The Laws of Irresponsibility

Scott Veitch*

Abstract. This paper considers the ways in which the legal organisation of responsibility is able to legitimate the disappearance of responsibility, that is, to organise irresponsibility. It assesses the importance of aspects of legality under contemporary social conditions as a means of constituting impunities that facilitate the legitimation of suffering as a matter of routine practice.

Problems with responsibility

According to Young (2004) "The most common model of assigning responsibility derives from legal reasoning to find guilt or fault for a harm. Under the fault model, one assigns responsibility to particular agents whose actions can be shown as causally connected to the circumstances for which responsibility is sought" (368). Young recognises a number of problems with this model including the following: the identification of the agent; the establishing of cause and effect; the relevant status of the actions (intentional, negligent etc.); and, finally, that "Assigning responsibility to some agents, on this model, usually also has the function of absolving other agents who might have been candidates for fault" (ibid).

There is a sense in which this last observation seems like a truism. Where responsibility is assigned to some person or group of persons, then those who are not that person or within that group are, almost by definition, not responsible. They are, to use Young's term, absolved from responsibility. But Young's point is intended to go deeper than that. It is concerned with a genuine attempt to understand and engage with the complex and varied sources of actions and events within which harms

* School of Law, University of Glasgow. This paper draws on work that was first discussed at a workshop on Complicity held at the Altonaer Stiftung für philosophische Grundlagenforschung in Hamburg in October 2006. I am immensely grateful for the opportunity afforded by the Stiftung to present that work in progress, and in particular to Valerie Kerruish and Uwe Petersen for the invitation to do so. I am grateful to them and Emilios Christodoulidis, Tarik Kochi, and Stewart Motha for their detailed comments on that occasion.

DILEMMATA: Jahrbuch der ASFPG **2** (2007), 171–187.

are caused, an attempt that many moral and political approaches simply do not make. (Young's primary concern in this article is with trying to re-think, let us say at the least, the *involvement* of consumers in the propagation of harms — whether human or environmental — through their consumer activities in the context of global labour and consumption practices.) Hence in reviewing an analysis offered by Onora O'Neill, Young claims that where 'we' benefit from, or at least contribute to by our actions, processes that are inevitably complex, such as the global division of labour, then we nonetheless have responsibilities, or are in a relation of implication, with respect to being a part of these processes themselves. But where the fault liability model would limit, or, what is more likely exclude responsibility entirely, and hence work its absolution of 'us', Young proposes instead not abandoning the model, but paying more attention to the alternative notion of *political* responsibility. According to this, and drawing, she says, on the work of Hannah Arendt, individuals are responsible "precisely for things they themselves have *not* done. The reason to assume political responsibility involves not individual fault, but derives from 'my membership in a group (a collective) which no voluntary act of mine can dissolve . . . '" (375: quoting Arendt).

What appears radical already from such a short description is the dual sense of an actor's *implication* in harms that is not, on the one hand, related to intentional or negligent action *by* the actor; and on the other, the claim that any excuse from responsibility, based on the non-voluntary nature of the membership of a group, is delegitimated. Underpinning both these claims is the attention Young says is required to query the 'normality' which is assumed, or taken for granted, with respect to the more conventional understandings of the fault model. That is, as Young notes, in the legal liability model, "what counts as a wrong . . . is generally conceived as a deviation from a baseline. Implicitly we assume a normal background situation that is morally acceptable, if not ideal" (377). Yet, in the alternative, she suggests, "A concept of political responsibility in relation to structural injustices . . . evaluates not a harm that deviates from the normal and acceptable, but rather often brings into question precisely the background conditions that ascriptions of blame or fault assume as normal." Such a critique will be justified in so far as it understands that the assessment of what is 'normal' operates *routinely* — that is why it is *norm*al — to make invisible certain forms and experiences

of harms by setting them as background conditions where the matter of 'deviation' or breach does not arise with respect to them. Hence at this point, Young explains, "When we judge that structural injustice exists, we are saying precisely that at least some of the normal and accepted background conditions are not morally acceptable" (378).

But what can this mean? If I have sympathy with Young's analysis as I have briefly reported it here, then that sympathy is suddenly given critical provocation by a stark question: What is the significance of that word '*morally*'? In the first instance, what meaning, if any, is lost if that word is dropped? Alternatively what meaning, if any, is gained by it being there? Let me make a few comments with respect to this issue which suggest profound problems with the role of 'morality' in situations of the type that Young is referring to.

