VULNERABILITY, SUFFERING AND THE LAW UNDER THE EARTHQUAKE

VULNERABILIDADE, SOFRIMENTO E A LEI SOB O TERREMOTO

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ABSTRACT: This paper focuses on the intersection of vulnerability, suffering, and the law in the context of the February 2023 earthquakes in Turkey. The research critically examines the state's responsibility in addressing the vulnerabilities exacerbated by natural disasters. The paper argues that state institutions, by failing to act on prior knowledge and warnings about the earthquakes, displayed a form of culpable ignorance that intensified public vulnerability and suffering. The author draws upon Fineman's vulnerability theory and Fricker's concept of ignorance, emphasizing the importance of acknowledging and responding to inherent human vulnerabilities and societal inequalities in legal and governmental frameworks. The lack of institutional resilience and effective response in the wake of the disaster highlights the need for law and policies grounded in the reality of human vulnerability. The author also explores the role of solidarity in crisis management, suggesting that community efforts can somewhat mitigate the failures of state institutions. The article asserts that legal reforms and international recognition of state responsibility in disaster management are crucial for addressing structural inequalities and improving resilience against future disasters.

Keywords: Vulnerability. Earthquake. State Responsibility. Legal Response. Human Suffering.

RESUMO: Este artigo foca na interseção de vulnerabilidade, sofrimento e direito no contexto dos terremotos de fevereiro de 2023 na Turquia. A pesquisa examina criticamente a responsabilidade do estado em abordar as vulnerabilidades exacerbadas por desastres naturais. O artigo argumenta que as instituições estatais, ao falharem em agir com base em conhecimentos e avisos prévios sobre os terremotos, demonstraram uma forma de ignorância culposa que intensificou a vulnerabilidade e o sofrimento público. A autora se baseia na teoria da vulnerabilidade de Fineman e no conceito de ignorância de Fricker, enfatizando a importância de reconhecer e responder às vulnerabilidades humanas inerentes e às desigualdades sociais em marcos legais e governamentais. A falta de resiliência institucional e resposta efetiva após o desastre destaca a necessidade de leis e políticas fundamentadas na realidade da vulnerabilidade humana. A autora também explora o papel da solidariedade na gestão de crises, sugerindo que os esforços comunitários podem mitigar um pouco as falhas das instituições estatais. O artigo afirma que reformas legais e reconhecimento internacional da responsabilidade do estado na gestão de desastres são cruciais para abordar as desigualdades estruturais e melhorar a resiliência contra futuros desastres.

Palavras-chave: Vulnerabilidade. Terremoto. Responsabilidade do Estado. Resposta legal. Sofrimento humano.

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INTRODUCTION

"You can hold yourself back from the sufferings of the world, that is something you are free to do and it accords with your nature, but perhaps this very holding back is the one suffering you could avoid." – Franz Kafka¹.

At 4.17 a.m. on 6 February 2023, a 7.8-magnitude earthquake struck close to Gaziantep city in southern Türkiye, the most powerful earthquake recorded in the country since 1939. A second earthquake with a magnitude of 7.6 occurred some nine hours later, with its epicentre approximately 70 km from the first earthquake, near Ekinözü city in Kahramanmaraş province. On the same day, the earthquakes have caused widespread destruction of houses and infrastructure in urban centres and rural areas across the country. At 4.17 a.m. on 6 February 2023, a 7.8-magnitude earthquake struck close to Gaziantep city in southern Türkiye, the most powerful earthquake recorded in the country since 1939. A second earthquake with a magnitude of 7.6 occurred some nine hours later, with its epicentre approximately 70 km from the first earthquake, near Ekinözü city in Kahramanmaraş province. On the same day, with the earthquakes having caused widespread destruction of houses and infrastructure in urban centres and rural areas across the country, the Government of Türkiye issued a level four alarm calling for international assistance.

As of 5 April 2023, Türkiye's Disaster and Emergency Management Presidency (AFAD) reported that the death toll from the devastating earthquakes on 6 February has reached 50,3391 (including at least 6,600 Syrians present in Türkiye), and 107,204 people injured. Some 3 million people have become relocated, and more than half a million buildings have sustained damage, of which at least 298,000 buildings have either collapsed or have been severely damaged.²

The most strong feeling which we feel after the earthquake issuffering!

