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Levinas on the 'Origin' of Justice: Kant, Heidegger, and a Communal Structure of Difference

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LEVINAS ON THE 'ORIGIN' OF JUSTICE: KANT, HEIDEGGER, AND A COMMUNAL
STRUCTURE OF DIFFERENCE

by

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ABSTRACT

The way we understand community fundamentally structures the way we approach justice. In opposition to totalizing structures of justice founded upon an ontological conception of community, Emmanuel Levinas conceives the possibility of a political or social structure of difference. I argue that the conceptions of community presented by Kant and Heidegger, either as a harmonious, unified being *in common,* or as a common-identity disclosed beneath the ontological horizon of being-with, necessarily leads to violence. This violence is reflected in the forms of justice instantiated by these philosophies, which privilege the 'light' of the universal over the particularity of individuals in the face-to-face encounter, ultimately corrupting and nullifying one's anarchic moral responsibility for the Other.

The intent of this thesis is to argue that justice can only remain just if it is seen, not on the basis of a communal 'light' that absorbs, integrates, and incorporates the Other as an element of a system, but as founded on the anarchic responsibility of the one-for-the-Other. Justice, I will show, cannot be seen as an aim of a community—complete and self-sufficient—in achieving an end, but as a rupture, a disturbance, as a call made among a multitude of particular, unique Others by which ethics (the face-to-face) is fundamental.

DEDICATION

To my Mom, Dad, and Jake for their relentless love and support.

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Chapter 1: Introduction

Central to the philosophy of Emmanuel Levinas is the idea that there is nothing more primary or fundamental to human existence than ethics; that is, as he often states, "ethics is first philosophy." Ethics is therefore not a branch of philosophy founded or derived from a philosophical theory, but is rather the foundation and condition of possibility of philosophical thought, signification, and theoretical understanding. Thus, the term 'ethics' does not signify a concept, certain principles, institutions, or categories of thought or reason. Instead, he claims that ethics *is* the experience of the face-to-face encounter, which he terms 'proximity' or one's responsibility for the Other. Prior to autonomy or reason, intentionality or ontology, one has a responsibility for the Other that is "anachronously prior to any commitment," in that it is felt in the very approach by the Other (Levinas, *OB* 101).

Levinas' philosophy is thereby largely an attempt to ground the foundations of philosophical thought in ethics, and he does so by making sense of the priority of this responsibility for the Other. According to Levinas, the call for justice gives 'birth' to—it is the origin of—philosophy. In justice, it is necessary to know, to become conscious, to think rationally, to 'compare the incomparable'. However, Levinas argues that this concern for justice—the concern for peace, freedom, and well-being—cannot be based on a "light projected by universal knowledge on the world and human society" (Levinas, 1984, 164). In opposition to totalizing structures of thought that view the world and human existence ontologically—that absorbs, integrates, and incorporates the Other as an element of a predetermined structure of understanding—Levinas conceives of the possibility of a political or social structure of

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difference: of a multitude of particular, unique individuals in society with one another and with the need for justice. Justice, he argues, is therefore not founded upon ontology, but ethics.

As a social institution, justice requires the reciprocity of political law and the equality of individuals before the law. The order of justice maintains equality among individuals, upholds individual rights, and responds to wrongdoing. In the name of justice, individuals must thereby be thought of as a member of a genus: they are compared, judged, and condemned as an individual capable of being held morally responsible. However, this 'comparison of the incomparable' seems to contradict the priority, i.e., the asymmetry and inequality, of the ethical response, in which Levinas states—as responsible for the other—the subject is divested of all that can be common between the self and the Other. In other words, the work of justice seems to contradict the uniqueness of Other as an exteriority which absolves itself from membership in any common genus. I argue that justice, as that which thematizes and upholds ethical responsibility in the communal relation, is far different than the predominant conception of justice as seen in western philosophical thought. Justice does not develop on the basis of one person being alongside another in an ontological closeness, but is rather founded on proximity, i.e., the ethical relation.

In this thesis, I argue that the way we understand community fundamentally structures the way we approach justice. In other words, I will show how community, as conceived of as an ontological area, is one that leads to violence and corrupts and nullifies one's responsibility for the Other. Both Immanuel Kant and Martin Heidegger conceptualize community on the basis of ontology, and the violence inherent in perceiving community as an ontological area is reflected in the forms of justice instantiated by their philosophies.

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After giving a brief overview of the philosophy of Emmanuel Levinas, I will outline Kant's philosophical conception of justice as one that privileges an impersonal relation to a universal, non-human order over the particularity of the Other. In doing so, community is seen as "a people" of a common genus, i.e., an ontological category that privileges the universal over multiplicity and difference. In doing so, Kant fails to see the 'face' of the Other as the ethical obligation from which justice seeks to address and confront, and instead derives its origin and authority on the basis of the universality of autonomy; we will see that this failure to respond to the heteronomy of the ethical command can be clearly seen in Kant's advocacy of the principle of retribution.

Justice, for Kant, represents a reciprocity which harmonizes and unifies two separate freedoms, and compares, judges and condemns individuals on the basis of this freedom (as members of the same genus—rational and autonomous). I will show that Kant's 'philosophy of right,' is one that absorbs the individual into a political totality, congealing and integrating both "me and the neighbor into a 'we'. Justice, as derived from a conception of community as a harmonious, unified, being in common—as in the Realm of Ends—is founded on a relation of tyranny; rather, I will argue that the sense of universality that grounds justice cannot be structured according to principles professed in the name of the human through the spontaneity of the thinking subject, but according to the uniqueness of faces—as founded upon proximity—and a "collectivity that is not a community…the face-to-face without intermediary" (Levinas, *TO* 93-4). Justice is not the aim of a community—complete and self-sufficient—in achieving an end, but a rupture, a disturbance, a call made through an ethical relation to a multitude of particular, unique Others by which the ethical relation *calls* for justice.

In the third chapter, I will argue that community as conceived beneath the ontological horizon of being-with in Heidegger's philosophy, is also one that privileges the 'truth' disclosed on the basis of the ontological structure of the communal relation over the particularity of individuals; in doing so, he leaves us with a sense of justice that perceives the Other as a threat to communal identity or as a difference that must be surmounted or mastered. Justice is seen, once again, as founded upon the ontological disclosure of the communal relation—as a universal 'light' projected on human society and ethical responsibility—which ultimately leads to a form of justice that seeks harmony and equilibrium through violence. By arguing that justice is straightaway a system of thought founded on proximity, rather than founded upon the ontological disclosure of the communal relation, we will see that justice can only remain just if it is structured on the basis of the anarchic responsibility of the one-for-the-Other. That is, truth presupposes justice: the intelligibility of a system of justice lies in a man with a proper vocation; the call to create an ethical order that can be thematized and universalized is not one that rests on ontology, but in relation to the third: the society of the multitude with myriad faces and the possibility of a political structure of difference.

Justice, the reciprocity of law, the protection of rights, the thematization of moral responsibility, and the response to injustice, cannot be seen as a way to instantiate or protect the harmonious fellowship among a unity of a people. Nor can justice be seen as a derivation on the value of spontaneity—as that which ensures the exercise of spontaneity by reconciling an individual's freedom with the freedom of Others (Levinas, *TI* 83). An order of justice based on autonomy, reciprocity, or the 'truth' disclosed on the basis of an ontological conception of community fails to recognize the exigency of moral responsibility.

