

DISRUPTION: AN INTERROGATION OF THE FOUNDATIONS  
OF ETHICAL SYSTEMS

By

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A thesis submitted in partial fulfillment of  
the requirements for the degree of

MASTER OF ARTS IN PHILOSOPHY

WASHINGTON STATE UNIVERSITY  
Department of Philosophy

MAY 2010

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## ACKNOWLEDGMENT

This thesis could never have been completed without the help and input of my committee: William Kabasenche, Michael W. Myers and Matthew Stichter. I am also eternally grateful to the entire philosophy department for providing a place to gather my thoughts and interrogate my own assumptions.

I owe a great deal to Dr. E. Kirsten Peters who has provided me with conversations and skeptical glances that have molded the way I approach the questions expressed in this thesis.

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Abstract

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May 2010

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Construction of a system of ethics can be plagued by problems that delegitimize the entire system. Emmanuel Levinas criticized both consequentialism and deontology for the ontological foundations of their systems, which both fail to engage the other as an other. Consequentialism considers the balance of happiness and unhappiness without concern for individuals. Deontology's adherents are subject to the moral law rather than the other. Levinas's ethics requires an orientation towards others that exemplifies the infinite responsibility between the subject and the other. In responding to the other, the subject gains his subjectivity. This differs from traditional philosophy, which posits an autonomous "I" and then relates to others from that position. Only with a view of this ethical relationship as the foundation of understanding can an ethical system be created ethically.

Levinas's fundamental relationship provides a means to reexamine the decisions of legal systems in addition to ethical systems. By examining the foundations of tort law, it becomes evident how Levinas's language of

responsibility and due care can provide a robust understanding to ground the tort of negligence although it does not provide the necessary legal groundings.

Levinas demonstrates how the responsibility illuminated by the encounter with the other can provide a reason to legislate a certain decision: to legislate is to decide in response to a particular other. Case law provides the means to address and examine later cases while still referencing our fundamental relation to the other. Each case, considered in its similarity or dissimilarity to precedent presents a judge with the responsibility to decide a particular case before the bench. The jurist's reflections allow for moments where Levinas's ethics can be considered in deciding the case. In these instances, the just jurist's reflection on the responsibility to the other allows policy to be created that does not legislate Levinas, but rather provides a means for Levinas's voice to be heard in future common law interpretations. The space between ethical intuition and law provides this area for interpretation. Levinasian ethics cannot be established as law because its role is an anarchic one that calls the created system into question.

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## CHAPTER ONE

### A CASE, A PROBLEM, A PLAN

Despite efforts of millennia of philosophers, ethicists, preachers and all manner of moralists, evil persists. While methods for deciding the moral outcome or reasoning of a situation harkens back to some of the major thinkers in history, the enemies of goodness and justice seem to be consistently one step ahead of the moral theorist. When a theory illuminates our intuitions by presenting train car malfunctions and fat men, we still face the very real problem of bank meltdowns, children dying of curable diseases and poverty. How do our moral intuitions intend to keep up with the creativity of evil? Is there a moral intuition that can inform not only our construction of ethical systems, but also our construction of political systems? These are questions that I intend to tackle. In order to ground my omphaloskeptic tendencies, we will be looking at a recent instance of an intuitively immoral scenario.

#### A CASE: PFIZER, NIGERIA

Pfizer, a drug company behind many solutions to problems we were barely cognizant we had (net income: 8.104 billion dollars in 2008), has become central to an international case that can be used to track our moral reasoning in this thesis. An outbreak in Nigeria of measles, cholera and bacterial meningitis led Pfizer representatives to travel to Nigeria and assist in treating the affected population. For 100 children receiving help, the medicinal cocktail provided by

Pfizer contained an experimental drug called trovafloxacin, or as it was marketed later, Trovan. Five of the children in the experimental group died. Trovan had only been tested previously on one other child—and then only after all other medicines had failed. Another group of 100 children in the case were given a known cure as a control, but at a lower dosage—allegedly to show that Trovan was equally as useful. Six of the 100 children died from the control group (Abdullahi v. Pfizer, Inc.). If the allegations that the children were given a lower control dosage are true, then Pfizer is held doubly responsible for their negligence. In this instance, not only did they test a drug that was not ready for wholesale human testing, but falsified their results at the cost of more lives.

For reference, bacterial meningitis is a serious illness that involves the inflammation of the meninges, the protective barrier around the brain and spinal cord. Although nutrients must pass between the brain and the blood, they must never touch, and the meninges stops this from happening. There are two types of meningitis, bacterial and virus, and between the two types, the bacterial form has the highest rate of mortality: near 100% in untreated cases and 33% in treated adults die. As with many grave illnesses, the responsibility to provide informed consent should increase as the gravity of the disease increases. Often, patients—desperate for salvation from their illness—may fall prey to the lure of a possible cure. A patient may listen less to the risks and consequences of a drug that has questionable efficacy. They may believe that their desperate times call for desperate measures. Because of such a worry, a scientist must take the precaution above and beyond their normal route of informing. The bar for fully



informing should be higher to make up for the way desperation could cloud a patient's judgment. Unfortunately, this is the opposite of how many of these cases develop; the imperative for informed consent is often laid aside for the sake of expediency.

A Nigerian High Court allowed for families to sue Pfizer in the United States Court System. According to BBC reporting, Pfizer defended themselves, saying the trials "benefited the majority of the children" who were participants and that they were "proud of the way the study was conducted" (BBC News). This obvious consequentialist rationalization is unsettling. Their claim is also counterfactual to reports that the trial itself was incapable of use by the FDA because Pfizer did not carry out the necessary follow up studies (*Abdullahi v. Pfizer, Inc.*).

Parents of the children who participated in the treatment said that they did not know that they could have rejected the treatment if they had wanted and had their children take an approved treatment offered by the charitable organization Doctor's Without Borders. Because parents did not know their options, the gravity of the situation led them to allow Pfizer to use their children as test subjects (*Abdullahi v. Pfizer, Inc.*).

In spite of the U.S. Food and Drug Administration's initial statement that the Kano trial did not provide the right kind of data to support its use on children, Trovan went on the market in 1998 for adults; however, in June 1999, the U.S. Food and Drug Administration decided that the administration of the drug should be limited due to its association with fourteen cases of acute liver failure and six

deaths (*Abdullahi v. Pfizer, Inc.*). Subsequently, the drug has been removed from the market (BBC News).

The drugs movement from Pfizer to Kano to the waiting consumers demonstrates miscarriages of ethical reasoning should have been caught by our systems of justice, but the case was never even seen on its merits. The litigants in the cases filed suit against Pfizer, but due to *forum non conveniens* analysis, trials from Nigeria must be filed in Nigeria unless corruption is found in the Nigerian Court system. *Forum non conveniens* is the common law legal doctrine that allows a trial be suspended due to the existence of a more suitable forum. Four attempts at suing the company in the US Court system failed due to *forum non conveniens*. A District Court who saw the case said that the laws that were claimed to have been offended were “merely aspirational” (*Abdullahi v. Pfizer, Inc.*). In 2009, a settlement was finally reached between Pfizer and the Kano state government. Whether this means anything for the families has yet to be determined. Certainly, it means even less for the children who died during the ordeal. There is still a pending case between the federal Nigerian government and Pfizer.

The legal proceedings in this case followed the letter of the law, but the law is more than mere deduction. Perhaps the best forum for the trial was in Nigeria, but what is at the heart of this is a question of how appeals to letter of the law might be a method for avoiding the difficult work of justice. Appeals and movements to forestall a trial can easily drown out the pleadings of the individual. This seems to eliminate the heart of the law—a heart that attempts to preserve

and protect the individual. How does a system of justice lead to unjust ends? And more than this—can a system of justice ground our responsibility to one another? If laws are merely formal—providing a framework where justice can eventually be found—it demonstrates the necessity for moral actors in the formal system—not only in the system’s construction, but also in its execution.

These questions—how do ethical systems fail? How do justice systems fail? How do we root and identify our responsibility to one another? —all seem to find partial answers in the philosophy of Emmanuel Levinas. Levinas was a 20<sup>th</sup> century philosopher of Jewish descent. His family was killed during the Holocaust, and his philosophy was formed under the burden of witnessing and surviving some of modern history’s most reprehensible atrocities. Levinas saw the greatest miscarriages of justice that were done during the Holocaust. He saw these as the logical outcome of our Western fetishization of individual freedom—our attempt to formalize all of our thoughts off of the primacy of positing the “I” before all other philosophy. Chapter two of this thesis will take time to look at Levinas’ philosophy, how it was formed and how it differs from the typical conceptualizations of systems of philosophy and ethics. An exposition of his thought will show how he believes relationship is the foundation of understanding ourselves. Chapter three will provide some examples of what this ethic looks at by examining a paradigmatic case, a historic view that seems to align with Levinas’s suggestions, and some support from modern neuroscience. The fourth chapter will examine how Levinas’s ethics may be engaged to form a more robust legal and political philosophy. Levinas’s work has been used recently to

reimagine the grounding for the responsibility inherent in daily life that gave rise to tort law. A central question in Levinas's work is whether we are indeed our brother's keeper. By asking this question, we may begin to recognize our own responsibility to others in a way suppressed by solely obeying the deductions of classical ethics. Levinas's voice, the voice of a prophet, is one that may awaken in us the responsibility that may disrupt our established ethical reasoning.

## CHAPTER TWO

### A FAILURE OF THEORY

“Actions always have consequences! In this office, actions have consequences! [...] Not just physics. Morally”  
(Coen and Coen).

A cursory examination of consequentialism and deontology will demonstrate the fundamental problem that Emmanuel Levinas has with both systems. By examining how these systems could fail to provide what intuitively seems like justice, we will reach the core of Levinas’s arguments against both systems. From this, we can count on Levinas to reorganize the foundations of our ethics.

#### THE HAPPINESS MILL

Consequentialism has an intuitive pull, but often leads to unsavory ends. In the case above, we could assume what a stark consequentialist argument would look like: there is a near 100% chance of mortality without medication, but we can do some tests on one group in order to see if a new drug works. If it doesn’t work, the untreated children would have died, so we did not create any worse consequences for the world. If it does work, Trovan could help countless individuals with any number of infectious diseases. Indeed, current medical research often revolves around trying to find a new antibiotic that can keep drug companies and doctors one step ahead of antibiotic resistance. If we did not

test, we would have to face the fact that something we could have done might have created a drug that would have helped countless people for generations (or at least until its overprescription would cause antibiotic resistance to evolve). Admittedly, this is a simplistic consequentialist argument. Hopefully, no consequentialist would argue that this is the best case, but his argument would revolve around some constraints that would be ultimately utilitarian in nature. Perhaps, one might argue that such unfettered testing would create a world where any cereal you pick up off the shelf may be laced with some new drug that needs a test, and that this would not produce the best results overall. I hear these complaints, but in light of Levinas's criticism of consequentialism, they are insufficient. Any such argument will continue an appeal to the best possible consequences overall. The appeal to consequences at the cost of the individuals we are interacting with is of the highest concern to Levinas. Any method of constraining the free reign of the clinical scientist will still appeal to unsavory ontological assumptions.

