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VULNERABILITY IN FORENSIC PSYCHOLOGY AND CANON LAW

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Introduction

This article aims to initiate a discussion among psychologists and canon lawyers on the concept of vulnerability in forensic psychology to facilitate its application to current legislation.

After briefly considering the state of the matter in the ecclesiastical courts, various psychological approaches on vulnerability will be reviewed. The concept of vulnerability in the DSM-5 will be considered as a reference point for all clinicians. Then operational proposals will be made for experts and judges regarding tools and criteria for diagnosing vulnerability. The conclusion will highlight present limitations and future possibilities on applications of vulnerability-related methods, tools, and criteria.

1. Vulnerability in canon law

There are currently two main points of reference for the identification of vulnerability. The Congregation for the Doctrine of the Faith observes that „the definition of a ‚vulnerable person’ in the text of art.6

1, 10 mp SST refers to a ‚person who habitually has an imperfect use of reason’. It is also necessary to consider other references:

1. to art 6, „vulnerable person” *Sacramentorum Sanctitatis Tutela* explained in art 1: *Vox Estis Lux Mundi*. In Art 3. of *Sacramentorum Sanctitatis Tutela*.
2. Apostolic Letter in the form of a „*Motu Proprio*” of Pope Francis „*Vos Estis Lux Mundi*”: Art. 1: §2. For these norms, the following is meant: „vulnerable person”: any person in a state of infirmity, of physical or psychic deficiency, or of deprivation of personal liberty which, even occasionally, limits his or her capacity to understand or will or in any case to resist the offense.

The definition of vulnerability is of great importance in trials concerning sexual abuse committed by Clerics. We must remember that the document we are particularly interested in comes into force on 1 June 2019, and those criminal laws are not retroactive.

This document further specifies that the crimes against the sixth commandment of the Decalogue include (cf. art. 1, § 1, lett. a)

1. in forcing someone, by violence or threat or by abuse of authority, to perform or undergo sexual acts (the first two circumstances refer to can. 1395 § 2);
2. in performing sexual acts with a minor or vulnerable person (cf. can. 1395 § 2 and NGD art. 6 § 1, 1°);
3. producing, exhibiting, possessing or distributing, including by electronic means, child pornography (i.e., any depiction of a child, regardless of the medium used, engaged in real or simulated explicit activity and any depiction of the sexual organs of children for primarily sexual purposes), as well as recruiting or inducing a child or vulnerable person to participate in pornographic performances” (cf. NGD Art. 6 § 1, 2°).
4. Extends crimes against morals to clerics as well as to members of institutes of consecrated life and societies of apostolic life.
5. Introduces the category of vulnerable person: „any person who because of infirmity, physical or mental deficiency, or deprivation of personal liberty, is, even occasionally, limited

in his or her capacity to understand or will or in any case to resist the offense”.

6. It introduces some specific provisions regarding the reporting of the above-mentioned crimes: obligation to make such reports for clerics and members of Institutes of Consecrated Life (IVC) and Societies of Apostolic Life (SVA) (without prejudice to further reporting obligations that may come from state laws, art. 19 and the possibility for anyone else to do so (art. 3); the protection of whistleblowers (art. 4); the obligation to set up, by 31 May 2020, stable and easily accessible systems to collect reports (art. 2); and the care of people who claim to have been offended (art. 5). Diocesan child protection contact points, interdiocesan/diocesan child protection services, and regional/interdiocesan/diocesan child protection centers.

2. Vulnerability in contemporary forensic psychology

Over time, psychology has participated, together with the other disciplines involved, in the semantic and definitional development of the term „vulnerability”. Often the terms ‚vulnerable’, ‚fragile’, ‚weak’, and ‚victim’ have been and still are associated with individuals, population groups, or categories subject to one or more disadvantages or harms, whether specific or non-specific. However, given the complexity, it is difficult to identify a single definition for this term.

According to some scholars, the term „vulnerability” derives from the Latin „*vulnerabilis*” and is defined as „the ontological code of the human condition, which, as a result of the different expressions of corporeality and the different relationships involving individuals, takes on a different intensity as subjects and situations vary”¹. In this perspective, fragility is assumed as an ontological and universal trait of the human being; therefore, it depends on being embodied, on sociality, on finiteness, on mortality, and susceptibility to suffering.

¹ E. PARIOTTI, *Vulnerabilità e qualificazione del soggetto: implicazioni per il paradigma dei diritti umani*, in: O. Giolo, B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, Roma Carocci editore 2018, p. 149.

Freud, in his work 'The Malaise of Civilisation', had already indicated three factors from which, according to his point of view, vulnerability derives: the fragility of our bodies, the overwhelming force of nature, and the relationships between human beings². Of these, the first two relate to a physical vulnerability, while the last includes psychological vulnerability. According to Freud, relationships are meant to bring well-being to humans but often end up causing them suffering. Compared to Freud's time, when mental disorders were mainly attributed to guilt and conflict with the law, in today's society, such disorders are attributed to the insecurity of identity. They are therefore no longer linked to disciplinary obedience but decisions and personal initiative³.

Over time, the concept of vulnerability has evolved. Werner and Smith (1982) defined it as the possibility of negative development after exposure to strong sources of stress⁴. Rutter (1987) proposed vulnerability and protective factors as the two poles of the same continuum in which resilience is the element that mediates them in combination with risk factors. In this sense, vulnerability is a process, not a variable⁵. Malaguti (2005) argues that 'vulnerability, according to its biological and psychosocial components and its epidemiological approach, has paved the way for the concept of resilience'⁶. Today, vulnerability no longer coincides with the concept of risk but refers to a process whose outcome is determined by the action of several variables, both internal and external to the individual. Vulnerability

² S. FREUD, *Il disagio della civiltà*, Einaudi trad. it. 1930, p. 222.

³ W. TOMMASI, *Relazioni, dipendenza e vulnerabilità*, in: O. Giolo, B. Pastore (Eds), *Vulnerabilità. Analisi multidisciplinare di un concetto*. Roma: Carocci editore, 2018, p. 107.108.

⁴ E.E. WERNER, R.S. SMITH, *Vulnerable but invincible: A longitudinal study of resilient children and youth*, New York: McGraw-Hill 1982.

⁵ M. RUTTER, *Psychosocial resilience and protective mechanisms*, *American Journal of Orthopsychiatry* 57(3) (1987), p. 316.

⁶ E. MALAGUTI, *Educarsi alla resilienza. Come affrontare crisi e difficoltà e migliorarsi*, Erickson 2005, p. 68.

can therefore be considered the result of a composite and multi-determined process.

In this regard, some authors (Blum, McNeely, & Nonnemaker, 2002) have underlined how vulnerability can be considered a process of interaction between social, biological, and cultural factors. According to them, therefore, we can speak of a multidimensional conception of the interaction between factors⁷. From this point of view, vulnerability is divided and associated with several contributing causes of risk⁸. There is also talk of a dual theme: a prior risk factor (vulnerability) and an exposure event to which one is unfortunately subjected (victim). An individual can be considered vulnerable irrespective of the past exposure factor, so when defining vulnerability, one should consider a broad and structured dimensionality of different predisposing factors to injury.

The notion of vulnerability encompasses different dimensions: on the one hand, as already presented, there is the ontological, existential dimension; on the other, the situational, contextual dimension. Thus, vulnerability can be considered both an existential human trait and a variable and accidental condition, linked to individual moments of life and inter-subjective modes of relating⁹. Although it varies according to endogenous and exogenous elements, it could be argued that we are all exposed to vulnerability and fragility, whether it be of our neighbors or our own.

Pathogenic vulnerability, specifically, can be considered a subset of situational vulnerability. It derives either from violence in the socio-political environment or from prejudice or abuse in interpersonal relationships. In some cases, it is considered a pre-existing condition of the violation itself; in others, it is considered an effect

⁷ R.W. BLUM, C. MCNEELY, E.J. NONNEMAKER, *Vulnerability, risk and protection*, Journal of Adolescent Health Vol. 31, Issue 1 (2002), p. 28-39.

⁸ M. ZUFFRANIERI, E. AMISTÀ, *La perizia vittimologica in un'ottica pragmatica*, in: G. Gulotta (a cura di), *Mente, società e diritto*, Milano: Giuffrè Editore 2010.

⁹ S. ZULLO, *Lo spazio sociale della vulnerabilità tra "pretese di giustizia" e "pretese di diritto"*, *Politica del diritto* (2016). p. 467-68.

of the violation. Resilience can be considered as a strategy to remedy this kind of vulnerability¹⁰.

The concept of vulnerability is useful for several reasons, including identifying situations in which a human right is violated and determining the values to be protected. It also makes it possible to identify the elements of the inadequacy of the human rights paradigm, focusing on them from a perspective that considers them structurally linked to needs¹¹.

