

THE WORD MADE FLESH: LAW, LITERATURE AND ETHICAL
RESPONSIVENESS IN DANIEL BERRIGAN'S *THE TRIAL OF THE
CATONSVILLE NINE*

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The aim of this article is to analyse Berrigan's play *The Trial of the Catonsville Nine* in the context of the Law and Literature movement, a field of studies that underlines the textual character of the law and the role of literature in interrogating the legal. Particular attention will be paid to the intersection between a certain literary representation of the legal and the tenets of a deconstructive mode of ethics inspired by Levinas and Derrida. By privileging the spirit over the letter of the law, the Saying over the Said, Infinity over Totality, Berrigan's work exposes the deconstructible nature of legality and opens up a space in which the law can aspire towards justice. I will also draw on Gibson's ethics of sensibility both in its personal and textual sides in order to investigate the role of excess and vulnerability in this plea against the Vietnam War.

Keywords: Berrigan; Derrida; Levinas; law; justice; deconstructive ethics; Vietnam War

LA PALABRA SE HIZO CARNE: DERECHO, LITERATURA Y SENSIBILIDAD ÉTICA EN
EL JUICIO DE LOS NUEVE DE CATONSVILLE DE DANIEL BERRIGAN

El objetivo de este artículo es analizar El juicio de los nueve de Catonsville en el contexto de la corriente Derecho y Literatura, que pone de relieve el carácter textual de la ley y el papel de la literatura en el cuestionamiento de lo legal. Se prestará especial atención a la intersección entre un tipo de representación literaria de lo legal y la ética deconstructiva inspirada en Levinas y Derrida. Al privilegiar el espíritu sobre la letra de la ley, el Decir sobre lo Dicho, lo Infinito sobre la Totalidad, la obra de Berrigan pone al descubierto el carácter deconstructible de la legalidad y posibilita un espacio en el que la ley puede aspirar hacia la justicia. Recurriré también a la ética de la sensibilidad de Gibson, en su faceta interpersonal y textual, para estudiar el papel del exceso y la vulnerabilidad en este alegato contra la Guerra del Vietnam.

Palabras clave: Berrigan; Derrida; Levinas; ley; justicia; ética deconstructiva; Guerra del Vietnam

For me and for many, Daniel Berrigan is one for whom the word becomes flesh.... A paralyzing cynicism about the organized violence of our time continually whispers to us: "Be real. What can anyone do?" Daniel provides a reply to the voices of despair and violence out of his pithy, fey wisdom: a consistent, poetic, brave and faithful "No". (Rush 1996: 59)

Catholic priests play by the rules. Why did those priests go break the law? (Sachs 2001)

The peace of empires issued from war rests on war. It does not restore to the alienated beings their lost identity. (Levinas 1991: 22)

1. Introduction

Daniel Berrigan's play *The Trial of the Catonsville Nine* is a privileged site for the analysis of literature's critical engagement with the law. The questioning of the legal by the literary in this anti-war play is reinforced by its promotion of a kind of ethical responsibility based on the philosophical work of Emmanuel Levinas and Jacques Derrida. The ethics of sensibility or affect, derived by Andrew Gibson from Levinas's theory of alterity, will be also drawn upon in order to stress the importance of vulnerability and excess in the play. Besides engaging with the literary text, the article is concerned with the historical act of civil disobedience on which it is based, as well as with contemporary and later reactions to the real event. My analysis intends to expose how Berrigan's work promotes ethical responsibility while at the same time falling short of the heavy demands placed by Levinasian ethics.¹

The Trial of the Catonsville Nine recounts an event that took place more than forty years ago in Catonsville, Maryland. On May 17, 1968, a group of two women and seven men, two of them Catholic priests, entered Local Selective Service Board number 33, seized 378 draft files and burned them in a nearby car park after having poured homemade napalm on them. While waiting for the police to come and arrest them, the nine activists, all Catholic, held hands, said the Lord's Prayer and gave speeches in justification of their action. Theirs was a protest act against the Vietnam War, prompted by their religious convictions and by their disagreement with the imperialist, war-mongering policy of the US Administration. "The act was pitiful", says Berrigan in his autobiography, "a tiny flare amid the consuming fires of war" (1987: 220). For the contemporary reader, the play resonates with more recent but similarly appalling instances of war, especially war in Iraq, the chain of events that led to it, and the acts of protest it triggered in the States and all over the world: "We wash our hands in the dirt

¹ This essay is a revised and extended version of a paper presented at XXXI International AEDEAN Conference held in A Coruña in November 2007. The research carried out for the writing of this paper has been financed by the Spanish Ministry of Education and Science and the European Regional Development Fund (FEDER), in collaboration with the Aragonese Government (no. HUM2007-61035/FIL. Proyecto Eje C-Consolider).

of others/ pointing to the invasions or atrocities of others/ certain that our own invasions and atrocities/ are more excusable because more subtle/ though indeed far more devastating” (Berrigan 1971: 60).² The arrogance of leaders present and to come is also pointedly alluded to: “what of the fantastic arrogance of our leaders/ What of their crimes against the people the poor and the powerless/ Still no court will try them no jail will receive them” (1971: 30).