We cannot delve into the minutiae of consequentialism, but we must respect the strongest branch of the theory. Mill's *Utilitarianism* describes the duty and morality of Utility as such: "The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce to the reverse of happiness" (7). Our measure of morality and duty is the degree to which we can create happiness and minimize the reverse. The risks and dangers of testing trovafloxacin on those children were certainly far less than the

possible benefits to be reaped from a new, successful antibiotic. Naturally, this may fail utilitarian mandates solely because the drug had high instances of hepatotoxicity, but for the sake of argument, we should present the drug in the best light and assume Trovan would become a panacea.

Even in the best light, it does not seem sufficient to consider the use of poor, desperate families to further a drug company's ends as warrant for stamping this action as "moral" simply because of possible good outcomes for the majority of humanity. By this reasoning, the utilitarian considers others as merely variables in their moral calculation. Other individuals are not really individual *people*, but rather are vessels for utility in a cosmic equation that aims to over-balance the sum total of happiness versus that of the reverse. In the end the utilitarian does not view others as individuals, but rather as a totalized unity. The role of the ethical decider is one in which she sits as all-knowing presider over how happiness can be best distributed among the whole of the population.

This is unsatisfying because it seems wrong to sit in judgment and require the least fortunate to sacrifice for the happiness of the whole. These justifications cannot find their merit in the face of poor Nigerian children who thought they would find a cure, only to have their eagerly offered snake oil be not only ineffective, but also deadly. The problem with this view is that the utilitarian can use the slippery definitions of value that they desire, wrangle them into their equation and get a conclusion that justifies their position (even if their justification afterward has to differ from their justification before). A utilitarian, if they can cleverly justify their position, need not ever say that they are unhappy with the

cost. They need only to show on a ledger their clever accounting. By design, acting moral is acting by his prescriptions of utility, but morality seems to be more than that, and ethics seems to demand more. It seems to call us to a more primal orientation towards others. It is not an orientation that allows one individual or community to lord over others his reasoning about the happiness of all of humankind, but rather one where one's own identity is derived out of a fundamental relationship to others. A more fundamental orientation is one where the weakest in the world leaves the subject vulnerable and in a position where he must heed or ignore their call because it comes from outside of me, and also defines me.

## OUR DUTY

Kant has more of an appeal to this author than Mill does. Kant does not have the presumption of understanding others the way Mill does. As Levinas is introduced later, it will become evident that there is indeed much in common between the conclusions of these two philosophers, but they are still at odds.

The deontologist could try to apply the categorical imperative—act only according to that maxim whereby you can at the same time will that it should become universal law without contradiction—to this situation and suppose that the maxim followed is, “one should be able to test a drug on a patient without their full informed consent.” Could this maxim be universalized? It certainly could not. Furthermore, the individuals in this scenario were used solely as means without any regard to their ends. So at the end of our Kantian assessment, we



arrive at a place where we recognize that it would not be rationally possible to follow the maxim that we have created, and we must therefore abandon our attempt to test the drug. This is a satisfactory consequence to me (although the consequences are not Kant's main concern). The problem for Levinas is the motivation for such reasoning.

Kant takes great care to justify why an individual ought to follow his categorical imperative. The sensible world comes to the subject through primary intuitions. These intuitions illuminate the fundamental ways that he perceives the world. Cause-and-effect is a sensible phenomenon because that is the way it is sensed. From understanding that all senses of the world come to the individual through the categories illuminated by the primary intuitions of space and time, we can trust that our reasoning will allow our actions to have moral significance. Our duty is to act within the constraints placed upon us by the intuitions and the categories. If the maxims from which we act cannot be universalized, then we act immorally because not everyone can act according to such maxims.

If this is what grounds moral responsibility, then it seems there is a problem. An individual's duty is less to other individuals, but is more towards rationality itself. The Kantian's concern is not for the individuals in Kano, but is more for the rational consistency of whatever she can do to them. Although Kant's ethics have become synonymous with rights, it seems that those rights are simply a byproduct of respect for rationality. What is more, this respect for rationality comes from a fundamental relation to the world that is ontological. We

see the world through our intuitions and categories. These illuminate our *a priori* structures of rationality. At its heart, this is ontology.

Another problem that becomes evident from Kantianism is the need for a Judge. Even though Kant rejects that common conceptions of God have the capacity to be understandable or rational, he feels he must posit a God—one who will be sure that the checkbook of morality ends up being balanced at the end of life. Positing a God is a troubling step for Levinas. The use of God as judge to explain why evil exists is bound to fail. It is a theodicy at its heart that attempts to provide succor for the ills of the world. The temptation of creating a theodicy is one that beckons us to explain evil, or at the worst, to say something along the lines of: it will all work out in the end. Those that committed evil acts will be judged in the future, and those upon whom evil has been done will be told to fear not, because good will triumph in the end. This neglects the true suffering of the other. The Holocaust is explained via the promise of divine judgment rather than a more sensible way of describing it: by helplessly saying that the full understanding of evil's existence is inexplicable. By saying that evil is unexplainable, Levinas says we are capable of suffering with those who suffer.

Hopefully, it is evident why one might be uncomfortable with the consequences of the most prevalent means of describing ethical reasoning. Consequentialism requires a justification that merely says that more benefited from the actions than were hurt by any other mode of operation. While Kantianism often provides a good end, it does so by employing an ontology Levinas hopes to be rid of. In the case of the Kantian, responsibility is a matter

of satisfying the moral law rather than meeting the needs of an individual. Kant beckons his followers to be responsible to rationality and duty, and in doing so they act morally. There must be a way to protect those seeking the Good to avoid such unsavory problems.

Another problem that becomes apparent from these systems is the tendency to make ethics out to be solely the instantiation of some single ideal. For Kant, it is the idea of the good will, or coinciding rational thought with the laws of rationality, and for Mill, it is maximizing happiness. These singular things are what become ethics. Anything else happens to be incidental. Ethics is no longer an encounter or an orientation, but becomes a Platonic form. These are not the only systems that fall prey to such a monism. Seeking pleasure, respecting the moral law, seeking The Good all seem to end the same way: suggesting there is one form of ethics. These all seem to neglect the other person, though. Levinas provides an avenue out of such monism in his political thought. As will be discussed later, the collapsing of all ideas into “one thing,” or “the ethical” into the same as “the legal” or “the political” deprives ethics of its capability to destabilize totalized systems of power.

A solution to our problem comes from analyzing the way these two systems—the ethical and the political—fundamentally organize their thoughts. In this thesis, an examination of the different way of viewing ethics, one that does not presuppose a fundamental ontology, but rather posits ethics as our primary relationship, will be attempted. The subject’s place in the world is not defined by its examination of the objects in the world—from which it extrapolates desired

consequences or methods of thinking—but rather from understanding that its relationship to the world is one of duty to others. The others are a mystery—ones we cannot reduce to vessels for happiness—and a mystery that the subject must heed the cry of, or be in danger of losing its own subjectivity. The guide through these tours will be Emmanuel Levinas, a Lithuanian born French philosopher who has calls the foundations of Western ethics into question.

## LEVINAS

Despite typically being considered a “continental” philosopher, Emmanuel Levinas has gained prominence among many in the entire philosophical community. Not only has Levinas been able to illuminate some fundamental assumptions in Western ethical thought, but he has also been a prophetic voice to philosophers of law. Before his impact can be examined, it is necessary to understand this man in the history of philosophy. Indeed, there seems to be no way to separate the man from the philosophy.

Central to Levinas’s philosophy is the story of how he came to be a philosopher. Levinas was born in Lithuania in 1906. This set him in a prime position to watch the 20<sup>th</sup> century’s failure of ethical theory. The dialectic of moral sentimentalities took a turn for the worse during World War I, and humanity plunged into some of its darkest times in World War II. The actions of the allies’ enemies were not the only ones of moral concern to Levinas, but he watched as the allies exacted injustices, such as the Dresden fire-bombings and Hiroshima,

while ethical theories failed to inspire a strong admonishment of the growing evil, or in the saddest scenarios even gave their whole-hearted approval.

This is the century that in thirty years has known two world wars, the totalitarianism of right and left, Hitlerism and Stalinism, Hiroshima, the Gulag, and the genocides of Auschwitz and Cambodia. This is a century which is drawing to a close in the haunting memory of the return of everything signified by these barbaric names: suffering and evil are deliberately imposed, yet no reason sets limits to the exasperation of reason become political and detached from all ethics (Levinas, "Useless Suffering" 162).

The failures of ethics were not due to people's genuine desire to fulfill the moral law. Rather, it was due to the subtle shift from an ethical ontology to the ontology of sums up an individual with the placement of the Star of David on her overcoat. The starting point of the ethical system bears too much resemblance to the foundational thinking of the National Socialists. This is why Levinas thought a different foundation must be found that will eliminate the possibility for such a shift.

Levinas's studies took him from Lithuania to Russia, Germany and finally to France, where he studied the philosophy of many modern thinkers, among whom was Husserl. In 1928, he spent the year in Freiburg, Germany, and while there, he studied under Edmund Husserl and attended Martin Heidegger's first seminar as Husserl's successor at the school. Levinas thought he went to Freiburg for Husserl, but he came out of the other side of it on track to become a student of Heidegger. His enchantment ended three years later when Heidegger became committed to National Socialism; Levinas even abandoned his work on a

book he was writing about Heidegger's philosophy. It was at this moment where Levinas took a turn from Heideggerian philosophy and began to consider some of the very questions that will be considered later. In 1934, the kernels of his later philosophy began to be apparent in his article for the Catholic Journal

*Esprit*:

[...]it is not enough to follow certain journalists in distinguishing between Christian universalism and racist particularism: a logical contradiction cannot judge a concrete event. The meaning of a logical contradiction that opposes two forms of ideas only shows up fully if we go back to their source, to intuition, to the original decision that makes them possible (Levinas, "Reflections on the Philosophy of Hitlerism").

For Levinas, it was not enough that an individual align their thinking with the rational strictures illuminated by the sensible world. There must be something more because such moves lead to using others simply as an object in their moral reasoning. As long as I consider your ends, I need not consider *you*.

Levinas took a swipe at Heidegger in his essay "Is Ontology Fundamental?" written in 1951. At this point, it is necessary to describe a bit of Heidegger's philosophy. Heidegger was concerned with exposing a fundamental flaw in the way Western philosophy has described "being." While philosophers from Plato on have been described beings in terms of their properties, Heidegger was interested in the way which one could describe the pretexts for being itself. Rather than describe the facts of a being, philosophers ought to describe what allows being to appear. Heidegger's description of *Dasein* demonstrates his view of what being is fundamentally. *Dasein* is the being for whom being is a

question. It is a being that is thrown into a given world and must understand and examine the possibilities and means to make his own existence meaningful.