In the final chapter of my thesis, I argue that justice—the concern for peace, freedom and well-being—can only remain just if it is seen, not on the basis of a communal 'light' that absorbs, integrates, and incorporates the Other as an element into the system, but as founded on the anarchic responsibility of the one-for-the-Other. I will discuss the implications that Levinas' conception will have on the way we approach and understand justice—in particular, I will show that justice is not that which seeks to restore the sense of an archaic or original bond between the I and thou, between victim and offender; it is not that which seeks harmony or unification among individuals within an ontological community. Instead, justice is that which seeks to transform the effects that wrongdoing had on the past by purifying its effects, by addressing suffering, and supporting the victim as well as the offender. It is not a principle of justice—a legal structure that seeks to satisfy universal principles—that we should strive to promote; justice, as derived from the value of spontaneity, whether on the basis of autonomy or the existential freedom of the *das Volk,* is one where 'the stranger is assimilated' underneath a totality from which everything is justified and understood. Instead, justice as a response must always 'anticipate a justice which is more just'—a better justice that can better reduce suffering. It must correspond to "the ceaseless deep remorse of justice: a legislation always unfinished, always resumed, a legislation open to the better" (Levinas, *RB* 195).

Introduction to Levinas Philosophy

According to Levinas, the content and force of moral responsibility—its normativity—does not rest on the "subjective condition," where the autonomous subject assumes, consents to,

or commits to act under certain moral rules or principles. Levinas states that moral responsibility (ethics) is anarchic: without principle and without origin. Prior to the will (autonomy), reason, or any principle upon which an ethics would rest or be disclosed, one is responsible for the Other. Ethics is anarchic, Levinas argues, because proximity, the face-to-face encounter, is felt immediately as a responsibility for the Other. He states that the normative force of moral obligation lies in, or is commanded by, the very 'face' of the Other person. The ethical responsibility commanded by the face is not experienced, or disclosed through the relation— proximity does not represent the potential to experience a moral demand, nor is ethics derived from the face-to-face relation. Ethics is this relation. "Responsibility arises as if *elicited,* before we begin to think about it, by the approach of the Other person"—by the fact that the Other always already approaches me as a *respons*ible subject (Stanford, "Levinas").

The face of the Other does not appear as a phenomenon disclosed on the basis of the horizons of intentionality or as a moment of being-in-the-world. Levinas argues that the face of the Other affects the subject as an "invocation not preceded by comprehension" (Levinas 1951, 7). The face of the Other does not *appear* as an image or form (it is not that which has eyes, a nose, a mouth, etc.); rather, it is a non-phenomenon, meaning it cannot be experienced or disclosed to thought. Rather than appearing, it expresses; it does not indicate an ethics, but expresses an ethical invocation, an imperative, a calling forth or a calling to respond (Levinas 1953, 21). The Other's suffering is not an empathically comprehended as suffering, but an exposure which is an expression, which is language. Levinas, in describing the face, states that it expresses a vulnerability, suffering, defenselessness, a being-faced-towards-death. The language is extreme, but it signifies that the face of the Other moves me, requires me, and makes a demand

on me that I can never quite satisfy. The demand is felt as the "impossibility of approaching the Other without speaking to him" (Levinas 1951, 7).

In approaching the Other, the face makes a demand—not to leave it alone: to which one responds "here I am". Levinas states, "to respond 'here I am' is already the encounter with the face" (Levinas, *RB* 127). That is, elected to respond, to responsibility, the subject is *subject*ed; "the word *I* means *here I am*, answering for everything and for everyone" (Levinas, *OB* 114). It is only in the subject's election as unique, challenged as irreplaceable, that she feels the impossibility of slipping away from her subjectivity or individuality. One's personhood therefore does not rest on his or her freedom or belonging to a certain genus (as having particular traits or characteristics). The "I" is conceived as a unique individual only when she is signaled out by the Other in this primordial 'election'.

In this sense, it is not the Other's position as Other-than-me that turns the subject's pre-reflective gaze back onto her own being. The subject is *identified* prior to the for-itself (a vision of oneself by oneself): to be "I" is to be for-the-Other, responsible. The demand made on the subject by the Other is thereby asymmetrical and non-reciprocal. "Here I am" responsible without having any right to claim a responsibility in return. In other words, the subject is passively accused, prior to her freedom to commit or actively choose to respond, she is anarchically responsible for the Other (Levinas, *PW* 80).

The alterity, or otherness of the Other is therefore not intelligible through the experience or disclosure of her difference. She is not experienced as an alter-ego "like me," and her difference cannot be comprehended or posited relative to one's own subjectivity. Without any specific Other properties or qualities, her Other-ness can only be expressed as a disturbance or an

exteriority, absolved from all essence, genus, or resemblance. The face-to-face relation does not

start with a subject, situated in the midst of a world disclosed ontologically, but affects the

subject unbeknownst to itself (Levinas, *OB* 76). The face affects one as a non-phenomenon; it

resists its absorption or disclosure in the experience of the world (75).

However, Levinas argues that there is always a 'simultaneous and inseparable'

responsibility for the 'third'—the other neighbor. He states,

> But I don't live in a world in which there is but one single 'first comer'; there is always a
> third party in the world: he or she is also my other, my neighbor. Hence, it is important
> for me to know which of the two takes precedence…Must not human beings, who are
> incomparable, be compared?...here is the birth of the theoretical; here is the birth of the
> concern for justice, which is the basis of the theoretical (Levinas, *RB* 165-6)

The other is always the "brother of all other men," and therefore, responsibility must be weighed

in terms of this communal relation (Levinas, *OB* 158). That is, one must judge, know, and ask

oneself "what about…?" What about my responsibility for the third, their responsibility for each

other—what about truth, reason, justice? In the face of the third, there is a need for reciprocity

and the equality of individuals before the moral law. That is, the third interrupts the asymmetric

responsible for the Other that, before, only went in one direction. Levinas argues that this

interruption gives rise to the call for justice; the need for justice gives "birth"—it is the origin—

of the first question. It gives rise to reason, truth, and philosophy; in justice, it is necessary to

know, to become conscious, to think rationality, to 'compare the incomparable.' The call for

justice is therefore not founded upon ontology, but ethics—a rational response to moral

responsibility in relation to the third, the other Other that I am also responsible for. In the

following chapters, I am going to argue that the way we understand human sociality (this

presence of the third) fundamentally restructures the way we approach justice; justice, as a social

order conceived on the basis of an ontological conception of sociality—whether as being in-common or as common identity—necessarily leads to violence. Instead, justice must be seen as a response to the disturbance of the third, which is a relation that is fundamentally ethical in nature.

Chapter 2: Levinas on Kant's Social and Judicial Philosophy

Autonomy, the philosophy which aims to ensure the freedom, or the identity, of beings, presupposes that freedom is sure of its right, is justified without recourse to anything further, is complacent in itself, like Narcissus. (Levinas 1998: 49)

Levinas' ethics fundamentally opposes that of Kant's, whom Levinas states reduces one's responsibility for the Other, a command made by that Other, to an impersonal relation to a universal order. That is, in Kant's ethics, the "heteronomy of a command is in reality but an autonomy" (Levinas 1953, 15). The moral obligation felt in the face of the Other is reduced to an inwardness—to a moral responsibility whose origin lies in the autonomous (self-legislating) subject. For Kant, the origin and authority of justice is derived on the basis of this autonomy as well. That is, rational and autonomous individuals require a political structure where their rights will be protected by the State. Justice is thereby that which harmonizes or unifies two separate freedoms, and compares, judges, and condemns individuals on the basis of this freedom (as members of the same genus—rational and autonomous). I argue that Justice, as based a non-human universal order, ultimately nullifies ones responsibility for the Other, and this can be clearly seen in Kant's advocacy of principle of retribution.

Kant's Moral and Social Philosophy

In the *Foundations of the Metaphysics of Morals,* Kant derives the foundational principles of a metaphysics of morals, i.e., the nature and structure of the moral law, upon what he calls the "categorical imperative." The categorical imperative, he argues, is the supreme principle of practical reason. It takes on different formulations, but the first of which is "act only in accordance with the maxim through which you can at the same time will that it become a

universal law" (G 4:421). From this, Kant argues that moral law can never be based on material, i.e., empirical observations, but is derived formally with regard to a priori, universal and necessary laws of reason.