First consider the way in which 'morality' seeks to carve out a specific difference within the possibilities of what might otherwise be candidates for 'unacceptability'. The practices being referred to here are those which form the 'background conditions' within which, it is claimed, 'structural injustices' exist. But if these conditions are themselves complex, then what Young has ably discerned is that part of that very complexity involves observing an inability of 'morality' to discern unacceptability based on the postulated differences between 'normal' and 'exceptional'. The issue here is a general one. Young argues that instead of concentrating on, for example, finding causal agents, we should concentrate on seeing that "those participating in the production and reproduction of the structures should recognize that their actions contribute along with those of others to this injustice, and take responsibility for altering the processes to avoid or reduce injustice" (379). The problem, however, when put in these terms, is precisely this: that those responsible are frequently and most likely to be those who don't see the injustice *as their* problem; or even more acutely put, see it as *not being a case of injustice* at all, because it is an instance of some other form of acting the operating conditions of which are in fact thought to be *just*. (For example, the EU may want to respond to 'moral' claims to incorporate labour or human rights standards in its external relations, but it still, famously, gives more subsidy to its cows than it does to the impoverished of the third world.) Most commonly, and certainly in the types of case Young is referring to, these conditions and forms of acting are nothing less than those of a functioning capitalist

market, one of the key attributes of which is that the relations and rules of engagement take place and are understood by the actors themselves in economic and not political terms. For this reason *political* responsibility, where it is given any consideration at all, will be either denied or, if it is articulated, have already been invoked as just.

If 'political responsibility' faces this severe difficulty then it is also clear that *moral* disapprobation (whatever that means) may tinker at the edges, or assume whatever mantle suits best — charitable obligation, noblesse oblige, the language of regret — but it will in no way open to critique the kind of massive, and detailed, structural transformations required properly to address these injustices. Hence when Young writes that, "We share responsibility to fashion organized means of changing how the processes work so they will issue in less injustice" (380), she fails to acknowledge that many of the major players here — if we are to use such an actor-based notion, then these are major in terms of capital clout rather than anything so quaint as people or peoples — explicitly *denounce* such 'sharing', or broad participation, as anathema to the proper functioning of the economy (as observable, for example, with respect to the constituency of the summits of the World Economic Forum at Davos) or, when they do not so denounce, do not in any way open for negotiation the 'background' conditions that the very political instruments — state, EU, or WTO say — are themselves constitutively disallowed from changing *as* background conditions.

And this, ironically, returns us to the legal liability model: deviation from the norm there was correctly understood as the model for assessing responsibility, but with political responsibility, the normal action still has to be seen to be a deviation in order to recognise it as *injustice*; and yet to the extent that the structures and the political institutions implicated in this themselves use 'normal' mechanisms to consolidate their position — whatever form these may take (and they are many: the 'baseline' constitution of global capital; guaranteed property/profit rights such as TRIPs; bi-lateral investment treaties, etc.) — then those actors most prominently involved in fact consider that *these are* the politically responsible ways of acting. And what is perhaps most powerful of all about the securing of this 'normality' – and we will return to this shortly — is not merely, and not only, that they are produced and reproduced as economic, and thus

essentially background and non-political, but that they are so commonly inaugurated, sustained and legitimated as *legal*: as *the law*.

If we are sympathetic to the cause Young espouses — to reduce the suffering consequent on the workings of a global capitalist economy — we may nonetheless wonder whether, despite its endeavours, a lack of sociological and political depth may work to limit the initial impetus of her analysis. The analysis would, one is tempted to say, remain superstructural. Perhaps this fact explains why, despite arguing that the share of political responsibility is not equal amongst actors, Young rejects the idea that we should concentrate — as even Thomas Pogge suggests — on those who design the global economic order; for this would mean, she suggests, that it lets too many of 'us' off the hook of our responsibilities. This is so even where it is the case, Young claims, referring to Liam Murphy's work, that "so long as the society in which we live is far from the ideal of justice, moral demands on individuals will be rather stringent and perhaps difficult to meet" (383–4).

