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Chapter 10

Critical Realism and the Metaphysics of Justice

‘we hybrids moulded from clay and spirit’ (Levi 2013, 71)

In this chapter, I consider the problems of guilt in connection with genocide discussed after the Second World War by Hannah Arendt, Karl Jaspers, Primo Levi and Jean Améry. I look at the different forms of guilt: of perpetrators, bystanders, victims who became perpetrators, and of collective guilt. The way in to understand the structure of guilt is to consider the idea of survivor guilt, and the chapter links this to an underlying metaphysics of guilt. It considers primarily Levi’s account of survivor and accomplice guilt, and the ‘grey zone’ where judgment becomes problematic. The aim is to consider the ethical structure that supports our understanding of specific guilt categories, and this links Jaspers and Levi to Roy Bhaskar’s philosophy of metaReality. There he argues for a sense of metaphysical unity or identity that operates at a deeper level than the difference, conflict and change that occupy his dialectical critical realist philosophy. The philosophy of metaReality rounds out and deepens his thought, and I explore it for the first time in this chapter, arguing that it represents a key to understanding the philosophical thoughts and thoughtful experiences of Jaspers and Levi. The chapter considers the shape and structure of ethical enquiry, and what it is that makes ethical enquiry possible. From that point of view, it becomes possible to understand better our concepts of guilt and justice.

With regard to critical realism, I wish to say something in the next section about the work of the late Roy Bhaskar,¹ and its different levels, and how it is relevant to my own views on issues of guilt in the law and in moral thinking today. The three levels of critical realism are critical realism in its basic form, dialectical critical realism, and metaReality. Bhaskar always said that people should take what they wanted or needed from his thought, but that there was an immanent logic that led from one level to another. This chapter is in the spirit of that remark. My work has been particularly influenced by dialectical critical realism, but recently I have started to address what I see as a resistance in legal studies to think metaphysically about law. Another way to put this would be to say that I see increasingly the need to think metaphysically about issues of justice and guilt in order to understand our contemporary juridical practices, and this takes me to the third level of Bhaskar’s philosophy on what he termed metaReality.

Most work in law has a secular and non-metaphysical cast, and the idea of overcoming resistance is significant. Bhaskar used to say that his clue as to how to proceed philosophically was to push against those points where he encountered most resistance to his argument. Broadly, we can say that his work tracks three such resistances in its different levels of development. In its first phase, the resistance was most obviously to arguing for ontology and depth realism in a world that was much more comfortable to talk of

¹ Roy Bhaskar died in November 2014. Before his death, he was able to produce a final work which focuses on and integrates his developing account of ontology as the key to the three levels of his philosophy. It is published in 2016 under the title *Enlightened Common Sense: an Introduction to the Philosophy of Critical Realism* by Routledge.

epistemology and empirical reality (Bhaskar 1975, 1979). In its second phase, it was the significance of absence or negativity that was key, and here the resistance was historical as well as modern (Bhaskar 1993, 1994).² The third resistance was to what became the ‘spiritual turn’ in Bhaskar’s thought, in what he called metaReality. This is the thought that we can broadly identify as involving the significance of a metaphysical underpinning to the nature of reality (Bhaskar 2012a, 2012b).

In speaking of identifying and addressing resistances, there is a parallel with the practice of psychotherapy, which also has a depth realist aspect. Bhaskar was keen to thematise his work around the idea of a ‘reality principle’ that is denied by modern thought in its epistemic and positivistic quality. For now, I make the simple point that there was courage in his willingness to follow ‘the line of most resistance’. In this chapter, I adopt a similar approach, in an area that is daunting even to the uninhibited. I organise my thoughts around two linked discussions. First I look briefly at Bhaskar’s work from critical realism to dialectical critical realism and on to metaReality. Second, I address issues of guilt and its judgment in the context of the aftermath of the Second World War. This starts with thinking about Hannah Arendt and Karl Jaspers, and their dialogue on the subject, and then moves on to consider Primo Levi’s thoughts in *The Drowned and the Saved* (Levi 2013) and then Jean Améry’s thoughts on collective responsibility in his *At the Mind’s Limits* (Améry, 1980). My aim will be to link ideas from metaReality with a metaphysics of guilt, which I will draw from Jaspers and Levi, and then apply to concepts of perpetrator, accomplice, bystander and collective guilt.

The Different Phases of Critical Realism

The basic achievement of critical realism is the revindication of ontology over the imperialist ambitions of epistemology, and within that, the vindication of a particular, depth, ontology. The analysis of what scientists did in both the natural and social sciences was only explicable once you understood that the world was real and existed independently of thinking about it (Bhaskar 1975) (or at least this was relatively the case with regard to the social sciences: Bhaskar 1979). More than that, the world was structured, deep, and with generative mechanisms at play that could be discovered by scientific investigation. A depth realist mode of enquiry into such mechanisms was required as the basis for understanding how the world worked. Particularly relevant to the social sciences was the existence of structures and, working to produce, reproduce or transform these, agency. The structure-agency couple, together with the hermeneutic circle that this engaged (Bhaskar 1979 ch.4), had to be understood. Once grasped, reasons could be seen as causes and, ultimately, a scientific naturalist attitude was as possible in the social as in the natural sciences *mutatis mutandis*. Depth realism in the social sciences recognised natural necessity, but it had also to deal with a particular kind of subject, the human being as agent.

