Black and White in the Gray Zone: Where Law Ends and the Story Begins

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To cite this article: Orit Rozin (2015): Black and White in the Gray Zone: Where Law Ends and the Story Begins, Journal of Modern Jewish Studies, DOI: 10.1080/14725886.2015.1116238

To link to this article: http://dx.doi.org/10.1080/14725886.2015.1116238

Published online: 11 Dec 2015.

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TUVIA FRILING, Mi Ata Lion Berzheh? Sipuro shel kapo be’auschwitz—historia, politika, vezikanon Tel Aviv, Resling, 2009

Tuvia Friling takes a brave step in his book, first published in Hebrew in 2009: he presumes to evaluate the actions of a Jewish kapo at a Nazi concentration camp. The common wisdom among historians for the last half-century has been that no person who did not personally experience the Holocaust may presume to judge the actions of Jews who went through that inferno. Many have even questioned whether it is possible to achieve an accurate reconstruction of events in the camps on the basis of survivor testimonies. Refreshingly, Friling rejects this doctrine of non-judgementalism.

A Story of a Kapo is a sensitive but penetrating account of the adult life and death of Eliezer Gruenbaum. A devout communist Gruenbaum fought in the Spanish Civil War and later, during World War II he held the post of kapo in Block 9 at Birkenau, the death and labour camp that was part of the Auschwitz complex. He survived the camp and made his way to Israel, where he fought in the 1948 war. He was the son of one of the great Polish Zionist leaders, Yitzhak Gruenbaum, who later became Israel’s first interior minister.

After the war and before his arrival in Israel, Eliezer Gruenbaum was the subject of, or defendant in, a number of legal proceedings in which he was accused of cruelty towards fellow Jews and collaboration with the Nazis. In his detailed account of these proceedings, Friling seeks to determine what Gruenbaum actually did at Birkenau and to parse the testimonies of the witnesses against him. At the same time, he uses Gruenbaum’s story to consider how Israeli society coped with the phenomenon of collaboration with the Nazis and examines Gruenbaum’s place in public discourse and collective memory in the era that followed his death.

Friling’s biography of Eliezer Gruenbaum is exceptional in many ways. More than other such studies, it reveals the biographer’s labours and the materials from which he weaves his story. It offers a fascinating view of the writer himself as he crafts his narrative. Every biographer brings his personal acuity, outlook and feeling to his work, but Friling, despite his restraint, and notwithstanding the fact that he writes little about his own thoughts on the subject, is unusual in offering this exposure. I presume that the reason he chooses to do so is his awareness of the strident historiographic debate about law and history and the feasibility of reconstructing historical events.

The materials from which Friling fashions his narrative are the figure of Eliezer Gruenbaum, the trials of collaborators, the testimonies of Holocaust survivors, the question of whether a criminal procedure can achieve justice, the riddle of survival in the heart of darkness, and emotions and intuitions relating to justice and revenge. Yet Friling also, perhaps principally, addresses, on the subtextual level, fundamental
questions of the writing of history. His book is thus an up-to-date response to the most prominent voices in his profession. Wrestling with what Shoshana Felman and Dori Laub have called the “crisis of witnessing,” (Felman and Laub 1992) he struggles with the question of how truth is determined by the tools used in criminal trials, and with the nature of moral truth. He also grapples with the academic polemic over the very possibility of creating scholarly knowledge in the postmodern age. Carlo Ginzburg has declared that “Knowledge (even historical knowledge) is possible,” and proposes that a piece of reality may be reconstructed from a biased text, a sort of evidence he calls a distorting mirror (Ginzburg 1999, 25). Following Ginzburg, Friling seeks to provide a foundation for a particular account of events and to explain that which is so difficult to explain—the position of a collaborator with the Nazis.

Friling takes a cautious position and displays great sensitivity towards Holocaust testimonies and a great human respect for his collaborator protagonist. His principal innovation, however, is one that touches on the delicate point where moral judgement, criminal justice and history meet in the consideration of figures classified as collaborators during the Holocaust. The heart of the matter that Friling discusses and struggles with is the possibility of telling a story that conjoins the time before Auschwitz; the death factories from which, against all odds, a small number of survivors emerged; and the world that was recreated thereafter. The experience of split identity described by survivors such as Primo Levi and Yehiel Dinur (who wrote under the penname Ka-Tzetnik) places very real obstacles in the path of any attempt to fuse these splinters into a single coherent narrative (Ka-Tzetnik 1993, 112; Petropoulos and Roth 2005, xvi). Friling badly wishes to root out solid facts about life in the camps, but in doing so he is beset by demons of doubt. His book, like other works I cite here, stands in the shadow of Primo Levi’s writings, and cannot avoid coping with the concept of the “gray zone,” the term that Levi coined in The Drowned and the Saved (1988) to refer to the extremely complicated internal structure of Auschwitz, which created moral ambiguity and compromise. What Levi referred to especially was the way the Germans organised the camp so that Jews, although very reluctantly, would become complicit in the extermination of their own people (Petropoulos and Roth 2005, xvii).

