

---

# CONTENTS

---

<i>Acknowledgements</i> .....	v
<i>List of Figures</i> .....	ix
<i>List of Abbreviations</i> .....	xi

<b>Introduction</b> .....	1
Chapter Summary.....	1

## PART I

### LEGAL AND CONCEPTUAL FOUNDATIONS

<b>1. Substantive Scene-Setting – The Prohibition of Torture and Inhuman and Degrading Treatment</b> .....	5
Chapter Summary.....	5
I. The Evolving Prohibition of Torture .....	5
II. The ECtHR's Interpretation of Article 3 ECHR.....	7
III. Vulnerability and the Evolutive Interpretation of Article 3 ECHR....	17
IV. Interim Conclusion .....	21
<b>2. Theoretical Scene-Setting – Vulnerability Theory</b> .....	22
Chapter Summary.....	22
I. A Primer on Vulnerability Theory.....	22
II. The Work of Martha Albertson Fineman .....	25
III. Theorising Human Rights through a Vulnerability Lens .....	26

## PART II

### MAPPING THE COURT'S APPROACH TO VULNERABILITY

<b>3. A Typology of the Court's Approach to Vulnerability under Article 3 ECHR</b> .....	31
Chapter Summary.....	31
I. Overview: A Typology and Distribution of References.....	31
II. Dependency-based Vulnerability .....	40
III. Vulnerability Due to State Control.....	62
IV. Vulnerability Due to Victimisation .....	81
V. Vulnerability in the Context of Migration.....	91
VI. Vulnerability Due to Discrimination and Marginalisation .....	106
VII. Vulnerability, Pregnancy and Precarious Reproductive Health .....	112

VIII.	Vulnerability Due to the Espousal of Unpopular Views.....	115
IX.	Intersecting Vulnerabilities.....	116
X.	Underexplored Sources of Vulnerability.....	119
<b>4.</b>	<b>The Growth and Impact of Vulnerability Reasoning .....</b>	<b>121</b>
	Chapter Summary.....	121
	I. A Quantitative Analysis of Vulnerability under Article 3 .....	121
	II. The Effects of Vulnerability under Article 3 ECHR .....	124
<b>5.</b>	<b>Evaluation of the Court's Approach in Practice .....</b>	<b>143</b>
	Chapter Summary.....	143
	I. Vulnerability as a Vehicle of Exclusion and Inclusion .....	143
	II. Reticence, Selectivity and the 'Floodgates' Problem .....	145

PART III

CONTEXTUALISING AND CRITIQUING THE COURT'S APPROACH

<b>6.</b>	<b>Situating Vulnerability Reasoning in a Broader Context.....</b>	<b>151</b>
	Chapter Summary.....	151
	I. Vulnerability and Other Human Rights Bodies.....	151
	II. Vulnerability and the Context of Minority Rights .....	153
	III. Vulnerability in the Court's Non-Discrimination Jurisprudence.....	158
<b>7.</b>	<b>Vulnerability Deciphered – Human Dignity, Substantive Equality and Judicial Empathy.....</b>	<b>161</b>
	Chapter Summary.....	161
	I. On Human Dignity and Vulnerability .....	161
	II. On Vulnerability, Justice and Equality .....	172
	III. On the Court's 'Legitimacy' and Judicial Empathy .....	188
	IV. Interim Conclusion: Synthesising a Coherent Theory of Vulnerability.....	203
<b>8.</b>	<b>Conclusion – A Framework for Using Vulnerability under Article 3 ECHR .....</b>	<b>204</b>
	Chapter Summary.....	204
	I. Between Theory and Practice: Concerns about the Court's Approach .....	204
	II. Bringing Coherence to the Court's Vulnerability Heuristic.....	212
	III. Revolutionising the Revolution: Vulnerability Theory and its Guidance for the Court.....	225
	IV. Final Thoughts.....	229
	<b>A Note on Methodology.....</b>	<b>231</b>
	<i>Index</i> .....	239