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The Witness

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1.1 In the camp, one of the reasons that can drive a prisoner to survive is the idea of becoming a witness. "I firmly decided that, despite everything that might happen to me, I would not take my own life... since I did not want to suppress the witness that I could become" (Langbein 1988: 186). Of course, not all deportees, indeed only a small fraction of them, give this reason. A reason for survival can be a matter of convenience: "He would like to survive for this or that reason, for this or that end, and he finds hundreds of pretexts. The truth is that he wants to live at whatever cost" (Lewental 1972: 148). Or it can simply be a matter of revenge: "Naturally I could have run and thrown myself onto the fence, because you can always do that. But I want to live. And what if the miracle happens we're all waiting for? Maybe we'll be liberated, today or tomorrow. Then I'll have my revenge, then I'll tell the whole world what happened here – inside there" (Sofsky 1997: 340). To justify one's survival is not easy – least of all in the camp. Then there are some survivors who prefer to be silent. "Some of my friends, very dear friends of mine, never speak of Auschwitz" (Levi 1997: 224). Yet, for others, the only reason to live is to ensure that the witness does not perish. "Others, on the other hand, speak of it incessantly, and I am one of them" (ibid.).

1.2 Primo Levi is a perfect example of the witness. When he returns home, he tirelessly recounts his experience to everyone. He behaves like Coleridge's Ancient Mariner:

> You remember the scene: the Ancient Mariner accosts the wedding guests, who are thinking of the wedding and not paying attention to him, and he forces them to listen to his tale. Well, when I first returned from the concentration camp I did just that. I felt an unrestrainable need to tell my story to anyone and everyone!... Every situation was an occasion to tell my story to anyone and everyone: to tell it to the factory director as well as to the worker, even if they had other things to do. I was reduced to the state of the Ancient Mariner. Then I began to write on my typewriter at night.... Every night I would write, and this was considered even crazier! (Levi 1997: 224–5)

But Levi does not consider himself a writer; he becomes a writer so that he can bear witness. In a sense, he never became a writer. In 1963, after publishing two novels and many short stories, he responds unhesitatingly to the question of whether he considers himself a writer or a chemist: "A chemist, of course, let there be no mistake" (Levi 1997: 102). Levi was profoundly uneasy with the fact that as time passed, and almost in spite of himself, he ended up a writer, composing books that had nothing to do with his testimony: "Then I wrote.... I acquired the vice of writing" (Levi 1997: 258). "In my latest book, *La Chiave a stella*, I stripped myself completely of my status as a witness.... This is not to deny anything; I have not ceased to be an ex-deportee, a witness" (ibid.: 167).

Levi had this unease about him when I saw him at meetings at the Italian publisher, Einaudi. He could feel guilty for having survived, but not for

having borne witness. "I am at peace with myself because I bore witness" (ibid.: p. 219).

1.3 In Latin there are two words for "witness." The first word, *testis*, from which our word "testimony" derives, etymologically signifies the person who, in a trial or lawsuit between two rival parties, is in the position of a third party (**terstis*). The second word, *superstes*, designates a person who has lived through something, who has experienced an event from beginning to end and can therefore bear witness to it. It is obvious that Levi is not a third party; he is a survivor [*superstite*] in every sense. But this also means that his testimony has nothing to do with the acquisition of facts for a trial (he is not neutral enough for this, he is not a *testis*). In the final analysis, it is not judgment that matters to him, let alone pardon. "I never appear as judge"; "I do not have the authority to grant pardon.... I am without authority" (ibid.: 77, 236). It seems, in fact, that the only thing that interests him is what makes judgment impossible: the gray zone in which victims become executioners and executioners become victims. It is about this above all that the survivors are in agreement: "No group was more human than any other" (ibid.: 232). "Victim and executioner are equally ignoble; the lesson of the camps is brotherhood in abjection" (Rousset, cf. Levi 1997: 216).

Not that a judgment cannot or must not be made. "If I had had Eichmann before me, I would have condemned him to death" (ibid.: 144). "If they have committed a crime, then they must pay" (ibid.: 236). The decisive point is simply that the two things not be blurred, that law not presume to exhaust the question. A non-juridical element of truth exists such that the *quaestio facti* can never be reduced to the *quaestio iuris*. This is precisely what concerns the survivor: everything that places a human action beyond the law, radically withdrawing it from the Trial. "Each of us can be tried, condemned and punished without even knowing why" (ibid.: 75).