Grounding theoretical exploration in reflections on earthquake in Turkey, in this paper, I argue that we must understand state responsibility according to vulnerability forms of life. Moving from Martha Alison Freeman's views, this explanation requires to base on human condition . I claim that since the state and its institutions do not do their duties connected to minimize effects of earthquake, they increase vulnerability of people and they suffer them.

To explain the state's responsibility, one of the key word is ignorance. What the state and its institutions must know regarding these matters and move according to this knowledge is not only legal obligation, but also ethical obligation. Miranda Fricker explains culpable and non culpable forms of ignorance. While culpable form of it "represent a blameworthy failure to put the requisite effort or skill into knowing something one ought to know", the nonculpable form refers to some kind of cognitive failure.³ Our case represents culpable form of ignorance. In fact we can

(Accessed date: 1.02.2023).

https://reliefweb.int/report/turkiye/turkiye-humanitarian-needs-and-response-overview-interim-update-published-11-april-2023 (Accessed date: 14.04.2023)

¹ Benno Zabel, "Suffering from Vulnerability: On the relationship between Law, Contingency and Solidarity", *Neatherlands Journal of Legal Philosophy*, 2021, https://www.bjutijdschriften.nl/tijdschrift/rechtsfilosofieentheorie/2021/2/NJLP_22130713_2021_050_002_007

³ Miranda Fricker," Epistemic Injustice and The Preservation of Ignorance", p.2. https://www.mirandafricker.com/uploads/1/3/6/2/136236203/epistemic_injustice_and_the_preservation.pdf (Accessed date: 10 April 2023)

call this kind of ignorance as wilful ignorance. Since geologist knew that an earthquake will be happen in south-eastern Türkiye, authorities wilfully ignored them. For example:

Two decades ago, John McCloskey drew a red line on a map of southeastern Turkey to pinpoint where a large earthquake would probably strike. The only question was when.

The answer came last month, when a magnitude-7.8 shock hit the precise location that McCloskey and his team had identified. It struck at 4.17 a.m. local time on 6 February, when most people were asleep, and killed more than 50,000 residents in Turkey and neighbouring Syria.⁴

Turkish geologist also warned Turkish authorities about the danger.

Why did authorities ignored warnings of geologist?

There are many reasons for this. One of them which was stated Seyla Benhabib may be explained according to Hannah Arendt. Benhabib says that a certain defiance of reality and remoteness from facts are characteristic of totalitarian thinking. Erdogan is not a totalitarian ruler but an authoritarian one in a country struggling to maintain the institutions of a multiparty democracy. His dismissal of facts as fabrications of his enemies and his contempt for those who point to economic or environmental realities that cannot be bent at will are characteristic of his mindset as well. Having devoted the last decade to a Kulturkampf against the media, universities, academics, and scientists, Erdogan is depriving Turkey of one of its most important assets in the hour of its greatest need.⁵

For this reason, it is obvious that the state and its institutions did not do their responsibilities to reduce people's vulnerabilities. To explain this point clearly, I will move from Fineman's vulnerability theory. For this, firstly I will insist on the meanings of vulnerability and resilience, since both of these concepts are related disasters. Then, I try to explain state responsibility connected with the law.

In fact, the law also do not response suffering from vulnerability in our case. To be clear, there was no law in the first day of earthquakes. Court buildings destroyed in the earthquake places. Many judges, prosecutor and lawyers died at this area. In that point, one could not reach any legal institutions; namely, institutions are vulnerable in the earthquake places. For this reason, people cannot or have difficulty access to justice. In this respect, I argue law's role regarding vulnerability in the disaster times. In this context, I try to explain how the law response state responsibility in these times.

Finally in this paper, I insist on solidarity which leads us to think about how we aware of our vulnerability and connected with civil organizations, how we can develop state's responsibility.

1 VULNERABILITYAND RESILIENCE

Fineman says that ".. Human beings are embodied creatures who are inexorably embedded in social relationships and institutions. There should be political and legal implications for the fact that we live within a fragile materiality that renders us constantly susceptible to change, both positive and negative, in our bodily and our social circumstances. Sometimes bodily vulnerability is realized in the form of dependency on others for care, cooperation, or assistance. Sometimes it is realized in our dependency on social arrangements, such as the family or the market and economy. But, whether realized or latent, vulnerability is universal and constant — an essential and inexorable aspect of the human condition." In this paper I insist on social vulnerability.