Lynn Sachs’s 2001 documentary *Investigation of a Flame* relives the moment and reflects on the significance of the Catonsville Nine act from a contemporary standpoint. This experimental documentary, which dispenses with some of the typical techniques such as voice-over narration, offers a multi-perspective account of the draft burning through home movies, archival footage, snapshots, letters and interviewing. Among those interviewed are six of the nine activists, Selective Service staff, Catonsville residents and the prosecutor and defence in the trial that followed. The conversations deal with the rights and wrongs of civil disobedience and the (im)morality of the Vietnam War. Combining a shaky camera, fast travelling shots, extreme close-ups of interviewees and long shots of military parades, pacifist demonstrations and scenes in Vietnam, Sachs manages to call attention to the complexity of the event. The soundtrack – some catchy, thematically to-the-point pop songs of the sixties and seventies like ‘CIA Man’ and the ‘White House Blues’ – provides a marked contrast to the solemnity and austerity of the protest act.

According to the participants, this act of “indirect civil disobedience” (Gustainis 1990: 166) continued the tradition of nonviolent resistance to authority that has characterised the US since its origin. In the words of Herbert Mitgang, “Political protest by individuals against the power of the state is as American as apple pie and handguns”. And he moves on to explain the case of Thoreau, who spent a night in jail in 1846 for not paying several years’ poll tax because he “didn’t want his money to go to a government that supported the Mexican War”. “He was not alone”, Mitgang adds, “Lincoln was a Mexican War dove, too” (1991: 2).

But the protest of the Catonsville Nine did not end with the burning of the files. The trial, which took place in Baltimore, in October that same year, was planned as an act of propaganda, a means of further advancing the pacifist cause. As some of the protesters admitted during the trial, their primary intention was to communicate with the audience both inside and outside the courtroom in order to speak to the conscience of the American people and convince them of the illegality of the war. According to Justin Gustainis, the oral proceedings “allowed the full meaningfulness of the act to be articulated in words”, since “the act itself was essentially gestural, and was articulated only by the necessarily truncated texts of a press release and a prayer” (1990: 178). Legally, the trial was a failure: the nine defendants were found guilty of destroying US property and interfering with the Selective Service System and received sentences that ranged from two to three and a half years. However, the impact of the trial as an anti-war protest was considerable. Media coverage granted the defendants nationwide attention and encouraged direct action protests among radical Catholics. “In the

² The speeches of the nine defendants before the judge are rendered in short sentences with no punctuation which have the appearance of verse.

following years”, says Berrigan, “some seventy draft boards were entered across the land. Their contents variously shredded, sacked, hidden out of sight, burned, scattered to the wind” (1987: 221). The Catonsville Nine became role models for the Catholic Left, “an informally organised but highly influential group of resisters” (Mollin 2004: 29), who resorted to draft file burning as part of their struggle against the Vietnam War. In fact, the Catonsville process has been analysed as an example of a “popular trial”, a “judicial proceeding that gains the attention of a general audience, usually through sustained coverage by the mass media” (Hariman 1990: 2). The trial was surrounded by a weeklong “festival of support” that “brought hundreds of antiwar protestors to Baltimore for a series of rallies and demonstrations” (Gustainis 1990: 165). As Robert Hariman has pointed out, one of the most outstanding characteristics of popular trials is their thoroughly rhetorical nature, since they function as “forums for debate, as symbols of larger constellations of belief and action, and as social dramas used to manage emotional responses to troubling situations” (1990: 5).

It is precisely the dramatic quality of the legal action that Daniel Berrigan emphasises in his play *The Trial of the Catonsville Nine*. This plea against the Vietnam War, published in 1970, joined the long list of North-American anti-war literary pieces.³ As Andrés García states in the introduction to the Spanish edition: “el caso de los nueve se comprende mejor cuando no se percibe – o no sólo – como un asunto legal, político o moral, sino como un drama literario en el que los actores serían los acusados y el coro griego las cerca de dos mil personas que tomaron las calles de Baltimore durante los días del juicio” (Berrigan 2008: 13)[The case of the Catonsville Nine can be better understood when perceived not only as a legal, political or moral matter, but also as a literary drama in which the actors would be the defendants and the Greek choir the nearly two thousand people that took to the streets in Baltimore during the trial. (My translation)]

Berrigan, a Jesuit priest and one of the nine who had taken part in the destruction of the files, is also a very prolific writer who has published more than fifty books to date. Although he is perhaps more highly regarded as a lyrical poet – his first collection of poems, *Time Without Number*, won him the prestigious Lamont Poetry Award (1957) and was nominated for the National Book Award – Berrigan is the author of numerous essays, travel books, journals, pacifist manifestoes, theological treatises and an autobiography (Dear 1996: 9-10). *The Trial of the Catonsville Nine*, his only dramatic piece, is Berrigan’s best-known work. The play, translated into several languages and

