Technology, Dead Male Bodies and Feminist Recognition: Gendering ICT Harm Theory

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Abstract

Drawing on anthropology, feminist science and technology studies (STS) and critical masculinity studies, this article contributes to a theory of male harm by reflecting on examples of data driven screening-practices in refugee protection and targeting practices in drone strikes as a way of making sense of the relationship between technology and men's suffering. The article identifies and unpacks the shifting composite of attention and dis-attention to male vulnerability and intersectionality residing at the heart of the gendered and racialised logic of screening and targeting. This logic produces distinctions between 'protectable' and 'undesirable' civilian bodies, where data-mediated masculinity emerges as a key attribute of this undesirability. The article ends by discussing possible methodological turns for developing a more conscious techno-legal feminism.

1.0 Introduction

Information Communication Technologies (ICTs) are now a standard part of humanitarian aid, being employed for evidence collection, risk assessments, protection work and aid distribution by NGOs, international organisations, governments, and the private sector. This includes smartphones, satellites, surveillance drones, biometric technology and social media and data aggregation platforms. These 'humanitarian technologies' perform remote sensing analysis and

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crowd mapping; individual identification through cell phone tracking, finger prints, iris scans, or facial recognition; vulnerability, needs and risk assessments; and serve as conduits for aid delivery in the form of cash-based interventions. In the context of conflict, many of the problems codified as 'human rights' violations, 'humanitarian crisis' or 'security threats' are currently portrayed as amenable to technological solutions. ICTs are being promoted and described as having the potential for being 'game changers' with respect to these crises. A growing critical literature is trying to temper this technology optimism and theorise the potential harms resulting from the use of ICTs in crisis. However, so far, no attempt has been made to critically engage with the particular role gender plays in the theorisation of harms.

Legal scholarship on conflict and suffering has, for the past two decades, been dominated by a moral and analytical concern with 'women and children' and sexual violence. While the ICT literature on conflict and suffering is more limited, this concern is mirrored in the focus on the gendered (often used in this context as a synonym for 'women') nature of digital shadows and digital illiteracy. However, when one does the body count in the physical and political world of unrest and violence— in the city and along the borderlands— those bodies by a large majority belong to a specific subset of males. Battle deaths, torture, unlawful imprisonment, disappearances and extrajudicial killings overwhelmingly affect young poor men of non-Caucasian ethnicity. Taking this empirical observation as the point of departure, my project in this article—as a feminist legal and humanitarian studies scholar— is to theorise the study of ICT harms in humanitarian crisis responses through a gender perspective with a focus on men and masculinity.[2] I argue that a greater scholarly acknowledgement of the scale and nature of this gendered form of social suffering in humanitarian emergencies is of ethical importance for feminist legal scholars beyond those interested in humanitarian issues. This acknowledgment must be accompanied by a greater theoretical engagement with 'male harm'.

My methodological approach is eclectic, drawing on reports and evaluations from humanitarian organisations (The United Nations High Commissioner for Refugees (UNHCR) in particular), media reports and scholarly contributions in the fields of anthropology, feminist and critical masculinity studies, as well as my own previous work which I have used to develop this approach. To make the conceptual argument, I borrow insights from science and technology

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[2]My feminist legal work has focused on displacement, see generally Lemaitre, Julieta, and Kristin Bergtora Sandvik, 'Shifting frames, vanishing resources, and dangerous political opportunities: legal mobilization among displaced women in Colombia' (2015) 49.1 *Law & Society Review* 5; but with some attention to technology: Kristin Bergtora Sandvik and Kjersti Lohne, *What's wrong with the idea that 'robots don't rape?* (online) 1 November 2015, <https://www.opendemocracy.net/kristin-bergtora-sandvik-kjersti-lohne/what-is-wrong-with-robots-do-not-rape> (last accessed 22 January 2018).

studies (STS), but also draw parallels between the law's and STS's blind spots with respect to male suffering, emphasising the productive interface between these bodies of scholarship.[3] I am specifically interested in the co-constitution of technological interventions and humanitarian suffering and what this means for law and the recognition of men as 'protectable' or 'targetable': ICT's are not only 'technical measures' but have explicitly gendered and political dimensions with respect to how vulnerability and harm are construed.[4] Analytically, this entails navigating determinist and constructivist perspectives on technology to focus on how technology and society engage in a mutually constitutive relationship[5].

While the present attempt at theory building— through an approach I am colloquially labelling 'techno-legal feminism'— is a limited exercise within a specific thematic domain, I hope to contribute to frame some broader topics for discussion for a wider audience of feminist legal scholars. To illuminate the co-constitutive aspects of the relationship between technology and men's suffering, I explore examples of i) data driven screening-practices in refugee protection; and ii) targeting practices in drone strikes – archetypical responses to contemporary humanitarian suffering as well as sources of humanitarian suffering that point attention to very different functions of 'humanitarian technology'. These examples are culled together from policy documents, grey literature and academic analysis. I argue that to articulate what gendering ICT harm theory entails, we must pay attention to the shifting composite of attention and dis-attention to male vulnerability and the intersectionality of masculine identities residing at the heart of the gendered and racialised logic of screening and targeting. I suggest that this logic produces distinctions between 'protectable' and 'undesirable' bodies, and that data-mediated masculinity emerges as a key attribute of this undesirability.

The article proceeds as follows: The first part surveys two strands of literature. I locate the gender-gap in emergent theories of ICT harm, using my own work with Nathaniel Raymond as an example of such gap.[6] I then map out the broader literature on law, technology and recognition of gender-harm in conflict and crisis, indicating current trends and shifts. In the second part, I explore two examples of ICT use in crisis that affect men in specifically gendered ways, namely screening of refugees and targeting of potential extremists. I also discuss what

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[3] Simon A. Cole and Alyse Bertenthal, 'Science, Technology, Society, and Law' (2017) 13(1) *Annual Review of Law and Social Science* 351.

[4] Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Harvard University Press 1995).

[5] Donald MacKenzie and Judy Wajcman (eds) *The Social Shaping of Technology* (Open University Press 1999).

[6] Kristin Bergtora Sandvik and Nathaniel A. Raymond, 'Beyond the protective effect: towards a theory of harm for information communication technologies in mass atrocity response' (2017) 11(1) *Genocide Stud Prev: Int J* 9.

constructing a male harm gender component may entail. I conclude by reflecting on how a techno-legal feminist approach capable of grappling with the reality of male harm can be developed.

2.0 From Finding Gender but Excluding Men to Finding Gender, Including Men

2.1 Locating Gender Gaps in Emergent Theories of ICT Harm

At present, many of the problems plaguing the international community—whether labeled as human rights violations, humanitarian crisis or security threats—are increasingly framed as potentially responsive to technological intervention. In parallel, entrepreneurs, technology companies and consultancies tout ICTs as having the potential for being game changers in these complex emergency contexts while curiously presenting ICTs as neutral. Signifying a new element that significantly alters an existing situation or activity, a game changing technology holds the promise of changing, not only how things are done and by whom, but what's possible within (or despite) a given context. [7] Technological utopianism—a strong and widely propagated sentiment in the humanitarian field that perhaps can be understood as a successor to the field's previous optimism attached to legalisation and soft law-making— is as a belief in technological progress as inevitable, apolitical and problem-free and in technology as the vehicle for 'achieving a "perfect" society in the near future.'[8] The burgeoning 'ICT for good' literature espouses optimistic and frequently utopian claims about the capacity of technology to mitigate political, economic, social and cultural forms of human suffering; to solve structural problems in the various 'do good' sectors that focus on conflict; and even effectively contribute to end crisis and 'make peace'.[9] This line of argumentation extends well into the domain of warfare, with the notion of data-driven precision-weapons as more discriminating and thus 'more humane' towards civilians under International Humanitarian Law. With respect to gender, focus has generally moved from a concern with women's lack of access to technology (digital shadows) to an optimistic emphasis on ICT as a unique vehicle for empowerment of women.[10]

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[7] Kristin Bergtora Sandvik. 'Now is the time to deliver: looking for humanitarian innovation's theory of change' (2017) 2 (1) *Journal of International Humanitarian Action* 8.

