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**Urquiza-Haas, Nayeli (2017) Mistranslating Vulnerability: A defence for hearing, Tilburg Law Review 22 (2017) 5-30**

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### **Abstract**

Immigration case-workers in the UK hear endless stories about flight and persecution by people claiming asylum. However, asylum claims are fragile due to the logocentric foreclosures to the acoustic registers in asylum testimonies. In view of the fragility of refugee narratives of flight, legal safeguards aim to create the right conditions for interviewees' testimonies. Yet, this article suggests refugee status determination processes side-line the sound of vulnerability by falsely interpreting testimonies that appear to be incomprehensible as untrue or as exceptional accounts of vulnerability. But silenced or fragmented testimonies are not necessarily untrue or devoid of meaning; their meaning is tied to the marginalization of phone in the logocentric logic in law. Instead of accepting the voices of asylum-seekers as aphonic, this article heeds the call to hear the acoustic uniqueness of testimonies, drawing on Adriana Cavarero's vocal philosophy.

### **Keywords**

vulnerability – asylum testimonies – Cavarero – logocentrism – vocal philosophy

Oh miserable, what cry am I to utter?

What sound, what lament...<sup>1</sup>

## **1. Introduction: The fragility of pleading for a safe space**

Asylum seekers must present credible testimonies in order to gain refugee status and benefit from the protections available under international and domestic legal frameworks. To qualify for refugee status, or other subsidiary protections, asylum-seekers must demonstrate a “well-founded fear of persecution”. As defined under international refugee law, a refugee is a person who:

‘[...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, unwilling to return to it’.<sup>2</sup>

Human rights guidelines and principles in different legal systems are geared to create the conditions for a fair hearing. However, scholarship in this field notes how miscommunication, mistranslation, mishearing, of the asylum-seeker testimony often undermine the process for determining refugee status. In some cases, interviewers fail to ask the right questions to avoid talking about sensitive topics such as sexual violence.<sup>3</sup> Researchers interpret this avoidance as a coping mechanism meant to prevent empathic responses towards stories of trauma from asylum-seekers.<sup>4</sup> Elsewhere, scholars propose that a culture of disbelief predisposes decision-

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<sup>1</sup> Victoria Wohl, *Euripides and the Politics of Form* (Princeton University Press 2015) 51.

<sup>2</sup> Convention Relating to the Status of Refugees [Refugee Convention] (Geneva, 28 July 1951) 189 U.N.T.S. 137, entered into force 22 April 1954.

<sup>3</sup> Helen Baillot, Sharon Cowan and Vanessa Munro, ‘Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context’ (2013) 40 *Journal of Law and Society* 509.

<sup>4</sup> Heaven Crawley, ‘“No One Gives You a Chance to Say What You Are Thinking”: Finding Space for Children’s Agency in the UK Asylum System’ (2010) 42 *Area* 162.

makers to hear falsity from gaps within testimonies. Silences, ‘gaps’ in the stories, and contradictions become signs of suspected dishonesty in accounts of persecution told by asylum-seekers. When an asylum-seeker cannot speak fluently in the language of the potential host, it is the role of the interpreter to equalize the asylum-seeker’s position vis-à-vis the state, by respecting their rights to due process in accordance with the law, including, the right to a fair hearing. But, hearing, translating, and interpreting what a story of persecution is a complex and by no means a direct and unmediated transformation of one language into another.

Indeed, the stakes are high in the process of telling and hearing stories of persecution as failure to hear and ‘translate’ a story, because it may sound false or incoherent to the ears of the law, may lead to the marginalization of asylum seekers. Hightower and Anker suggest that legal marginalization implies that someone standing on the edge of the law is not yet clearly recognized as being bound to a polity and an enforceable system of rules. Etymologically, *margo*, from which the word “margin” derives, means “edge, which means people stand in a paradoxical position which is neither inside nor outside yet nevertheless in a relation with the law.”<sup>5</sup> However, Hightower and Anker stress that what is at the edge can be also be moved, related and associated in different ways. This means legal marginalization is not static. Viewed this way, lines and borders create the conditions for inclusion and exclusion but these demarcations also create the “possibility of hybrids, associations and transgressions.”<sup>6</sup> In this sense, translation is the concept best suited to mobilize those subjectivities suspended in margins of the law, since *translatio* in Latin and *metapherein* in Greek mean to ‘pass over’ or ‘carry over’.<sup>7</sup> Even though translation exists because there is a boundary or line that impose rules and barriers to the movement of people or how they should or shouldn’t tell a story of persecution, I regard the activity of translation as that which mobilizes the vocal register of speech, and with it,

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<sup>5</sup> Ben Hightower and Kirsten Anker, ‘(Re) Imagining Law: Marginalised Bodies/Indigenous Spaces’ (2016) 29 *Revue internationale de Sémiotique juridique* 1

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.* 2.

marginalized stories of persecution are able to cross over the boundaries of the law.

Modern linguistics describes the voice as the prime carrier of speech. The phonetic component of language is taken to be the basic unit of language where sounds become syllables and syllables assembled together become nouns and verbs, which in turn are assembled according to the rules of syntax to compose meaningful sentences.<sup>8</sup> Thus, voice is a necessary condition of a plea for refuge. However, credibility assessment procedures undercut the ability to hear that voice. Recognized as one of the most challenging aspects of refugee determination procedures, these assessments mirror a legal convention that valorizes linear and coherent narratives. Wherever contradictions emerge in the story of persecution, decision-makers run the risk of mishearing what was said. These failures could give the impression that the law is deaf in one ear. Instead, it might be that specific conventions in legal thinking have desensitized the law to what it perceives as incoherent and incomprehensible sounds. Deaf legal ears can hear only the loudest sounds, the cries that signify exceptional accounts of vulnerability. Conversely, aphonic testimonies, silenced throughout the process, tend to get marginalized. Instead of accepting the voices of asylum-seekers as aphonic, this article heeds the call to ‘hear the right gaps’.<sup>9</sup> Silenced testimonies are not devoid of sound; the sound is in the margins. At the same time, I do not wish to suggest the process of translating silent gaps in the testimony into sound is necessarily benign or hostile. Instead, it is simply the activity of moving the phonic components of asylum-seekers’ stories within across, or beyond, the lines demarcated by the law. Thus, translation denotes the possibility of moving silenced testimonies away from the edges of law by recovering the sound of vulnerability.<sup>10</sup>

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<sup>8</sup> Adriana Cavarero, *For More than One Voice: Toward a Philosophy of Vocal Expression* (Paul Kottman tr, Stanford University 2005)

<sup>9</sup> Helen Baillot, Sharon Cowan and Vanessa Munro, ‘“Hearing the Right Gaps”: Enabling and Responding to Disclosures of Sexual Violence within the UK Asylum Process’ (2012) 21 *Social & Legal Studies* 269.

