

## The Time of Victims

In a still-recent time, the simple utterance of the term “history” served as an explanation itself: history wants, judges, condemns, etc. Today, although in a different fashion, *memory* has become the keyword which is an explanation in and of itself: it is a right, a duty, and a weapon. It goes along with grief, trauma, catharsis, memory work, piety, and compassion. In certain situations, we resort to it, not as a complement or a supplement to, but *instead* of history. It is clearly an alternative to a history which we believe has failed or has been silenced: the history of victors, rather than that of victims, of the oppressed, the forgotten, the dominated, minorities, and the colonized. A history excessively enclosed in the nation, too “official”, at the service of the nation. And some even use memory as a “therapeutic alternative” to a historic discourse which would only ever be an “oppressive fiction.”<sup>1</sup>

### From the Ancient Victim to the Modern Victim

In ancient religions, the victim appeared in the context of sacrifice to a deity. Rituals could not do enough to avert the violence of bloodshed. In Greece, it was necessary to obtain the animal’s own consent to its slaughter in honor of the god.<sup>2</sup> Various modern theories of sacrifice have examined the status of the victim. During the nineteenth century, we came to use a broader and vaguer category of the sacred: both victim and sacred. At the same time, this sacredness was easily shifted to one’s country, to which it was legitimate and glorious to sacrifice *oneself*. The wartime rhetoric of the first half of the twentieth century proclaimed and sang this out.<sup>3</sup> A country is entitled to demand the sacrifice of its children, whom it would in turn eulogize as heroes. Therein lies some part of the old contract which had been in place since the Homeric epic: death (either given or received) of the warrior in exchange for “undying glory”. Except that in *The Iliad*, this is played out between the warriors themselves and the bard, in no way in a context of sacrifice. They died in sight of their peers and in single hand-to-hand combat. Later, in the context of the city, when Pericles delivers the customary speech in honor of the first casualties of the Peloponnesian War, he actually indulges in a eulogy for Athens. In dying for it, its citizens have merely done their duty.

The War of 1914 would be a great consumer of sacrifices, all while managing a notable and consequential shift. Indeed, at the forefront was the figure of self-sacrifice, as Marcel Gauchet analyzed it. These citizen-soldiers “ceased being mere sacrificial victims of the homeland in danger; in everyone’s eyes as well as their own, they became those who deliberately sacrificed themselves for the salvation of the homeland, and who gave their life and found – this is the crucial point – confirmation and accomplishment of their individual existence”.<sup>4</sup> As such, a civil religion of sacrifice would be established, one which would

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<sup>1</sup> Kerwin Lee Klein, “On the Emergence of Memory in Historical Discours”, *Representations*, 69, 2000, p. 145. Didier Fassin, Richard Rechtman, *L’empire du traumatisme, Enquête sur la condition de victime*, Paris, Flammarion, 2007.

<sup>2</sup> Marcel Detienne and Jean-Pierre Vernant, *La cuisine du sacrifice en pays grec*, Paris, Gallimard, 1979.

<sup>3</sup> See Thomas Macho, « Zum Bedeutungswandel der Begriffe des Opfers und des Opfertodes im 20. Jahrhundert » in *Nachleben der Religionen, Kulturwissenschaftliche Untersuchungen zur Dialectik der Säkularisierung*, M. Trem, D. Weidmer Hrsg. W. Fink, München, 2007, p. 225-235.

<sup>4</sup> Marcel Gauchet, *A l’épreuve des totalitarismes 1914-1974*, Paris, Gallimard, 2010, p. 40.

also become a “great school of voluntary servitude” and one which would breed totalitarianism.<sup>5</sup>

But after 1945, the economics of glory as well as the civil religion of sacrifice could not remain as such. This figure of the victim, in the guise of one who has sacrificed himself or herself, that is, to a certain point, one who has “chosen” to die, is simply no longer defensible when faced with the tens of millions of dead and missing, the displaced populations and the haggard survivors whose opinion on the matter was never asked. Rather, a gap is being formed between the old association of the victim and the hero (even in the guise of the anonymous “unknown soldier”) both of whom, up until then, had marched (officially) hand in hand and had founded a civil religion of the dead. There have certainly always been heroic victims (which have always been needed and celebrated) and other, countless victims, who are pitied, but who have suffered, who were only able to suffer, and who have done nothing *but* suffer. In short, while previously active and positive, the notion of victim was loaded with a passive, and to a certain degree, negative connotation. It was preferable to say as little as possible about them. The then-common formula of the Jews being taken off to camps “like sheep to the slaughter,” is simultaneously the most right-thinking and crudest expression of this.<sup>6</sup>