These are the core ideas of basic or original critical realism and Bhaskar was to spend the 1980s and 1990s working to develop it first in the direction of dialectical critical realism, and then metaReality. In dialectical critical realism, the idea of a structured and differentiated world was developed in three moves. The first of these was the idea that central to our understanding of the world is the importance of change, and change is to be understood as involving the negation of what exists as it is transformed and becomes something else. The

² In his dialectical philosophy, Bhaskar traces the problems and therefore the ‘metacritique’ of western philosophy back to the Greeks Parmenides and Plato, where absence (real determinate non-being) is denied. See Norrie 2010, chs 6,7.

world is constantly changing and this 'becoming and begoing' is understood in terms of absenting what is there, the 'real determinate negation' of what exists. This recognition of absence as real determinate negativity was essential, and those who refused this move had a one dimensional, 'ontologically monovalent', attitude to the world (Bhaskar 1993; Norrie 2010 chs 2,6,7). At the same time, all change is geo-historically located and subject to its own spatio-temporal rhythms (Bhaskar 1993 chs 2.2, 3.6; Norrie 2010, 28-34).

Second, alongside this, the structure-agency dual was transformed into four-planar social being in which relations with nature, interpersonal relations, social (institutional, structural) relations per se and intrapersonal relations (individual psychic structures) all go to constitute the human being's concrete universality/ singularity (Bhaskar 1993, ch 2.7, 2.9, Norrie 2010, 113-7). Putting the first and second points together, we can summarise the core perspective of dialectical critical realism as an understanding of the world as involving both structured being and becoming. Third, attached to these, there was a further move to integrate an ethical understanding of human freedom and solidarity with the socio-historical (spatio-temporal) understanding of the evolution of human being as a special kind of natural, anthropological, being (Bhaskar 1993 ch 3; Norrie 2010, ch 5).

What I have just described is sometimes referred to as the MELD structure of dialectical critical realism. The first *Moment* of basic, structural critical realism moves to a second *Edge* of negativity and is transformed thereby, before a third *Level* of seeing things as a whole, in their totality, emerges, and this leads to a fourth *Dimension* of ethical agency or praxis. Though not too much should be read into the MELD structure (it is as much descriptive of a particular journey as providing a necessary form for the theory), its end point, ethical agency or praxis, was already present in original critical realism. Now, however, it is thought through as a drive towards freedom in its various forms, which can only be achieved in solidarity with others. The logical and practical outcome of this drive to universalise the forms of freedom and solidarity is the latent, potential, tendential possibility of the eudaimonic condition, one in which the free flourishing of each depends on the free flourishing of all (Bhaskar 1993, ch 3.10; Norrie 2010, 144-56). This, it might be added, requires as its condition, the flourishing of the planet and other natural species as a whole.

Such a vision only needs to be stated in order to disclose the gulf between the actually existing world with its generic master-slave relations, and the immanent, real possibilities available to human being. Nonetheless, the message of dialectical critical realism is that the gulf is real only because both sides, the world that actually exists, and what is really possible within it, are both true, or 'alethic',³ as Bhaskar has it. The vision of dialectical critical realism is of a world in which alienation, splits, contradictions and conflicts animate modernity alongside the inherent, latent possibilities that exist for human socio-natural being. Bhaskar, however, was not to leave his argument there. There was a further development to occur, which involves the idea of metaReality. If the eudaimonic condition is a tendential, un- or under-actualised possibility for modernity, then it is real, true and alethic. What form does this condition take? Its emphasis on the universal, on connection and solidarity, and on the full flourishing of each and all, indicates a potential for universality, identity and oneness contained within the actually existing world of splits, contradictions, lacks and dualisms. Modernity exists as a world of conflict and structural violence: Bhaskar thematises the existence of what he called power₂ or generalised master-slave relations. Underlying this,

³ The truth of, or real reasons for, or dialectical ground of things, as distinct from propositions: Bhaskar 1993, 394; Norrie 2010, 126.

however, he began to see a deeper sense of identity, which he was to analyse in metaphysical terms at the level of metaReality.

In metaReality (Bhaskar 2002, 2012a, 2012b), Bhaskar builds this vision in his analysis of the ways in which moments of transcendental connection underpin social transactions that are conflicted and split – in the forms of human exchange where even simple communications disclose moments of real identity and connection, in the senses of community that exist even in communities that are split and contradictory, in the transcendental feeling that participating in nature or music, art, or literature provides, or in acts of kindness and love. In moments of creativity which overcome the split between subject and object we also find identity behind non-identity.

Such considerations led Bhaskar in this third phase of his thought to consider being as involving an ultimate unity that underlies difference and conflict, between oneself and the other, across time and place: a co-presence in human being of all the experiences open to human beings, for good and ill, and this co-presence lies at the core of metaReality. It involves a sense of universality in the human condition. Co-presence ‘is where some other thing is enfolded or implicit within a being’ and the claim of metaReality is that ‘the alethic truth of all other beings’ is enfolded within myself (Bhaskar 2012b, xlix). Beings remain distinct in their constitution and their location in space and time, but my potential ability to understand or identify with another stems from an ultimate underlying identity.

For myself, I resisted this third move in the initial ways that Bhaskar presented it. It seemed to me to abandon, or at least to downplay, the central importance of what he had achieved in his dialectics and original critical realism. I felt it led too quickly to an ethical ‘call to arms’ which de-emphasised the historicity and structuration of conflict. Yet I couldn’t get away from the sense that there was something very important in what he was saying, and something that, *because it was true*, would have to come out in the working and therefore the thought of law. That something is found in the idea of metaphysical guilt, which I first encountered in Jaspers’s thought, and which I now investigate in Levi and his and Améry’s accounts of guilt.

