

Ethics and Law in the Thought of Emmanuel Levinas

John Paul Grosso
Masters in Philosophy
john.grosso@elf.mcgill.ca

Abstract

The following is an examination of Emmanuel Levinas' presentation of the question of how a legal system might be said to create justice for society. Levinas' conviction that legal systems must be continuously guided by the ethical obligation the self has for the other and society is confronted with the challenges posed by the instrumental logic that dominates legal structures. This tension between instrumental system building and phenomenological ethics will be examined in detail and presented as a creative rather than paralysing force. The character of the legal system Levinas would like to see erected is interpreted to be one that has the capacity to contain the ethical obligation to the other within a systematic structure that continually renews itself through a double gesture wherein it constantly and thoroughly addresses both the actions and obligations of people as well as its own capacity and criteria for decision.¹

The theme of the relationship of ethics and law in Levinas' thought merits attention and commentary since the exact nature of their re-

¹Abbreviations used in this paper: Derrida: FL = *Force de Loi* ; LR = *La Religion*. Levinas : TI = *Totalite et Infini* ; AE = *Autrement qu'être* ; SS = *Du Sacré au Saint*.

relationship is ambiguous. Tension between them is not only a tension between law as seen by Levinas and secular society, but also a tension between several of Levinas' own works. In fact, he encourages us to not see it as a tension at all. These difficulties arise for at least two reasons. Firstly, like Kierkegaard and other great thinkers before him who addressed what we might crudely call 'spiritual' matters, there is a great temptation to situate Levinas' thought squarely in either the 'religious' or 'secular' category in order to simplify the task of interpretation. This is probably due respectively to Levinas' use of terminology that originates in religious discourse² and his commitment to critical dialogue with the so-called 'secular' philosophical tradition. Both of these classifications end up missing the mark since Levinas' work is globally better characterized as an attempt to penetrate to a phenomenological ground that resists categorization. He wants to tap into the initial encounter the self has with the world, namely, the encounter with the other.

The second tension is about whether his project is a 'descriptive' or 'prescriptive' one.³ One of the goals of the present analysis will be to point out that this tension is a necessary one because it allows Levinas to account for justice in his thinking. The tension created by the responsibility the self has for society allows for the possibility of justice. His intent is not so much to oppose ethics to law or reduce one to the other, but rather to show how the two of them are in constant exchange.

Before directly examining the interplay of the law and ethics in Levinas' texts, let us first review some of the general ideas present

²For example, Levinas often examines the 'sacred' and the 'saintly' in a very unique sense. Like in **SS**, for example.

³If forced to simplify the matter and 'take sides', Levinas' project appears more descriptive than prescriptive, for the reason that as a phenomenologist he is interested in describing the way things appear rather than the way he thinks things ought to be. This particular formulation also highlights Levinas' distance from conventional ethics. His thought does not imply that 'one ought to be responsible', hence leaving open the possibility that one is not responsible or might choose to resist responsibility. His thesis is a much stronger one: '*You are always already responsible for the other*'.

in those texts that support the more specific topic of this paper. Otherness is the principal theme of Levinas' thought, and as such it is not surprising that his main critique of the philosophical tradition and socio-political structures is precisely that they have the tendency to reduce the original pluralistic nature of reality into a conceptual unity. In this regard Levinas is strongly influenced by Heideggerian 'leveling down' in the sense that totalizing conceptual structures are regarded as being not in contact with their foundations.

In 'levelling down' [*Einebnung*], the different modes in which Heidegger's Dasein fundamentally exists in its world are all painted with the same brush of averageness. The co-existence of these modes is over-emphasized while the fundamental distinctions between them are ignored (Heidegger, 165). In the general context of Heidegger's thought, the paradigmatic example he constantly refers to in reference to 'levelling down' is modern technological science which 'levels down' all experience with the world to a physical manipulation of matter, while forgetting the interpretive and discursive elements which equally underpin all engagement with the world. This is the aspect of 'levelling down' that most fascinates Levinas and motivates his treatment of and insistence on otherness, namely, his assertion that any attempt to thematize the uncanny and fundamental ethical relation we have phenomenologically prior to any thematic constructivism results in an elimination of the otherness that was set out to be examined in the first place. Rather than retaining a unique character, otherness becomes more akin to identity. In fact, resistance to thematization is precisely why Levinas asserts the ethical primacy of otherness in the first place. Both traditional philosophical and more modern technical-analytic approaches of dealing with ethical questions all end up failing for precisely the same reason: they insist on rendering entirely explicit that which by its very nature is not wholly accessible. For Levinas, this is a grave inadequacy in thought that must be addressed.

