the United States. However, it is arguable that this responsibility is only partial and is sometimes only superficial. In the Nordic states, vulnerability can be denied in a similar way to that described by *Kilkelly* and *Tisdall/Morrison* in their chapters from Ireland and Scotland.²⁹ From a Nordic perspective, *Martnes* asserts that the education regulation in Norway does not seem to build on and accept that all humans are vulnerable and that children have a fundamental need for caring relationships.³⁰ *Moldenæs* also questions the situation for asylum-seeking children in this matter.³¹

24 Fineman, "Reasoning from the Body," 17–34, 21.

25 Fineman, "Reasoning from the Body," 17–34, 19.

26 Martha A. Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale Journal of Law and Feminism*, vol. 20(1) (2008): 1–18, 10.

27 Martha A. Fineman, "Beyond Identities: The Limits of an Antidiscrimination Approach to Equality," *Boston University Law Review*, vol. 92(6) (December 2012): 1713–1719.

28 Fineman, "Beyond Identities," 1713–1719.

29 Ursula Kilkelly, "Vulnerability Denied: The Rights of Children in Conflict with the Law," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 7.

30 Mona Martnes, "The Caring Role of the School: A Discussion on the Relationship between Care, the Rights of the Child, and the School," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 6.

31 Fredrikke Fjellberg Moldenæs, "Vulnerability and Discrimination: The State's Responsibility towards Asylum-Seeking Children's Right to Health and Care to Prevent Discrimination against Children," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 8.

1.3.2 Societal and Individual Vulnerability

Views on the concept and theories of vulnerability vary. As previously noted, it is commonly emphasised that children are more vulnerable compared to adults. Such views can be seen as focusing on individual vulnerability, characterising children as holders of a particular and inherent vulnerability due to their age, immaturity, and dependency. However, as discussed extensively in this book, the vulnerability of children is often more a result of societal factors than children's inherent characteristics, which indicates that society may create structural inequality which is then characterised as vulnerability.

The inequality that children or groups of children experience is produced and reproduced by society and its institutions. And, as Fineman states, “neither inequalities nor the systems that produce them are inevitable, they can also be object of reform”.³²

The ECtHR frequently addresses vulnerability in a rather concrete way in its discussions of whether there has been a violation of the human rights of the applicant. If the court finds that the applicant has been living under especially vulnerable conditions or could be characterised as especially vulnerable, this leads to a closer scrutiny of the states and leaves the state a narrower margin of appreciation.³³ In its practice, however, it seems that the court has not been influenced by the theories of the universal vulnerability of humans, even if it could be argued that human rights law has no invulnerable subjects. However, in this volume, the practice of the ECtHR is not the focus of the discussions, and we only refer to other sources for further reading.³⁴

In this book, there is a divergence between whether being labelled as belonging to a vulnerable or especially vulnerable group stigmatises or marginalises a person or whether, on the contrary, being vulnerable is an argument for strengthening the human rights of that person. This divergence, however, might be the result of different understandings and perspectives on vulnerability.

32 Martha A. Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition,” *Yale Journal of Law and Feminism*, vol. 20(1) (2008): 1–18, 5.

33 The European Court of Human Rights, *Handyside v. The United Kingdom*, judgment of December 7, 1976, section 48–49.

34 Corina Heri, *Responsive Human Rights: Vulnerability, Ill-Treatment and the ECtHR* (Modern Studies in European Law) (Oxford: Hart Publishing, 2021) Retrieved May 19, 2023 from <http://dx.doi.org/10.5040/9781509941261>; Alexandra Timmer, “A Quiet Revolution: Vulnerability in the European Court of Human Rights,” in *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*, eds. Martha Albertson Fineman and Anna Grear (Ashgate Publishing, 2013), 147–170.