Before moving on, though, let me give a brief centenary illustration of what I have in mind. In 1916, after the Easter Uprising in Dublin, Sir Roger Casement was hanged by the British for treason. Casement, who was born and raised in Ireland, had been knighted by the British in 1911 for his work in exposing the conditions of Amazonian Indians working in rubber plantations. In this work and earlier work relating to the position of native Africans in similar settings in the Congo, Casement had become convinced of the iniquities of western colonialism, and he came to see the relationship of Ireland to Britain in similar terms. During the First World War, he sought to raise a regiment of Irish nationalist troops from those held prisoner by the Germans and also sought German arms for the rising. When he was arrested on landing on the Irish coast, he was charged with treason, sabotage and espionage and taken to the Tower of London. He was hanged in London in August 1916. A strong campaign was mounted against his execution, but this was countered by stories circulated in the press relating to a set of diaries that he had seemingly written which showed him to be a promiscuous homosexual. Prior to his execution, Casement was received into the Catholic Church, and his last words were as follows:

My final message for everyone is a *sursum corda*. I wish the best to those who will take my life and those who have tried to save it. All of you are now my brothers.
(Vargas Llosa 2012, 388)

Mario Vargas Llosa has recently described Casement as a man of contradictions and contrasts, and, though no model of perfection, one where ‘angels and demons combine inextricably in his personality’. In Ireland, he has ‘gradually, though always with reluctance and prudery’ begun to be accepted as ‘one of the great anti-colonial figures and defenders of human rights and indigenous cultures of his time, and a sacrificed combatant for the emancipation of Ireland’ (Vargas Llosa 2012, 398).

In light of this, it is the power and significance of those final words to which I point, and the sense of identity and co-unity between Casement and his enemies. Casement was to be executed by his enemies in the middle of a world war, after a violent uprising against a colonial power that he opposed, and that had been ruthlessly suppressed. When he had been tried by a British court, he refused to recognise it, and in order to promote his execution against significant opposition, his character had been dragged through the mud. A holy man, no doubt, as his late reception into the church makes clear, but the religious dimension is not central to the point. The point is that a human being could find the grace to see his enemies and executioners as his brothers prior to his death. How do we understand this moral quality to surface as it did in the end for Casement? It is the sense of identity beyond difference and conflict that lies at the heart of Bhaskar’s non-religious philosophy of metaReality which I wish to pursue. In what follows, my focus will now turn to issues of war guilt.

The Problem of War Guilt: Arendt and Jaspers

If we now explore this sense of the metaphysical in relation to the question of guilt, I am interested in the idea of ‘transitional justice’. This involves the problems thrown up for justice by transitions from one regime to another, where the transition involves dealing with figures in the old regime in terms of calling them to account for their actions. One sees this in many parts of the world, especially nowadays in Latin America, but also in Africa (Rwanda, South Africa). The locus classicus of the problem is the war crimes trials of the Nazis after the Second World War, and I’ve done some work on the views of Hannah Arendt in *Eichmann in Jerusalem* (Arendt 1964), and her engagement immediately after the war with Karl Jaspers (above, Chapter ...).

Jaspers had written a book on German war guilt (Jaspers 2000), and Arendt had responded that Germany was saddled with a real problem. There were tens or hundreds of thousands of people who could not be adequately punished for their crimes. The problem was not just one of numbers or scale, but the widespread, systematic abandonment of its moral compass by whole swathes of a people. What had been done was carried out by ‘civilised barbarians’, who had no sense of the wrongness of their actions, despite their enormity. The problem was focused later in her consideration of Eichmann, who, she argued, could be executed but not on the basis of the normal moral understanding that he had done wrong, which his punishment could communicate. Eichmann, and many like him, was incapable of such communication, because he could not see that he had done wrong. He thought indeed that he had done his ‘duty’, that he had acted ‘according to Kant’. Punishment would therefore lack the normal moral quality that was expected of it. There was no possibility of a moral dialogue with such a person.

The argument seems both logically persuasive and morally counter-intuitive. It makes sense in terms of the need to address Eichmann as a responsible moral agent, but it leads to the conclusion that the worse someone like him behaved, the less justice could make its claims upon him. In opposition to this, I pursued Jaspers’s argument when he distinguished four different kinds of guilt – political, legal, moral and metaphysical – but I noted the

problematic quality of this typology at the same time. Political guilt was an ‘external’ form of guilt involving for example reparations that were imposed on a people as a whole by a victorious power, regardless of their actual wrongdoing. Legal guilt, again an ‘external’ form, was imposed on individuals where a crime was formally identified, and where a formally free act had taken place. Neither of these forms of guilt addressed the moral dialogue that a process of criminal justice is normally thought to involve. Moral guilt, on the other hand, was an ‘internal’ form of guilt, but in Jaspers’s account, it was not appropriate for engagement in a public trial process. Instead, it involved a moral agent’s private engagement with himself and with close family and friends. In any case, it was self-evident that the accused in the trials of Nazis felt no such guilt. That did however leave the fourth form of guilt, metaphysical guilt, and this intrigued me. What did Jaspers mean by this fourth category?

In this first quotation, morality’s ‘mundane purposes’ are contrasted with the more transcendental quality of metaphysical guilt, which involves an absolute solidarity or unity with other human beings, one which goes beyond a ‘morally meaningful’ sense of duty. This, importantly, taps into the idea of ‘survivor guilt’, about which, more below:

Morality is always influenced by mundane purposes. . . . Metaphysical guilt is the lack of absolute solidarity with the human being as such—an indelible claim beyond morally meaningful duty. This solidarity is violated by my presence at a wrong or a crime. It is not enough that I cautiously risk my life to prevent it; if it happens, and if I was there, and if I survive where the other is killed, I know from a voice within myself: I am guilty of being still alive. (Jaspers 2000, 65)

In the following passage, this sense of absolute solidarity as an unconditional obligation to every other is articulated as follows:

Somewhere among men the unconditional prevails – the capacity to live only together or not at all. . . . Therein consists the substance of their being. But that this does not extend to the solidarity of all men, . . . but remains confined to the closest of human ties – therein lies this guilt of us all. (Jaspers, 2000, 26)

In considering Jaspers’s account, one can identify perhaps five different meanings of the “metaphysical” as it connects with guilt. These are, first, the lack of absolute solidarity with the human being as such, as above, and, second, and closely connected, to identify but not live by the unconditioned in human relations. These fundamental metaphysical or transcendental elements represent the basis by way of negative contrast for a third meaning, to live in history and politics. In such a state, one does not live by the unconditional alone. A fourth meaning, closely linked to the third, is to live in relations of power given to one. Finally, a fifth meaning links to survivor guilt: to live after a crime, to survive it.