<sup>10</sup> In discourse, the word testimony in asylum cases embodies two different meanings. One comes from the Latin *testis*, which ‘signifies a person who in a trial or lawsuit between rival parties, is in the position of the third party’. The second meaning derives from *superstes*, which refers to a survivor who is also witness to an event. Giorgio

To flesh out the traces of sound in the silence, the first section examines vocal philosophy by Adriana Cavarero,<sup>11</sup> and suggests that legal hearing is wedded to the metaphysical voice of reason. Testimonies that do not cohere with the conventions set by the metaphysical voice of reason, a mode of thinking also found in the legal context, are at greater risk of being silenced. Specifically, I argue that the refugee status determination process sidelines the sound of vulnerability by falsely interpreting testimonies that appear to be incomprehensible as false. In the second and third sections, I examine two instances that illustrate the hypothesis stated above. The first one shows how the sound of vulnerability is sidelined in the contemporary refugee determination process. Based on research focused on communication discontinuities throughout the refugee determination process in the United Kingdom (UK), I first question how testimonies are stylized and sanitized by this heavily regulated environment. The process itself may render these accounts incomplete as incoherent accounts of persecution, but these failures are usually attributed to the potential falsehood of the testimony. Instead of interpreting silences and incoherent stories as potentially false accounts, I suggest adjudication authorities fail to hear the sound and fury underpinning pleas for refuge. Thus, the second instance recovers the sound of vulnerability underpinning asylum-seekers' testimonies through Ancient Greek literary sources and explains why the law conceals these sounds. Drawing parallels between the status determination process today and the tale of *The Suppliant Maidens* by Aeschylus, I argue that marginal sounds in refugee testimonies are moved to the edge of logos, since they appear to be superfluous and excessive. Overall, my goal is to find a way to fine-tune judicial ears. Instead of hearing the "gaps" in an asylum story as silences or incoherencies as evidence of falsehood in asylum-seekers' stories of persecution I argue, borrowing a famous line from *Macbeth*'s, that these gaps are full of 'sound and fury'. Contrary to this view from

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Agamben, *Remnants of Auschwitz: The Witness and the Archive* (Daniel Heller-Roazen ed, 4th edn, MIT Press 1999) 17.

<sup>11</sup> Adriana Cavarero (n 8).

Shakespeare, these acoustic gaps are full of meaning and significance. The problem is these stories are not heard by decision-makers because asylum law expects testimonies to have specific qualities to be considered credible. Methodologically, this article draws insights from the well-established field of law and literature,<sup>12</sup> with the emerging field of ‘acoustic jurisprudence’.<sup>13</sup> On one hand, it focuses on the conditions of story-telling in the refugee-status determination process; on the other, it relies on conceptual tools that expose marginalized sounds. Lamentation, a poetic and acoustic component of Greek tragedy, represents an intersection between the acoustic, literary, and legal elements of asylum-requests.

## **2. Auricular justice: An ear for a mouth**

Communication can be fragile in certain situations. The urgency to speak and to be heard is most acute when a person suffers. This section examines how speech may be fragmented or even destroyed in traumatic events. Speech appears as a prerequisite for justice. Without it, we run the risk of deepening the sense of abandonment of those who have been wronged by others or are running away from challenging life- circumstances. However, I explain that some utterances go unheard because they appear as asemantic vocal emissions. Based on Cavarero’s critique of Western metaphysics, this section explains how the phonic utterances demoted to asignifying sounds subservient to speech. Consequently, voices are not heard as unique expressions of living and breathing beings, whose lives matter regardless of what they say or how they justify their need for protection.

If I am drowning in the sea, I will call for help. In May 2016, two young Eritrean men, Filmon and Selomon, were escaping mandatory conscription in Eritrea and boarded a wooden boat on the coast of Libya with 400-550 people. This boat was towed by another boat believed

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<sup>12</sup> Paul Gerwitz, ‘Narrative and Rhetoric in the Law’ in Peter Brooks and Paul Gerwitz (eds), *Law’s Stories: Narrative and Rhetoric in the Law* (Yale University Press 1996).

<sup>13</sup> James Parker, ‘Towards an Acoustic Jurisprudence: Law and the Long Range Acoustic Device’ (2015) *Law, Culture and the Humanities* 1 <<http://lch.sagepub.com/cgi/doi/10.1177/1743872115615502>> accessed 7 May 2017.

to carry other 500. After three hours, the towed boat began to sink. Selomon vividly recalls the cries of women and children, a sound that shocked and haunts him and the other survivors:

‘I started to cry when I saw the situation and when I found the ship without an engine. There were many women and children’.<sup>14</sup>

It is believed up to 550 people died in that incident. The news report does not say when they were saved, but Filemon said they were sinking for at least six hours off the Italian coast before he swam to the other crowded boat.<sup>15</sup> More than 5,000 asylum-seekers died in 2016 trying to cross the Mediterranean.<sup>16</sup>

Survivors from near drowning experiences describe the pain from the cold water on limbs and the tightening of the chest as the lungs start to give in. The physiological reactions demand solutions, usually through the help of others. Pain is said to be a fundamentally isolating experience, because it destroys the ability to communicate with others through meaningful speech; one shouts, gesticulates, or moans.<sup>17</sup> Humans, as Lyotard notes, discover through ‘the feeling of pain which accompanies silence (and of pleasure which accompanies the invention of a new idiom), that they are summoned by language [...]’.<sup>18</sup> So, before the phrase “help” is uttered, there is a silence and the feeling of pain, a differend, a neologism which expresses ‘the unstable state and instant of language wherein something which must be able to be put into phrases cannot yet be’.<sup>19</sup> In the absence of a phrase, the feeling becomes a wrong because it

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<sup>14</sup> Tribune news services, ‘Mediterranean Shipwreck Survivors Haunted by Cries of Kids; 700 Huded Die’ Chicago Tribune (Pozzallo, 30 May 2016) <<http://www.chicagotribune.com/news/nationworld/ct-migrants-refugees-drown-mediterranean-20160529-story.html>> accessed 15 April 2017.

<sup>15</sup> Sarah El Deeb, ‘More than 700 Feared Dead in Recent Mediterranean Crossings’ Associated Press (Pozzallo, 29 May 2016) <<http://bigstory.ap.org/article/7135d796d1704163b8e86c66c4c050df/un-700-migrants-feared-dead-mediterranean-shipwrecks>> accessed 7 May 2017.

<sup>16</sup> Ben Quinn, ‘Migrant Death Toll Passes 5,000 after Two Boats Capsize off Italy’ The Guardian (London, 23 December 2016) <<https://www.theguardian.com/world/2016/dec/23/record-migrant-death-toll-two-boats-capsize-italy-un-refugee>> accessed 7 May 2017.

<sup>17</sup> Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (OUP 1985).

<sup>18</sup> Jean-François Lyotard, *Differend: Phrases in Dispute* (Georges Van Den Abbelee tr, University of Minnesota Press 1988).

<sup>19</sup> *ibid.*



cannot be represented through language,<sup>20</sup> and thus, communicated to others. Explained otherwise, the pain is compounded by the intensity of the experience and the failure to communicate it. In the absence of a phrase to express the anguish of pain, one may suffer from the specific wrong of ethical loneliness which . Jill Stauffer defines as ‘the experience of being abandoned compounded by the experience of not being heard’.<sup>21</sup> I interpret the sense of abandonment as that which follows from the incommensurability between pain and language. Unlike the loneliness and solitude which is part of the human condition, ethical loneliness is dehumanizing. This harm is characterized by abandonment insofar as one can no longer trust the ability of humanity to respond.<sup>22</sup> Ethical loneliness represents the silence that falls after a cry for help is ignored because it is not heard in the first place.

According to Adriana Cavarero, mishearing is endemic to Western thought because it has demoted the singularity of the voice. She explains that the philosophical tradition of metaphysics excised voice from speech, characterizing the phonetic as a generic sound and thus a mere vehicle for speech. Subservient to signification, the acoustic is by itself meaningless. To become meaningful, sounds or syllables need to join words and phrases together, organizing them logically through grammatic rules. The metaphysical tradition which ‘devocalized logos’<sup>23</sup> also conflated language with reason. Like language, logic follows rules and procedures ‘among which the principle of non-contradiction stands out because it assures the validity of the signifying process’.<sup>24</sup> Presuming that speech is the destination of the voice, the philosophical tradition of metaphysics ‘has the tendency to totalize this destination so that outside of speech, the voice is nothing but an insignificant leftover’.<sup>25</sup>

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<sup>20</sup> *ibid.*

<sup>21</sup> Jill Stauffer, *Ethical Loneliness: The Injustice of Not Being Heard* (Columbia University Press 2015) 9.

