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## New Forms of Collaborative Lawyering and Story Construction in the Field of International Protection: Cases of Victims of Human Trafficking

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### Abstract

*This contribution seeks to explore new forms of legal, human and social protection in which clients, lawyers and voluntary associations work together to identify vulnerable people and their needs and to defend them. It shows how forms of so-called collaborative lawyering can be articulated in practice by analysing cases of international protection in Italy. It puts the accent on the role played by non-lawyers (cultural mediators) in contributing to the victims of human trafficking processes of familiarisation and socialisation, thereby exploring whether and how these diverse collaborators may contribute to empowering the performance of vulnerable clients in the procedures that involve them. The contribution ends with a proposal to make conscious use of legal storytelling as a tool for supporting vulnerable clients, in a socio-clinical space shared between researchers, professionals (attorneys, judges, voluntary associations) and clinical students.*

**Keywords:** migration law; human trafficking; clinical law approach.

### Introduction

This contribution seeks to explore new forms of legal, human and social protection in which clients, lawyers and voluntary associations work together to identify “vulnerable people” and their needs and to defend them (Galowitz, 2012). These new forms of so-called collaborative lawyering (López, 1994; 2017) pave the way for a more generalised appraisal of the possibility of developing legal-clinical tools to help vulnerable people engage in problem-solving, supporting their participation in legal settings.

Within this framework, I shall show how forms of collaborative lawyering can be articulated in practice by analysing the case of a woman seeking international protection in Italy. I shall put the accent on the role played by non-lawyers (cultural mediators) in contributing to the process of how victims of human trafficking reconstruct their stories, thereby exploring whether and how these diverse collaborators may contribute to empowering the performance of vulnerable clients in the procedures that involve them.

From the standpoint of the issue of access to justice, I shall argue the thesis that the possible development of a socio-clinical model of research and action within Law Faculties, based on a dynamic narrative approach (Daiute, 2014), may furnish vulnerable clients familiarity with the norms, procedures and expectations of the institutions of their host countries, providing them with

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tools – such as narrative devices (Daiute et al., 2017; Di Donato, 2020) – for mediating their positions in regards to society.

The contribution has the following structure. It first draws on some perspectives of clinical legal education as the ideal framework for shaping interdisciplinary collaborations (par. 2); it then describes the normative framework that governs international protection in Italy and the role of social workers in protecting the victims of trafficking and of prostitution (par. 3); on this basis, it then proposes fragments of the story of Margaret and of the administrative path on which she embarked with the support of the Dedalus social co-operative based in Naples (par. 4). The chapter ends with a proposal to make more conscious use of storytelling as a tool for supporting vulnerable clients, in a socio-clinical space shared between researchers, professionals and clinical students (par. 5).

### **Collaborative lawyering for cases of powerless clients**

A “rebellious vision” of clinical legal education (López, 1992; 1996; 2004; 2005; 2009, 2017; White, 1987-1988; Alfieri, 2016) especially supports the idea of recentralising clients’ stories to enhance their “power to act independently and collectively upon the laws and legal institutions”, by restoring the integrity of their voices and stories in legal settings (Alfieri, 1990-1991: 2146). In fact, the late 1980s and early 1990s saw the emergence of an extensive literature highlighting the importance of a more egalitarian collaboration between attorneys and (lower-income) clients, as individuals or as members of a community. According to clinical scholars, the client is important to understanding the law and the case, starting from the specific experience of which (s)he is the bearer, as an individual or as a member of a group or institution (Shalleck, 2015). This new model’s primary concern is to ensure that clients play the central role not only in setting ultimate objectives and offering details of their experiences but also in making important decisions (Zulack, 1994-1995). Rebellious lawyers thus promote a vision exhorting lawyers to involve clients directly in individual and collective efforts to speak and act against their own oppression (Piomelli, 2016). In particular, López (2004) argues that lawyers, clients and other community members should work together in a non-hierarchical relationship to challenge the existing system of power, taking the local, socio-cultural context of the lawyering process into account. In turn, Alfieri stresses the potential of (poor) clients’ stories as a means of social change, despite lawyers’ “attitude to silence clients’ voices” and representations (1990-1991). He highlights how lower-income and subordinated people are not completely powerless or helpless. In his view, clients possess skills and knowledge that enable them to recount “alternative stories”, resisting the dominant elites’ views in society. As such, he urges that attorneys should not simply work *for* clients, but *with* clients as lay allies (1990-1991; 2016).