The categorical imperative is derived from the theory set out in the *Critique of Pure Reason.* Here, Kant argues that humans have an *a priori* capacity to represent the world as law-governed. That is, the way we experience the phenomenal world—the way objects appear to us—is structured by an *a priori* feature of the human mind. Kant calls these *a priori* organizing principles of the mind the categories, or the pure concepts, of understanding (Kant, *CPR* 91–116). What is referred to as the 'Copernican revolution' in philosophy, this idea reformulates the way we understand our experience of phenomena. Rather than human cognition conforming to objects in the world, "objects must conform to our cognition" (Kant, *CPR* xvi). Sense data can only appear through the mind that structures it according to the categories of human understanding; thereby, objects no longer have qualities independent of our experience of them. This means that we no longer just *know* objects in the world by how they appear to our senses; rather, entities are what they are through the way they are comprehended through our cognitive faculties. The phenomenal world is therefore mind dependent: "all appearances are not in themselves *things*; they are nothing but representations and cannot exist outside our mind" (Kant, *CPR,* 2:6). We therefore "do not find the order of (phenomenal) nature; we make it" (Braver, *TW* 35).

Pure apperception is thereby *original*; it depends on the self-conscious subject that categorizes the world of phenomena. Kant states that the self-conscious subject is the pure, original source and condition of experience, and is therefore necessarily the foundation of the

unity of experience; that is, for Kant, there is no such thing as passive observation or knowledge; the "I" always already synthesizes and unifies the experience of empirical phenomena. Knowledge and understanding are therefore, "nothing but the faculty of combining a priori, and of bringing the manifold of given representations under the unity of apperception" (Kant, *CPR* 2:16). The self-conscious subject organizes and synthesizes phenomena while "generating the representation 'I think,'" in which being conscious of external phenomena is reduced to what is in the subject: the spontaneity of comprehension is the 'light' by which we grasp and understand phenomena (2:16).

According to Kant, this principle of apperception—that which performs the synthesis of recognition—makes knowledge and understanding possible:

> For without such combination nothing can be thought or known, since the given representations would not have in common the act of apperception 'I think,' and so could not be apprehended together in knowledge. Understanding is…the faculty of knowledge (Kant, *CPR,* 2:17).

It is only in the "I's" synthesis and unification of representation through the categories of understanding that knowledge and understanding is possible.

> Consequently it is the unity of consciousness that alone constitutes the relation of representations to an object, and therefore their objective validity and the fact that they are modes of knowledge; and upon it therefore rests the very possibility of the understanding (2:17).

Inextricably tied to Kant's Copernican Revolution in philosophy is the fundamental reorientation of the relationship between the self—the original, synthesizing subject—and the Other, as that which persists as separate and different from the self. For Levinas, Kant's epistemology is founded on an ontology which asserts the spontaneity of the subject as the ground of the comprehension of human existence, the world, and as we will see, society:

If in Kant there is no perception of objects without a comprehending spontaneity already at work, this spontaneity acts in order to order the material of sensation, is already under order […] then is not the "rational feeling" by which the mind is first affected with the sense of law prior to the perception of organized objects? (Levinas, *OB* xxiv)

In other words, Kant's account of human existence, his ontology, is imprinted by his epistemology, which orders and categorizes the material world through the subject's spontaneity. The spontaneity of the subject is her freedom. The free subject autonomously comprehends that which exceeds the self; that is, the moral subject grasps and consumes the external world into itself, ordering it and appropriating it. Phenomena appear to the self-conscious subject, which, through her own faculty of understanding, unifies the phenomena according to a perceived universal and necessary law. It is in the subjects own mind that the synthesis takes place, and so does not need to be accompanied or derived from external sources. This is why Kant says "since the object is outside me, the cognition in me, all I can ever pass judgment on is whether my cognition of the object agrees with my cognition of the object (Kant 1992, 557-58). *A priori* knowledge therefore cannot conform to the objects that we experience, but to the mind that the phenomena appear to.

If we are to have knowledge of the phenomenal world, it cannot rest on a metaphysics where the objects of thought are independent of, or external to, our experience of them. The experience of phenomena depend on the universal structure of the mind, one in which the knower is the active organizer of experience—organizing structures as universal and unchanging (Braver, *TOW* 57). Kant believed that the way the mind structures experiences are shared among all humans. Since each individual operates using the same categories of understanding, we must

structure the world in the same way (Oxford Companion). This then ensures the intersubjective

validity, necessity, and universality of truth.

Kant believes that the *a priori* capacity to present the world as law-governed applies to

the way we understand moral law as well. Since our mind "imposes coherence and consistency

on all cognitions, it even implements normative concepts such as necessary truth and obligation,

in the form of law like 'principles'" (Stanford, "KTJ"). Normative rules of morality reflect the

internal structures of the faculty of understanding. Kant states that, for the necessity and

universality of moral law, "it is requisite to reason's lawgiving that it should need to presuppose

only *itself,* because a rule is objectively and universally valid only when it holds without the

contingent, subjective conditions that distinguish one rational being from another" (Kant, *CPR*

5:21). The moral law is true and necessary if it is universally valid with respect to the spontaneity

of the subject who apprehends the law according to the categories of reason. As Henry Allison

puts it,

> Just as it is impossible in the epistemological context to explain the possibility of *a priori*
> knowledge, if one assumes that our knowledge must conform to objects, so to, in the
> practical context, one cannot explain the possibility of a categorical imperative…an *a*
> *priori* practical principle with the requisite universality and necessity, if one assumes that
> an object (of the will) must be the source of moral requirements (Allison, *KTF* 100).

Rather than basing an action's moral worth on the consequences or particular ends of that action,

the agent's happiness or welfare, or any other contingent motives that a rational agent might

have, Kant argues that we are morally obligated to act on the basis of unconditional, necessary,

and universal laws of reason—for the good *in itself.* It is only when a being wills an action on the

basis of the moral law, for the sake of the law, that his or her action can have moral worth.

Kant argues, "freedom and unconditional practical law reciprocally imply each other" (5:29f). If a moral agent is to be free, by definition, she must be free from external control or influence; that is, the actions of the moral agent must not be determined by particular or conditional motivations and inclinations. According to Kant, the individual has the capacity to act according to pure, practical reason—the categorical imperative—which is non-instrumental and unconditional. Since her subjection to the categorical imperative depends on a will free from conditional, or hypothetical imperatives, she must be free to follow that law (Stanford, "KAR").

As autonomous, the Kantian moral subject is simultaneously self-legislating; the agent's autonomy implies that the agent is bound to the commands of the law that are self-given, by way of the original, synthesizing or organizing features of the mind. That is, from the foundations of practical reason—the categorical imperative—the subject wills the ethical law (*nomos*) for itself (*auto*). The rational agent must therefore determine whether her actions can be universalized on the basis of the categorical imperative; that is, the law must have intersubjective validity: it must be applicable to every person, universally and necessarily on the basis of the spontaneity of its comprehension. The self-legislated laws cannot be external to the will of the moral agent (i.e., heteronomous), or it is thereby dependent on an empirical condition and not practical law. Instead, the individual must act on maxims that are 'fit for a giving of universal law' (Kant, *CPR* 27)—a law that can be applied to the will of every rational being. The principles that actions are based on must be universalizable without contradicting the will. The law is thereby an expression of each person's rational will, which gives the categorical imperative its moral legitimacy.

In the "Doctrine of Right," Kant extends this argument into social and political philosophy. He argues that social law, like moral law, cannot be based on the conditional interests of a state or community. The individual thereby cannot be subject to a law that is based on, for example, a custom or culture, the welfare of the citizens, or the power of a single sovereign. If this were the case, the individual would be subject to a law based on a heteronomous source, which would be contingent, conditional, and would "distinguish one rational being from another" (Kant, *GMM* 5:21).