Levinas' primary philosophical concern is to preserve the unthematizable otherness of the other. Instead of turning otherness into a concept and normalizing it, Levinas analyses it in a manner

he believes preserves its otherness as such. For example, he sees such common courtesies as saying ‘excuse me’ to denote an acknowledgement of one’s implicit knowledge of obligation to the other. Behind all the arguments of his *oeuvre* is the insistence that otherness, if we are to recognize it as such, resists any kind of thematization.⁴

Since otherness is such an important and all-encompassing idea for Levinas, a complete exposition of all its implications is clearly beyond the scope of the present analysis. Let us instead identify the aspect of otherness that is of particular importance here, namely its primordial character that must always be taken into account regardless of whatever other developments Levinas makes in his thought or we make in this analysis. We will return to this crucial point later, but for the moment it suffices to point out that a crucial difference between what Levinas calls *l'éthique*⁵ and law is that the latter relies on enforcement⁶ in order to have an influence, whereas the former holds a permanent influence over all interpersonal and social relationships regardless of force or action.⁷

Yet, at just the moment at which we place our finger on an apparent difference between *l'éthique* and the law, their interdependency jumps forth. A complete separation between them is unjustified since, as Levinas insists in **TI**, the other addresses the self with a command, a kind of law. ‘Don’t kill me’, ‘Feed me’. This is a subtle but important distinction. The point is not to insist that the distinction between *l'éthique* and law is unfounded. It certainly has a great deal of merit and the current observation does not trump the previous one since this command of the other is not one that is necessarily enforced. Instead, before engaging in a more thorough analysis we

⁴This thought is behind all of Levinas’ work, but one could pay particular attention to **TI** ‘Séparation et Discours’ section 7. ‘Le face à face, relation irréductible’ pg. 78

⁵Note that *l'éthique* for Levinas doesn’t correspond to the conception of ethics as a set of rules that guide conduct.

⁶The principal theme of Derrida’s *Force de Loi*.

⁷“Autrui est le seul être que je peux vouloir tuer” (**TI** 216). The ‘vouloir’ is critical. It indicates that the elimination of the other and/or otherness can amount to nothing more than a wish.

should acknowledge that Levinas is placing the general notion and necessity of law in the primordial encounter with the other (Levinas, **TI**, 234). Laws and social structures are created not for some separate reason, but precisely because their imperative is already found in the encounter of the self with the other.

While the fundamental principles of common law⁸ largely take the form of prohibitions rather than obligations, *l'éthique* takes the form of the latter. Such distinctions, however useful to the end of illustrating differences between 'conventional' ethics and law are not airtight for Levinas since for him the possibility and necessity of both ethics and law have otherness as their foundation.

Another important difference between *l'éthique* and law centers around the issue of equality and substitution. A fundamental presupposition of secular law is that all humans have equal rights and obligations toward one another regardless of race, social standing or cultural differences. While avoiding the extreme interpretation that people ought to be treated unreciprocally, Levinas takes a different path that strongly critiques the notion of equality. He sees such thinking as being a totalizing one that would characterize individual humans as being part of a normalized category called 'humanity' (Levinas, **AE**, 74-75).

Despite the significant challenge thematization poses to the otherness of the other, Levinas at the same time acknowledges that otherness demands thematization. Throughout his *oeuvre* he insists on the irreducibility of the relation with the other, yet insists that in face of the sheer impossibility of serving all others we must resort to the creation of laws which we can at least try to adequate as much as possible toward such a task. Levinas' point here is not

⁸A bias toward common law is not intended. It is not picked arbitrarily, but rather because it is the dominant legal system in Canadian society and because the question of construction, that is, how to correctly formulate law so that it is guided by *l'éthique* is here regarded as a contemporary question. Doubtless that Levinas formulated his thought with regard to the social context he found himself in; which was sufficiently different from ours in 21st century Canada, but this is not the focus here

that the creation of categories of classification and social institutions will guarantee justice for the other, but rather the more nuanced view that such creations can at least make justice a conceivable goal rather than a limitless responsibility that is impossible to fathom.