According to *Tisdall and Morrison*, few people wish to claim to belong to the category of vulnerable groups.³⁵ Similarly, based on decades of research on and with children, *Lundy* presumes that if children were to make an alternative conceptualisation of childhood – a new child-authored paradigm – they would probably not focus on their vulnerability.³⁶ This might indicate that common understandings of vulnerability, and especially of individual vulnerability used to describe particular groups, are seen as adverse. In *Herring's* chapter based on a different understanding on vulnerability, vulnerability is seen as a positive universal phenomenon that should be embraced.³⁷

Timmer et al. (2021) assess the potential and pitfalls of the concept of vulnerability, though not explicitly in relation to children's rights.³⁸ Still, their discussion is of relevance to ours. According to Timmer et al.:

The obvious risk of the concept of vulnerability is that it stigmatises and stereotypes those who are held vulnerable. In everyday use, “vulnerability” is mostly seen as something that makes you weak, as something to be avoided. The key problem with designating only specific categories of people as vulnerable in law and policy is that it “reinforces and valorizes” the ideal of the liberal subject who is conceived of as autonomous and independent. Vulnerable persons are then seen as deviant, as the exception to the norm.³⁹

They further note that this is “closely linked to an attitude of paternalism, whereby vulnerability is equated with the need for greater protection, not so much empowerment or participation.”⁴⁰ This pitfall indicates that when the CRC Committee defines some groups of children as especially vulnerable, there is a risk of further stigmatising these groups.

Another problem with the traditional paradigm on defining some individuals or groups as especially vulnerable is that it can veil the role of society and its institutions. *Moldenæs* argues that by stating that some children are more vulnerable than others, we are in danger not only of losing sight of the reasons for their vulnerability but also of only focusing on the child's characteristics rather than the

35 Tisdall and Morrison, “Vulnerability under COVID-19,” chapter 5.

36 Lundy, “Vulnerability Should Not Eclipse Agency,” chapter 2.

37 Jonathan Herring, “Vulnerability, Childhood and the Definition of Health,” in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 3.

38 Alexandra Timmer et al., “The Potential and Pitfalls,” 190–197.

39 Alexandra Timmer et al., “The Potential and Pitfalls,” 190–197, 194 et seq.

40 Alexandra Timmer et al., “The Potential and Pitfalls,” 190–197, 195.

broader context of the situation or the community the child should be a part of.⁴¹ While considering how vulnerability played out in policy responses to COVID-19 in Scotland, *Tisdall and Morrison* find that minimal data were gathered on children affected by domestic abuse.⁴² This highlights the risk of the vulnerabilities of children being subsumed into a general vulnerability category, so that their rights were overlooked or further marginalised. *Lundy* argues that categorising children in particular as vulnerable can render them even more vulnerable.⁴³ Still, she holds, vulnerability theories that focus on universal vulnerability, which classifies all as vulnerable, pose the risk that children once again are deprived of the dedicated attention that was denied for so long and that a children's rights approach mandates for. Thus, there seem to be risks of focusing on vulnerability, but also risks of ignoring or denying vulnerability. This is evident in *Kilkelly's* chapter.⁴⁴ *Kilkelly* argues that a rights-based approach to children in the justice system, including in detention, requires an appreciation of children's vulnerability if these children are to enjoy protection of their rights.⁴⁵ *Moldenæs*, too, while showing how unaccompanied minor asylum-seeking children above the age of 15 are treated differently from younger children, can be read in light of *Kilkelly's* chapter on vulnerability denied.⁴⁶

The connection between ensuring rights and vulnerability is evident in several chapters. *Aasen* states that although vulnerability is a common aspect of the human condition, individual and social factors may indicate that some people are particularly vulnerable to human rights violations.⁴⁷ In similar manners, *Sandberg* emphasises the double vulnerability of children: that children are particularly vulnerable to the effects of climate change and that their dependence on adults creates an additional vulnerability.⁴⁸ She holds that children's rights are a response to the inherent vulnerability of children and the various vulnerable situations(s) they may find themselves in. Still, there is no guarantee that these rights are ensured,

41 Moldenæs, "Vulnerability and Discrimination," chapter 8.

42 Tisdall and Morrison, "Vulnerability under COVID-19," chapter 5.

43 Lundy, "Vulnerability Should Not Eclipse Agency," chapter 2.

44 Kilkelly, "Vulnerability Denied," chapter 7.

45 Kilkelly, "Vulnerability Denied," chapter 7.

46 Moldenæs, "Vulnerability and Discrimination," chapter 8.

47 Henriette Sinding Aasen, "The Right of Children to Make Healthcare Decisions – Balancing Vulnerability and Capability in Norwegian Law," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 11.

48 Kirsten Sandberg, "Children's Access to Justice in Climate Matters: The Role of Vulnerability," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 10.

which is illustrated by *Tisdall and Morrison*.⁴⁹ They find that vulnerability did not offer the protection of children's rights that we might have anticipated during the pandemic.