From a legal point of view, vulnerability is used to describe a wide range of situations in different ways. It is read and used as a condition that is graduated in intensity and qualifies the condition of individual subjects, although it has a collective meaning. It is used as a tool to determine the status of the subject of rights and is used to identify situations at risk for the violation of rights rather than as identification of the right holder¹².

Laffi, (2007) also spoke of 'social vulnerability'. This term refers to a situation in which one lives an everyday life that becomes unsafe. One is socially vulnerable when, for example, one does not have a secure home or job or has to cope with a serious illness or trauma. Social vulnerability is determined by different factors, namely, housing, financial status, work, health, family relationships, social relationships and resilience, i.e. man's ability to transform negative events¹³. When one is vulnerable, one is more easily attacked, damaged, and lives in a state that can be invaded by pain, suffering, and is exposed

¹⁰ B. PASTORE, *Soggettività giuridica e vulnerabilità*, in: O. Giolo, B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, Roma: Carocci editore 2018, p. 135.

¹¹ E. PARIOTTI, *Vulnerabilità e qualificazione del soggetto: implicazioni per il paradigma dei diritti umani*, in: O. Giolo, B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, Roma: Carocci editore 2018, p. 152.

¹² E. PARIOTTI, *Vulnerabilità e qualificazione del soggetto: implicazioni per il paradigma dei diritti umani*, in: O. Giolo, B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*. Roma: Carocci editore, 2018, p. 154.

¹³ S. LAFFI, *Forma di vulnerabilità sociale a Bolzano. Uno studio di casi attraverso una ricerca di tirocinio*, Bolzano: Einaudi 2007, p. 3.

to dangers, since most of the time one lacks protection¹⁴. Vulnerability can also be defined as ,a condition caused by trauma, injury, deficit, accident or crisis that may affect one's life at a particular time'¹⁵. When a system, such as, for example, the family system, breaks down, one can enter a state of confusion and lose the balance that made it stable. One then enters into a state of vulnerability in which the elements of fragility prevail over the elements of strength.

Being vulnerable means being confronted with a change in the self-image built up over time and the environment's representation of the phenomenon. Some people, for example, feel a sense of shame and hide their condition for fear of not being understood. Vulnerability, therefore, is both a social and relational condition, is context-sensitive, and, in some cases, as already mentioned, is due to contingent, social, environmental, economic, and political factors¹⁶.

The analysis of reality through vulnerability offers an opportunity for social critique that aims to reduce asymmetries by experimenting with progressive changes¹⁷. Our humanity and the mutual dependence among human beings construct the obligation to remedy vulnerability and to respond to the needs of others whenever possible.

3. The vulnerable victim

Victim protection has always been a priority for the European Union. Over time, several legal instruments have been developed for different types of vulnerable victims, especially in recent years. Briefly, on the Council of Europe side, it is useful to mention the most relevant ones: the Convention on Action against Trafficking in Human Beings, signed in Warsaw in 2005; the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed

¹⁴ E. MALAGUTI, *Educarsi alla resilienza. Come affrontare crisi e difficoltà e migliorarsi*, Trento: Edizioni Erikson 2012, p. 57.

¹⁵ *Ibidem*.

¹⁶ S. LAFFI, *Forma di vulnerabilità sociale a Bolzano. Uno studio di casi attraverso una ricerca di tirocinio*, Bolzano: Einaudi 2007.

¹⁷ S. ROSSI, *Forme della vulnerabilità e attuazione del programma costituzionale*, Rivista AIC, N. 2/2017.

in Lanzarote in 2007; and finally, the Convention on Preventing and Combating Domestic Violence, signed in Istanbul in 2011¹⁸.

As regards the Italian situation, a new category of offended persons has been included in the Italian legal system since 2015: the vulnerable victim. This figure is governed by Article 90 *quater* c.p.p., introduced by Legislative Decree no. 212 implementing Directive 2012/29/EU on minimum standards on the rights, assistance, and protection of victims of crime. This provision aims to ensure appropriate information, assistance, and protection for victims, irrespective of the existence of a criminal investigation. It also offers the possibility to participate in criminal proceedings¹⁹. This article specifically provides that „For the provisions of this Code, the condition of the particular vulnerability of the offended person shall be inferred not only from his/her age and state of disability or mental deficiency but also from the type of offense and the manner and circumstances of the act for which proceedings are brought. In assessing the condition, account shall be taken of whether the offense was committed with violence to the person or with racial hatred, whether it is connected with organized crime or terrorism, including international terrorism, or trafficking in human beings, whether it is characterized by the purpose of discrimination, and whether the offended person is affectively, psychologically or economically dependent on the perpetrator of the offense”²⁰.

For Directive 2012/29/EU, the term ‚victim’ means not only the natural person who has suffered harm, including physical, mental, or emotional harm, or economic loss which was directly caused by a criminal offense, but also the family member of a person whose death was directly caused by a criminal and who has suffered harm as a result of that person’s death.

¹⁸ S. SGARRO, *La testimonianza della vittima vulnerabile*, Psicologia e Giustizia, Anno XXI, (2020), n. 2.

¹⁹ F. DELVECCHIO, *Il danno alla vittima del reato e i suoi rimedi*, Milano, Padova: Wolters Kluwer Italia Srl. 2017.

²⁰ *Ibidem*.

In the light of this, vulnerability should also be understood as fragility concerning the dangers of criminal proceedings, their mechanisms, and the subjects involved. This may derive from both the subjective characteristics of the victim and the type of crime. For example, criminal proceedings in themselves can be a challenging experience, as they can cause trauma through the recollection of memories, ritual forms, and confrontation with the accused. When the harmfulness of criminal proceedings depends on the sum of subjective and objective factors and the relationship between the victim and the defendant, one can speak of „particularly vulnerable” victims. These include child victims of sexual abuse and exploitation. In addition to these, some victims are destined to be harmed by their participation in criminal proceedings due to their particular subjective conditions, regardless of the type of crime. These include, for example, minors, who are regarded as persons in need of protection, and victims suffering from physical or mental illness. Then there are „objectively vulnerable” victims, i.e. victims whose vulnerability depends on the type of crime. In this case, the harm does not arise from the trial itself but from the negative consequences of their contribution to the trial. In addition to these, there may be other categories of victimization, such as, for example, those belonging to sexual minorities, which have emerged especially in recent years.

Summarising the above, it is, therefore, possible to state that there are different types of victimization. The primary victimization stems from the commission of the crime and is the totality of the consequences of criminal damage. The secondary victimization results from the response of the criminal justice apparatus to victimization. The first source of the secondary victimization is the hearing, as it is a moment of great psychological stress, especially in the case of victims defined as vulnerable. Psychophysical balance may be at risk, which is why it is important to create a protection network. Another source of the secondary victimization is the lack of protection against the excessive length of criminal proceedings. This can cause victims to feel abandoned and frustrated. In addition to the criminal and process victimization, there is a third victimization: the mass media

victimization. The person who is recognized as vulnerable is psychologically fragile and therefore needs confidentiality and protection, which media intrusion does not allow. The mass media often expose the victim's experience to the judgment of others and make it public, and the victim is at risk of being subjected to further violence²¹. Finally, repetitive victimization occurs when the same person suffers multiple criminal episodes.

In crimes of ill-treatment against family members, in which the act is committed with violence and the person is effectively dependent on the perpetrator, the passive subject can be defined as a 'vulnerable victim' and can, therefore, enjoy the guarantees of protection provided by the law for this category. This condition is not recognized automatically, but each case must be assessed by the judicial authority. The European Directive, in Article 22(3) concerning the individual assessment of victims to ensure their protection, stipulates that due consideration shall be given to victims of gender-based violence and violence in close relationships, as well as to victims of other crimes²².

At present, even though from a European perspective, the judicial authority must ensure their protection, and even though the new European reforms aim to avoid further victimization, the victim is still regarded as an extra within the procedural paradigm.

4. Vulnerability in sexual offences

Today, the child, together with women and the elderly, is one of the so-called privileged victims, i.e., as explained above, the so-called vulnerable members of society. These individuals, for physical, psychological, cultural, and social reasons, are particularly vulnerable and may suffer the consequences of the crime in a more traumatic way.

Among crimes committed against children, abuse represents a serious and widespread social problem, although it is a little known

²¹ F. DELVECCHIO, *Il danno alla vittima del reato e i suoi rimedi*, Milano – Padova: Wolters Kluwer Italia Srl. 2017.