Thus, sharing this rebellious vision and moving from my own researches into the use of storytelling as a legal device to give voice to people who are unheard or marginalised (Di Donato, 2020), I shall focus on cases of victims of sexual trafficking protected by social workers – the Dedalus social co-operative, based in Naples – within the anti-trafficking programme in Campania<sup>2</sup>.

I will analyse some passages of the collaborative process of story re-construction undertaken by *Dedalus*, in Margaret’s case, with the aim of understanding if the client is actively involved as

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<sup>2</sup> The Dedalus social co-operative, established in Naples in 1981, deals in particular with issues concerned with flows of migration and the rights and duties of migrants as they make their way towards emancipation and citizenship [<http://www.coopededalus.it/> website consulted on 7 May 2019].



an equal, dignified participant in the transition from everyday sociocultural storytelling towards the co-creation of an “expected” legal story. I then explore how the diverse collaborations (the lawyer, the cultural mediator) interrupt or support, from their diverse perspectives, the construction of a successful case in the respect of the client’s narrative.

### **The problem of identifying the victims of human trafficking: The Italian legal context**

As is well known, in the specific field of international protection, European law provides for a series of measures aimed at accommodating vulnerable people, such as victims of human trafficking or of other serious forms of psychological, physical or sexual violence. There is a need to adapt humanitarian, social and legal devices to some of the peculiarities of this category of clients: guaranteeing conditions of accommodation suitable for specific situations, providing pertinent legal advice, providing an interpreter capable of acting as a cultural mediator in a broad sense, and providing medical or psychological assistance (D’Halluin, 2016). In particular, specific attention should be paid to gender issues, within the more general category of vulnerability. The latter – of ambiguous definition – is understood here to be a relational and situated concept rather than a general characteristic belonging to specific categories of individuals (Peroni and Timmer, 2013, p. 2060). As Fineman (2008-2009, p. 8) points out, vulnerability is a category that embraces all human beings, with no one particular group being more vulnerable than another is. It is the geographical, political, economic, and institutional conditions, in a broad sense, that make people dependent and without skills. It is through drawing on this meaning that the vulnerability of women victims of trafficking will be seen here, with the implicit aim of understanding whether, having changed the context, their vulnerability can be compensated or reduced through forms of collaborative socio-legal aid, within which the client’s story regains some dignity.

In this context, the Italian legal order<sup>3</sup> furnishes special protection to victims of trafficking as vulnerable individuals in the procedure for recognising international protection (Art. 2, sections h-b, Legislative Decree N° 25/2008). In the framework of this procedure, a significant role is played by voluntary associations like Dedalus, mentioned above, which works officially in Italy on an anti-trafficking programme. In addition to contributing to identifying the victims, Dedalus accompanies them in the process of social integration that is also functional to the acceptance of their applications for international protection, according to Art. 18 of Legislative Decree N° 286/98.

For the purposes of protecting victims of trafficking, identification is the first delicate step towards organising adequate protection and assistance<sup>4</sup>. In Italy, the procedure takes place in two phases: a preliminary phase comprises a first analysis of the circumstances that could contribute to considering that the person in question is a victim of trafficking. Conducting this preliminary identification is the task of the forces of law enforcement, the border police, health personnel and the territorial committees. After conducting the preliminary identification, the territorial committee sends details about the possible victims of trafficking to organisations like Dedalus, which are responsible for protecting them. This is because, according to Art. 18, section 3b, of Legislative Decree N° 286/98, the interviews have to be conducted by qualified and especially trained personnel (belonging to social organisations, which may be public or private and which carry out programmes

<sup>3</sup> Italian Legislative Decree N° 251, dated 19 November 2007, transposes European Directive 2004/83/EC containing minimum standards for attributing the qualification of refugee or of person otherwise in need of international protection to a citizen of a third country or a stateless person, together with minimum standards governing the content of the protection thus recognised.