Friling points out the great distance that separates law and justice in both legal and quasi-legal proceedings from the justice of life or common-sense justice. He presents judicial proceedings as a distinct field with boundaries and well-known limitations, but nevertheless rejects Agamben’s view that legal proceedings cannot platform for discovering the truth (Agmaben 2002, 18–19). Nor does he wonder whether survivors and those who did experience the Holocaust can have a common language, and therefore whether a judicial proceeding, or indeed any sort of conversation, is possible (Lyotard 1988). Neither does he reject the possibility of reconstructing a likely version of the truth from the testimonies of witnesses. But he understands the limited capacity of criminal procedure to address the issue of collaborators during the Holocaust. His gaze is broader than that of a criminal proceeding. He includes the law and the rules of evidence as part of the picture of truth, not as the proprietors of truth. His point of view unifies differing and opposed perspectives—he participates in investigating the truth in the framework of judicial inquiries centred on Gruenbaum’s actions as a kapo. But he does not leave it at that. Additionally, as noted, in the last part of the book he presents different narratives of memory that complete the initial work of uncovering the facts. He seems to have felt an imperative, as a historian
writing today, to relate how events are remembered, and not just what happened (Bilsky and Gur Aryeh 2009). Friling is not just a “judge” (Karpel 2009). He is a historian. “Judges and historians share a concern for ascertaining facts, which may include rumors affecting financial markets, myths, legends, and so forth,” Ginzburg stipulates. However, “judges and historians are separated by two fundamental divergences. Judges are supposed to pronounce sentence, historians are not; judges are concerned only with events leading to individual responsibilities, historians are not” (Ginzburg 1999, 50).

Given the charged nature of the concept of trial testimony—in fact, testimony of all kinds—Georgio Agamben’s distinction between two kinds of witnesses is an important one.

In Latin there are two words for “witness.” The first word, testis, from which our word “testimony” derives, etymologically signifies the person who, in a trial or lawsuit between two rival parties, is in the position of a third party (*terstis). The second word, superstes, designates a person who has lived through something, who has experienced an event from beginning to end and can therefore bear witness to it. (Agamben 2002, 17)

The two concepts are contradictory. In a trial, an eyewitness is supposed to be a third party—that is, he is a witness situated “outside” the event. Only in such a case can his testimony be objective, and to be accepted as speaking the truth. The “participant witness,” according to Rivka Brot, “is one who personally underwent an experience and can testify to it as a result of his personal involvement.” Yet such a witness clearly cannot be unbiased (Brot 2009, 10). Psychoanalyst Dori Laub takes an extreme position on the limitations of participant witnesses who experienced the Holocaust. “A witness is a witness to the truth,” he maintains, but:

It was inconceivable that any historical insider could remove herself sufficiently from the contaminating power of the event so as to remain a fully lucid, unaffected witness, that is, to be sufficiently detached from the inside, so as to stay entirely outside of the trapping roles, and the consequent identities either of the victim or the executioner. … The perpetrators, in their attempt to rationalize the unprecedented scope of the destructiveness, brutally imposed upon their victims a delusional ideology whose grandiose coercive pressure totally excluded and eliminated the possibility of an unviolated, unencumbered, and thus sane, point of reference in the witness. (Felman and Laub 1992, 80–81)

Friling must thus deal with both these facets of the concept of the witness. With regard to the determination of the facts in judicial procedures he rejects ethical testimonies, that is, those testimonies that have the potential to cast light on individual experiences but not on a specific incident, testimonies that often begin with the words “everybody knew that” or “I did not see it, but” (Brot 2009, 17). However, he maintains that such testimonies can contain information on Gruenbaum’s reputation or about the environment in the period following the Holocaust. In so doing, Friling reorganises the field of discussion and, most importantly, does battle for the right of the historian to offer a historical reconstruction of the horrors of the Holocaust—a right that cannot be taken for granted. Friling depicts what Lawrence Langer has called “choiceless choices
Friling surveys three judicial or quasi-judicial proceedings in which Gruenbaum was the defendant or target of investigation. The first was a committee of inquiry established in Buchenwald by three members of the Communist Party, from which Gruenbaum emerged largely unscathed. The second was a commission of inquiry set up by the Polish Communist Party, a long, thorough proceeding in which Gruenbaum was charged with a number of offences. These ranged from ideological deviation from the teachings and policies of the Communist Party to direct and indirect abuse of prisoners in the block under his charge. He was also charged with beating prisoners and causing them serious injury, sending prisoners to the gas chambers, with manslaughter and homicide and being an accessory to these crimes. This proceeding ended with his permanent expulsion from the Communist Party. French prosecutors conducted normative legal proceedings, which continued for eight months. Friling hints that had Gruenbaum been brought to trial in France he may well have had the upper hand. But in the end the director of the French war crimes investigation authority ruled that French military courts had no jurisdiction over acts committed outside French territory by foreign nationals against other foreign nationals.