Kant states, "the concept of any rational being as a being that must regard itself as giving universal law through all the maxims of its will, so that it may judge itself and its actions from this standpoint, leads to…a *realm of ends"* (50:433). The 'realm of ends' leads to the "systematic union of different rational beings under common laws" (50:433). In other words, the idealized origin and authority of the social law is in the realm of ends, where autonomous—self-legislating—subjects give to themselves the law on the basis of the categorical imperative. Since every rational individual possesses this status as a legislator of universal law, as a community, the individuals legislate the same universal principles that they are all bound to. The law of the state thereby has authority on the same basis that moral law has authority over individuals: on the basis of autonomy and pure reason. The reciprocity of political law is therefore maintained on the conception of individuals as equal in their capacity to act as autonomous, rational agents (regardless of their particular differences).

The reality of coexistence is not so idealistic though, and Kant accounts for this in the "Doctrine of Right". Rational and autonomous individuals inevitably come into conflict with each other. Individuals thereby agree to enter into a social contract, where their rights will be

protected by the State. According to Kant, the only right of the individual in a civil society is "freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law" (Kant, *MM* 6:237). The rights guaranteed by the state then support and maintain the autonomy of the individual and protect it against any action that interferes with or hinders freedom. Therefore, the authority of state law must be derived from the mutual agreement of the coexisting civil persons, who are each equal and autonomous beings that will a universal law.

Under these rights, Kant states that if an individual's action limits the freedom of another's, the state may hinder the first subject to defend the second by "hindering a hindrance to freedom" (Shuster 2011, 435). In fact, if an action interferes with the freedom of another's, justice must be enforced. According to Kant, justice must adhere to the categorical imperative; it must be independent of consequential or material circumstances. Thereby, justice is not sought as a way to prevent crime, deter crime, provide revenge, or to bring about a future benefit to society. He states, "Punishment by a court…can never be inflicted merely as a means to promote some good for the criminal himself or for civil society" (Kant, *MM 105*). Kant argues that it is only the principle of retribution alone that can be determined *a priori* (no external source can justify the need to punish) (130).

On the basis of the equality of rational beings, Kant argues that the principle of retribution is the only form of justice that adheres to the universal law, stating, "only the law of retribution…can specify definitely the quality and the quantity of punishment; all other principles are fluctuating and unsuited for a sentence of pure and strict justice" (Kant, *MM* 105). It is therefore the duty of a civil society to inflict punishment on wrongdoers. Kant states,

> Whatever underserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him, you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself. But only the law of retribution—it being understood, of course, that this is applied by a court (not by your private judgment)—can specify definitely the quality and the quantity of punishment. (Kant, *MM* 105-6)

The principle of retribution is thereby the principle of equality, or the *lex talionis*: "eye for an eye" or "tooth for tooth". Whatever action the wrongdoer commits against another, the wrongdoer inflicts upon himself. Therefore, punishment must be "proportional" to the wrongdoing, in kind and degree (Shuster 2011, 439). In this sense, the offender is paying back a "debt" to society on the basis of the moral good (441). Kant defends capital punishment on these grounds as well. He states, "anyone who commits murder…must suffer death; that is what justice…wills in accordance with the universal laws that are grounded *a priori*" (Kant, *MM* 107). The principle of retribution, on the basis of the categorical imperative, necessarily requires that murder be punished with death.

Kant argues that it is only when we respond to wrongdoing on the basis of equal retribution that the offender is respected as an autonomous moral agent. Further, it follows that only the subject that behaves autonomously—that is, self-legislating with respect to the moral law—is deserving of respect. Respect for all persons is the second formulation of the categorical imperative, which states "act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end" (Kant, *FMM* 54). In order to respect the dignity of an offender, one must respect the intrinsic value of that person that grants them to be worthy of respect: which alone is their capacity to act autonomously—to be the author the moral law. In this regard, the political autonomy of the subject is indebted to moral autonomy.

Kant states that the principle of retribution "is imposed only because the individual on whom it is inflicted has committed a crime. For one man ought never to be dealt with merely as a means subservient to the purpose of another..."(Kant, *PoL* 195). Punishment is not inflicted on a moral agent because it will bring about some beneficial consequences for the criminal or society, but because the agent willed—was the author of—the deed and its effects (Shuster 2011, 432). Since the principle of justice must adhere to the principles of universal moral law, justice must not be enforced conditionally on the basis of the effects that punishing the offender will serve for the community. Rather, retribution must be inflicted because the offender willed to act against the law, disrespecting the requirements of morality and the victim as an end-in-herself. This is what Kant means when he states, "Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him on the grounds that he has committed a crime" (Kant, *MM* 6:331).

If we are to respect the 'humanity' and dignity of the offender—his autonomy as a moral agent—we must follow the "humanity formula" of the categorical imperative. We must treat the offender as an end-in-himself. Justice must be imposed in a way that respects the individual's capacity to act as a rational and autonomous agent. Kant therefore argues that the principle of retribution is necessary on the basis of the categorical imperative. Retribution is the only form of justice that would respect the moral agent's capacity to act autonomously; if we did not punish the offender for his actions, we would be denying the criminal of his very personhood: his capacity to act rationally. In Kant's eyes, this is dehumanizing, and condemns the person as irresponsible or childish (Shuster, 2011 435). An approach to justice that does not respect the wrongdoing on the basis of his or her autonomy, like rehabilitative or restorative justice or even

punishment on the basis of revenge, would treat the offender as a means to the purposes of others.

Ethics as First Philosophy: Levinas on Kant

According to Levinas' project, the entire Western tradition of thought has turned about systematic philosophies of power and totality—oppressive infrastructures which privilege ontology over ethics, freedom above responsibility, and the comprehension of the external world over the ungraspable difference of the other. This mode of thinking, Levinas argues, has been inscribed in our ideas about autonomy and self-legislation, as well as political organization and the work of justice. In "Command and Freedom," Levinas argues that "thought which is nothing but freedom of thought, is, by that very fact, a consciousness of tyranny" (Levinas 1953, 16); the subject "knows nothing prior to its freedom or outside of the necessity which runs up against this freedom, but is presented to it" (Levinas, *CPP* 132). If the sovereignty of individual freedom is the origin or source of the principle of moral responsibility, the spontaneity of the thought is a 'consciousness of tyranny.'

Levinas states, "Pure reflection cannot have the first word: how could it arise in the dogmatic spontaneity of a force which moves by itself? Reflection must be put into question from without. Reflection needs a certain kind of heteronomy" (Levinas 1962, 21). Whereas Kant argues that moral law arises from spontaneous rational thought, the categories of understanding, Levinas argues that the moral imperative is given over to us by the face of the Other (we will come to see that this also applies to knowledge and understanding as well). That is "the face is

the fact that a being affects us not in the indicative, but in the imperative, and is thus outside all categories" (Levinas 1953, 21).

If one is morally obligated to attend to the needs of another person, that demand or order is not found within the subject who deems it his or her duty to act according to the moral law; in Kant's philosophy, for example, a moral obligation given by the weak, the poor, the 'orphan and the widow' is not an imperative given to the subject by the plea of that particular other, but an imperative given to oneself by oneself through the universal moral law. Moral conduct thereby consists only with "the idea of humanity as an end in itself," and not through the responsibility we have for others as unique, finite, and vulnerable beings. In fact, the subject only accepts the order given by the other if it finds that order in itself as the origin or source of the law (Levinas 1953, 15). Thereby, in Kant's philosophy, the "heteronomy of a command is in reality but an autonomy…the exteriority of the command is but an inwardness" (15). By way of example, the command "thou shall not kill" is considered by Kant to be an imperative converted spontaneously by an autonomous agent, rather than an imperative felt in the very approach of the Other. The moral obligation we have to help the Other in his or her suffering is not 'jarring,' or traumatic, but is accepted as if it came from ourselves.