The problem of justice emerges out of our encounter with the other. As a result of the encounter of the self with the other, the self recognizes that there are a seemingly limitless number of others to which it is also responsible. Levinas calls these others *le tiers*, and asserts that “*Le tiers me regarde dans les yeux d’autrui*” (Levinas, **TI**, 234). Language plays the decisive role in the expression of metaphysical desire and is instrumental to the encounter with the *tiers* since as a thematizing kind of discourse it opens up to us the realization that thematization serves others, not the self. This realization is the first encounter with *le tiers*. Hence, Levinas makes the claim in the same sentence that “le langage est justice” (ibid.)

While the question of what role justice plays in the legal system occurs in the case of every law and every ethical decision, there is one historical example that is particularly appropriate within the context of an examination of the thought of Emmanuel Levinas. As a survivor of a Nazi forced labour camp, Levinas was almost certainly granted a sum of money from the German government as compensation for the suffering he endured under National Socialism. While few would deny the necessity of such formal gestures when viewed from an instrumental perspective, it is unclear exactly how they can be said to bring justice to their recipients. There are those who would claim that these political initiatives have served ‘justice’ by recompense, hence concluding that the previously unjust state of things has been ‘justified’ or ‘made right’. However, those like Levinas who are critical of the possibility of ever completely satisfying our obligation to the other might stress that ‘justifying’ something can equally denote a pejorative sense, for example, one may ‘justify’ an action that is ethically wrong through persuasive trickery or flattery.

In **AE**, Levinas refers to the *Dit* and the *Dire*, an analysis that proves quite illuminating with regard to the aforementioned connection between language and justice. The *Dire* does exist chronologi-

cally prior to the *Dit*, but it would be incorrect to regard the latter as being the accomplishment or fulfillment of the former. Indeed, it is the *Dit* that makes the *Dire* recognizable. It is not an exaggeration to say that the *Dire* does not exist without the *Dit*. Just as the emergence of the *Dit* allows us to even begin to conceive of what a more fundamental meaning of the world might be, so does language allow us to be cognizant of the demands of the other and justice. This double gesture ensures a separation between the subject and the other that is not reconcilable (**AE** p.73)

The section of **TI** entitled ‘Autrui et les autres’ does not have the goal of using the relation with *autrui* or the *tiers* to determine what the rules of a possible social order might be. Levinas is not engaged in a Hegelian kind of project that attempts to develop or extract an absolute truth or method from metaphysical givens. His goal, at least in **TI**, is rather to demonstrate that the encounter with the *tiers* demands that a ‘universal’ social order be created to at least attempt to cope with what would otherwise be an unconceivable and insurmountable obligation and responsibility.

Reflection upon the meaning of the *tiers* makes this necessity clear. It would be impossible to fulfill our obligation to the *tiers* completely on the model of responsibility to the other. This would involve having some kind of communication with every single other — a task none of us would be arrogant enough to imagine we could assume. Since the self recognizes the imperative involved in this relation and has the capacity to create such a categorical system, it becomes a moral imperative to do so — even while knowing full well that such a creation can never completely do justice to the irreducibility of the relation with the other and the *tiers*.

In **AE**, more so than in **TI**, the role of the *tiers* is accented and explained. In addition to the critical observations about the non-empirical, linguistic appearance of the *tiers* we saw above, Levinas shows us how the encounter with the *tiers* permits the self to understand that its obligation is not a unilateral one with one particular other, but rather that it must serve all others with maximum dedication. Levinas accentuates this point by observing that without

the intrusion of the *tiers* into the relation with the other the relation would become a kind of ‘in-itself’ wherein the self would not be aware of its obligation to the innumerable others; as in *jouissance* (Levinas, **AE**, 93).