*Dasein* bravely understands its role in the world, the way it can use the objects surrounding it and can achieve fuller understanding in contemplation of its own death. For *Dasein*, though, others pose a problem. Others are objects with wills and sensibilities. They may try and make *Daesin* less apt to focus on his own being, or at the very least are merely other objects. In his typically cryptic way, Heidegger describes his fears as such,

The 'they' has its own ways in which to be. That tendency of being with which we have called 'distantiality' is grounded in the fact that being-with-one-another concerns itself as such with *averageness*, which is an existential characteristic of the 'they'. The 'they', in its being, essentially makes an issue of this. Thus the 'they' maintains itself factually in the averageness of that which belongs to it, of that which it regards as valid and that which it does not, and of that to which it grants success and that which it does not, and of that to which it grants success and that to which it denies it [...] This care of averageness reveals in turn an essential tendency of *Dasein* which we call the 'levelling down' of all possibilities of being. (qtd. In Wrathall 48)

This quote demonstrates that the other is a threat for Heidegger. It, to adjust his verb tense, "levels down" all possibilities of being. When I come into the philosophy department, I am expected to behave, dress, and look in a certain way. No one sets this rule in any concrete manner, but the organization as a whole extends certain expectations to me. The decision is made for me that I cannot do whatever I want. This is not necessarily a bad thing in a lot of circumstances, but when it is *Dasein's* responsibility to orient itself towards its own being, conceding a bit of the decision-making process can be a problem.

Others constitute a force that bends a being towards an orientation that is not decided by that being. The capacity to examine one's own place in the world is essentially relinquished to the crowd.

Initially, Heidegger's philosophy must have appealed to Levinas at the beginning of his philosophical career, but that appeal disappeared once Heidegger became a supporter of National Socialism. Levinas was still concerned with the fundamental relationship of beings in the world, but came to the conclusion that the relationship was not one of ontology, but one of ethics. This is how Levinas came to his big idea, which if anyone has heard of Levinas has heard it described as, "Ethics as first philosophy." His positioning of ethics first is not one that suggests that ethics is the king of philosophy, but rather that our fundamental relationship to understanding is ethical.

## THE PHILOSOPHY

Levinas's philosophy is not one of legislation. At its heart, his ethics is not about legislation, but is rather about an orientation to the world that guides behavior. Hilary Putnam describes a distinction between two types of philosophers: legislators, those concerned with detailed moral and political rules, and the "moral perfectionists" (Putnam). Putnam describes a moral perfectionist as such:

[A] philosopher is a 'perfectionist' because s/he always describes the commitment we ought to have in ways that seem impossibly demanding; but such a philosopher is also a realist, because s/he realizes that only by keeping an 'impossible' demand in view that once can strive for one's 'unattained but attainable self.' (Putnam 36).



His concern is less about forming a whole and coherent ethical system, but rather about cultivating openness towards acting ethically that can never be achieved. This openness compels the subject's actions and can never be satisfied. Legislation could come out of this compulsion, but only the inherent orientation, instantiated at the ethical encounter, could be considered ethical. What Levinas wants to do is to demonstrate a way of relating to others that is not reduced to mere comprehension. This will be examined further shortly, but perhaps it is becoming evident how his history has informed why he would want to employ this method. The reign of National Socialism found its justification in its capability to comprehend someone else—to place upon them a star or a triangle and sum up who they are in their totality. Against these summed up individuals, one can use an equation to find out what they need from them. But if relationships to another are ones that cannot possibly be comprehended—if individuals see their orientation towards each other as ones that cannot be summed up by stars and triangles—then perhaps individuals are in a position of responsibility to one another. If someone as brilliant as Heidegger could become a National Socialist, could our understanding of medicine, modernity and science protect us from the dangers that this wisdom brings? If Heidegger's philosophy could not protect him from his brashness, then it would be foolish to place too much trust in modernity's offerings. Levinas wanted a philosophy that did not require understanding the other, but rather one that found its philosophical heft in the infinity the other represents.

Relating this back to Heidegger's work, we can see how Levinas began to create his own philosophy. Recall that for Heidegger, the other was someone who kept me from focusing on my own being. They were someone who urged me to simply fall into the *status quo*, but they were ultimately understandable. As Levinas says in "Is Ontology Fundamental?"

That is to say, comprehension, in Heidegger, rejoins the great tradition of Western philosophy; to comprehend the particular being is already to place oneself beyond the particular. To comprehend is to be related to the particular that only exists through knowledge, which is always knowledge of the universal. (5)

While Heidegger and Western philosophy attempt to step outside of the context in which one exists, what we find in Levinas is something different. As Simon Critchley summarizes:

Unless our social interactions are underpinned by ethical relations to other persons, then the worst might happen, that is, the failure to acknowledge the humanity of the other. Such for Levinas, is what took place in the *Shoah* and in the countless other disasters of this century, where the other person becomes a faceless face in the crowd, someone whom the passer-by simply passes by, someone whose life or death is for me a matter of indifference. (Critchley, The Cambridge Companion to Levinas 13)

Understanding a relationship other than comprehension will be easier to do once we see what a relationship of comprehension looks like. The temptation of comprehension swarms around any encounter between two people. This method of comprehension can be done in at least two common ways. First of all, comprehension can be done based on the other's otherness. When I see someone that is different than me, an initial response is to try and figure that person out. This happens often when we describe someone through one-word

descriptors: “Don’t worry about him, he’s just a Kantian/Jew/Christian/Republican/Mormon.” These descriptors sum up someone into a tight package that can be then attributed to all their actions and needs. If A is a loner, then there is not much we can do to get him to come out with us. If B is a chronic liar, then everything she says will be completely second-guessed. Through these definitions, we no longer have to engage with the person, but we need only to define their actions in the terms we have already applied to them. A second type of comprehension can plague even our oldest relationships; comprehension can be done by an attempt to make someone “like me.” A danger lies in the idea that you and I share the same opinion on a matter. Seemingly, the more you and I share in common, the more I may begin to think of you as being “like me,” as someone that I understand. When I do this, I try and collapse your desires into mine. Your thinking is assumed to be similar to mine, as well. This type of comprehension, a comprehension by familiarity, is one that often becomes harder to resist as we get closer to another individual. This means that even the relationships we are most comfortable with face the danger of not being extended the proper due care, for I no longer need to ask what your dreams are if we are of the same mind. Levinas calls both methods of comprehension “totalization.” They are reductionist approaches to others that denude the other of a robust humanity and ascribe certain knowable characteristics to the other. These characteristics become the basis for interactions and moral consideration rather than the actual person to whom they belong.

What does it mean to have a relation that is something other than comprehension? Levinas says that we cannot unless it is *autrui*. *Autrui* is the French word for other that is often left untranslated. *Autrui* is something we want to comprehend—certainly any encounter leaves us with the desire to understand who, or why someone is—but “this relation overflows comprehension” (Levinas, “Is Ontology Fundamental?” 6). Simon Critchley nicely sums up what this means: “If the other person were reducible to the concept I have of him or her, then that would make the relation to the other a relation of knowledge or an epistemological feature [...] ethics is not reducible to epistemology, practical reason is not reducible to pure reason” (The Cambridge Companion to Levinas 11). The other is another person that is met through interactions. They are not something the subject figures out and manipulates, avoids, interacts with, teaches or helps, but they are people who call to the subject. The other provides a voice to which a subject must respond, if even to ignore the voice. This initial response to the other is the foundation of the subject’s identity.

To illustrate, imagine you lived in an apartment your whole life and never saw another person. You did not have T.V., or books, or anything that referred to an “other.” There are objects there that you know that are not you, but you have no reason to calculate anything morally from this. Imagine there is a knock at your door, and you open it for the first time. When you open the door, you are faced with someone else, and even greater than that, this person represents the infinity that lies outside your door that you cannot fully conceive. The finite world that you have known is now disrupted by the infinity presented to you in the

other. You now have someone in front of you that you must respond to. You are no longer the main power in the world. This places you in a position of responsibility that is uniquely dependent on the existence of the other. Whatever the other requests you are at the mercy of. You can accept or reject their question, but you cannot help but react to this concrete instance before you. Perhaps you would hope to eliminate this other, and so you kill him. This, you might think, will free you, but it does not. In fact, your murder of the other shows how fully the other has possessed you. Even your most violent action cannot deny his necessary effect on your life. The vulnerability of the other demonstrates his power over us. Murder could be described as our most powerful act, but even that cannot expunge the infinity that is represented by the other. So their vulnerability is their power. By being signifiers of the infinite, they dominate us. So we always respond, and always in response to an other.

This gets closer to the heart of why ethics is first philosophy for Levinas. It is because a subject is face-to-face with something that it cannot comprehend, and being in this position places us in a distinct disadvantage. The very appearance of someone else, with a will and voice, calls the subject's very own being into question, much like Heidegger suggested, but this voice also forces the subject to respond to something that is uniquely "not it." The voice of the other is an invocation that calls the subject into being, and he must respond. The "hello" of our neighbor snaps the individual into existence. He can decide to answer the call, or turn away. The vocation of the other is what defines him. If he did not respond to the voice, then he is no more than a contented cow on a

hill. The other is compelling because to respond is to become human. For Levinas, Western autonomy is an illusion. The way we understand ourselves is inherently heteronomous. Although there is an “I” reacting to the other, it is the other that elicits the response. We are free to act, but we are not free to choose whether the identity-creating encounter occurs. Because of this heteronomy, individuals face an asymmetry. I am subject to responding to your call. Anything I do is a response. Even to ignore your cry is to respond. The asymmetry comes into play because I cannot demand anything from you. There is no amount of foot stamping, berating, or wheedling that can evince a response without the other’s acquiescence. How does Levinas justify this strange way of thinking of others? And what does this mean for the individual? And how does it relate to ethics?

First of all, how do we come to this justification of the other? Levinas pulls it from a strange location: Descartes’s description of God in the Third Meditation. Descartes’s description of the idea of infinity, the idea that contains more than can be thought creates a “fissure” in rationality that allows for Descartes’s placement of God. Using the same reasoning, Levinas says that, seeing the other and wanting to comprehend him has a relation that overflows comprehension. “Not only because knowledge of the other (*autrui*) requires, outside of all curiosity, also sympathy or love, ways of being distinct from impassible contemplation, but because in our relation with the other, he does not affect us in terms of a concept. He is a being and counts as such” (Levinas, “Is Ontology Fundamental?” 6). In giving such a high role to the other, some

suggest that Levinas has posited others as being God. A more reasonable assumption is that there is just a substitution of reasoning. The same reason that Descartes suggests God exists suggests an incomprehensible infinity in the other.

What does the other require of us? Were we to do anything but respect the infinity of the other, we would be doing a grave injustice. Comprehension chooses what we will signify another as.