<sup>22</sup> *ibid.* 2.

<sup>23</sup> Cavarero (n 8) 44.

<sup>24</sup> *ibid.* 188.

<sup>25</sup> *ibid.* 12.

For the voice to acquire meaning, it needs to be attached to a signifier (a word that in turn refers to a concept in the mind) and is joined to other words in a logical order. Phone is then captured in a system of signification.<sup>26</sup> If the voice fails to become speech, logocentric logic wrongly regards acoustics as superfluous excess to be ignored and transformed into lack of meaning. As Cavarero then explains, ‘[...] the sphere of the voice is constitutively broader than that of speech: it exceeds it. To reduce this excess to mere meaninglessness—to whatever remains when the voice is not intended toward meaning, defined as the exclusive purview of speech—is one of the chief vices of logocentrism’.<sup>27</sup>

The devocalization of logos turned vocality into the opposite of reason.. For logos is mute as it coincides with the ‘visible order of the ideas contemplated by pure thought’.<sup>28</sup> Concepts and ideas are mostly abstract objects of thought signified through speech, while reason “speaks” through those ideas that are logically entwined. In this set-up, the voice becomes a conduit for the internal world of the mind, whereas speech becomes indistinguishable from thinking. Unable to hear because of the “metaphysical filter” that separates speech and thought from the voice, the acoustic vibration of voices singing in concert appears meaningless on their own.

Characteristically, Cavarero reconstructs the symbolic meanings attached to mythology, bringing characters whose function had been marginal to narrative, idea or philosophical discourse of life.<sup>29</sup> Her reading of the fable of Echo and Narcissus, as told by Ovid, is particularly poignant because it allegorizes the subordination and marginalization of vocality. According to the myth, Echo is a loquacious and rhetorically skilled nymph who tricks the Goddess Juno into believing something that was not true. Juno punishes Echo, condemning her to repeat the

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<sup>26</sup> *ibid* 35.

<sup>27</sup> *ibid* 13.

<sup>28</sup> *ibid* 57.

<sup>29</sup> Adriana Cavarero, *In Spite of Plato: A Feminist Rewriting of Ancient Philosophy* (Serena Anderlini D’Onofrio and Aine O’Healy trs, Routledge 1995).

words of others and never her own. Much later, Echo meets and falls in love with Narcissus, a young man known for his charm and beauty. But she cannot express her feelings through speech. Instead, she flings her arms around him. But he rejects this expression of affection. Broken-hearted, Echo's body fades away and all is left of her mimicking voice. Meanwhile, Narcissus rejects another love-stricken admirer who in turn asks the gods to punish the object of his desire. In response, the gods make Narcissus fall in love with his own image, reflected in a pond. Obsessed and unable to possess his object of affection, he dies. Echo sees this scene but cannot express anything or console him. All she can do is mimic what Narcissus says.

According to Cavarero, Echo's condition signifies existence as a voice purely subservient to others, and represents an allegory of logocentric-based politics trapped in a solipsistic dialogue. Better said, her voice is a monologue that gives the appearance of being a dialogue. Echo's voice is not her own; instead it is 'a forced and unintentional repetition'.<sup>30</sup> In the end, tragically, the mediation of a mirror prevents an authentic encounter between the characters of the tale. First, the mirror reflects Narcissus, deepening his love for himself. Meanwhile, the existence of Echo is reduced to that of an acoustic mirror, which enables Narcissus to hear only his own words, even if they are carried by the voice of a girl he believes to be shy. In sum, he only sees and hears his own reflection. Meanwhile, as Cavarero remarks, Echo becomes a disembodied voice that has lost all uniqueness, represented by the loss of her body, and therefore the ability to signify meaning.

Significantly, this myth shows how the ontology of voice cannot be reduced to this functional role. In short, the voice is not simply a vehicle for speech nor is it subservient to discourse. Instead, by foregrounding the uniqueness of the voice, Cavarero is also stressing its

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<sup>30</sup> Cavarero (n 8) 166.

role in politics. As Dohoney explains, Cavarero's project underscores political plurality understood as a political sphere 'composed of unique and unrepeatable selves'.<sup>31</sup> Liberal politics equalizes individual characteristics under the juridical figure of the universal person of law.<sup>32</sup> As often argued by feminists, this abstract figure has no body. The effacement of the body enabled logocentrism to liberate mute speech 'from the corporeality of breath and the voice'.<sup>33</sup> Thus, the recovery of the singular and unrepeatable materiality of each voice is at the heart of her project.

To deconstruct logocentrism, she traces back the instances where the object of her inquiry (vocality) disappeared or morphed within the history of thought. These traces are not found only in philosophical texts, but also in literature as shown through her analysis of Ovid's *Metamorphosis*. By marking the present absences which survive in literature, Cavarero 'narrates stories of singular lives' and 'confers meaning on this materiality'.<sup>34</sup> Thus, this deconstruction is not limited to a diagnostic identification of the repression of vocality in logocentrism, because it substantiates the ontology of vocality and hence lays the groundwork for its reevaluation. A mere reversal that affirms the role of the voice is clearly insufficient to re-vocalize thought. A voice needs to mean something on its own, but only if it is grounded in the body of a unique person who breathes. As Dohoney remarks, the voice is an 'indication of someone there to be heard and seen'.<sup>35</sup> Each voice in the body politic is unique, since 'the act of speaking is relational: what communicates first and foremost, beyond the content that the words communicate, is the acoustic, empirical, material relationality of singular voices'.<sup>36</sup> This means that singular voices which come together to speak do not depend on understanding the

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<sup>31</sup> Ryan Dohoney, 'An Antidote to Metaphysics: Adriana Cavarero's Vocal Philosophy' (2016) 15 *Women & Music* 70, 75.

<sup>32</sup> Patrick Hanafin, 'Voicing Embodiment, Relating Difference: Towards a Relational Legal Subjectivity' (2008) 29 *Australian Feminist Law Journal* 77.

<sup>33</sup> Cavarero (n 8) 62.

<sup>34</sup> Adriana Cavarero and Elisabetta Bertolino, 'Beyond Ontology and Sexual Difference: An Interview with the Italian Feminist Philosopher Adriana Cavarero' (2008) 19 *Differences* 128.

<sup>35</sup> Dohoney (n 31) 76.

<sup>36</sup> Cavarero (n 8) 13.

message, but on the basic ability to listen to a voice itself and not its semantic register.

### **3. Funneled hearing: Narrative coherence, fragmentation and disbelief in the asylum-determination process**

Judicial discourse on justice is built around the tropes of hearing and speaking. Marianne Constable remarks, for example, how liberal political institutions constantly 'assert the need for citizens to speak' because speech is understood as the hallmark of political subjectivity.<sup>37</sup> Conversely, 'silence often appears either as a lack to be remedied or as itself a form of 'voice' that signifies acquiescence and consent'.<sup>38</sup> Thus, one of the responsibilities of the state is to create the conditions that propitiate speech, as well as the conditions for listening to others when they speak. The right to be heard is fundamental. Article 6 of the Human Rights Act outlines the right to a fair trial, which is considered a key element of liberal democracies and represents an essential component of the rule of law, because they secure individual access to an impartial court of law; an opportunity to be heard and to hear others (witnesses, charges, arguments by the opponents, the court's judgement) as well as the right to remain silent. Nevertheless, as Stauffer remarks, the institutions designed to hear and repair a harm may ironically 'use procedures that silence some stories and, even when a resistant story gets told, and, miraculously heard, the larger world may not be willing to hear it for what it is'.<sup>39</sup> This section builds on this idea, signposting sites of irony in the refugee status determination process. It suggests that the process is often compromised by the rules that demand coherence and clarity as a precondition for presenting testimonies. First, it examines the interview and interpretation procedures

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<sup>37</sup> Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton University Press 2005) 86.