²² S. SGARRO, *La testimonianza della vittima vulnerabile*, Psicologia e Giustizia, Anno XXI, (2020), n. 2.

and marked phenomenon. Child abuse and maltreatment are not current phenomena, but old ones, even if they were ignored, tolerated, or justified for a long time. If we look at the situation of children in different historical periods and cultures, we can see that abuse has always been present. We need only think of the ancient Egyptian and Assyro-Babylonian civilizations, where the newborn child was not considered an integral part of the human race unless it had first undergone social birth rites. In Greece and China, the killing of deformed or unwanted children was a customary practice. In Roman culture, the *pater familias* had the right of life and death over his children²³. The child, therefore, was not seen as a person in need of protection but as belonging to the parent. Child protection legislation first appeared at the end of the 19th century in the United States. Children who had been abused by their parents were protected by the Society for the Protection of Animals because it was only by equating the child with an animal that it was possible to ensure their protection. During the 1940s and 1950s, the first descriptions of beaten children appeared in scientific literature. Kempe and Silverman (1962) described the *battered child syndrome*²⁴, which was also confirmed in Italy by the research of the pediatricians Rezza and De Caro (1962)²⁵. This syndrome comprised a variety of signs and symptoms in children under one year of age, secondary to violent physical acts, which resulted in neurological damage. Following this discovery, attention was no longer focused only on the abuse but also on other types of maltreatment. At the beginning of the twentieth century, pedagogy, sociology, and psychology began to interest children and their needs. The child's emotional and psychological

²³ M. POLO, *Le violenze contro i minori: cause e conseguenze*, *Psychofenia*, N. 35-36 (2017), p.185-208.

²⁴ C.H. KEMPE, F.N. SILVERMAN, B.F. STEEL, W. DROEGEMULLER, H.K. SILVER, *The battered child syndrome*, *Journal of the American Medical Association* 181 (1962), p. 17-24.

²⁵ E. REZZA, B. DE CARO, *Fratture osse multiple in lattante associate a distrofia, anemia e ritardo mentale (sindrome da maltrattamenti cronici)*, in: *Acta Paediatrica Latina* 15 (1962), p. 121-139.

needs and requirements were recognized. Besides, children's rights should be guaranteed not only by their parents but by society as a whole²⁶. It was only from the 1980s onwards, with the mass media, that interest began to be shown in child abuse and, more generally, in intra-family violence.

The word 'abuse' comes from the Latin *abutor*, meaning to misuse, to make a harmful use of. The Fourth Criminological Seminar of the Council of Europe, held in Strasbourg in 1978, described the abuse as „acts and inadequacies that seriously disturb a child, affect his or her bodily integrity, physical, emotional, intellectual and moral development, the manifestations of which are neglect and/or injury of a physical and/or psychological and/or sexual nature by a family member or others who care for the child”²⁷. Child abuse and maltreatment refer to all forms of physical and/or emotional abuse, sexual abuse, neglect or negligence, or commercial or other exploitation that result in actual or potential harm to a child's health, survival, development, or dignity within a relationship characterized by responsibility, trust or power (WHO, 2002)²⁸. In the DSM-5, issues of child maltreatment and neglect are not considered mental disorders but have been included under 'other conditions that may be of clinical concern' to draw attention to the scope of these issues. They are divided into physical, sexual, psychological, and neglect abuse. From the point of view of jurisprudence, „abuse” is defined as „any violence, threat, deception, fraud, the substitution of persons or inappropriate use of authority by taking advantage of a condition of physical or mental inferiority at the time of the act”²⁹. Abuse occurs when the victim is incapable of being aware of the real meaning of what is proposed, of being responsible for the consequences of what

²⁶ A. ABBURRÀ, *Il bambino tradito. Carenze gravi, maltrattamento e abuso a danno di minori*, Roma: Carocci Editore 2000.

²⁷ IV Criminology Seminar-Council of Europe, Strasbourg 1978.

²⁸ World Health Organisation.

²⁹ I. ORMANNI, A. PACCIOCCA, A. PACCIOCCA, *Abuso sessuale. Guida interdisciplinare*, Laurus Robuffo 2004, p. 77.

he or she accepts, and of giving lawful, legal, or legitimate consent³⁰. Since 'abuse' refers to a wide range of behaviors, sometimes not related to the use of coercion or physical force, it could be argued that sexuality does not become a crime only when it involves the use of violence. It should be borne in mind that any kind of abuse is a destabilizing attack on the child, his or her personality, and development. In short, the term 'abuse' concerning sexuality indicates an improper use of consent. Minors cannot give valid consent. The term „sexual abuse” can also be used for adults with a mature body whenever any sexual interaction takes place to the extent that valid consent is lacking. Thus, the category of „sexual abuse” can also be applied to sexuality with anyone (even in casual encounters or with prostitutes or between boyfriends or spouses) if there is non-consensual sexuality. Consequently, it can be considered „vulnerable” to anyone who is not in the condition of being unable to give valid consent; that is, lawful, legal, legitimate, and moral.

The forms of violence to which children are exposed vary according to their age and stage of development. Infants and toddlers, for example, are more exposed to abuse by family members because they are dependent on adults and have little social interaction with the outside world. As children grow older, the risk of the abuser becoming a stranger increases as independence and time spent outside the home increases.

The severity of the violence and its consequences also vary. It would seem that physical injuries, for example, are less likely to affect the child's well-being than psychological damage.

Child maltreatment is classified as follows³¹.

- Physical abuse. This is a form of visible maltreatment, as it produces injuries on the child's body that cannot be attributed to accidental events. It usually involves aggression by,

³⁰ *Ibidem*.

³¹ M. BURGONI, M.G. CALACHI, O. MAGRI, G. PEDRAZZOLI, *Gli indicatori del maltrattamento ai minori e i loro significati*, in: A.M. Campanini (a cura di), *Maltrattamento all'infanzia. Problemi e strategie di intervento*. Roma: Nis. 1993.

for example, punching, kicking, beating, burning, shaking, scratching, pulling out hair. The injury may be the result of one or more episodes of violence and may be more or less severe:

- Sexual abuse – is a form of maltreatment that involves the involvement of a child in sexual activities that include, in addition to hetero- and full homosexual relations, also, for example, sexual games, pornography, prostitution, acts that use the child to give pleasure to himself or his partner; such abuse occurs under conditions of intimidation or taking advantage of the immaturity and not full awareness of the child. In many cases, the victim has a relationship of trust with the abuser, which is often a parent, family member, or someone significant to the family.
- Neglect. This is a form of maltreatment consisting of a serious lack of care of the child by the family, both in terms of physical and psychological needs. Such neglect leads to a serious impairment of the child's psychophysical and social development. Parents are often unable to recognize and understand the needs of their children and do not assist or protect them; they do not provide care or affection and do not monitor them in dangerous situations. Maltreatment of this kind can lead to malnutrition, danger to physical health, difficulties at school, emotional instability, and deviance.
- Psychological abuse is a form of maltreatment that includes acts and omissions such as, example, punishment, threats, segregation, intimidation, disinterest, and lack of affection, demands that are not appropriate to the age and characteristics of the child, or excessive involvement in adult problems and conflicts. These acts are, in most cases, carried out by adults significant to the child and may lead to an alteration of the child's psycho-affective development.

In addition to this maltreatment, there are other types that, despite some common aspects, have different characteristics:

- Munchausen syndrome. This is a form of maltreatment acted out by one or both parents, usually the mother. It consists

of medical examinations and tests on the child as a result of illnesses induced or stimulated by the parent. Children in this type of maltreatment are forced to undergo frequent hospital admissions, and often the cause of the illness for which they are brought is not established.

- Iatrogenic ill-treatment. This is a form of ill-treatment in which doctors or health personnel abuse the child for unnecessary and harmful laboratory investigations, hospitalizations, or surgery.
- Exploitation – is a form of maltreatment in which an adult uses his or her authority over the child intending to initiate the child into, for example, drug dealing or drug use, prostitution, child labor, or theft.

Among offenses directed at children, sexual offenses have a strong traumatic impact. Kempe and Kempe proposed a classification that includes physical abuse, physical neglect, emotional neglect, and sexual abuse³². In particular, Kempe defines sexual abuse as „the involvement of children and adolescents, who are therefore immature and dependent, in sexual activities that they do not yet fully understand, to which they are not able to consent with full awareness, or which are such that they violate societal taboos about family roles”³³. This definition emphasizes that physical contact between the abuser and the child is not necessary to establish abuse. The DSM-5 defines child sexual abuse as „any sexual act involving a child that is intended to provide sexual gratification to a parent, caregiver, or another individual who has responsibility for the child. It includes activities such as fondling a child’s genitals, incest penetration, rape, sodomy, and lewd acts. It also includes non-contact exploitation of a child by a parent or caregiver, for example, forcing, tricking, enticing, threatening, or pressuring a child to participate in acts for the sexual gratification

³² R.S. KEMPE, C.H. KEMPE, *Le violenze sul bambino*, Roma: Armando 1980.