[8] Howard P. Segal, 'The Technological Utopians' in Joseph J. Corn (ed) *Imagining Tomorrow: History, Technology and The American Future* (MIT Press 1986).

[9] See generally the blog *iRevolutions* (online) https://irevolutions.org/ and https://werobotics.org/ (last accessed 14 February 201; and ICT4peace for examples of this perspective.

[10] Ineke Buskens and Anne Webb, *African women and ICTs: Investigating technology, gender and empowerment* (IDRC 2009); Melhem, Samia, Claudia Morrell, and Nidhi Tandon, *Information and communication technologies for women's socioeconomic empowerment* (World Bank Publications 2009).

An emergent literature has attempted to unpack these claims by problematising the historical context and ethics of ICT use in crisis.[11] This is generally done either by examining the gap between the promises made on behalf of ICT technology and their impact[12] or by elaborating on the unintended consequences of deploying ICT in various crisis settings.[13] Most recently, attempts have been made to theorise the potential harms resulting from the use of ICTs in crisis.[14] However, generally, there has been no attempt to critically engage with the role of gender in this theory-building. In the following, I will take my recent work with Nathaniel Raymond as the point of departure for addressing the gender gap in this thematic context.

In our paper 'Beyond the protective effect: towards a theory of harm for information communication technologies in mass atrocity response', we identified five considerations for an initial theory of ICT harm[15]: we argued that data security (privacy and data protection) and cybersecurity must be understood analytically through the prism of human security; that the collection and distribution of demographically identifiable information (DII) in conflicts (and disasters) can be a causal vector for harm;[16] that there is little conceptual attention to ethical tradeoffs before technology is deployed; and finally we observed that there is a need for a deeper recognition of the tensions between data for Humanitarian Service Provision (collect what you need) and Human Rights Truth Provision (collect what you can); as well as between self-protection in humanitarian cyberspace and humanitarian neutrality. While our intention was to offer some conceptual building blocks for a theory of harm, I suggest that our blatant omission

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[11] Kristin Bergtora Sandvik, Maria Gabrielsen Jumbert, John Karlsrud, Mareile Kaufman, 'Humanitarian technology: a critical research agenda' (2014) 96 (893) *International Review of the Red Cross* 219; Kristin Bergtora Sandvik and Kjersti Lohne, 'The rise of the humanitarian drone: giving content to an emerging concept' 2014 43(1) *Millennium-J Int Stud* 145; Kristin Bergtora Sandvik, 'The humanitarian cyberspace: shrinking space or an expanding frontier?' (2016) 37 (1) *Third World Quarterly* 17; Kristin Bergtora Sandvik, Katja Lindskov Jacobsen and Sean Martin McDonald, 'Do no harm: a taxonomy of the challenges of humanitarian experimentation' (2017) *International Review of the Red Cross* 1; Katja Lindskov Jacobsen and Kristin Bergtora Sandvik, 'UNHCR and the pursuit of international protection: accountability through technology?' (2018 forthcoming) *Third World Quarterly.*

[12] Kate Crawford and Megan Finn. 'The Limits of Crisis Data: Analytical and Ethical Challenges of Using Social and Mobile Data to Understand Disasters' (2015) 80 (4) *GeoJournal* 491; Larissa Fast, 'Diverging Data: Exploring the Epistemologies of Data Collection and Use among Those Working on and in Conflict' (2017) 24 (5) *International Peacekeeping* 706.

[13] Ryan Burns, 'Rethinking Big Data Digital Humanitarianism: Practices, Epistemologies, and Social Relations.' (2015) 80 (4) *GeoJournal* 477; Katja Lindskov Jacobsen 'On humanitarian refugee biometrics and new forms of intervention' (2017) 11 (4) *Journal of Intervention and Statebuilding* 529.

[14] Mark Latonero and Zachary Gold 'Data, Human Rights & Human Security' (2015) 1(16) *Date&Society* 89.

[15] Crisis settings are unstable environments where conditions themselves might ruin hardware and access to electricity and connectivity is unstable. We bracketed instances where harm is done because ICT malfunction or are implemented in inadequate or biased manners.

[16] DII can be defined as either individual and/or aggregated data points that allow inferences to be drawn that enable the classification, identification, and/or tracking of both named and/or unnamed individuals, groups of individuals, and/or multiple groups of individuals according to ethnicity, economic class, religion, gender, age, health condition, location, occupation, and/or other demographically defining factors (Sandvik and Raymond above note 6).

of 'gender' – which could have been relevant for each consideration listed above —is representative for this small but emergent field of inquiry. This raises important questions with respect to how we think about harm and technology: Whose bodies are capable of being harmed by ICT? Why, how, under which circumstances and with what consequences? How do we as feminist scholars identify and conceptualise that harm?

2.2 The Shifting Calculus of Gendered Suffering in Law and STS

As illustrated above, 'gender' is easily lost in the embryonic theory-building efforts in scholarship on ICT harm. To contribute to a conceptual framing of gender that includes 'male suffering' specifically, it is useful to start by considering the shifting calculus of gendered suffering in law and STS, respectively, to examine the gradual engagement with men and masculinity. Feminist legal studies and techno-feminist STS have followed roughly parallel tracks in their responses to violence and suffering, gradually abandoning the equation between 'women' and 'gender'. In an early phase, scholars focused on uncovering and unpacking the patriarchal nature of law and technology, respectively. The objective was to make women visible as victims as well as to use law and technology to remedy gendered injustices and to empower women through legal and technological tools. In its contemporary phase, both fields have started to unpack the consequences of this 'gendered interpretation of gender' with respect to knowledge gaps, resource distribution and legal protection.

From the early 1970s but particularly from the mid-1990s, feminists have engaged critically with international laws procedural and thematic disregard for women's issues, such as the sexual violence in Rwanda and Bosnia. As feminism has shifted from a concern with the patriarchal nature of international law to the emancipatory role of legal technology, enormous effort has gone into making crimes against women visible and punishable and into 'giving voice' to victims.[17] In an effort to grapple with this progress-and-salvation narrative, since the early 2000s or so, some feminist legal scholars have criticised the privileging of women's suffering and the optimistic view of law underpinning this agenda.[18] Critical attention has been given to the hegemony of 'women and children' in the 'protection of civilians' discourse [19] and

[17] Christine Chinkin, 'Rape and sexual abuse of women in international law' (1994) (5) *Eur. J. Int'l L.* 326; Kelly D. Askin, 'Sexual violence in decisions and indictments of the Yugoslav and Rwandan tribunals: Current status' (1999) 93 (1) *American Journal of International Law* 97.

[18] Anette Bringedal Houge and Kjersti Lohne,'End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law' (2017) 51(4) *Law & Society Review* 755.

[19] Charli R. Carpenter, 'Women and children first': gender, norms, and humanitarian evacuation in the Balkans, 1991–95' (2003) (57) *Int. Organ.* 661.

increasingly also to how the emphasis on 'uncovering' and punishing sexual violence engenders a 'political economy of rape' at the expense of attention to political nature of gendered insecurity.[20] STS scholarship on gender and technology broadly parallels women's rights scholarship's considerations of the emancipatory possibility of legal technology for women: during the 1990s, the early feminist pessimism about the inherent masculine quality of technology was replaced by a perhaps 'unwarranted optimism about the liberating potential of technoscience for women'.[21] In both disciplinary fields, men have been largely invisible as analytical subjects.