<sup>4</sup> See the European Union Strategy towards the Eradication of Trafficking in Human Beings, which provides specific, concrete measures for putting Directive N° 2011/36/EU into practice.

of emergence, assistance and social integration). These interviews are held in the presence of a cultural mediator and serve the purpose of formal identification. When the hearing has been completed, a report is written, which is then sent to the territorial committee, which treats it as an official opinion. The purpose of the report is to enable the committee to pursue the proceedings for recognising protection. In the proceedings for formal identification, the staff involved must collect information of various kinds that comes under the heading of anti-trafficking indicators: personal data (name, gender, nationality, country of origin); physical appearance (checking for the presence of wounds or signs of torture or of fear); living and working conditions and so on.

Since for a series of reasons it is not easy to identify a victim of trafficking (the person may be controlled by the traffickers, be afraid of reprisals, have little faith in the authorities or be unaware of being a victim), the work done by social organisations like Dedalus is crucial, also for the purpose of preparing these people to be examined by the territorial committee that has to decide their fate. Their work focuses on helping these clients understand the meaning of the administrative path they have to take: what parts of their story can be relevant for the purposes of the hearing and how their narrative should be put into the more general political, social and legal context of their country of origin. In fact, a crucial stage in ascertaining the status of refugee or, as an alternative, the status of subsidiary protection<sup>5</sup>, is the “personal interview” (Art. 12 Legislative Decree N° 25, 2008)<sup>6</sup>. As already mentioned before, the interview is conducted in the presence of a cultural mediator who speaks the same language as the asylum seeker and of a lawyer. The aim is to piece together a consistent, detailed narrative that will be provided to the territorial committee responsible for assessing the application for international protection.

What makes the presence of multiple collaboration in this kind of procedure priceless is thus the type of client. Given that these people come from countries where the protection of human rights is hardly ever guaranteed and customary law takes precedence over formal law, and considering the possibly traumatic nature of the events they have experienced, relationships with these clients may be particularly fraught with difficulty if they are not always aware of the fact that they are victims, nor even of their rights. The primary task of non-lawyers is therefore to act as cultural mediators in the broad sense, aiming on the one hand to instil a minimum of legal awareness in their clients about how norms and procedures function in their host country and, on the other, to build a relationship of trust with social and legal workers. The purpose here is to enable them to identify as victims and help them build a plausible, credible version of their story, so that it will be worthy of legal recognition.

### **The case of Margaret: how to construct a credible story?**

Margaret’s story – of which I only describe here the part that concerns the process of identification conducted by Dedalus<sup>7</sup> – is a typical one.

The process of identifying Margaret undertaken by Dedalus took the form of a series of interviews that I was able to attend, held in the co-operative’s offices between February and April

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<sup>5</sup> Art. 2, section 1, subsection g) of Legislative Decree N° 25, 2008, defines the “status of subsidiary protection” as “recognition on the part of the state of a foreign citizen as a person admitted to subsidiary protection, pursuant to the acceptance of the application for international protection, in accordance with the procedures defined by this decree”.

<sup>6</sup> It takes place in the presence of a member of the Committee “paying due attention to the personal or general context in which the application arises, including the applicant’s cultural origin or vulnerability” (Art. 15 Legislative Decree N° 25, 2008)..

<sup>7</sup> For an expanded version of Margaret’s case, see Di Donato (2020).



2018. What now follows is my own brief description of the three phases of these interviews with Margaret, based on the notes I took during the meetings and subsequently edited.