In this sense, it does not invoke these beings but only names them, thus accomplishing a violence, and a negation. A partial negation which is violence. This *partiality* is indicated by the fact that, without disappearing, those beings are in my power. Partial negation, which is violence, denies the independence of a being: it belongs to me. (Levinas, "Is Ontology Fundamental?" 9)

The temptation to comprehend someone is one that leads to violence. Ontology itself leads to no longer seeing beings as beings, but as objects. The response to this incomprehensible other is often to murder it, but this does not free us. Murder simply demonstrates more fully how bound we are to the other.

Levinas goes even further in describing our dependence on others. He takes a critical look at how Western philosophical work has attempted to filter all examinations through the I. In his essay "Transcendence and Height," he describes the ego as a "the melting pot" that transmutes any foreign idea into something comprehensible (11). The problem is that if one attempts to see all things through the knowing "I" first, she assimilates others into simple data points and knowledge. Ethics from this viewpoint are bound to shortchange the complexity of the other being for expediency's sake—to reduce encounters into epistemology and ontology. But what if all of this was not the correct grounds for

viewing our position? Do we lose our entire means of establishing any type of humanism because it leads to egoism? This is not the case. As Levinas says, “To contest that being is *for me*, not to contest that being is for the sake of man; is not to give up on humanism, it is not to separate the absolute and humanity. It is simply to contest that the humanity of man resides in the positing of an I. Man par excellence—the source of humanity—is perhaps the Other” (“Transcendence and Height” 14).

The power of the Other to call the subject’s autonomy into question is what imparts humanity on the subject. Without the call, there is nothing to answer or ignore. Levinas believes that ethical encounters are ones where the call of others is not ignored. The reason to answer the call is because of an infinite responsibility to the other. Because the other cannot be totalized, because he is beyond comprehension, he has a power over us. Because of the other’s position above the subject, the subject is bound to respond to his call. This response is in measure to their infinity, which is how Levinas comes to the conclusion that we are infinitely responsible to others. Anything besides a position of responsibility to the other is a totalizing move. It is a move that decides what their need is and whether it is worth being fulfilled. But receptivity is what can impart humanity. To hear the call of the individual, and to respond is to be human with someone. Rather than Heidegger’s approach, which requires fighting the other’s leveling effect, one must understand that without the Other, there is no I. Without a receptivity to the other, I cannot even begin to develop.



Many fear that Levinas has leveled a complaint against all other forms of philosophy that do not coincide with his method of thinking. This does not seem to be the case, though. Rather than destroying and tossing out all the previous works done, Levinas demonstrates something at the core of all of ethical discourse that is lacking, but it also provides what it suggests is lacking. For Levinas, the capacity to even begin these methods of discourse depends primarily on the openness and vulnerability that he has described. Before discourses on what ought to be done in a particular situation, it should first be recognized that the ability to decide what to do is tied directly with the ability to answer the call of the other. Without this basic trust and extension, all means of discourse would be impossible. For there is nothing I need from you if I am autonomous. For an applied ethic, it does not seem to be too difficult to imagine the constraints a utilitarian might put on their rights in the face of the other. When thinking of how to employ one's responsibility to the other, there does not seem to be a problem with Levinasian reflections that precede a Kantian decision.

Another unique feature that is derived from Levinas's thinking is that the infinite responsibility to the other lies solely with the subject. This responsibility cannot be demanded from the other because it cannot be exacted. It is something that must be cultivated in the subject. Levinas liked to describe this personal responsibility by quoting Alyosha Karamazov from Dostoevsky's *The Brothers Karamazov*. When Alyosha, the religious and penitent brother, is confronted by his agnostic brother Ivan about the variety of injustices that exist in

the world and their proof that God does not exist, Alyosha responds by saying, “Each of us is guilty before everyone for everyone, and I more than the others”(Levinas, Otherwise Than Being 146). The guilt that Ivan laid upon God was taken up by Alyosha. Rather than say that this guilt is evidence that God does not exist, Alyosha demonstrated that the responsibility is one that is personal and cannot be fulfilled. A worry comes out of this infinite responsibility that the individual will be eternally subject to the other. Infinite responsibility will translate into a hostage situation. For Levinas, this hostage situation is exactly what gives the individual subjectivity. The ego is never fully “up to us” and as such, the danger of being taken advantage of is never removed. For Levinas, to live is to be subject to destruction. Only then could an individual be blameless. Responsibility is not based on reciprocity. If anything, it is based on an incapability of reciprocity, which always compels the subject forward because he can never satisfy his responsibilities. Levinas was asked about this very subject during radio interviews with Philippe Nemo. When asked about the equal responsibility of others in the face of our gaze, Levinas replied, “Maybe so, but that’s *his* business” (Levinas, “Ethique et Infini: Dialogues avec Philippe Nemo”). While responsibility is infinite, it seems how the responsibility is acted out can vary, as the next chapter will examine.

This basic introduction should help demonstrate what can be derived from Levinas’s philosophy. To recapitulate, Levinas’s philosophy places an ethical relationship as the first encounter we have. This relationship is the foundation that allows all of our other interactions to occur. Each individual is called into

existence by his encounter with an other. This primal encounter is one that cannot be disregarded. Because of the vulnerability of the other, and the individual's impossibility of fully understanding the other, the subject is infinitely responsible to the other. How this responsibility translates into law and politics will encourage us to see how ethics can relate to a lived system.

## CHAPTER THREE

### LEVINAS WITH FLESH

A great deal of time has been spent explicating the fundamentals of Levinas's philosophy. Any good philosophy must be able to be readily available to explain its value in the world. Before supposing that Levinas provides a valuable lens to view the question of justice in the Kano example, time should be taken to sketch what a relationship of Levinas's in the world would look like, to demonstrate some of the dangers apparent in the fulfillment of infinite responsibility, and finally to see if there is any support for such claims of ethical relation in the world.

#### THE FACE AND THE LIMITS OF RESPONSIBILITY

Key to Levinas's philosophy is the idea of the face-to-face encounter. As discussed above this is where the call of the other is recognized. It would not be helpful if every encounter relied on starting anew from the initial relations between a subject and the other. The following example of a face-to-face encounter should provide evidence of what can be taken from one encounter to another. A friend relayed this story to me: he grew up in an abusive home. He never knew when his father might be upset by a minute infraction. Although his understanding of his father's short temper was rather robust, it was not until he saw his father face-to-face that he understood how his responsibility to his father was to be enacted. One day, his father was yelling about something, and in turn,

my friend argued back. This enraged his father more until his dad grabbed him and threw him on the floor and held him to the ground. My friend remembered how his father's face was red with rage, the blood vessels engorged below one of his eyes, and in that moment he realized how vulnerable his father was. That face, angry and antagonistic, represented an infinity that my friend could not fathom. He also recognized how frail his father was. He said that his father seemed more afraid than he was at that moment. The fear he sensed in his father is still with him today.

Those who make harsh demands, who wield their outward power with abandon seem far more vulnerable than those who have cultivated the quiet self-assurance of benevolence. What responsibility did my friend take from that encounter? His father had not beaten him into submission, but rather, he finally recognized that he had a power over his father—that his father was consumed by the rage he felt towards him—but that my friend was responsible for how he interacted with this vulnerability. Years later, when talking to his mother, she related those days back to my friend. She said that those days were difficult for the whole family. The father himself was the product of an abusive parent. Before my friend was ever conceived, his father was concerned that he would be the same kind of father that his dad was. He was terrified that he had become everything that he hated, and surely that final encounter, face-to-face, the air pregnant with the threat of violence, had been a turning point for the father, too. That moment restored the relationship between my friend and his father, and his father never hit him again. He was certain that by recognizing the weakness of

his more powerful father that he recognized his own weakness, and his responsibility to not exploit that weakness was absolutely central to the restoration. From that moment on, whatever his dad did, we would have no part in being a foil to his rage. He never excused his dad for the behavior; he simply understood that there was more to him than simply his rage.

It is reasonable to fear that one, accepting his responsibility to the other, could be exploited by the other. This is a reasonable concern because it is important to understand the limits of these responsibilities. This seems to be an equivocation on “responsibility” and “response.” Levinas says that the voice of the other does give the subject its subjectivity, but it does not prescribe what this responsibility looks like. At the very least, it is a proscription to not kill, as that is the ultimate totalizing move. As the previous encounter demonstrated, my friend did not decide to fight his father, but he also decided to not be a victim; rather he reoriented himself in relation to his father. He made no excuse to eliminate his father’s responsibility, but he knew that that was not an area where he could be directly involved. He had to only see his father as a person he could never fully understand, who was doing things neither could fully explain.

This scenario demonstrates how a Levinasian face-to-face encounter, an encounter where the infinite responsibility to the other as demonstrated by the other’s unknowability, the vulnerability of the other, and a moment of action which decides how the subject will be in the world, can carry important understanding between relationships. My friend said that that moment, more than any other has affected every other relationship he has. It is not always on

the forefront of his mind, but in moments of deliberation, or when he feels used, or abused, or cannot understand why others act the way they do, he understands that action does not require that he fully understand those things. In the same way that he saw the trace of what made his father do the things he did and understood that he could never fully comprehend such rage, he realizes that he can never fully understand the others he encounters. It is in reflecting on that vivid face-to-face encounter that he can understand these other face-to-face encounters. Where, *prima facie*, it would be quite easy to attribute the other's actions to some characteristic, or some unflattering *ad hominem*, he finds a new apprehension of his responsibility to others becomes apparent.

The ethical face-to-face encounter leads the subject to evaluation of his actions. In the ethical encounter, the judgment and intentions of the subject are analyzed in the face of the other. An historic example comes from the civil rights movement in the South. Undoubtedly, this was one of the darkest periods of American history. After the slaves had been freed, blacks still faced social systems created to demonstrate that they were not considered members of southern society. Even after federal legislation and Supreme Court rulings had ruled in the favor of the elimination of segregation and the unconstitutionality of polling laws, most schools remained segregated. In Mississippi in the late 1960s, only four percent of African Americans eligible to register to vote had done so (Lewis). Without at least one member of a face-to-face encounter between the white southerners and the African Americans ethically orienting herself to the other, a face-to-face encounter between an African-American and a white

southerner would not end well. What is the role of the African-American in the face of an other who will certainly not respect their own otherness? If responsibility meant merely submission, then the white southerner would only feel the need to reevaluate his interactions when he tired of attacking the African-American. Dr. Martin Luther King, Jr., demonstrated how radical the responsibility to the other truly is. In speaking to those who took part in the bus boycotts that followed Rosa Parks's refusal to move to the back of a bus after a long-day's work, Dr. King said:

If we are arrested every day [...] if we are exploited every day, if we are trampled over every day, don't ever let anyone pull you so low as to hate them. We must use the weapon of love. We must have compassion and understanding for those who hate us. We must realize so many people are taught to hate us that they are not totally responsible for their hate. But we stand in life at midnight, we are always on the threshold of a new dawn. (qtd. in Lewis 20)

This seems to be the quote of one who understands that our relations to one another define us. The white southerner is an other to whom the protestors were responsible, but the white southerner seems to not reciprocate the responsibility. In such instances, the responsibility is to act non-violently. If white southerners became objects of hate, it would not serve either party well. Indeed, it would mean that the struggle between competing "I"s would never cease. Dr. King's "weapon of love," is one that forces the other to reexamine his relation to the other. It is not by an exertion of brute power that non-violence works, rather it is the raw expression of vulnerability. The other can rage and fight and kill, but these things are powerless to erase the psychic stain of their irresponsibility towards the others in their life.



