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VULNERABILITY AND ASYLUM. TAXONOMIES, RESTRICTIONS, AND ENLARGEMENTS

ABSTRACT. This article explores the concept of vulnerability in the political asylum in the light of its potentialities and the deep ambiguities encompassing this concept in the humanitarian grammar and the policies of protection. Theoretical fields such as feminist political philosophy and social anthropology have advanced precious analysis on vulnerability taking it as a constitutive element of the human condition, yet unevenly distributed condition and always politically structured. Nevertheless, when the vulnerability has been coded by humanitarian and political govern on refugees, its de-historicising and disempowering force, together with paternalistic responses that it traditionally evokes, have found new strength. Thus, in front of black, impoverished, suffering subjects (especially women and children) in need to be saved and protected, the vulnerability turns back to be an ascribed feature, a hypostatised and de-politicised identity characterising specific individuals or groups. In the light of these theoretical perspectives, this paper dialogues with literature and research have already developed a critical gaze on the ways in which vulnerability has become a moral criterion through which receiving contexts establish taxonomies between worthy refugees and migrants not deserved protection.

In the early nineties, whilst the Global North States and their humanitarian agencies started introducing vulnerability as a key category in guidelines and protocols concerning refugees, migrants seeking protection were getting more exposed to violence, abuse, and oppression along the migratory routes. In the years of The Common European Asylum System (1999) establishment enacted to harmonise Member States' national protection systems and to promote the EU as "an area of protection for people fleeing persecution or serious harm in their country of origin", the same European countries and institutions increasingly tightened border externalisation (mainly through bilateral agreements with countries of origin and transit), created border zones both along the migratory routes and on the European soil, and managed asylum seekers and refugees' arrivals mainly through policies of confinement. The same occurred along the South America route toward the United States, especially on the Mexico-US borders (De León 2015), on the Australian frontiers,[1] or within African regions, where the Global North humanitarian agencies (especially, UNHCR and IOM) still manage asylum seekers and displaced persons. This double track's apex - the use of vulnerability by the Global North States to appoint themselves as saviours of injured subjects by persecution and abuses in their contexts of origin and the simultaneous exposure of migrants to borders violence by these same States - was reached between 2016 and 2019, when the UN Assembly

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[1]   https://www.monash.edu/arts/border-crossing-observatory/research-agenda/australian-border-deaths-database.

signed the New York Protocol (2018). This latter - which in several articles refers to vulnerability - laid the foundation for the Global Compact for safe, orderly and regular Migration and Global Compact on Refugees (for a critical view, see Atak, Nakache, Guild, Crépeau 2018).[2] In these documents, vulnerability appears as a humanitarian and political canon to strengthen human mobility global government, also highlighting the profound contradiction between political proclaims and the real situations that refugees are currently forced to live - such as in Turkey or along the border wall with Syria, in Libya, in the Aegean Islands, or along Eastern Europe ground routes.

Which idea of vulnerability has been coded by the global humanitarian and political government on refugees? Furthermore, how vulnerability is used to classify and assess refugees, and what about its relapses in responding to collective or individual hurts? The vulnerability category should allow a specific and broader chance of protection to asylum seekers and refugees who suffered from violence, trauma, abuse, or living in deep psychological or social unrest situations. However, this category "often seems to function as an implicit or explicit access criterion" (Flegar 2018, p. 375) to resources and justice and to regulate refugees' inclusion and exclusion in the migratory context. Moreover, if vulnerability functions as an exclusion criterion, it

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[2] New York Declaration for Refugees and Migrants, New York, 13 September 2016, United Nations General Assembly Document No. A/71/L.1. See also IOM https://www.iom.int/global-compact-migration.

also needs to look at what means to be included and the posture that the subject must take to show his/herself as vulnerable.

This article explores the concept of vulnerability in the political asylum in the light of its potentialities and the deep ambiguities encompassing this concept in the humanitarian grammar and the policies of protection. Theoretical fields such as feminist political philosophy and social anthropology have advanced precious analysis on vulnerability taking it as a constitutive element of the human condition, yet unevenly distributed condition (Butler 2004, 2016) and always politically structured (Bourgois 2017). Nevertheless, when the vulnerability has been coded by humanitarian and political govern on refugees, its de-historicising and disempowering force, together with paternalistic responses that it traditionally evokes, have found new strength. Thus, in front of black, impoverished, suffering subjects (especially women and children) needing to be saved and protected, the vulnerability turns back to an ascribed feature, a hypostatised and de-politicised identity characterising specific characteristics individuals or groups. In the light of these theoretical perspectives, this paper enters into dialogue with literature and research have already developed a critical gaze on the ways in which vulnerability has become a moral criterion through which receiving contexts establish taxonomies between worthy refugees and migrants not deserved protection.