*First meeting.*

The first meeting I attended took place at the beginning of February 2018. Margaret arrived at the co-operative accompanied by a psychologist from the centre where she was a guest, of the kind known in Italy by the acronym of SPRAR<sup>8</sup>. Before the interview started, the psychologist informed the interviewers – the mediator, Barbara, and the lawyer, Evelyne – that Margaret had already started a traineeship and that she would start working with a company in the following week. The lawyer, who had prepared the setting for the interview and given me permission to attend, explained to Margaret how it would proceed, emphasising the function and significance of the path they were about to embark on together, that of piecing her story together and orienting it for the purposes of the interview she would have with the committee, which was due to meet Margaret several months later. Evelyne also underlined the importance of building a story that would give her a better chance of obtaining the status of international protection, explaining that recognition of asylum is based on the premise that there are good reasons for believing that the applicant would be running a serious risk if she were to return to her country of origin: “We have to be very accurate in reconstructing your story from when you were still in Nigeria. We shan’t get it all done today: it’s a complicated job. *If we make a good job of it, we have a better chance of constructing a story that will lead to a happy ending*”. Barbara, speaking partly in English and partly in her own language, added: “*you must convince them*<sup>9</sup> about the risks you are going to face, you must show solid reasons. It’s not a problem if you don’t remember: feel free and relax”.

The lawyer then asked her for information about her family in Nigeria, which seemed to be made up of nine siblings (two boys and seven girls). Margaret grew up on the outskirts of Benin City and did not go to school. Her mother entrusted her to a woman who had promised to see her through her studies, but who sent her to work on the land instead. This story was confirmed by the state of her hands, which were not those of a person of her age (about twenty), but were deformed by hard labour. After her natural mother died, Margaret went to live with one of her sisters. This sister’s husband then put her in touch with a person who was supposed to bring her to Italy and then to Belgium, where she would be met by a *madam* who would give her a job. Evelyne asked her what proposal this person had made to her. Barbara translated this question as: “what was the promise when you reached the woman?”. Margaret answered: “prostitution”. In other words, she was aware of the fate that awaited her, but had nevertheless decided to undertake the journey that constituted the only chance she had to escape from a situation of poverty and difficulty (she is the mother of three children). During a typical religious ritual, they made her swear that she would pay €30,000 once she reached her destination, threatening her that there would be repercussions for the members of her family if she failed. Margaret added that she had had no choice: she had to leave and had done what they asked of her. At this point, Margaret broke down in tears. Evelyne suggested they interrupt the interview at this stage and continue the next time, but Margaret asked to continue immediately. Her story progressed with the description of several stages on her journey, once she had left the starting point of Benin City in the company of three other girls. They travelled in a bus driven by armed men: when they reached their destination, Margaret and the other girls were beaten

<sup>8</sup> SPRAR stands for *Sistema di protezione per richiedenti asilo e rifugiati* (System of protection for asylum seekers and refugees), which comprises the network of local authorities that guarantee systems of ‘integrated hospitality’.

<sup>9</sup> From this point onwards, I shall use Italics type to draw attention to certain passages in the story.

up and raped. Evelyne asked for more details about the various stages of the journey: “*Shall we go on a little part of this journey? Let’s say we are leaving Benin City*”. Margaret took up her story again, specifying that, after several hours of travelling, the person who was responsible for them had left them somewhere, giving each of them a number: they were to stay in this unidentified place until they were called for on the basis of this number. Since there were some gaps in the story, after about two hours of interviewing, Evelyne suggested stopping and taking it up again another time, commenting like this: “The journey is a very important stage for piecing the story together. So we’ll stop now and continue next time”. Margaret showed signs of impatience and asked how long she would have to wait before the committee would summon her for the hearing: she had lodged her application in November of the previous year and three months had already gone by. Evelyne answered that the waiting time was generally up to one year from the beginning of the procedure and that the aim was not to rush things but to do a good job.