³ David Krasner points out that the “early 1970s and even into the 1980s observed the rise of antiwar books and films, such as Ron Kovic’s *Born on the Fourth of July*, inspired by Dalton Trumbo’s 1939 novel *Johnny Got His Gun*, as well as *The Deer Hunter*, *Apocalypse Now*, *Coming Home*, *Platoon*, *Casualties of War*, and *Full Metal Jacket*” (2006:88). The anti-establishment tendencies that characterised the late sixties and early seventies also reached the American theatre. Despite their diversity, Krasner affirms, the plays produced in these decades present “a common iconoclasm summed up in the popular phrase ‘polymorphously perverse’”: “Beat poetry, rock ‘n’ roll, Motown, pop art, abstract expressionism, experimental drugs, disability rights, feminism, Civil Rights movements, anti-Vietnam War protests, and the deep social fissures of American politics were watershed events” (2006: 64). Among the plays attacking the establishment he mentions Megan Terry’s *Viet Rock*, “a fast-paced drama shedding light on the propaganda machine that led to Vietnam” (2006: 85).

still being performed, has become a symbol of resistance to war. But, why write a drama? Perhaps, like W.B. Yeats and T.S. Eliot before, in turning to the theatre Berrigan was aiming at a larger audience. He was willing to voice the group's opposition to the Vietnam War, spread their pacifist ideas and urge others to join them in saying no to any form of violence. Perhaps the actual trial, with its particular *mise en scène* – witnesses stepping on and off the stand, the defendants' long and passionate speeches and a devoted public – easily lent itself to the dramatic mode.

Berrigan wrote his play taking as a basis the trial records. As he explains in the introduction, the work was written in the manner of the factual theatre, a form that requires "essential adherence to the letter of a text" (1971: vii). His main concern was then to be "as faithful as possible to the original words, spoken in the heat or long haul of the trial, making only those minute changes required for clarity or good sense" (1971: vii). Berrigan's play is not, however, a straightforward reproduction of the data of the trial record, but a literary piece in which qualitative changes occur. In Berrigan's own words, he hoped "to induce out of the density of matter an art form worthy of the passionate acts and words of the Nine" (1971: viii). In his essay 'Notes on Contemporary Theatre', published in 1971, Peter Weiss – the playwright and painter – addresses the subject of documentary theatre, a label under which Berrigan's play can be considered. Weiss defines this kind of drama as "theatre of reportage": documents of contemporary life, like trial records, dossiers, letters, etc, provide the foundation of a performance whose main aim is the criticism of the manipulations of the powerful. The element of protest is very prominent: "Like the spontaneous rally with posters, banners, and chants", it "demonstrates a reaction to contemporary conditions and a demand that they may be revealed to the public" (Weiss 2008: 382). Documentary drama takes sides. Injustice and inequality "cry out for immediate redress" (2008: 384). The attacks of the US against Cuba, the Dominican Republic and Vietnam are presented as "unilateral crimes": "There is nothing wrong with depicting genocide and predatory war in black-and-white terms, denying the butchers any endearing traits whatsoever and resolutely siding with their victims in every possible way" (2008: 385). "Documentary theatre", Weiss affirms, "abstains from any kind of invention, it adopts authentic material and presents it in the stage without any modifications of its content, but with definite formal modifications" (2008: 382). But faithfulness to the original texts alone does not make documentary drama. If a dramatic work is to become an effective instrument of political persuasion it must not renounce artistic achievement (2008: 383). Otherwise, it would become a sterile surrogate for practical political action. A typical technique in shaping documents into art is the interruption of factual material by "reflections, monologues, dreams, retrospections, contradictory behaviour". These "breaks in the action" produce the effect of personal and textual insecurity that draws attention to "the many-layered complexity of the event" (2008: 385). The tendency to present things in black and white is, thus, somewhat nuanced. *The Trial of the Catonsville Nine* proves Berrigan's craftsmanship. The play is interspersed with fragments of language that include Berrigan's own poems, newspaper cuttings, a poem by Neruda, a piece of the actual court record and quotations by authors such as Jefferson, Hitler, Sartre, Brecht and Kafka, among others. It further complies with documentary theatre in the sense that this can often take the form of a tribunal, "making a new kind of testimony out of

those questions and points of attack that were voiced in the context of a real inquest” (Weiss 2008: 385).

2. The legal and the literary

The fact that Berrigan’s work is concerned with the depiction of a trial makes of it a privileged site for the study of the interconnections between the legal and the literary. The Law and Literature movement is an emerging field of studies that stresses the textual character of laws and the influence of fictional representations of the law in the understanding of legal structures. Literature, Julia Chrystostalis says, “plays with the law so as to reinforce or subvert or amend or destroy as occasion warrants” (2004: 158). Some literary texts appear as alternative forums for justice. Read as a supplement to the actual legal proceedings, Berrigan’s play adopts a critical tone towards the institution of law in an attempt to expose the gap that sometimes separates law from justice. The openendedness of equitable justice is set against the rigidities of legality. Two kinds of strategies – the legal and the rhetorical – overlapped in the trial (García in Berrigan 2008: 16). The major legal tactic employed by the defence was the doctrine of nullification, according to which “a jury may refuse to convict defendants ... even if its members believe those defendants did commit the acts with which they are charged”. The jury “has the right to say that the law violated by the defendants was an unjust law ... and may ‘nullify’ that law” (Gustainis 1990: 167). The nullification of the law at the Catonsville trial would have had a huge impact, since the legality of the Vietnam War might itself have been called into question (1990: 168). The defendants are perfectly aware of this:

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Change could come if one judge would rule on the war. If one judge would act, the war could not continue as it does. (Berrigan 1971: 118)

But the judge explicitly forbade the jury “to make their decision on the basis of conscience” and urged them instead to decide the case “only on the basis of the facts presented by both sides” (Berrigan 1971: 105).