1.4 One of the most common mistakes – which is not only made in discussions of the camp – is the tacit confusion of ethical categories and juridical categories (or, worse, of juridical categories and theological categories, which gives rise to a new theodicy). Almost all the categories that we use in moral and religious judgments are in some way contaminated by law: guilt, responsibility, innocence, judgment, pardon.... This makes it difficult to invoke them without particular caution. As jurists well know, law is not directed toward the establishment of justice. Nor is it directed toward the verification of truth. Law is solely directed toward judgment, independent of truth and justice. This is shown beyond doubt by the *force of judgment* that even an unjust sentence carries with it. The ultimate aim of law is the production of a *res judicata*, in which the sentence becomes the substitute for the true and the just, being held as true despite its falsity and injustice. Law finds peace in this hybrid creature, of which it is impossible to say if it is fact or rule; once law has produced its *res judicata*, it cannot go any further.

In 1983, the publisher Einaudi asked Levi to translate Kafka's *The Trial*. Infinite interpretations of *The Trial* have been offered; some underline the novel's prophetic political character (modern bureaucracy as absolute evil) or its theological dimension (the court as the unknown God) or its biographical meaning (condemnation as the illness from which Kafka believed himself to suffer). It has been rarely noted that this book, in which law appears solely in the form of a trial, contains a profound insight into the nature of law, which, contrary to common belief, is not so much rule as it is judgment and, therefore, trial. But if the essence of the law – of every law – is the trial, if all right (and morality that is contaminated by it) is only tribunal right, then execution and transgression, innocence and guilt, obedience and disobedience all become indistinct and lose their importance. "The court wants nothing from you. It welcomes you when you come; it releases you when you go." The ultimate end of the juridical regulation is to produce judgment; but judgment aims neither to punish nor to extol, neither to establish justice nor to prove the truth. Judgment is in itself the end and this, it has been said, constitutes its mystery, the mystery of the trial.

One of the consequences that can be drawn from this self-referential nature of judgment – and Sebastiano Satta, a great Italian jurist, has done so – is that punishment does not follow from judgment, but rather that judgment is itself punishment (*nullum judicium sine poena*). "One can even say that the whole punishment is in the judgment, that the action characteristic of the punishment – incarceration, execution – matters only

insofar as it is, so to speak, the carrying out of the judgment" (Satta 1994: 26). This also means that "the sentence of acquittal is the confession of a judicial error," that "everyone is inwardly innocent," but that the only truly innocent person "is not the one who is acquitted, but rather the one who goes through life without judgment" (ibid.: 27).

1.5 If this is true – and the survivor knows that it is true – then it is possible that the trials (the twelve trials at Nuremberg, and the others that took place in and outside German borders, including those in Jerusalem in 1961 that ended with the hanging of Eichmann) are responsible for the conceptual confusion that, for decades, has made it impossible to think through Auschwitz. Despite the necessity of the trials and despite their evident insufficiency (they involved only a few hundred people), they helped to spread the idea that the problem of Auschwitz had been overcome. The judgments had been passed, the proofs of guilt definitively established. With the exception of occasional moments of lucidity, it has taken almost half a century to understand that law did not exhaust the problem, but rather that the very problem was so enormous as to call into question law itself, dragging it to its own ruin.

The confusion between law and morality and between theology and law has had illustrious victims. Hans Jonas, the philosopher and student of Heidegger who specialized in ethical problems, is one of them. In 1984, when he received the Lucas Award in Tübingen, he reflected on the question of Auschwitz by preparing for a new theodicy, asking, that is, how it was possible for God to tolerate Auschwitz. A theodicy is a trial that seeks to establish the responsibility not of men, but of God. Like all theodicies, Jonas's ends in an acquittal. The justification for the sentence is something like this: "The infinite (God) stripped himself completely, in the finite, of his omnipotence. Creating the world, God gave it His own fate and became powerless. Thus, having emptied himself entirely in the world, he no longer has anything to offer us; it is now man's turn to give. Man can do this by taking care that it never happens, or rarely happens, that God regrets his decision to have let the world be."

The conciliatory vice of every theodicy is particularly clear here. Not only does this theodicy tell us nothing about Auschwitz, either about its victims or executioners; it does not even manage to avoid a happy ending. Behind the powerlessness of God peeps the powerlessness of men, who continue to cry "May that never happen again!" when it is clear that "that" is, by now, everywhere.