⁵https://foreignpolicy.com/2023/02/22/erdogan-war-academia-university-experts-earthquakes-deadly/ date: 01.03.2023) (Accessed

⁴ https://www.nature.com/articles/d41586-023-00685-y (Accessed date: 10 April 2023)

⁶ Martha A. Fineman, Titti Mattsson, Ulrika Andersson, "Privatization, Vulnerability, and Social Responsibility A Comparative Perspective", *Gender in Law, Culture and Society*, Routledge Press, November 23 2016, p. 3.

In fact, vulnerability and resilience are key concepts regarding disasters. These concepts are related each other. Fineman explains this relationship clearly:

Importantly, the primary emphasis of vulnerability theory is not our human vulnerability, although the theory begins there. When vulnerability is understood as a universal constant, the task then becomes to explore the strategies by which we can mitigate this vulnerability. Therefore, human beings are not rendered more or less vulnerable because of certain characteristics or at various stages in our lives, but we do experience the world with differing levels of resilience. The inequality of resilience is at the heart of vulnerability theory because it turns attention to society and social institutions. No one is born resilient. Rather, resilience is produced within and through institutions and relationships that confer privilege and power. Those institutions and relationships, whether deemed public or private, are at least partially defined and reinforced by law.⁷

In our case, unfortunately, resilience was not produced within and through institutions. Fineman says that resilience means not only economic or material resources, but also "security, comfort, love, or the resilience of the resources that we have as human beings, to confront and ameliorate our vulnerability".⁸

In fact, it is difficult to understand vulnerability outside of social and material conditions. This kind of vulnerability is exposed by the dependency of humans and other creatures on infrastructural support. It occurs "when we are unsupported, when those infrastructural conditions characterizing our social, political, and economic lives start to decompose, or when we find ourselves radically unsupported under conditions of precarity or under explicit conditions of threat" At that point, the concept of dependency is important for understanding gender and other type of inequalities related to vulnerability. Fineman states two forms of dependency: inevitable and derivative dependency. According to her "[i]nevitable dependency described the needs for care associated with certain biological and developmental stages of life. Infants were inevitably dependent, as were many people as they aged or became ill or disabled. She underlines this kind of dependency as connected to gender roles such as mother and wife". She also theorizes on structural dependency as a derivative dependency: "[D]erivative dependency arises on the part of the person who assumes responsibility for the care of an inevitably dependent person". At this point, she underlines the needs of caretaker persons.

According to her, while inevitable dependency is universally experienced, such as in the case of children, derivative dependency is not (for example all the people do not take responsibility as a caretaker). At this point, structural dependency is linked to the economic and social conditions. Fineman further states that "as vulnerable human beings we are all, and always, dependent upon societal structures and institutions, which provide us with the assets or resources that enable us to survive, and even thrive, within society." Inequalities occur when these structures and institutions hide this dependency. Regarding the legal subject, if we isolate agents from these dependencies and regard them free from negative conditions, we increase their invisibility and vulnerability. After that, we can only speak about the equal legal subject as a myth.

⁸ Martha Alison Fineman, 2023, https://moneyontheleft.org/2022/01/01/vulnerability-theory-with-martha-fineman/(Accessed date: 12.04.2023)

⁷Fineman-Mattsson-Anderson, 2016, p. 4.

⁹ Judith Butler, *Rethinking Vulnerability and Resistance.12–27 in Vulnerability in Resistance*, edited by Judith Butler, Zeynep Gambetti, and Leticia Sabsay. Durham and London: Duke University Press.2016, p.19.

¹⁰ Martha Albertson Fineman. "Vulnerability and Inevitable Inequality", *Oslo Law Review*, 2017, 4: 133–149. Available at https://www.idunn.no/oslo_law_review/2017/03/vulnerability_and_inevitable_inequality (last visited 10 April 2023).

¹¹ Martha Albertson Fineman, "Cracking the Foundational Myths: Independence, Autonomy, and Self Sufficiency", in *Feminism Confronts Homo Economicus: Gender, Law, and Society*, edited by Marta Albertson Fineman and Terence Dougherty. Ithaca and London: Cornell University Press, 2005, p.184.

¹² Martha Albertson Fineman, "The Limits of Equality: Vulnerability and Inevitable Inequality", in *Research Handbook on Feminist Jurisprudence*, edited by Robin West and Cynthia Grant Bowman. Cheltenham, UK, Northampton, MA, USA: Edward Elgar Publishing, 2019, p.86.