As a literary artifact, Berrigan’s play is more interested in the rhetorical strategies of this unusual trial in which the accused usurp the role of the prosecution (Berrigan 2008: 14). The central part of the work, entitled ‘The Day of the Nine Defendants’ is made up of “a series of vignettes” in which “each defendant speaks movingly about ... the experiences that inspired moral disobedience to the law” (Shepard 1981). The first to be summoned to the stand is Philip Berrigan, Daniel’s brother and one of the leaders of the burning of draft files in Catonsville, who recounts his personal history of conversion, from his enthusiastic participation in the Second World War to his commitment to civil rights and his non-violent opposition to the Vietnam War. He also mentions the long tradition of civil disobedience in the US, which the act of the Catonsville Nine continues. In the words of Michael True, although the language of the nine defendants “reflects their common Christian background, they speak from broad concerns and experience: Thomas and Marjorie as former Maryknoll missionaries in Guatemala; George Mische as a former worker with the Alliance for Progress; Thomas

Lewis as a civil rights activist in the inner city". "The testimonies of Brother David Darst and John Hogan", he adds, "serve, in their simplicity, as counterpoints to the sophisticated statements by the previously-named participants" (True 1988: xxv). The defendants' resort to civil disobedience is presented as evincing "the failure of formal justice" (Pabón 2003: 221) when dealing with the phenomenon of war. "This is wrong This is immoral This is illegal", states defendant Thomas Lewis (Berrigan 1971: 42). "I wasn't concerned with the law", he adds (1971: 48), "I was concerned with the lives/ of innocent people ... A person/ may break the law to save lives".

The Trial of the Catonsville Nine highlights the conflict between the letter and the spirit of the law. It was the letter of the law – represented by the judge, the prosecution and the members of the jury – that won the day in the actual trial. Berrigan's emphasis, however, is on the spirit of the law and the defendants' right to renew the law with questions of conscience. "Your honor", says defendant David Darst to the Judge, "the instructions you gave to the jury bound them to the narrow letter of the law. And a verdict according to the spirit of the law was strictly prohibited. It is my feeling that the spirit of the law is important, particularly in American legal tradition and in American life" (1971: 117). Berrigan's play questions the 'already inscribed' nature of the law, reveals the tensions that underlie legal discourse and advocates a law ruled by the principles of equity. Concerned with the corrective function of equity, Dieter Paul Polloczek has affirmed: "Equity may supplement the letter of the law in order to ensure that a given interpretation of the 'letter' will express the 'spirit' of the law". In other words, equity, "a maxim applied and instituted in the majority of Western legal systems", allows a fair judgement in special cases where the law proves inadequate. It reminds us of "the judicial discretion to interpret the law according to rules and precedents that can change over time" (Polloczek 1999: 5).

3. Derrida, Levinas, Gibson and the demands of ethical responsiveness

The Law and Literature movement has not remained alien to the ideas of critical theory. Drawing on thinkers like Bakhtin and Derrida, its proponents have laid bare the necessary porosity of the law and the conversational nature of law making. *The Trial of the Catonsville Nine* is a polyphonic artifact which exposes frictions between authoritative and alternative discourses of the law, thus counteracting the court's attempt "to limit ... communal law-making, to suppress the multiplicity of voices claiming the sanction of the state for their visions" (Dolin 1999: 14). The propositions of Jacques Derrida can also throw light over Berrigan's undoing of legal discourse. His re-examination of Western thought from an anti-essentialist position led to the formulation of the theory of deconstruction: meaning is always already subjected to the play of *différance*; there is nothing inherently stable in it; everything is in a state of flux and thus permanently open to revision. The concept of *undecidability*, central to deconstructive thought, proves useful at this point. Contrary to what it may seem, undecidability highlights not so much the impossibility of deciding as the need to open the field of the decision. In the words of David Campbell: "the very notion of undecidability is the condition of possibility for a decision. If the realm of thought was

preordained such that there were no options, no competing alternatives, and no difficult choices to make, there would be no need for a decision” (1999: 43). What Berrigan denounces in his play is the already-made nature of the decision taken by the jury. If the central point in the trial is the burning of the files – a crime the defendants admit to having committed – it is clear that the Catonsville Nine deserve to be punished by the law. There is, in this sense, no decision to make. This is the philosophy of the accusation. This is the intention of the judge too. But, for Berrigan and his companions, the crime is not an end in itself but a starting point that allows them to push against the limits of the law. What is at stake for them is the illegality of the Vietnam War. And it is in this respect that the need to make a decision becomes crucial.