In using the materials from these proceedings, Friling accepts the testimonies of witnesses who were present at the time and place of the events that were investigated. These people could serve as witnesses to a specific event, that is, they answered to the standards for witnesses in criminal proceedings. He broadens his canvas considerably in his examination of the two latter proceedings, both of which were conducted during Gruenbaum’s sojourn in Paris. With regard to the Polish Communist Party investigation, Friling looks at the historical context, in other words, the treason trials of French collaborators. He argues that an understanding of the postwar milieu is essential to providing a foundation for at least some of the claims of Gruenbaum’s defence. Without being familiar with this atmosphere and without an acknowledgement of the judges’ world-view, no understanding of the nature of the proceedings is possible. Friling writes:

In the atmosphere of the summer of 1945 in Paris, against the background of the Communist Party’s efforts to serve as a manifest symbol of everything opposed to the spirit of Vichy … there was no place for people like Eliezer. People who arrived with bloodstains on their garments, or at least were surrounded by rumours that their garments were so stained. (2009, 237)

Just as justice draws its values from outside the judicial system, so a particular trial, Friling understands, is situated in a place, culture, society, and historical moment.
In a trial, Assman writes, testimony is distinct from the witness and his biography (except inasmuch as it touches on his reliability). But in other forms of testimony, such as videotaped survivors’ stories, the testimony and the witness are intimately tied together (Assman 2006, 267). Friling shows that the connection between the testimony and the witness is much more complex than Assman supposes and depends on the witness’s status, that is, whether he testifies on behalf of the prosecution or the defence. Clearly, a witness who gives recorded testimony for commemorative purposes is not like a witness at a trial. The former is a product of the witness’s personal motivation, and not just a product of where he was and what he remembers. The significance of such testimony also depends on the identity of the witness, the specific historical moment, and his affiliation to a specific group, factors of the type noted by Galia Glasner-Heled and Dan Bar-On that Friling does an excellent job of pointing out (Glasner-Heled and Bar-On 2009).

Friling shows that receptiveness to testimony depends on the audience. Such was the case in the trial of Malchiel Gruenwald that took place in Israel in 1954–1955 and centred on Israel Kasztner’s negotiations with Adolf Eichmann in Budapest. That trial led, in the space of just a few years, to two diametrically opposed judgements, that written by District Court Judge Benjamin Halevy and that of Supreme Court Justice Shimon Agranat.

The fact that Friling participates in the discussion of the nature of judicial proceedings and seeks to extract all possible historical truth from them does not make him a judge, nor counsel for the defence. In practice, he asks two questions. The first is the historian’s classic question: what happened? In addition, he asks how events were experienced and how they are etched in memory, a question to which he devotes a large part of this massive book. Friling thus seeks to recreate a plausible historical truth, not only to make judgements and to determine what we know for certain and what is merely hearsay, but also, and most importantly, to prove that it is indeed possible to achieve a true account of a difficult and complex historical episode. His style is to the point and restrained, but his implication is that the inferno of the Holocaust did not occur on another planet as Ka-Tzetnik at first claimed. Rather, Friling sides with Ka-Tzetnik after he had undergone psychotherapy, who wrote that Auschwitz was of this world: “Wherever man is, there is Auschwitz, because it was you and me, not Satan, who created Auschwitz” (Ka-Tzetnik 1993, 113). If that is the case, a historical reconstruction of Auschwitz, if only a partial one, is possible.

In the wake of Justice Agranat’s Supreme Court ruling in the Gruenwald-Kasztner trial, Michal Shaked wrote that:

the most important message of the Kasztner trial was that the Jews in the Holocaust should not be judged, that no one who was not there should pass judgment. … a philosophy of non-judgment of Jews in the Holocaust, and this philosophy in and of itself and by itself, is perceived as enlightenment and tolerance. (Shaked 2000, 63)

In contrast, Judge Benjamin Halevy, who found Kasztner guilty despite the fact that he had not been “there” in the inferno and did not understand its complexity has, since the Kasztner trial, been mostly viewed as having taken an unenlightened position.

