



Brown, A. (2021) Relational Vulnerability: Theory, Law and the Private Family, Ellen Gordon-Bouvier. *International Journal of Law, Policy and the Family*, 35(1), ebab042. (doi: [10.1093/lawfam/ebab042](https://doi.org/10.1093/lawfam/ebab042)) [Book Review]

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<https://doi.org/10.1093/lawfam/ebab042>

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Deposited on 08 February 2022

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***Relational Vulnerability: Theory, Law and the Private Family*, Ellen Gordon-Bouvier, Palgrave MacMillan, Basingstoke, 2020, 203pp, £59.99, eBook, ISBN 978-3-030-61358-7**

‘all human life is conditioned by vulnerability, as a result of our embodied, finite, and socially contingent existence. Vulnerability is the ontological condition of our humanity.’¹

This book is situated within the literature applying Fineman’s ‘vulnerability theory’² to a variety of socio-legal contexts,³ in this case family law. This is area of growing academic interest,⁴ and as Collins has previously observed: “‘Vulnerability’ has emerged as a very important idea for those interested in family law. But it is an abstruse concept without further explanation.”⁵ To that end, this book represents an attempt to provide some of that ‘further explanation’, in one specific area of family law, as Gordon-Bouvier states: ‘This book is an expansion of, and contribution to, the existing scholarship on vulnerability’,⁶ because the book provides an account of, ‘a new model of what I term *relational vulnerability* that I apply in the specific context of English law’s treatment of unpaid work when performed in the context of the private married or unmarried family.’⁷ Thus, the focus of the book is firmly upon the role of ‘dependency work’, and those that perform it, within the private family. This concept is given a ‘broad definition’ by the author: ‘encompassing all forms of socially reproductive labour, including (but not limited to) caring for children and adults, providing the support necessary for adults to engage in the workforce, and performing the work necessary to produce and maintain the home as the locus of the private family.’⁸ The book’s potential contribution to scholarship regarding the legal regulation of adult relationships is made clear in the introductory chapter which notes that, ‘the vulnerability lens allows me to examine the issues

¹ W. Rogers, C. Mackenzie and S. Dodds, ‘Why Bioethics Needs a Concept of Vulnerability’ (2012) 5 *International Journal of Feminist Approaches to Bioethics* 11, 12.

² See e.g. M. Fineman, *The Autonomy Myth: A Theory of Dependency* (New York: The New Press, 2004), M. Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20 (1) *Yale Journal of Law & Feminism* 1, M. Fineman, “‘Elderly’ as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility’ (2012) 20 (1) *Elder Law Journal* 71, and M. Fineman and A. Grear (eds.), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (New York: Routledge, 2014).

³ See e.g. C. Stychin, ‘The Vulnerable Subject of Negligence Law’ (2012) 8 (3) *International Journal of Law in Context* 337, B. Clough, ‘Disability and Vulnerability: Challenging the Capacity/Incapacity Binary’ (2017) 16 (3) *Social Policy & Society* 469 and Rogers (et al.) (n 1).

⁴ See e.g. J. Wallbank and J. Herring (eds.), *Vulnerabilities, Care and Family Law* (London: Routledge, 2013).

⁵ J. Collins, ‘The Contours of ‘Vulnerability’ in Wallbank and Herring (eds.), *Vulnerabilities, Care and Family Law*, 22.

⁶ E. Gordon-Bouvier, *Relational Vulnerability: Theory, Law and the Private Family* (Basingstoke: Palgrave MacMillan, 2020), 2.

⁷ *Ibid.*

⁸ *Ibid.*, 3.

from a novel perspective and to take the debate in a new direction'.⁹ However, despite this claim, the author is clearly conscious of the potential limitations of her own analysis, commenting that: 'my aim is not to produce definitive solutions to current problems.'¹⁰