1.6 The concept of responsibility is also irremediably contaminated by law. Anyone who has tried to make use of it outside the juridical sphere knows this. And yet ethics, politics, and religion have been able to define themselves only by seizing terrain from juridical responsibility – not in order to assume another kind of responsibility, but to articulate zones of nonresponsibility. This does not, of course, mean impunity. Rather, it signifies – at least for ethics – a confrontation with a responsibility that is infinitely greater than any we could ever assume. At the most, we can be faithful to it, that is, assert its unassumability.

The unprecedented discovery made by Levi at Auschwitz concerns an area that is independent of every establishment of responsibility, an area in which Levi succeeded in isolating something like a new ethical element. Levi calls it the "gray zone." It is the zone in which the "long chain of conjunction between victim and executioner" comes loose, where the oppressed becomes oppressor and the executioner in turn appears as victim. A gray, incessant alchemy in which good and evil and, along with them, all the metals of traditional ethics reach their point of fusion.

What is at issue here, therefore, is a zone of irresponsibility and "*impotentia judicandi*" (Levi 1989: 60) that is situated not *beyond* good and evil but rather, so to speak, *before* them. With a gesture that is symmetrically opposed to that of Nietzsche, Levi places ethics before the area in which we are accustomed to consider it. And, without our being able to say why, we sense that this "before" is more important than any "beyond" – that the "underman" must matter to us more than the "overman." This infamous zone of irresponsibility is our First Circle, from which no confession of responsibility will remove us and in which what is spelled out, minute by minute, is the lesson of the "terrifying, unsayable and unimaginable banality of evil" (Arendt 1992: 252).

1.7 The Latin verb *spondeo*, which is the origin of our term "responsibility," means "to become the guarantor of something for someone (or for

oneself) with respect to someone." Thus, in the promise of marriage, the father would utter the formula *spondeo* to express his commitment to giving his daughter as wife to a suitor (after which she was then called a *sponsa*) or to guarantee compensation if this did not take place. In archaic Roman law, in fact, the custom was that a free man could consign himself as a hostage – that is, in a state of imprisonment, from which the term *obligatio* derives – to guarantee the compensation of a wrong or the fulfillment of an obligation. (The term *sponsor* indicated the person who substituted himself for the *reus*, promising, in the case of a breach of contract, to furnish the required service.)

The gesture of assuming responsibility is therefore genuinely juridical and not ethical. It expresses nothing noble or luminous, but rather simply obligation, the act by which one consigned oneself as a prisoner to guarantee a debt in a context in which the legal bond was considered to inhere in the body of the person responsible. As such, responsibility is closely intertwined with the concept of *culpa* that, in a broad sense, indicates the imputability of damage. (This is why the Romans denied that there could be guilt with respect to oneself: *quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire*: the damage that one causes to oneself by one's own fault is not juridically relevant.)

Responsibility and guilt thus express simply two aspects of legal imputability; only later were they interiorized and moved outside law. Hence the insufficiency and opacity of every ethical doctrine that claims to be founded on these two concepts. (This holds both for Jonas, who claimed to formulate a genuine "principle of responsibility" and for Lévinas, who, in a much more complex fashion, transformed the gesture of the *sponsor* into the ethical gesture par excellence.) This insufficiency and opacity emerges clearly every time the borders that separate ethics from law are traced. Let us consider two examples, which are very far from each other as to the gravity of the facts they concern but which coincide with respect to the *distinguo* they imply.

During the Jerusalem trial, Eichmann's constant line of defense was clearly expressed by his lawyer, Robert Serviatus, with these words: "Eichmann feels himself guilty before God, not the law." Eichmann (whose implication in the extermination of the Jews was well documented, even if his role was probably different from that which was argued by the prosecution) actually went so far as to declare that he wanted "to hang himself in public" in order to "liberate young Germans from the weight of guilt." Yet, until the end, he continued to maintain that his guilt before God (who was for him only a *höherer Sinnesträger*, a higher bearer of meaning) could not be legally prosecuted. The only possible explanation for this insistence is that, whereas the assumption of moral guilt scemed ethically noble to the defendant, he was unwilling to assume any legal guilt (although, from an ethical point of view, legal guilt should have been less serious than moral guilt).