Over the last decade, in what I call the 'contemporary phase,' feminist legal scholars have begun to give specific attention to how we think about law and the ways in which men suffer in war (while it is also generally recognised that 'gender' is not reducible to a binary logic). As noted by Dowd, it is vital that feminist legal scholars recognise that men are not universal or undifferentiated; and that intersections of manhood particularly with race, class, and sexual orientation are critical to the interplay of privilege and disadvantage, of hierarchies among men, and of factors that may entirely trump male gender privilege,[22] such as refugee status. Feminist legal scholars have pointed to a knowledge deficit on sexual violence against men,[23] but also to a problematic (recent) 'calculus of losses', whereby the much higher ratio of male casualties in the conflict becomes invisible when emphasis is on women as 'the most suffering victims' most 'in need of solidarity'.[24]

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[20] Ruth Rubio-Marin, 'Reparations for conflict-related sexual and reproductive violence: A decalogue' (2012) 19 *William and Mary Journal of Women and the Law* 69; Julieta Lemaitre and Kristin Bergtora Sandvik, 'Beyond sexual violence in transitional justice: Political insecurity as a gendered harm' (2014) 22 (3) *Feminist Legal Studies* 243.

[21] Judy Wajcman, 'From women and technology to gendered technoscience' (2007) 10 (3) *Information, Community and Society* 87; Cynthia Cockburn, 'The circuit of technology: gender, identity and power' in Eric Hirsch and Roger Silverstone (eds) *Consuming technologies: Media and information in domestic spaces* (Routledge 1992) 33; Cynthia Cockburn, 'On the machinery of dominance: Women, men, and technical know-how' (2009) 37 (1) *WSQ: Women's Studies Quarterly* 269; Judy Wajcman, 'Feminist theories of technology' (2010) 34 (1) *Cambridge journal of economics* 143.

[22] Nancy E. Dowd, 'Masculinities and feminist legal theory' (2008) (23) *Wis. JL Gender, & Soc'* 201.

[23] Charli R. Carpenter, 'Recognizing gender-based violence against civilian men and boys in conflict situations' (2006) 37 (1) *Security dialogue* 83; Chloé Lewis, 'Systemic silencing: addressing sexual violence against men and boys in armed conflict and its aftermath' in Gina Heathcote and Dianne Otto (eds) *Rethinking peacekeeping, gender equality and collective security* (Palgrave Macmillan UK, 2014) 203.

[24] Isabel C. Jaramillo-Sierra, 'Finding and Losing Feminism in Transition' (unpublished manuscript on file with author). Also; Karen Engle, 'Feminism and It's (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovinia' (2005) (99) *American Journal of International Law* 778; Janet Halley, 'Rape at Rome: Feminist Interventions in the Criminalization of Sex-related Violence in Positive International Law' (2009) (30) *Michigan Journal of International Law* 1.

In a similar vein, an emergent field of critical masculinity studies have made important contributions through discussions of 'hegemonic masculinities.'[25] This literature also seeks to put issues of intersectionality and vulnerability on the research agenda.[26] STS literature emphasises the need to avoid both gender essentialisms and technological determinism,[27] and there is a sizeable STS literature linked to critical masculinity studies exploring militarised masculinities and masculinity in relation to military technologies.[28]

As noted, this article considers the interplay between technology, male suffering and humanitarianism/conflict, drawing on these areas to highlight the fact that considerable work is still required to identify and address gender-related knowledge gaps. In the nascent literature on the 'law of humanitarian action', there is scant 'male-oriented' gender-analysis of how ICTs shape the implementation of protection obligations under international law or the soft law standards of the humanitarian sector; including the impact on programming and everyday service delivery.[29] Discourses on migration in legal scholarship remain characterised by neglect or dismissal of the gendered experiences of male migrants.[30] While an emergent literature interrogates male bodies, vulnerability, and the role of technology in identity management,[31] there is very little work linking the insights on techno-feminism to critical masculinity studies in the context of violence, suffering and ICT: there is no 'techno-masculinist' analysis of conflict and suffering where ICT works in gendered ways that target and harm men in particular. As I will show in the next sections, a techno-legal feminist approach, in combining the insights of these literatures to articulate a gender component for a theory of ICT harm, can help develop an analytical understanding of gendered harms within the specific context of technology, insecurity and violence more broadly.

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[25] Robert Connell, *Masculinities* (Policy Press 1995); Robert W. Connell, and James W. Messerschmidt. 'Hegemonic masculinity: Rethinking the concept' (2005) 19 (6) *Gender & society* 829; James W. Messerschmidt, 'Engendering gendered knowledge: Assessing the academic appropriation of hegemonic masculinity' (2012) 15 (1) *Men and Masculinities* 56.

[26] Marsha Henry, 'Problematizing military masculinity, intersectionality and male vulnerability in feminist critical military studies' (2017) 3(2) *Critical Military Studies* 182.

[27] Cynthia Cockburn, 'The circuit of technology: gender, identity and power' *Consuming technologies: Media and information in domestic spaces* (1992) 33; Cynthia Cockburn, 'On the machinery of dominance: Women, men, and technical know-how' (2009) 37 (1) *WSQ: Women's Studies Quarterly* 269.

[28] Michael Salter, 'Toys for the boys? Drones, pleasure and popular culture in the militarisation of policing' (2014) 22(2) *Critical Criminology* 163.

[29] Andrej Zwitter et al. (eds) *Humanitarian Action: Global, Regional and Domestic Legal Responses* (Cambridge University Press 2014); Kjersti Lohne and Kristin Bergtora Sandvik, 'Bringing Law into the Political Sociology of Humanitarianism' (2017) *Oslo Law Review* 4.

[30] Katharine Charsley and Helena Wray, 'Introduction: the invisible (migrant) man' (2015) 18 (4) *Men and Masculinities* 403.

[31] Gill Haddow et al. 'Cyborgs in the everyday: Masculinity and biosensing prostate cancer' (2015) 24 (4) *Science as culture* 484.

3.0 ICT and the Emergency Field: Unpacking the Gendered Logic of Screening and Targeting

3.1 The Construction of Victims and 'Problematic Foreign Masculinities'

As noted above, the broad turn to ICTs in humanitarian and conflict settings is informed by sweeping progress narratives regarding technology's ability to effect social change. Donors, decision makers and practitioners believe that ICT can produce better, even perfect, data by providing more accurate (by identifying and processing more vulnerability and security cases), cost-effective and comprehensive screening of communities and individuals in insecure contexts. There is a belief that algorithms can eliminate human fallibility and help overcome the logistical difficulties with keeping records in emergency settings.

In the case of humanitarian protection programming, which is currently dominated by 'vulnerability'-language, data-driven decision making is seen to enable tracking of assistance at the individual level (for example, to determine how much of the allocated cash grant is used where, by which individuals and for what); prevent duplication of efforts, and reduce corruption, fraud and abuse of assistance and services by way of making transactions transparent.[32] In the case of 'humanitarian' targeting, data-driven decision-making is perceived to compensate for lack of human intelligence and access to 'the global battlespace'[33].

In the following, I will argue that these types of legibility-narratives work to invisibilise certain social and legal consequences: namely, how binary gender relations as embedded in law and policy documents are inscribed into the algorithms used for screening and targeting. Determinations of vulnerability and risk are typically presented as objective and neutral but are deeply subjective and political. Close attention must be given to how the demarcation of legal, political and cultural boundaries allow different identities and groups to be defined and made visible as subjects of protection.[34] For the purposes of this article, this concerns the mechanisms

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[32] UNHCR, *Information management systems, Azraq refugee camp* (online) 29 April 2014 <https://data2.unhcr.org/en/documents/download/40297> (last accessed 23 January 2018).