To that end, Chapter 1 functions both as an introductory chapter and as the grounding for the theoretical content to come. The chapter provides a brief review of the literature on 'vulnerability',¹¹ before setting out the three 'core claims' of the book's theoretical framework of 'relational vulnerability'.¹² To conclude, the first chapter includes summaries of the book's following six substantive chapters, which provides helpful structural clarity at this early stage. These six chapters can be seen as loosely forming three separate pairs within the book's overall argument. Chapters 2¹³ and 3¹⁴ provide a more detailed account of the theoretical framework, with chapter 2 exploring the implications of the 'temporality' of vulnerability upon the private family, and chapter 3 expanding upon the concept of 'relational vulnerability' and how that vulnerability impacts the dependency-worker. Thereafter, chapters 4¹⁵ and 5¹⁶ provide the book's substantive analysis of English family law, through applying the theoretical framework of 'relational vulnerability' to the construction of the private conjugal family. First, in chapter 4, the married family and the regime of financial provision on divorce are considered, and second, in chapter 5, the unmarried cohabiting family and English law's 'failure to provide specific remedies upon relationship breakdown'¹⁷ for such families are examined. The book shifts in chapters 6¹⁸ and 7¹⁹ to consider the concept of 'resilience', which is understood 'as an antidote to vulnerability';²⁰ with chapter 6 seeking to provide a 'deeper understanding'²¹ and theoretical framework of 'resilience', and chapter 7 utilising that framework to consider different policy responses that the state could adopt to addressing 'relational vulnerability'.

⁹ Ibid.

¹⁰ Ibid, 18. The difficulty, and indeed potentially the danger, of providing such definitive answers in family law is something that I have previously cautioned against, see A. Brown, *What is the Family of Law? The Influence of the Nuclear Family*, (Oxford: Hart, 2019), 192-197.

¹¹ Gordon-Bouvier (n 6), 3-10.

¹² Ibid, 10-14.

¹³ Ibid, 23-45.

¹⁴ Ibid, 51-73.

¹⁵ Ibid, 81-103.

¹⁶ Ibid, 107-132.

¹⁷ Ibid, 16.

¹⁸ Ibid, 135-158.

¹⁹ Ibid, 163-186.

²⁰ Ibid, 135.

²¹ Ibid, 17.

Finally, in chapter 8,²² the book draws together the arguments from these substantive chapters and provides some ‘concluding thoughts’ that identify the need for ‘urgent reform’.²³

Chapter 1 has a range of functions within the book, grounding the work in the existing literature, introducing the conceptual framework of ‘relational vulnerability’ that will underpin the following chapters, providing a summary of the overarching argument that the book will advance in those chapters and the more obviously ‘introductory’ function of summarising the substantive content these other chapters. Within this chapter, the author explains that the theoretical framework of ‘relational vulnerability’ ‘focuses on the harm caused by the socially and legally constructed private family as a means for the state to conceal the embodied and relational reality of vulnerability and dependency and avoid responsibility for it.’²⁴ Thereafter, the ‘three core theoretical claims’ of this conceptual framework of are established: firstly, ‘that vulnerability should be understood as multifarious rather than solely resulting from the human condition’,²⁵ secondly, ‘that vulnerability, both the inherent and embodied form to which we are all subject, and the additional relational vulnerability affecting dependency-workers, is inherently infused with questions of time and temporality’,²⁶ and thirdly, ‘that the private family is a social, political, and legal construct that enables the state to conceal the realities of human vulnerability and dependency, allowing it to remain restrained.’²⁷ These claims are each briefly sketched out in this first chapter, and subsequently returned to throughout the book.

Following on from this introductory chapter, chapters 2 and 3 expand upon the book’s theoretical framework; with chapter 2 focusing upon issues of embodiment and temporality. The chapter draws heavily on the existing literature on vulnerability to contrast the reality of ‘the duality of vulnerability’s inevitability and unpredictability’²⁸ with the idealised image of the ‘autonomous liberal subject’ in order to argue that ‘[t]he construction of the private family with its gendered and sentimentalised roles ensures that the state can absolve itself of responsibility for vulnerability and dependency.’²⁹ The first part of chapter 2 is focused upon providing additional theoretical grounding regarding the book’s understanding of

²² Ibid, 189-196.

²³ Ibid, 195.

²⁴ Ibid, 10.

²⁵ Ibid. This first claim is described as ‘multifarious vulnerabilities’.

²⁶ Ibid, 11. This second claim is described as ‘vulnerability’s temporality’.

²⁷ Ibid, 13. This third claim is described as ‘law, relationality and the private family’.

²⁸ Ibid, 23.

²⁹ Ibid, 24.