³³ *Ibidem*, p. 69.

of others, without direct physical contact between child and abuser”³⁴. The clinician, during the detection, will have the task of specifying whether the abuse is confirmed, suspected and what the related circumstances are³⁵. From a preventive point of view, the clinician could make a prognosis of vulnerability if certain predisposing conditions occur, such as the proximity of people who are hyper-sexualized or who have already been convicted of sexual abuse, or a condition of loneliness or neglect. The latter conditions are those immediately observed and sought after by predatory pedophiles. For this reason, these conditions can be indicated as ‘vulnerability indicators’. The same can be said for the clinical condition of emotional dependency because the victim, even an adult legally capable of understanding, cannot give valid consent to any sexual interaction, precisely because of his or her clinical condition. In criminal law, the sexual offense is a legal figure that includes sexual violence, lewd acts, exploitation of prostitution, child prostitution, pedophilia, and child pornography. According to some authors, the age at which the onset of traumatic sexual experiences is most likely to occur in four years, eight years, and eleven years³⁶. The WHO estimates that approximately one hundred and fifty million girls and seventy-three million boys under the age of eighteen are forced into sexual intercourse or other forms of sexual violence that include physical contact. Forms of sexual abuse include full heterosexual/ homosexual relationships, sex games, pornography, prostitution, indecent exposure, acts that use minors to provide sexual pleasure for themselves and their partners, and female genital mutilation³⁷.

Although the connection between sexual abuse and mental pathology, alcohol or drug abuse, aggression, and the use of physical

³⁴ DSM-5: *Manuale diagnostico e statistico dei disturbi mentali*, Milano: Raffaello Cortina Editore 2014, p. 834-835.

³⁵ A. PACCIOCCA, *DSM-5 e temi esistenziali*, Roma: Laurus Robuffon 2014.

³⁶ M. MALACREA, *Trauma e riparazione. La cura nell'abuso sessuale all'infanzia*, Milano: Cortina Raffaello 1998.

³⁷ World Health Organisation.

violence, as well as that of the abuser as a stranger, has been proven unfounded over time, these stereotypes persist in the collective imagination. The persistence of such prejudices is not accidental but responds to the need to identify the rapist as different. The image of the abuser as a rapist is not a random one, but a response to the need to identify the rapist as different. The image of the abuser, despite numerous data showing that most sexual violence is committed within the family, is still that of a stranger who convinces children to submit to his will with offers of various kinds³⁸. Statistical data on the family of the abused person, the IQ, the age of the parents, or economic and social factors do not correspond. A uniform statistic in the surveys, however, concerns the sex of the abused since girls are more likely to be abused than their male peers³⁹.

Abuse takes place in different contexts. The abusers can be parents or other family members, friends, acquaintances, strangers, or people in positions of authority such as teachers, health and social workers, or other minors. Based on the type of abuser, child abuse can be divided into different categories:

- Intrafamilial – it is carried out by family members who live with the child (e.g. mother, father, siblings, and grandparents);
- Extrafamilial – implemented by people known to the child (e.g. acquaintances or family friends);
- Intrafamilial – extra domestic: is carried out by a family member who does not live in the same house (uncles, cousins).

In addition to the above, abusers can be institutional caregivers (institutional abuse), persons unknown to the child (street abuse), and abusers belonging to individuals or organized criminal groups (commercial abuse)⁴⁰.

³⁸ A. ADAMI, *Dentro la violenza: cultura, pregiudizi, stereotipi. Rapporto nazionali ,Rete antiviolenza Urban'*, Milano: Franco Angeli 2002.

³⁹ I. ORMANNI, A. PACCIOLO, A. PACCIOLO, *Abuso sessuale. Guida interdisciplinare*, Laurus Robuffo 2004, p. 77.

⁴⁰ M. POLO, *Le violenze contro i minori: cause e conseguenze*, Psychofenia N. 35-36 (2017), p. 185-208.

Among the sexual abuses that occur within the child's family, one can distinguish between overt sexual abuse, disguised sexual abuse, and pseudo-abuse. Overt sexual abuse usually involves fathers or stepfathers as abusers and daughters as victims. There are situations, though rare, where the abuser is the mother⁴¹. In some cases, the grandfather may also be the abuser. Male children can also be sexually abused by both mother and father. In the second type of abuse, the child is not sexually abused. The abuser also shows care for the intimate parts, e.g. by washing or applying creams. Supervised abuse, in which the child is made to witness, for example, the sexual activity of the parents, the sexual abuse of a parent, or the exposure of pornographic images or videos, maybe part of masked abuse⁴². Finally, in pseudo-abuse, there is a complaint, but there is no certainty that the abuse took place. For example, a child may make a statement that is not true, as may be the case with an instrumentalized accusation by one spouse against the other spouse⁴³.

As far as extra-familial sexual abuse is concerned, it affects boys and girls equally and usually occurs in situations of low family control and/or emotional neglect, whereby the child accepts the emotional attention of a stranger. The perpetrators of this type of abuse are different: they can be strangers, but also known people, such as family friends, or neighbors. The abuse can be occasional or repeated over time and the victim is lured in various ways⁴⁴.

The phenomenon of abuse can be explained through various theories, including unitary and interactional theories. The former include the psychoanalytic theory, which considers parental psychological problems and disagreements as to the primary cause of maltreatment; the social theory, according to which maltreatment is behavior

⁴¹ F. BRUNO, N. FUSARO, V. PICARIELLO, *E se l'orco fosse lei? Strumenti per l'analisi, la valutazione e la prevenzione dell'abuso femminile*, Milano: Franco Angeli 2016.

⁴² M. POLO, *Le violenze contro i minori: cause e conseguenze*, *Psychofenia* N. 35-36 (2017), p. 185-208.

⁴³ *Ibidem*.

⁴⁴ F. MONTECCHI (a cura di), *I maltrattamenti e gli abusi sui bambini*, Milano: Franco Angeli 1998, p. 107-112.

expressed by a specific social group; and the environmental theory, according to which violent action results from social and environmental stress (e.g. from unemployment, inadequate housing conditions or poverty); the cognitive development theory, which identifies four levels of understanding of the child and the parent's task, with the lowest level leading to abuse; the labeling theory, according to which the dominating group defines a social class of marginalized individuals as a deviant element to protect its interests. The interactive or multi-causal theory, on the other hand, holds that maltreatment is characterized by many interrelated causes. It derives, therefore, from a set of variables from the family, society, and the set of relationships. From this point of view, different risk factors are considered to make a diagnosis of abuse: risk factors related to the individual (e.g. age, personal history, stress conditions); risk factors derived from society (e.g. unemployment, isolation, belonging to a disadvantaged social class); risk factors related to relationships (e.g. the individual's social relationships with family or friends); risk factors related to the community, i.e. those linked to the individual's relational contexts (e.g. school or work)⁴⁵.

To be able to adequately investigate sexual crimes against children, it is necessary to provide a general framework from the legal point of view, since training to deal with sexual abuse requires both psychological and legal competence. In addition to these competencies, legal psychology will have to cooperate with medicine, statistics, pedagogy, sociology, and other approaches, since abuse is a complex and multifaceted phenomenon. Specifically, legal psychology has the task of studying the motivations of the suspect and the defendant, as well as of the persons involved in the process. This discipline is often related to other related disciplines, although requiring different skills, such as, for example, legal psychology, which deals with the psychological basis underlying criminal and civil law; rehabilitation psychology, which is interested in the punishment as rehabilitative

⁴⁵ M. POLO, *Le violenze contro i minori: cause e conseguenze*, *Psychofenia* N. 35-36 (2017), p. 185-208.

treatment; rehabilitative psychology, which attempts to improve the quality of life through the modification of laws and training in legality; criminal psychology, which studies the psychic and antisocial structures of the person who commits crimes; forensic psychology, which deals with the psychological aspects of judicial evaluation. The judge, during the preliminary investigation, asks the psychologist or psychiatrist for technical advice on the child to identify the psychological suitability to testify, the reliability of the accusations, and the overall behavior in the case. Besides, he or she may also be asked to investigate family members, friends, or relatives to obtain possible indications of sexual abuse. Also for this reason it is necessary to integrate the different disciplines and to cooperate with them⁴⁶. When assessing the weight of the indicators of abuse, it seems to be common to favor indicators relating to the affective-emotional area and behavior with sexual organs, such as masturbation. The DSM-5 is a point of reference for forensic psychology but does not meet the technical needs of the courts. It can, however, help in making legal decisions⁴⁷.

Concerning cases of abuse it was found that many people, both in childhood and adulthood, can adapt even in the face of unfavorable life conditions. It was therefore concluded that any random agent taken in isolation or association with others can only be responsible for part of the variability at play since risk factors should not be assessed deterministically but within an interactionist concept⁴⁸. Vulnerability, therefore, takes on meaning as a function of a risk factor. Where the risk intensifies, there is greater vulnerability, whereas a proactive factor reduces the effect.