[33] Derek Gregory, 'From a view to a kill: Drones and late modern war' (2011) 28 (7-8) *Theory, Culture & Society* 188.

[34] Maria DeVargas and Stefania Donzelli, 'Sub-Saharan Migrants' Masculinities: An Intersectional Analysis of Media Representations during the Libyan War 2011' in Thanh-Dam Truong et al. (eds) *Migration, Gender and Social Justice* (Springer Berlin Heidelberg 2014) 241. See also; Melanie Griffiths, ''Here, Man Is Nothing!'' Gender and Policy in an Asylum Context' (2015) 18 (4) *Men and Masculinities* 468; Katarzyna Wojnicka and Paula Pustułkam, 'Migrant men in the nexus of space and (dis) empowerment' (2017) 89; Helena Wray, ''A Thing Apart' Controlling Male Family Migration to the United Kingdom' (2015) 18 (4) *Men and Masculinities* 424.

of constructing gender-identity and the ways in which masculinities are being 'othered' by way of marking them as 'problematically different'.[35]

Generally, male domination is structured around normative masculine ideals ('hegemonic masculinity'). These ideals include the marginalisation and exclusion of other than hegemonic masculinities through social relations of dominance which are premised upon, for example, heterosexuality, class relations, racism and citizenship status. The process of marginalisation and othering entails ascribing problematic attributes such as 'uncivilised', 'diseased', 'asocial', etc. to individual men or groups of men; a process that in turn facilitates their social exclusion, discrimination and violence against them.[36] Historically, in terms of refugee protection and the allocation of durable solutions, Jewish and African male refugees in particular have been labelled as undesirable or as unsuitable for international protection in the context of third-country resettlement.[37] There is a rich literature interrogating the construction of non-white men as security threats. At present, of particular relevance is the promulgation of attributes of masculine anti-sociality, irrationality, violence, savagery and hyper-sexuality associated with 'a misogynistic Arab culture and archaic Muslim religiosity': refugee and asylum policies are premised on othering masculinities by marking them as 'problematically different'.[38] Within this frame, Muslim men and asylum seekers become latent threats to Muslim women (there); Western women (here); and vehicles for violent extremism that should be eliminated (there) or detained (here)[39]. As feminist legal scholars, it is our task to interrogate how these assumptions are constructed, how they exist and matter, and how they are coded into data-driven decision-making systems. The two examples below will illuminate the construction of male suffering by providing radically opposite perspectives on 'humanitarian technology'.

3.2 Screening Refugees

My first example considers refugee protection in the humanitarian space, drawing on UNHCR policy documents and secondary literature. UNHCR is the key international actor mandated to

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[35] Paul Scheibelhofer, ''It won't work without ugly pictures': images of othered masculinities and the legitimisation of restrictive refugee-politics in Austria' (2017) 12 (2) *NORMA* 96.
[36] Scheibelhofer above note 35.
[37] Kristin Bergtora Sandvik, 'A Legal History: the Emergence of the African Resettlement Candidate in International Refugee Management' (2010) 22 (1) *International Journal of Refugee Law* 20.
[38] Scheibelhofer above note 35.
[39] Jasbir K Puar, *Terrorist assemblages: Homonationalism in queer times* (Duke University Press 2007).

protect refugees globally.[40] The development of gender-norms in international refugee law and specific categories to protect 'women-at-risk' in the application of durable solutions are some of the defining achievements in contemporary refugee management.[41] This achievement is in part premised on construction of women as victims, more or less explicitly in opposition to male refugees, who are often re-presented as either resilient, self-sufficient individuals or as perpetrators responsible for women's vulnerability. To illustrate how binary gender-constructions shape algorithmic protection, the following example focuses specifically on the representation of Syrian male refugees in the aid system and how this representation is operationalised in data driven approaches as a vehicle for identifying and prioritising the most vulnerable refugees.

A first observation concerns the relative invisibility of segments of the Syrian male refugee population across the region. Civil society reports have highlighted the 'disproportionate, and sometimes aggressive, targeting of refugee men by both government authorities and host community members', including threats to physical safety and labor exploitation, noting also how Syrian male refugees greatly fear arrest at check points.[42] Yet, as observed with respect to a 2016 report by the International Rescue Committee on the vulnerability of Syrian refugee men in Lebanon, 'there is little documentation as to the vulnerability of Syrian refugee men, so there is a perception that they don't face any.'[43] Access to protection is determined, in part, by the prevailing perceptions of vulnerability in the humanitarian sector,[44] and male suffering fits poorly in the logic of the humanitarian imaginary.[45] In the context of the Syrian conflict, this connects to this population's failure to 'look' like a beneficiary, according to Turner, who notes that 'for many humanitarian workers

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[40] The 1951 Refugee Convention and the 1967 Protocol are the cornerstone of the international legal framework to protect refugees. The refugee regime foresees three durable solutions: local integration, return and third-country resettlement.

[41] Susanne Buckley-Zistel and Ulrike Krause (eds) *Gender, Violence, Refugees* (Berghahn Books 2017).

[42] UNHCR/UNICEF/WFP, *Vulnerability Assessments of Syran Refugees in Lebanon* (online) 2016 <https://reliefweb.int/sites/reliefweb.int/files/resources/VASyR2016.pdf> (last accessed 23 January 2018).

[43] Laura Dean, *Dispatch #4: Don't Forget the Men* (LAWFARE) (online) 2 February 2016 <https://www.lawfareblog.com/dispatch-4-dont-forget-men> (last accessed 24 January 2018), referring to International Rescue Committee, *Vulnerability assessment of Syrian Refugee Men in Lebanon* (online) 2016 <https://www.rescue.org/sites/default/files/document/464/irclebanonrefugeemensvulnerabilityassessment.pdf> (last accessed 23 January 2018).

[44] Lewis Turner, 'Who will resettle single Syrian men?' (online) *Forced Migration Review* 54 2017 <http://www.fmreview.org/resettlement/turner.html> (last accessed 23 January 2018).

[45] Thea Hilhorst, *The other half of gender: are humanitarians blind to male suffering?* (online) 20 May 2015 <https://www.oneworld.nl/overig/other-half-gender-are-humanitarians-blind-male-suffering/> (last accessed 23 January 2018).

a young Syrian man "with gelled hair and turned-up fake leather collar … looks like a threat, not like a beneficiary."'[46]

With respect to legal protection, service delivery and application of the norms of the international refugee law regime, gender has very tangible effects. It has been reported, for example, that single refugee men are less likely to have registered with UNHCR in comparison to the rest of the refugee population. This results in cost-related barriers to health service access,[47] but it also impacts access to durable solutions in the international refugee regime. At the same time, within the durable solutions framework, men are *explicitly excluded because of their gender*. For example, in 2015, the Canadian government announced that it would only accept unaccompanied men who identified themselves as non-heterosexual for third-country resettlement.[48] Turner suggests that this 'reflects a view that 'authentic' refugees are women and children, who are implicitly vulnerable and in need of external assistance,' noting how, furthermore, this type of policy responds to, rather than challenges, 'Islamophobic portrayals of Muslim Arab men as threatening, and as potential terrorists, rather than as victims and survivors of the conflict in Syria.'[49]

Key to my argument, vulnerability assessments comprise a key factor in the digital exclusion of male refugees. According to the prevailing understandings of vulnerability among actors in the humanitarian field, women and children are assumed to be 'the most vulnerable', an assumption with significant material effects. For instance, many organisations work on the assumption that female-headed households are more economically vulnerable than male-headed households and therefore in need of more financial support.[50] However, UNHCR's 2015 *Vulnerability Assessment Framework Baseline Survey* for Jordan shows that a male-headed household is just as likely to be living in poverty as a female headed-household.[51] I argue that these perceptions of gender and vulnerability not only impact directly on programme priorities but also shape screening efforts and data generation that legitimise these priorities, in

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[46] Lewis Turner, *Are Syrian Men Vulnerable Too? Gendering The Syria Refugee Response* (online) 29 November 2016 <http://www.mei.edu/content/map/are-syrian-men-vulnerable-too-gendering-syria-refugee-response> (last accessed 23 January 2018).