‘vulnerability’ and how this relates to the concept of ‘relationality’,³⁰ before more directly critiquing the traditional, liberal conception of subjecthood,³¹ and the role of the state, law and the private family in promoting and privileging that liberal subject,³² before drawing these strands together within the understanding of ‘relational vulnerability’,³³ commenting that: ‘[d]ependency workers are sacrificed in order for the unrealistic image of individual autonomy to survive’³⁴ and concluding the chapter with the observation that, ‘[r]elational vulnerability is the direct consequence of the actions of the restrained state – actions that it takes to avoid fulfilling its obligations to its citizens.’³⁵ It is clear that it is in this chapter that the central themes of the book – the relationship between the state and the individual, law’s valorisation of the autonomous liberal subject, the role of the private (nuclear) family as the means of hiding the plight of dependency workers – begin to emerge. Chapter 3 continues this expansion of the book’s underpinning theoretical framework by considering what is described as ‘the various ways that relational vulnerability affects the dependency-worker, not just in the short term, but over the course of her life.’³⁶ Through engaging with literature from a range of non-legal disciplines, the chapter explores three related ‘strands’ of relational vulnerability: economic, psychological and spatial, in order to illustrate one of the book’s key arguments, that, ‘relational vulnerability, unlike inherent vulnerability, *is* capable of elimination, or at least significant reduction, through state action and reform.’³⁷ Interestingly, the author is clear that the material in this chapter ‘is an area that will undoubtedly benefit from future empirical socio-legal research’³⁸ exploring some of its implications and applications in different contexts and relationships. Nonetheless, the chapter first considers the economic harms of relational vulnerability;³⁹ noting that such harms are ‘inevitably the easiest...to quantify and therefore the aspect that has received the most attention in the literature’.⁴⁰ Because of this previous interest in economic harms, the chapter subsequently sets out the existing research on

³⁰ Ibid, 24-31. For more on the concept of ‘relationality’, see e.g. J. Herring, *Relational Autonomy and Family Law*, (New York: Springer, 2014) and R. Harding, *Duties to Care: Dementia, Relationality and Law*, (Cambridge: Cambridge University Press, 2017).

³¹ Gordon-Bouvier (n 6), 32-37.

³² Ibid, 31-32 and 37-42.

³³ Ibid, 43-45.

³⁴ Ibid, 43.

³⁵ Ibid, 45.

³⁶ Ibid, 51.

³⁷ Ibid, 52.

³⁸ Ibid, 53.

³⁹ Ibid, 54-57.

⁴⁰ Ibid, 53.

psychological harms⁴¹ and spatial harms.⁴² From this, the author utilises that range of literature from across disciplines to set out and interrogate these types of harms in more detail. The chapter concludes by drawing together the three strands of relational vulnerability with the observation that: '[m]uch of the dependency-worker's relational vulnerability is future related and will become apparent when she experiences the decline of old age.'⁴³

Thereafter, chapters 4 and 5 shift the focus of the book from this theoretical explication to applying the conceptual framework of 'relational vulnerability' to the substance of English family law's regulation of adult personal relationships; these chapters 'seek to examine how law helps to structure and shape the networks of relations in which we are all embedded'.⁴⁴ Chapter 4 considers the married family, arguing that 'the legal framework governing the married (and civilly partnered) family has always sought to uphold the liberal principles of individualistic autonomy and state restraint, simultaneously marginalising and stigmatising those who perform dependency-work.'⁴⁵ The chapter traces the shifts in the 'methods and discourses' that English law has utilised in its regulation of the married family from the historical stark division between the 'public' and 'private' spheres to the more recent invocation of the rhetoric of 'autonomy' and formal equality within marriage. The focus of the chapter is the regime of financial provision on divorce, and the chapter explores the evolving judicial understandings that underpin that regime;⁴⁶ from early 20th century cases such as *Hyman v Hyman*,⁴⁷ through the infamous 'one third' rule of *Wachtel v Wachtel*,⁴⁸ to the formal equality of *White v White*,⁴⁹ the 'move towards substantive equality'⁵⁰ in *Miller and McFarlane*,⁵¹ before considering what is described as the 'autonomy turn'⁵² and the role of prenuptial agreements and the removal of legal aid from private family cases. The chapter argues that despite these changes in the judicial understanding of the substantive legal rules 'the legal framework governing financial redistribution on divorce promotes the autonomous

⁴¹ Ibid, 57-64.