<sup>38</sup> *ibid.*

<sup>39</sup> Stauffer (n 25) 82.

noting how these events disaggregate the testimony, potentially silencing the voices of refugees. Second, it argues that the culture of disbelief is a noise that disables the hearing capabilities of decision-makers. Predisposed to hearing lies and identifying the “bogus” asylum-seeker, decision-makers increasingly mishear the vulnerability present in refugee testimonies. When they miraculously hear these stories of vulnerability, it is only because they are amplified by presenting them as exceptional stories of suffering, but these stories are still not heard for what they are. In the end, the decision-making process resembles the story of Narcissus and Echo. Stuck in the rut of hearing itself, the voice of asylum seekers is side-lined by the legal procedures, transforming these testimonies into echoes without meaning to legal ears.

As said before, the process of refugee status determination rests almost entirely on material facts in the personal testimony. Recognizing the centrality of the testimony in the status determination process, international, regional and domestic bodies have instituted procedural safeguards meant to ensure asylum seekers have access to fair asylum hearings. UK immigration law (apart from the Refugee Convention)<sup>40</sup> is bound to European Council Procedures Directive 2005/85/EC.<sup>41</sup> This Directive sets out the obligations and responsibilities of applicants and national authorities in charge of approving or rejecting requests for asylum. Basic principles include the right to have access to the asylum-determination procedure (Art 6);<sup>42</sup> the right to remain in the Member State territory until the decision is made (Art 7);<sup>43</sup> proper examination of the application and written explanation for refusal, as well as access to the interview report (Art 8 and 14);<sup>44</sup> access to interpreters and legal representation (Art 10 and 15 respectively).<sup>45</sup>

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<sup>40</sup> The UK is a signatory of the Refugee Convention but it has not incorporated it directly domestic law. Instead, the provisions are reflected in its immigration rules. The legal architecture around immigration and asylum law is quite complex and beyond the scope of this paper. Key statutes relevant to the asylum determination procedure include the Immigration Act 1971, the Immigration, Asylum and Nationality Act 2006 and Immigration Rules.

<sup>41</sup> Council Directive (EC) 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2005] OJ L326

<sup>42</sup> *ibid* art 6.

<sup>43</sup> *ibid* art 7.

<sup>44</sup> *ibid* art 8 and 14.

<sup>45</sup> *ibid* art 10 and 15.

Articles 12 states applicants are entitled to be heard through a personal interview conducted by a competent authority under national law. <sup>46</sup>

UK Home Office caseworkers are the first to decide whether someone qualifies for refugee status or humanitarian protection. If rejected, applicants can appeal to the Immigration and Asylum Chamber of the First-tier Tribunal. Legal representatives, judges, interpreters, UK Border Agency caseworkers, and interpreters, align their work around the ‘expected jurisprudential parameters’;<sup>47</sup> provided by the definition of a refugee in the Convention. Johnson argues decision-makers ‘expect a particular type of testimony’, meaning that the laws and norms governing asylum law create a sort of model which sets the parameters of how to interpret asylum-seekers.<sup>48</sup> Specifically, accounts of persecution are expected to have linear structure in which series of events help decision-makers identify a person’s realistic fear of persecution. Linear narratives show a clear cause and an effect in a story of flight. This requirement is evident in the screening and substantive interviews carried out after applying for asylum in the UK. After filing a petition, UK Border Agency immigration officers carry out a “screening interview”. The screening interview is structured to collect basic personal details of asylum applicants, trace their journey into the UK, assess the internal credibility of this story and to check whether they have applied for asylum in another European Union (EU) or non-EU country. At this point, applicants are asked if they prefer a female or male case worker. The Home Office assigns a case-worker in charge of conducting the “first reporting event”, where applicants meet their case worker who will afterwards carry out a substantive interview. The purpose of this interview is to examine in more detail the asylum claim between the screening and the

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<sup>46</sup> Paragraphs 339NA to 339ND of the Immigration Rules reflect these international obligations under the Directives, detailing the circumstances where a personal interview may be omitted, confidentiality issues, contradictions in the account with regards to the persecution, and the applicant’s entitlement to an interpreter. See Home Office, ‘Immigration Rules’ (2017) pt 11 rr 339NA-339ND <<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>> accessed 27 April 2017.

<sup>47</sup> Toni Johnson, ‘On Silence, Sexuality and Skeletons: Reconceptualizing Narrative in Asylum Hearings’ (2011) 20 *Social and Legal Studies* 57, 63.

<sup>48</sup> *ibid.*

substantive interview varies. Based on the screening interview, authorities assess whether an applicant qualifies for the fast track asylum procedure. If so, the asylum-seeker will be detained in a high security facility until the procedure is finalized. The substantive interview of the fast-track process happens only a few days after the screening.<sup>49</sup> Vulnerable asylum seekers who have complex asylum cases end up in detention facilities because the decision is based on the screening interview, which only ascertains basic facts as noted before.<sup>50</sup>

If processed through the normal time-frame, the substantive interview is likely to happen within a month after the screening interview. Applicants can submit other documents such as written testimonies or any additional supporting evidence not submitted at the screening stage.<sup>51</sup> No one excepts interpreters and legal advisers to be present at this interview, to protect the confidentiality and privacy of who testifies. Unlike the structured nature of the questions in the screening interview, the substantive interview is meant to pose open questions.<sup>52</sup> Asylum-seekers can speak more candidly, and explain their story in more length and detail. The Home Office describes it as 'the main opportunity for the claimant to provide evidence about why they need international protection'.<sup>53</sup> Still, interviewers must investigate links between the personal experiences of applicants and verifiable details such as published events or incidents'.<sup>54</sup> This is for corroborating material facts of the claim by matching them with the political situation of a foreign country and/or existing case law on particular social groups who are

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<sup>49</sup> Until 2008, the Home Office used to decide suitability based on a list of countries of origin. Now, the criteria for assessing suitability is simply whether in the judgment of the assessor at the asylum screening interview, the applicant's claim for refugee protection can be dealt with "quickly." In January 2017, the High Court ruled in *TN (Vietnam) & US (Pakistan), R (On the Applications Of) v Secretary of State for the Home Department & Anor* [2017] EWHC 59 that the fast-track system was too brief to be fair, and it estimated that 10,000 appeals might have been affected.

<sup>50</sup> Stephen Shaw, 'Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw' (Williams Lea Group 2016).

<sup>51</sup> Home Office documents specifically warn applicants against submitting false information and the penalties for fabricating stories, which can be a fine or two years in prison.

<sup>52</sup> Robert Gibb and Anthony Good, 'Interpretation, Translation and Intercultural Communication in Refugee Status Determination Procedures' (2014) 14 *Language and Intercultural Communication* 385.

<sup>53</sup> United Kingdom Home Office, 'Asylum Policy Instruction: Asylum Interviews' (2015) s 1.2 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/410098/Asylum Interviews\\_AI.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410098/Asylum_Interviews_AI.pdf)> accessed 7 May 2017.