The moral responsibility that the subject has for the other is deformed or weighed in the absence of the human relation. Levinas claims "we must impose commands on ourselves in order to be free. But it must be an exterior command, not simply a rational law, not a categorical imperative, which is defenseless against tyranny; it must be an exterior law…armed with the force against tyranny" (Levinas 1953, 17). Levinas is arguing that an imperative is given over to our moral responsibility prior to reason—an imperative that makes "discourse and impersonal

reason human" (18). That is, reason and the condition of possibility of the institution of law presupposes the face-to-face encounter. Ethics is there not founded (originary) or derived from a philosophical theory, but is the foundation and the condition of possibility of reason and philosophical thought.

According to Levinas, moral responsibility is demanded by a heteronomy or an exteriority. Ethics, we have seen, *is* the face-to-face encounter (proximity or language). He states that this relation to the Other is "anarchically a relationship with a singularity without the mediation of any principle, any ideality" (Levinas, *OB* 100); this responsibility is "anachronously prior to any commitment" (Levinas, *OB* 101). The Other approaches "essentially insofar as I feel myself—insofar as I am—responsible for him" (Levinas, *EI* 97). In other words, for Levinas, freedom and reason are both preceded by a responsibility invoked by the face of the Other; we will even see that freedom (and universality) can only be operative after being called into question by the Other.

Levinas argues that moral responsibility is commanded by the 'face' of the unique, concrete Other. The 'face' of the Other is not the appearance of an empirical form, nor does it represent an alter-ego or Other-self similar to but logically distinct from the subject that perceives it. Levinas states, "The Other is what I myself am not;" the Other expresses a fundamental alterity that is not constituted by specific Other-properties or even a spatial difference, which would be a quality linked to its manifestation. "Absolving himself from all essence, all genus, all resemblance, the neighbor….concerns me for the first time…in a contingency that excludes all *a priori.*" (Levinas, *OB* 86). The alterity of the Other is not grasped through the *a priori* categories of understanding, intentionality, a positing, or a disclosure.

Levinas, in opposition to Kant, argues that the Other does not appear as a phenomena

and cannot be described according to categories of experience or according to an *a priori*

framework. He states, "to approach, to neighbor, is not tantamount to the knowing or

consciousness one can have of approaching" (Levinas 1986, 118). The contact with the "flesh

and bone" Other is not characterized as the manifestation of an Other, but as a proximity (118).

As an encounter that precedes self-reference, the face-to-face relation is not an "experience of

proximity'—a phenomenon that discloses the experience to thought, the sensible into a

thematizing, identifying, universal discourse (118). Rather proximity is "the relation with a being

that maintains its total exteriority with respect to him who thinks it" (Levinas, *TI* 50). Proximity

is the fact that the Other has always already approached me as a primordially ethical and

responsible subject, without having to comprehend the Other as such.

Levinas states, "the face of the Other at each moment destroys and overflows the plastic

image it leaves me, the idea existing to my own measure and to the measure of its *ideatum*—the

adequate idea. It does not manifest itself by these qualities, but…*expresses itself"* (Levinas, *TI*

50-1). The face is not a phenomenon that appears as a part of or within an objective reality from

which human ideas or understanding corresponds. Her Otherness is not recognized as a quality.

"The alterity of the Other is not logically surmountable in a common genus—or transcendentally

surmountable in lending itself to the synthesis operated by a Kantian 'I think'" (Levinas *EN*,

185). The Other is not disclosed by the nature of the thought of a self-conscious thinking subject.

Her visibility or appearance is not intelligible; however, even though the face surpasses our ways

of comprehension, it still makes contact. In Derrida's words,

> There is no way to conceptualize the encounter: it is made possible by the other, who is
> the unforeseeable "resistant to all categories." Concepts suppose an anticipation, a

horizon within which alterity is amortized as soon as it is announced precisely because it has let itself be foreseen. The [Other] cannot be bound by a concept, cannot be thought on the basis of a horizon; for a horizon is always a horizon of the same, the elementary unity within which eruptions and surprises are always welcomed by understanding and recognized. (Derrida, *VM* 95)

Levinas' heteronomous ethics therefore displaces the morality of autonomy espoused by Kant's original and autonomous subject. The nudity and exposure of the Other is deadened within Kant's ontological framework, which refuses to wrestle with heteronomy in favor of the exultancy of absolute Reason. The Levinasian ethical subject encounters the other as 'resistant to all categories' of understanding in proximity.

In "Language and Proximity," Levinas refers to face-to-face contact as a relation between interlocutors. Levinas argues that a conception of language that reduces speech "to the solitary or impersonal exercise of thought"—as one limited to the impersonal language of reason—or to the participation of two logically singular, autonomous and rational universal-voices, is a nonhuman language (Levinas 1987, 115). Language does not originate in the decantation of a thought relative to the other in the other's mind —a form of communication dependent on the common content of human comprehension. He states,

> [the] impossibility of approaching the Other without speaking to him signifies that here thought is inseparable from expression. But such expression does not consist in decanting in some manner a thought relative to the other into the other's mind. Before any participation in a common content by comprehension, it consists in the intuition of sociality by a relation consequently irreducible to comprehension (Levinas 1951, 7).

The language Levinas speaks of is not one that represents humanity's capacity to objectify meaning through reason on the basis of the ideality and universality of cognition. He argues that a 'truth' that manifests itself as already invoked, as the categorical imperative, is one of a

nonhuman language—a language that speaks before men. Rather, Levinas argues, language is felt immediately in the approach of the Other.

The face of the Other does not appear as a sign, but as an expression—an "invocation not preceded by comprehension" (Levinas 1951, 7). The face *speaks* prior to the communication being assumed by the subject. That is, prior to linguistic meaning, the face expresses a message that precedes and overflows the "what" of thinking (Rushton 2002, 225). Levinas argues that this language occurs as an imperative or an invocation, "a face by which the Other challenges and commands me through his nakedness, through his destitution." In the encounter, the face demands a response; this demand is felt in the "impossibility of approaching the Other without speaking to him" (Levinas 1951, 7). Proximity is thereby language. "The eyes break through the mask—the language of the eyes, impossible to dissemble. The eye does not shine; it speaks" (Levinas, *TI* 66). Levinas claims that his very look is encountered as an inescapable finitude, as wanting, and is simultaneously an appeal to not let the Other alone in facing her death. The language used by Levinas to express the face is extreme (destitute, weak, vulnerable, mortal), but the demand felt in the face of the Other is urgent. It is one that grips me, moves me, requires me, and makes a demand of me that I can never satisfy (Morgan, *CC* 10).

Identity, the uniqueness of the self, is not brought about in grasping the self through consciousness. The difference between the self and Other is a non-indifference of the same for the Other (Levinas, *OB* 145). That is, prior to self-consciousness, the uniqueness of the subject comes from a responsibility assigned or elected from the outside. The uniqueness of the self is manifested directly *by* and *for* the Other—uniquely assigned by the Other's demand, the self is elected to respond. The 'non-indifference' of the same signifies that at the very heart or source of

the self is the other: the 'other in me.' Further, non-indifference points to responsibility for the Other as definitive of the subject's very constitution. Through the alternating work of negation and double negation, Levinas refers to non-indifference to illustrate two definitions of the subject. The subject is *non*-indifferent: the subject is the very impossibility of indifference. The subject is *non-in*different: at the heart of the subject is difference, or its election by alterity. This election or assignation is the impossibility of "slipping away and being replaced" (Levinas, *OB* 147). The subject is thereby incarnated by the Other who provokes (calls forth, challenges) her as irreplaceable, as the *one* elected to respond without her being able to avoid the assignation. The very call identifies the person as a unique individual—subjectum. It is only in the face-to-face relation that the subject responds "here *I* am", accused in her skin. This is an identity prior to the for-itself, of the relationship of oneself with oneself. It is not a vision of oneself by oneself, nor a manifestation, nor an identification with the truth. Before it is 'I' or 'oneself', identity is sensibility, vulnerability, maternity: which is responsibility for the Other.