⁴² Ibid, 64-72.

⁴³ Ibid, 72.

⁴⁴ Ibid, 81.

⁴⁵ Ibid, 82.

⁴⁶ Ibid, 88-100.

⁴⁷ [1929] AC 601.

⁴⁸ [1973] Fam. 72.

⁴⁹ [2001] 1 AC 596.

⁵⁰ Gordon-Bouvier (n 6), 93.

⁵¹ *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24.

⁵² Gordon-Bouvier (n 6), 94.

liberal ideal and thereby marginalises dependency-workers.⁵³ Thus, regardless of rhetorical (and seeming substantive) shifts, the relational vulnerability of the dependency worker is not being fully acknowledged or reflected in the regime of financial provision on divorce in English law. Chapter 5 shifts the focus to the unmarried family, which is clearly fertile ground for the book's theoretical framework,⁵⁴ because of the lack of a specific regime of legal rights and obligations for cohabitants in English law. The result of this, as the chapter argues, is that 'the legal framework is heavily oriented around the self-interested autonomous subject who enters into arms-length, dispassionate agreements with other individuals rather than being attuned to the complexities of family relationships'.⁵⁵ To illustrate this, the chapter considers the case law on constructive trusts and proprietary estoppel – the equitable remedies through which rights in the family home can be established – in the context of cohabiting relationships, observing that, '[p]roperty law's disregard for future needs and its creation of relatively narrow categories by which ownership can be established places unmarried dependency-workers in a precarious position if the relationship breaks down.'⁵⁶ Thereafter, the chapter focuses upon the judicial language used in these cases,⁵⁷ and how the idealised, autonomous liberal subject dominates within that language, which works to the disadvantage of unmarried female dependency-workers.⁵⁸ Notably, the chapter sharply contrasts the judicial language in cases involving male claimants, which the author argues, 'have been recast into a commercial framework to portray the claimant as motivated by financial gain';⁵⁹ illustrating the gendered constructions of familial roles that underpin judicial reasoning in this context. These two chapters effectively contextualise the book's theoretical framework in the substance of English law relating to adult personal relationships.

In chapters 6 and 7, the book returns its theoretical core by examining the concept of 'resilience', with chapter 6 seeking to 'provide a more detailed and nuanced consideration of the nature and aims of resilience than currently exists within the theory.'⁶⁰ In this chapter, the author is attempting to address some of the criticisms of 'vulnerability theory' and its approach

⁵³ Ibid, 103.

⁵⁴ As is illustrated by the author's previous work, see e.g. E. Gordon-Bouvier, 'Relational Vulnerability: The Legal Status of Cohabiting Carers' (2019) 27 (2) *Feminist Legal Studies* 163.

⁵⁵ Gordon-Bouvier (n 6), 107.

⁵⁶ Ibid, 112.

⁵⁷ Ibid, 116-125.

⁵⁸ See e.g. *Geary v Rankine* [2012] EWCA Civ 555, *Curran v Collins* [2015] EWCA Civ 404 and *Smith v Bottomley* [2013] EWCA Civ 953.

⁵⁹ Gordon-Bouvier (n 6), 126.

⁶⁰ Ibid, 135.