[47] International Rescue Committee above note 43.

[48] AFP (2016) *Canada to turn away single men as part of Syrian refugee resettlement plan* (online) 23 November 2015 <https://www.theguardian.com/world/2015/nov/23/canada-syrian-refugee-resettlement-plan-no-single-men> (last accessed 23 January 2018).

[49] Turner above note 44.

[50] Turner above note 46. For an example of this see Women's refugee Commission, *Unpacking Gender: The Humanitarian Response to the Syrian Refugee Crisis in Jordan* (online) 2014 <https://www.womensrefugeecommission.org/resources/gender-issues/985-unpacking-gender-the-humanitarian-response-to-the-syrian-refugee-crisis-in-jordan> (last accessed 23 January 2018).

[51] Turner above note 46.

sum producing a mutually reinforced notion of women as vulnerable and of men's specific gendered problems as invisible and irrelevant to vulnerability considerations.

The datafication of vulnerability - at present something of a buzzword in the humanitarian field - has been gradual: UNHCR's turn to data has happened as part of UNHCR's decades long effort to organise its operations and those of its implementing partners according to the principles of 'results-based management' (RBM).[52] In 2002, UNHCR launched its 'registration modernization campaign', known as 'Project profile'.[53] ProGres, UNHCR's software registration programme which was developed by Microsoft was first launched in 2004.[54] 'RAIS' (Refugee assistance information system) was initially developed by UNHCR Jordan in 2009 to address the demands for a better coordination of partners, effectiveness and accountability, and is now the main coordination tool for assistance delivery in Lebanon, Jordan, Egypt, and Iraq.[55] UNHCR describes RAIS as 'a monitoring systems that keeps refugee information up to date, prevents duplication of efforts and helps in providing targeted assistance to persons of concerns. It also provides efficient reporting tools and maintains security of data.'[56] UNHCR also emphasizes that 'RAIS is very simple and easy to use and ensures that only important, required data is entered'.[57]

The 'VAF' (Vulnerability Assessment Framework) was launched in Jordan in 2014 to develop a 'robust model' to map vulnerabilities of the Syrian non-camp population.[58] VAF –a proxy means testing mechanism—is promoted as central to identifying and ranking demographic vulnerability through a 'vulnerability score' where 1 is low vulnerability, 2 is mild,

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[52] Kristin Bergtora Sandvik, 'How accountability technologies shape international protection: results-based management and rights-based approaches revisited' in Kristin Bergtora Sandvik and Katja Lindskov Jacobsen (eds) *UNHCR and the Struggle for Accountability: Technology, Law and Results-based Management* (Routledge 2016) 138.

[53] UNHCR, *Registration project improves profile of refugees in Mozambique* (online) 30 December 2004 <http://www.unhcr.org/news/latest/2004/12/41d42e904/registration-project-improves-profile-refugees-mozambique.html> (last accessed 23 January 2018).

[54] UNHCR, UNHCR seeks ProGres in Refugee Registration. 1 September 2004 <http://www.unhcr.org/news/latest/2004/9/4135e9aa4/unhcr-seeks-progres-refugee-registration.html> (last accessed 23 January 2018).

[55] UNHCR, *JORDAN MISSION – Assistance Master Coordination – Cross-checking Cash, voucher and NFI prior to distribution. Training of trainer guide* (online) <https://data2.unhcr.org/en/documents/download/59825> (last accessed 23 January 2018).

[56] UNICEF/UNHCR, *UNICEF and UNHCR Regional Information Management Workshop Amman, 10-12 July 2016* (online) <http://wos-education.org/uploads/wos_meetings/IM_Workshop_2016_Report_VB_(03.07.17)_For_web.pdf> (last accessed 23 January 2018).

[57] UNHCR, *Inter-sectoral Meeting – January 24 , 2014*, (online) <http://data.unhcr.org/syrianrefugees/download.php?id=4369> (last accessed 24 January 2018).

[58] UNHCR, *RAIS: Interagency Tool for: Vulnerability Scoring requesting new beneficiary lists VAF Module JORDAN Mission* (online) <http://data.unhcr.org/syrianrefugees/download.php?id=12876> (last accessed 23 January 2018).

3 is moderate and 4 is high/severe. VAF data is then fed into RAIS, to be used to make programming decisions.

According to UNHCR, these systems provide 'a comprehensive and collaborative data-driven system that features more in-depth collection of household information, and standardised definitions and benchmarks for determining vulnerability levels within different sectors.'[59] Data against VAF indicators should be collected by UNHCR at the registration stage but vulnerability is primarily to be identified through the 'Home Visit Form', a vulnerability assessment questionnaire. This form is to be filled in during household visits by UN agencies and their implementing partners to be then entered into RAIS. This information includes the estimated ability of a household to cover its monthly expenses, the number of dependents, the shelter conditions and access to healthcare, etc. [60] It is suggested that 'Partners who have identified beneficiaries for individual household assistance are able to check the 'vulnerability profile' of that household against the database by uploading a list of unique identifiers (e.g. UNHCR or Ministry of Interior registration number)'. Humanitarian actors can then allocate assistance based on the vulnerability profile.[61]

Proxy means testing and the 'social protection' agenda it is part of have been criticised on account of methodological problems, the prevalence of errors in targeting, its general neoliberal tenor and for excluding rights-based approaches.[62] With respect to VAF, emergent academic analysis has pointed to the dilemmas of decontextualisation when protection needs are quantified.[63] Practitioners have also noted inconsistencies in practice: while UNHCR relies heavily on implementing partners, the systems used for identifying vulnerability vary between UNHCR and its partners and between the partners[64], with different partners using different scorecards for example.[65] The critique I begin to outline here is a critique of the notion of neutrality and infallibility surrounding the VAF and the underlying protection logic the VAF knowledge production regime espouses. The turn to big data analytics and sophisticated

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[59] UNHCR, *The Vulnerability Assessment Framework: The basic* (online) December 2014 <https://data2.unhcr.org/ar/documents/download/42854> (last accessed 23 January 2018).
[60] UNHCR, above note 59.
[61] Hisham Khogali, Lynette Larsen, Kate Washington and Yara Romariz Maasri, 'Aid effectiveness and Vulnerability Assessment Framework: determining vulnerability among Syrian refugees in Jordan' (2014) (48) Field Exchange (online) < http://www.ennonline.net/fex/48/aideffectiveness> (last accessed 23 January 2018).
[62] Kidd, Stephen, Bjorn Gelders, and Diloá Bailey-Athias. 'Exclusion by design: an assessment of the effectiveness of the proxy means test poverty targeting mechanism' (No. 994950593502676. International Labour Organization 2017).
[63] Cathrine Brun, 'There is no Future in Humanitarianism: Emergency, Temporality and Protracted Displacement' (2016) 27 (4) *History and Anthropology* 393.
[64] Brun above note 63.
[65] Brun above note 63 and Khogali et al above note 61.

processing software does not eliminate but is rather constituted through a gendered logic applied to identify and prioritise vulnerability - and through the kind of technology optimism attached to programs like the VAF.