A responsibility to the other is not one that means the subject must *do* as the other wants. Rather it is a submission that does no violence to the other. In the cases of the father and the white southerner, the individual's choice to not do violence means that the other must reanalyze their position. Surely they can still decide to kill, but their murder, even if retributive, will be impossible to justify. This responsibility defines who the individual is, and it also forces the other to call into question his relation. The power of nonviolence is in its passivity. The responsibility to the other does not mean their power can demand what it wants to no end, but shows that through the individual's rejection of the other's demands, he can call into question the other's view of their orientation.

This view is not one that is directly explicated by Levinas, but that may be from his fear of his readers thinking he was systemizing the responsibility to the other. It does seem as though he may endorse this view of responsibility, though. Indeed, at the very least, the face-to-face encounter entreats the subject not to kill the other. In the face of a violent other, it seems that the only possible response that would not totalize the other would be one of nonviolent resistance. To engage in arguments of rights would be totalizing, and probably futile. It was only in laying one's life down for the violent other that the revolutionaries were able to make the white southerners reorient their thinking.

## THE SCIENCE OF MORALITY

Levinas depends a great deal on the power of a face-to-face encounter. It is quite literally in seeing the other's face, a representation of the infinite, that we

understand our relation to one another. This seems to be supported by neuroscience's examination of morality. Jonah Lehrer's book, *How We Decide*, discusses the reductionist activities that often underlie interactions. As discussed earlier, there is great difficulty in describing the responsibility to others as simply a set of maxims. As described in the book, psychopaths are often marked by a higher than average capacity for reasoning. They deftly move from premise to premise to conclusion in order to justify their misdeeds. What they lack is something deeply rooted in how humans interact—the capacity for emotion (Lehrer). Naturally, this is not a complete picture of how evil is promulgated, but it is one of the ways in which it can happen. In these instances, there is a malfunction in the amygdala, an area of the brain that normally creates emotional responses like fear, anxiety or revulsion. Without these central emotions, logic runs free and can justify some of the worst ends.

As a result, psychopaths never feel bad when they make other people feel bad. Aggression doesn't make them feel nervous. Terror isn't terrifying. (Brain-imaging studies have demonstrated that the human amygdala is activated when a person *thinks* about committing a "moral transgression.") [...] G.K. Chesterton was right: "The madman is not the man who has lost his reason. The madman is the man who has lost everything except his reason." (Lehrer 171)

Without the destabilizing power of emotions elicited by the other, rationality leads to madness.

In tests on psychopaths, they did not feel fear when they saw film footage of someone who was afraid. They had no capacity to feel with the person on the screen, and because of that, the other person was not seen as anything more than another object—something to be used in logical calculations. The emotional

response to the face of another person is something that cues the individual to the infinity that face represents. The face represents fear, hopes, and ends of their own that are separated from the viewing individual. Without a capacity to see others as more than simply objects, individuals are prone to violence.

This demonstrates the need for cultivating the sympathy and empathy that are central to ethical decision-making. Appealing to reason is not a satisfactory method of alleviating responsibility. Indeed, the other must be seen as an other, and our responsibility come from that. To imagine the other is simply an object in logical calculation is a prelude to a dangerous relationship.

This chapter demonstrates a few real life examples of how Levinas's philosophy might be of use. In the first instance, the boy's interaction with his father allowed him to understand his responsibilities in the face of an irresponsible father. By his own admission, this interaction became a paradigmatic case for the boy to understand future relations, which always beckoned back to the vulnerability hidden behind the visage of the other. Dr. Martin Luther King, Junior's call to nonviolence demonstrated the responsibility of an individual in the face of the other. Their responsibility was not one in which they obeyed their oppressors, but was one that called them to disobey in order that their oppressors' orientation toward them might be questioned. Finally, we looked at the importance of the emotional connection to the face of the other as demonstrated by neuroscience. Researchers are beginning to see that those classified as psychopaths often demonstrate a lack of emotional understanding, but a higher than average demonstration of logical capabilities. The impossibility

of recognizing the emotions of the face of the other leads to logical calculations that reduce others to mere objects for use in these calculations. These insights should be of aid as we see how Levinas's philosophy can help delineate the responsibilities of interpersonal relations.

## CHAPTER FOUR

### LEVINAS AND LAW

Levinas acts proactively against attempts to legislate his philosophy. Ethics is found in the “saying,” a deliberative act and disposition that occurs differently at each encounter. Levinas demonstrated his reticence towards writing down his philosophy in the beginning of *Totality and Infinity*, and the written text became one of Derrida’s main critiques of Levinas. Writing it down turned it into a dogma that used the language of Western philosophy and bound this dogma to the same critiques Levinas tried to address. Although this critique is still leveled against Levinas, his philosophy has worth for what this chapter tries to address. This chapter shows that Levinas’s philosophy can be useful in interrogating methods of justice and ethics. Even though the philosophy of Levinas is an anarchic force, it does not mean that all things must be in a constant state of destruction and resurrection. Rather, Levinas’s philosophy provides an interrogating voice at the moments of decision from which general principles can be built. This will especially be seen in relation to Levinasian thinking and the law.

#### LAW AS A SYSTEM OF ETHICS

Let us begin by supposing an analogy between law and a Western ethical system. Seemingly, our ethical systems are a means to come to ethical ends. They are the way that we analyze a situation and make a decision that will be

dubbed 'ethical' depending on the fidelity to the ethical strictures we have adopted. Similarly, our legal system is a set of laws, cases and precedents that, when appealed to, should lead to a legal end. If precedents are followed, and the law is exacted in accord with its proper use, then we will achieve our end, which should be justice. From our country's history it is evident our legal system doesn't always provide justice. In fact, sometimes the law is exploited and manipulated to serve the ends of the most powerful in the system. Those who are the most vulnerable are often at the mercy of a legal system that is beyond common knowledge and access. This critique could perhaps be leveled against a legal system. The one with the upper hand can make a decision and say what maxim he followed when he made a decision that led to the destruction of a race of people, or a drug company can say why their decision benefited more people than it hurt. In both systems, the systems themselves do not guarantee that their end will ultimately be just. In fact, an appeal to the very letter of the system would be a frightening indicator that there might be something to benefit the decider, rather than his feeling of infinite responsibility to the individuals in the ethical decision-making—a psychopathic indicator. When the law is seen merely as a deduction of principles without regard to the goals of justice or the law, injustice lay in wait. Considering the other in statutory legislation and judicial reasoning does not guarantee justice, but it could be an important check. In a similar way, when the law is reduced to mere principles and a monistic ideal of the Good that exists irrespective of other individuals, one could presume that injustice is not far behind. Each of these systems must be able to recognize and

adapt to critiques that are faced, not only from those who follow them, but from those who view the system from the outside as well.

Any obvious way that the law and ethics differ is based on what their structure is assumed to be. The legal understanding of the United States is developed through a variety of means: statutory law set forth by legislators and common law enacted through court decision. If the law were simply the exacting of principles that could be given an empirical corollary, and then computed with its outcome being “justice,” then there would be no need for judges. A simple computer program, far less complicated than a simple calculator, could be the means to decide all questions before the law. But this is not the case at all; judges must look at the fuzzy edges of the law and decide, based on public opinion, precedents and their own careful consideration, where justice lies in these situations. As Edward Levi says:

The basic pattern of legal reasoning is reasoning by example. It is reasoning from case to case. It is a three-step process described by the doctrine of precedent in which a proposition descriptive of the first case is made into a rule of law and then applied to a next similar situation. The steps are these: similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case. (2)

Previous cases and contexts are always considered in a particular situation. In essence, the particulars of a case mean that each ruling is something that is ruled on in a new way in light of previous decisions. “[...]it would be disturbing to find that the rules change from case to case and are remade with each case. Yet this change in the rules is the indispensable dynamic quality of law” (Levi 2). The flexibility inherent in law is essential to its operation. It is something that is

bumped up against continuously as individuals in a nation attempt to mete out the most just way to live together in community. This is not altogether different from an ethical system, though. We derive a system, spell out its sufficient causes and then test it. The dangers of far reaching utilitarian arguments towards individual rights demonstrate a weakness in the theory. A deontological system that ends with more fidelity to rationality than a needy neighbor might give the deontologist pause. The system is then re-analyzed in an attempt to account for anomalous situations, or show why they do not matter in the end. Both systems rely on new contexts for evaluating what has been assumed in the system. Levinas's orientation allows us to examine the roots of both our legal decisions and our ethical concerns. Its capability to disrupt both modes of thinking demonstrates its power in our moral thinking.

Let us take some time to look how our legal system interrelates with ethics. As we shall see, it is not simply a legislation of system of ethics, nor can it be. The realm of the legal stands across a gulf from ethics, but the two must dialogue. The difficulty is going to be in relating the two without one consuming the other. Tort law demonstrates how Levinasian ethics cannot be turned into law, but the ethical intuitions that Levinas demonstrates disrupts the normal process of evaluating tort cases because of its demand of individual responsibility for the other.

The law is a product of the way we view others, and how we commune with them. The various methods of law have different ways of representing the "others" in our life. The different branches of law demonstrate the possible views



that we can have towards others that the law can disentangle. Contract law establishes a means to enforce agreements between two individuals. At its core, we see the other individual as capable of harming us, so we need a third party enforcer. A contract's *quid pro quo* can only happen if we can fully believe that our agreement will be protected should the other decide to ignore our established relationship. The other, while trusted, is not *to be* trusted. Implicit in contract law is the idea that the other might harm us and might not do their duty if they were not forced to. The other is an unknowable mind that we fear will take advantage of us. The success of a fulfilled contract may mean gains for both parties involved, but the legal force of a contract seems to stem from the mutual need of protection rather than exhibition of the cooperation between the parties.