Of all the forms of violence presented, sexual abuse is the most serious and damaging to the child's psychological health, both in

⁴⁶ I. ORMANNI, A. PACCIOCCA, A. PACCIOCCA, *Abuso sessuale. Guida interdisciplinare*, Laurus Robuffo 2004, p. 87.

⁴⁷ A. PACCIOCCA, *DSM-5 e temi esistenziali*, Roma: Laurus Robuffo 2014.

⁴⁸ P. DI BLASIO, *Psicologia del bambino maltrattato*, Bologna: Il Mulino 2000, p. 116-117.

the short and long term, especially since it is almost always associated with other forms of violence⁴⁹.

The consequences of sexual abuse are of a different nature, mostly harmful, and are based on the characteristics of the event itself, such as, for example, precocity, frequency, duration, the seriousness of the sexual act or relationship with the abuser, as well as on protective factors, such as the individual resources of the victim, those of his or her family environment and the interventions activated in the psychosocial, health, and judicial spheres. Among the legal consequences of sexual abuse is also the need to ascertain and quantify the damage because of compensation. Of course, there are also clinical and social consequences.

5. Vulnerability in the DSM-5

In addition to the above epistemological considerations, it is very important to consider the opinion of the scientific community that is the point of reference for all psychiatrists and psychologists in the world: the DSM-5. On the one hand, we can say that the DSM-5 is the highest academic authority for the issues it deals with, and therefore also of vulnerability, on the other hand, however, this manual considers organic and psychosomatic, in addition to those specifically psychological and psychiatric. However, it is very important to keep in mind the complexity of the person for a more accurate diagnosis in both clinical and psycho-forensic settings.

Here I report the main contexts in which the DSM-5 refers to the vulnerability and predispositions related to the various clinical conditions that, as you can see, have many references especially, to issues on sexuality, addictions, sleep-wake cycle, personality disorders, and somatization. All page citations that follow refer to the English version of the DSM-5⁵⁰.

⁴⁹ *Ibidem*.

⁵⁰ American Psychiatric Association, DSM-5 (Diagnostic and Statistical Manual Fifth Edition). Washington DC,

Concerning vulnerability in sexuality, we have the following references. „Several factors must be considered during the assessment of sexual dysfunction, given that they may be relevant to etiology and/or treatment, and that may contribute, to varying degrees, across individuals:

1. partner factors (e.g., partner's sexual problems; partner's health status);
2. relationship factors (e.g., poor communication; discrepancies in desire for sexual activity);
3. individual vulnerability factors (e.g., poor body image; history of sexual or emotional abuse), psychiatric comorbidity (e.g., depression, anxiety), or stressors (e.g., job loss, bereavement);
4. cultural or religious factors (e.g., inhibitions related to prohibitions against sexual activity or pleasure; attitudes toward sexuality); and
5. medical factors relevant to prognosis, course, or treatment” (p. 413). „There appears to be a strong influence of genetic factors on vulnerability to sexual problems in women” (p. 435).

Vulnerability in Gender Dysphoria. „Additional predisposing factors under consideration, especially in individuals with late-onset gender dysphoria (adolescence, adulthood), include habitual fetishistic transvestism developing into autogynephilia (i.e., sexual arousal associated with the thought or image of oneself as a woman) and other forms of more general social, psychological, or developmental problems” (p. 457).

Vulnerability in Paraphilic disorders. „the connection between the paraphilias is not obvious, and the presence of multiple paraphilias may be coincidental or else related to some generalized vulnerability to anomalies of psychosexual development (p. 686).

Vulnerability in Personality Disorders. Narcissistic personality. „Vulnerability in self-esteem makes individuals with narcissistic personality disorder very sensitive to „injury” from criticism or defeat” (p. 671). „Typical features of narcissistic personality disorder are variable and vulnerable self-esteem, with attempts at regulation through attention and approval seeking, and either overt or covert

grandiosity" (p. 765). „In narcissistic personality traits of Negative Affectivity (e.g., depressivity, anxiousness) can be specified to record more „vulnerable" presentations". Vulnerability in Borderline Personality: „perceptions of others selectively biased toward negative attributes or vulnerabilities" (p. 766).

The vulnerability toward developing co-occurring conditions changes as individuals pass through the age of risk for various co-occurring conditions. For example, prepubertal children with tic disorders are more likely to experience attention-deficit /hyperactivity disorder (ADHD), obsessive-compulsive disorder (OCD), and separation anxiety disorder than are teenagers and adults, who are more likely to experience the new onset of major depressive disorder, substance use disorder, or bipolar disorder (p. 83).

It is believed that multiple genes confer vulnerability to panic disorder. However, the exact genes, gene products, or functions related to the genetic regions implicated remain unknown. ... There is an increased risk for panic disorder among offspring of parents with anxiety, depressive, and bipolar disorders (p. 211).

There is evidence for a genetic vulnerability to trichotillomania. The disorder is more common in individuals with obsessive-compulsive disorder (OCD) and their first-degree relatives than in the general population (p. 253).

About personality disorders, some personality features may be associated with a vulnerability to situational distress that may resemble an adjustment disorder... In addition to some personality disorders incurring vulnerability to distress, stressors may also exacerbate personality disorder symptoms (p. 288).

Vulnerability in Socio-Cultural area. Areas of psychological vulnerability: „culture may also contribute to vulnerability and suffering (e.g., by amplifying fears that maintain panic disorder or health anxiety)" (p. 14). Social anxiety: „Traits predisposing individuals to social anxiety disorder, such as behavioral inhibition, are strongly genetically influenced... social anxiety disorder is heritable (but performance-only anxiety less so). First-degree relatives have a two to six times greater chance of having a social anxiety disorder, and liability

to the disorder involves the interplay of disorder-specific (e.g., fear of negative evaluation) and nonspecific (e.g., neuroticism) genetic factors” (p. 205).

Vulnerability in Cultural Formulation Interview. „Psychosocial stressors and cultural features of vulnerability and resilience: Identify key stressors and supports in the individual’s social environment (which may include both local and distant events) and the role of religion, family, and other social networks (e.g., friends, neighbors, coworkers) in providing emotional, instrumental, and informational support. Social stressors and social supports vary with cultural interpretations of events, family structure, developmental tasks, and social context. Levels of functioning, disability, and resilience should be assessed in light of the individual’s cultural reference groups” (p. 750). „A number of factors may contribute to somatic symptoms and related disorders. These include genetic and biological vulnerability (e.g., increased sensitivity to pain), early traumatic experiences (e.g., violence, abuse, deprivation), and learning (e.g., attention obtained from illness, lack of reinforcement of nonsomatic expressions of distress), as well as cultural /social norms that devalue and stigmatize psychological suffering as compared with physical suffering” (p. 310). „Familial transmission of bulimia nervosa may be present, as well as genetic vulnerabilities for the disorder” (p. 348). „A shared vulnerability for psychosis and medical disorders may explain some of the medical comorbidity of schizophrenia” (p. 105). „Bereavement-related depression tends to occur in persons with other vulnerabilities to depressive disorders, and recovery may be facilitated by antidepressant treatment” (p. 155).

Overconnection schemata involve impaired autonomy with themes of dependency, vulnerability, and incompetence (p. 304). Rumination disorders: „Psychosocial problems such as lack of stimulation, neglect, stressful life situations, and problems in the parent-child relationship may be predisposing factors in infants and young children” (p. 333).

Vulnerability in eating and elimination disorders. „A number of predisposing factors for enuresis have been suggested, including delayed or lax toilet training and psychosocial stress” (p. 356).

„Physiological predispositions to constipation include ineffectual straining or paradoxical defecation dynamics, with contraction rather than relaxation of the external sphincter or pelvic floor during straining for defecation” (p. 358). „Inadequate, inconsistent toilet training and psychosocial stress (e.g., entering school, the birth of a sibling) may be predisposing factors” (p. 359).

Vulnerability in Substance-related and addictive disorders. „High vulnerability is associated with preexisting schizophrenia or bipolar disorder, as well as impulsivity (producing enhanced rates of all substance use disorders and gambling disorder), and a high risk specifically for alcohol use disorder is associated with a low level of response (low sensitivity) to alcohol” (p. 494). Females who drink heavily may also be more vulnerable than males to some of the physical consequences associated with alcohol, including liver disease (p. 495). „External environmental circumstances may precipitate a withdrawal syndrome in vulnerable individuals. ... Genetic factors appear to increase vulnerability to caffeine withdrawal, but no specific genes have been identified” (p. 508). „The hallucinogenic effects in vulnerable individuals may last for weeks and may precipitate a persistent psychotic episode resembling schizophrenia” (p. 521). „Peer factors may relate to genetic predisposition in terms of how an individual selects his or her environment... Peer factors may relate to genetic predisposition in terms of how individuals select their environment” (p. 544). „Genetic factors contribute to the onset of tobacco use, the continuation of tobacco use, and the development of tobacco use disorder, with a degree of heritability equivalent to that observed with other substance use disorders (i.e., about 50%). Some of this risk is specific to tobacco, and some is common with the vulnerability to developing any substance use disorder” (p. 574). „Some individuals underestimate their vulnerability to develop gambling disorder or to return to gambling disorder following remission (p. 587).