At the end of this interview, I asked the lawyer why she had asked certain questions, such as the ones about certain details of the journey, the better to understand which elements would be of interest to the committee. Evelyne gave me some examples of indicators of trafficking, in which the journey is crucial: the individual’s transfer, her passiveness, the false promises given and the trickery are all such indicators. She also added that the fact that Margaret had consented was an element that made her case exceptional and problematic. For this reason, this element might be omitted from the report to be sent to the committee or at least furnished with a circumstantial explanation.

#### *Second meeting.*

During the next meeting, Barbara encouraged Margaret to tell the story as there were gaps (“points we miss”): “they are direct, you must be specific”. “From Nigeria to Libya, how many days did it take? How long you did stay in Libya? Where? How did you survive? Did they give you clothes?”. Considering Margaret’s reticence, the mediator tried to encourage her further, suggesting she thinks seriously about the consequences of being sent back home, asking “What happens if you go back?”. Margaret answered: “My life would be worse, nobody could care for my children”. Barbara explained to her that the questions she would be asked during the committee hearing would be something like “Why did you leave your country?”, reminding her that the committee would have to decide whether she would be allowed to stay in Italy: “They will ask you whether you were capable of defending yourself in Nigeria by going to the police. The committee has information about Nigeria, *they combine information*. You should be more aware about your country. You must be able to give an account. There are a lot of gaps we need to fill”.

#### *Third meeting.*

In the third meeting, which took place after another two weeks, Barbara once again pointed out the need to achieve greater clarity about some of the stages of the journey, explaining the meaning of the questions better and asking her to be more precise and concise in her answers. Barbara started showing signs of impatience, because she and the lawyer had not compiled enough material to piece the story together: “I am not understanding anything, so what do we do? *You don’t forget the truth because it is your truth, truth is inside you, so you answer quickly*”. Barbara then burst out impatiently in Italian, asking “*ma che stiamo facendo?*” (What are we doing here?), then also in English “*We are doing everything we can. I am not responsible because I tried*. It is time! Who was that man? I want the name! What happened between the two of you? Is he the father of your baby? How long did you stay at that house? Who was he?” Margaret now started talking in



her own language, without stopping, but alternating her story with bursts of tears. Barbara added the occasional comment in Italian that enabled me to understand the gist of the story: “*She [the madam] brings in seven men every day and takes money for just three weeks*”.

Since the reconstruction of Margaret’s story has not yet been written up as an official opinion by Dedalus and the interview with the committee has not yet taken place, my account stops here at this preliminary phase of the identification procedure.

#### *Overview of the meetings.*

A retrospective look at these meetings – which constitute examples of collaborative lawyering – enables us to examine the guide role played by the lawyer, Evelyne, and above all by the cultural mediator, Barbara, in reconstructing the path followed by Margaret. They focus on elements in Margaret story that are significant for identifying her as a victim of trafficking – her poverty and enslavement, both during her earlier life in Nigeria and again later, during her journey and after arriving in Europe – by highlighting the need to focus clearly on the various stages of her journey, their dates and the people she met, and to formulate the most incisive responses to questions, in order to meet the expectations of the committee.

The short excerpts from these conversations show how the kind of questions evolved from one meeting to the next, becoming more pressing and direct as the meetings grew ever more intense. In addition, this verbal behaviour was accompanied by Barbara’s increasing impatience, as she tried to encourage Margaret to tell her story, saying that she had done everything possible to help and support her in the path she would tread towards the hearing before the committee. The steps taken by Evelyne, the lawyer, who was only present in the first of these meetings, were more incisive and restricted to defining the operative and legal framework.