<sup>54</sup> *ibid.*



persecuted.<sup>55</sup>

Asylum-seekers are entitled to an interpreter, provided for by the Home Office. The aim is to assist decision-makers when hearing an asylum claim and ensure foreign-speaking claimants are not disadvantaged. Guidelines instruct interpreters and translators not to alter the authenticity of the account, and require their intervention to reflect the actual language used, whether it is colloquial, formal, etc.<sup>56</sup> Unmediated verbatim translations ought to mirror the presumption that interviews are a neutral and objective ‘fact-finding exercise’.<sup>57</sup> However, grammatical errors and colloquial speech stretch the role of the interpreter throughout the interview. Whilst expected to provide a ‘verbatim’ unedited interpretation, some testimonies by some people may appear so ‘so disjointed from how they came across in the interview’.<sup>58</sup>

Gibb and Good illustrate well the problems that arise from fragmenting testimonies to make them clear in a comparative study that examines the conflicting rules that regulate the role of translators and interpreters in the UK and France. To facilitate their interpretation, testimonies are fragmented into short and easy-to-translate sentences, but this alters the overall flow and coherence of the account.<sup>59</sup> Thus, interpreters complain that the format of the interview fragments the narrative coherence of testimony from asylum-seekers,<sup>60</sup> and say they are blamed for the disrupting narratives. One interpreter in this study opined fragmentation favored ‘the Home Office because people do not speak like that naturally, and they will lose track [...]’.<sup>61</sup> Overall, interpreters are under the pressure of contradictory demands: to act as “disembodied” translating machines but also encouraged to anticipate and have a more active, yet

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<sup>55</sup> *ibid.*

<sup>56</sup> Mark Henderson and Alison Pickup, ‘Best Practice Guide to Asylum and Human Rights Appeals’ (2 edn, Electronic Immigration Network 2015) <<http://www.ein.org.uk/bpg/contents>> accessed 10 January 2017.

<sup>57</sup> *ibid* ch 1.

<sup>58</sup> Gibb and Good (n 52) 393.

<sup>59</sup> *ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *ibid* 392.

limited, participation to clarify a narrative.<sup>62</sup> Finally, their work is limited by language since they are not able translate emotion. Like the asylum-seekers, interpreters must express facts, setting aside emotional speech acts which cannot be translated into prose.<sup>63</sup>

Coming back to a point noted in the interpretation-translation process, communication standards require testimonies to reflect a coherent and clear factual narrative, expressed through the language of the country where a petition is filed. Asylum-seekers are not expected to speak like lawyers. Instead, legal representatives (barristers, solicitors, immigration advisers) translate their case into the technical language of the law. In their interviews, all asylum-seekers must present clear and coherent statements. As stated by the Home Office, 'interviews are recorded verbatim and clarity is crucial, especially names, places, or organisations'.<sup>64</sup> For this reason, interviewers are encouraged to clarify inconsistencies and plausibility to answers in the interviews, particularly Country of Origin Information (COI) and other information in written documents.<sup>65</sup> United Nations High Commissioner for Refugees (UNHCR) procedures also encourage interviewers to clarify inconsistencies and contradictions that might otherwise conceal 'misrepresentation or concealment of material facts'.<sup>66</sup> Contradictions, assessed on the basis of the internal and external coherence and plausibility of the story, may undermine the credibility of the account. But, failure to present clear and non-contradictory testimonies does not necessarily render the account a lie. Decision-makers are told to base decisions on common sense.<sup>67</sup> All asylum seekers are expected to present credible account that it is likely to have happened and on balance capable of being believed. This is a low standard of proof and even

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<sup>62</sup> Cecilia Wadensjö, *Interpretation as Interaction* (Routledge Press 1998) 75.

<sup>63</sup> Johnson (n 46).

<sup>64</sup> United Kingdom Home Office (n 53).

<sup>65</sup> *ibid* s 5.2.

<sup>66</sup> United Nations High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (United Nations High Commissioner for Refugees 2011) para 199.

<sup>67</sup> United Kingdom Home Office, 'Asylum Policy Instruction: Assessing Credibility and Refugee Status' (2015) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397778/ASSESSING\\_CREDIBILITY\\_AND\\_REFUGEE\\_STATUS\\_V9\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf)> accessed 7 May 2017.

if there is insufficient evidence for one aspect of the claim, the Home Office states it should not be determinative. Instead, they must assess the material fact ‘in the context of the evidence as a whole and not in isolation’.<sup>68</sup>

Although the refugee determination process architecture provides detailed safeguards meant to enable asylum seekers to speak their testimony and to be heard, critics say there is an organizational ‘culture of disbelief’ that undermines these goals.<sup>69</sup> This culture is characterized by the prejudice against economic migrants, who are blamed for making fake asylum claims to prevent deportation.<sup>70</sup> Adherence to this view is evinced by xenophobic political discourse in the UK.<sup>71</sup> Caseworkers are arguably not isolated from this highly-politicized context. Some of the evidence of this ‘culture of disbelief’ cited by asylum researchers includes reports by asylum-seekers about hostile interviews as well as rejection letters that show a ‘hostile’ tone<sup>72</sup> Past UNHCR reports confirmed that first instance decision-makers have taken an incorrect approach to credibility assessments because they comb through inconsistencies to cast doubt on the integrity of asylum-seekers as witnesses, instead of focusing on the facts.<sup>73</sup> Caseworkers also use ‘unnecessary and unsupported conclusions’ stating the account is ‘invented’ or ‘fabricated’.<sup>74</sup> Contrary to established guidelines, case owners place a high burden of proof on applicants. Souter concedes that policy reforms have been rolled out to address these organizational practices.<sup>75</sup> These practices may also be indicative of many things other than a problem

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<sup>68</sup> *ibid* s 5.2.

<sup>69</sup> Sarah Gibson traces the culture of disbelief to the New Labor government, which adopted deterrence as the guiding principle in asylum and migration policy. See Sarah Gibson, ‘Testimony in a Culture of Disbelief: Asylum Hearings and the Impossibility of Bearing Witness Testimony in a Culture of Disbelief: Asylum Hearings and the Impossibility of Bearing Witness’ (2013) 17 *Journal for Cultural Research* 1.

<sup>70</sup> *ibid*.

<sup>71</sup> Media and political discourses represent migration, particularly undocumented migration, as a security and economic threat. Methods of criminalization deployed by the government against undocumented migration are meant to turn the UK into a “hostile” environment.

<sup>72</sup> Crawley (n 4).

<sup>73</sup> United Nations High Commissioner for Refugees, ‘Quality Initiative Project: Fifth Report to the Minister’ (United Nations High Commissioner for Refugees 2008) s 2.3.20 <<http://www.unhcr.org/uk/quality-initiative-and-integration.html>> accessed 7 May 2017.

<sup>74</sup> *ibid*.

<sup>75</sup> James Souter, ‘A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom’ (2011) 1 *Oxford Monitor of Forced Migration* 48, 53.

originating in legal reasoning. They very likely indicate a mixture of prejudices against immigrants and asylum seekers, inadequate training, among other things.

More recently, fieldwork by Baillot, Cowan and Munro shows how decision-makers are embedded in complex institutional cultures where other factors intervene, including compassion fatigue and the absence of institutional mechanisms to train and adequately support decision-makers.<sup>76</sup> Unable to cope with hearing traumatic stories from asylum-seekers, case owners adopt detachment strategies that coincidentally align with the institutional culture of disbelief. Elsewhere, the authors also claim decision-makers avoid asking detailed questions about traumatic events, such as rape, due to their own unease around the topic.<sup>77</sup> These studies give some credence to what Souter argues, that rather than a culture of disbelief, there is a culture of epistemic denial, which involves the ‘prior prevention of information from even being recognised or taken into account during the development of belief or disbelief’.<sup>78</sup> Disbelief is an attitude, while denial is an act that prepares grounds for disbelief. By avoiding asking the right questions, decision-makers arguably reinforce the existing culture of disbelief.