Vulnerability in Sleeping problems. „It usually resolves once the initial precipitating event subsides. For some individuals, perhaps those more vulnerable to sleep disturbances, insomnia may persist long after the initial triggering event, possibly because of conditioning

factors and heightened arousal” (p. 365). „Anxiety or worry-prone personality or cognitive styles, increased arousal predisposition, and tendency to repress emotions can increase vulnerability to insomnia... The prevalence of insomnia is higher among monozygotic twins relative to dizygotic twins; it is also higher in first-degree family members compared with the general population. The extent to which this link is inherited through a genetic predisposition, learned by observations of parental models, or established as a by-product of another psychopathology remains undetermined” (p. 366). „Most individuals resume normal sleep patterns after the initial triggering event has disappeared, but others—perhaps those more vulnerable to insomnia—continue experiencing persistent sleep difficulties... Anxiety or worry-prone personality or cognitive styles, increased arousal predisposition, and tendency to repress emotions can increase vulnerability to insomnia. Noise, light, uncomfortably high or low temperature, and high altitude may also increase vulnerability to insomnia. Genetic and physiological. Female gender and advancing age are associated with increased vulnerability to insomnia” (p. 366). „Cheyne-Stokes breathing can be distinguished from other mental disorders, including other sleep disorders, and other medical conditions that cause sleep fragmentation, sleepiness, and fatigue based on the presence of a predisposing condition (e.g., heart failure or stroke) and signs and polysomnographic evidence of the characteristic breathing pattern” (p. 386). „Predisposing factors may include a longer than average circadian period, changes in light sensitivity, and impaired homeostatic sleep drive” (p. 392). „Hospitalized individuals with neurological and psychiatric disorders can become insensitive to social cues, predisposing them to the development of non-24-hour sleep-wake type” (p. 398). „Physical health (e.g., gastrointestinal disorders, cardiovascular disease, diabetes, cancer). Individuals with a history of bipolar disorder are particularly vulnerable to shift work type-related episodes of mania resulting from missed nights of sleep. Shift work type often results in interpersonal problems” (p. 398). „It is not known whether the medications per se result in REM (Rapid Eye

Movement) sleep behavior disorder or they unmask an underlying predisposition” (p. 409).

In general, individuals with lower levels of impairment may be better able to function independently. However, even these individuals may remain socially naive and vulnerable, have difficulties organizing practical demands without aid, and are prone to anxiety and depression (p. 56).

Other areas of predisposition and vulnerability: „Predisposing factors include female gender, advancing age, genetic risk variants, and family history of RLS (Restless Legs Syndrome)” (p. 412). „The impaired brain function of individuals with mild and major NCD (Neurocognitive Disorders) renders them more vulnerable to delirium” (p. 600). „Medication-induced movement disorders. „A prior episode associated with antipsychotics has been described in 15%-20% of index cases, suggesting underlying vulnerability in some patients” (p. 711).

6. Proposals

After this analysis of the concept of vulnerability aimed at the legal-forensic application, the proposal that I would make is twofold:

- a. consider the opportunity to use specific instruments for the evaluative assessment of the degree and type of vulnerability;
- b. consider other criteria to identify the vulnerable personality that could escape the scrutiny of tests and classical diagnostic manuals.

We know that especially in forensic psychology we need to classify psychic dimensions that are very difficult to classify and quantify the unquantifiable. However, we need to rely on instruments that experts indicate are reliable or at least the most reliable according to the most modern and accredited research and scientific evidence.

Even concerning vulnerability, we have instruments that can be used – with due precautions – in the forensic psychology of various courts around the world.

The first instrument that I would like to propose is the Mental Vulnerability Questionnaire (MVQ)⁵¹ which, as can be seen, investigates vulnerability in three areas:

- a. Psychosomatic symptoms;
- b. Mental symptoms;
- c. Interpersonal problems. (see attachment no. 1)

A second instrument, the Personal Attributes Questionnaire (PAQ) based on the concept of vulnerability of Spence & Helmreich, (1978)⁵² has considered three variables: Agency, Communion, and Emotional Vulnerability. Concerning the Five-factor theory, Emotional Vulnerability and Communion correlated well with Neuroticism and Agreeableness, respectively, and Agency had moderate correlations with Neuroticism, Extraversion, and Conscientiousness. The PAQ (see Appendix 2) has also highlighted its validity in identifying emotional vulnerability and quantifying it within a group, as described by Spence, J.T., & Helmreich, R.L. (1978)⁵³. What is of interest in this forensic psychology context is a) the possibility of being able to identify the quality and intensity of emotional vulnerability in correlation; b) the correlation between emotional vulnerability and resourcefulness. The latter construct of resourcefulness is

⁵¹ C.A. DA CRUZ SEQUEIRA, et al., *Evaluation of the Psychometric Properties of the Mental Vulnerability Questionnaire in Undergraduate Students*, Perspectives in Psychiatric Care 53 (2017), p. 243–250, Perspectives in Psychiatric Care ISSN 0031-5990. DOI 10.1111/ppc.12164. L. FALGAARD EPLOV, *Health and Disability The Mental Vulnerability Questionnaire: A psychometric evaluation*, Scandinavian Journal of Psychology 51 (2010), p. 548–554. DOI 10.1111/j.1467-9450.2010.00834.x

⁵² L. CHARLES WARD et al., *Measurement of Agency, Communion, and Emotional Vulnerability With the Personal Attributes Questionnaire*, Journal Of Personality Assessment 86 (2) (2006), p. 206–216 Copyright © Lawrence Erlbaum Associates, Inc.

⁵³ J.T. SPENCE, R.L. HELMREICH, *Masculinity and femininity: Their psychological dimensions, correlates, & antecedents*, Austin: University of Texas Press 1978. J.T. SPENCE, R.L. HELMREICH, C.K. HOLAHAN, *Negative and positive components of psychological masculinity and femininity and their relationships to self-reports of neurotic and acting out behaviors*, Journal of Personality and Social Psychology 37 (1979), p. 1673–1682.

a derivative of research done in victimology. In fact, who is a victim shows – to a variable degree – certain helplessness or a low level of resourcefulness or freedom to react. Resourcefulness before had been considered as a characteristic of masculinity or active person as opposed to the characteristic of femininity or passivity. I now believe that it is appropriate to consider resourcefulness apart from the masculine-feminine and active-passive dichotomies. The vulnerable adult is not always the woman with a passive attitude and the aggressor is not always the man with an active attitude. Therefore, I propose this second instrument – the Personal Attributes Questionnaire (PAQ) – with variations not in the content of the dichotomous items but the response indications.

A third instrument⁵⁴ that also proposes to identify the most vulnerable persons is the SV in IDD (Social Vulnerability Questionnaire for Individuals with Intellectual and Developmental Disabilities) that has shown its effectiveness also for problematic adults, adolescent bullies, and adult stalkers (see attachment n. 3). The SV in IDD can identify six critical factors that predispose to vulnerability: Factor I: Risk Awareness; Factor II: Parental Independence; Factor III: Social Protection; Factor IV: Credulousness; Factor; Factor V: Vulnerable Appearance; VI: Emotional Abuse. The more these factors are evident the more vulnerable the person is. Item #11 plays a crucial role in the interpretation of SV in IDD.

Currently, research on sexual vulnerability is focusing on risk factors. Regarding this, risk factors fall into two categories:

- a. static factors (i.e. generally unchangeable information such as previous offense history) from which several actuarial scales have been developed;
- b. dynamic factors (i.e. psychological dispositions) that are typically identified in treatment. These risk factors are artifacts

⁵⁴ M.H. FISHER, *Psychometric Properties and Utility of the Social Vulnerability Questionnaire for Individuals with Intellectual and Developmental Disabilities*, Journal of Autism and Developmental Disorders (2020) 50:2348–2359 <https://doi.org/10.1007/s10803-018-3636-4>.

of the same behavioral and psychological vulnerabilities. Static factors acting as markers for underlying dispositions, while dynamic factors are the underlying dispositions⁵⁵.

The last proposal, but for me, the most important one, is the one related to a criterion to be agreed upon to determine the state and the trait of vulnerability. This criterion comes to us from the Cognitive-Existential approach whose greatest representative is Viktor Frankl, who in expounding his thought on moral conscience proposes a basis of two dimensions: freedom and responsibility. According to this anthropology, the healthy person, among other characteristics, is the one who feels free and at the same time responsible for the meaning and significance of his life, but also free and responsible for his attitude towards suffering, death, and any of his choices for self-determination.