### Conditions for a Reversal

Even though the victims tended to fade away too in the silence of the postwar period, several new elements have, in time, led to a mutation of their condition. There were first the trials: beginning with Nuremberg, instituting, of course, crime against humanity, but also and already the presence of a few witnesses. Such was Marie-Claude Vaillant Couturier, a former Ravensbrück deportee, who, coming to stand witness, wanted to force the defendants to look at her. By implementing moral and material reparations, Chancellor Adenauer’s Germany recognized the principle of individual reparations for the first time, rather than only reparations from state to state or from the vanquished to the victor.<sup>7</sup>

Since the Charter of the Nuremberg Trials, public action has become, as we well know, imprescriptible in the cases of crimes against humanity. Finally written into the French Penal Code in 1994, this regime of imprescriptibility has become recognized by a large majority of states since the inauguration of the International Criminal Court in 2003. In this case, imprescriptibility means that prescribed time, which is commonplace in justice, does not apply, no more so than the principle of the non-retroactivity of the law. As noted by the late Yan Thomas, “the opposite of imprescriptibility is not passing time, but prescribed time” – both are equally constructed.<sup>8</sup> Imprescriptibility means that the criminal remains contemporary to his crime until his death, just as we remain or become contemporary to facts judged as crimes against humanity. Think of the trial of Maurice Papon, former secretary general of the Prefecture of the Gironde, none of whose jurors had directly experienced war.

“The question is not ‘What are the effects of time?’ but ‘What effects do we decide to give to time?’” What is at stake is a “political-legal operation on time.”<sup>9</sup> The “by nature” imprescriptibility of crime against humanity establishes a “legal timelessness”, under which

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<sup>5</sup> *Ibid.*, p. 50.

<sup>6</sup> Saul Friedlander, in his autobiography, *Quand vient le souvenir*, Paris, Seuil, 1978, p. 163, reports that while at summer camp in 1946, this phrase was spoken by a counselor, and turned him into a Zionist.

<sup>7</sup> Pierre Hazan, *Juger la guerre, Juger l’histoire*, Paris, PUF, 2007, p. 27-28.

<sup>8</sup> Yan Thomas, *Les opérations du droit*, Paris, Hautes-Etudes-Gallimard-Seuil, 2011, p. 269-271.

<sup>9</sup> *Ibid.*, p. 269.

the criminal was and will be contemporary to his crime until his dying breath. If a historian enters into this timelessness during a trial, the only place afforded to him by French Criminal Law is that of a witness whose testimony must be solicited orally, as provided by law. But beyond the sphere of law, shifts have taken place between legal time and social time, even exchanges between the two in the name of responsibility, by way of the duty of memory and repentance. Applying the regime of temporality of imprescriptibility in the public space is indeed one of the hallmarks of the legalization of this space, which is a major feature of our time, with all its consequential difficulties. One needs only to mention the recently opened controversies of the memory of slavery and the issue of reparations, which were one of the sticking points at the Durban Conference in 2001. UNESCO declared 2004 the “International Year to commemorate the Struggle against Slavery and its Abolition.” Commemorating is one thing, but demanding reparations is another.

### A New Figure

Since the Eichmann Trial in 1961, witnesses and victims, i.e. witnesses *as* victims, have come to full light. The authority of the former is enhanced by the quality of the latter. During the testimonies, the defendant is faced with some of his victims. For the first time indeed, witnesses, i.e. victims, were called to testify, not against Eichmann, who they obviously had never seen, but against what they had endured.<sup>10</sup> A witness first became the voice and the face of a victim, a survivor who was listened to, who was made to speak, and who was recorded and filmed. In this respect, the most considerable recent undertaking was launched by the Spielberg Foundation, with the goal of gathering *all* the testimonies of *all* the survivors of Nazi concentration camps, and to thus have the real story of deportation “on line” in the victims’ voices. Note that in such an arrangement, a historian’s mediation would become not only useless but, worse, harmful because, ideally, nothing should interfere in the face-to-face meeting of a witness and the audience, who, in turn, is called to be a witness to the witness, a “vicarious witness”.