Additionally, this detached position aligns with the ‘objective’ stance decision-makers associate with their quasi-legal role.<sup>79</sup> So far, I have stressed how the voice of the claimant is doubted. Since the testimony cannot be trusted, the body becomes the primary site of truth, an unmediated signifier for the well-founded fear of persecution required by international asylum law.<sup>80</sup> Scars and wounds speak for the torture and injuries experienced in the past. This appeal to the ‘self-evident truth of the suffering body’ is a characteristic of the humanitarian exception discourses.<sup>81</sup> Such discourses appeal to the common vulnerability of all human beings and the

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<sup>76</sup> Baillot, Cowan and Munro (n 3).

<sup>77</sup> Baillot, Cowan and Munro (n 9).

<sup>78</sup> Souter (n 77) 54.

<sup>79</sup> Baillot, Cowan and Munro (n 3).

<sup>80</sup> Didier Fassin and Estelle D’Halluin, ‘The Truth from the Body: Medical Certificates as Ultimate Evidence for Asylum Seekers’ (2005) 107 *American Anthropologist* 597.

<sup>81</sup> Ayten Gündoğdu, *Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants* (OUP 2015) 115.

universality of human rights. Gündoğdu warns against the discourse of corporeal vulnerability because it represents asylum seekers as ‘bare’ humans rather than persons with political and civil rights. It depersonalizes refugees by representing them as suffering masses who need pity from society to be accepted into the political community. Another negative effect, derived from the latter point, is that it has incidentally produced a high threshold to be met by asylum-seekers, namely the standard of ‘exceptional circumstances’ signified by the exceptionally suffering body.<sup>82</sup> As Baillot, Cowan and Munro note, this also translates into a hierarchy of suffering within the interview process:

‘Over time, the various stories risk being received as routine and mundane, to the extent that it may become difficult for decision-makers to approach each case afresh and avoid creating hierarchies of persecution which demand even higher levels of suffering to incite sympathy’.<sup>83</sup>

Gündoğdu makes a similar argument,<sup>84</sup> through a dissenting opinion in the European Court of Human Rights (ECtHR) case *N. v. United Kingdom*.<sup>85</sup> The asylum claim stated she had been raped by members of the National Resistance Movement in Uganda because she had links to the opposing faction, the Lord's Resistance Army. She had HIV and her counsel argued she could not receive an adequate treatment in Uganda. Even though her appeal was rejected by the ECtHR, Gündoğdu stresses how the dissenting opinion stated that her case met the test of ‘exceptional circumstances’.<sup>86</sup> Subsequent cases confirm this position, whereby foreign nationals who suffer from grave illnesses can be removed from the UK, unless their situation

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<sup>82</sup> Penelope Deutscher, ‘The Inversion of Exceptionality: Foucault, Agamben, and “Reproductive Rights”’ (2008) 107 *South Atlantic Quarterly* 55.

<sup>83</sup> Baillot, Cowan and Munro (n 3) 532.

<sup>84</sup> Ayten Gündoğdu, *Rightlessness in an Age of Rights: Hannah Arendt and the Contemporary Struggles of Migrants* (OUP 2015)

<sup>85</sup> *N. v. United Kingdom* [2008] ECHR 453

<sup>86</sup> *D. v. United Kingdom* [1997] 24 EHRR 423

meets the high-threshold of exceptionality,<sup>87</sup> whereby deportation would interfere with the right not to suffer inhuman and degrading treatment (as guaranteed in the European Convention on Human Rights)<sup>88</sup>. Underpinning this logic of exceptionality is the appeal to the ‘bare humanity’ of asylum seekers, which ironically makes them ‘much more vulnerable to the arbitrary forms of violence’,<sup>89</sup> by generalizing their identity into suffering bodies at the mercy of sympathy from decision-makers. But sympathy is restricted by a hierarchy of suffering, which prioritizes some claims over others. This strategy is not only a race to the bottom, but also robs asylum-seekers of an individual voice. The truth of the wounded body is meant to speak for the person as a referent to the truth of the testimony. But as the following passage from a refusal letter implies, the bodily scars may be real but the testimony can still be doubted if there is a contradiction between the scars and the story:

‘The mere fact of the existence of scars does not, in itself, indicate that the injuries were sustained in the manner you have described. Consequently, given the lack of credibility evident in your claim overall, and in the absence of any other credible and independent evidence to support your assertions, it has been decided not to attach any weight to the presence of scars on your body’.<sup>90</sup>

While the UNHCR report interprets this quote as an example of incorrectly understanding medical evidence in a status determination procedure, it also symbolizes the fragility of the testimony insofar as it is deemed to be incomplete unless accompanied by an external referent, such as the body. However, the body fails to perform this function here. The question is, why are the testimonies considered to be so unreliable? Why do testimonies from asylum-seekers require a supplement or referent which attests to its credibility?

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<sup>87</sup> GS (India) and Ors v SSHD [2015] EWCA Civ 40

<sup>88</sup> European Convention on Human Rights 1953, art 3

<sup>89</sup> Gündoğdu (n 84) 105.

<sup>90</sup> United Nations High Commissioner for Refugees (n 78) s.2.3.53

Giorgio Agamben remarks that witnesses are expected to present a neutral account of the facts that enable others to make a judgment. To say that the witness is an objective spectator also implies she is detached from the event. Refugees are not only witnesses, but also survivors. Paradoxically, survivors cannot be witnesses at the same time, because their subjective position regarding the event calls into question their 'identity and reliability'.<sup>91</sup> Judicial logic undercuts the ability of survivors to bear witness to their own survival. Psychoanalysis holds a similar conclusion. Caruth explains that a Freudian account of trauma is based on the idea that survivors who repeatedly return to the past are meant to uncover a suppressed memory. But, because trauma arrives unexpectedly, as the subject is not fully cognizant of the traumatic event. For this reason, Caruth describes traumatic memories as 'a history that literally has no place'.<sup>92</sup> Contrary to this general reading, where creation of memories is bound to the past, Caruth suggests that trauma is activated by 'incomprehensibility of a future that is not yet owned'.<sup>93</sup> Inarticulate language, such as stammering, signifies the repetition of trauma where one is trapped in between the shock of death and the incomprehensibility of surviving it. However, it also represents a 'creative act of parting' signaling an affirmation of life.<sup>94</sup> Stammering language does not represent an inability to speak of the past but it can also be, like that of a babbling child, a language of playfulness. Memories from survivors are thus retrospective and prospective narratives, where one 'does not simply point backward [...] but bears witness to the past by pointing to the future'.<sup>95</sup> Although this argument does not appease the judicial expectation for objectivity, or eliminate the expectation of a referent that can attest to the truth of the traumatic event, it counters the view that suffering bodies cannot speak because the narrative appears fragmented.

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<sup>91</sup> Agamben (n 10) 33.

<sup>92</sup> Cathy Caruth, *Trauma: Explorations in Memory* (John Hopkins University Press 1995) 153.

<sup>93</sup> Cathy Caruth, 'Parting Words: Trauma, Silence and Survival Parting Words: Trauma, Silence and Survival' (2001) 5 *Cultural Values* 7, 11.

<sup>94</sup> *ibid* 21.

<sup>95</sup> *ibid*.