This reflection rests on the conclusion that all ethics involve, to varying degrees, the notion that in order to act justly one must be able to look beyond one’s own interests and think of the other. Remember that in **TI** *jouissance* was also a kind of relation with the world that closed the self off from others. The pleasure that one receives from eating delicious food, for example, blinds one’s awareness of obligation to the other. This obligation to the other appears as a kind of interruption of one’s pleasure in which the self is compelled to take the bread it relishes off its lips in order to offer it to the other who demands it of them. This interruption that allows the self to move from *jouissance* to responsibility is analogous to the way the arrival of children interrupts the erotic relation between lovers in the sense that it obliges them to look beyond their romantic relationship and consider the other who now cohabitates it. (Levinas, **TI**, 313)

Although there is a definite continuity between Levinas’ two main works, **AE** possesses the distinctive character that *l’éthique* becomes situated in sensuous subjectivity rather than in a relation with the other and their face (Peperzak, 182). In the latter work, probably as a result of re-examination of his previous writings, Levinas makes the very deliberate transition from asking ‘what’ *l’éthique* is to examining ‘who’ it is⁹ Levinas writes,

⁹Levinas was likely influenced by Heidegger’s *Being and Time* where it is continually insisted that Being is, in a certain sense, what Dasein *is* as Being-in-the-world [*in-der-Welt-Sein*], not an externality that it can represent to itself. See § 12 of *Being and Time* (Heidegger 78-86). What Levinas contributes to Heidegger’s idea is an even further radicalization. The self of Levinas does not discover *l’éthique* as a *phenomenon* in the same sense that *Dasein* relates to its world. Levinas’ subject has a much more intimate relationship called ‘proximity’ that lacks the methodological character Heidegger ascribes to phenomenology. See **AE** pages 35 and 55

À partir de la représentation se produit l'ordre de la justice modérant ou mesurant la **substitution** de moi à l'autre et restituant le soi au calcul. La justice exige la contemporanéité de la représentation. C'est ainsi que le prochain devient visible, et dé-visage, se présente, et qu'il y a aussi justice pour moi. Le Dire se fixe en Dit – s'écrit précisément, se fait livre, droit et science. (Levinas, **AE**, 202)

The section of **AE** this quote is taken from is essential for Levinas' thought about justice and contains one of the most precise formulations of what he thinks social institutions should be. In fact, the above quote demonstrates excellently what motivated Derrida in *Force de Loi*, to examine the consequences of Levinas' idea.

The argument that Derrida presents in that text can be summed up as being about calculation and decision. Derrida points out, as Levinas does with the above quote, that it is just that there be law. Without some body of social norms justice would be inconceivable. The difficulty however, is that though it is just that there be some kind of law due to the untenability of holding oneself completely responsible to all others, there is a fundamental contradiction — *the law is not just*. It relies on calculation and force to achieve its goals and as such does not reproduce the obligation to the other analogously. Behind legal calculation, an instrumental attempt at attaining justice, Derrida points out that there hides always the *decision* to calculate in the first place (Derrida, **FL** 50). Even if we allow that there is a certain justice in the decision to calculate we are at the same time admitting the lack of justice in the calculation itself. Hence no matter the extent to which we develop legal calculation, “... elle serait peut-être légale, [mais] elle ne serait pas juste ... car seule une décision est juste” (Derrida **FL** 53).

The two broad questions that will guide our reflections for the remainder of this analysis will be the following. A) Can or should the thought of Levinas function as a kind of guide for the creation of social institutions? B) What form should these institutions take?

What would their characteristics be? Would they resemble our current institutions and be a kind of continuation or development of them or would they be altogether different? This last question could also be approached in the following way: would their creation necessitate a revolution?

These questions are not easy ones, and before proceeding it is necessary to mention that Levinas himself does not give clear answers to them in his *oeuvre*, he provides only indications as to the manner in which we, as interpreters of his thought, ought to progress. Yet, if we are to take Levinas' project seriously, this lack of a clear answer is precisely what demands that we ask those questions and earnestly seek a solution.

With that consideration in mind let us now look at one of Levinas' Talmudic studies '*Judaïsme et Révolution*' from **SS**, which provides us with some very important indications about how to proceed. First, Levinas makes some introductory remarks in order to characterize the interpretive approach he will choose to take in this work. He reflects on whether his reading is "*Lecture du sens dans le texte ou du texte dans le sens?*" (Levinas, **SS**, 15). This phrase assures us right from the beginning of his essay that Levinas will address the questions that are of concern to our present investigation since the dynamic at work in this phrase is precisely the one we are dealing with here. We can in fact re-phrase Levinas' words here to accentuate this point. '*A tiers in the other or an other in the tiers?*'. '*A Dit in the Dire or a Dire in the Dit?*'. And finally, and perhaps most importantly for our purposes here, "*l'éthique in the law or law in l'éthique?*" Questions about the meaning of origins and interdependence pervade the work of Levinas.