In France, public recognition of this new interest in victims resulted in 1985 by an act creating the term “died in deportation” (*Mort en deportation*). Until then, there was only a mention of “Fighting France” (*la France combattante*) commemorated since 1945 at Mont Valérien, where every 18<sup>th</sup> of June, General de Gaulle would go for a ceremony to the sober ritual. In the 1990s, the rise in power and in show of the figure of the victim was increased by the extending the category of trauma. Formed from the medical notion of bodily injury, becoming a psychological category at the end of the 19<sup>th</sup> century, then, at the end of the 20<sup>th</sup> century, a category of psychiatric nosology, trauma has now become a general social fact. As such, it establishes “a new condition of the victim.”<sup>11</sup> For proof, just pay attention to the speeches given, to the gestures made, and to the systems of psychological support put into place following disasters. But in this case as well, the reversal is recent. “A quarter-century ago, wrote Didier Fassin and Richard Rechtman, trauma was not mentioned outside the closed circles of psychiatry and psychology.” Rather, suspicion prevailed (soldiers were suspected of feigning their “neuroses”). Now, in the space of a few years, we have moved from doubt to recognition: trauma is “claimed” and the victim is “recognized”.<sup>12</sup>

With trauma appears a “new language of the event,” insofar as it allows us to name (in a rough manner) “a new relationship to time, memory, bereavement, debt, unhappiness and the

<sup>10</sup> Annette Wieviorka, *L'ère du témoin*, Paris, Plon, 1998.

<sup>11</sup> Didier Fassin, Richard Rechtman, *L'empire du traumatisme, Enquête sur la condition de victime*, Paris, Flammarion, 2007, p. 16.

<sup>12</sup> *Ibid.*, p. 15.

unfortunate.”<sup>13</sup> In practicing commemoration, we pass from “died for” to “died because of”: no longer for France, but because of it,<sup>14</sup> up to the recent decision to take legal action against the army by certain families of fallen French soldiers in Afghanistan.<sup>15</sup> Designating an event as traumatic establishes an immediate empathy with those who are “victims” of it. The name is a status with “rights and responsibilities” that go along with it: behaving “like a victim”. The instant deployment of teams of psychological support and the organization of rituals, in some cases in the name of the entire country, must allow victims to deal as quickly as possible with the “disaster” and to engage in the “mourning process.” Thus, an estimated nine thousand mental health specialists intervened in New York in the days following the September 11<sup>th</sup> attacks.<sup>16</sup> The disaster, with its extreme media coverage, further strengthened the visibility and centrality of the victim.

Finally, the transformation of the status of “victim” leads to re-readings of certain episodes of history, and that’s not a surprise. Such is the case of the recent trajectory of the figure of Captain Dreyfus. In 1994, at the centennial of the Affair, there were very few events. The Delegation of National Celebrations did not even mention it in its records.<sup>17</sup> In 2006, with the centennial of the judgment by the *Cour de cassation* rehabilitating Dreyfus, everything changed. The Republic then spoke abundantly about memory, applied the duty of remembrance, practiced repentance, make room for victims and recognized in July 1995, from the President of the Republic’s own mouth, that it had “committed the irreparable” at the Vel’d’Hiv roundup. In this situation, the historian must return to the archives, find others and reopen the past of the Affair. Thus, reading the five-year correspondence between Dreyfus and his wife while he was “cut off from the world of the living” reveals a man fully active in his affair, who never gave in his honor: a victim indeed, “despite himself” for sure, but one who knew how to mobilize a stubborn everyday heroism in isolation and distress.<sup>18</sup> A victim *and* a hero. This is the intent of the campaign launched then by some to ask the President of the Republic to transfer his remains to the Pantheon, as an “ordinary hero”, embodying all those who, in the most terrible conditions, have fought to keep what makes up the dignity and humanity of mankind.<sup>19</sup> “Ordinary hero”, indeed, yet truly a hero. Others have opposed this, refusing to push through this reversal of the victim into a hero. To them, the Pantheon should remain a “place for the heroes of the Republic.” Moreover, they add, Zola, the “hero” of the Affaire is already at the Pantheon. The request failed.

### Victims and Justice: Only the Present

The broadest way, the rise of the victim is consistent with that of the present, which is a hallmark of our time. For a victim, the only time available might be the present: the time of the tragedy which has just taken place, or just as well, one that took place a long time ago but which, for the victim, has always remained something in the present – either a fixed present or

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<sup>13</sup> *Ibid.*, p. 405.

<sup>14</sup> Serge Barcellini, « Du droit au souvenir au devoir de mémoire », *Cahiers français de la Documentation française*, 303, 2001.

<sup>15</sup> These soldiers are career soldiers. Military conscription is no longer compulsory.

<sup>16</sup> Fassin et Rechtman, *op. cit.* p. 9.

<sup>17</sup> Duclert, *Dreyfus au Panthéon*, *op. cit.*, p. 251-252.

<sup>18</sup> Alfred et Lucie Dreyfus, « *Ecris-moi souvent, écris-moi longuement...* », *Correspondance de l’Ile du Diable* (1894-1899), edition established by Vincent Duclert, foreword by Michelle Perrot, Paris, Mille et une nuits, 2005.