Hakalehto argues that children's special vulnerability is more often connected to the deficient implementation of their rights in general than to them belonging to a certain group labelled as vulnerable.⁵⁰ *Martnes* poses a corresponding question in her chapter on the relationship between care, the rights of the child, and schools.⁵¹ She argues that a caring school, built on an acceptance of vulnerability as a universal human condition, is necessary for the fulfilment of children's rights. *Herring* goes further and suggests not only that vulnerability is at the heart of the human condition⁵², but also that it should be greatly welcomed and that our mutual vulnerability requires us to reach out to offer and receive help.

In one way or another, most of the authors recognise children as especially vulnerable, that they can be more profoundly vulnerable, and in different ways, than adults. However, there is a widespread understanding that vulnerability is almost a characteristic of childhood, rather than created by the system and structures of society. *Stoecklin* discusses how traditional social representations of childhood turn children into especially vulnerable becomings in need of protection.⁵³ *Köhler-Olsen* argues that a focus on the societal structures and institutions in which the child grows up recognises that the child is held in a vulnerable position, rather than defining the child as being "vulnerable" as such.⁵⁴ *Rap* states that vulnerability from a children's rights perspective should be seen as a temporal state, caused by external circumstances, rather than a static inherent characteristic.⁵⁵ In a similar manner, *Lundy* suggests that children are not inevitably vulnerable, but that adults' perceptions can operate to render them vulnerable.⁵⁶ Equally, *Daly* finds

49 Tisdall and Morrison, "Vulnerability under COVID-19," chapter 5.

50 Suvianna Hakalehto, "From Problem Talk to Taking Action – Implementing the Rights of Vulnerable Children," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 9.

51 Martnes, "The Caring Role of the School," 87–102.

52 Herring, "Vulnerability, Childhood," 37–50.

53 Daniel Stoecklin, "The Transactional Horizons of Child Vulnerability," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 14.

54 Julia Köhler-Olsen, "Combating Vulnerabilities – the CRC's Role in Children's Social Well-Being and Right to Health," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 4.

55 Sephanie Rap, "Vulnerability and Child Participation: A Reflection on the Involvement of Refugee Children in Asylum Procedures," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 13.

56 Lundy, "Vulnerability Should Not Eclipse Agency," chapter 2.

that professionals working with children are operating in systems that frequently provide them with little space, time, and training for them to engage with children in a way that facilitates them to increase children's competence.⁵⁷ Failing to support children's competence makes children more vulnerable in systems where children already are lacking in power, as in criminal proceedings and medical questions. *Kilkelly* also holds that the justice system deepens the vulnerability of children in conflict with the law.⁵⁸ *Tisdall and Morrison* find that our systems and structures may ameliorate or increase inequalities, support, undermine, or ignore human rights, making certain individuals and groups of people more vulnerable than others.⁵⁹ *Herring* too agrees that there are different levels of vulnerability and believes that some of the dependencies of childhood are created by society.⁶⁰ It is the way our society is structured that disadvantages children.

Recognising society's role emphasises the need for state response. *Köhlner-Olsen* underpins the state's legal obligation to implement policies that combat structural dimensions of vulnerability detrimental to the child's social well-being and right to health.⁶¹ However, it is problematic that institutions, legislation, and policy are built without participation from children. As mentioned by *Sandberg* and *Stoecklin*, children are denied the right to vote.⁶² There is a lack of agency in many aspects of their life, for instance, in schools and migrant cases (*Hakalehto, Martnes, Moldenæs, and Rap*).⁶³ As *Tisdall and Morrison* state, children need to be included as social actors, not only dependent on adults, to address children's vulnerability and ensure their human rights.⁶⁴ The societal response to children's vulnerability should be with children.

57 Aoife Daly, "Rethinking Children's Competence through Children's Rights: Giving Professionals Space for Supporting Children," in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 12.

58 Kilkelly, "Vulnerability Denied," 105–118.

59 Tisdall and Morrison, "Vulnerability under COVID-19," chapter 5.

60 Herring, "Vulnerability, Childhood," chapter 3.

61 Köhler-Olsen, "Combating Vulnerabilities," chapter 4.

62 Sandberg, "Children's Access to Justice" chapter 10; Stoecklin, "The Transactional Horizons," chapter 14.

63 Hakalehto, "From Problem Talk to Taking Action," chapter 9; Martnes, "The Caring Role of the School," chapter 6; Moldenæs, "Vulnerability and Discrimination," chapter 8; Rap, "Vulnerability and Child Participation," chapter 13.