Of course, we encounter here exactly the same difficulty noted a moment ago, though expressed now in a different way. For the great giveaway with the line just quoted is to be observed in those apparently tentative or innocuous terms 'rather' and 'perhaps'. They tell us a great deal because they are as far from tentative and innocuous as is it is possible to be; on the contrary, they are virulent. What is 'rather stringent' about these 'moral demands' if it is not an open admission of a readily defeasible obligation? What is 'perhaps difficult' to meet about them if not the fact that they will just not be met? Instead, by 'rather' and 'perhaps' are best understood the reality that the 'moral' part of the 'moral demands' on individuals are not at all stringent, nor intended to be, nor *could* they be. For they play out in entirely the wrong register, where wrongs will not register except as regret, as options, as perhaps, perhaps, perhaps. The nature of the 'moral' enterprise here is (necessarily) to mis-understand the nature of the experience of suffering from the perspective of which so many 'perhaps's are in reality just so many blank stares, 'blind eyes turned', so many determined, doggedly-defended impunities.

Young acknowledges that often "the problem is not that people are failing in the performance of their tasks; on the contrary, they are doing their jobs rather well. The problem is the way that the institutions are defined, their power, purposes and interactions with one another, as well

as how they define tasks to fulfil those purposes" (384–5). This seems true in an important sense, that is, one which will seek to grasp an understanding of the lived conditions of pernicious exploitation. But will an overhaul of these conditions come from the result of us — 'us' again — coming to 'our' senses *morally*? (Are 'we' really all just so dumb?) Young claims that the transformation of institutions, "is everyone's task and no one's in particular" (385), and yet it is precisely this that the 'shrewd jargon of morality' — to borrow Philip Roth's coruscating formulation — does and will negotiate so brilliantly, turning 'demand' into 'absolution' via 'perhaps'. Hence despite it being said that different persons "stand in differing positions in structures that produce unjust outcomes", differences Young considers according to "connection, power, and privilege", there is once again a failure, for much the same reasons as noted before, to see any necessary responses as being irrelevant in so far as they are 'moral'; something that can be recognised clearly from the conclusion: "Persons who benefit relatively from structural inequalities have special moral responsibilities to contribute to organized efforts to correct them, not because they are to blame for them, but because they have more resources and are able to adapt to changed circumstances without suffering serious deprivation" (387).

The sad inadequacy, the empty elitism of that 'special' moral obligation, is again a tell-tale symptom, although this time one in which the 'rather's and 'perhaps's become formulated more powerfully in as much as they must be attentive to the care that must be taken not to suggest — god forbid — that those who benefit are in any way 'to blame', or that in seeking change their resources would in any way be threatened such as to cause them to suffer 'serious deprivation'.

What is admirable about, indeed the reason for considering, Young's analysis, is that it does seek to understand that a primary attentiveness be given to the experience of suffering, particularly that associated with extensive poverty, exploitation and immiseration in a global context of economic structures that simultaneously produce unprecedented wealth for the few. But what I have suggested, albeit briefly, is that despite attempts to move and think beyond the academic propensity to keep their pristine concepts well-removed from the diseased scourges of suffering, the language of political, and certainly moral, responsibility fails adequately to comprehend the constitution of forces that maintain this suffering.

More than that even: that this language remains *complicit* in its reproduction. But does this mean that the very language of responsibility, no matter what content it may take on, is suspect, at least with respect to suffering consequent on this kind of scale of organisation? No doubt one of the strongest statements of a rejection of the notion that a search for responsibility is important with respect to understanding and changing capitalist modes of exploitation is given by Marx in the preface to *Capital* when he writes:

> Individuals are dealt with here only in so far as they are the personifications of economic categories, the bearers of particular class-relations and interests. My standpoint, from which the development of the economic formation of society is viewed as a process of natural history, can less than any other make the individual responsible for relations whose creatures he remains, socially speaking, however much he may subjectively raise himself above them (Marx, 1990: 92).

Or alternatively, does the language of responsibility — at the very least in its etymologically minimal sense of being a call for a *response* — not mark the existence of an intuition the rejection of which would be to ignore or negate potentially worthwhile forms of motivation and action in the face of such suffering?

I want to come at these questions through a route that will not line them up for adjudication, but rather see how there are important sociological and conceptual factors that need first to be understood in a way that might in fact turn out to undermine the very questions. Specifically, I want to pursue the ways in which *legal* modes of organisation have come to play a central role in organising responsibilities whilst simultaneously providing means of negating responsibilities. But this process, I suggest, is more profound than Young's sense of absolution through law, because it concerns not only modern law's conceptual abilities, but its social pervasiveness and dominance. And it is this that explains further why a shift of emphasis towards moral or political responsibilities as a suggested means of redress, is misguided.