To conclude this section, the status determination process demands the production of a credible and truthful account that will allow for a judgment. Although the asylum determination system strives to create the right conditions for hearing asylum-seekers stories during interviews, the emphasis is on helping them narrate a credible testimony.<sup>96</sup> Nonetheless, as survivors they are not regarded as credible witnesses. Instead the procedure systematically silences the voices of asylum-seekers. This is done first through the fragmentation of the narratives during the interviews, either because speech is broken down into question-answer formats, or because the testimony is broken down to smaller components to assist translations. Second, the denial of the listener whose inability to hear contradictorily confirms organizational prejudices, as well as the belief that unbiased decisions are achieved through detachment. Since decision-makers appear to be deaf to the pain and suffering of asylum-seekers, the vulnerability of the body is emphasized in asylum petitions. This strategy backfires, not only because the courts adopt a high threshold for vulnerability, but also because the body is used as evidence to corroborate testimonies. Thus, bodies are invested as sites of truth, but this is a moot gesture which ultimately evinces the legal attitude towards the paradox of bearing witness to survival as the survivor. Ultimately, relying on the body as a referent is a symptom of the problem, which is the distrust towards the witness/survivor.

Although asylum-seekers are encouraged to speak, their testimonies are not trusted. Different measures in place to ensure hearing their stories are undermined by the cumulative distrust towards the testimony of refugees. The belief that survivors cannot be objective and neutral testifiers underpins this attitude which reads falsehood in the silences or incoherent gaps in the narrative of persecution. In this vicious cycle, the law hears only those who speak the language of law, for this reason, the perfect asylum-testimony is most likely the one that

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<sup>96</sup> Gibson (n 69) 6.



ventriloquizes the legal speech, or more precisely the one that adapts demonstrates its credibility through an objective, linear, coherent, and reasonable narrative.

#### **4. Lamentation: Hearing poetry in the gaps**

This final section examines elements of vocality and repetitive stammering through the figure of lament and ritual supplication through *The Suppliant Maidens* by Aeschylus. The tragedy itself represents the drama of petitioning asylum through the story of the Danaids, a group of 50 women who fled Egypt to escape unwanted marriages. My specific interest in the play is the overlap between rituals of supplication and lamentation. To be clear, the historical evidence of supplication laws is beyond the scope in this paper. My analysis simply elaborates this theme as represented in the literary text, to flesh out a reflection on how the law governing the refugee status determination may be failing to grasp the voice of asylum-seekers, because it does not adhere to its schemas of intelligibility explained above. Feminist interpretations of lamentation expose why the sound of vulnerability was regulated and why it needs to be valorized again in the sphere of communication.

The plot begins before the Danaids arrive at the city gates of Argos. To petition for hospitality from the city, they need to beg at the altar of Zeus.<sup>97</sup> Pelasgus, the King and guardian of the city, comes to meet them and asks who they are and why they are asking for protection. Their answer does not convince him, for he doubts they are of Greek descent as they claim to be. He also worries that if he wrongly turns them back, then the city will be punished for not honoring moral and religious obligations towards strangers given by Zeus. Conversely, if protection is offered, the city could go to war with the Egyptides who will come to claim their brides. Seeing hesitation from Pelasgus, the Danaids threaten to hang themselves at the gates

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<sup>97</sup> Strangers in Ancient Greek religion could be given a place in the community through the intervention of Zeus Xenios and Zeus Hikesios. The first one represents the Zeus for strangers and the latter, Zeus of Suppliants. The Danaids call on Zeus Hikesios for protection. Robert Parker suggests the suppliant is assimilated by the stranger, or better said, the suppliant is an intensified figure of the stranger. See Robert Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Clarendon Press 1983)

of the city rather than go back. Agonizing, Pelasgus delegates the decision to the Argive people. The King appoints Danaus, the father of the Danaids, to represent the women and advises Danaus on how to convince the Argive citizenry. The tragedy ends on a cliff-hanger, since the Danaids celebrate after a victorious vote is tainted by the imminent threat of war against the Egyptides.

In Ancient Greece and Rome, ritual supplication meant ‘help me’ and ‘spare me’.<sup>98</sup> It is accompanied by specific gestures such as begging ‘by the beard, chin, or knee’ to exert ‘social, moral, and religious pressure on them to grant ones’ request’.<sup>99</sup> There is nothing in the text which suggest they do this gesture. On the other hand, the text is plagued by references to lamentations, especially in the opening chorus. According to Loraux lament, defined as the poetic expression of grief, is found in the texts through repetitive onomatopoeic vocalizations, such as “ai-ai”.<sup>100</sup> She explains that lamentation was historically performed by women who wailed, tore their hair or inflicted wounds upon themselves. Further, she says scholars interpret lamentation as an uncontrollable excesses of female grief, that was heavily regulated because it could offset the desire to avenge a departed clan member and undermine Athens democratization.<sup>101</sup> But the banishment and gradual feminization of lamentation did not only purify mourning from ‘dangerous’ excesses. In the public sphere, it was transformed into a regulated expression of oration in funeral settings (known as epitaphios logos), understood as a secularized and egalitarian collective eulogy for citizens who died in war.<sup>102</sup> Funeral oration had a

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<sup>98</sup> John Gould, ‘Hiketēia’ (1973) 93 *The Journal of Hellenic Studies* 74.

<sup>99</sup> Euripides, ‘Medea. Translated and Introduction by Ruby Blondell’ in Ruby Blondell, Mary-Kay Gamel, Nancy Rabinowitz and Bella Zweig (eds), *Women on the Edge: Four Plays by Euripides* (Routledge 1999) 21.

<sup>100</sup> Nicole Loraux, *Mothers in Mourning: With the Essay Of Amnesty and Its Opposite* (Corinne Pache tr, Cornell University Press 1998)

<sup>101</sup> *ibid.*

<sup>102</sup> Nicole Loraux, *The Invention of Athens: Funeral Oration in the Classical City* (Alan Sheridan tr, Zone Books 2006)

functional objective: it presented death in battle as meaningful and desirable virtue for citizens.<sup>103</sup> Mourning did not completely disappear from the public sphere; it survived obliquely in tragedy. Tragic theater provided a space where the lamentation, expressed in a mimetic and feminized form, could be held at a distance.<sup>104</sup> Still, Honig argues that theater represented an institutional exception, which although seemingly repressing unbounded excesses, was more like a ‘disciplined domain within which some subversion was tolerated’.<sup>105</sup> In the texts, lament appears in the phonetically repetitive interjection of ai-ai or referenced through the mourning mothers and virgins that populate the tragic genre. As Loraux suggests, lamentation is characteristically described as musical expression of mourning but it is also represented through the figure of nightingales. This bird, which Loraux considers to be emblematic of lamentation, is often referenced by the Danaids in *The Suppliant Maidens*.<sup>106</sup>

Supplication converges with lamentation in this tragedy. First, it is identifiable in the choral odes, where the Danaids express the characteristic ambivalence of mourning between anger and pain (‘oh mortal outrage, look down how it grows [...] I sing suffering, shrieking/Shrill and sad I am weeping/Ah my life in dirges/And rich lamentations’).<sup>107</sup> The Danaids call on the protection of Athena, patron of Athens, who is a virgin maiden like them (‘the pure daughter of Zeus, who guards sacred walls’),<sup>108</sup> hoping she will protect them. But if the goddess fails, they ‘shall go on in supplication to Zeus of the dead, who welcomes all strangers’.<sup>109</sup> They call on their father Danaus for advice, who in turn cautions prudence and plainly responds:

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<sup>103</sup> Wohl (n 1).

<sup>104</sup> Loraux (n 100).

<sup>105</sup> Bonnie Honig, ‘Antigone’s Laments, Creon’s Grief and the Politics of Exception’ (2009) 37 *Political Theory* 5, 13.

<sup>106</sup> Loraux (n 100) 55-60.