In a similar way, criminal law maintains a distrust toward the other. We live together in a society and attempt to coexist, but some decide to stand against the laws we have established. They must be punished in this instance. The other pushes against us and constrict our autonomy, and their encroachment must be deterred. Methods of punishment for criminal law range from a purely utilitarian point of view, i.e., punishment serves all of society better, to a point of view that retributive justice balances the injustice created by the criminal's transgression. A utilitarian perspective immediately considers the punishment of the individual to be dependent upon its ability to add to society. If I were convicted of a crime, then it would only be good to punish me to the extent that the good benefits to society balance the negative impacts. In this situation the individual can clearly be seen as a factor in an equation that is beyond his

control. While the individual's pain is considered, it does not have a special place over society. That pain is simply another variable in the utilitarian equation. A retributive view of society means that it is a duty to punish the criminal in some way. Fidelity to the established laws demands that he must pay in some way for his breach of proper modes of conduct. Society's duty in this is not to the criminal, or to society, but to the law itself. By definition, the transgressor's punishment establishes justice.

Constitutional law looks at the world in a different way. It is not merely a large scale contract because there is no external enforcer. The government itself cannot be the enforcer because it is subject to the very law that creates it. It is something more. In establishing our government, we begin our preamble by saying, "We, the People of the United States," and in doing so, we distill all our desires into the realm of the same. Our hopes and desires are the same. By our statement, we can see that you and I are co-definers of our experience. It is a method where my desires and your desires should coincide, and although it is done in good faith, it totalizes the country's desires. We decide together what we want to happen, and we ordain and establish it.

Contract, criminal and constitutional law are based on our duty to one another. These basic methods for establishing the law are all created from the totalizing moves that define the others by their similarity or their dissimilarity—by their desires similarity to mine, or their threat to my desires. Surely, we must establish a constitution, but this doesn't mean that we only operate in that framework. There is an area of the law that does move outside this realm of

totalization. It is established through the description of an individual's responsibility to those he is in proximity to. This is an interesting distinction because instead of describing the other, it describes a fundamental relationship. This area of law is the area of tort law.

'Tort,' comes to our language by the French word *tortus*, which means 'twisted.' This area of law focuses on civil wrongs not covered by contract law that allow an injured party to claim compensation. These laws cover civil areas such as libel, trespassing, nuisance, or defective products; however, the main area we will be focusing on is the area of negligence. As demonstrated above, justification for our contract laws and our constitutional laws can be easily demonstrated from appeals to our autonomy—in the case of contracts—or our common interest—in the realm of Constitutional law—but there is a great deal of law that is left unjustified. Why should we care about individuals in other countries when we are testing our drugs? Why should I even care about the well-being of my neighbor next door outside of our constitutional common interests? Tort law answers and maintains at its heart that individuals are subject to a certain due care toward one another. These laws establish that I am in some way responsible to my neighbor. I do not have the right to simply do as I please as long as I do not break some established contract or some implicit constitutional responsibility. I have a duty to my brother, and because of that he can make a claim against me should I not fulfill my duty. This claim is not due to anything besides my proximity to you and my capability to do otherwise.

Levinas's language has a great deal in common with the legal area of tort law. Not only does Levinas talk about a duty of care, but he also takes great pains to talk about morality having a great deal in common with the proximity of others. Cain's question to God, "Am I my brother's keeper?" is central to both Levinasian ethics and tort law. The themes of tort law echo the themes of Levinas: responsibility, a pre-original call, and a duty. In the same way that Levinas sees our individuality coming from our proximity to others, the tort lawyer sees our responsibilities as coming from our proximity to others. I am held accountable for what happens near me simply because I am there. In fact, proximity is a key issue in tort law.

Levinas described the responsibility to the other as being asymmetrical. In the same way, tort law is asymmetrical. It is not based on the promise of someone acting in the same way, but is rather based on my own response to the needs of another and my ability to act. Many of the ways that have been attempted to describe why someone is responsible for their negligence have come up short in one way or another. Some arguments are grounded in economic descriptions and others operate simply by definitions created in previous cases, but most have a difficulty explaining why negligence is even considered in liberal society. Liberal political thought suggests that we are free insofar as we do not impede the rights of others. This way of describing this situation seems peculiar because if my negligence does not overstep onto the rights of my neighbor, then there really is no need for accountability. Perhaps the questions of negligence should not even be entertained. Our autonomy need not

be burdened with the excess weight of caring for my neighbor. Ironically, though the tort of negligence seems to be anathema to our liberal political ideals, it is the most litigated area of the law and fodder for most of our daytime courtroom reality shows.

The responsibility at the heart of tort law seems to be a Levinasian ideal. For Levinas, our responsibility to the other is central to our very identity. Rather than responsibility being an addition to our normal autonomous interests, it is central to how we understand our existence in the world. We are not defined by our autonomy because that ideal of autonomy is largely an illusion. Our first position is one of radical heteronomy, where I am first responsible to the other.

How have torts been decided historically? Establishing when someone is due care is a complex legal area. For decades, the way of determining the veracity of a claim was based on the idea of proximity. This definition became difficult to parse, so the Hand formula was created. The Hand formula was concocted by Justice Learned Hand to describe whether someone should be held responsible for his negligence. In this case, a defendant can be considered negligent if and only if the cost of preventative measures (B) is less than the probability of harm (P) times the injury caused (I). So the arithmetic of our failure of responsibility to others can be summed up as:  $B < PI$ . This quaint totalization is certainly not fully sufficient because there is a great deal packed into calculating the P, I and B.

As the Hand formula demonstrates, a great deal of how we view torts is based simply on economics, but this would be unsatisfactory to many, including

Levinas. Such a crude totalization of our responsibility of care misses the point of our initial responsibility to the other. It is a mathematical imposition onto our failures. Seemingly, tort should be more than that. Levinas's philosophy has a great deal that it can add to this conversation.

For Levinas, our ethical relation is prior to all other interactions. As described earlier, a central tenet of Levinas's philosophy is that the *a priori* ethical relationship is what allows all other agreements, relationships, and ethical valuations to take hold. It seems as though tort functions in a similar way in the realm of the law. Tort demonstrates that there is an inherent responsibility to others. A tort illuminates a vulnerability that allows us to make a constitution or establish a contract. Recall that infinite responsibility as described by Levinas is not one that can be preemptively calculated. Similar to the way in which his ethics is about the face-to-face encounter, torts are about the very things in life that we cannot predict, but are rather due to our orientation towards responsibilities as they are placed before us. This relates to Levinas's description of the face, which cannot be totalized. The face stands in for the very futility of trying to describe someone wholly. This face, and our incapability of describing it wholly, is a representation of our impotence and the vulnerability of the other. This language, although inexact, seems to describe the situation in torts: our responsibility to the vulnerability and unpredictability of the other.

Levinas's writing on our responsibility to the other is not based upon their responsibility to us. He recognized the very problems that such an asymmetrical responsibility would entail. The vulnerability of the other holds us hostage.

Because our very identity is entwined with this vulnerability, we are responsible to the call of others because it defines who we are. As mentioned earlier, Levinas decentralizes the ego from being “inside” my head, and rather makes the ego a development of reacting to the other. As we answer, we are responsible to the other; we find our humanity. In ignoring the call, we ignore what makes us human. The whole of liberal thinking comes at the question of why we ought to give each other due care through a justification system that seems entirely economic—it is costly to do otherwise. Levinas, on the other hand, assumes this responsibility from the outset. Our own identity is derived from the calling of the other, and we are subject to others from the very outset. Without a calling, there is no called.

Levinas’s ideals of responsibility do differ from the responsibility inherent in tort law. Levinas’s view of responsibility is what establishes any further interaction. Without the initial face-to-face encounter, there can be no grounds for law or any communication. Levinas’s responsibility is an individual responsibility. I cannot speak for other’s responsibilities to me. These responsibilities resist legislation because they are personal and face-to-face. To legislate them is to decontextualize them. The call of the other never allows the subject to find peace, and certainly, the infinite responsibility is never satisfied. Tort law can pull intuitions from Levinas, but it cannot pull its full justification.

The duty of care is difficult to establish legally. Jurists face difficulties when deciding whether someone did not extend due care to the extent that was necessary. Desmond Manderson argues in his book *Levinas, Proximity and the*

*Soul of Law* that the justification for torts law can be found in Levinasian thinking. In the same way that the face-to-face encounter grounds all interrelations, tort law grounds all other forms of law. His book describes a case before the Australian High Court that should have demonstrated the primal level of the duty to care. In the case at hand, *Gala v. Preston*, a group of drunken young men stole a car and sped off to the Queensland Coast. Many hours later, the plaintiff in the case was sleeping in the back of the car while the defendant crashed the car and injured the plaintiff. In this case, the court ruled that the plaintiff could not sue the defendant for negligence because the joint criminal activity is what allowed the accident to take place. The ruling focused extensively on the fact that the youths had been engaging in illegal activities, and as such, they were not entitled to the due care that a tort needs to establish. The court decided that there is no way to establish the care that one boy was due from the other without referencing their criminal activity. In view of how we try and view responsibility in common parlance, this seems to be a troubling conclusion. If due care were a primal relation, then it should only be suspended through some willing agreement. Perhaps the court's justification will illuminate how this decision was reached.

American law has demonstrated previously in cases such as *Riggs v. Palmer* (1880) that a criminal may not benefit from his crime ("Can a Murderer Inherit?: *Riggs v. Palmer*"). In this case, a man's grandson had murdered him in order to gain his inheritance, and even though *Riggs v. Palmer* was referenced by the Australian high court, the bearing on this case seems to be tenuous at



best. Any allusion to similarities is difficult to establish. In *Riggs*, the plaintiff clearly broke the law and was trying to benefit from it. His illegality preempted his ability to make a claim resulting from it. In *Gala*, the illegality should not have preempted any claim to a tort, and any award from the judge would not have been a “benefit,” but would have reestablished what was misbalanced in the accident. The way that the court attempted to establish the right to tort was through some type of extra justification: due care is only due to you if you are obeying the law. Palmer did not get his inheritance because of his illegal activity, so Preston has no claim to his tort.

This does not seem to be a reasonable justification for depriving one of a tort. Due care to others is due care even if among criminals. If this were not the case, then it could be easy to cast off the constraints of due care simply by citing the other party’s immorality. Certainly, if Gala had been assigned as a getaway driver, then Preston would not have had a case because Gala would have been expected and encouraged to drive recklessly, but the central question was whether proximity and interrelated care could be upended hours later when they are sober and not being chased. Manderson does not see the need for such a suspension of due care, and I agree (Manderson). Our duty to responsibility cannot be so easily cast off. If tort is something extra that is added to our normal rights, then it faces a shaky justification. Indeed, the court could have derived many other means for denying a tort claim to the plaintiff: criminal activity itself could have suggested that due care was not necessary (the “there is no honor among thieves” justification). In this justification, rather than saying that illegality

eliminates claims to due care as a consequence of that illegality, the court could have said that the relationship established between the two was one where there was never any due care. This scalpel thin difference seems to provide better judgments between the two cases: in the case as presented Preston did not deserve a tort claim because he was a criminal, in suggested justification, joint illegality would have had an assumed suspension of due care.