Law and organised irresponsibility

For C W Mills, with whom, so far as I can tell the term 'organised irresponsibility' originates, it is "Within the corporate worlds of business, war-making and politics, [that] the private conscience is attenuated — and the higher immorality is institutionalized" (Mills 1956: 343). Mills calls this "structural immorality" (ibid), the "mindlessness of the powerful that is the true higher immorality of our time; for, with it, there is associated the organized irresponsibility that is today the most important characteristic of the American system of corporate power" (342). Consistent with the problems just raised with Young's analysis, Mills had observed that, "In economic and political institutions the corporate rich now wield enormous power, but they have never had to win the moral consent of those over whom they hold this power" (344). Instead, "recurrent economic and military crises spread fears, hesitations, and anxieties which give new urgency to the busy search for moral justifications and decorous excuses." If crisis is an overused, devalued term, he suggests, it is largely because it has been used by people in power "to cover up their extraordinary policies and deeds. For genuine crises involve situations in which men at large are presented with genuine alternatives." The "higher immorality", the organized irresponsibility "have not involved any public crises; on the contrary, they have been matters of a creeping indifference and a silent hollowing out" (345).

As I suggested earlier, it may be in no small measure due to the legitimation function offered by legal norms and institutions that crises are not seen for what they are, at least with respect to those whose suffering is not acknowledged, and that the very legality of actions is a key mode of facilitating the fact that responses are commonly those, as Mills so tellingly puts it, of 'creeping indifference'. In order to explore this a little more, let me draw briefly on the work of Ulrich Beck and his analysis of risk society and its environmental dangers, to show one prominent way in which this may occur. Beck has taken up these themes in a way that explicitly connects the role of law to the organisation of irresponsibility. This is, importantly, a far more devastating account of law's role than that of a mere inadequacy associated with the fact that a fault liability model dominates law's modes of cognition, action and organisation. Instead it suggests that law and legal institutions are themselves complicit in the ongoing production and normalization of global risks, and that this

works consistently — that is, in an organised manner — to favour certain interests to the exclusion of others. If so, then we are confronted not only by the possibility of law's inability to confront global hazards, but by the fact that law and legal institutions operate to promote them.

If modern industrial society was centrally concerned with the distribution of goods, argues Beck, then risk society is concerned with the distribution of 'bads'. But such distribution takes place according to certain dynamics, including importantly that of legal regulation. Yet in this instance, instead of law operating, as would more commonly be understood, to regulate responsible behaviour and impose consequences for irresponsible behaviour — that is, to set standards and impose sanctions consequent on their breach — the actual operation of law turns out to be a way of organizing *irresponsible* behaviour. In other words dangerous actors — be they states or corporations — carry out activities that contribute to global risk, but these harmful activities are legalized through a regime that claims still to be there to protect people and the environment from such harms. The reason this happens is because the principles law has for organizing responsibility — in particular those regarding causation, individual liability, and proof — are rooted in an earlier form of modernity and have not caught up with the nature and extent of the dangers now being faced. Yet their operation is *not* simply inadequate but contributes decisively to the problem. This, says Beck, is the "concealed gap of the century", and in the context of ecological harms, leads to nothing short of what he labels "legalized universal pollution":

> dangers worldwide make it harder to prove that a single substance is the cause; the international production of harmful substances works against proving the culpability of a single company or perpetrator; the individual character of criminal law contradicts the collective danger; and the global character of the danger has abolished "causes" as our industrial forefathers understood them (Beck 1995: 131–132).

By assigning responsibilities only under certain well-established legal categories, what modern law and legal institutions do then is organise a system of *non*-liability, a regime of unaccountability: environmental harms continue at an alarming rate, and yet either no-one at all can be or is held responsible for them, (or everyone and thus no-one is responsible for causing them), or responsibility is massively asymmetrical to the harms

caused (small fines, say, for massive damage caused). Here then is how Beck sums up the overall effect:

> If one wanted to think up a system for turning guilt into innocence, one could take this collaboration between justice, universal culpability, acquittal and pollution as one's model. Nothing criminal is happening here, nothing demonstrably criminal anyway. Its undemonstrability is guaranteed precisely by compliance with, and strict application of, the fundamental rule of justice — the principle of individual culpability, whereby both pollution and non-pollution, justice and (coughing) injustice, are guaranteed (ibid 135).