In his essay ‘Force de loi’ Derrida affirms that “Deconstruction is justice” (1992: 14). In order to elaborate on this topic he explicitly tackles the relationship between justice and the law and reveals a critical tension: Justice always already exceeds the law. Deconstruction can help distinguish between these two key concepts: the law remains essentially deconstructible while justice is essentially *undeconstructible* and is always *differing* from the law (Ieven 2006: 207). This is again the work of undecidability, whose “ghost”, Derrida states, is present in every decision, deconstructing “from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of the decision, in truth of the very event of a decision” (1992: 24-25). Undecidability, Derrida defends, must be present in the decision of the judge, who can call into question the “mystical foundation of authority” on which laws rest. The decision of the judge must not simply involve applying the rule. The straightforward application of the law on the part of the judge would make his verdict legal but, perhaps, not just. Through a “reinstating act of interpretation”, he may decide not to follow a rule of law but to make the law in every single case, transforming and ameliorating the existing principle. This will bring the law nearer justice: “In short, for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy or suspend it enough to have to reinvent it in the reaffirmation and the new and free confirmation of its principle” (Derrida 1992: 23). According to Bram Ieven, deconstruction performs a hygienic function with respect to the law: “The law can be read and re-read, it can be interpreted and reinterpreted, while each time trying to make it more just, that is to say, to bring it closer to the demands of justice” (2006: 201). Berrigan’s play, I believe, encourages the deconstructibility of legality and advocates a move back to the basics of justice, which is always a justice-to-come: “It will always have it, this *à-venir*, and always has. Perhaps it is for this reason that justice, insofar as it is not a juridical or political concept, opens up for *l’avenir*, the transformation, the recasting or refounding of law and politics. ‘Perhaps’, one must always say perhaps for justice” (Derrida 1992: 27). “I [Daniel Berrigan] wish to ask whether or not reverence for the law does not also require a judge to interpret and adjust the law to the needs of people here and now. I believe that no tradition can remain a mere dead inheritance. It is a living inheritance which we must continue to offer for the living” (114-15). The play demands the creation of an intermediate space “in which it becomes possible to do justice to the absolute singularity of things – even if just for a moment” (Ieven 2006: 207). “Lead us in justice/ and there will be no need to

break the law" (Berrigan 1971: 30), states Philip Berrigan. And he adds, "Let lawmakers judges and lawyers/think less of the law more of justice/less of legal ritual more of human rights".

I will now take a closer look at the philosophy of Emmanuel Levinas, perhaps the most influential thinker in the current turn to ethics of deconstruction. Despite the voices that charge the latter with the demise of ethical criticism in the sixties and seventies of the past century, the Levinas-Derrida tandem has demonstrated that ethics and deconstruction are perfectly and fruitfully compatible. What Levinas seems to find problematic, however, is the application of ethics to the field of aesthetics, a point that needs to be discussed before setting Berrigan's play in dialogue with his theory of alterity. Unlike contemporary moral philosophers such as Martha Nussbaum and Alasdair MacIntyre, for whom literature, with its emphasis on concreteness and particularity, is the perfect vehicle for the abstract concepts of ethics, Levinas defends the untranslatability of ethics into literature. The eternal present in which the latter lives, he says, cannot but freeze the diachronic logic of the former. In art in general and literature in particular, time turns into fate. Characters in a book "are committed to the infinite repetition of the same acts and the same thoughts", Levinas states in 'Reality and Its Shadow' (2003a: 139). The openness of the ethical encounter with the other is thus lost in its literary representation. The Saying is inevitably arrested by the Said. The question, then, seems to be, in Thomas Claviez' apt words: "Can Levinas' philosophy teach us anything about an ethics of literature that would allow us to regard certain texts in a new light?" (2008: 144). After revising Levinas's ideas on literature in relation to his view on language and unmasking his somewhat reductive conception of the aesthetic, Claviez convincingly clears the way for an approach to the ethical encounter with the other in literature: "Levinas' distinction between philosophy and art as concerns ethics is questionable, since it is based on an equally questionable reduction of art to myth and thus 'lie'" (2008: 155). Claviez' own interpretations along Levinasian lines of four classic works of American letters prove the point, as do several other works like Andrew Gibson's *Postmodernity, Ethics and the Novel: From Leavis to Levinas*, which cast light on the intricacies of the literary text by resorting to Levinas's ethical metaphysics. It is not so much a question of approaching works as exemplifications of ethical theories as of exploring some of the dilemmas these theories pose within the frame of literature. As Claviez says of *Uncle Tom's Cabin*: "the life-giving, but deep-freezing potential of a fictive Said ..., at certain sublime moments, lets the Saying shine through" (2008: 283).

Translated into Levinas's terms, *The Trial of the Catonsville Nine* stages the conflict between the Saying and the Said. It is my contention here that the judge's insistence on the letter of the law privileges the Said over the Saying. The Saying and the Said stand for two different ways of being in the world and relating to our neighbours. In the words of Levinas, Saying is "the proximity of one to the other, the commitment of an approach" (2004: 5). It is "to respond to another, ... to find no longer any limit or measure for this responsibility, ... which is responsibility for the free initiatives of the other" (2004: 47). In the Said, Levinas maintains, the world as becoming is arrested, the "otherwise than being" is "immobilized and fixed" (2004: 5-7, 23). In his opinion, the ethical relationship should be articulated around the Saying, understood as "a verbal or

non-verbal ethical performance, whose essence cannot be caught in a constative proposition. It is a performative *doing* that cannot be reduced to a constative description” (Critchley in Gibson 1999: 136). Levinas’s distinction between the Saying and the Said is echoed by Geoffrey Harpham’s oft-quoted definition of ethics as “the strictly undecidable”, that which “suffers determination by morality” (1995: 56). It also underpins the differentiation between justice and the law as conceived by Derrida. Ethics, justice and the Saying thrive in undecidability but need their counterparts in order to reach the realm of the decision. Like the symbol for Yin and Yang, the Saying and the Said do not stand in clear-cut opposition, but interpenetrate each other: the Said threatening to congeal the Saying and the Saying unwriting the already given nature of the Said. Levinas equates the Saying to exposition to alterity, an exposition that precedes being, is always already there and has direct consequences for the Self:

Saying is a risking or uncovering of the self... Saying is never indifferent. It is the declaration ‘Here I am’ [*Me voici*] answering ‘for everything and everyone’ ... and it is disinterested, for, in it, the bases of any position for or fixity to the self are consumed. Saying is ‘otherwise than being’. But it is also the ‘extraordinary everydayness’ of my responsibility to and for the others. (Gibson 1999: 137)

Emmanuel Levinas opens his preface to *Totality and Infinity* with a reference to the devastating effects of violence and war on morality. The “ontology of totality issued from war” (1991:22) runs counter to the infinity of being that rules over the moral. It is not only that violence contravenes the most basic commandment emanating from the Face of the other – “Thou shall not kill” – but that it makes people play roles “in which they no longer recognize themselves” and “betray not only commitments but their own substance” (1991: 21). The arms employed at war always “turn against those who wield them” since they destroy the identity of individuals, reducing them to “being bearers of forces that command them unbeknown to themselves” (1991: 21). Levinas rejects the ontology of totality, which rules out singularity, in favour of infinity, the basis of peace and justice: “Justice would not be possible without the singularity, the unicity of subjectivity” (1991: 246). Proof of the individuality of the subject is his “aptitude for speech”. Levinas pictures *existents* “called upon to answer at their trial”, able to speak, “rather than lending their lips to an anonymous utterance of history”. His vision “breaks with the totality of wars and empires in which one does not speak” (1991: 23). At this trial Levinas alludes to, the individual is placed under the judgement of God, who exalts his subjectivity and calls him to “moral overstepping beyond laws” (1991: 246). It is precisely the judgement of God that concerns the Catonsville Nine. It is with reference to his higher law that they defy man-made laws at the trial: “The one law [that overrides all laws]/ is the primary law of love and justice/ toward other men”, declares Thomas Lewis (Berrigan 1971: 43). It is their impressive ‘aptitude for speech’ that marks them as morally creative individuals against the silent totality of war and the empire.

The burning of the draft files in Catonsville was carried out by a group of Catholics. Their act of civil disobedience has been studied in the light of the life of Jesus as narrated in the Gospels. Clearly, the spirit of the Sermon on the Mount – ‘Blessed are the Peacemakers’ – informs the group’s non-violent stance, as does the Christian ethics of sacrifice and martyrdom. I will nonetheless argue that the reading of *The Trial of the*

Catonsville Nine through the ethics of alterity put forward by Levinas can reinforce the play's message and uncover new meanings. Both Levinas and the *Catonsville Nine* are inspired by the values of the Jewish-Christian tradition, but while the *Nine* favoured action over intellectual reflection, Levinas provides the critic with a complex analytical tool with which to cast some extra light on Berrigan's play. There are no references to Levinas in Berrigan's rendering of the act in his autobiography. There are no direct references in his play either. The emphasis in both is placed on the Christian motivation. "As a Christian/", states defendant Thomas Lewis in the play, "I am obligated to the primary law of brotherhood/Men have responsibilities not only to their immediate family/but to the world" (Berrigan 1971: 43). This quotation shows that it is in *The Trial of the Catonsville Nine* that the connections with Levinas come through. The impulse to answer for one's neighbour that the defendants put down to the condition of being a Catholic, is for Levinas the most basic marker of humanity and defines us even before we are constituted as beings. As a composite of the testimonies of the nine, the play reverberates with the Levinasian imperative of infinite and inescapable responsibility for the other, a demand that transcends any religious creed. An exhortation, Simon Critchley affirms (2007: 11) that usurps my autonomy and holds me hostage to the other's needs. Daniel Berrigan puts it in the following terms in his play: "We could not ... do otherwise/For we are sick at heart" (1971: 93). Molly Rush recalls his words in a later trial. They had been arrested and thrown into jail for hammering on nuclear weapons: "We could not *not* do this.... With every cowardly bone in my body ... I wished I hadn't had to do it. That has been true every time I have been arrested. My stomach turns over. I feel sick. I feel afraid. I hate jail" (Berrigan in Rush 1996: 58). Elsewhere, Berrigan again, defines his life as a "double negative" (1987: 307). Beckett's motto "I must go on. I can't go on. I will go on" is appropriately evoked by Critchley (2007: 44) in an attempt to apprehend the nature of Levinas's formidable demand. Berrigan's double negative and Beckett's aporia are potent appeals to action: "Nothing can be done!' How often we had heard that gasp: the last of the human, of soul, of freedom. Indeed, something could be done; and was. And would be" (Berrigan 1987: 221). They pose an invitation not to give up in the face of trouble: "I keep trying and failing and trying again" (Berrigan 1987: 165). Even, or more so, if our actions prove ineffectual. Even, if what we do fails to mitigate the war: "We go on, we go on.... We see nothing happening (indeed we see only worsening of the ills we dare object to)" (Berrigan 1987: 304). Out of sheer endurance.

