Law & The Sacred: Desecration, Law and Evil

Rolando Gaete

God is not alone in being sacred. The Devil is equally sacred --Bataille (1998: 46)

Evil and the Sacred

The essential question about the Holocaust "How could this happen?... retains... all its weight, all its stark nakedness, all its horror" (Scholem, in Markle 1995: 149). It is essential because it gathers together all those events that are collectively known as the Holocaust. It expresses both disbelief and a secret hope that if only the horror could be understood it would be less terrifying.

The failure to comprehend the organised extermination of a whole people has created a void in History, a hole in the meaningful narratives of History.

Such a monstrous event recalls Kant's phrase in *Religion within the Limits of Reason Alone* (1960: 28): "There is evil". Kant was asserting the existence of substantive, positive evil against the dominant view that 'evil' is no more than a lack: either ignorance or psychological deficiency. Today, even more than in Kant's time, talk of evil may sound naive and as old-fashioned as talking about the sacred. In fact, both are often associated, for example, when talking about violence practised by fundamentalist movements or about Nazi "holy wildness" (Zimermann 1996: 252). One could speak of a 'perverted sacred' akin to that spiritual evil which Schelling called "a pale, bloodless, fanatical spiritualism that despises sensuality and is bent on violently dominating and exploiting it... a perversion of true spirituality" (Zizek 1996: 8).

But can we refer to something as archaic as evil in our modern enlightened age? Talk of a sacred evil was certainly justified in the remote past, when -- in Bataille's words -- the divine was grasped "as a dark and malefic *sacred*" that "aroused thousands of stakes for witches" (1998: 43). Talk about evil has become obsolete in a 20th century from which the sacred has vanished and the gods have flown. Did not Nietzsche predict that this would be the nihilistic age when the news about the death of God would finally reach our ears?

In our techno-scientific civilisation, evil is merely the lack of good and the sacred is an unnoticed absence on the margins. If there is evil at all, it is not substantial but banal. As Cynthia Ozick has said: "The 'banality of evil' is the catchword of our generation" (1992: 44). The phrase was coined by Hanna Arendt and since then it has become the dominant view of the Holocaust. In the same way that in former times the existence of a sacred sphere would "snatch us from the general banality of human existence" (Fink 1866: 132), a banalisation of evil snatches our understanding of the Holocaust from a dangerous sacred world and places it safely within the field of rational understanding.

The German philosopher Jaspers warned Arendt of the danger of treating the Nazi regime as evil. Arendt had written to him of "a guilt that is beyond crime". She wrote: "The Nazi crimes, it seems to me, explode the limits of the law; and that is precisely what constitutes their monstrousness", Jaspers answered: "a guilt that goes beyond all criminal guilt inevitably takes on a streak of 'greatness' -- of satanic greatness... It seems to me that we have to see these things in their total banality, in their prosaic triviality..." (May & Kohn 1996: 39, 139).

Jaspers was rightly concerned about a possible sacralisation/demonisation of Hitler, probably because it might seduce romantic temperaments attracted to the gothic, ready to glimpse into the abyss and experience the fascination and repulsion of horror. Bataille had written "the sacred has died from... uncontrollable fear of what is fascinating and violent. It did not simply die due to an excessive development of the profane, of the world of science and the machine" (1998: 46).

So Jaspers tried, successfully as it turned out, to prevent Arendt from falling into a danger which is inherent to the nature of the sacred, encouraging her to remain on the terrain of the trivial and profane in her interpretation of the horror of Nazism. And that is the position she took in her influential *Eichmann: A Study on the Banality of Evil*, which manages to underdramatise the genocide.

As embodied by that apparently sad man, Eichmann, who had been the Head of the Jewish Office of

the German Gestapo in charge of "the final solution of the Jewish problem", a grey bureaucrat doing his duty, the Holocaust is treated as the banal product of the bureaucratic organisation of contemporary societies and of technological thinking. Eichmann, as seen by Arendt, was not an evil man, he was just ignorant, thoughtless, full of cliches, with a "curious, quite authentic inability to think" (Arendt 1958: 286).

A banal bureaucrat and good family man who had neither "interesting" perversions nor a heroic or romantic commitment to evil, somebody "terribly and terrifyingly normal". His normalcy was "more terrifying than all the atrocities put together" (Arendt, in Markle 1995: 39).