A few critical points can be raised regarding the interaction between Margaret and the two operators. First, to some extent, there appears to be an apparent lack of understanding and respect for daily, socio-cultural storytelling when the mediator says that the “truth is inside you”. Margaret seems to have had even less opportunity to tell her stories in a spontaneous way, i.e. “the kind of people she met during the trip and how she came to an awareness of what she was involved in. Secondly, in terms of *credibility and plausibility* of the story, according to socio-cultural psychologist (Daiute, 2019), stories of violence, neglect are only credible when verified and validated through multiple authors, purposes, and audiences; the truth is not inside Margaret or any single story she shares. Margaret’s frustration and tears are credible, given the lawyer’s lack of understanding. Thirdly, in terms of the coherence/consistence of her story, in particular the coherence of Margaret’s “agreeing” to participate in sex trade is situated not only within the story as prompted by the lawyer beginning with the legal categories that must be addressed, but also as a coherence that evolved over time in the journey and the reality that she was a slave and not ever going to repay the debt.<sup>10</sup>

As has been showed in other cases (Di Donato, 2020), the fact that a story is spontaneous and transparent is not enough on its own to make it worthy of recognition and protection. This may perhaps explain the artificiality of the situation described above, and the “forcible reshaping” of the story by the cultural mediator.

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<sup>10</sup> Private communication with the author.

### **Conclusions: for a dynamic use of storytelling to support asylum seekers' performance**

Although it is based on the respective competence and experience of a lawyer and a cultural mediator, I think that the practice described above could well be completed by specific clinical techniques that depend on the use of legal narrative. The process of re-constructing the story should be understood from within a more interactive perspective, giving sufficient space to the client's history, according to the "rebellious" as well as "collaborative" approaches of clinical legal education as mentioned above.

Currently, leading clinical scholars have sought to identify how narrative theory can yield narrative practices that help lawyers develop an understanding of their clients' lives and their clients' desires in seeking help through lawyers (Elmann et al., 2009, p. 139 ff). In their view, telling the story is also the 'cure' for silenced or powerless voices to be heard (Delgado, 1989). Unfortunately, such assumptions of the client as powerless and voiceless do not pay enough attention to the credibility and coherence of narrating as a relational process in everyday cultural and personal life. A major shift of the relational theory, to which I subscribe, is that narrating is *always* an interactive process (even when told by an individual) around a culturally-developed object (i.e. the narrative as shared at different points in time) that people use to *act* in the world (Daiute, 2014). Narrating is a relation tool in everyday social life and in the legal system. Because of its relational nature, "narrating can be a means of social inclusion" (Daiute and Kreniske, 2016, p. 2). This aspect comes to light in general in cases of international protection (Di Donato, 2020) – and specifically in the case of Margaret – where the issue is one of allowing due space for the foreigner's story so that it can mediate his or her position with regard to the institutions of the host country. Thus, for example, in Margaret case, the lawyer could have used the original narrative to mediate the interaction, which would likely provide some of the desired information, albeit implicitly, relief for Margaret from further abuse in this process, and information for the lawyer. In this way, the client might have had a real opportunity to feel involved in the process of narrative creation as an equal dignified co-author and not just as an abused/passive victim.

At the end of this journey, then I suggest making more explicit use of narrative (Gaakeer, 2019) as a tool for lawyering and interacting with (vulnerable) clients as a prior step to make these types of the client involved in the solution of their case thereby avoiding victimisation.

In this process, legal clinics might have a crucial role as socio-legal spaces to realise effective forms of collaborative lawyering, with the active participation of lay and expert actors (lawyers, volunteer associations, clinical students), in order to address the multidimensional problems faced by the client and to elaborate a common understanding of socio-legal problems. Thereby confronting perspectives from personal and professional stances, for different relevant audiences and purposes. Such a space would allow clients to understand how the legal system works, what the formal and informal rules are and the practices with which they are expected to deal. This could provide a possible means to reduce conditions of vulnerability for specific categories of clients, such as Margaret. Indeed, as Fineman stated, recognizing, labelling and protecting so-called "vulnerable" people is not enough, it is necessary to compensate for their inequalities and disadvantages (Fineman, 2008-2009, p. 22).





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