Rethinking vulnerability. Historical dimension and political responsibility

In these last years, vulnerability – from Latin etymology *vulnus* (wound), *vulnerare* (to wound), and concerning the subject *vulnerabilis* (one who could be wounded) – has been put at the core of a sophisticated reframe by feminist political philosophy (Butler 2004, 2016; Gilson 2013, 2016; Ziarek 2013). Initially, such reframing interpellated the hegemonic imaginary ("of the industrialised, capitalist Western parts of the world", Gilson 2016, p. 74), which associated the term vulnerability to a constitutive and originating passivity of the body and subject, specifically of women, which in turn involved a distorted analysis of dominion and power. For instance, the analysis of violence or rape was anchored in the idea of a violable body by its nature exposed to abuse, instead of turning to the working of power and dominance structures and the ways in which they themselves make certain bodies more exposed than others to prevarications.[3] Immediately, these reflections expanded to a broader critique capturing relevant dichotomies: the vulnerability defined as the opposite of resistance and action, vulnerable body as the contrary of the political subject, and finally, the conviction that political subject (and his/her transformative agency) is who is not susceptible by wounds. One of the main consequences of these ways of conceiving vulnerability to label specific groups or individuals (historically the

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[3] See for instance Gilson (2016), Code (2009), Bergoffen (2011) for their analysis of rape in war and peace times.

women, but currently also certain categories of individuals representing perfect icons of repression and compassion, such as veiled women as the emblem of patriarchal oppression, children as the perfect image of impotence, refugees showing clear signs of violence and suffering) is to hypostatise them in a permanent temporal condition of weakness, dependency, and devoid of any agency. Here, vulnerability becomes an absolute position and the only variable defining the (vulnerable) subjectivity at the expense of other experiences, identities, desires through which she/he perceives the own self, history and future, or testifies endured injustices. If conceived through these oppositive dichotomies and deprived of a historical and temporal dimension, vulnerability and vulnerable subject only can find as the remedy to their condition the paternalism - which in its own sense is intended an external action performed by the state or an individual toward another individual, also against his/her will, in the name of safety and freedom of this latter and motivated by the conviction that this action is the best resolution to his/her wellbeing and protection. The will to give "a more comprehensive understanding of vulnerability" capable to "steer clear of predetermined oppositions and dualist patterns of association" (Gilson 2016, p. 78) has had as its primary objective that to contrast processes of de-historicization and de-politicisation both of vulnerability and violable/injured subject. It means that vulnerability must be recognised as "a condition of potential (rather than fixity)" (Gilson 2016, 78) and that the discourse must shift from "objectionable ontological claims about the constitutive vulnerability" of certain bodies (Butler, Gambetta,

Sabsay 2016, p. 2) toward "a social and political account about how the vulnerability is produced and distributed" (*ibidem*). The road that led to this re-articulation of vulnerability is grounded on two core issues: 1) vulnerability and violability are "ineradicable dimensions of human dependency and sociality" (Butler 2004, p. XIV) and "loss and vulnerability seem to follow from our being socially constituted bodies, attached to others" (*ivi*, p. 20); 2) starting with the recognition that vulnerability is an unavoidable dimension of the human condition, in which ways it can be mobilised to rethink political action, resistance and ethic? (Butler, Gambetta, Sabsay 2016; Ziareck 2013, p. 68). Butler's insight that (all) the bodies imply mortality, vulnerability, agency (2004, p. 26) and that also the resistance and struggles for justice expose bodies to the vulnerability of power has led to conceive violability as the point to rethink resistance and alliances, and to question policies of the state and social injustice.

Vulnerable postures and humanitarian grammar

Since the 2000s, the category of vulnerability has pervaded many international humanitarian agencies documents (guidelines, protocols, manuals for personnel working with refugees). To those, there were added laws and agreements (e.g., EU-

Reception Conditions Directive) and means[4] to measure the vulnerability level of specific refugees' categories. However, instead of offering a clear and shared definition of vulnerability, these documents list categories of subjects or groups that, according to the circumstances, may be considered as vulnerable. In some instances, vulnerability is established on the basis of individual characteristics, such as trafficked or stateless persons, individuals with physical or mental disabilities or having endured violence and abuse; in others, it is instead the belonging to a particular "social group" to constitute the assessment criterion, for instance, children, older people and women,[5] especially if pregnant, alone with children, or the victims of sexual/gender violence.