The general conclusion, almost a social-scientific law, follows: "the *thoughtless* individual who, lacking wickedness, pathology, or even ideological conviction, willingly becomes a cog in the new bureaucracies of murder" (Villa 1996: 165). And Arendt's conclusion: "It is indeed my opinion now that evil is never 'radical', that it is only extreme, and that it possesses neither depth nor any demonic dimension... It is 'thought-defying', as I said, because thought tries to reach some depth, to go to the roots, and the moment it concerns itself with evil, it is frustrated because there is nothing. That is its 'banality'. Only the good has depth and can be radical" (Arendt & Gershom 1978: 251).

Evil is nothing -- only the good is something. While there is positive good, evil is only privative, an absence.

But the banality of this evil banalises everybody, perpetrators and victims. The Nazi regime ran "a system in which all men are equally superfluous. The manipulators of this system believe in their own superfluousness as much as in that of all others..." (Arendt 1951: 433) and yet this superfluousness is not exceptional but inevitable in the utilitarian rational civilisation we inhabit. This danger is inescapable as long as we think of our world exclusively in utilitarian terms.

Heidegger's notorious 'agricultural remark', which has been much commented upon in recent years in exposures of the extent of his Nazi militancy, also deals with the superfluous nature of human beings in a world from which the sacred has vanished:

> Agriculture is now a mechanized food industry; in essence it is no different than the production of corpses in the gas chambers and death camps, the embargoes and food reductions to starving countries, the making of hydrogen bombs (Lyotard 1990: 85).

The well-organised technological society is always present, in the forefront or in the background, of the industrial images that we associate with the Holocaust: the railroad ending in Auschwitz, the gas chambers, the routine process of selection of those to be murdered, the organised disposal of corpses, [1] the bureaucratic secrecy, and, above all else, the professionalism of the perpetrators -- that is, their unemotional attitude, attempting to achieve the ideal model of scientific detachment, what Otto Rank called 'doubling' (1971). [2] Doubling was the constitution of an Auschwitz professional self as something different from the 'true' self, a phenomenon which is common in any criminal subculture. [3] As Lifton comments, in the case of the Nazi doctors, "the doubling was particularly stark in that a prior healing self gave rise to a killing self" (1986: 423).

The banalisation of the Holocaust as simply a product of technological thinking, of modernity's reason at the service of perfecting humankind, has the advantage of making it comparable to many other horrors of our time that have been justified as an attempt to construct a better future. The political advantages are clear. If technological thinking is the essence of the Holocaust, then there is no stain in the German character and we can forget and turn the page as we have done with other massive massacres in History. [4] The words in German were "I will lead you all, every single one of you, to a glorious future" (Lifton 1986: 471); they could have been said by any modern leader this century.

On the other hand, the disadvantage of banalisation is that the Holocaust is deprived of meaning. Then, the Holocaust "challenges the credibility of redemptive thinking" because its only justification is a fascistic conception of progress and sacrifice (Hartmann 1992: 326). This is, for example, Cynthia Ozick's pessimistic conclusion:

> I do not see a 'redeeming meaning' in a catastrophe of such unholy magnitude... We (Jews) emerge from a redemptive tradition... (But) *this* time there was no redemption, the Red Sea did

> not open, nobody walked through the parting of the waters, the waters remained high and cold and deadly and closed (Hartmann 1992: 279).

Nancy writes: if the Holocaust was a sacrifice

> this sacrifice leads nowhere, it gives no access... the camps represent the absence of sacrifice, because they put into play an unheard-of tension between sacrifice itself and the absence of sacrifice (1991: 32).

So we are left only with ruins, with the waste left by the unholy functioning of a disciplinary technological civilisation in frantic pursuit of 'progress'. We are left with banality. The Holocaust is incomprehensible because it is the ultimate product of an incremental process of banal bureaucratic routine. In fact, according to the dominant 'explanation', there is no record of an oral or written order by Hitler to carry out the genocidal plan. The series of events known as the Holocaust would have been an incremental process rather than an intended project of total extermination. [5] To put it quite crudely, genocide is a 'natural' tendency of modernity.