<sup>19</sup> Duclert, *op. cit.* p. 379-380.

a past which does not pass. The temporality unique to the victim falls precisely within the scope of the presentist configuration in which we find ourselves; we could even say that the victim works it, structures and strengthens it.<sup>20</sup>

Of which operation on time is transitional justice the instigator? Transitional justice is understood as a legal response (which may take various forms) to the misdeeds of a bygone regime. As a legal regime of transition, it unfolds somewhere between “before” and “after” and thus creates an intermediate time which, by its very execution, it begins to reduce. Under the terms of the final report of the Truth and Reconciliation Commission of South Africa, this justice, defined as “restorative”, is intended “build a bridge” between the past and the future. It is this airlock where, in the present moment of the face-to-face established between victim and perpetrator, the conditions for restarting time can be developed.

Created in 1995, presided by Archbishop Desmond Tutu, it sought amnesty without amnesia.<sup>21</sup> It “heard the grave abuses of human rights”; it was empowered to grant amnesty provided that the perpetrator fully disclosed his mistakes; it had no power of enforcement. Throughout the hearings, it had to distinguish and validate many types of truth: among which, “healing truth”, resulting in the possibility for the victim to publicly state what he had suffered, sometimes though not always, in the presence of his perpetrator. “The task of recovering the victim’s self-esteem and the task of accepting responsibility for the perpetrator are parallel and coextensive.”<sup>22</sup> Twenty thousand victims came to testify. Was “healing” always the result of the trial? Not necessarily, according to some studies conducted on those who testified in order to help heal the “wounds on the social body” by speaking out their suffering in public. As stated by the preamble to the new constitution, the Commission was designed as the first instrument to “heal the divisions of the past”. Through this, it had to help re-open a time beyond apartheid, because according to the profound conviction of Desmond Tutu “there is no future without forgiveness.”<sup>23</sup>

In the series of trials for crimes against humanity that took place in France between 1987 and 1998 (Barbie, Touvier, Papon), time was also at play. We might indeed consider them to be postponed or late manifestations of transitional justice which, coming to close an intermediate time which had stretched out until then, or which had been perceived as such in those years. Designed as moments of remembrance, they were meant to let victims’ grievances be said and heard, again or at last, and for them to receive some form of reparation. But they were also meant to operate, and especially remain, as “instruments of history”: the debates were filmed (for a future broadcast).<sup>24</sup> Here we are in a register of history as a lesson for the future. Furthermore, these trials asked the specific question (which has been debated) of the presence of the historian as a witness, witness by virtue of his expertise certainly, but also as a “witness” in the legal sense of the French penal code. Contributing to the manifestation of the truth, he took the oath and inserts himself not only in the present moment of the trial (he must speak without using notes), but also in the “legal timelessness” of crime against humanity. As a central character of the trial, the defendant is “trapped” in imprescriptibility, in a stopped time, somehow made for him, a time which cannot pass. Evading or escaping it is surely his greatest desire. But for the victims as well,

<sup>20</sup> François Hartog, *Régimes d'historicité, Présentisme et Expériences du temps*, ed. augmentée, Paris, « Points Seuil », 2012.

<sup>21</sup> *Amnistier l'Apartheid, Travaux de la commission Vérité et Réconciliation*, sous la direction de Desmond Tutu, Paris, Seuil, 2004. *Vérité, réconciliation, réparation*, under the direction of Barbara Cassin, Olivier Cayla and Philippe-Joseph Salazar, « Le Genre humain », Seuil, 2004.

<sup>22</sup> A. Garapon, *Des crimes qu'on ne peut ni punir ni pardonner*, Paris, Odile Jacob, 2002, p. 248. Nearly 8,000 guilty parties requested amnesty and 20,000 victims testified..

<sup>23</sup> Cf. D. Tutu, *No Future Without Forgiveness*, New York, Image Books, 2000.