As the literature on asylum has already pointed out, a first critical gaze on vulnerability as a mean of classifying and assessing refugees may nourish and justify restrictive policies towards those who are considered as less or not vulnerable. In turn, this distinction can permeate the public discourse replacing the traditional (already hierarchical) distinction between refugees and economic migrants with that between deserving refugees and other categories of asylum seekers. Finally, the

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[4] UNHCR 2016 gives indications about to identify 'low, medium or high rating of vulnerability'; the 2020 EASO Asylum Report lists procedures to identify vulnerable applicants; the same agency offers a Tool for identification of persons with special needs.

[5] International humanitarian agencies seem to consider women as a vulnerable group per se; nevertheless, in some instances they emphasize 'a more nuanced approach with regard to this vulnerability label' (Flegar 2018). I remind that the classification of women as a social group – so coded by humanitarian language - has been harshly criticized by feminist perspective, especially postcolonial feminism.

multiplicity of legal and humanitarian definitions of vulnerable refugees and vulnerability entails a certain imprecision level and especially of arbitrariness, which in turn may involve profound protection inequality. One person, for instance, or one vulnerable group, may be protected by the asylum law of one country and not recognised as such in a neighbouring one (see Hruschka, Leboeuf 2019).

Nevertheless, a more in-depth gaze allows capturing how the dichotomies and associations so well questioned in the theoretical debate express their full vitality in the field of asylum and in the humanitarian government addressed to it. In the field of asylum, this vigour must be analysed in light of colonial legacies, sedimented global structures of inequality,[6] and contemporary imperialism deeply still affecting the codification of violence and vulnerability and the injured subject his/her access to asylum and protection. By exploring asylum claim based on gender violence, several studies let emerge how "refugee woman" (the culturally othered woman, Razack 1995) represents the perfect icon of passivity and of the vulnerable female subject in need to be protected by her *oppressive/patriarchal* culture. They also highlighted the victimising posture these women must take to gain more chance to see their protection request recognised. In these analyses, asylum claims and border procedures emerge as (gendered) "racialised events", "an encounter between powerful and powerless, and the powerful are always from First World and mostly

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[6] See Herzfeld (2004, pp. 2-4) on the ways in which global hierarchies of value are rooted in historical structures of inequality.

white, while powerless are from Third World and nearly always racialised and ethnicized" (Razack 1995, p. 46). It means that vulnerability – and the vulnerable subject – is not neutral from an ethnic, racial, class and gender point. On the contrary, fixed, stereotype and ahistorical ways of conceiving the (no Western/from the Global South) 'culturally othered' subject and his/her needs deeply resound in the ways in which the Global North offers "safety and freedom" to those subjects who have been wounded by "their culture" or by persecutions lived in their places of origin. The lengthy work already developed by postcolonial critique concerning the ways in which these colonial legacies are constantly recoded in the present to read the Global South subject, his/her belongs and cultural models, is particularly useful to understand the de-historicization and de-politicisation processes of this same subject and of inequality structures having wounded him/her. This perspective is also helpful to analyse the paternalistic response to vulnerability as the Western gift of freedom (Nguyen 2012).

One of the main consequences of the ways in which vulnerability is used by the powerful national and international actors (e.g., the receiving contexts or humanitarian agencies, which in theory should guarantee safety to refugees) to label certain categories of refugees is that already emphasised by political philosophy. Namely, conceiving vulnerability as an absolute position, capable of absorbing any other positions and experience implies hypostasizing refugees in a permanent position of weakness, dependency, and lack of agency, and cancelling relation with

own story and sense of future, and so does the value of testimony. Concretely, the vulnerability in the asylum is first a process of identification and assignment performing within a humanitarian, legal and bureaucratic rituals between the North Global actors (depending on the contexts, IOM, EASO or UNHCR personnel, NGOs social workers, police forces, working alone or in concert one with each other)[7] and men, women and children from the Global South. The first problem is that the selection between who is or not vulnerable is based on 'a belief that vulnerability is a characteristic which is easily identifiable and objectifiable in an individual' (Freedman 2019, p. 7), but the second concerns the neoliberal humanitarian response and forms of social control (Flegar 2018, p. 375) that subjects who have been evaluated as vulnerable receive as protection. Thinking to the previous example on women as a 'social group', in Sexual and Gender Violence UNHCR guidelines (2003), violence against women seems to be dependent on 'their culture' of origin,[8] of which refugee women bring the signs on their bodies. The humanitarian response to women protection lies in helping them to become 'agents of change' (UNHCR 2003, p. 25) and to develop "awareness and emancipation", as though these women did not their own ideas and social meanings to interpret these issues or to conceive their bodies or experiences, or as though these values would be exclusively Western prerogatives. If the vulnerability evaluation excludes some subjects or groups from

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[7] For instance, in the hotspot areas located in Greece and Italy (Tazzioli); first arrivals or border zones in the extra-EU contexts.