History and Legal Intervention

If this is the danger, it requires vigilance. At a time when fascism is undoubtedly going through a resurgence, laws have been enacted in some countries restricting the freedom of expression of neo-Nazis by making the denial of the Holocaust a criminal offence. Particularly in Germany, Austria and France, where the danger is higher, politicians have criminalised the view that the Holocaust is a lie and that therefore Nazism can be respectable again. In other countries, such as the UK, the Government is exploring the possibility of introducing similar laws. [6]

The purpose of these laws is to spoil the kind of experience or 'revelation' recently described by a former recruit of a neo-Nazi movement in Germany:

> At first they offered me literature. The first material I received was about what they called 'the Auschwitz lie'... The West German neo-Nazis said there were new scientific discoveries about Auschwitz that proved that no one had been gassed there. An American 'gas chamber expert' named Fred Leuchter from Boston, had measured chemical residues using the latest scientific equipment, and there was no doubt: it was all a lie.
>
> This was a revelation beyond words. No gas chambers! No mass murder of the Jews! It had all been Communist lies, like so much else. 'This is phenomenal!' we said. 'This is wonderful!' And in this moment of relief and joy for me and other new recruits I think we passed from being simply rebels against the GDR to being true neo-Nazis... we'd grown up with German Guilt. Now this guilt was lifted (*The Guardian* February 10, 1996).

The denial of the Holocaust has become more sophisticated over the years. The deniers no longer dispute the existence of the camps and the fact that many Jews died in them because of insufficient food and lack of proper medical attention, both inevitable in a war situation -- but they deny the existence of an overall genocidal project and of the gas chambers. This denial is today carried out through a campaign using materials and arguments prepared by a group of academics linked to the Institute of Historical Review, a body that coordinates the campaign internationally. This global campaign promotes a politics of memory based on History re-writing which attempts to remove the stigma of the genocide from Nazi politics.

Legal interference with neo-Nazi campaigns are obviously controversial in democratic societies, in which the fascist danger is controlled through censorship. Thus denials of the Holocaust are usually treated as particular instances of a general legal category, hate speech or 'incitement to racial hatred'. In many countries this kind of speech is an offence, whether or not it is likely to lead to a breach of the peace. In fact, racist speech can harm defenceless people more than people who may respond with violence.

But criminalisation of any kind of offensive speech is illegitimate in the light of the dominant liberal theory that traces its origins to John Stuart Mill. A fundamental distinction in this theory is that between

offensive speech and harmful speech. Only speech that produces direct quantifiable harm -- for example, injurious falsehood affecting the plaintiff's commercial interests -- can be treated as a breach of the law. Holocaust denial, even if it is "a monstrous insult", in the words of Dworkin (1995: 45) -- perhaps the leading liberal legal theorist -- cannot warrant the intervention of the law. It can be assimilated to an attack on taste, but its protection is clearly not the law's business. In Mill's words: "a person's taste is as much his own peculiar concern as his opinion or his purse" (1992: 123).

It is true that Nazi speech is an example of the 'paradox of freedom'. This paradox -- the respect of the right to free speech to those who exercise this right in order to abolish it for others -- was used by the Nazis to rise to power. This contradiction is addressed by article 17 of the European Convention of Human Rights which enables States to restrict and even derogate some rights in order to avoid the use of freedom to destroy freedom. Article 17 was included in the Human Rights Convention precisely because of the way the Nazis took advantage of rights granted under the Weimar Constitution in Germany.

The dangers of the legal powers granted to the State under Article 17 are alluded to by the Classical Latin question: 'Who will guard the guardians?'. This problem arose when the European Commission of Human Rights refused to apply this Article against a right-wing Greek dictatorship, [7] which was actually using the resources of the law to restrict human rights, while it applied it against the potential threat posed by the small German Communist Party. [8]

This discrimination can be explained in the context of the cold war. The decision was taken when the McCarthyist hunt of communists in the United States had come to an end (Gaete 1993: 88-91), which may explain why the decision in the *German Communist Party* case was criticised by virtually all commentators at the time (Gaete 1993: 94-5, n. 23). What the history of judicial derogation of rights shows is that governments and courts may use legal powers for purposes other than those originally intended by the legislator.

For the same reason, censorship laws are rightly treated with suspicion by liberal opinion. To mention two examples of laws imposing restriction on free speech which are being criticised by liberal opinion, there seems to be a consensus now in the United Kingdom that blasphemy laws should be abolished and that obscenity laws should be applied only on materials which can be proven to cause anti-social behaviour.

So it is from within this liberal paradigm that the strongest arguments against the criminalisation of Holocaust denial come. The denial of the Holocaust is increasingly presented as a form of historical revisionism. And liberalism, still following Mill, takes History to be essentially falsifiable. As any other social science, History is inherently a matter of interpretation. And its interpretations inescapably fall into the hermeneutical circle, i.e. interpretations are developed against a background of assumptions which are, in their turn, also interpretative.