The depth of the grasp that the responsibility for the other has on the self culminates in what Levinas terms 'the Other in the Same'—the trace of traumatic difference which determines the subject's very subjectivity by disrupting its sameness with itself: "subjectivity is properly itself because it is dispossessed of itself from within" (Stanford, "Levinas"). The Other's irreducibility to being possessed in thought, his presence, calls into question the subject's spontaneity through obligation and responsibility. Levinas terms this *calling into question* ethics, proximity: "obligation calls for a unique response not inscribed in universal thought, the unforeseeable response of the chosen one" (Levinas *OB* 145).

Within ontological philosophies of comprehension, the demand made by the Other (an exteriority) is encompassed under a sovereign reason that knows only itself. In this philosophy of light "the eye shines" rather than speaks—the Other becomes a theme, an object, or a phenomena that appears to the spontaneity of the subject that comprehends and unifies it. The Other takes its "place in the light…reduced to the same" (Levinas *TI* 43). In other words, within ontological philosophies of comprehension, which identifies the Other through the freedom of the knowing subject, the Other's very alterity vanishes. Ethics, one's responsibility to the Other, is reduced to a neutral order, an order of comprehension. The heteronomous demand, the exigency of the demand to end the suffering of the Other, is subservient to the autonomous legislation of the comprehending self. For Levinas, this epistemological privileging of comprehension over difference has simultaneously ontological ('the priority of Being over the existent' in Heidegger) and ethical consequences (a self-legislating moral law deafened to the call of the Other)— ultimately amounting to a subordination of ethics and justice to freedom.

Kant's ontology justifies the self-legislating spontaneity of the subject which gains knowledge of the external world through an internal synthesis of comprehension. The comprehensive knowledge of the world by the Kantian subject, Levinas argues, conceals the primary importance of a justice open to the interruption of the Other: "If freedom denotes the mode of remaining the same in the midst of the Other…then knowledge contains the ultimate sense of freedom" (Levinas *TI* 45). Following the ontological privileging of the freedom of the knowing subject—which knows despite the Other's resistance to knowledge—is the subsumption of the Other to a particular class or genus. As we have seen, Levinas argues that the alterity of the other is not a logical distinction—the Other is not a part belonging to a divided

whole, as in Kant's Realm of Ends. The one-for-the-other is not a reciprocal relation that unites

into Community. The subject is not in community with the Other, as member of a common

genus—as each under the genus 'autonomous'. In order to deaden the shock of alterity, the self

which proceeds from an ontological ground of freedom and knowledge as based on community

categorizes and de-faces the Other. This categorization is blind to alterity, deaf to difference,

and—in the realm of justice—invulnerable to the Other who can speak for herself.

The Kantian subject which addresses the Other through the mediation of the categorical

imperative, respects the moral agent's capacity to act as a free agent alone. This system of

punishment deals out judgment with regard to the wrongdoer as of a genus. The face of the Other

is not encountered, and instead the Other is judged solely as wrongdoer, as a criminal, as an

imperfect follower of the moral law under the ontological understanding of the Other and human

sociality under the universality of autonomy. For example, in the case of capital punishment,

Kant determines that, in order to respect the dignity of the wrongdoer, he must be sentenced to

death. To respond to a murderer with capital punishment is, according to Kant, the "fitting of

punishment to the crime […] in accordance with the strict law of retribution, since only by this is

a sentence of death pronounced on every criminal in proportion to his inner wickedness"

(Shuster 2011, 434). To delineate this point by way of example,

> Kant gives the example of two rebels: one who acts from the honorable (though
> mistaken) motive of wishing to depose a government he regards as illegitimate, and
> another who acts only for the sake of his private gain. Kant argues that both would
> receive what they deserve if they to die. "Since the man of honor is undeniably less
> deserving of punishment than the other, both would be punished quite proportionately if
> all alike were sentenced to death; the man of honor would be punished mildly in terms of
> his sensibilities [i.e., valuing honor more than life] and the scoundrel severely in terms of
> his [i.e., valuing life more than honor]." (434)

In this example, the divergent motivations behind the murders is irrelevant—in both cases, the punishment is dictated by the principle (*arche*) of retribution. The response of the State to the criminals is to de-face them as Other, and to punish them through the mediation of a neutral principle; in this case, the principle of retribution. Punishment is thus dealt "in accordance with universal laws that are grounded *a priori*" (Kant, *MM* 107), rather than in response to the immediate proximity of the face of the Other. Indeed, retributive justice is blind and remains blind to the face of the judged—comprehending the incalculable motivation of the murderer as an 'inner wickedness.' The judge that deals punishment is blind to the face of the Other — her particular circumstances, her vulnerability, her destitution and proximity. Judgment that follows from 'respect for the moral agent's autonomy' does not see an Other but sees a duplication of the self, an alter-ego, that ought to have acted autonomously and rationally—in other words, 'like me:' Levinas states, "In the knowledge of the Other as a simple individual—individual of a genus, a class, or a race—that peace with the Other turns into hatred; it is the approach of the other as "such and such a type" (Levinas 1984, 166).

Levinas states "what characterizes violent action…is that one does not face what the action is being applied to: it is that one does not see the face in the other, one sees the others freedom as a force…one identifies the absolute character of the other with his force' (Levinas, 1953, 19). Violence is committed when one looks way from the face of the Other, what judgment is being applied to. The force or disturbance that the Other's alterity has on the subject, as that which summons and contests, is identified: one sees the Other as an autonomous subject through the mediation of the universal, rather than as a suffering that demands a response. Levinas argues that this 'moral order' is neither human nor inhuman. That is, it is not ordained by man and the

kind of society he wants to create, but rather, ordains itself through the rational force of its logic.

That is, value is given only to the idea of universality. Instead:

> One must not turn one's back on singularity on the pretext of saving universality…otherwise, one will find nothing but the idea of it—but must respond to the singularity of the Other in order to perceive the send of universality implied by that response (Chalier, *LK* 83).

Against the impersonal universality of a system of justice that neglects and nullifies responsibility for the Other—that structures reciprocity on the basis of the universality of the system—"there has to be a point that counts for itself" (83).

There is an anxiety felt in the condemnation of the Other, even when the concepts are in agreement with each other. That is, where Kant states that tooth for tooth, or life for life, is the only way to respect the actions of an autonomous agent, Levinas argues that the vocation 'you shall not kill,' is an imperative that does not first emerge from the subject's will, but as a heteronomous command made by the other—more importantly interpreted as "thou shalt not leave me along in my dying" (Levinas, *RB* 145)—to which the subject responds "here I am," responsible even for the Other's responsibility, even for the Other's evil. To be responsible for the Other is then to feel the infinite resistance to murder in the face of the Other. The principle of retribution, as that which justifies suffering and murder, nullifies this expression, and in doing so, corrupts one's moral responsibility for the Other. In the trouble at the prospect of committing violence, even when violence is rationally necessary, even necessary in the "unfolding commanded by the march of truth"—the universality of justice—even in the promise of harmony between the one and the Other, Levinas states, "one can ask oneself if peace has not to respond to a call more urgent than the call of truth and initially distinct from the call of truth (Levinas,

1984 165). That is, the suffering of the Other is not suffocated in the rational necessity of Kant's concept of justice.