In terms of the debate between Arendt and Jaspers, the value of this conception of metaphysical guilt was that, in a world where the worst perpetrators felt no guilt, indeed felt vindicated in what they had done, here was a conception of guilt that could operate beyond the need for actual acceptance of, or capacity for, moral dialogue between perpetrators and those judging them. Of course, Jaspers was speaking at the highest level of abstraction, and he was not speaking of the guilt of those who were perpetrators, but either onlookers or survivors. Nonetheless, the conception of guilt here was non-actualist, and related to a deeper set of claims about universality and humanity, and what humans owe to each other, regardless of whether this was accepted in an agent’s particular understanding or actual acceptance of responsibility. My argument therefore was that one could take this formulation which Jaspers deployed to speak of universal guilt – of the survivor, the bystander, and the collective group – and turn it on the perpetrators themselves. Metaphysical guilt, operating at a different level,

was complexly related to, but in some way operated to underpin, the other forms of guilt, in the political, legal and moral spheres. In providing it with a fuller role in relation to Jaspers's typology, it was possible to see the limitations of Arendt's criticism of guilt attribution in the case of perpetrators of crimes against humanity.

This was the attraction of the idea of metaphysical guilt, but it seems on reflection to be vulnerable to criticism. Jaspers himself had worried that his conception would be too abstract, too questionable, and would be seen as simply the crazy idea of a philosopher (Jaspers 2010, 68). His own background was in Christian pietism, and it might be thought that the idea of metaphysical guilt reflects too much his Christian worldview. A further meaning he had given to metaphysical guilt involved the common guilt of mankind, by which he meant 'original sin'. The resolution of such guilt was to be sought by living in relation with God, and reflecting on the way to humble self-purification. Is it only from a religious point of view that metaphysical guilt appears valid, and if so, what persuasive power does it have for those who do not share it? In reaching into this domain, is one in danger of basing one's thought on a terrain that academics, legal and otherwise, will find hard to accept? We may be happy to strike a further blow against the 'positivist unconscious', that dominates much academic work, but are we reaching for a somewhat 'local' universal in pressing Jaspers into service? Alternatively, is it possible to align Jaspers's conception with the view advanced by Bhaskar in his philosophical, non-theological,⁴ account of metaReality?

One way of reflecting on these concerns is to pose a more concrete question. It will be recalled that the fifth meaning of metaphysical guilt involved the person who survives a crime. It is with regard to that meaning that I will pursue my concern here. The question can be put as follows: is a conception like survivor guilt no more than a fancy name for psychological trauma, or does it deserve a different kind of understanding, as a form of metaphysical guilt? If it does, this would support the intuition that such a conception may be important to our understanding not just of the metaphysical, but of how the metaphysical manifests itself in worldly guilt and justice.

The Nature of Survivor Guilt: Reading Primo Levi

In this section, I begin with the understanding of survivor guilt in psychoanalytical accounts of survivor trauma, before considering how this conception of guilt as psychological mimesis is taken up and extended metaphysically by Levi. It is on this basis that the distinctions as well as the difficulties in his account of the different kinds of guilt emanating from the experience of the Camp can be understood, including his account of the 'grey zone'.

Guilt versus Shame: the Nature of Survivor Guilt

Survivor guilt is a controversial topic in the psychoanalytical understanding of traumatisation, and it is also a topic taken up by Primo Levi in his account of life and survival in the concentration camp. A helpful intermediary between the two uses is the work of Ruth Leys on guilt and shame (Leys 2007), which analyses the psychoanalytical debate on survivor guilt and draws on Levi to do so.

Leys's book is a powerful analysis of evolving directions in the psychiatric analysis of trauma, and the use of the concept of survivor guilt in the treatment of trauma disorders. Her argument is that conceptions of *shame* have over the last thirty years tended to supplant conceptions of *guilt*, and this has meant ultimately a move to seeing trauma in terms of an

⁴ 'What I wanted to do was to make spirituality compatible with secularism.' Bhaskar 2010, 167.

external psychological assault on the victim, from the outside. In the approach associated with guilt, on the other hand, the analysis of traumatic disorder involves a sense of the potential for taking an internal view of the psychology of the victim. This may involve a process of mimesis, or imitation and identification with the person perpetrating the violence. It is mimesis, under the requirement of survival, that leads ultimately to the sense of guilt that we call survivor guilt, and which lies at the root of the way some victims experience their traumatic situation:

The concept of survivor guilt had been theorised within the terms of psychoanalytic ideas about the relationship – the imitative or identificatory relationship – between the victim and the aggressor. The claim ... was that one characteristic, indeed primordial, mode of defense against violence was for the victim to save herself by giving in to power and identifying with the threatening other. (Leys 2007, 181)

Such identification leads in due course to feelings of guilt as the victim reflects consciously or unconsciously on their past thought processes and how they had identified with the perpetrator in the time when they had survived, but others had perished. According to Leys, the sense of trauma as survivor guilt draws on something of this more classical psychoanalytic understanding. The significance of this claim has in recent times been contested, but it is not my purpose to enter into the internal debate between psychiatrists and psychoanalysts, or between Freudians, post-Freudians and anti-Freudians. As we will go on to see, it is borne out by Levi's account of his own moral experience of the Camp. Accordingly, Leys's analysis, which is sympathetic to the classical approach, is helpful in positing a material psychological mechanism that can underpin the idea of survivor guilt. The question for me now is whether it can help us in understanding the role of metaphysical guilt as deployed by Jaspers. Can we then develop the idea beyond the religious basis that might otherwise be our only way of understanding what he has to say?