Because of the controversial nature of History, Lipstadt has argued that the legal criminalisation of Holocaust denials force courts to

> render a decision not on a point of law... but on a point of history... It transforms the legal arena into a historical forum, something the courtroom was never designed to be. When historical disputes become lawsuits, the outcome is unpredictable (Lipstadt 1993: 220).

As such, this objection is not decisive. The same objection could be placed against all trials relying heavily on expert witnesses. In obscenity cases, for example, the courtroom often becomes a literary seminar in which the difference between erotica and pornography or the aesthetic or literary merits of seized materials are discussed. The fact that courtrooms are often sites of disputes between expert witnesses rather than lawyers is not a major problem.

The problem lies rather in the use of the judicial forum as a platform for neo-Nazis to argue their positions and receive publicity. Censorship of their political opinions may be precisely what Nazis or neo-Nazis need both to appear as victims and to make use of the forum of a court of law to spread their ideas whenever they are prosecuted. However, as Lipstadt herself recognises, the time to ignore them in order to deprive them from fora where they can get their views amplified is long time gone (Lipstadt 1993: 221).

Dworkin structures the argument against the criminalisation of Holocaust denial in a way that raises the main issues:

Denying that the Holocaust even existed is a monstrous insult to the memory of all the Jews and others who perished in it... It would be ghastly, not just for Jews but for Germany and for humanity, if the cynical 'Auschwitz lie' were ever to gain credibility. [But it should not be combated by subjecting it to censorship]. The Creationists who banned Darwin from the Tennessee public schools in the 1920s were just as convinced about biological history as we are about German history, and they, too, acted [by using censorship] to protect people who felt humiliated at the centre of their being by the disgraceful new teaching. The Muslim fundamentalists who banned Salman Rushdie were convinced that he was wrong, and they, too, acted to protect people who had suffered deeply from what they took to be outrageous insult. Every blasphemy law, every book burning, every witch-hunt of the right or left, has been defended on the same ground: that it protects fundamental values from desecration (Dworkin 1995: 45).

Dworkin's opposition to a legal protection of certain beliefs against "desecration" seems to be based on a fundamental distinction between mere beliefs and scientific knowledge. In this view, the truth claims of the Holocaust should be treated as a matter of science and not as a matter of memory; as Public History rather than private memory. Private memory, especially when shared in ritualised commemorations, can become myth while history, or at least the chronicle of facts, is capable of settling certain truths about the past. [9] As Lang has argued, "if historical representations are to be at all distinguishable from those of fiction, the difference will be located here at the level of chronicle -- if only *faute de mieux*". The historical chronicle says, for example, "on 20 January 1942 certain members of the Nazi Hierarchy, meeting at Wannsee, discussed the terms -- and the term itself -- of the 'Final Solution'" (Lang 1992: 307).

However, a commitment to multicultural relativism takes the liberal position further. There is no such thing as a dry chronicle of facts because all facts are interpretation. In this sense, History is not different from myth and Dworkin's comparison with the myth of the Creation makes precisely this point.

A multicultural relativism implies that there is no independent method for discovering which version of the past is superior. Within the liberal paradigm, there can be no commitment to a substantial good and there can be no conception of evil (Badiou 1993: 15). All versions have a right to equal respect because for every truth there is an alternative truth that also has a right to be freely expressed. If we could make an analogy with the liberal principle of fairness or due impartiality recognised in many codes of conduct governing the coverage of news and issues in some public service broadcasting systems, a consistently relativistic position taken to its logical consequence would require that every time the media make a reference to the evolutionary explanation of Nature, it should make a 'balancing' reference to the Biblical story of Adam and Eve. And whenever certain historical facts are mentioned, it should be made clear by television producers that these are no more than viewpoints and the same time should be given to the opposite viewpoint.

Seen in this light, it is not so far-fetched to require that Holocaust deniers be given the status of 'the other side' in an argument, so that any mass coverage of the Holocaust should also cover the deniers' objections. Relativism asserts that there is always another side and it must be given a voice. Historical truth must be treated as an argument. And an argument invites counterarguments.

This relativism is embedded in the language of modern law. The law is abstract and must use general categories making different behaviours equivalent. Unimaginable atrocities are defined by neutral expressions such as 'violations' or 'breaches' or 'abuses'. The Holocaust has been domesticated by subsuming it under general categories -- genocide, bureaucracy, technology. Stanley Cohen has made this point forcefully:

> Both the pictorial language of atrocity, horror and suffering and the older theological language of sin and evil have given way to legalism and UN-speak. Not 'Thou shalt not kill' but 'Thou shalt not violate the right to life protected by Article 6, paragraph 1 of the Covenant' (Cohen 1996: 499).