It is in exactly this way that modern law is not simply inadequate to the task of combating the dangers of risk society, but is rather also directly involved in *perpetuating* their ongoing development. This, says Beck, shows how law in risk society engineers a global system of *organized irresponsibility*.

Drawing on this graphic example of legal complicity in the production and legitimation of harms, we are able to work, I suggest, towards a fuller understanding of the role of law with respect to the legitimation of suffering more generally. As I have argued more extensively elsewhere (Veitch, 2007), the legal organisation of irresponsibility in this respect relies on three very conventional features of law under contemporary social conditions, the effects of which are no less significant for these being conventional or normal — indeed that is precisely the point.

These features are: law's claim to correctness, its force, and its social priority. According to Alexy's analysis (2004) legal normativity involves a socially effective institutionalised force, and the claim that this force is right or just (the claim to correctness). And it is because of the former (socially efficacious coercion), that the latter (correctness) necessarily extends its reach beyond matters of merely internal legal validity and makes its claim to legitimacy effective in the terrain of social relations more generally. It is this then that constitutes the third feature of law in contemporary society. That is, given law's claim to correctness and its enforceability, law attains a level of priority and prominence in social life and its normative hierarchies even when its effects may in fact be claimed to be unjust.

If we consider a further sociological dimension to this, then where in contemporary society there exists an increase in formal law, that is, where under conditions of *juridification* there is an expansion into and densification of legal normativity within the fabric of social relations (Habermas 1987), then that double structure of coercion and right increasingly imbricates those social relations with the force and correctness of law. A necessary effect of this is that to an increasing degree the juridical form permeates, structures and organises the available range of normative understandings, expectations and responses in society generally. Consequently, as Habermas himself has observed in his later work, it has come to be the case in modern society that law increasingly becomes "the only medium in which it is possible reliably to establish morally obligated relationships of mutual respect even amongst strangers" (Habermas 1996: 460), with the result that positive law "*relieves* the judging and acting person of the considerable cognitive, motivational and ... organisational demands of a morality centred on the individual's conscience" (452, emphasis in original). It is this that sees law's measure increasingly predominate in matters concerning controversial aspects of morality and politics including even the basic elements of the reproduction of social life — or their denial. It is this that forces us to think not of the influence of morality or politics on law, but rather the reverse: the influence of, indeed the determination by, law because of its social effectiveness, on other conventional sources of norms. For it is with this observation, moreover — to return to our earlier critical remarks — that we can now see more fully why the claim about 'moral' and 'political' responsibility, as supposedly independent sources of motivation, is deeply implausible.

Given this we should understand that the reach and force of law's normativity is necessarily a most powerful and extensive means of organizing the very material practices of responsibility and irresponsibility, and so must be understood as being implicated in, rather than merely indifferent to, the production of suffering. In other words, law's measure — its normative organising, force, and claim to correctness — stands in a relation of *implication* to the commission of mass suffering and its normalization, whether that is with respect to environmental devastation or suffering brought about through legalized practices of economic exploitation. Moreover, and returning to Beck's insights, law and legal institutions are implicated in the very disavowals that establish legitimate impunities.

Hence to the extent — and it is indeed a large extent — that law does in fact dominate the field of responsibility in a socially effective and legitimate manner, then it is in precisely these more profound respects that we should understand the limitations of discourses of responsibility. For it is the failure to grasp the constitutive role of law here which in large part accounts for the sense in which claims about moral and political responsibility under conditions of global capitalist exploitation appear super-structural: they are not sufficiently able to engage with the possibility that it is the very 'normality' of what Young earlier termed the 'background conditions' that poses the greatest threat to human and environmental well-being. But this is *not* because they are, in some vague sense, 'morally unacceptable'; rather something far more troubling is signified. Put at its most extreme (for it is the extremity, that is, of the 'normal'), and returning for a final time to Beck, it involves realising that

> This threat to all life does not come from outside; it does not begin with the exceptional case, war, the enemy. It emerges within, enduringly, as the reverse side of "progress", peace and normality. Those responsible for safety and rationality, and those who threaten it most, are no longer isolated from one another by national or group boundaries, polarized by the roles they play, *but are potentially one and the same* (Beck 1995: 163, emphasis added).