The ethical demand does not derive from "the anonymous legality that governs the masses…" that "creates harmony through transitory cruelties and violence" (Levinas 1984, 169). Justice does not conform to the ideal of the unity of the "one", the universal, which alterity disturbs. Rather than approaching the other as 'such and such a type'—as wrongdoer, or criminal—the Other should be encountered as Other; that is, as incomprehensibly different and exposed, an exposure to which wounds the security of the self—in short, as *alterity*:

> [The impact of alterity] is being shaken in the complacency and pleasure of contentment. Being exposed to the other is being exposed to being wounded and outraged. It is being confounded in the exultancy of one's own initiatives […] Exceeded on all sides by responsibilities beyond its control and its capacity even to fulfill, the responsible subject is in distress, in terms that equal or even exceed the desolate terms with which Kant describes the law-abiding rational entity (Levinas, *OB* xxiv-xxv).

In Levinas' conception of justice, the responsible subject replaces the autonomous subject. The responsible subject is capable—even required—to respond to the violent exposure of the Other's suffering. Levinas states "prior to the message of truth it bears, will we not have heard the vocation 'you shall not kill'"(Levinas 1984, 164). To judge the Other in proximity is not to deal out his judgment with reference to a rational or moral law, but to encounter him in proximity, which means being affected prior to the application of law or reason. The responsibility that the subject has for the Other is infinite; that is, it exceeds all bounds and contingencies, measuring no less for a wrongdoer than for someone that 'wills the moral law.' A Levinasian conception of justice would not be measured by any principle of mediation, such as the categorical imperative, for the Other addresses me immediately. The appeal of the destitute

Other, likewise the face of the wrongdoer before judgment, "affects me without any mediation; it is the very experience of immediacy" (Levinas, *OB* xxv).

The Other is not reducible to the way she is implicated in community. She is not an alter-ego "like me," but an Other whom I am responsible for. We will see that it is this responsibility for the Other that calls man into question and invites him to justice. Justice is therefore not constructed on the basis of an impersonal, universal law, which rationally justifies the need for violence. Instead, a justice must be sought as a response to suffering. This requires the judgment of faces, de-faced, the reciprocity of law among individuals as members of a genus, but also the need to repair wrongdoing. It is not a justice that values autonomy as that alone which has dignity, but a humanism of the Other that is grounded in the individual uniqueness demanded by responsibility.

Chapter 3: Justice against the Ontological Community

Across the unbreakable chain of signification, standing out against the historical conjuncture, was there not an expression, a face facing and interpellating, coming from the depths, cutting the threads of the context? Did not a neighbor approach?—Levinas, "Enigma and Phenomenon"

What does the face-to-face relation tell us about holding a person accountable for their wrongdoings? That is, how does proximity reveal itself in justice, where moral responsibility can and must be applied equally among individuals? Levinas maintains that proximity, responsibility for the Other:

> Requires the signification of the thematizable, states the idealized said, weighs and judges in justice. Judgments and propositions are born in justice, which is putting together, assembling, the being of entities. Here with a problem begins the concern for truth, for the disclosure of being (Levinas, *OB* 161).

We have seen that responsibility for the Other is felt in its immediacy as antecedent to all questions, latent in the very experience of the face of the Other. However, a problem arises in the face of the 'third', a term Levinas uses to refer to the communal relation: the person that is "other than the neighbor, but also another neighbor, and also a neighbor of the other, and not simply his fellow" (Levinas, *OB* 157). That is, we are never responsible for one person alone, and as I will show, this responsibility for the third does not affect us in terms of an ontological being-alongside others in a communal horizon.

The "inseparable and simultaneous" concern for the third gives rise to the first question: what does it mean to be responsible in a community or "what do I have to do with justice" (Levinas, *OB* 157)? It is through this question posed in the concern for justice that proximity "is found to answer in the end not with responsibility, but in the form of theoretical propositions, to the question 'what about…?" (155). In society with Others, communal responsibility requires

conscious reflection, the 'thematization' of moral responsibility, the visibility of faces, the disclosure of being, the concern for truth, knowing, and philosophy.

However, the philosophical theorizations that support a system of justice cannot be interpreted in terms of disclosure; it cannot rest on ontological conception of community. He states, "the said bearing the theme and the essence appearing in truth extend[s] *behind* the essence it bears… [it] is not in any way a statement of being, not even an ontological statement of formal ontology. It is irreducible to essence" (155). Levinas here describes a demand for justice that is priori to 'the said'—the ethical experience taken as a theme or phenomena. He argues that the demand for 'truth' is 'irreducible to essence', it does not manifest ontologically through the truth of disclosure. There is a more fundamental level to conscious reflection that presupposes proximity; that is, 'truth presupposes justice': "to know is to justify" (Levinas, *TI* 82). In the face-to-face encounter, the need to know, to reason, is a demand for justification in regards to the moral responsibility demanded in proximity. Thereby, we will see that truth is produced "only in veritable conversation or in justice" (71).

As I have argued, justice cannot begin with an *original* position—the archaic community—where autonomous and equal persons come together under the manifestation of a universal law, in virtue of that law. Rather, justice must be seen as that which opens itself up to the call of truth: which is a call to respond, consciously, reasonably, knowingly, to the third, or the Others that interrupts one's responsibility for the unique Other. That is, the call for truth is one that affirms responsibility for the multiplicity of the unique and the anarchic responsibility that one has for the Other—a responsibility that cannot be deduced or handed over through

reason. Levinas argues that the ideal of justice comes to open itself to the call of truth, but anarchic responsibility "would be the very rationality of reason or its universality" (160).

In this chapter, I address Heidegger's conception of community in *Being and Time* as a common-identity disclosed beneath the ontological horizon of being-with. By doing so, justice is founded upon the ontological disclosure of the communal relation—as a universal 'light' projected on human society and ethical responsibility—which ultimately leads to a form of justice that seeks harmony and equilibrium through violence. In opposition to a totalizing structure of justice founded beneath the ontological horizon of being-alongside fellow Dasein, Levinas conceives of the possibility of a political structure of difference—of a multitude of particular, unique individuals in society with one another. I am going to show that the form of justice instantiated by Heidegger's view on community is one that privileges the 'truth' of ontological disclosure of community over the particularity of individuals, ultimately corrupting and nullifying that which is primary or fundamental to human existence: ethics. By arguing that justice is straightaway a system of thought founded on proximity, rather than founded upon the ontological disclosure of the communal relation, we will see that justice can only remain just if it is structured on the basis of the anarchic responsibility of the one-for-the-Other.

Heidegger on the Communal Relation

In *Being and Time,* Heidegger argues that philosophers, like Kant, have misunderstood the essence of truth. Whereas Kant took a theoretical approach to being, structuring knowledge on the basis of *a priori* categories in the mind of the conscious subject, Heidegger approached

ontology on the basis of Dasein's—his term for the human being—lived experience, i.e., its involvements as Being-in-the-world. In doing so, he tried to show that the essence of truth was derived from a pre-cognitive, pre-theoretical, or what he calls a 'pre-ontological' understanding of Dasein's Being or what it means for Dasein *to be* (Dreyfus 16). Heidegger thereby pursued the meaning of Being by means of "fundamental ontology," one which is sought through an analysis of the everyday involvements as Being-in-the-world, "in order to provide the foundations for ontology as a whole" (Braver, *TW* 175).

> Heidegger states,

> Whenever an ontology takes for its theme entities whose character of Being is other than that of Dasein, it has its own foundation and motivation in Dasein's own ontical structure, in which a pre-ontological understanding of Being is comprised as a definite characteristic…Therefore fundamental ontology, from which alone all other ontologies can take their rise, must be sought in the existential analytic of Dasein (*BT* 3/33-4).