This vocabulary tends to 'flatten' the descriptions of horror making different situations comparable. Whether it is the Turkish policy of resettlement and extermination of the Armenian population or the

massacres of Tutsis in Rwanda, the Soviet Gulag or American aggression on Cambodia, that vocabulary makes every contemporary massacre equivalent, perhaps an instance of the behaviour to be expected from an evolved species of apes who tend to be, if we are to believe their glorious History, killers of members of their own species. [10]

Lipstadt (1993: 215-6) has denounced this relativistic position, which denies the uniqueness of the Holocaust, as more insidious than the more naive denial of the facts.

Accommodating themselves to the advantages of the system, the deniers have shifted to a denial of the uniqueness of the Holocaust that is dressed up as a respectable form of historical revisionism. The most influential relativisation has been developed by Nolte, who interprets the Holocaust as merely a response to and a copy modelled on the Gulag Archipelago, in fact an understandable act of defence motivated by the fear of becoming victims of Bolshevism. This version is a kind of cold war thesis that Nolte applies retrospectively to Nazi rule. According to this thesis, the communists are to blame for all the major atrocities this Century, *including the Holocaust*. Nazi genocide is an indirect product of Stalinist genocide. [11]

The success of these revisionist approaches is beyond doubt. Once again, we must confront the political uses of laws and truths. Nolte's thesis received the endorsement of President Reagan as a cold war weapon during what has been called the Bitburg incident. [12] On 5 May 1985, in a memorial visit to a military cemetery, President Reagan asserted that the Waffen SS buried there (among thousands of other tombs) were as much victims as the victims of the concentration camps. And he advocated a policy of forgetting, since the "German people have few alive that remember even the war". Although Schlesinger's caustic comment was probably accurate -- Reagan "fought the war on the film lots of Hollywood... and apparently got many of his ideas of what happened from subsequent study of *Reader's Digest*" (Markle 1995: 139), Reagan was doing what was expected of him, using History and Memory -- or their absence -- as weapons at the service of the cold war main objective, namely the defeat of Communism. One must remember the way human rights talk had been consistently at the service of cold war propaganda during the cold war (after the end of the cold war, a quick cooling down of American enthusiasm for human rights has been noticeable).

Cesarani has rightly called these different moves on the memory of the Holocaust a "thicket of relativisation" (Cesarani 1994: 171).

Apocalypse, Sacrifice and Profanation

As I have said, Arendt originally saw the Nazi crimes as crimes that put radically into question the relativism of legal liberalism: "The Nazi crimes, it seems to me, explode the limits of the law; and that is precisely what constitutes their monstrousness" (May & Cohn 1996: 39).

The distinction between the legal and the illegal does not make sense any more when a radical evil throws the whole Universe out of joint. "We are simply not equipped to deal, on a human, political level, with a guilt that is beyond crime" (May & Cohn 1996: 39).

Arendt is talking here of something monstrous that escapes the somehow banal legal description of crime as a transgression of rights. The monstrous is beyond representation and imagination, belonging to the same domain as the sublime. In Kant's classical analysis, the sublime not only transgresses limits but makes them impossible. Lang calls the Nazi genocide "an inversion of the sublime" (Lang 1992: 305). It is akin to what Lacan called the Real.

The Real is what is beyond the sphere of representation (the Symbolic). Reality and truth, insofar as they are understood and represented, take place by means of oppositions and differences. On the other hand, the Real is undifferentiated and can neither be symbolised nor imagined. "It is this character of... resistance to symbolisation which lends the real its essentially traumatic quality" Evans 1996: 160). When Bataille writes that men "are swayed by two simultaneous emotions: they are driven away by terror and drawn by an awed fascination" (1998: 58), he is talking about the Real, which he understands as the horrifying, fascinating, sacred.

The banality thesis refers to the technological project of the West, which is far from banal. It was the

destiny of the West which the Nazis alluded to when they justified their historical and ethical project as the project of saving the West. In the Nazi view, the centre of Europe, Germany, had to undertake a cataclysmic transformation in order to force the West to go back to its true essence, to its "passion for empire, recurrent ever since Hellenistic Greece and Christian Rome" (Lyotard 1990: 22), "the great projects (commercial, legal, scientific, technological, military, cultural) whose aim is to deny human dependence on the nameless Divine" (Zimermann 1996: 249).