From Mimesis to Metaphysics

In working through her defence of survivor guilt with regard to the internal, mimetic approach to guilt in the psychoanalytic/ psychiatric literature, Leys had looked closely at Levi's experience of the death and labour camp, especially in his book *The Drowned and the Saved* (Levi 2013). If we follow her there, we find an analysis that substantially supports her argument about survivor guilt, but also takes us further, towards an ethical, metaphysical, conception.⁵ In the Camp, Levi writes, power was sought amongst others 'by the many among the oppressed who were contaminated by the oppressors and unconsciously strove to identify with them' (Levi 2013, 45). Levi describes as mimesis the 'identification or imitation, or exchange of roles between oppressor and victim' (Levi 2013, 45-6). He warned, however, that this idea 'has provoked much discussion,' continuing that much of it has proved highly problematic (Levi 2013, 46).

We will come to the difficulties in the next section, but for now, we should note the salience of the mechanism of mimesis for Levi. There is however an important difference in his approach from the analysis presented by Leys, and it involves the different – moral - register

⁵ Giorgio Agamben (2002, 94-7) seeks to dismiss the idea of survivor guilt in Levi's account. Linking it to collective guilt and then to the analysis of guilt in Greek tragedy, he misses the ground I discuss below concerning metaphysical guilt. He wishes to sideline survivor guilt in order to promote a 'new ethics' located in Levi's grey zone, but based on shame as the focus of an existential ontology of subjectification and desubjectification. (2002, 104-35). The key link is Robert Antelme's account of a young Italian student whose face turns pink (flushes) when he is picked at random for execution on a death march. It appears, however, that Agamben has interpreted this event in his own way: see Leys 2007, 174-9.

in which he thinks. For Levi, what was at stake was not simply a psychological, trauma-inducing, mechanism, though that was a crucial part. Beyond it was an ethical wrong that had been done that went to the heart of what it meant to be human. His comment that he does 'not believe that psychoanalysts ... are competent to explain this impulse' (Levi 2013, 90) emphasises the difference in standpoints. Psychoanalytical knowledge had not been developed in the Camp, and even where a psychoanalyst such as Bruno Bettelheim had experience of the Camp, the analysis seems 'approximate and simplified, as if someone wished to apply the theorems of plain geometry to the solution of spheric triangles' (Levi 2013, 90). In seeking the correct ethical register, Levi observes that everyone in the Camp 'suffered from an unceasing discomfort that polluted sleep and was nameless. To define this as a 'neurosis' is reductive and ridiculous' (Levi 2013, 91). It would, he says, 'be more correct to see in it an atavistic anguish, [that] 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 2013, 91).⁶ Earlier in the book, he had written, in the case of those who had collaborated, of 'the death of the soul' which yields and breaks under pressure (Levi 2013, 60), and of being made to live 'at an animal level', in which 'our moral yardstick has changed' (Levi 2013, 78). But there are two sides to the hybrids that we are, and it is the spiritual side of humankind that needs to be attended to in thinking about survivor guilt. Here the psychoanalyst cannot help us.

In a number of passages, Levi returns to the need to think through the metaphysics of guilt. To return to normal life from the mental states imposed in the Camp was not just to experience and work through psychological trauma, it was to experience and live with a sense of ethical abandonment that went to the very heart of what it meant to be human, and to possess a human spirit. Many of the precise comments made by Levi take these observations and give them a transcendental or metaphysical frame. In the following quotation, Levi points to the general capacity of humankind to turn the world into one of sheer pain, and the impact of knowledge of this on those who observed it:

The just among us, ... felt remorse, shame and pain for the misdeeds that others and not they had committed, and in which they felt involved, because they sense that what had happened around them in their presence, and in them was irrevocable. It would never again be able to be cleansed; it would prove that man, the human species – we in short – were potentially able to construct an infinite enormity of pain. (Levi 2013, 92)

More concretely, there is the failure to offer solidarity with a human being who is your companion, whom you fail to help. This is the nub of survivor guilt:

Almost everybody feels guilty of having omitted to offer help. The presence at your side of a companion who is weaker, or less cunning, or older, or too young, hounding you with his demands for help or with his simply being there.... The demand for solidarity, for a human word, advice, even only a listening ear was permanent and universal but rarely satisfied. (Levi 2013, 82)

And finally, there is again the guilt of the survivor, or perhaps just the observer, who now knows that humankind, and therefore the individual him or herself, may be capable of such things. In the following passage, Levi points to specific failures to act, but it seems that not

⁶ Levi writes that he 'entered the Lager as a non-believer, and as a non-believer I was liberated and have lived to this day' (2013, 163). The reference to God in this passage must be read in this light.

acting or not acting adequately, is a further issue to the simple guilt at the existence of a crime. Here he speaks of

....the shame which the just man experiences when confronted by a crime committed by another, and he feels remorse because of its existence, because of its having been irrevocably introduced into the world of existing things, and because his will has proven non-existent or feeble and was incapable of putting up a good defence. (Levi 2013, 75)⁷

However one reads these comments, it seems that they occupy similar territory to Jaspers's account of metaphysical guilt. An understanding of this deep layer of human being or experience is central to the nature of the judgment of guilt. On Levi's account, survivor guilt operates as living proof in the extreme or limit case of the significance of Jaspers's account. We have moved here beyond the understanding of such guilt as a material mental mechanism underlying traumatisation, though what we have is a deepening of the understanding of such things, rather than simply an alternative mode of explanation. The metaphysical, indeed, builds on the existence of the mental mechanism, but it is important to see that it is acknowledged by the testimony of the survivor as a sentiment generated by the reality of the camp experience, and not just as a metaphysical speculation. Survivor guilt was ingredient in the real structure and the actual events.