to resilience. The chapter sets out the origins of resilience within social psychology literature, before exploring how the concept has come to be used within the orthodox ‘neoliberal political vocabulary’, as ‘the goal towards which currently vulnerable individuals and groups should strive.’⁶¹ The author argues that this neoliberal understanding places vulnerability and resilience in opposition and conceptualises resilience as ‘offering the “solution” to the “problem” of vulnerability.’⁶² However, the chapter instead sets out an alternative understanding of ‘resilience’, building upon Fineman’s conception, offering an understanding of the concept that is ‘inherently relational’,⁶³ and focusing upon the ‘psychological dimension’ of resilience; the perspective of the dependence-worker regarding her own resilience. From this conception, the author argues that ‘the private family, as an institution, has the *potential* to be resilience-enhancing in terms of offering support and care.’⁶⁴ Thereafter, the chapter begins to consider how this understanding of resilience could guide state responses to these issues, particularly through the guise of the ‘responsive state’ (a concept which is expanded upon in the following chapter), arguing ‘that the responsive state has a duty to maximise the dependency-worker’s autonomy, but that autonomy must be understood in a relational rather than an individualistic sense.’⁶⁵ Chapter 6’s theorising of the normative content of resilience sets up chapter 7, which returns to the idea of the ‘responsive state’ and adopts a ‘policy-focused approach’.⁶⁶ Through this, chapter 7 considers and evaluates three potential responses that the state could adopt to attempt to address the ‘relational vulnerability’ of dependency-workers. These responses are: first, ‘judicial redistribution of resources’,⁶⁷ second, ‘state-paid subsidies for dependency-work’,⁶⁸ and third, ‘modified community of property solutions’.⁶⁹ The author notes that these are ‘realistic’ responses, and that they ‘are deliberately intended to be relatively moderate and workable solutions rather than excessively radical and idealistic ones that are liable to be dismissed as fanciful.’⁷⁰ The proposed responses are all based upon approaches that have been adopted in other jurisdictions. Central to this chapter is a rejection of the distinction, currently made in English law, between married and unmarried families,

⁶¹ Ibid, 138.

⁶² Ibid, 139.

⁶³ Ibid, 145.

⁶⁴ Ibid, 147.

⁶⁵ Ibid, 152.

⁶⁶ Ibid, 163.

⁶⁷ Ibid, 167-170.

⁶⁸ Ibid, 171-178.

⁶⁹ Ibid, 178-183.

⁷⁰ Ibid, 163.

which is described as ‘both unjustified and unfair’;⁷¹ this reflects the arguments advanced in chapters 4 and 5. In assessing these responses, the book returns to the ‘economic’, ‘psychological’ and ‘spatial’ harms, set out in chapter 3. The different chapters of the book are clearly being brought together in this last substantive chapter. For each potential response the chapter briefly explains the practicalities, before considering how the response would address ‘relational vulnerability’, how the response relates to the book’s conception of resilience, and the potential objections to each response. The author observes that ‘all three hypothetical responses are capable of addressing relational vulnerability to some extent’,⁷² but that, ‘state subsidy offers the most compelling solution to the problem because it involves a radical rejection of privatised means of correcting relational imbalances’⁷³ and that ultimately a holistic approach was required in order for the state to more fully address relational vulnerability. Finally, chapter 8 provides some ‘concluding thoughts’, summarising and restating the arguments of the preceding chapters, with the author observing: ‘[t]he fundamental message I wish to convey is that the state’s promotion of a temporally artificial, invulnerable view of personhood is not only false and unsustainable, but also actively harmful.’⁷⁴ The book ultimately concludes by briefly turning to COVID-19, with the author noting that, ‘the pandemic has also brought into focus our constant reliance on dependency-work for society to function effectively,’⁷⁵ and finishes with a call to arms, urging ‘that this opportunity for change is not lost.’⁷⁶

I have previously commented of ‘vulnerability’ that it is, ‘deliberately constructed to be ambiguous, this renders clarity of definition difficult (if not impossible) to achieve.’⁷⁷ However, throughout the book, the author is clearly mindful of this potential conceptual ambiguity, and the book provides a clear and understandable account of complex theoretical literature, while retaining focus upon the application of these theoretical ideas to the context of English law’s engagement with married and unmarried couples. The book consistently made me think, which is the best compliment that I can give it; indeed, the two chapters that consider the law’s interaction with the married and unmarried family offer consistently novel insight. Overall, this book provides an excellent distillation of the role that ‘relational vulnerability’

⁷¹ Ibid, 165.

⁷² Ibid, 184.

⁷³ Ibid.

⁷⁴ Ibid, 195.

⁷⁵ Ibid, 196.

⁷⁶ Ibid.

⁷⁷ Brown (n 10) 184.

could play in the legal regulation of adult personal relationships, offering some interesting potential solutions for the future. Although their radicalism (despite the author's view of their realism) perhaps makes them unlikely to be taken forward in the current political climate. Nonetheless, the book is a strong addition to the literature on the legal understanding of adult personal relationships and on the relationship between law and vulnerability theory.

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