64 Tisdall and Morrison, "Vulnerability under COVID-19," chapter 5.

1.4 THE FURTHER CONTENT OF THIS BOOK

In Chapter 2, “Vulnerability Should Not Eclipse Agency: Children’s Perspectives on Their Own Lives”, *Laura Lundy* offers an alternative approach to understanding vulnerability from a children’s human rights perspective and grounded in children’s own understandings and experiences.⁶⁵ She suggests that children are not inevitably vulnerable, but that adults’ perceptions can operate to render them vulnerable and/or undermine the enjoyment of their human rights. She also questions whether an approach that conceptualises adults and child alike as vulnerable might impact children differently and disproportionately, removing a dedicated gaze on their rights and interests, reinforcing existing paternalistic responses to children, and undermining their ability to shape and inform their own lives.

Exploring the concept of childhood health through the lens of universal vulnerability and relational theory, *Jonathan Herring* offers an alternative approach, but from a totally different angle than Lundy.⁶⁶ In Chapter 3, “Vulnerability, Childhood, and the Definition of Health”, he illustrates the highly individualised and idealised nature of definitions of health. He argues that once we see childhood through the lens of universal vulnerability theory, the boundaries between adults and children collapse.

Introducing the 10 dimensions of vulnerability hindering the experience of health, *Julia Köhler-Olsen* discusses in Chapter 4, “Combating Vulnerabilities – the CRC’s Role in Children’s Social Well-Being and Right to Health”, to which extent state policies must address these dimensions of vulnerability due to their legal obligation under the CRC.⁶⁷ By including the right to non-discrimination and equality, the CRC provides legal mechanisms that bind states to implement policies that combat structural dimensions of vulnerability detrimental to the child’s social well-being and right to health. Compared to Herring, she has a different understanding both on health and vulnerability.

In Chapter 5, “Vulnerability under COVID-19: Children’s Human Rights under Lockdown”, *Kay M. Tisdall and Fiona Morrison* address both Fineman and Herring in a discussion on structural vulnerability and show how the academic discussion goes in different directions.⁶⁸ The COVID-19 pandemic has shown how vulnerable we are, individually, collectively, and globally. The pandemic caught many Global North countries by surprise, unused to such widespread and pervasive disaster. Despite Scotland’s commitment to children’s human rights, state responses show

65 Lundy, “Vulnerability Should Not Eclipse Agency,” chapter 2.

66 Herring, “Vulnerability, Childhood,” chapter 3.

67 Köhler-Olsen, “Combating Vulnerabilities,” chapter 4.

68 Tisdall and Morrison, “Vulnerability under COVID-19,” chapter 5.

the precarity of children's human rights under the pressures of responding to the pandemic and the vulnerability of considering the full range of children's rights to protection, provision, and participation.

By building on Fineman and Herring, *Mona Martnes*, in Chapter 6, "The Caring Role of the School: A Discussion on the Relationship Between Care, the Rights of the Child, and the School", explores the definition of care and discusses which role the school should have in caring for children.⁶⁹ She further explores whether a lack of care might be a problem for protection and fulfilment of the rights of the child in the CRC.

In Chapter 7, "Vulnerability Denied: The Rights of Children in Conflict with the Law", *Ursula Kilkelly* shows how the CRC recognises the rights of all children, including children in conflict with the law, who are entitled to age-appropriate treatment and respect for their dignity and right to reintegration into society.⁷⁰ Despite these standards, many states ignore the special vulnerability of these children, who often suffer poor individual, family, and community circumstances that are compounded by punitive responses that focus on their behaviour rather than their needs. Chapter 7 presents the view that rights-based responses to children in conflict with the law, which focus on rather than deny the vulnerability of these children, find greater support in the research. This chapter builds a bridge towards discrimination.

In Chapter 8, "Vulnerability and Discrimination: The State's Responsibility towards Asylum-Seeking Children's Right to Health and Care to Prevent Discrimination of Children", *Fredrikke Fjellberg Moldenæs* investigates whether the caregiving for unaccompanied asylum-seeking children between 15 and 18 years of age in Norway represents a breach of the rights set forth in the Convention on the Right of the Child, especially the right to health and caregiving, and whether it constitutes discrimination against these children.⁷¹

In Chapter 9, "From Problem Talk to Taking Action – Implementing the Rights of Vulnerable Children", *Suvianna Hakalehto* presents the recent findings on the health and well-being of Finnish schoolchildren who belong to certain vulnerable groups.⁷² She further discusses the responsibilities of the state to act to realise the rights of these children. As far as children's rights in general lack effective implementation, it is difficult to define what it means to give special attention to realising the rights of the vulnerable groups.