Levinas's theory of alterity, which revolves around the encounter with the Face of the Other, has a very clear physical component that Andrew Gibson takes as a starting point for his ethics of sensibility or affect. The Face of the Other is for Levinas "the original site of the sensible": "The Other becomes my neighbour precisely through the way the face summons me, calls for me, begs for me, and in so doing recalls my responsibility.... Responsibility for the Other, for the naked face of the first individual to come along" (Levinas 2003b: 82, 83). Sensibility as an ethical faculty is characterised by openness, attentiveness and receptiveness. It is "the power of being affected rather than affecting" (Gibson 1999: 161) and privileges feeling over thought. Drawing on Levinas, Gibson further defines it as "'uncovering' ... exposure to wounds, *vulnerability* ... not as a passive reception of stimuli, but as a positive 'aptitude' ..., the nakedness of

a skin presented to contact, to the caress, which always ... is suffering for the suffering of the other" (1999: 165). Gibson finds important similarities between Levinas's concept of sensibility and George Bataille's concern with "expenditure without reserve", generosity and excess (1999: 166).

In line with Gibson's ethics of affect, the peaceful protest of the Catonsville Nine emerges out of compassion and encourages extreme generosity and active vulnerability. It shows "a preference for suffering rather than for inflicting suffering" (Berrigan, in Dear 1996: 13). At the heart of their non-violent resistance lies the Levinasian Saying, "the most passive passivity ... inseparable from patience and pain" (Levinas 2004: 50). Notice the terms employed by Daniel Berrigan in his autobiography for describing his gradual commitment to non-violence: "When the offended party yields to contempt and counterviolence, I came to understand, both sides are demeaned, no light is shed, wounds are exacerbated. There must be another way. I came on the other way, gradually and with clumsiness, through friends: Dorothy Day, Merton, my brother Philip, certain Jesuits. These in person. And Dr. King and Gandhi and others, my noble ancestral teachers" (1987: 144). The years spent in prison for this and other acts of resistance are a proof of their 'expenditure without reserve', as are the problems met by those belonging to religious orders that were often punished by their superiors for exceeding their roles. The Berrigans were in fact the first priests in the US to spend time in jail for civil disobedience.

The centrality of the corporeal to both the action and the play can also be read in terms of the ethics of sensibility or affect. This is David Darst's explanation of why they chose homemade napalm for their protest: "We felt it was fitting that this agent/which had burned human flesh in the war in Vietnam and in many other places/should now be poured on the records/which gave war and violence/their cruel legitimacy" (Berrigan 1971: 34). In a previous action of a similar nature, two of the Catonsville Nine had poured their own blood on the draft files. There are also allusions in the play to the self-immolation of a Syracuse student in protest against the war. Daniel Berrigan had access to him and describes the experience in the following dramatic terms: "The boy was dying in torment/his body like a piece of meat/cast upon a grille .../I felt that my senses had been invaded in a new way" (1971: 91-92). Berrigan's experience of ministering for the terminally ill – mainly patients with cancer or AIDS – further testifies to his exposure to the suffering of the flesh.

Gibson's ethics of sensibility has a further textual side with which Berrigan's play also complies. This textual ethics of affect implies discursive practices characterised by openness and instability. *The Trial of the Catonsville Nine* opens up the dramatic to the poetic and the essayistic. Besides the fact that most of the play is written in a very poetic style, silences and pauses are marked typographically and further contribute to the play's resistance to closure. Besides, the attempts by the judge and the accusation to keep to the facts and exclude the world are partly neutralized by Berrigan's quotations, all in italics, particularly abundant in the play's third act, 'The Day of the Nine

Defendants'.⁴ As mentioned above, the speeches by the accused are interrupted by a pastiche of fragments from fiction and non-fiction that let in reality in various ways. They point at texts outside Berrigan's text: Texts, like Sartre's *The Condemned of Altona*, which stress Levinasian responsibility – "I have taken the century upon my shoulders and have said: I will answer for it. This day and forever" (1971: 25); Camus on the role of Christians in "The Unbeliever and the Christians" also reverberates with Levinas – "The world expects that Christians will get away from abstractions and confront the blood-stained face which history has taken on today" (1971: 56); or the words by Bishop Defregger of Munich asking for understanding and forgiveness for his wartime role in the execution of Italian villagers: "I do not want to defend myself. I can only abandon myself to God's judgement" (1971: 35); a short fragment by the US Court of Appeals, reversing the conviction of Dr. Spock on the grounds that "the right to be tried by a jury of one's peers ... would be meaningless, if the judge could call the turn" (1971: 105), which is precisely what judge Thomson did in the Catonsville trial; also, pacifist manifestoes like that of Kipphardt's Oppenheimer – "I will never work on war projects again.... We cannot do better than keep the world open in the few places which can still be kept open" (1971: 47).