On the contrary, the person the more predisposed to problematic (physical, psychic, social, and moral) the less he feels and uses his freedom and responsibility in the various contexts of his life to the point of perceiving his life as without any sense and meaning. This condition is the premise of many physical, psychic, social, and moral problems. Freedom without responsibility leads to wild living and responsibility without freedom leads to living as automatons. In the human being freedom and responsibility is one as two sides of the same coin.

From these premises, it follows that the person is vulnerable in the measure in which he/she has not a balance within freedom-responsibility. In the application of this „freedom-responsibility” criterion to clinical psychology, the etiological link between the meaning of the symptom and the meaning of life is sought, and then psychotherapy treatment is based on the awareness of being able to consider every situation and condition as an opportunity to develop prosocial

⁵⁵ A.R. BEECH, L.A. CRAIG, *The current status of static and dynamic factors in sexual offender risk assessment*,

Journal of Aggression, Conflict and Peace Research, Vol 4 (4) (2012), p. 169-185.
<http://dx.doi.org/10.1108/17596591211270671>.

self-transcendence⁵⁶. In the same way, in the applications of the criterion „freedom-responsibility” to forensic psychology, the expert and the judges will have to look for the etiological link between the conduct in question with the possible „noogenic neurosis” that is characterized by a void of meaning: life appears as without a meaning worthy of being realized and therefore without value⁵⁷.

It might seem paradoxical but such a crucial and vital criterion as „freedom-responsibility” on which health or disease – and sometimes even life or death – depends, has never been taken into account by classical diagnostic manuals. For over 50 years, diagnoses and trials in various courts have been made with the criteria of these manuals – such as ICD and DSM – almost completely ignoring a clinical humanistic-existential approach. Finally, since 2013 we have the DSM-5 that among the new terms has also introduced a mention of the „meaning of life”. It is not the only existential seed in the DSM-5 because there are also hints to the meaning of death and other existential themes including cultural and religious issues⁵⁸.

I believe that now consciences are sufficiently mature to consider alternative approaches, such as the Cognitive Existential approach of Logotherapy that has anthropology compatible with all cultures and all religions because it is based on ontological human principles: the freedom-responsibility in front of life understood as the opportunity to perform a task or mission that gives a personal and pro-social sense.

Logotherapy, as the greatest exponent of the Existential Cognitive approach, among the many applications has recently had an application to the theme of vulnerability related to the context of poverty: „Frankl (2000) considers the individual a tridimensional being and he

⁵⁶ A. PACCIOLO, *Humanistic and Existential Psychology in the Practice of Psychotherapy*, Vol. 19, April 2019. [ejournal.stftws.ac.id](http://ejournal.stftws.ac.id/index.php/spet/article/view/84) (<http://ejournal.stftws.ac.id/index.php/spet/article/view/84>). (DOI <https://doi.org/10.35312/spet.v19i1.84>).

⁵⁷ Noogenic Neurosis and Self-Transcendence. The Existential-Humanistic approach in clinical psychology (Angelicum) (ANG 96-4 (2019). [qxp_ANGELICUM 27/01/20 14:54](#) Pagina 446.

⁵⁸ *DSM-5 e Temi Esistenziali*, Ediz. Laurus Robufo, Roma 2014.

focuses on the spiritual dimension from which it is possible to query the meaning of life. ... integration of Logotherapy and Psychoanalytic Psychotherapies conform a suitable approach to address the issues presented by people living in vulnerable contexts... This particular approach seeks „to look further” and identify the capacities of those who ask for help and take responsibility for their existence”⁵⁹.

Conclusion

We started from the observation that it is not easy to identify vulnerability and it is even more difficult to assess it both for clinical purposes and psycho-forensic applications. We considered the two first definitions: the first very narrow, limited to a permanently imperfect use of reason, and the second referring to the limits of personal freedom with an inability to resist offenses.

The concept of vulnerability needs more explication and that is why we have offered an epistemological reflection waiting for further contributions; that is why we have considered vulnerability in the DSM-5 as a pathological predisposition in the various problems starting from genetics to extend to familiarity and get to environmental conditioning.

Both epistemology and DSM-5 are important in clarifying personal vulnerability specifically in decision making. However, both – epistemology and DSM-5 – are still not enough if the application tools are lacking; which is why three tools were presented – the Mental Vulnerability Questionnaire (MVQ), the Personal Attributes Questionnaire (PAQ), and the SV in IDD (Social Vulnerability Questionnaire for Individuals with Intellectual and Developmental Disabilities) to make both – judges and forensic psychologists – aware of the possibility of operational tools to put into practice what epistemology indicates and DSM-5 provides. It is obvious that the application of the aforementioned three tools, like all the specific methodologies,

⁵⁹ P. OVEJAS, A. FEENEY, *Clinical Psychological Interventions in Populations with Socioeconomic Vulnerability*, Revista Argentina de Clínica Psicológica Vol. XXX, N°1, (2021), p. 988-997 DOI 10.24205/03276716.2020.2094.

is up to the expert forensic psychologists. However, it is good that also jurists and judges know both the existence of these modalities of vulnerability assessment and their potentialities together with their limits. Precisely regarding this, I believe it is appropriate to clarify that today we have not only new tools – we also have new modalities and procedures for a more reliable diagnosis. In fact, before DSM-5 (2013) almost all diagnoses were based on clinical interviews and the answers that subjects gave to tests. Today we have a procedure that allows us to make more reliable diagnoses: in addition to the answers the subject gives to the tests, we have indications that come to us from one or two external observers. For example, the first two tests – the Mental Vulnerability Questionnaire (MVQ), the Personal Attributes Questionnaire (PAQ) – can be administered not only to the subject (the presumed vulnerable person) but also to two external observers also called BF (Best Friend) that the subject will have indicated. This procedure will serve to have some indications on how the subject perceives himself (the items formulated in the first person) and how he is perceived by two external observers (the items formulated in the third person). This method can be further refined by asking the subject to evaluate his or her parents (the items formulated in the third person) to observe how he or she perceives the parents. This may serve us to hypothesize similar vulnerabilities in one or both of his or her parents.

The third instrument presented – the SV in IDD (Social Vulnerability Questionnaire for Individuals with Intellectual and Developmental Disabilities) – also lends itself to a more precise diagnostic procedure. Since it is structured with items formulated in the third person, it can be an observation grid by two professionals who – at different times – can verify the indices of converging vulnerabilities (observed by both) and the indices of temporary or doubtful vulnerabilities.

As we know, to make a good diagnosis, it is not enough to have good tools used well and based on a good epistemology with reference points of a diagnostic manual. A good clinical diagnosis of procedural criteria based on sharable anthropology; and is why the principle

of freedom-responsibility was hypothesized and applied by V. Frankl in proposing Logotherapy has been mentioned⁶⁰.

This is the reason why among the proposals put forward here, logotherapy has been included, which is the most authentic expression of contemporary Existential Cognitivism, but its roots go back to before Frankl himself validated his theory in concentration camps⁶¹. Other contexts are recommended to explore this approach further.

However, the main reason for which the proposal of the freedom-responsibility criterion for the psycho-forensic evaluation of vulnerability was made lies in the anthropological compatibility in trials both for the nullity of marriage and for cases of „*delicta graviora*”.

There are cases in which the victim has a vulnerability little visible because it appears perfectly capable of understanding and will and therefore does not have an imperfect use of reason, however, is unable to oppose his attacker. One of these cases could be that of emotional dependency which, like other dependencies, makes the subject little free and little responsible. In these cases, it will also be necessary to investigate the predatory perpetrator if he habitually goes in search of people in need of affection and predisposed to emotional dependence. Assuming that the sexual predator (whether serial or not) is a cleric and that the person with the *vulnus* of affective dependence is a faithful one, it is not easy to prove that the sexual relations took place with valid consent. Similar cases – *mutatae mutandis* – may

⁶⁰ Frankl wanted to give to his approach the term „logotherapy” to indicate a psychotherapy centered on the „logos” that he, despite being Jewish has borrowed from the Greek of the fourth gospel, where A. John states in his prologue that „in the beginning was λόγος.” His interpretation of „λόγος” was that of the meaning and significance of life and all creation, present before any form of life began. Similarly, every form of life has meaning before there are even the prerequisites for its birth.

⁶¹ Frankl himself says: „The beginnings of logotherapy, however, date back to the publication: *Psychoterapie und Weltanschauung. Zur Grundsatzlichen Kritik ihrer Beziehungen*, Internationale Zeitschrift fuer Individualpsychologie, 1925”. Cf. V.E. FRANKL, *Zur geistigen Problematik der Psychoterapie*, Zentralblatt 1937, a publication in which for the first time expressis verbis existential analysis was sketched; also, Frankl, 1939.

arise when proceeding in cases of 1095, paragraph 2, or 3 in which the maturity of one and both partners of the couple must be ascertained. In all these cases, as well as in others, it is important to observe the case with the criterion of freedom-responsibility that can evaluate both the presence of psychopathology (or immaturity) and the physiological growth necessary for an existential choice for marriage or consecrated life.