Recently, a group of people who once had belonged to a political organization of the extreme Left published a communiqué in a newspaper, declaring political and moral responsibility for the murder of a police officer committed twenty years ago. "Nevertheless, such responsibility," the document stated, "cannot be transformed... into a responsibility of penal character." It must be recalled that the assumption of moral responsibility has value only if one is ready to assume the relevant legal consequences. The authors of the communiqué seem to suspect this in some way, when, in a significant passage, they assume a responsibility that sounds unmistakably juridical, stating that they contributed to "creating a climate that led to murder." (But the offense in question, the instigation to commit a crime, is of course wiped out.) In every age, the gesture of assuming a juridical responsibility when one is innocent has been considered noble; the assumption of political or moral responsibility without the assumption of the corresponding legal consequences, on the other hand, has always characterized the arrogance of the mighty (consider Mussolini's behavior, for example, with respect to the case of Giacomo Matteotti, the member of the Italian parliament who was assassinated by unknown killers in 1924). But today in Italy these models have been reversed and the contrite assumption of moral responsibilities is invoked at every occasion as an exemption from the responsibilities demanded by law.

Here the confusion between ethical categories and juridical categories (with the logic of repent-

ance implied) is absolute. This confusion lies at the origin of the many suicides committed to escape trial (not only those of Nazi criminals), in which the tacit assumption of moral guilt attempts to compensate for legal guilt. It is worth remembering that the primary responsibility for this confusion lies not in Catholic doctrine, which includes a sacrament whose function is to free the sinner of guilt, but rather in secular ethics (in its well-meaning and dominant version). After having raised juridical categories to the status of supreme ethical categories and thereby irredeemably confusing the fields of law ethics, secular ethics still wants to play out its *distinguo*. But ethics is the sphere that recognizes neither guilt nor responsibility; it is, as Spinoza knew, the doctrine of the happy life. To assume guilt and responsibility – which can, at times, be necessary – is to leave the territory of ethics and enter that of law. Whoever has made this difficult step cannot presume to return through the door he just closed behind him.

1.8 The extreme figure of the "gray zone" is the *Sonderkommando*. The SS used the euphemism "special team" to refer to this group of deportees responsible for managing the gas chambers and crematoria. Their task was to lead naked prisoners to their death in the gas chambers and maintain order among them; they then had to drag out the corpses, stained pink and green by the cyanotic acid, and wash them with water; make sure that no valuable objects were hidden in the orifices of the bodies; extract gold teeth from the corpses' jaws; cut the women's hair and wash it with ammonia chloride; bring the corpses into the crematoria and oversee their incineration; and, finally, empty out the ovens of the ash that remained. Levi writes:

> Concerning these squads, vague and mangled rumors already circulated among us during our imprisonment and were confirmed afterward.... But the intrinsic horror of this human condition has imposed a sort of reserve on all the testimony, so that even today it is difficult to conjure up an image of "what it meant" to be forced to exercise this trade for months.... One of them declared: "Doing this work, one either goes crazy the first day or gets accustomed to it." Another, though: "Certainly, I could have killed myself or got myself killed; but I wanted to survive, to avenge myself and bear witness. You mustn't think that we are monsters; we are the same as you, only much more unhappy."... One cannot expect from men who have known such extreme destitution a deposition in the juridical sense, but something that is at once a lament, a curse, an expiation, an attempt to justify and rehabilitate oneself.... Conceiving and organizing the squads was National Socialism's most demonic crime. (Levi 1989: 52–3)

And yet Levi recalls that a witness, Miklos Nyszli, one of the very few who survived the last "special team" of Auschwitz, recounted that during a "work" break he took part in a soccer match between the SS and representatives of the *Sonderkommando*. "Other men of the SS and the rest of the squad are present at the game; they take sides, bet, applaud, urge the players on as if, rather than at the gates of hell, the game were taking place on the village green" (Levi 1989: 55).

This match might strike someone as a brief pause of humanity in the middle of an infinite horror. I, like the witnesses, instead view this match, this moment of normalcy, as the true horror of the camp. For we can perhaps think that the massacres are over – even if here and there they are repeated, not so far away from us. But that match is never over; it continues as if uninterrupted. It is the perfect and eternal cipher of the "gray zone," which knows no time and is in every place. Hence the anguish and shame of the survivors, "the anguish inscribed in everyone of the 'tohu-bohu,' of a deserted and empty universe crushed under the spirit of God but from which the spirit of man is absent: not yet born or already extinguished" (Levi 1989: 85). But also hence our shame, the shame of those who did not know the camps and yet, without knowing how, are spectators of that match, which repeats itself in every match in our stadiums, in every television broadcast, in the normalcy of everyday life. If we do not succeed in understanding that match, in stopping it, there will never be hope.

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