

Industrial and Environmental Disasters and Corporate Anonymity

Italy is a land of industrial disasters, yet corporate crimes remain “anonymous”: little studied, little perceived, little prosecuted. Claudia Marcolungo, who teaches Environmental Law at the University of Padua, picks up the thread of the counter-manifesto and addresses a theme that has remained beneath the surface: corporate anonymity.

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Italy is a country of disasters: from Seveso to Sarno, from Viareggio to Genoa, from the floods to the contaminations, to say nothing of many other disasters whose media echo has never fully surfaced.

But the appeal that appeared in *Repubblica* and *Il Sole 24 Ore*, in the aftermath of the conviction for the Viareggio massacre of 29 June 2009, says a great deal, if one is willing to look beyond it.

On the incongruities of the appeal Luca Santa Maria has already written brilliantly; here I intend instead to address a theme that has remained beneath the surface but is of great importance: corporate anonymity.

Let us start from a first matter of fact: the appeal as signed does not mention Moretti, the manager convicted for the rail disaster (together with others, it should not be passed over in silence), but speaks of personal liability in large enterprises, public and private. Moretti nonetheless appears in watermark, like a spectre hovering in the shadows. One of the first messages that can be drawn from it is the endangerment of the entrepreneurial system, so much so that a wound to the very competitiveness of the country is evoked.

It is worth recalling, by way of premise, that the *raison d'être* of the *società anonima* — the “anonymous company”, as the joint-stock company was once called — was originally, precisely, limited liability, configuring the company as an autonomous centre of legal imputation, whose organisation and structure were functional to the pursuit of the corporate interest, detaching itself from the personalistic matrix that characterises the notion of enterprise — recte, of the entrepreneur — in our Civil Code.

It is undeniable that much time has passed since then, and that the organisational structure of enterprises has grown more articulated, reaching levels of complexity originally

unimaginable. An evolution to which, however, there has been no more than a partial corresponding adjustment in terms of corporate liability arising from unlawful acts, administrative and civil as much as criminal.

Corporate crimes — again in “anonymous” terms — are in Italy little studied, little perceived, little prosecuted. The reasons may be many: cultural, legal, economic; that is not the point. What matters is the misalignment between individual responsibilities in the exercise of one’s functions (not positions) and the liability of the corporate body. If it is true that the internal organisation of large enterprises, public and private, is often an apparently incomprehensible Babel, it is equally true that the glue is the corporate interest, the point of convergence of multiple, concurrent and coexisting courses of conduct aimed, usually, at achieving the maximum corporate profit. Benefits, managerial salaries, profits, dividends and reputation are the point of arrival of this articulated system of individual contributions and of responsibilities — personal and shared — directed primarily at attaining the company’s ends.

This is not a matter of endorsing strict liability in criminal law. It is not a matter of summary punitive justice. It is a matter of verifying (and in the Moretti case we have reached the third Cassation...) in the concrete case whether the individual persons, within the perimeter of their own responsibilities, did or did not adopt the precautions, comply with the prescriptions, check the contingencies, in order to prevent disastrous events from occurring. Equally, it is a matter of verifying whether the companies themselves complied, organisationally, with the models of prevention and control.

The manifesto evokes the rule of law, forgetting how the rights of the defendants were safeguarded, both across the several instances of judgment and in the quality of the defence they were able to command. At the same time, the appeal signed by numerous professionals forgets to underline how, precisely in the face of organisational complexity, the management of an enterprise presupposes not only honours but precise burdens.

The anonymous company, we were saying. Well: large enterprises, often on the occasion of disasters, change skin, take on new legal guises, migrate to more “welcoming” places precisely in order to evade their responsibilities — administrative, economic and social, and, at times, criminal. We are thus left, as a collectivity, with empty shells that will never be able to repair the damage caused and, with the help of a lax statute of limitations, not even the possibility of punishing those guilty of the numerous collapses and disasters that mark Italian industrial history.

Another matter of fact: if we look with a rigorous eye at the history of disasters in Italy, the picture that emerges is the systematic application of acquittals under the statute of limitations, which translates, in rule-of-law terms, into the failure of the judicial system. The number of SIN — the contaminated “sites of national interest” — in our country is the plastic form of this de facto impunity: Bagnoli, Priolo, Taranto are scars of wounds received and never fully healed.

The text of the Court of Cassation's judgment on the Viareggio massacre is not yet available, and yet a sort of endangerment of the industrial system is already being evoked, invoking constitutional principles, in the name of interests dressed as principle. Unfortunately, in the name of competitiveness, ambiguous legal instruments have been proposed for the "anonymous" companies that are the economic engine of the country, such as tax and criminal shields, "voluntary correction" schemes, write-offs of various kinds. This is a toolbox capable of undermining the industrial fabric itself, in the name of the acceptance of a physiological baseline of illegality and of a class immunity.

To conclude, large enterprises are not in reality anonymous at all: they are an associative phenomenon of individuals, of a group of managers, which takes decisions and must bear their consequences. The intention is not to argue for strict criminal liability, nor for the automatic application of liability by virtue of a position at the top, but it is fundamental to understand that the matter in dispute is professional duties of conduct not properly discharged. A State governed by the rule of law does not legitimise selective impunities, does not look with a favourable eye on white collars because "clean crimes" do less damage and inspire less fear; suffice it here to recall that, unlike other European countries, Italy has no register of cases of corporate crime in the environmental sector, despite being, as has been said, a land of disasters.

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whitecollarcrimes

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