While UNHCR emphasises the importance of minimising the risk of excluding households or segments of the refugee population from the VAF-process, noting the risk of the incorrect categorisation of vulnerability-levels[66] I propose that this data-driven approach to vulnerability is premised on and perpetuates the same a priori exclusion of male vulnerability that permeates the refugee protection regime (and the broader humanitarian field) as a whole. The working definition of 'vulnerability' developed by the humanitarian community for the Syrian Refugee Crisis in Urban areas of Jordan is gender neutral. Vulnerability is 'the risk of exposure of Syrian refugee households to harm, primarily in relation to protection threats, inability to meet basic needs, limited access to basic services, food insecurity, and the ability of the population to cope with the consequences of this harm.'[67]

UNHCR has recognised the need to integrate a gender perspective into VAF, stating that the organisation works to clarify how additional gender sensitive analysis can be applied to the VAF models and results.[68] However, I will argue that the fact that VAF was designed without a gender perspective does not mean that it is gender neutral. Generally, there is a dearth of attention towards male vulnerability. A review of key VAF documentation from UNHCR's data portal, including VAF policy documents, evaluations, training manuals and power point presentations produced between 2013-2017 yield minimal information about men. Typically, the various VAF documents speak about, for example, women and girls in relation to sanitation or about girls and boys with respect to education – yet both VAFs technical vocabulary and VAFs analytical categories are largely silent on the lived vulnerabilities of men.

Moreover, through its mechanical determination of vulnerability as an outcome of datafication and ranking, VAF makes connections between gender and suffering invisible. UNHCR explains that gender-based violence has been deliberately left out from VAF data collection and observes that 'the vulnerabilities of Female-headed households globally tend to be linked to harder to identify protection risks'. [69] I suggest that what is performed here is a

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[66] To minimise the risk of exclusion for refugees, the VAF envisions 1) an appeals process, or fast-tracked reassessment for border line cases; 2) a periodic update of vulnerability status and 3) quality assurance of data collectors and database. Khogali et al above note 62.
[67] UNHCR, *Vulnerability Assessment Framework Guidance Note* (online) <https://reliefweb.int/sites/reliefweb.int/files/resources/VAF101.pdf> (last accessed 23 January 2018).
[68]UNHCR*, Vulnerability Assessment Framework Baseline Survey,* (online) May 7 2015 <*http://data.unhcr.org/syrianrefugees/download.php?id=8844*> (last accessed 23 January 2018) 17 fn3.
[69] UNHCR above note 68 at 17.

double act of invisibilisation. In this refugee population, it is overwhelmingly men who work outside the home and who are expected to be breadwinners.[70] Gender-based violence, sexual and otherwise, is often directed towards men because of their multiple identities as poor, refugee men. This can severely impact their coping capacity and greatly increase their vulnerability in specific gendered ways.[71] By making this connection technically invisible, VAF contributes to obscure specific forms of male vulnerability while reinforcing the notion of women's vulnerability as the key analytical problem. Essentially, my argument is that when male vulnerability is excluded from conceptualisations of protection problems, algorithmic representation and data collection efforts through the home visit form, this vulnerability will remain invisible even with an optimal implementation of the VAF.

3.3 Drone Strikes

In my second example, I build on a well-established academic literature to reflect on the constitution of gender in the global battlefield. As part of the vocabulary of 'humanitarian wars' - military interventions for ostensibly humanitarian purposes,[72] the aid sectors willingness to contain the humanitarian effects of Western armed interventions,[73] or the notion of the 'humanitarian warrior figures' saving and securing local populations [74] - there is the notion of 'humanitarian weapons', whose capacity for surgical precision and discrimination minimises civilian suffering. The deployment of weaponised drones for what was argued to be humanitarian purposes first became a reality in 2011. Citing United Nations Security Council Resolution 1973 on Libya which was passed on 6 February 2011, President Obama approved the use of armed drones, justifying their deployment as tools of humanitarian assistance for the protection of civilians, supporting a 'humanised' approach to waging war.[75]

What I want to illustrate here is, first, how the politics of drone targeting is co-constituted through a conceptualisation of civilians that excludes men in targeted communities

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[70] UN Women/REACH, Jordanian and Syrian women's labourforce participation and perceptions on employment Amman (online) September 2016 <http://jordan.unwomen.org/en/digital-library/publications/2017/3/jordanian-and-syrian-refugee-womens-labour-force-participation-and-attitudes-towards-employment#view> (last accessed 24 January 2018).

[71] A related example is given from a workshop in Zaatari camp, where the issue of men being vulnerable particularly to violence was raised but linked to their potential to commit violent acts due to unemployment Khogali et al above note 62.

[72] Adam Roberts, 'Nato's 'humanitarian war'over kosovo' (199) 41 (3) *Survival* 102.

[73] Mark Duffield, Joanna Macrae, and Devon Curtis, 'Politics and humanitarian aid' (2001) 25 (4) *Disasters* 269.

[74] Noora Kotilainen, 'Humanitarian Soldiers, Colonialised Others and Invisible Enemies-Visual strategic communication narratives of the Afghan War' (2011) *The Finnish Institute of International Affairs. Working Paper* 72.

[75] Sandvik and Lohne above note 11.

and, second, the history of airpower in targeting populations of colour. Feminist attention has been given to the notion of 'military toys' in the context of gaming[76] and to the idea of drones being 'unmanned.'[77] Yet, so far, despite the focus on how drone targeting is premised on and constitutive of a very specific conceptualisation of the term 'civilian', very few commentators have taken the step of seeing the highly gender specific (both in terms of targeting and aftermath) impact of drone strikes on civilian populations as 'gender-based persecution' or similar.[78]

The dominant politico-military rationale for the use of drones in war is that the 'drone stare' – a video feed in near-real time – allows the operator to see and strike with 'surgical precision,' not only minimising civilian casualties but also completely abstracting the risk to one's own soldiers. Such rationales for drone use in warfare are in keeping with what Der Derian has referred to as 'virtuous war.' which is founded on 'the technical ability and ethical imperative to threaten and, if necessary, actualise violence from a distance – *with no or minimal casualties.*'[79] In critiquing this military rationality, Gregory describes the visibilities and invisibilities provided by drones as constitutive of 'techno-culturally mediated ways of seeing'. Within these spaces of constructed (in)visibilities, Gregory asserts that civilians are construed to be devoid of agency, as it is virtually impossible for victims of attacks to be recognised as civilians before it is too late.[80]

However, as observed by numerous commentators, the construction of civilians is historically and geographically contingent.[81] Wilke explains that 'The genealogy of the term 'civilian' suggests that non-Europeans were not among its intended beneficiaries,' noting how 'non- European populations under European rule were called 'natives,' not 'civilians'.[82] There is a long history of regarding wide sectors of the local male population as non-civilian and

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[76] Michael Salter, 'Toys for the boys? Drones, pleasure and popular culture in the militarisation of policing' (2014) 14 (2) *Critical Criminology* 163.

[77] Mary Manjikian, 'Becoming Unmanned: The Gendering of Lethal Autonomous Warfare Technology' (2014) 16 (1) *International Feminist Journal of Politics* 48; Lisa Parks, 'Drones, vertical mediation, and the targeted class' (2016) 42 (1) *Feminist Studies* 227; Lorraine Bayard de Volo, 'Unmanned? Gender Recalibrations and the Rise of Drone Warfare' (2016) 12 (1) *Politics & Gender* 50.

[78] The only example I could find is Neha Bhat, No Man's Land: *Does the Gender Crimes Framework of the ICC Statute Cover 'Gender Based' Targeting through Signature Drone Strikes?* (online) 24 September 2013 <https://ssrn.com/abstract=2330510 or http://dx.doi.org/10.2139/ssrn.2330510> (last accessed 24 January 2018). I am grateful to the editor for pointing out Lauren Wilcox new work to me. Lauren Wilcox, 'Embodying Algorithmic War: Gender, Race, and the Posthuman in Drone Warfare' (2017) 48(1) *Security Dialogue* 11.