This passion does not belong only to the realm of the utilitarian and profane but it is rooted in a metaphysical and theologically subversive project of domination. As explained by Munch, a doctor who was an assistant and admirer of Mengele, in an interview in Der Spiegel in 1998, Mengele believed that the "Germanic peoples are the bearers of European culture" and that the world would be healed by the extermination of the Jews (*Sunday Telegraph* November 29, 1998: 2). Why were the Jews an obstacle? Because of their belief in the Limit of the Law of the Holy, which puts into question the metaphysical drive of the West, the sacrifice of everything and everybody for the sake of an ever receding future, a progress to infinity (Copjec 1996: vii-xxvii): "As bearers of the memory of finitude and dependence (the Jews) must be destroyed (Zimermann 1996: 249).

This is why Lacoue-Labarthe treats the Holocaust as a *caesura* in History, the catastrophic happening of an inexpressible and irreversible loss. An apocalypse. Frank Kermode speaks of an "apocalyptic set" that enables peoples to suffer the horrors of war and terror with the promise of a coming dawn (Rabinbach 1997: 7). Rabinbach calls this predisposition "the belief in the redemptive power of violence" (Rabinbach 1997: 1).

There is nothing banal in a violence performed in terms of an Apocalypse. It is closely linked to a sacred sense of sacrifice. The Nazis did not think that they were sacrificing the Jews, they thought they were sacrificing themselves. Himmler's notorious speech to the SS makes this clear:

> You should know what a hundred -- or five hundred or a thousand -- corpses laid next to one another are. To have held out, and at the same time... to have remained honest men... is a glorious page of our history that has never been written and which will never be written (Nancy 1991: 33).

The SS were joining a quasi-religious order, in a "mystical fusion... with 'destiny', and with immortalising powers" (Lifton 1986: 426). Because in a true cult "the one who sacrifices is the first sacrificed, the first victim... The sacrificing priest is himself sacrificed" (Fink 1966: 131). And in the same way that the priest is God's vicar on earth, which makes of the divine Other an absent and remote Being, the leader is the vicar of Destiny. Lacan mentioned, in passing, how the Nazis identified themselves with "the desire of this Other that I call... *the dark God*" (Copjec 1996: xxi).

They killed, murdered, gassed people, and finally, most of them, died in battle -- for that dark god, the Other's desire, the leader. Bataille compares the fascist leader to the untouchable in India that are sacred "because of the prohibition of contact analogous to that applied to sacred things" (1985: 145). Eichmann, the head of the Gestapo Jewish office, was not only a grey bureaucrat obeying orders, too thoughtless to understand the big picture. Eichmann has been represented as almost an idiot who acknowledged the record -- the facts, the figures -- but could not see the catastrophic event in which he was willingly taking part. But this portrait is not persuasive. He obviously understood the big picture perfectly well. His evil was not rooted in ignorance but in the will to enjoy his own sacrifice to the 'sacred' leader. Eichmann is "the one who renounces his personal judgement, desires and emotions to serve the will-to-jouissance of Hitler" (Maccanell 1996: 64). Maybe this is what Arendt found terrifying in the mediocrity of Eichmann. Not the terror of a machine-like bureaucrat but a terrified glimpse at his enjoyment.

> The perverse compulsion to be at the service of the leader's *jouissance*, an obscene Other which is not only above the law but it is the denial of all law (Maccannell 1996: 65).

The act of profanation of the identity of the other and of what the other holds as sacred is a central component in the warrior's enjoyment. The denial of the Holocaust is not merely a kind of antisocial behaviour that must be repressed in order to avoid unpleasant political consequences, a calculation that is inherently controversial, but it is a demolition of memory. While the historical record on the genocide

is powerful enough and it has not been affected by denials, memory is fragile because it is constructed in the present, in the sacred act of commemoration.

Memory of course is destined to fade away in a kind of natural profanation inflicted by time. Previous to its legal meaning, profanation is the effect of the passing of time on all things sacred. Profanation is inexorable: it is the impact of infinite time on finite things, "the corrosion of time" that does not lead to oblivion but to a loss of the sacred: it is the flight of the gods that leaves behind only ruins. Commemoration is a struggle against this demolition. Brozsat explains how many Jews engage in acts of remembrance "alongside the mere dry historical reconstruction of facts – because the incommensurability of Auschwitz cannot be dealt with in any other way" (La Capra 1992: 121). Commemoration is to retrospectively construe a law (*nomos*) that gives the past meaning. The denial, the forced amnesia of what has become for the Jews a sacred event is the imposition, all over again, of a symbolic death.