Perpetrators, Victims, Collaborators⁸

Now, however, we need to pause, and to be clear about the line of argument. We have seen that survivor guilt can operate to indicate a deep sense of metaphysical guilt in the human condition, and the argument has been that this conception can operate to ground a Jaspersian response to an Arendtian question. But I noted above that we move here between two forms of actual, worldly guilt: that of the Camp survivor (the victim) and that of the war criminal (the perpetrator), and these are two very different people. As we noted above, Levi was both drawn to the theory of mimesis, to which he gave an ethical turn, and also concerned that it led to serious misunderstanding about the nature of guilt in the Camp. We need to explore this point.

Perpetrators and Victims

The problem with survivor guilt is that it can lead to the conclusion that all are complicit in guilt, and this can erase the important distinctions between different kinds of guilt. It is clear that people, perpetrators and victims, are not guilty in the same way, or for the same things, and some are not guilty at all. Here, Levi wanted to hold on to a sense of the universal guilt we share for the existence of the Camp, while being clear about the distinctions we need to draw to identify the guilt of different classes of agents in relation to it. These included those in the 'grey zone' of collaboration that existed between the victim and the perpetrator. He adopts a subtle and nuanced line, which both acknowledges who the real perpetrators are, and assigns a degree of responsibility, or refuses to do so, to those who collaborated, but all this against the horizon of a general sense of universal responsibility.

⁷ Levi uses the term 'shame' here, but he uses it interchangeably with 'guilt' in this work.

⁸ A further category that ought to be discussed here is that of the supporters and beneficiaries of systems premised on structural violence: see Norrie 2008, 228, and generally, Meister 2012. Perhaps we should talk of 'beneficiary guilt' alongside that of the perpetrator, accomplice, bystander, survivor and the collective.

With regard to collaborators, Levi cites the case of Rumkowski, the Chief Elder of the Jews of Lodz. He writes of Rumkowski's distorted view of the world, his dogmatic arrogance, his clinging to power, and his contempt for law. The man had been drugged by the power given him by the Nazis, but, Levi notes, this 'does not exonerate [him] from his responsibilities' (Levi 2013, 69). His own life was tragic but, still, though there were extenuating circumstances, 'no tribunal would have absolved him, nor certainly can we absolve him in the moral plane' (Levi 2013, 70). Yet, Levi also describes this as a case of *impotentia judicandi*. Are many of us not just like Rumkowski?

We are all mirrored in Rumkowski, his ambiguity is ours, it is our second nature, we hybrids moulded from clay and spirit; his fever is ours, the fever of our Western civilisation that 'descends into hell with trumpets and drums', and its miserable adornments are the distorting images of our symbols of social prestige. (Levi 2013, 71)

Levi continues that, like Rumkowski, we are all dazzled by power and prestige so that we forget our 'essential fragility'. We all come to terms with power, 'forgetting that we are all in the ghetto, that the ghetto is walled in, that outside the ghetto reign the lords of death and that close by the train is waiting' (Levi 2013, 71). Despite this impotence in judging in the 'grey zone', Rumkowski stands as one who deserves to be held responsible.

There were, however, others who worked the system and should not be held accountable. Some were ready to compromise and, as 'grey, ambiguous persons,' 'they are the rightful owners of a quota of guilt' (Levi 2013, 47). But others, for example the 'crematorium ravens', those who worked in the special squads in the crematoria in order to preserve their own lives for a few weeks – no one is authorised to judge them, and 'a judgement of them [should] be suspended' (Levi 2013, 61). Here the language is important, since a judgement suspended is nonetheless one that can be made – but not carried out. *Impotentia judicandi* again, yet with a different outcome to that in the case of Rumkowski.

It should be repeated however that none of this counts against the full responsibility of the perpetrators, the men and women who ran the death camps. As Levi says, it is crucial not to conflate perpetrators, victims, and collaborators. A sense of the universality of the human condition should not undermine these distinctions. As regards the different positions of the perpetrator and the victim, Levi says, 'I do not know ... whether in my depths there lurks a murderer, but I do know that I was a guiltless victim and I was not a murderer'. Confusing the two roles 'means wanting to becloud our need for justice'. Yet, it is having just said this that he then wishes to make a 'few more remarks' about the grey, ambiguous people: the crematorium ravens, those who cooperated in running the system, but also, it seems, himself who did not do enough, who failed to offer solidarity, who continued to live while a crime was committed, who witnessed the systemic rendering of the world as one of enormous pain. There remains a commonality of guilt, but there are also victims, perpetrators and collaborators.