Vulnerability theory requires that the state and its policies should be based on human vulnerability. For this reason, we need to know what the requirements of human vulnerability are in reality. Fineman says that "vulnerability theory provides a template with which to refocus critical attention, raising new questions and challenging established assumptions about individual and state responsibility and the role of law, as well as allowing us to address social relationships of inevitable inequality. In this regard, vulnerability theory goes beyond the normative claim for equality, be it formal or substantive in nature, to suggest that we interrogate what may be just and appropriate mechanisms to structure the terms and practices of inequality." Then, if we focus on the reality of human vulnerability, we should insist on inequality that arises from relationships and institutions. In fact, there is a structural inequality connected to the state and its institutions. Legal institutions, such as courts, also reproduce inequality. In that context, legal institutions cause substantial problems, and to see them is not possible in the logic of equality forms.

2 STATE RESPONSIBILITY

The vulnerable theory requires recognizing conditions that cause inequality. Similarly, it requires to see and be aware of these conditions. In this point, it is important to state Fineman's responsibility theory:

"Vulnerability is posited as the characteristic that positions us in relation to each other as human beings and also suggests a relationship of responsibility between state and individual. The nature of human vulnerability forms the basis for a claim that the state must be more responsive to that vulnerability. It fulfills that responsibility primarily through the establishment and support of societal institutions. Additionally, those institutions are themselves vulnerable to a variety of internal and external corruptions and disruptions and this realization is the basis for the further claim that these institutions must be actively monitored by the state in processes that are both transparent and inclusive." ¹⁴

In Turkey, an ineffective national government, expansive poverty, weakened infrastructure (physical and human systems), and an overall lack of building codes of enforcement show that the government did not do their responsibility. After the earthquake, the government also do not responsive to that vulnerability. One people who affected from earthquake said that

"No government, no state, no police, no soldiers. Shame on you! You left us on our own.".

We heard these words many people who live earthquake places. These words show that people do not trust state and its institutions. Government approach supported the losing trust of people. Sometime the government also accepted they did not do their duties to save people's lives.

President Recep Tayyip Erdogan has asked people in a heavily quake-hit area of Turkey for understanding over rescue delays, amid mounting anger at the government's response.

On a visit to Adiyaman, Mr Erdogan said the tremors and bad weather meant "we could not work as we would have liked". "For this, I ask forgiveness," he said. 15

Because of the earthquake, structural inequality more deeper than before. Structural inequality reflects that how inequal groups struggle acutely in the aftermath of a major disaster event. Structural inequality yields two results in the earthquake. One of them, this inequality results most of the people killing by the earthquake. Secondly, because of this inequality most of the people have very hard conditions during the recovery process after the disaster. Risk groups face more inequal situations.

¹³ Fineman, 2019, p.73.

¹⁴ Martha Fineman, Fineman, Martha Albertson, "The Vulnerable Subject and the Responsive State", *Emory Law Journal*, Vol. 60, Emory Public Law Research Paper No. 10-130, Available at SSRN: https://ssrn.com/abstract=1694740 p.9. (Accesed date: 10.12.2022)

¹⁵ https://www.bbc.com/news/world-europe-64789135 (Accessed date: 10.04.2023)

The examples of risk groups regarding disaster can be listed as the follows, noting that these are not entirely discrete: income disparity, class, racelethnicity, gender, age, disability, health, literacy, families and households. ¹⁶ In our case, one can easily see that these groups are more suffered. For example earthquakes more affected disable persons, women, girls, children, elder and poor people. Moving from intersectionality principle, one can easily see multiple discrimination how affect people in this situation. Refugees also have more inequal conditions. Because obstacle of the language, they could not hear their voices under collapsed buildings. Syrian earthquake survivors now face racism in access to aid in Antep. Moreover, according to the result of the research, poor areas suffered more damage in Turkey's earthquake:

In Kahramanmaras, a city of 560,000 caught between the two epicentres, 2% of buildings showed probable damage. The impact was greatest in poor areas, presumably because pricier structures are sturdier: the share of buildings with probable damage ranged from 1.0% in the decile of districts with the most expensive homes to 3.6% in the decile with the cheapest ones.¹⁷

In fact, we have economic crises. After the earthquake this crises more deeper. People are more poor than before. They do not have any opportunity to live buildings which increase their resilience against the earthquakes. Legal institutions also do not enough to response suffering from vulnerability. In this conditions, our problem is how can we change state responsibility according to vulnerability approach.

3 WHAT CAN WE DO?

Under the authoritarian regimes, it is difficult to do something against the politics and try to change it according to vulnerability approach. But our experience may be regarded as an example of solidarity. Namely, solidarity may change suffering picture together with vulnerability lenses.