[8] Violence is described as 'harmful traditional practices', see for instance p. 18.

the possibility to have adequate protection, it is also the process of a (possible) inclusion to capture the arbitrariness of criteria through the recognition process of signs making an individual vulnerable. As Freedman points out, one of the main problems concerning the signs "through which one decides who is vulnerable" (2019, p. 7) is that while a pregnant woman or a visible bodily sign (handicap, for instance) can be easily identified, how "more hidden or invisible forms of vulnerability such as mental illness and post-traumatic stress, among others" (*ibidem*), be recognised? As the literature on trauma, violence, protracted suffering highlights, the memory and narrative of violation are crossed by silence and reticence rather than an easily translatable word or a language into a bureaucratic, legal, or humanitarian grammar. Within a broader debate on the nexus between violence-trauma and political asylum, the repercussions that vulnerability assessment practices such as those illustrated have received important analyses concerning the postures refugees "have to show in order to gain the consideration of vulnerable" (Freedman 2019) (for instance, dependency, weakness) and the regimes of truth to which refugees' testimony must correspond (see, for instance, Beneduce 2018; Fassin 2008).

Continuum of violence and vulnerability

Rather than a tool to identify and recognise the real structural causes having generated vulnerability in order to support the survivors to re-articulate their

collective or individual hurts without transforming them into icons of victims, the vulnerability has become a label through which to create a hierarchy of deservingness. The same proliferation of humanitarian and political definitions[9] shows how the vulnerability, together with the classification processes it implies, appears as a set of means through which "NGOs and intergovernmental bodies measure the vulnerability of human lives" (Schwartz 2019, p. 74).

In the anthropological debate interested in the processes of care wounds inflicted to marginalized subjects and groups, the vulnerability concept has been elaborated as structural vulnerability. It refers "as a *positionality* that imposes physical-emotional suffering on specific population groups and individuals in patterned ways, structural vulnerability is a product of class-based economic exploitation and cultural, gender/sexual, and racialised discrimination, as well as complementary processes of depreciated subjectivity formation" (Quesada, Hart, Bourgois 2011, p. 340). The emphasis (of the author) on the term *positionality* is central to stress "individuals are structurally vulnerable", namely "the vulnerability of an individual is produced by his or her location in a hierarchical social order and its diverse networks of power relationships and effects" (*ibidem*, p. 341). This reflection, together with its practical relapses (for instance, concerning the way in which care and protection processes are

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[9] See for a synthesis Principles and guidelines for migrants in vulnerable situations drawn up by the United Nations Human Rights (2018) and The Global Compact for Safe, Orderly and Regular Migration (GCM) - First-Ever Global Compact on Migration endorsed by United Nations General Assembly in 2018.

enacted), is entirely relevant in shifting the analysis of vulnerability condition from an individual level of fault, moral evaluation and commendation towards an analysis of social injustices, as well historical and political processes that generate conditions of vulnerability.

Rather than drawing attention to the vulnerability as the assessing element of the subject (in this case, the Global South refugee), this perspective looks at the relationship between refugees and experiences that have made them vulnerable (such as economic and social systems of poverty, political violence, persecution, oppression) and especially sheds light on the ways in which social and institutional structures - called to alleviate suffering (in this case, places and institutions of protection) and to respond to a social bond of protection - are instead responsible for the reproduction and strengthening of violence and inequality. These final reflections take up the theoretical insights already highlighted and lead us to analyse the close relationship between vulnerability and the political responsibility of vulnerability.

One of the main paradoxes of governmental and humanitarian intervention on asylum emerges looking at the nexus between vulnerability and geopolitical context. As Freedman writes, "the closing of many borders on the so-called Balkan route and the EU-Turkey Agreement of March 2016 have further restricted refugees' possibilities of reaching the EU and have forced them to take even more dangerous and difficult routes" (Lovertt, Whelan and Rendon 2017). While the Global North States define themselves as "safe countries" subscribing protocols and directives to guarantee

protection to the vulnerability, these same countries manage human mobility mainly through co-operation policies with countries of origin and of transit reinforcing externalisation border agreement. Last years' research, for instance, has widely documented how the Italy-Libya Treaty (2007, and its subsequent Memorandum, 2017)[10] deeply exacerbated the exposure to violence, severe abuses, trafficking, and exploitation of women and men within Libyan camps; it has also highlighted the rights violation, abuses and unsafe living conditions of Syrian refugees after the EU-Turkey Agreement, and the fierce insecurity Latinos migrant families are exposed to along the USA route (De León 2015; Marchand 2008).