This text is also of particular relevance to our purpose here, since the lines of Talmud of which it is an interpretation deal directly with the question of social justice. For Levinas, one of the most important aspects of this text is its fundamental orientation toward the other (Levinas **SS** 17). The characteristic feature of this orientation is that its logic is neither to create a universal category called 'humanity' in order to defend its rights, nor to engage in a project of the protection

of the rights of the ‘individual’ or the ‘self’. The first and only ethical orientation of this text is justice for the other.

Here we have a first clue as to what a just social order might be. It would clearly not be a ‘humanist’ or ‘individualist’ one in the sense of say, common law where the rights of the individual trump the demands of the other.¹⁰ Neither would a traditional Marxist order be sufficient since it groups all others under one universal category ‘humanity’ and subsequently subdivides them into the universal dichotomies of ‘proletariat’ and ‘bourgeoisie’. So far the only continuity that Levinas allows with an already existing set of social norms of recent western civilization is with the religious ; specifically the Jewish.

On the next page Levinas takes the care to assure us that this reflection is not a racist one (Levinas, **SS**, 18). His intention is not to limit what he characterizes as thoughts of Jewish origin as the sole possessions of a chosen people. Indeed, he sees all experience of injustice as referring to a point more original than religious or class divisions. He sees the power of this message as a ‘universal’ one not in a categorical sense, but rather in the sense that it is not limited to a particular class or culture and transcends any struggle for justice. In fact, it transcends the notion of struggle all together. It is “*une universalité plus haute que celle d’une classe exploitée*” (ibid.)

Another central point raised here is that any social institutions that we might create will not guarantee justice in a complete sense. Here the reflection is not strictly analogous to Derrida’s point about the injustice that resides in the heart of law. To put it most precisely, Levinas warns us that the creation of institutions does not fulfill or absolve us of ethical obligations. Our ethical obligations, obligations conceived of not in the sense of an abstract duty but rather as

¹⁰Manderson quotes a famous passage of common law in his article, ‘Proximity: ethics and the soul of law’ which illustrates this legal orientation [the article is available for download at Manderson’s website — http://www.law.mcgill.ca/faculty/bio_display-en.htm?printBio=972. The electronic version does not have page numbers. The quote I am here referring to can be found on the second page of section two ‘The argument: torts and ethics’]

the motivation to provide and act, remain our fundamental relation regardless of any instrumentality created by an institution. The institution should be regarded as a way for us to actualize and confirm this obligation rather than a means of automating it or removing it from conscience. “*Ce n’est pas par l’État et par les progrès politiques de l’humanité que sera satisfaite la personne – ce qui n’exclut, certes, pas l’État des conditions nécessaires de cette satisfaction*” (Levinas, **SS**, 20).

Here a comparison with the institution of marriage is helpful in illustrating a similar dynamic of interdependence between the interpersonal and the social. If one accepts that the motivation for entering into marriage with another person is love¹¹ the formalization of this relationship ought not to transform it into something qualitatively different but ought rather to guarantee the preservation of the relationship through a constant renewal wherein the institution allows the two people to remember why they chose to enter into it in the first place. The dynamic indicated here is analogous to the one between *Dire* and *Dit* in **(AE)** which is not to be described as a development or a tautology, but rather a reciprocal exchange.

In **SS** the social contract is not a defense and declaration of the rights and responsibilities of individuals. His argument is rather that, “*Il s’agit dans le contrat de limiter mes devoirs plutôt que de défendre mes droits.*” (Levinas, **SS**, 21). As has been pointed out by Manderson¹², this orientation that Levinas assigns to the social contract is in a particular way quite similar to the one we find in common law. Here Levinas is accenting the limiting function of social contracts with regard to the ethics they support. The lines of Talmud he is interpreting here tell of an employer who rushes to establish a contract with his workers regarding how much he ought to feed them in order to avoid entering a contract-less and hence infinite relation which he could never hope to adequately fulfill. The

¹¹ This statement is put in the conditional in order to account for the conception of marriage as an economic engagement.