I have quoted authors who say that the Holocaust lacks any redeeming meaning. Michalson, for example: "in its starkest forms, moral evil is a kind of void in our experience, an absence of meaning" (Hewitt 1996: 92). Munch, the former Nazi doctor, answers the last question put to him by his interviewer -- "What does Auschwitz mean to you?" -- with one word: "Nothing".

This is the terror that Burke wrote about, "terror of a 'there is nothing', which threatens without making itself known" (Lyotard 1990: 32). But meaninglessness can produce a different kind of understanding. The understanding of Kant when looking at the stars above and at his heart inside. The fundamental insight into the sacred is that of meaningless, the glimpse of a purposeless Universe which does not follow a pre-designed plan or which is not there to reach a pre-designed goal. It is sacred because it makes it impossible to think of it in the way one thinks about a thing, existing within the framework of the Universe, which has no value, plan or goal -- like a stone in a desert or a broken washing machine on a rubbish dump. The analogy to useless play, whose purpose is to play the play, is better (Fink 1966: 235; Gadamer 1979: First Part, II, 1).

The withdrawal of meaning opens a clearing for the experience of the sacred, the terrifying modern experience of being before the absence of a rational God, an experience that Pascal and Kierkegaard explored (Bataille 1988). This experience and the effort to confront and understand it may be painful. But a banalisation of human existence that reduces all human phenomena to a utilitarian calculation can lead to even more painful consequences.

Challenged by the development of fascistic communities that ground a seductive culture of hatred on a perverted sense of the sacred, we are presented with a hard choice between either paying 'the unbearable price of freedom' which censors all forms of censorship, or engaging in a comparative calculation of harms which can never provide clear guidelines. These approaches will not help us to identify the point at which legal intervention becomes necessary unless we confront and increase our understanding of the drives and desires that were at play in the Nazis' structures of motivation. "What is not confronted critically does not disappear; it tends to return as the repressed" (La Capra 1992: 126).

References

Arendt H 1958 *The Human Condition* University of Chicago Press Chicago

--1965 *Eichmann: A Study on the Banality of Evil* Viking Press New York

--& Scholem G 1978 'Eichmann in Jerusalem: An Exchange of Letters' in *The Jew as Pariah. Jewish Identity and Politics in the Modern Age* ed Feldman R H Grove Press New York

Badiou A 1993 *L'Ethique: essay sur la conscience du Mal* Hatier Paris

Bauer F 1984 'The place of the Holocaust in contemporary History' in *Studies in Contemporary Jewry* vol 1 ed J Frankel Indiana University Press Bloomington

Bataille G 1985 *Visions of Excess* University of Minnesota Press Minneapolis

--1988 *Guilty* Lapis Press Venice CA

--1998 *Essential Writings* ed Michael Richardson Sage London

Cesarani D 1994 October 7 'Extermination in Negative' *The Times Higher Education_Supplement*

Chalk F & Jonassohn K 1990 *The History and Sociology of Genocide* Yale University Press New Haven

Cohen S 1996 'Human rights and crimes of the state: the culture of denial' in *Criminological Perspectives* ed J Muncie, E McLaughlin & M Lagan Sage London

Copjec J 1996 'Introduction: Evil in the Time of the Finite World' in *Radical Evil* ed J Copjec Verso London and New York

Dworkin R 1995 'The unbearable price of freedom' in *Index on Censorship* 4/95

Evans D 1996 *An Introductory Dictionary of Lacanian Psychoanalysis* Routledge London and New York

Fink E 1966 *Le jeu comme symbole du monde* Les Editions de Minuit Paris

Gadamer H-G 1979 *Truth and Method* Sheed and Ward London

Gaete R 1993 *Human Rights and the Limits of Critical Reason* Dartmouth Aldershot

Goldhagen D J 1996 *Hitler's Willing Executioners* Abacus London

Hartmann G H 1992 'The Book of the Destruction' in *Probing the Limits of Representation: Nazism and the Final Solution* ed S Friedlander Harvard university Press Cambridge

Hewitt, A 1996 'The Bad Seed: 'Auschwitz' and the Physiology of Evil' in *Radical Evil* ed J Copjec Verso London and New York