In case one is tempted to think that this expresses something specific to the environment, as opposed to the harms of legally organised economic activity, we need only be reminded of some of the realities of what Eduardo Galeano (2000) has called our 'upside down' world to see just how normal the madness has become: where "The countries that sell the world the most weapons are the same ones in charge of world peace" (113) ("fortunately for them" Galeano adds, "the threat of world peace is receding"); where in Latin America, he writes, but it is not of course only there, "the streets and avenues tend to bear the names of those who stole the land and looted the public purse" (201); where "the most successful companies in the world are the ones that do the most to murder it" and which, "in the name of freedom make the planet sick and then sell it medicine and consolation" (215); where debt is "something even those who have nothing have" (247–8); and where, generally, "Never have so many suffered so much for so few" (236). To maintain this 'upside down world'

requires an enormous bureaucratic, legal and administrative effort, both at an ideological and material level. It requires nothing short, in other words, of the unerring force that only normatively organised coercion, that is, that only *law*, can offer.

In the global context, which is, as Young rightly discerns, the context within which it is necessary to think of these issues, Lindqvist makes this point with great articulacy: "More and more people", he writes "are being born into poverty, ignorance, and hunger. More and more people are born superfluous, worthless to the interdependent economy, yet still vulnerable to its effects. More and more are born for whom violence is the only way out." But that violence is and has historically been met, not by reason, nor morality, nor by political responsibility; *except*, that is, to the extent that all these are implicated *in* the response, a response which is made in the only register with which it is meaningfully commensurate, namely normatively organised violence itself:

> Throughout this century, it has been clear that the standard of living enjoyed in industrial countries cannot be extended to the world's population. We have created a way of life that must always be limited to a few. These few make up the broad middle class in a few countries and a small upper class in the rest. The members know each other by their buying power. They have a common interest in preserving their privileges, by force if necessary. They, too, are born into violence ... Global violence is the hard core of our existence (Lindqvist 2001: sections 397–398).

And the measure of its success is the extent to which it is organised legally.

Here is a simple question: is it not unlikely that a legal system and its concepts which have come to prominence in modernity, which have coexisted with slavery, colonial brutality, and economic immiseration, and which continue to exist — despite claims of equality — with most of these, and which make up a prominent and indeed valued institution in such societies, is it not unlikely that this institution is not in some way involved in these very harms? To say that it is not so implicated historically is a denial of the historical reality, and few would sensibly hold it to be true. But to say that it is not implicated now, given the immiseration and violence of the contemporary global order is surely equally implausible. And yet, the dominant mode of thought and action does not and will not accept this designation, and it does not and will not do so, I have suggested,

in large part because of the legitimacy that legality bestows. This legitimacy is the embodiment of what Stanley Cohen has called 'magical legalism' which is, he said, "a method to 'prove' that an allegation could not possibly be correct because the action is illegal." For example, a state may have signed up to torture conventions which make torture illegal, and so — the "magical syllogism" — whatever horrific practices the state is engaged in cannot be torture. These kinds of "legalistic moves", says Cohen, "are wonderfully plausible as long as common sense is suspended" (Cohen 2001: 108).

Such suspension of disbelief is one that also infects an optimistic view of our times, one that would seem to prefer ignorance of the fact that, despite ours being supposedly the age of equality and human rights, "Our era has witnessed more violations of their principles than any previous, less 'enlightened' one. Ours is the epoch of massacre, genocide, ethnic cleansing, the age of the Holocaust ... No degree of progress allows us to ignore that never before in absolute figures, have so many men, women, and children been subjugated, starved, or exterminated on earth" (Douzinas 2002: 20).

Yet to the extent that so many of the harms of the past and present century were, and continue to be, *not* legal violations, that is, continue to be perfectly legal, then this is why, it seems to me at any rate, it is so important to understand that the kind of harms to which we need to pay far more attention are those in which the law is *itself* implicated. That is, not crimes and delicts, but legal behaviour itself. This involves paying attention to law's *successes*, not its impotence. It involves paying attention to the fact that law is both culpable in the sense of engaged in the active commission of harms and not culpable at exactly the same time. For this is precisely how the disappearance of responsibility for extensive harms succeeds, and it is not through law's failure but amongst the successful practices of legal responsibility. This is how an asymmetry between suffering and establishing responsibility for it operates in a legalised manner, and it is, finally, how legally *caused* harms, not responses to them, should best be understood: *not* as impotence, but as the system *working*.