[79] James Der Derian, *Virtuous War: Mapping the Military–Industrial–Media–Entertainment Network* (New York: Routledge 2009).

[80] Derek Gregory, 'From a View to a Kill: Drones and Late Modern War' (2011) 28 (7-8) *Theory, Culture & Society* 68.

[81] Lauren B. Wilcox, *Bodies of Violence: Theorizing Embodied Subjects in International Relations* (Oxford University Press 2015); Helen M. Kinsella, *The image before the weapon: a critical history of the distinction between combatant and civilian* (Cornell University Press 2011).

[82] Christiane Wilke, 'Seeing and Unmaking Civilians in Afghanistan: Visual Technologies and Contested Professional Visions' (2017) *Science, Technology, & Human Values* 0162243917703463.

imminently threatening, rendering them vulnerable to a violent death that is not considered a wrong.[83] In parallel with this, it must be observed that the inception of airpower was a highly racialised project, with the objective of controlling colonial populations. The first use of airpower in Africa occurred during the Italo-Turkish War, fought in Libya in 1911–1912. In their conquest of Morocco in 1912– 1914, the French used aircraft for reconnaissance and bombing. British use of airpower to enforce civil control in sub-Saharan Africa began in 1916, in the Sudan and British Somaliland.[84] Today, the objective of targeting has changed as part of changing norms and technology. Civilians are no longer exclusively racialised as white but also predominantly gendered as feminine.[85] Women and children of all ethnic groups have become 'civilian populations' which should not be targeted or could be legally killed only under very rigorous humanitarian law requirements, and weapons have become 'humanitarian' to undertake the work of distinction. The men of the same populations, however, can now be targeted through signature strikes. Such strikes allow for killing people without exact identification: they target people—who fit into the category 'military-aged males,' who live in regions where terrorists operate and 'whose behavior is assessed to be similar enough to those of terrorists to mark them for death.'[86]

Signature strikes operate based on the idea that biological life can be numerically codified, and that this codification and its consequences are legitimate once behavior and movements of anonymous entities on the ground are identified as suspicious patterns that match certain risk profiles. Numerically codified biological life, abstracted from the individual human beings, is rendered meaningful on the basis of risk profiles and through the lens of the 'objectifying' screen technology, which ultimately justifies the lethal strike.[87]As pertinently observed by Suchman et al, security as predictive technoscience rests on a different 'apparatus of distinction' that turns the suspect/enemy into an anticipatory target that can be 'Found, Fixed, and Finished' with the help of information based on real-time tracking, data mining, and the imaginary of an omnipotent sensorium.[88] The term 'military-age male' is not defined in

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[83] DeVargas and Donzelli above note 34.

[84] *See* David Killingray, 'A swift agent of government': air power in British colonial Africa, 1916–1939' (1984) 25 (4) *The Journal of African History* 429, in Kristin Bergtora Sandvik, 'African drone stories' (2016) 8 (2) *Behemoth- J Civilisation* 73.

[85] Wilke above note 82.

[86] Spencer Ackerman, *Obama claims US drone strikes have killed up to 116 civilians* (online) 26 July 2016 <https://www.theguardian.com/us-news/2016/jul/01/obama-continue-signature-strikes-drones-civilian-deaths> (last accessed 23 January 2018).

[87] Krasmann, Susanne, 'Targeted 'killer drones' and the humanitarian discourse' in Kristin Bergtora Sandvik and Maria Gabrielsen Jumbert (eds) *The Good Drone* (Routledge 2016).

[88] Lucy Suchman, Karolina Follis and Jutta Weber, 'Tracking and Targeting: Sociotechnologies of (In) security' (2017) 42 (6) *Science, Technology, and Human Values* 0162243917731524.

military doctrine, but used by military officials in counterinsurgency operations to describe individuals who are deemed guilty, not based on evidence, but rather on their demography.[89] For example, Wilke notices that the persistent references to men in Afghanistan as well as in Pakistan's Federally Administered Tribal Areas (FATA) as 'militants' and 'insurgents' significantly narrow the category of the civilian and broaden the category of noncivilians. This new civilian/militant binary allows for new ways of coding and categorising people as well as behaviors. In this scheme, it is precisely 'the inherent hostility and dangerousness' of militants that 'justifies their death'. The civilian/non-civilian binary is reconfigured so that gender becomes a proxy for reading civilian status.[90] In sum, making male bodies targetable requires a particular process of exclusion based on the surveillance of visible, gendered attributes.

3.4 Identifying and Explaining Harm

Having mapped out the above examples of screening and targeting, I return to the starting point of this article by trying to map out some directions for theorising a gender component into ICT theories of harm. In the previous sections, I have observed that the construction of refugee protection builds on a form of positive identification of women as victims that appears to exclude men, both as individuals and male suffering more broadly, from legal protection and from access to durable solutions. Men are considered the source of women's vulnerability yet as a category they cannot themselves be as vulnerable and are thus not protectable. Drone targeting builds on but also reinforces the exclusion of men from the conceptualisation of who is to be protected by way of rendering men as legitimate targets because of their gender. What kind of theoretical observations can we get at by seeing the examples together? In the following, I will suggest that these are illustrative examples of how data mediated masculinity is becoming a key attribute of the *undesirability* of the male body that makes for this kind of gendered sorting. Vulnerability and intersectionality are key attributes of this process, either construed as the starting point for actions, or ignored in gender-exclusive ways that shape outcomes.

Male harm and male vulnerability is created through data-driven processes – coding, registration, data gathering, and everyday program execution and maintenance - that effectively remove large numbers of undesirable male bodies both from face-to-face encounters with

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[89] Micha Zenko, *Targeted Killings and Signature Strikes* (online) July 16, 2012, <https://www.cfr.org/blog/targeted-killings-and-signature-strikes> (last accessed 23 January 2018).
[90] Wilke above note 8.

decision-makers (military, humanitarian or otherwise) and from the protection guarantees of international law. Data-mediated masculinity is produced through large-scale and systematic processes of obscuring, forging or foregrounding connections between male bodies, between male bodies and cultural signifiers (law in particular), and between male bodies and temporal and geographical space. Screening and targeting are only two examples of such processes. Data driven refugee protection mechanisms – in practice representing a significant shift from a legal to a socio-technical protection regime - build on a composite of social, technical and political problem representations of gendered vulnerability that renders male vulnerability invisible, while what Merry Engle has recently called 'the seduction of quantification'[91] seems to legitimise this dis-attention. This invisibility is perpetuated through the day-to-day operation of frameworks such as RAIS and VAF, through which invisibility is being made ideologically legible according to a script that sees vulnerability assessments as infallible and where what cannot be read as algorithmic knowledge can't exist. The logics of targeting, on the other hand, *create* vulnerability by way of flattening individual subject positions in favor of algorithmic decision-making based on pattern of life data and biological traits.

Male harm is also produced through the ways in which intersectionality becomes the basis for targeting or for invisibility. Here, we can draw on Crenshaw's seminal typology of structural, political, and representational intersectionality to think about the aggregated outcome of such processes.[92] Structural intersectionality refers to the production of disempowered locations generated by intersecting structural patterns of subordination. Political intersectionality concerns how individuals find themselves silenced by their positioning at the intersection of various social categories. Representational intersectionality is linked to the construction of subjects' identities in popular culture.[93] Relying on structural intersectionality as a mechanism for producing disempowered location, the logic of drone strikes is at the same time premised on specific gendered assumptions that work in confluence with age assessments, geographical location and the associated assumptions of religious and political affiliation.