<sup>107</sup> Aeschylus, ‘The Suppliant Maidens’ in David Greene, Richmond Lattimore and Seth Benardete (trs), *Aeschylus I* (3 edn, University of Chicago Press 2016) 104-115.

<sup>108</sup> *ibid* II.144-145.

<sup>109</sup> *ibid* II.157-158.

Mournful, respectful, answer needfully/the strangers; tell distinctly of an exile unsus-  
tained by murder. Let nothing bold/attend your voice, and nothing vain/come forth/ in  
glance but modesty and reverence/Not talkative nor yet laggard be in/ speech: the peo-  
ple here are quick to take offense. Remember to yield: you are foreign refugees/ in  
need...<sup>110</sup>

His advice is poignant because it speaks to the expectations of the hosts, but the message is contradictory. On one hand, their voices must convey need, submission, and weakness. Yet, their lamentation must be measured to avoid offending the Argive citizens. Pelasgus is possibly hoping their lamentation will not be interpreted as sign of danger.<sup>111</sup> As Loraux explains, male thinking fantasizes female lamentation as a threat to the city. Symbolically, mourning represents guilt for a murder in the past or yet to be done,<sup>112</sup> tempered to avoid causing offense. Upon arrival, Pelasgus remarks that the women know about Greek practices because they have placed an olive branch by the altar of Zeus, but they do not look Greek at all. Restraining himself from judging them further, he says their ‘voice’ ought to clarify who they are.<sup>113</sup> It is unclear what he means by ‘voice’ but it appears to refer to speech. After confirming the role Pelasgus as an authority figure in the city, the women promise to give a ‘brief’ and ‘clear’ story that ought to support their claim for refuge, which is that they have Argive ancestry.<sup>114</sup> He doubts this is true because of their darker skin and manner of speaking. To him, they look like Libyans, or ‘man-hating’ [...] carnivorous Amazons [...] armed with bows’.<sup>115</sup> Despite further requests for clarification, and the responses given by the Danaids, the King of Argos is not convinced they are who they are. He also

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<sup>110</sup> *ibid* II.184-205.

<sup>111</sup> Loraux (n 100).

<sup>112</sup> Later in the drama, the Danaids marry the sons of Aegyptus after they threaten to go to war with Argos, but the women murder their husbands on the wedding night.

<sup>113</sup> *Ibid* II.245-246.

<sup>114</sup> *ibid* I. 274.

<sup>115</sup> *ibid* II.286-87.

hesitates offering protection because he is afraid the Danaids cousins will come to reclaim their brides.

Analyzing why Pelasgus doubts the Danaids identity, namely that they are Greek women based on their Argive ancestry, Reed suggests there are repeated instances in the play which betray the Danaids story.<sup>116</sup> She argues that the phonic utterances of lamentation in the tragedy undercut the coherence of their story, making it seem as if they do not have a good command of the Greek language. This broken language not only appears to lack verbal signification but it reduces their voices to pure sounds. Specifically, these meaningless sounds resemble the gibberish of barbarians.<sup>117</sup> Their lamentations introduce a more fundamental contradiction to the testimony from the Danaids about what they are, whether human or animal-like creatures. Their lament appears not only as an excess of appeal to emotion (pathos) to be made subservient to logos or language, but it also contradicts their identity. Said otherwise, they claim to be Greek but the references to lamentation shows their testimony is untrue. Instead, they are foreigners whose phonic utterances signify barbarity (barbaros). The latter is an attribute Greeks gave to non-Greeks and an adjective used for incomprehensible speech as well animality,<sup>118</sup> following the Aristotelian definition of “rational man”. For Aristotle, the voice of man is different from animals because it signifies (semantike) and the voice of animals does not. Surely, it can be a “‘sign’ [semeion] of pain or pleasure, a cry or yelp’, which is thus equivalent to ‘an excess that is disturbingly close to animality’.<sup>119</sup> Therefore, Cavarero reiterates that his definition of man as a rational

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<sup>116</sup> Reed (n 113).

<sup>117</sup> Ibid.

<sup>118</sup> John Heath, *The Talking Greeks: Speech, Animals, and the Other in Homer, Aeschylus, and Plato* (Cambridge University Press 2005)

<sup>119</sup> Cavarero (n 8) 34.

animal is equivalent to a 'speaking animal'.<sup>120</sup> Lamentation is then a cry that might be misheard as the sound of animals or slaves. As Heath notes, Aristotle consistently compared slaves to animals which are 'the most obvious voiceless Others because their voice clearly lacks authority'.<sup>121</sup> The less the Argive king listens because he cannot make sense of what the Danaids say, the more their voices are close to being strangled, living a pain which cannot be uttered. While the gesture is a desperate plea for help, it also shuts down their vocal chords. This passage echoes the warning by Gündoğdu, about the allure of seeking protection through the figure of bare life.<sup>122</sup>

Ultimately, we can see how the advice from Danaus to regulate their lament by presenting a more moderate version that conforms to the norms of supplication ultimately fails. Anachronistic as this reading might be, *The Suppliant Maidens* offers an ancient allegory on the effacement of the voice in refugee status adjudication procedures. The voice of the survivor is a cry for help, brimming with excessive emotion, which is wrongly deemed superfluous and incommensurable with the linguistic system that separates phonetics from semantics. This incommensurability mirrors the excess represented by mourning in lamentation. Despite attempts to regulate it, their speech is punctuated with the ambiguous performance of animality and barbarity. In the end, the political community fails to hear the uniqueness of each voice because rules restrict access to those stories that are expressed coherently and rationally in the language of the host. We must perhaps return to the attention Cavarero gave to the genesis of narration, which echoes Caruth's thought on the life impulse represented by incomprehensible speech. Cavarero argues narration is not merely "reconstructing" the thread of a life story', where one explains a life as a succession of events.<sup>123</sup> For example, how asylum decision-making rests on the assumption that what

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<sup>120</sup> Ibid.

<sup>121</sup> Heath (n 110) 202.

<sup>122</sup> Gündoğdu (n 84).

<sup>123</sup> Adriana Cavarero and Elvira Roncalli, 'Narrative Against Destruction' (2015) 46 *New Literary History* 1, 14.

matters in the asylum-seekers testimony is a clear and coherent narration of events that explain why a person is in need for protection. Instead, she argues that narration involves ‘opposing the work of destruction that devoured life itself’.<sup>124</sup> Fragmentary language, inarticulate cries, or imperceptible sounds, are not meaningless. These expressions communicate the life of a unique person, whose story needs to oppose the destructive effect of silence.

## **5. Conclusion**

Bringing the arguments home, this article showed the different ways in which *The Suppliant Maidens* by Aeschylus allegorizes the challenges faced by vulnerable people in the adjudication of asylum claims. It stressed how the process of constructing the identity of a refugee is precarious and geared to make some claims fail from the start. While the testimony of asylum-seekers is central for determination of their legal status, incoherencies, silences or any other form of speech fragmentation make them subject to doubt and mistrust by immigration authorities. In this climate of disbelief, worsened by xenophobic and anti-immigration policies, the discourse of humanitarian exception substitutes asylum-seekers’ testimonies. However, the exacerbation of the bare humanity of refugees creates a high bar only overcome by truly exceptional suffering bodies. My contention is that the inability to listen to these precarious testimonies, or to mistranslate them as “fake” claims arises from the logic that attaches credibility, objectivity, and reason to narrative coherence. Stressing the intricate link between law and language and the limits of this convention in the legal discipline, this article opens a space to rethink testimony by refugees through a phonetic re-exploration of vulnerability. Rather than

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<sup>124</sup> Ibid.

unbinding these testimonies from the norms of language because they appear illegible, fragmented, generic sounds, this article gestured towards a response-ability to the singularity of voices.