To accept this requires a fair degree of upsetting of conventional viewpoints, for it requires an acknowledgment that that which is commonly believed can, and sometimes does, promote social goods and benefits, also

and at the same time is capable of producing extensive harms and covering these up. But this is exactly how the 'laws of irresponsibility' work.

Motivating responsibility?

Generals' strategies, it is often said, are based on preparations designed to fight the last war. There is something of this which is reminiscent when it comes to the grand legal codes of the modern era. These codes — whether of the Enlightenment revolutions or of the European or United Nations declarations of human rights — have all emerged from amid the rubble of human devastation and the broken bodies of human violence and degradation, and even then, representing only a segment of its total. These codes, so commonly now universal — that is, applicable across all times and spaces – are the juridical embodiments of the innumerable litanies of *Never again*, the legal responses to the so many solemn declarations of *Nunca mas!* and *Lest we forget*.

But spare this a thought: if these laws and legal codes are really like that, if they really do embody the highest aspirational ideals of universal right and humanity; if they really do provide us with the *most* progressive standards of human decency, then what, after the *next* full scale horror *will the set of legal codes have to embody*? The response to this is likely only to be visceral, for one dare not begin to imagine. Yet against such potentially apocalyptic scenarios, is not responsibility also still a worthwhile response? I have suggested that the field of responsibility is marked so heavily by legal forms and expectations that it is inevitably a suspect notion in terms of addressing the existence of suffering consequent on humanly organised action. In particular this is the case with respect to the unexamined motivations attributed to moral and political responsibility. But, to the extent that an understanding of responsibility practices — or indeed of legally regulated practices of irresponsibility — is necessary to see how such organisation works, it is, nonetheless, still an important, perhaps even essential, area of enquiry with respect to the assessment of the nature, and hence possible alleviation, of harms.

Beyond that, perhaps one will take inspiration from all kinds of other sources, but we should not pretend that they are 'moral', or 'political', as if that meant some form of autonomous or independent reason or motivation. Instead, perhaps one can turn one's face away, if only momentarily,

to other rhythms; times and timings that Orwell captured with such enduring eloquence in his 'Some Thoughts on the Common Toad':

> At any rate, spring is here, even in London N.1, and they can't stop you enjoying it. This is a satisfying reflection. How many a time have I stood watching the toads mating, or a pair of hares having a boxing match in the young corn, and thought of all the important persons who would stop me enjoying this if they could. But luckily they can't. So long as you are not actually ill, hungry, frightened or immured in a prison or a holiday camp, spring is still spring. The atom bombs are piling up in the factories, the police are prowling through the cities, the lies are streaming from the loudspeakers, but the earth is still going round the sun, and neither the dictators nor the bureaucrats, deeply as they disapprove of the process, are able to prevent it.

True enough, no doubt; but as Orwell knew, one cannot avert the gaze for too long.

Bibliography

Alexy, R. (2004), 'The nature of legal philosophy', *Ratio Juris* 17: 156–167.

Beck, U. (1995), *Ecological Politics in an Age of Risk*, trans. A. Weisz, Cambridge: Polity.

Cohen, S. (2001), *States of Denial: Knowing about Atrocities and Suffering*, Cambridge: Polity.

Douzinas, C. (2002), 'Postmodern just wars: Kosovo, Afghanistan and the new world order' in J. Strawson (ed) *Law after ground zero*, London: Glasshouse, 20–36.

Galeano, E. (2000), *Upside Down: A primer for the looking glass world*, trans. M. Fried, New York: Picador.

Habermas, J. (1987), *The Theory of Communicative Action, Vol. 2 Lifeworld and System*, trans. Thomas McCarthy, Cambridge: Polity.

Habermas, J. (1996), *Between Facts and Norms*, trans. W Rehg, Cambridge, Mass.: MIT Press.

Lindqvist, S. (2001), *A History of Bombing*, London: Granta.

Marx, K. (1990), *Capital Vol. 1* 'Preface to the First Edition', Harmondsworth: Penguin.

Mills, C. W. (1956), *The Power Elite*, New York: OUP.

Veitch, S. (2007), *Law and Irresponsibility: On the legitimation of human suffering*, London: Routledge-Cavendish.

Young, I. M. (2004), 'Responsibility and Global Labour Justice' *Journal of Political Philosophy* 12: 365–388.