Kant E 1960 *Religion within the Limits of Reason Alone* Harper and Row New York

Kuper L 1981 *Genocide* Penguin Books New York

--1985 *The Prevention of Genocide* Yale University Press New Haven

La Capra D 1992 'Representing the Holocaust: Reflections on the Historians' Debate' in *Probing the Limits of Representation: Nazism and the Final Solution* ed S Friedlander Harvard University Press Cambridge

Lang B 1992 'The Representation of Limits' in *Probing the Limits of Representation: Nazism and the Final Solution* ed S Friedlander Harvard University Press Cambridge

Lifton R J 1986 *The Nazi Doctors: Medical Killing and the Psychology of Genocide* Basic Books New York

Lipstadt D 1993 *Denying the Holocaust* The Free Press New York

Lyotard J-F 1990 *Heidegger and "the Jews"* The Regents of the University of Minnesota, Minneapolis

Maccannell J F 1996 'Fascism and the Voice of Conscience' in *Radical Evil* ed J Copjec Verso London and New York

Markle G E 1995 *Meditations of a holocaust traveller* State University of New York Press New York

May L & Kohn J 1996 *Hannah Arendt. Twenty Years Later* The MIT Press Cambridge, Massachusetts

Mill J S 1992 *On Liberty* Glasgow

Nancy J-L 1991 'The Unsacrificeable' in *Literature and the Ethical Question* ed Claire Nouvet Yale French Studies Yale University

Ozick C 1992 'On Christian Heroism' *Partisan Review* 49

Rabinbach A 1997 *In the Shadow of Catastrophe. German Intellectuals Between Apocalypse and Enlightenment* University of California Press Berkeley

Rank O 1971 *The Double: A Psychoanalytical Study* University of North Carolina Press Chapel Hill

Sunday Telegraph Review 1998 'Mengele's henchman -- and proud of it' November 29

The Guardian 1996 'Fuhrer-Ex' *Guardian Weekend* February 10

Villa D R 1996 *Arendt and Heidegger. The Fate of the Political* Princeton University Press Princeton New Jersey

Zimmerman M E 1996 'The Death of God at Auschwitz?' in *Martin Heidegger and the Holocaust* eds A. Milchman & A. Rosenberg Humanities Press New Jersey

Zizek S 1996 'Selfhood as Such is Spirit: F. W. J. Schelling on the Origins of Evil' in *Radical Evil* ed J Copjec Verso London and New York

Footnotes

1 As recently remembered by a war criminal, the efficiency with which children who had died during the journey to Auschwitz were "scraped out of the wagons and carried away by the legs like dead chicken, two at a time, their heads dangling down" (*Sunday Telegraph* November 29, 1998: 2).

2 The concept of doubling has been used very effectively by Robert Jay Lifton in his *The Nazi Doctors: Medical Killing and the Psychology of Genocide*.

3 "The Mafia or 'death squad' chief who coldly orders (or himself carries out) the murder of a rival while remaining a loving husband, father and churchgoer" (Lifton 1986: 423).

4 "Then Germany can still aspire to reclaim a national acceptance that no one denies to perpetrators of other massacres, such as Soviet Union." (Maier as quoted in La Capra 1992: 109).

5 The on-going controversy between "intentionalists" and "functionalists" has no prospect to be settled. The more information historians gather, the deeper the incomprehensibility of the Holocaust becomes. The last attempt at understanding, Goldhagen's *Hitler's Willing Executioners* (1996), attributes the cause of the Holocaust to widespread anti-Semitism in Germany. It is unnecessary to say that other interpreters have savaged this far from perfect but, in many ways, admirable book.

6 Other countries, for example Switzerland, Romania, Lithuania, Canada, have also enacted laws criminalising the denial of the genocide of the Jews.

7 The Greek Case, Eur. Conv. of H. R., 12 Yearbook, 1969.

8 German Communist Party vs. FRG, Appl. 250/57; YB 1.

9 This power to put the record straight is one of the important political effects of Commissions of Truth and Reconciliation. While their final reports do not change the competing interpretations of the past held by perpetrators and victims, they make the denial of certain facts no longer possible.

10 There have been different attempts at classifying massacres in ancient and modern times. See Kuper 1981 and 1985; Bauer 1984; Chalk and Jonassohn 1990.

11 For good references to the coverage of the controversy see footnote 18 in Markle (1995: 141).

12 I follow Markle's version (1995: 139-140).