When women, men and children reach North Global countries, they often must face up with further paradoxes. Firstly, the vulnerability identification procedures often run the risk to fail completely. Refugees arriving in Italy and Greece through the Mediterranean Sea, for instance, have to wait for identification procedures within the *hotspots areas* which are run by Frontex and national police - sometimes in concert with humanitarian actors. Many of research carried out in these main EU enter points have documented the institutional responsibility in letting humanitarian figures or often to security forces personnel lacking expertise in recognition of the deep signs of abuse (in the sense of long-term consequences of violence experiences - such as loss

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[10] The Treaty on Friendship, Partnership and Cooperation between Italy and Libya (e.g., https://www.hrw.org/news/2009/09/23/italy-libya-connection). See also Cotonou Agreement 2000 https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/cotonou-agreement_en , EU-Turkey 2016 https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/ .

of care capability or action, recalcitrancy, shame, mental distress) the task to evaluate who is or not vulnerable. From the refugees' standpoint (included violated women, minors, abused young men), it is pretty difficult to declare experiences that made them vulnerable within a context in which humanitarian and control roles are completely overlapped or to share pain and fear with personnel who lack expertise in recognising signs and reverberations of violence. An in-depth analytical gaze has caught the consequences of the paternalistic protection as a response to vulnerability based on "dominant conceptions of vulnerability and of action" presupposing (and supporting) "the idea that paternalism is the site of agency, and vulnerability, understood only as victimisation and passivity, invariably the site of inaction" (Butler, Gambetti, Sabsay 2016, p. 1). This analytical key has suggested how the "gift of freedom" (Nguyen 2012) offered by the Global North to refugees aiming "at freeing peoples from unenlightened forms of social organisation' often occurs 'through fields of power and violence" (*ibidem*). As a result, the attempts to remove the vulnerability (to promote action and freedom - as if refugees lack own proper ideas of resistance and political subjectivity) end up replacing "one form of social control with another" (Hirschmann 2003, p. 177), reinscribing bodies and lives of these men and women in new paternalistic order. Several anthropological research carried out on policies of assistance in the USA (Ong 2003), within the EU-camps or in third countries managed by international humanitarian agencies have shown how – in continuity with a colonial legacy – the sedimented imaginary on refugee as

vulnerable subject opposite to that of political agent (therefore a subject to be solicited to action, to be made autonomous) legitimises a control on refugee men and women bodies, on their reproduction practices and family care, their movements and daily life choices. Often overlapping with direct surveillance forms, these pedagogical interventions aim to make refugees autonomous individuals and instil in them a proper moral and a modern ethic of the self.

Conclusion

To the injustices causing persecution, abuse, economic deprivation, and death, a further global hierarchy of inequality inscribes itself regulating access to justice and enveloping the refugees seeking protection in the gears of humanitarian and political government. This unequal order is strengthened by a discursive register that, in the field of asylum, still anchors the vulnerability to a continued and constitutive absence of agency, fuelled by a persistent colonial canon that sees in the cultural and violated subject of the Global South the one who can be eventually saved and protected by paternalistic interventions that will make him/her autonomous and emancipated. Nevertheless, not all refugees are considered as vulnerable, neither the exile condition is enough to consider them as subjects wounded by history. The vulnerability becomes, in this sense, a regulating criterion to assess those who are worthy and those who are not vulnerable enough to deserve protection. Nevertheless, the ways in

which vulnerability has been reframed offer precious analytical keys to rethink the nexus between *to be wounded* and asylum. The politically and socially structured vulnerability does not only shed light on the structural conditions of dispossession causing pain and oppression, flight and asylum claim. Instead, it interrogates social structures, which in theory should redistribute justice and resources to unveil how the sedimented ethnic, racial, class and gender discriminations that these structures embody and repeatedly nourish instead of alleviating suffering, make vulnerability as an enduring condition perpetuated and reinforced by the places of arrivals. In this sense, anthropological perspectives urge political engagement in wound repair processes shifting the analysis from evaluation of subject to institutional and social responsibility nourishing vulnerability and suffering. Philosophical feminist debate on vulnerability does not limit itself to emphasise how violability dwells alongside action and resistance. Instead, vulnerability is put at the core to rethink contemporary political life starting with the loss and suffering and those who - having been wounded – show the fragility of the human condition. Thus conceived, vulnerability may be mobilised to reframe responses to violability and collective hurts and assert the political value of subjectivities having lived abuses, displacement, borders violence to think new forms of alliance and shared communities.

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