<sup>24</sup> In the fall of 2000, the cable television channel “Histoire” broadcast part of the Klaus Barbie trial recordings, in 2005, the Maurice Papon trial.

time, in one way or another, has stopped, even if they needed time to be able to say it and to be heard. Among so many others, Jean Améry's testimony leaves no doubt: "Resentment blocks access to the utmost human dimension: the future."<sup>25</sup> And at the end of the Papon trial, Touzet, the civil party attorney observed analogously: "We are not having historical debates. The victims are suffering. Only afterward will history take place." He meant that time could be restarted and what came to pass could finally become the past. "For suffering," added Antoine Garapon, "freezes time: it dives not into the past but into an eternal present, where it is no longer possible to take off."<sup>26</sup>

More broadly, and beyond these landmark cases, there has been a shift in the trials' center of gravity since the 1990s: from the defendant to the victim. "History is now read through the eyes of the victim", notes Garapon, an attentive observer of this shift, of which he identifies the conditions of possibility and defines and highlights its meaning.<sup>27</sup> If it participates in the general movement of extending prosecution, the phenomenon marks a transition from criminal law to civil law or, from sanction to reparation or compensation. "By claiming reparation for their injuries [...], plaintiffs claim that the story will not end until [the defendants] have served for their unpunished crimes and outstanding debts. These legal demands (even if they go unanswered) inaugurate a new relationship to time."<sup>28</sup> Any injury can be converted to debt which is liable to evaluation; by paying the debt, history is "liquidated", resentment is extinguished and we can begin again from square one. Time is "purged" just like a debt.

But this (very liberally inspired) justice, which only deals with the present, ignores history and does without politics, leads to a paradoxical situation. Unlike the regime of imprescriptibility, which is limited to the lifetime of a suspect, the time of this civil justice is tied to that of "potential victims" which may turn up for generations to come. If it is true that one of the chosen cornerstones is the "presentness of suffering", the question arises of determining how far we can go back in time or, just as well, how far forward we can go from the initial trauma. Even though this justice is meant to close accounts and avoid history, doesn't it make us move from imprescriptibility to endlessness, while turning itself, even unintentionally, into an instrument of the present?<sup>29</sup> If imprescriptible time is indeed a time constructed by law, a necessary "legal fiction", we have tended to "naturalize" it by making it a social time, an equivalent of endlessness, which is itself an inascribable, detemporalized time, and which at any moment, can be reactivated in the presentness of complaint and debt.

Finally, throughout the same years, memory, which is centered on the victim, has become a new field of international public action: that of the politics of memory.<sup>30</sup> A few examples will suffice. 1998 saw the creation of the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research, a truly international organization. "We identify with the victims and their suffering and we draw our inspiration from this struggle", states their manifesto. The United Nations Conference against Racism in Durban in

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<sup>25</sup> Jean Améry, *Par-delà le crime et le châtement. Essai pour surmonter l'insurmontable*, Arles, Actes sud, 1995, p. 120.

<sup>26</sup> Antoine Garapon, *Des crimes qu'on ne peut ni punir ni pardonner, Pour une justice internationale*, Paris, Odile Jacob, 2002, p. 169.

<sup>27</sup> Garapon, *Peut-on réparer l'histoire ? Colonisation, Esclavage, Shoah*, Paris, Odile Jacob, 2008, p. 61.

<sup>28</sup> *Ibid.*, p. 62.

<sup>29</sup> *Ibid.*, p. 169-172.

<sup>30</sup> Henry Rousso, « Vers une mondialisation de la mémoire », *Vingtième siècle, Revue d'histoire*, 94, 2007, p. 3-10 ; « Les dilemmes d'une mémoire européenne », *Historicités*, sous la direction de Ch. Delacroix, F. dosse, P. Garcia, Paris, La Découverte, 2009, p. 203-221. Sarah Gensburger, « L'émergence progressive d'une politique internationale de la mémoire : l'exemple des actions publiques de 'partage' de la mémoire », *Traumatisme collectif pour patrimoine*, under the direction of Vincent Auzas and Bogumil Jewisewicki, Québec, Presses de l'Université Laval, 2008, p. 25-41.

September 2001 was held with the goal of “repairing” the crimes of history and to “heal” the past, no less, according to statement made by Mary Robinson, the General Secretary of the Conference, by confronting the issues of slavery and the slave trade. This program of transitional justice on a global scale and over several centuries would end in failure due to a bidding war on victimhood by some NGOs and by focusing on the Zionist enemy, guilty of the Holocaust of the Palestinians.<sup>31</sup> In November 2005, the UN voted a resolution called “Memory of the Holocaust”. On this occasion, it was decided that January 27 would be the International Holocaust Remembrance Day. Finally, looking to the East, in Ukraine in 2006, a law recognized the *Holodomor* (the famines of 1931-1933) as genocide of the Ukrainian people. The catastrophe ended up being metabolized into a heritage around which a collective identity could be rebuilt. Its inclusion into law made it possible to self-identify as Ukrainian, i.e. as a victim.

So memory, crime against humanity, trauma, and reparation are all elements which enter into the manufacture of a time of victims which has become our own, where the present, that of presentism, prevails.

François Hartog

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<sup>31</sup> Hazan, *op. cit.* p. 95-138.