Unaffected state's institutions and it's policy against the disasters results solidarity among the people. Civil organizations, international communities, individuals and voluntary groups have started solidarity with people who affected earthquakes. One of the Turkish state institution, namely Turkey's Disaster and Emergency Management Authority (AFAD), could not manage the process, people have started to manage it. For example, they constructed some places with all of the requirements. They also started to build places which consider women needs. They organize programs for children, elder people and other groups. Namely, civil organizations, individuals and voluntary groups take the responsibility to response human vulnerability.

¹⁶ Maureen Fordham, William E. Lovekamp, Deborah S.K. Thomas, and Brenda D. Phillips, "Understanding Social Vulnerability", *Social Vulnerability to Disaster*, Eds. <u>Deborah S.K. Thomas</u>, <u>Brenda D. Phillips</u>, <u>William E. Lovekamp</u>, <u>Alice Fothergill</u>, Routledge, 2013, p.3-4.

¹⁷https://www.economist.com/graphic-detail/2023/02/16/poor-areas-suffered-35-times-more-damage-in-turkeys-earthquake (Accessed date:01.04.2023)

4 HOW CAN WE IMPROVE THE LAW?

After the Istanbul earthquake in 1999, many cases opened the courts against the building contractors. But the courts did not give them any punishment. In that point, it is possible to say that the law increase vulnerability of the people.

After the earthquakes of the February 2023, public authorities announced that 200 people were arrested. But we do not know how the courts will decide. Actually, the problem is connected with the law which do not response human vulnerability. To change it, firstly, we should insist on vulnerable legal subject and try to change the ignorance of the vulnerability.

If we move vulnerable legal subject we should aware of the conditions and structures which increase or support this vulnerability. In other words, it is necessary to consider the vulnerable legal subject connected with structural inequality. In this paper, I try to explain the situation of any vulnerable legal subject connected with structural injustice. As Fineman rightly stated, we should "recognise the ways in which power and privilege are conferred through the operation of societal institutions, relationships and the creation of social identities, sometimes inequitably. Because law should recognise, respond to, and perhaps, redirect unjustified inequality, the critical issue must be whether the balance of power struck by law was warranted" 18. That is to say, to recognize or see these ways guides us to aware of vulnerability

Then, under authoritarian regime our duty is to think about the legal subject as vulnerable and recognize wilful ignorance and its effects in constructing the subject and find ways transforming the ignorance of vulnerability.

Moreover, international law should be improved as to response human vulnerability. After the Haiti earthquake, UN started to work about government responsibility regarding disasters. In this respect, international law should also recognize this responsibility and regard it within humanity crimes.

CONCLUSION

It may seem churlish to view natural disasters through political lenses. Yet the economist Amartya Sen's study of famine in India showed that open societies, in which knowledge and information flow freely, are better able to cope with catastrophic events than are authoritarian regimes that repress the circulation of solid information and professional assessments.¹⁹

It is possible to say that Sen's study of famine explains our authoritarian regime approach regarding the earthquakes. Even after the earthquakes, we do not have information about how may people died or injured.

We need to have politics and law which based on the reality of human vulnerability. We need to insist on inequality that arises from relationships and institutions. In fact, we need a responsible state. Although it seems very hard, it is not impossible.

In that point, I would like to state Hannah Arendt's views about what can we lose in the crisis times. She insists on the evil, "under the Nazis, corrupted the basis of moral law, exploded legal categories, and defied human judgement" According to her, "evil come from a failure to think. It defies thought for as soon as thought tries to engage itself with the evil and examine the premises and principles from which it originates, it is frustrated because it finds nothing there. That

¹⁸Martha Alison Fineman, Vulnerability. https://moneyontheleft.org/2022/01/01/vulnerability-theory-with-martha-fineman/ (Accessed date: 12.04.2023)

¹⁹https://foreignpolicy.com/2023/02/22/erdogan-war-academia-university-experts-earthquakes-deadly/

²⁰ Hannah Arendt, "Introduction", *Eichmann in Jerusalem: A Report on the Banality of Evil*, Penguin Books, 2022, p. 35

is banality of evil"²¹. Differently from Arendt, I would like to ask what can we not lose in the crisis times. In our experience, solidarity shows that there are people who trust each other and have humanity feelings. Together with them, we try to block domination or banality of evil.

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²¹ Arendt, p.45

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