Overall, it must be recalled, the three groups are located in the structure and context of the Camp, which allows perpetrators to victimise, and turns some victims into accomplices. The 'greatest responsibility lies with the system, the very structure of the totalitarian state....' (Levi 2013, 40). It is that which establishes the setting in which the different kinds of actor

operate. What it does not do is homogenise all guilt into a general category, though it complicates it beyond a simple account of perpetrators and victims.⁹

Bystanders and Collective Guilt

Then there is the guilt of the bystander. Insofar as he or she is a Camp inmate, the bystander is the person who may feel guilt at not having acted, in the ways described above. But bystander guilt goes further than this, into the question of a general guilt that might exist for a people that has allowed genocide to occur. Here again, we should consider the positions of Arendt and Jaspers. For Arendt, a distinction is made between political and moral responsibility. With regard to the former, she agrees that every generation 'is burdened by the sins of the fathers as it is blessed with the deeds of the ancestors' (Arendt 2003, 27), but this should not lead to a sense of personal responsibility for it is only metaphorically that we can say 'we feel guilty for the sins of our fathers or our people or mankind, in short for deeds we have *not* done'. Morally speaking, 'it is as wrong to feel guilty without having done anything specific as it is to feel free of all guilt if one actually is guilty of something' (Arendt 2003, 28). From this standpoint, she neatly pins the tendency in post-war German debate to whitewash individual perpetrators for what they had done, since all were guilty anyway. But this was surely a consequence of political moves in favour of post-war reconstruction, rather than a necessary consequence of identifying both individual perpetrators and a general sense of a collective guilt as distinct moral phenomena.

Jaspers's approach to the same issue is intriguing and different. His initial view is that collective guilt exists only in the limited form of political liability, for 'there is no such thing as a people as a whole' so that the 'categorical judgment of a people is always unjust ... and results in the debasement of the human being as an individual.' Accordingly, 'to pronounce a group criminally, morally or metaphysically guilty is an error akin to the laziness and arrogance of average, uncritical thinking' (Jaspers 2000, 35-6). Yet, later in his account, Jaspers becomes concerned that his fourfold typology, though 'correct and meaningful,' might have lost something in the process, which 'in collective guilt is always audible in spite of everything'. In the end, he finds himself returning 'to the question of collective guilt' (Jaspers 2000, 69), and this leads him back to the formulations we encountered above relating to metaphysical guilt. People live under evolving conditions which determine the moral aspects of a nation's life and which 'help to determine individual morality.' The individual lives 'as a link in [a] chain' and there 'is a sort of collective moral guilt in a people's way of life which I share as an individual' (Jaspers 2000, 70). The world of which the Germans were a part could produce a regime such as the Nazis, and this is a moral fact for which all Germans are at a certain level responsible.

We . . . feel that we not only share in what is done at present—thus being co-responsible for the deeds of our contemporaries – but in the links of a tradition. We have to bear the guilt of our fathers. That the spiritual conditions of German life provided an opportunity for such a regime is a fact for which all of us are co-responsible. . . . (Jaspers 2000, 73)¹⁰

Levi also confronts the question of collective guilt, in the shape of those who 'turn their backs so as not to see [the crime] and not feel touched by it'. This is 'what the majority of

⁹ Compare Agamben's understanding that the Camp reduces all to a 'zone of irresponsibility' (2002, 21) 'in which victims become executioners and executioners become victims' (2002, 17). This is not Levi's position. See Leys (2007, 157-61) for a considered critical response to this.

¹⁰ Ultimately, Jaspers extends the claim of metaphysical guilt beyond the German context to a 'guilt of all', while insisting that this 'must not become a way to dodge German guilt' (Jaspers 2000, 94).

Germans did during the twelve Hitlerian years, deluding themselves that not seeing was a way of not knowing, and that not knowing relieved them of their share of complicity or connivance' (Levi 2013, 91).¹¹ How does Levi's view of bystander guilt relate to the metaphysical conception that we have seen underpins his account of survivor guilt? To speak of guilt as he does as a sin of omission involved in looking the other way suggests it is the failure of an aggregate (a majority) of actual agents that counts, so the way is not opened to a metaphysical conception. Where a metaphysical account would be needed, however, is in relation to those who did not look the other way, and who still feel guilt, or those in subsequent generations who express feelings of guilt for the tradition and the actions of the earlier generations.

Levi's approach to this can be discerned from the penultimate chapter of *The Drowned and the Saved*, where he reports on correspondence with Germans. To one he writes that he feels no hatred for the Germans as a whole, that hatred is only due to the perpetrators, and that any judge should only punish actual culprits and not those innocent of crimes (Levi 2013, 212). But this does not exclude for Levi a sense of collective guilt, in the manner expressed by Jaspers. While it is 'dangerous, wrong, to speak about the 'Germans', or any other people as of a single undifferentiated entity, and include all individuals in one judgement', at the same time, 'I don't think I would deny that there exists a spirit of each people (otherwise it would not be a people), a *Deutschtum*, an *Italianata*, an *Hispanidad*' so that one can expect 'one specific, collective behaviour rather than another', while dismissing caricature and allowing for individual exceptions (Levi 2013, 210-1). This is difficult territory, but Levi follows it by quoting a German physician who writes to him that he is 'conscious of being implicated in the greatness and culpability of my people' and that he 'stands before you as an accomplice of those who did violence to your destiny and the destiny of your people' (Levi 2013, 212-3). With regard to the generation to come, Levi quotes without comment but seemingly with approval the following:

At the end of the war I was still a child; I cannot take upon myself any share of guilt for the frightful crimes committed by the Germans; and yet I am ashamed of them.... You write that you cannot understand the Germans. If it is your intention to allude to the executioners and their helpers, then I too cannot understand them; but I hope I will have the strength to fight them if they should appear again on the stage of history. I spoke of 'shame': I meant to express this feeling – that what was perpetrated by German hands at that time should never have happened, nor should it have been approved of by other Germans. (Levi 2013, 213)