Manderson has provided a way to allow Levinasian thought to erupt into the way tort law is considered. It would seem that he does move too far in saying that Levinasian tort law provides the basis for all other forms of law. In Levinas's face-to-face encounter, the responsibility of one for the other allows all the later interactions to be grounded. The assumption of due care provides the right orientation for normal life. Manderson's analogy to the law is insufficient. Tort law is one of the later forms of law to be derived. It certainly did not precede contract and criminal law. Rather than the due care from tort being a foundation, Manderson need not look any further for a justification of tort than Levinas's face-to-face encounter. Levinas's responsibilities cannot be established as law, but they are the foundations for the openness that allows the formation of a contract. So in the same way that Manderson has demonstrated that Levinas can inform tort law, he should not assume that a Levinasian account of tort law is the foundation for contracts, criminal and constitutional law. Rather, he should look for those areas to be informed by Levinas himself, rather than a Levinasian interpretation of tort.

Although Manderson has demonstrated a new way of viewing due care that provides a better justification for the tort of negligence, it does not mean that this justification will provide justice as an automatic logical output. As Levinas would surely agree, justice is not found in the end of some careful calculation, but it is a lived action in the face of the other. Let us see if Manderson's newer justification of the tort of negligence will be able to provide us with a satisfactory end to our concern in the Nigerian trovafloxacin case. If he cannot—which we shall soon see that legally it does not—then it seems that there must be a need for just individuals acting in a system, rather than a concrete and immutable foundation for the law.

In our case, the due care that is owed to the family was ignored completely. Levinasian responsibility to the other was obviously ignored, but justifying a tort claim may be difficult. Indeed it seems as though the troubles brought against the company by the families may have passed the Hand formula. Recall, the Hand formula helps decide economically when liability is due in a tort case. The cost of precaution (B) was less than the probability of harm (P) times the injuries accrued (I). The fact that the drug had not moved through the normal passage of clinical test and that follow-up tests were not completed demonstrates that the legal precautions themselves were ignored. From my novice analysis, it seems that a trial considered on its merits would mean the families are due a liability claim. The individuals in this case were used because the crisis was occurring in Nigeria. The drug company recognized this as an opportunity to do clinical trials and possibly help the children suffering from the sweeping plague in

the area. Once the consequences of Pfizer's actions were made evident, a case was brought against them. Unfortunately, the case was remanded back to the Nigerian courts because the American courts said that their court was not the correct forum to hear the complaint. So here, our system failed to provide a decision based on the merits of the case. The vulnerability of the individuals in the case was not enough to elicit the responsibility of the drug manufacturers. And even though this might have been a fairly clear cut-and-dry case in the area of tort and negligence, it was foiled before it could reach the jurists' ears. This demonstrates a deeper problem with our justice system than simply a justification of torts.

So perhaps we face a new question, and one that Levinas has already asked. Is concocting a new clever justification for a system of laws enough? Can we create a system more complete that will produce justice? Indeed the refinement of any system moves us closer and closer to the "more perfect Union" that was suggested in the Preamble of the United States Constitution. The system will never be perfect, but is a goal which compels our country. The problem here is a gap between the ethical and the political.

Our system of laws has not brought justice to the families in Kano yet. This is a problem inherent in both legal and ethical systems. Machinations of logic never consider the other as another, but they rather consider her as a variable in an equation. Suits and appeals were ignored in the Kano situation because of *forum non conviens*. Our laws that protect others from negligence do nothing to protect those others if the system itself provides a means of avoiding

responsibility. This is how we see that these systems as a whole have a flaw built into them. By defining an outcome as being just, or an outcome as being ethical we need not take into account all of our intuitions about what it means to live in communion with one another. Perhaps, justice is only found in interpersonal relations. When a just lawyer, out of a sense of responsibility, tries to seek justice for those in Kano who are hurt she embodies the responsibility that seems inherent in Levinas's philosophy. Though she may try and fail, if she is compelled from her sense of responsibility to the other, this is where justice can be found.

The openness to the call of the other must be central to the judge's character as well. *Forum non conveniens*, the method used to remand the case to Nigerian courts, is a common law doctrine that did not necessarily need applied. This is where Levinas could have made the most difference in this case. Pfizer's claim before the court said that justice would best be served in Nigeria rather than the States. There is no international law that demands the case be sent back to Nigeria; rather, it was an application of the reflection of the judge in this case. Had that reflection taken into consideration the responsibilities to the others, I would hope that the decision to remand the case would not have been accomplished. Rather, there was a miscarriage of justice on the individual judge's part.

On its face, Pfizer is responsible for its negligence in the Kano case, but the judge is responsible for allowing the machinations of Pfizer's legal team to forestall justice for the Nigerian families. Not only was Pfizer the proximate

causes to the illnesses and deformities of the children, but also they used a *post hoc* rationalization to describe why their actions were better for the people involved. The proximity of Pfizer to the individuals in Kano does not simply stop at the face-to-face encounter. The call of those in need in Kano, callously ignored (or at worst, heard and exploited) does not only reach to those who caused them harm. There is a responsibility that extends to each of us. Because we have heard of the plight of those that suffer, we must respond in some way to their suffering.

This brings us to a major objection to Levinas. In comparing his thinking to the openness inherent in tort law, we see how his ethics fights being normalized. Levinas calls us to an openness that cannot be made into a prescription for all behavior. Tort law operates via common law interpretations of statutes. Indeed, the whole of tort could be eliminated through an act of Congress, but Levinas's sense of responsibility would still remain. Similarly, while reflection on Kant's maxims or a Millian maximization of happiness would describe what we must do, Levinas leaves our responsibility open-ended and, even worse, impossible to fulfill because it is infinite. The Good is something that we cannot find at our armchair. To hear of the plight of the other, or more accurately, to see his face, is to call us to responsibility. The ruling of the judge provides justice in a negligence case, but there is no judge according to Levinas. The question, "what ought I to do?" does not get answered beforehand by Levinas; rather it depends on the encounter in which the question is asked.

While this is a reasonable objection, I do not find it compelling. If Levinas is rejected because he demands too much, or because the satisfaction of his philosophy is inherently impossible, then perhaps the truth the ethical philosopher seeks is one that can simply be grasped and then placed beside other trophies on a bookcase. If the good were graspable by a readily fulfilled duty, our compulsion to move toward the good could be seemingly satisfied. But this is not the case. If our very understanding of who we are is based upon our relation to others, then the ethic is never satisfied, and the good is never reached. This is why Levinas compares the infinite in the other to that in God. The other contains the trace of an infinite God that we can never fully totalize. This trace of God is a haunting memory of completeness that moves us. We attempt to subsume these traces of God, but to do so is impossible. In an openness and responsiveness to these traces of God in the other, we move toward but never reach the beyond trace of God.

When God revealed himself to Moses on Mt. Sinai, he could only allow Moses to see his backside as he passed by. The trace of God compelled Moses to carry out the law, to serve the other and to bring the law to others. That same backside revelation of God is demonstrated in the impossibility of knowing the other. In the world, though, our encounter with the other is represented in a fragile shell, the face of the other, with traces of the backside of passing God. In the same way that Moses was compelled to bring the law down to other people, we get responsibility from a similar revelation: glimpses of an infinity that we cannot fully grasp. For Moses, it was the infinite God; for everyone, it is the

infinite represented by the other. If our response to the infinite—kicking away our attempts at totalization—makes us ethical, then a system cannot fully encapsulate what it means to be ethical. Our utilization of any system can be simply a post-hoc rationalization that has little, or no relation, to any of the compulsions that we feel in the face of the other. Levinas compels us to be moral actors that are sensitive to our responsibility to others. Only then can we act in these systems morally.

## THE ETHICAL AND THE POLITICAL

As we have seen, there is an inherent difficulty in moving Levinasian intuitions about ideal proximity and care to a legal system's concrete representation of proximity and care. We never reach the point where we could fully legislate the moral disposition that Levinas seems to support. If we were legally culpable for every area of responsibility that Levinas suggests, we would never be justified in the eyes of the law. So there is a necessary gap here between the political and the ethical. Perhaps the space will benefit both parties, though. If Levinas's philosophy can be described as one of infinite responsibility, then perhaps ethical and legal moves can be devoid of metaphysical assumptions. Essentially, because we cannot use ethics as the groundwork for all the politics that might come out of it, the decisions that are made for the sake of politics can be derived for the answering of a single question or context in mind. Derrida makes this claim in his book *Adieu to Emmanuel Levinas*. The book was is one of the most critical books of Levinas, but also shows how



Levinas can be used for a multiplicity of further thinking. As Simon Critchley writes, Derrida demonstrates how “[...T]he very indeterminacy of the passage of ethics to politics entails that the taking of a political decision must be a response to the utter singularity of a particular and inexhaustible context” (Critchley, “Five Problems” 178). This seems to match up with political and legal reality. Bills, political solutions and cases are all based on very specific contexts. Certainly principles illuminate how to decide such cases, but it is clear that we do not take a singular ethic and deduce our morality and laws from that. The law itself houses within it the uncertainty and vulnerability that is found at the heart of Levinas’s description of infinite responsibility; but when it is put to use, it is often put into effect with a particular incident in mind. The case lawyer uses the context of a situation to ask for an answer to a particular problem. The judge decides this particular case. There can be no totalized system of laws because each decision is made for a specific context, and the decision reached becomes a context for future particular decisions. Because of this, there is always the danger of vulnerability, of destruction. The decision for the particular does not mean that the decision is arbitrary, though. If this were so, this political will would simply re-assert the primacy of an autonomous subject.

This would not coincide with Levinas’s view of the subject at all. We need a justification of politics in which ethics is non-foundational (because collapsing the law into what ethics demands would lead to the same problems associated with common ethical conceptions) yet the politic must be non-arbitrary (because an arbitrary law would posit an autonomous decider). This seems to be a tall

order, but it would be necessary if we would want to allow Levinas's thesis to have any effect on our law or politics. Although Levinas does not spend a great deal of time establishing this, Derrida does for us. Derrida establishes a politic from the basis of "*the other's decision in me*, a decision that is taken, but with regard to which I am passive" (Critchley, "Five Problems" 179). A political decision that is made with regards to the other maintains the passivity of the subject and the infinite responsibility that is central to Levinas's configuration of the subject; meanwhile, the view that it is the other's decision in me allows for the political decision to be non-arbitrary. Evidence of this exists in the names of many bills. For example, the Brady Bill is a political bill made in mind of a singular context that speaks to not only of the responsibility of one to another, but also speaks toward what everyone can gain from this responsibility.

This requires a different outlook than is typically found in philosophical thought. It is often hoped that decisions of ethics and politics can be made once-for-all, but Critchley suggests that each decision is necessarily different. Whenever I am faced with a decision, I am always responding to the infinite demand that is placed upon me by the other, and I am always responding in the context of the finite facts of the case. Each decision that I make is made in the context of a specific situation. This seems to be the case in the law, as demonstrated by the Levi quote above. Every case in the law is a new case. This would be expected from Levinas's point of view—since each context reveals a new and singular responsibility—but even if I subscribed to a deontological

notion of ethics, each decision I made would be in light of the situation I faced at that particular time.