¹² This is the global argument in *Proximity and the Ethics of Law* found in UNSW Law Journal, Volume 28(3). 2005.

conclusion that Levinas extracts from this story is that, in a sense which might at first seem contradictory, by putting restrictions on the infinite responsibility that one has for the other we create a sort of relationship wherein justice becomes a realizable hope rather than an abstract and unrealistic feeling. The contract prevents the self from either being crushed by their obligation in the sense that they can't even begin to conceive of how they could satisfy their infinite obligation to the other, or of ignoring their obligation by fleeing into the closed relationship of love.

Despite these clarifications about what the social order ought not to be and the general indications about why it must be created, Levinas still does not provide us with much positive indication about what this order should be, and perhaps even more importantly, how it ought to be created. The first clue, in this text, of how Levinas thinks this order might be established involves a rethinking of the concept of revolution which would not conceive of it as a violent overthrowing of the established order through action in the spirit of necessary struggle and sacrifice (Levinas, **SS**, 24).

What he sees as problematic with this way of conceiving revolution is that rather than serving the other, rather than making place for an agreement to a partial fulfillment of responsibility, it serves the very social structure itself. In his own words, it limits humanity to a certain "*déterminisme économique*" (ibid.). In a way reminiscent of the Husserlian-Heideggerian dynamic of forgetfulness of foundation in the sciences, Levinas is claiming that the challenge we face with regard to the creation of social institutions is that the more we focus on the development and perfection of the system itself, we run the danger of not accounting for the other the system was created for in the first place. We are faced with the difficult conclusion that the other guarantees that the system will never be completely effective since their demand upon it is infinite and can never be fully satisfied, and correspondingly, as the system becomes more developed and more efficient it has a tendency to serve and perfect its own function rather than ensure justice for the other.

To illustrate the difficulty with employing ethical principles as

guides to the creation of social structures, let us imagine the development of an elevator system. All social institutions must have clearly defined functional objectives in place in order to guide their design and activity. After all, is that not a very succinct description of what a legal system is: an ordered set of functional rules for society that are in principle inspired by ethical considerations. While an elevator is obviously not a legal system, we will make use of its functional objective, moving people from one floor to another as quickly and comfortably as possible, in order to illustrate how such instrumental thinking that pervades the legal system can lose sight of the ethical principles it is inspired by, hence begging the question of whether it can in fact be said to have been guided by those principles in the first place.

In an instrumental sense, the functional goal of moving people is analogous to the institutional goal of creating justice for the other by means of a legal system. In this narrow sense, justice is said to be achieved by facilitating the movement of people between floors. When seen in this way, the ability to move fifteen people ten floors upwards in one minute would be more ‘just’ than being limited to moving five people seven floors up in three minutes. As the system becomes more efficient and grows in functional capacity this model would conclude that justice is increased. The pretension of increasing justice becomes the motivation for streamlining the functioning *of the system*.

This is the difficulty that Levinas is expressing in his reflections about the relation of ethics and justice. The challenge we are faced with is that the instrumental manner in which a legal system functions has the tendency to preclude the possibility of ethical guidance. *The infinite responsibility Levinas claims we find ourselves faced with by the other and the tiers becomes displaced onto the social system itself in such a way that we become more faithful to the system than to the other it was originally meant to serve. That is to say, what was originally an infinite **responsibility** seeks to fulfill itself by becoming **mistranslated** into an infinite **efficiency**.*

So long as legal systems are conceived of instrumentally — that

is to say, so long as they can be regarded as functionally analogous to technological systems like elevators — they will lack the ability to incorporate or be guided by ethical principles. Let us return to the elevator system example in order to further illustrate this difficulty. To move people more quickly, i.e. more justly in an instrumental sense, the elevator must either move faster or accommodate more people. This development is perhaps marginally effective for promoting ‘justice’, but only in a very limited sense. We can imagine all sorts of counter-productive effects this endless efficiency could have. The faster the elevator moves the higher the occurrence of motion sickness among the passengers. The more people an elevator has to accommodate, the less comfortable it might be. Even if one could build a very fast-moving elevator that would not induce motion sickness and would be somehow large enough to accommodate traffic of people by means of doors on all its sides, it might still be the case that in order to increase efficiency we would be obliged to have the doors open and close at a rate so quick that it would make entering and exiting a futile effort in the first place.