Behind this sense of historical resolve, there seems to stand a sense of collective responsibility in the Jaspersian sense. The line of argument is familiar, and it is also seen in the work of Jean Améry, whom Levi discusses in the *Drowned and the Saved*, and whose approach to blaming is rather different to Levi's. Yet, on this point, there is little difference. Améry too begins by taking an aggregative view. Collective guilt is, he says 'sheer nonsense if it implies that the community of Germans possessed a common consciousness, a common will, a common initiative to act' (Améry 1980, 72), but it is a useful hypothesis if it means 'the objectively manifested *sum* of individual guilty conduct'. From that point of view, there 'grows out of the guilt of individual Germans ... a total guilt of the people.' Collective guilt must be demystified, but can then be seen as based upon a 'statistical statement' (Améry 1980, 73). Beyond this, however, there is also a further sense of collective guilt that is non-

¹¹ 'I repeat: the true crime, the collective, general crime of almost all Germans of that time was that of lacking the courage to speak.' (Levi 2013, 208)

summative or aggregative, in the sense of sharing in a particular culture and history that has in some way produced Nazism, and to which all belong:

It is understandable that the young people are free of individual guilt and of the collective guilt that results from its summation. [Yet] as long as the German nation, including its young and its youngest groups, does not decide to live entirely without history ... then it must continue to bear responsibility for those twelve years that it certainly did not terminate itself. German youth cannot cite Goethe, Morike, and Baron von Stein, and ignore Blunck, Wilhelm Schafer, and Heinrich Himmler. (Améry 1980, 76)

To summarise and conclude this section, we might say that in Levi, the moral status of perpetrators and victims represent the more straightforward pivot on which hinges the guilt of survivors, bystanders and the collective group. Yet, if we are to answer Arendt's problem, the underlying structure of a metaphysical guilt is required in order to render that pivot straightforward. It is only, then, once we understand this position that we can move towards an understanding of the grey zone, wherein the complicity of victims in perpetration in the systematic context of the Camp may lead to the impotence of judging. Lurking behind this ethical problematic is the guilt of the survivor, a guilt that is both with and without ground. Metaphysical guilt also underlies what is explicable and valid in the concept of collective guilt. The greatness of Levi's testimony of the Camp is that he is able to reflect with clear moral vision on how guilt in its different forms could be experienced, described and differentiated. What I have sought to do here is to think through the kind of ethical structure that would be necessary to ground Levi's judgements.¹² Taking my cue from his and others' reflections, especially on survivor guilt, it seems to me that the kind of meta-ethics, or ethical structure, necessary is one that can ground the distinctions between different guilt forms, and provide them with a deeper framing that structurally locates them. Such a framing is provided by the kind of metaphysical account of ethics I have discussed here.

Conclusion

My starting point in this essay was the issue of survivor guilt. How do we understand it, what does it tell us about guilt in general, and how does it connect with Jaspers's account of metaphysical guilt? What we find in Levi is a subtle and nuanced series of judgments about guilt in the concentration camps, in which perpetrators remain perpetrators and victims victims, but between the two their stands a grey zone in which the two sides, while remaining apart, also blur together. To be a complicit victim is not the same as a perpetrator, but it is to participate in a way that can lead to an attribution of responsibility, or not. It may be a question of suspending a judgment, or recognising a quotient of guilt, or both, or neither. There is no question of denying key distinctions, but there are still questions to be addressed which run up against those distinctions. The figure of Rumkowski, or the crematorium ravens, or the guilty survivor focuses the issue, but it also goes deeper into our sense of what it means to be human, and this is where the idea of metaphysical guilt comes in. From this standpoint, it is also essential to think through the issue of collective guilt. No doubt that notion should be freed of 'myth and mystification' (Améry 1980, 73), its 'Old Testament' connotations (Améry 1980, 75), and of course it should not be manipulated for political ends.

¹² For an alternative view which sees Levi as divided between Kantian and in effect Levinasian philosophical approaches, see Druker 2009.

Once all that is said, there is still something that we should look at in both a summative and a deeper historical sense.

What are the vulnerabilities we share, and what do we owe to each other in terms of fundamental questions about solidarity and our moral being? The question of the right to live in the place of another, and what we may do, or should do, or owe to the other require an understanding of what it is that is universal in the human condition: the things we fundamentally share as human beings. These questions can't be answered as a matter simply of psychological mechanism: they require an understanding of the deep ethics at the core of our being. It is that deep ethics that is brought out by confronting Arendt's vision of Eichmann, Jaspers's account of metaphysical guilt, and Levi's experience and nuanced judgment of the Camp.

Relating this back to Bhaskar's journey through critical realism to its dialectical phase, and on to metaReality, if the first two are about understanding the working of natural necessity and the place of human, ultimately moral, agency in the world, then the issues surrounding agency as an emergent power of biological matter disclose important questions of human freedom. In these phases, questions concerning the historical, structural and organisational dimensions of a social phenomenon are central. Critical realism has its feet firmly planted in the social and historical understanding of the human world, but this then leads us in the direction of fundamental questions about the human condition that touch on our universality and what we owe each other. The questions at this third level are not separate from the first two, but are already present in them. In what I have sought to explore in this essay about metaphysical guilt, and how it comes out of the most cruel experience, I have tried to indicate that the thought needed to understand the concentration camp, and its aftermath, leads us into the same area. In this way Bhaskar's understanding of metaReality underlabours for our understanding of some of the darkest moral experiences that have confronted human beings – by implication, all human beings.

An answer to the question of guilt takes us beyond the positive or actual realities of formal law, where agents are held responsible for their acts. The Camp discloses the metaphysical substratum that underlies our understanding of individual responsibility. Bhaskar's work underlabours to this conclusion.