The limits of this article are essentially four:

- a. the epistemological dimension of vulnerability to be continued to deepen;
- b. the critical review of the DSM-5 that although it is open to existential issues, however, still does not explicitly consider the psychic vulnerability to be applied in forensic psychology;
- c. expand the tools to be applied to highlight and assess vulnerability;
- d. interject to the above criteria also other criteria for the diagnosis of reliability, credibility, and suggestibility for the evaluation of the ability to testify not only in minors but also in vulnerable adults.

Bezradność w psychologii sądowej i prawie kanonicznym

Niniejszy artykuł ma na celu zainicjowanie dyskusji wśród psychologów i prawników kanonistów na temat koncepcji bezradności w psychologii sądowej, aby ułatwić jej zastosowanie w obowiązującym prawodawstwie. Po krótkim rozważeniu stanu sprawy w sądach kościelnych, autor dokonał przeglądu różnych podejść psychologicznych dotyczących bezradności. Koncepcja bezradności w DSM-5 została uznana za punkt odniesienia dla wszystkich klinicystów. Następnie przedstawione zostały propozycje dla ekspertów i sędziów dotyczące narzędzi i kryteriów diagnozowania bezradności. W podsumowaniu podkreślone zostały obecne ograniczenia i przyszłe możliwości zastosowania metod, narzędzi i kryteriów związanych z bezradnością. Autor zaczął swoje rozważania od spostrzeżenia, że nie jest łatwo zdefiniować bezradność, a jeszcze trudniej jest ją ocenić zarówno dla celów klinicznych, jak i psycho-kryminalistycznych. Dlatego też zostały rozważone dwie pierwsze definicje: pierwsza bardzo wąska, ograniczona

do osób, które na stałe posiadają niepełne używanie rozumu, a druga odnosząca się do granic wolności osobistej z niezdolnością do przeciwstawienia się przestępstwom. Pojęcie bezradności wymaga szerszego wyjaśnienia i dlatego autor artykułu zaproponował refleksję epistemologiczną; bezradność została przez autora uznana za patologiczną podatność na różne problemy, poczynwszy od genetyki, poprzez warunki rodzinne, a skończywszy na uwarunkowaniach środowiskowych, zgodnie zatem z tym co się przewiduje w DSM-5. Autor podsumowuje swoje rozważania stwierdza m.in., że ograniczenia tego artykułu są zasadniczo cztery: a. epistemologiczny wymiar bezradności, który należy nadal pogłębiać; b. krytyczny przegląd DSM-5, który chociaż jest otwarty na kwestie egzystencjalne, nadal nie uwzględnia wyraźnie podatności psychicznej do zastosowania w psychologii sądowej; c. rozszerzenie narzędzi, które należy zastosować w celu podkreślenia i oceny bezradności; d) dodanie do powyższych kryteriów również innych kryteriów diagnozy wiarygodności, wiarygodności i sugestywności w celu oceny zdolności do zeznawania nie tylko u nieletnich, ale także u wrażliwych dorosłych.

Keywords: vulnerability; forensic psychology; victim; sexual offences; DSM-5

Słowa kluczowe: bezradność; psychologia sądowa; ofiara; przestępstwa seksualne; DSM-5

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Attachment no. 1

Mental Vulnerability Questionnaire (MVQ)					
Instructions: Please score 1 to mean never; 2 for rarely; 3 for sometimes; 4 to mean very often; 5 to mean always	1	2	3	4	5
1. Do my hands easily shake?					
2. Do I suffer from loss of appetite?					
3. Do I suffer from severe headaches?					
4. Do I suffer from sleeplessness?					
5. Do I have anxiety attacks?					
6. Do I feel very tired?					
7. Do I take medicine, such as headache tablets, sleeping pills, tranquilizers, or the like?					
8. Do I have pain in different parts of my body, e.g., my stomach, neck, back, or chest?					
9. Do I suffer from bad nerves?					
10. Do I suffer from fits of dizziness?					
11. Do I believe that noise bothers me more than it does most other people?					
12. Am I in a bad mood?					
13. Is it difficult for me to concentrate on my work when someone is watching me?					
14. Does my heart beat very fast for no particular reason?					
15. Do I feel unwell?					
16. Is it difficult for me to make friends?					
17. Is it difficult for me to accept that other people decide over me?					
18. Do I prefer to keep to myself?					
19. Do small things get on my nerves?					
20. Do I have thoughts that trouble and worry me?					
21. Am I very shy or sensitive?					
22. Do I feel misunderstood by other people?					

Attachment no. 2

Personal Attributes Questionnaire (PAQ) ^A					
Polarities	-2	-1	0	+1	+2
1. Not at all aggressive to Very aggressive					
2. Not at all independent to Very independent					
3. Not at all emotional to Very emotional					
4. Very submissive to Very dominant					
5. Not at all excitable to Very excitable in a major crisis					
6. Very passive to Very active					
7. Not at all Able to Able to devote self completely to others					
8. Very rough to Very gentle					
9. Not at all helpful to others to Very helpful to others					
10. Not at all competitive to Very competitive					
11. Very home oriented to Very worldly					
12. Not at all kind to Very kind					
13. Indifferent to others' to Highly needful of others' approval					
14. Feelings not easily hurt to Feelings easily hurt					
15. Not at all aware to Very aware of feelings of others					
16. Can make decisions easily to Have difficulty making decisions					
17. Give up very easily to Never give up easily					
18. Never cry to Cry very easily					
19. Not at all self-confident to Very self-confident					
20. Feel very inferior to Feel very superior					
21. Not at all understanding to Very understanding of others					
22. Very cold in relations to Very warm in relations with others					
23. Very little need to Very strong need for security					
24. Go to pieces under pressure to Stand up well under pressure					

^A For each of the following polarities, indicate which polarity, in general, you lean toward. Write an „X” on -2 to indicate that you have a consistent leaning towards the first part of the sentence; an „X” on -1 to indicate that you have a moderate leaning towards the first part of the sentence. Avoid indicating 0 (zero) a perfect balance between the two parts of the proposed sentences is very unlikely. If it's difficult for you to indicate which polarity you tend for in general, indicate the tendency you've had these last six months. Write an „X” on +1 to indicate that you have a moderate bias toward the second part of the sentence; or, write an „X” on +2 to indicate that you have a consistent bias toward the second part of the sentence.

Attachment no. 3

The SV in IDD (Social Vulnerability Questionnaire for Individuals with Intellectual and Developmental Disabilities) is not a self-administered test but an observation grid for clinicians who will need to diagnose the type and degree of vulnerability.

1 Is considered part of a social peer group (Factor III: Social Protection)
2 Allowed to be with older people without supervision (Factor II: Parental Independence)
3 Is isolated from peers (Factor III: Social Protection)
4 Knows has a disability (Factor I: Risk Awareness)
5 People try to hurt feelings (Factor VI: Emotional Abuse)
6 Gets picked on by others (Factor VI: Emotional Abuse)
7 Likely to believe false claim (Factor IV: Credulous)
8 Others perceive to have a disability (Factor IV: Credulous)
9 Others consider looking different from peers (Factor IV: Credulous)
10 Others perceive as immature/ naïve (Factor III: Social Protection) (Factor IV: Credulous) (Factor III: Social Protection)
11 Others perceive as easy to take advantage of (Factor IV: Credulous)
12 Asks inappropriate questions (social faux pas) (Factor IV: Credulous)
13 Has many friends (Factor III: Social Protection)
14 People make fun of him/her (Factor VI: Emotional Abuse)
15 Lives close to friends (Factor III: Social Protection)
16 Consults with parents before making decisions (Factor I: Risk Awareness)
17 Is smaller than other individuals the same age (Factor IV: Credulous)
18 Is overly trusting of strangers (Factor IV: Credulous)
19 Likely to tell if something questionable happens (Factor I: Risk Awareness)
20 People do mean things (Factor VI: Emotional Abuse)
21 Recognizes potentially dangerous situations (Factor I: Risk Awareness) (Factor IV: Credulous)
22 Likely to be left alone for an extended period (Factor II: Parental Independence)
23 Allowed with the opposite sex without supervision (Factor II: Parental Independence)
24 Can accurately describe disability to others (Factor I: Risk Awareness)
25 Is often called names (Factor VI: Emotional Abuse)
26 Can be easily convinced to give money to others (Factor IV: Credulous)
27 Was taught to think for his/herself (Factor I: Risk Awareness)
28 Encouraged to express emotion and not take it out on someone/ thing else (Factor I: Risk Awareness)