This is precisely the sense in which the system comes to progressively serve itself as efficiency increases. So long as instrumentality conceived in a quantitative sense is the operational basis of the system, the importance of the qualitative ethical concerns that motivated the creation of such a system in the first place become forgotten. The system that was originally intended to serve human beings loses touch with its foundation and propagates itself. At this point, the further development of the system along purely instrumental lines becomes counterproductive. Since the doors are opening and closing so quickly that nobody actually ever enters the elevator there is no longer a need to have doors at all. *The inclusion of doors, the part of the system that allows people to enter and facilitates their transportation, ‘justice’, becomes more than superfluous. It becomes a hindrance to the system’s efficiency.*

This corruption of primary purpose takes place in all kinds of systematic developments be it urban transportation or telecommunication and has been the theme of numerous stories and films, the most

popular recent examples being undoubtedly *Terminator* and *The Matrix*. This is surely the kind of revolution that Levinas is warning us against when he writes, “*Il faut définir la révolution par son contenu, par les valeurs : il y a révolution là où on libère l’homme, c’est-à-dire là où on l’arrache au déterminisme économique.*” (Levinas, **SS**, 24).

At the end of *Force de Loi* Derrida does admit that calculation is necessary, but proposes that justice is found somewhere in a middle ground of the interdependence of morals and law (Derrida, **FL**, 62). The necessity of enforcement for the maintenance of law is the other main focus of Derrida’s text (Derrida, **FL**, 17). Beyond punishment, this enforcement of the law implies prevention as is evidenced by traffic patrol, crowd control etc. A careful reading of Levinas’ ideas about responsibility makes it clear that one is free to act in any way toward the other. One could kill the other. That is to say, one is free to *act* in that way, but regardless of actions the *decision* that underlies them is *never free*. Responsibility is not a matter of choice. One cannot decide whether they are responsible or not. One *is* that way and it does have an impact on your action, though it does not impact in the sense of forcing you to act a certain way.

The promise we made earlier of returning to a critical passage from **AE** will now be fulfilled. The following passage merits to be reproduced in its near completeness:

La justice est impossible sans que celui qui la rend se trouve lui-même dans la proximité. Sa fonction ne se limite pas à la “fonction du jugement”, à la subsomption de cas particuliers sous la règle générale. Le juge n’est pas extérieur au conflit, mais la loi est au sein de la proximité. La justice, la société, l’État et ses institutions — les échanges et le travail compris à partir de la proximité — cela signifie que rien ne se soustrait au contrôle de la responsabilité de l’un pour l’autre. Il est important de retrouver toutes ces formes à partir de la proximité où l’être, la totalité, l’État, la politique, les techniques,

le travail, sont à tout moment sur le point d'avoir leur centre de gravitation en eux-mêmes, de peser pour leur compte. [...] [Cela serait] la rationalité même de la raison ou son universalité, rationalité de la paix. (Levinas, **AE**, 202-203)

Notice that what is stressed here is judgment rather than enforcement, and the criterion for such an appropriate judgment is the ability of the judge to realize that they are in the same *relation éthique* as the accused. Not above or beyond the situation, but immediately involved and accountable for not only the consequences of their judgment of the accused but also the judgment of the judgment by the *tiers* and themselves. Impartiality, and the pretension of obtaining it, is here regarded as a deficiency in judgment rather than a strength. The clearest of all the indications that Levinas provides about what the legal system should be gravitate around the notion that the system should incorporate otherness into itself in order to ensure that it remembers that each case is a particular one and that the system itself obtains its legitimacy only through its capacity to make room for judgment rather than falling into dogmatism.

Post-Scriptum

As we have already pointed out, this is a task that Levinas sees as being of Jewish origin. The Jewishness of Levinas' ethics was recognized by none other than Derrida himself in *La Religion* (Derrida, **LR**, 240). He refers to a distinction between the sacredness of the Greco-Christian tradition and the saintliness of Jewish law. The exact nature of this relation is certainly the topic of another study, but would be of relevance to the current one in the sense that it would be able to flesh out the sense in which Levinas believes that this message of Jewish origin is universifiable. An examination of the role of the youth as receivers and interpreters of law in the second Talmudic study of *Du Sacré au Saint*, 'Jeunesse d'Israël', and their relation to the holy (*heilig*) Derrida refers to in *La Religion*

would be one way to proceed. For after all, are the youth not both a paradigm example of the other in all societies and the group whose participation in social institutions is the most problematic because of its immense energy and influence? One clear implication of Levinas' thought is that our social institutions will never accomplish justice until they can account for and adequately involve young as well as mature people.

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