What this method of thinking about our legal and political decisions essentially allows us to say is that each decision is born out of a specific context—one that does not hearken to a specific rigid moral system, but each decision is shaped by a rule that demands I take the other into consideration in the case. This method of describing the political seems to match up exactly with how legal rulings are made. Indeed, each time a case is before a judge, she is faced with this particular other, and her specific responsibilities to the people in the case. The principles that are drawn upon are not preformed *a priori* moral systems, but rather *a priori* relationships that take into account the legal reality before the bench. The decision of the judge is one that is derived from some universal criterion of engagement (perhaps a respect for precedent, or the even “originalism”) but the ruling is made based upon the singular context before her.

Because politics and ethics do not completely overlap, political invention can face each particular case anew. Freedom and creation of how the face-to-face encounter is to be disentangled in view of all the relationships before the judge means that the system is never complete, or whole. In a judge’s reflection upon the context of a case, she also can reflect on her principles that define duties to others. Levinas’s idea of infinite responsibility can engage with the contents of a legal system, without demanding that the politic be solely the ethical.

We should look at the role of the Kano litigation and Manderson's attempt at grounding tort one final time. The problem with Manderson's attempt at using Levinas to justify tort law is that it is incapable of incorporating the vast richness of Levinas's idea of responsibility. It devalues the responsibility that gives our individual identity to an enforceable call to care. Even if the connection between the two could be made, where our call to responsibility fully became the law, its satisfaction could never be found. The establishment of a legal need for care would be a totalizing force in itself. This is the very thing that Levinas would reject, but the spirit of what Manderson does is more illuminating than the final act. In using Levinas's formal approach to responsibility, he shows how the form can call into question the political content that has been established. Let us assume that legally Pfizer is completely justified in their movement for *forum non conveniens*. Assume the law, as presented, allows for Pfizer's remand to be accepted. Assume the particular decision, when taking into account the demands of the law, as established, renders the victims with justice being suspended till the Nigerian Courts decide. This is where the voice of ethics has its draw. This is where the spirit of Manderson's argument can find its most sympathetic ear. The demonstration of how the Levinasian principles of responsibility and hospitality can bring in a perspective that changes the law and the politics to see these particular cases in new ways. The ethical then has a voice in the political because the judge, lawyers and legislators all hear the ethical. The letter of the law, in not foreseeing a case like this, does not mean that the judge is without tools to exact justice. In deciding the particular case, in

the view of the responsibility to the other, she can do honor both to the call of the other, and the system which allowed the injustice to occur. Because *forum non conveniens* is common law, the judge need not remand if she sees that Pfizer's movements are attempting to forestall justice. Seeing the case on the merit, the judge should then decide that Pfizer is indeed liable. Her refusal to remand becomes precedent for future cases, and the common law now has the voice of the other embedded in it. *Forum non conveniens* is not ignored in this case, but its utilization is distilled for cases where the better forum genuinely is another nation's court. Future decisions, however, must still heed the voice in each case. There must always be an ethical actor because the system does not guarantee justice.

The power of ethics is not its capability to demand action, or its ability to establish itself as the rule of law. The Law is inherently incomplete and open for interpretation. The power of ethics, and especially Levinas's ethics, is that it disrupts the systems of established polity. Inasmuch as ontology has become the law, Levinas has shown that ontology can become a force for evil without the beckoning of a destabilizing ethic that answers to the call of others. In the same way, Levinas says that any politic can become tyranny if left to itself. Levinas's ethics provides us with tools to reevaluate the content of our polity and our laws, but it does not establish its own principles as the girders for the law.

To recapitulate how the ethical and the political must maintain separate realms. The political makes decision based upon specific situations that are informed by our ethics, but a politic that is supposed to be the summation an

ethical prescription is bound to fail ethically and politically. This allows our politics to give a particular answer to a problem, but stops us from deciding that this decision *is* morality. It is rather simply nourished by our morality. In this way, the ethical always provides an unending supply of nourishment to the countless particular encounters we face.

## CHAPTER FIVE

### CONCLUDING THOUGHTS

How can I pretend that you do not exist?  
It would be almost as impossible as you  
pretending that I do not exist.  
--Achak Deng (Eggers 535)

Let us recall what we have examined in this thesis. We began by describing a case study from Nigeria. During an outbreak of multiple pathogens there, Pfizer traveled to the state of Kano in Nigeria to test a new antibiotic. As a result, children died and many more faced deformities. Initially, Pfizer used these treatments to show the efficacy of their new antibiotic. Later, drug recalls occurred because the drug demonstrated high levels of hepatotoxicity. This led us to ask how our ethical systems lead us to make such unseemly judgments and even to justify them as being morally right. Perhaps our systems simply have the wrong foundations.

Next, we examined the philosophy of Emmanuel Levinas. It could be suggested that his philosophy was developed out of one of the most despicable case studies imaginable: the Holocaust. As an early disciple of Heidegger, he soon found himself questioning how someone he revered could buy into the National Socialist party and how Heidegger's philosophy could lead to such a view of others. Eventually we got to Levinas's "big idea," namely ethics as first philosophy. Our inability to comprehend the other leads us to be positioned in a way that leaves us incapable of being anything but responsible for others. Our

attempts to make others into an amalgamation and increase happiness for all (consequentialism) or our duties out of respect for the moral law (Kantianism) leave us without genuine concern for the other directly in front of us. Levinas's philosophy describes our initial orientation in the world as one where our identity is evoked by the voice of the other. We are nothing till we are called.

Back in Kano, we can see how the employees of Pfizer ignored the voice of the other, did not fulfill their duty to the voice of the other, totalized them, and committed great violence against them. Those heeding Levinas's philosophy would have seen their duty to suffer with those in Kano, offering succor through care, rather than utilizing this opportunity to advance business ends. Even if the Pfizer employees were not Levinasians, it could be hoped that the justice system might protect the families. This led us to an examination of how our legal system failed to bring justice to those who suffered at the hands of Pfizer. In this case, the system of justice allowed for justice to not be served. We saw that the system cannot provide the answer, but that the system requires just actors that can question how the system is created. This led to the extension of Levinas's ideas into the realm of torts law. Namely, how do we justify our responsibility towards others? Negligence Law describes why we are responsible to those around us and how our legal autonomy is not as far reaching as liberalism pretends. Our laws are structured in a way that affirms that we are inherently dependent on others for our identity. How we respond to others defines who we are as individuals, and likewise our societal considerations for the other define our society. Despite the Pfizer trial being dismissed out of court, we can see that



there is something at the heart of torts law that demonstrates our dependency on others.

How does our legal system relate overall to our system of ethics? Both cases have a set of precepts that attempt to reach a specific end (the Good, or the Just, or the Legal), but all these systems are incapable of firmly establishing justice, but require constant interrogation. Indeed, it seems as though ethics is a constant testing of how we describe the good. With each test, we find ways to eliminate unsavory faults in our system. So perhaps, in a practical sense, the idea that we can reach the Good, for all people, is an ideal. What we need is an effective start, from which we can attempt to interrogate the ways that we can live together. The philosophy of Emmanuel Levinas helps us to do that. We see from his philosophy that our initial orientation is ethical. The voice of others snaps us to ethical attention. From this we act and move. Levinas's ethics is less an ethic, but is more an ethic of ethics.

This thesis demonstrates that our legal system works through revision and reimagining of what justice means. It would be ludicrous so suggest that a decision was "just" only because it was the logical output of the legal system. Instead, the "just" is a trace we grasp at and search for. The law is malleable and requires our careful reflection and our ethical reimagining of what each case needs. This is exactly what the jurist does as he examines a case. In a speech to the Arab Judicial Forum in Bahrain in 2003, Justice Sandra Day O'Connor, whose reflective decisions often guided the Rehnquist court, said, "Presidents, ministers, and legislators at times rush to find convenient solutions to the

exigencies of the day. An independent judiciary is uniquely positioned to reflect on the impact of those solutions on rights and liberty, and must act to ensure that those values are not subverted” (Toobin 291). The liberties that are held dear by our society require the careful reflection. The fundamental way that we view others must be applied to our decisions. Sometimes we do not recognize our mistake until after fact, but the kernel remains. How we evaluate the problems with deontology and consequentialism often harkens back to a pre-ontological way of viewing our relation to others. In the same way a jurist reevaluates the laws by which we operate in light of our fundamental constitutional rights, Levinas allows us to reevaluate the ends and means of our ethical decision-making.

This has important parallels to another side of Levinas’s life. Besides his writing on ethics, he produced volumes of Talmudic interpretations. While Levinas may have tried to set his religious writings apart from his philosophical writings (he even had the two published at different publishing houses), traces of each can be found in the other. Levinas thought that all people, from the pagan to the priest, added something to our understanding of the Talmud. Evidenced in his other writings, Levinas took care to show how we only approach an understanding of God through our co-interrogation of the Book. The imperative for protection of the other comes from the need of all of us to hear the interrogation of all others. The loss of a voice is a loss of one who informs our understanding. In the law, we certainly see a similar questioning. We set up courts and appeals and establish justices all so we can interpret how the law is

supposed to be lived. The voice of the lawyer is a voice of one interrogating the law. We respond to the law in the same way that we respond to the other. In doing so we seek to fulfill our infinite responsibilities to the other. In ethics, I hope that this is equally evident. The moral law, whatever tradition it is derived from, is open to interrogation. The voice of the other is a voice that calls us to moral action and demands that we question the structure of our reasoning processes.

We have now heard the story of the families in Nigeria who have suffered from the actions of others. The activities of Pfizer, justified dubiously by those in power, demonstrate a neglect toward the call of the other. Now, in hearing, we face an ethical dilemma. We cannot not hear this story, now. We can only respond to their call—seeking justice by disentangling this responsibility in light of all the others we have heard, or ignoring it. Either choice defines us. This seems to be the heart of Levinas's thesis: the pre-text of all ethics is that our identity is tied to our actions in the face of this call. Justice for them can only be carried out by the way that we react.

Desmond Manderson describes in his book *Proximity, Levinas, and the Soul of Law* the idea that ethics is about scruples. Before it became idiomatic, a scruple was a small stone that was placed in one's shoe to disrupt their gait in order to remind the scruple bearer of something they did not want to forget (Manderson). To be a Levinasian is to be a scruple. Creation of a grand theory out of Levinas's philosophy is impossible, and I have a deep suspicion that it would look quite similar to Kant's *Groundworks*. There is still the need for a

scruple—something to disrupt the gait of a Kantian or a consequentialist to make them think about the very root of their endeavor. Levinas's voice is less the voice of Christ, who sums up the Tanakh succinctly, but is more the voice of John the Baptist in the desert, preparing ourselves for a meeting with an other who represents infinity. In all of this, Levinas's voice is one of preparation, one that readies us to respond to the voice we hear and the calls for which we should be prepared.

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