The refugee protection regime appears to deliberately ignore male intersectionality - such as age, ethnicity, nationality, and class for example - in the construction of vulnerability. This problem is both structural and particular: Humanitarian analysis has always been better at essentialism than intersectionality. As recently noted by Slim, humanitarian action has

[91] Sally Engle Merry, *The seductions of quantification: Measuring human rights, gender violence, and sex trafficking* (University of Chicago Press 2016).
[92] Kimberle Crenshaw, 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' (1991) *Stanford law review* 1241.
[93] DeVargas and Donzelli above note 34.

historically imposed single types of humanitarian identity on people but has generally not seen men and boys as fitting easily into the vulnerable beneficiary identity categories primarily occupied by women and girls.[94] The figure of problematic foreign masculinities instead serve as a foil for essentialist gender ideas: as illustrated by the refugee crisis, the practice is to homogenise migrants by race/ethnicity along the lines of a 'threat' to different actors, something which undermines their entitlements to security and protection as human subjects under international norms.[95]

4.0 Conclusion: Towards a More Conscious Techno-legal Feminism

Building on insights from 'techno-legal feminism', the objective of this article is to reflect on what attention to and inclusion of male harm looks like for a feminist theory of ICT harm. I contend that the production and exclusion of undesirable male bodies happens through a set of technological tools and a move to data driven humanitarianism. To explore the ways in which masculinity is codified in conflict I have considered how refugee protection screens men and signature strikes target male bodies. I have made the argument that humanitarian subject's bodies are constructed as protectable in highly gendered ways: regardless of the actual protection outcome for women in being identified as 'victims', the gendered binary works to legitimate and execute the exclusion of men from the protection of civilians' category and from protection programming, working to render men as legitimate targets. The article concludes with a somewhat acute proposition: namely that there will be considerable costs for the future of emancipatory thinking about gendered suffering in contexts of conflict and insecurity, for both empirical understandings and legitimacy, if a greater empirical and theoretical engagement with male suffering and how the institutions of global humanitarian governance perpetuate and co-construct male vulnerability is not embarked upon. There is a need for careful theoretical reflection on how masculinities are produced at the interface of gender, suffering, law and technology that goes beyond adding gender components to theories of harm. As a tentative example of harm, this article has put forward the concept of 'data mediated masculinities'. I conclude by making three propositions with respect to how we should go about developing a more conscious techno-legal feminism.

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[94] Hugo Slim, *Impartiality and Intersectionality* (online) 18 January 2018 <http://blogs.icrc.org/law-and-policy/2018/01/16/impartiality-and-intersectionality/> (last accessed 23 January 2018).
[95] DeVargas and Donzelli above note 34 at 243.

First, there is a need to apply the toolbox of feminist legal thinking to unpack the concepts of vulnerability and intersectionality laid out above. Feminist legal studies, critical masculinity studies and STS theories - the disciplines that together make up what I label 'techno-legal feminism' - help unpack the legal and technological underpinnings of categories such as civilians, gender and technology while highlighting the mutable interlinkages between these categories.[96] To understand how people are categorised into a binary civilian/combatant scheme, we must consider 'the intersectional matrices of gender, race, dress, and location' and look at the 'mobilization of concepts, coding schemes, epistemic presumptions, narratives of danger and security, and technologies.'[97] Importantly, the theoretical toolbox provided by the merging of FLS, critical masculinity studies and STS theories has the potential both for grappling with and encouraging uncertainty. The latter is particularly significant as a critical project in relation to the rise of technological utopianism and determinism: we need a more specific understanding of the 'irremediable uncertainties and deep-seated preconceptions inherent in discriminations between those persons who pose danger and those who are deserving of protection.'[98]

Second, in articulating resistance to this kind of techno-legal production of gendered, disposable bodies, there is a need to contemplate positionality. I suggest it is useful to refer to anthropology's struggles with the so-called 'savage' and 'suffering' slots to consider what techno-legal feminism is for. In his seminal 1991 contribution, Trouillot identified anthropology's contribution to the reproduction of Western notions of 'the primitive' as the practice of putting 'the other' in 'the savage slot.'[99] In his now equally seminal 2013 article on the 'suffering slot,' Robbins suggested anthropology had moved from engagement with 'the other' and with 'difference' to 'the figure of humanity united in its shared vulnerability to suffering.'[100] This has given anthropology an apparent 'new, politically and ethically acceptable object of study.'[101] Anthropologists have pointed to the emergence of 'new' savage slots, where migration studies and state policy have colluded in the representation of migrants

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[96] Wajcman (2007) above note 21.

[97] Wilke above note 83, citing Goodwin 1994, 626.

[98] Suchman et al. above note 89.

[99] Michel-Rolph Trouillot, 'Anthropology and the savage slot: The poetics and politics of otherness' *Global Transformations* (Palgrave Macmillan US 2003) 7. See also Lila Abu-Lughod, 'Do Muslim women really need saving? Anthropological reflections on cultural relativism and its others' (2002) 104 (3) *American Anthropologist* 783.

[100] Joel Robbins, 'Beyond the suffering subject: Toward an anthropology of the good' (2003) 19 (3) *Journal of the Royal Anthropological Institute* 447.

[101] Miriam Ticktin, 'Transnational humanitarianism' (2014) 43 *Annual Review of Anthropology* 273.

as effectively occupying a newly exoticised and racialised savage slot. [102] I suggest that techno-legal feminism has evolved both from and through similarly situated 'slots' of maternalism and difficulties with difference. Going forward, an important part of techno-legal feminisms' critical project will be to continually reappraise - and avoid - these 'slots'.

Third, I want to reiterate the need for more critical attitudes towards the arrangements and interpretations of existing quantitative data and for more detailed empirical studies of technology and gender, working to provide the bases for a detailed analysis of how ICT may cause harms in the context of conflict.[103] Critical engagement with the politics of numbers should, to a greater degree, be at the forefront of techno-legal feminism.[104] I have briefly mentioned the non-registration and non-programming of/for male refugees: this trend clearly has numerical significance, a significance which requires attention. As observed by Davis, when just over 50% of refugees are children and the percentage of adult men and women is about equal, some 75% of the refugees are women and children. Davis notes that the fact that 75% of the refugees will be *men* and children is never cited as statistically or politically significant or 'used in efforts to stir empathy for refugees or create policy or programming'.[105] The study of ICT in conflict is rapidly growing, in tandem with reports and policy analysis produced by civil society and NGOs. However, while socio-legal scholars use bits and pieces of STS to formulate conceptual critiques, so far, there have been few empirically driven studies of how technology, law and gender interact in the global emergency field. This is likely connected to the relative neglect or dismissal of the gendered experiences of male migrants and their vulnerabilities in legal scholarship, often casting men as oppressing their families or abusing legal channels of migration.[106] The diffusion of non-human objects such as ICTs 'generates new political settlements', which, in themselves, constitute a form of institutional power.[107] Algorithms have politics; they are neither neutral nor natural, and we need to know more about their gendered consequences.

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[102] Paul A. Silverstein, 'Immigrant racialization and the new savage slot: race, migration, and immigration in the new Europe' (2005) (34) *Annu. Rev. Anthropol* 363.

[103] Jelke Boesten, 'Of exceptions and continuities: theory and methodology in research on conflict-related sexual violence' (2017) 19 (4) *International Feminist Journal of Politics* 506.

[104] This includes a more comprehensive theoretisation of the concept 'techno-legal consciousness', understood as a composite of technological, legal, rights and risk consciousness.

[105] Rochelle Davis, *Syrian men as vulnerable: rethinking refugee categorization* (online) 2017 <https://sfs.georgetown.edu/syrian-men-vulnerable-rethinking-refugee-categorization/> (last accessed 23 January 2018).

[106] Charsley and Wray above note 30.

[107] Daniel R. McCarthy, 'Technology and 'the International' or: How I Learned to Stop Worrying and Love Determinism' (2013) 41 (3) *Millennium: Journal of International Studies* 470.