69 Martnes, "The Caring Role of the School," chapter 6.

70 Kilkelly, "Vulnerability Denied," chapter 7.

71 Moldenæs, "Vulnerability and Discrimination," chapter 8.

72 Hakalehto, "From Problem Talk to Taking Action," chapter 9.

In Chapter 10, “Children’s Access to Justice in Climate Matters: The Role of Vulnerability”, *Kirsten Sandberg* holds that children and young people are particularly vulnerable to the effects of climate change and that their rights are strongly affected. However, children do not have the right to vote and thus have no formal say.⁷³ To compensate for this added vulnerability and hold the state accountable for their rights, they should have a right to take decisions regarding the climate to a complaint-mechanism or the courts. Chapter 10 explores children’s limited access to justice in the light of theories of vulnerability and legal empowerment.

Henriette Sinding Aasen, in Chapter 11, “The Right of Children to Make Healthcare Decisions – Balancing Vulnerability and Capability in Norwegian Law”, analyses how the Norwegian regulation of children’s right to make decisions in the health field reflects the challenge of balancing competing perspectives of protection and children’s right to autonomy and privacy.⁷⁴ International and constitutional human rights law as well as theoretical perspectives on vulnerability and capability provide frameworks for the analysis of provisions in the Norwegian Patient and User’s Rights Act on the rights of children below 16 years to make decisions without parental involvement.

Following several chapters focusing on discrimination, in Chapter 12, “Rethinking Children’s Competence through Children’s Rights: Giving Professionals Space for Supporting Children”, *Aoife Daly* brings the discussion back to agency.⁷⁵ Like Lundy, Daly holds that children’s competence is fundamental to their rights but little understood. The CRC emphasises the right of children to be supported in the exercise of their capacities. Failing to support competence, it is argued, serves to make children more vulnerable in systems where they are already lacking in power.

The question of agency is also central in Chapter 13, “Vulnerability and Child Participation: A Reflection on the Involvement of Refugee Children in Asylum Procedures”. *Stephanie Rap* notes that the concept of vulnerability is often inherently tied to children, who are in development and therefore not fully matured.⁷⁶ When regarding vulnerability from a children’s rights perspective, it becomes clear that it should be seen as a temporal state, caused by external circumstances, rather than a static and inherent characteristic. The child’s right to participation provides children with a vehicle to overcome the vulnerable situation they might find themselves in. The power imbalance between adults and children, and the fact that procedures are not adapted to the age and level of maturity of the child, can lead

73 Sandberg, “Children’s Access to Justice,” chapter 10.

74 Aasen, “The Right of Children to Make Healthcare Decisions,” chapter 11.

75 Daly, “Rethinking Children’s Competence,” chapter 12.

76 Rap, “Vulnerability and Child Participation,” chapter 13.

to refugee children being in a particularly vulnerable situation when applying for asylum.

In Chapter 14, “The Transactional Horizons of Child Vulnerability”, *Daniel Stoecklin* discusses vulnerability from a *sociological* perspective. He argues that vulnerability is bound to social arrangements.⁷⁷ Children’s moving social positions depend on their reactions to these mostly adult-driven arrangements. This is illustrated in the chapter with observations from two major social crises: the COVID-19 pandemic and climate change. Children respond to these major crises differently; however, they do so with innovative strategies. Their agency and “modes of action” are analysed along the theory of “transactional horizons”, conducive to better inclusion of children’s rights in participatory public policies.

In the concluding chapter, “Vulnerability as an Underlying Norm for Children’s Rights: Conclusions and Further Outlook”, the editors reflect on the question of whether theories of vulnerability and the different ways of understanding this phenomenon bring added value to the discussions on children and children’s rights.⁷⁸

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77 Stoecklin, “The Transactional Horizons,” chapter 14.

78 Trude Haugli and Mona Martnes, “Vulnerability as an Underlying Norm for Children’s Rights. Conclusions and Further Outlook,” in *Perspectives on Children, Rights and Vulnerability*, eds. Trude Haugli and Mona Martnes (Oslo: Scandinavian University Press, 2025), chapter 15.

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