4. Conclusion: Too heavy a demand

In the final section, 'The Day of the Verdict', the play includes the reaction to the conviction of the defendants of those present in the courtroom:

A MEMBER OF THE AUDIENCE

Members of the jury, you have just found Jesus Christ guilty.

(*Commotion in court. Similar outbursts from other member of the audience*) (1971: 121)

Even the judge himself admits in an unusual conversation with the defendants before the clerk takes the verdict, that he sympathises with them on moral grounds: "I am not questioning the highness of your motive. I think that one must admire a person who is willing to suffer for his beliefs" (1971: 112). The burning of the files and the attitude of some of the defendants, however, elicited reactions of an altogether different nature that Berrigan alludes to in his play as well. "We have been accused of arrogance", admits Philip Berrigan (1971: 30). The accusations came not only from the powers that be, as was to be expected, but also from some fellow pacifists who disapproved of the dominant role played by the Fathers Daniel and Philip Berrigan. Marian Mollin (2004) reads the Catonsville act along gender lines. In her opinion, the two brothers received "a disproportionate amount of media attention, giving the actions a visibly masculine tinge". Daniel, she explains, "typically depicted the protests as highly masculinized rites of passage that would, in his words, remove 'the bars to manhood'. Philip similarly described involvement in the resistance as part of the process of 'becoming a man'"

⁴ DANIEL BERRIGAN: "Your honor, we are having great difficulty in trying to adjust to the atmosphere of a court from which the world is excluded, and the events that brought us here are excluded deliberately, by the charge to the jury" (1971: 113)

(2004: 41). Mary Moylan, one of the two women resisters from the Catonsville Nine, showed her disagreement with such dynamics:

for Mary, her membership in the Catonsville Nine became increasingly enraging. She saw rampant clericalism and patriarchalism in the way the Berrigan brothers were the center of attention. She was angered by the lack of equal regard for others, especially women like herself, who had taken the same risks but who remained in the shadows. (Rosemary Radford Ruether, in Mollin 2004:47)

Apparently, *The Trial of the Catonsville Nine*, a faithful rendition of the actual records, leaves little room for male chauvinism on the part of its author. However, significantly enough, not a single one of the quotations chosen by Berrigan to contrast and complement the speeches of the nine defendants is authored by a woman. Not even the one that closes Mary Moylan's testimony, which is about a woman, Antigone, but authored by a man, Sophocles: "In dark corners I have heard them say/ how the whole town is grieving for this girl/ unjustly dealt, if ever woman was/ for glorious action done" (1971: 66). The accusations of arrogance that Philip Berrigan mentions also seem to rest on the attitude of the two brothers towards those that did not share their views or their radical commitment to the pacifist cause. Anne Walsh, a former nun who took part in a number of draft boards, remembers the pressure to commit to an action: "we each ... put friends under a lot of pressure ... which was uncomfortable for me. But I think it's the only way you got people to act, to really say ... 'well, this is the only way to take a stand'" (in Mollin 2004: 39). The question the prosecution asks Thomas Lewis in the play – "Did you consider that others like you might hold a view about Vietnam that was contrary to yours?" (1971: 47) – further stresses this idea of one-sidedness. The Christian invitation to 'love thy enemies' and 'bless them that curse you and persecute you' does not seem to have been taken in by the resisters. Daniel Berrigan's allusion to Buddhism in his introduction to the play reads as merely ornamental: "My brother Philip said ...: 'There is no one way, there are as many ways as there are men or communities ...'. His remark had a Buddhist flavour" (1971: x). In Buddhism, non-violence stems from non-hatred and both lead to the dissolution of one's ego rather to its consolidation. "It is difficult to imagine this man dwelling in peace", says Walter Goodman (1988) in his review of Daniel Berrigan's autobiography, *To Dwell in Peace*, for the *New York Times*. The review, tellingly entitled 'Amid Avowals of Love, Bursts of Hate', criticises Berrigan's certainty of his own righteousness together with his scorn for those who hold different views. In the play, the anonymity of entries such as *judge*, *prosecution*, *defense*, *witness*, always referred to by their function in the trial, contrasts with the particularity of the names and surnames of the nine defendants. The Christian ideal of loving one's enemy is as demanding as Levinas's infinite responsibility for the other. I am responsible for all the others, including those that persecute me. I am accountable for the very faults of another. *The Trial of the Catonsville Nine* falls short of the Levinasian imperative since the other worthy of the resisters' compassion refers exclusively to those suffering from the rigours of war or fighting to eradicate them, neglecting those figures of the other that question the legitimacy of their acts.

Despite Berrigan's failure to fully comply with the exorbitant requests of Christian and Levinasian ethics – or perhaps, precisely, because of it – I would like to end my

analysis by quoting W.B. Yeats's refrain for his 'Easter 1916', a poem dedicated to the leaders of the failed Easter Rising against the British in Dublin. Notwithstanding the radical difference between the two events, one violent, the other non-violent, notwithstanding the effectiveness of the act by the nine resisters, we can say with Yeats that in Berrigan's *The Trial of the Catonsville Nine* "[a] terrible beauty is born".

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Received 23 March 2009

Revised version accepted 5 February 2010

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