The presence of the inferno here and now provided by Friling’s measured depiction, and his willingness to intervene and reorganise the facts, are testimonies to the return of
critique to the study of the Holocaust. Nevertheless, 60 years after the Kasztner trial, we are talking about a cautious and empathetic critique. Friling offers a new point of view, one that does not impose on that place and time an external perception of reality and conception of good and evil as, for example, Hannah Arendt did (Arendt 2007, 126–129). Instead, he seeks to understand each human being and his actions in the context of the conditions in which that person lived, the subculture that came into being there, his status and role in it, his moral conception, and the distinct logic of that place and time.

Friling thus offers a new enlightened view, one that does not reject those who were not there but rather brings them in. It is a view that offers the possibility of taking a stand about events that took place there, while using empathy, caution, care, and restraint.

To illustrate this, I quote Friling on Gruenbaum’s response to the Polish Communist Party’s commission of inquiry, made in Paris in the summer of 1945.

Eliezer responded in writing and orally to all the accusations . . . . Here and there the proceeding would also wring out of him quite personal things about how he felt about the irresistible process of brutalization and habituation that took place there, but also about his sense of having been betrayed. . . . He confessed to some of the accusations and in most cases explained why he could not have acted differently. . . . Indeed, after reading his words it would be easy to shrug and say: most criminals claim to be innocent. . . . For the most part, his responses are articulate and comprehensible and he presents them along a chronological axis. . . . Here and there one gets the sneaking feeling that in certain instances he does not describe what really happened, but rather constructs a reality that is comfortable for him, placing himself in its center. . . . In certain places his strength fails and the veneer of control cracks. In many places his words about the experience of that hell make the reader break out in a cold sweat. (2009, 148–149)

Friling is thus torn between an empathetic reading of Gruenbaum’s testimony and his desire “to brush history against the grain,” to quote Walter Benjamin. He has an intimate relationship with the testimony—he breaks out in a cold sweat—and he feels for Gruenbaum when his veneer of control cracks. Yet at the same time he takes a critical stance towards him and towards the facts that he describes.

“The human ear,” Brot writes,

prefers to hear unambiguous stories of a unitary hue over ambiguous stories in which there is no clear distinction between the good and the bad. . . . In the contest between testimonies that describe a black reality and those which depict shades of gray where morality is in doubt and which provide no clear lesson, the first wins out. (Brot 2009, 6)

Yet Friling does not paint a black picture, or a white one. Neither does he settle for a uniform tone of gray. He examines all the shades of gray and lays out splotches of darkness and of light, white and black threads, and in doing so he offers his readers not just a re-creation of historical events but rather a new conception of history. He brings the extremes together.
The importance of Agranat’s ruling, Michal Shaked argues, lies not in the fact that it cleared Kasztner but, rather, that it established the Holocaust as a memory, placing it firmly in the past. Likewise, in her biography of Agranat, Pnina Lahav wrote that “Agranat understood … that the best way to achieve normality may well be acceptance of the past” (Lahav 1999, 144). Yet acceptance of the past, as expressed in Agranat’s judgement, necessarily makes the Holocaust inaccessible to and unjudicable by those who were not there.

Friling’s work undoes that stipulation and offers a new paradigm. Using the story of one man, his rich and profound book covers a broad historiographic field. Brave and self-aware, he writes a work derived from a profound desire to understand. Friling reads each testimony several times, the first time empathetically, and other times against the grain. He considers all the scenes of horror related by the witnesses and carefully puts together a possible reconstruction of what actually happened. He reaches out towards Gruenbaum without actually touching him, taking special care not to make a pretense of knowing more than he actually knows. He fills in those gaps that he can fill in, but no more. Through the seams of the book the reader can glimpse a historian of profound humanism, the foundation of which is a fair and close assessment of a man whose ship of life foundered.

Glasner-Heled and Bar-On note that Gruenbaum’s memoir begins in the first person plural: “We have all undoubtedly seen images at the cinema of a passenger ship sinking on the high seas.” In their view, Gruenbaum sought to repatriate himself to the world of free and civilised human beings. In search of common ground with other people, he used metaphors and images from the cinema (Heled and Bar-On, 14). Heled and Bar-On view his endeavour as futile and argue that Gruenbaum himself believed that the chasm between the survivor and the person who had not experienced the Holocaust could not be bridged. Friling’s book begins with the opposite assumption, and bravely attempts to bridge the abyss.

Acknowledgements

I would like to express my gratitude to Marcos Silber, who invited me to take part in a seminar at the University of Haifa devoted to this book. I also wish to thank Galia Glasner-Heled, Rivka Brot, Avital Margalit and Uri Cohen, who read early versions of this piece.

References