In other words, or as Levinas put it, "the comprehension of being does not presuppose a merely theoretical attitude, but the whole of human comportment. The whole being is ontology" (Levinas 1951, 3). Ontological knowledge is no longer limited to theoretical apprehension, as proposed by Kant, but is rather founded on the very way Dasein is involved as Being-in-the-world: "knowing is a mode of Dasein founded upon Being-in-the-world" (Heidegger *BT* 90/62).

> This means that, rather than grasping or knowing phenomena through the faculties of cognition, the comprehension of phenomena entails their involvements through which Dasein comports itself as Being-in-the-world. Heidegger states,

> The kind of dealing which is closest to us is as we have shown, not a bare conceptual cognition, but rather that kind of concern which manipulates things and puts them to use…Such entities are not thereby objects for knowing the "world" theoretically; they are simply what gets used, what gets produced, and so forth. (Heidegger *BT* 95/67).

An entity (or phenomena) is comprehended, i.e., it shoes itself, through its manifestation in the 'world' of Dasein's concerns. Therefore, for Dasein, to comprehend a particular being is "not to look at it but to know how to handle it" (Levinas 1951, 4). The disclosure or comprehension of the entity necessitates its involvement in the background of meaning—the network of involvements—that Dasein concerns itself with. An example often used to describe this comprehension is that of the hammer. For Heidegger, the equipmentality of the hammer is fundamental or primordial to its comprehension as an entity in-itself. It is not first understood as having the value hammer, but is rather first comprehended in its involvement or appropriation in Dasein's concerns. Heidegger calls this the 'holistic network of involvement,' or its use 'towards-which' a task or work can be completed. The hammer, therefore, is first grasped as a piece of equipment involved with other pieces of equipment; it would not be a hammer if nails or the board that needs nailing did not exist. In other words, it is not first consciously grasped as a hammer as such, but is comprehended in its use towards completing a certain task.

Phenomena that appear to Dasein therefore must be understood in terms of the Being of Dasein. These phenomena belong to the "horizon" or the potentiality of experience of Dasein's Being. This is why Heidegger calls Dasein the 'light' or the 'clearing' by which the phenomena can be grasped or by which phenomena can appear. That is, the comprehension of phenomena presuppose the ontological structure of the Being of Dasein: its ontological structure as Being-in-the-World. Dasein as a 'being-there' in the world is thereby the essence of truth—"it is the condition of the very understanding of being" (Levinas 1951, 5). This is why Heidegger thinks that fundamental ontology must be sought through an existential analytic of Dasein, i.e., through a phenomenological investigation of the ontological structures of Dasein's Being.

Heidegger argues that, in existing, the very appearing of entities in the world are disclosed in a moment of vision. As Dasein exists, its existence is ek-sistence; it stands outside of itself and within the involvements as a Being-in-the-world. Dasein thereby "transcends beyond the beings into the disclosure of being as such," disclosing the Being of entities according to the structure of its own being-involved (Levinas 1951, 5). Comprehension and signification are therefore grasped within the horizon of meaning of Dasein's Being. It is here where Levinas argues:

> 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. (Levinas 1951, 5).

Heidegger reworks Kant's claim that entities are consciously disclosed and unified according to the categories of understanding. Instead, he argues that the source of the categories, the comprehension of Being, is 'care', or the horizon of meaning disclosed by Dasein in its involvements as Being-in-the-world. The relations with particular beings is thereby comprehended on the basis of the ontological or existential horizon of the Being of Dasein as Being-in-the-world. Heidegger thereby subjects relations between beings to structures of Being—the existentiell to the existential (5).

Human Others are also disclosed on the basis of this 'light' projected on the world by Dasein, who in its very movement comprehends the Other as such. That is, for Heidegger, our sociality rests on an ontological relation, which he terms *Mitsein,* or 'Being-with-Others'. Others are comprehended, not as phenomena that appear to the conscious subject, but beneath the horizon of meaning by which Dasein comports itself. Like the handling of equipment, the Other is "*overcome* in the very movement that grasps it" (7). The Other appears beneath the ontological

horizon of Being-with. Heidegger states "so far as Dasein is at all, it has Being-with-one-another

as its kind of Being." (Heidegger, *BT* 26/163). Being-with-Others is a fundamental, a priori,

mode of Dasein's Being; that is, being-with-others is a necessary characteristic of being human.

Thereby, Dasein's sociality with Others is motivated or founded upon the fundamental

ontological structure of its Being.

Heidegger states that Dasein cannot be conceived as an isolated individual who comes

together with fellow Dasein to form a community. Rather, Dasein is always already in a world

shared with Others; it is always already co-Dasein. However, this socio-ontological relation is

not one between particular beings; rather, Heidegger states,

> By 'Others' we do not mean everyone else but me—those over against whom the 'I'
> stands out. They are rather those from whom, for the most part, one does not distinguish
> oneself—those among whom one is too. By reason of this with-like Being-in-the-world,
> the world is always the one that I share with Others (Heidegger, *BT* 118).

The Others, according to Heidegger, are not definite Others—they represent those who

proximally and for the most part "are there" in everyday being-with-one-another (Heidegger, *BT*

164/126). The Others do not represent a particular person, set of people, or aggregate of

people—the "who" is a neuter, the *anyone.* Heidegger is here referring to what he terms *das*

Man, which translates as 'they self' or 'the one'. *Das Man* represents both a descriptive account

of Dasein's essentially acculturated and social existence, and the generally unnoticed prescriptive

elements of the social and cultural practices that Dasein participates in.

Das Man describes the "existentiell' features of Dasein as an individual: it refers to the

narrative structure by which Dasein understands itself and its existence; in this case, the

existentiell features of its existence refer to its relation to its particular social or communal

circumstances. That is, since Dasein always finds itself 'there' in a specific cultural, social, and

historical life-world, the possibilities of its existence are shaped by its relationship to this facticity; that is, the possibilities of its communal or social existence is structured by the ontological structure of being-in-the-world and being-with-others. *Das Man* therefore represents the socio-cultural structure of Dasein's facticity, or the cultural possibilities of its existence. This network of socio-cultural possibilities and the totality of interrelated meanings in which other acculturated co-Dasein are encountered describes this ontical feature of the ontological horizon of Dasein as Being-with-Others. Given that Dasein always already finds itself in a particular socio-cultural context, it is beholden to the cultural norms and the shared background practices of this community of co-Dasein. Thereby, Dasein's understanding of Being, or the existential possibilities of its existence, are interwoven with the self-understanding of Others in a society, i.e., the existentiell features of its existence; it does not appropriate the possibilities of its existence in isolation, but always in reference to the possibilities allotted to it from *das Man,* or the shared common meanings of its communal world (Blattner 67-8).

However, *das Man,* which translates as 'they-self,' the 'anyone,' or the impersonal and neuter pronoun 'one,' is used by Heidegger to describe what he calls Dasein's inauthentic mode of existence. He states,

> *Proximally,* factical Dasein is in the with-world, which is uncovered in an average way. *Proximally,* it is not "I", in the sense of my own self, that "I am", but rather the others, whose way is that of the Anyone. In terms of the Anyone, and as the Anyone, I am "given" proximally to "myself." Proximally Dasein is the Anyone, and for the most part it remains so. (Heidegger, *BT* 167/129)

Heidegger here distinguishes Dasein's they-self or anyone-self from its owned-self, i.e., the self which has been taken hold of as 'mine' (Heidegger, *BT* 167/129). Instead of choosing what to make of its own existence and the possibilities disclosed to it as Being-in-the-world and Being-

with-Others, Dasein acts only because it is "that which one does." Instead of owning up to its finite existence and its individual potential to choose what to make of its Self, Dasein just follows the norm. It lets the particular social and cultural norms (the network of involvements) of its public world govern the meaning of its Being and determine how it understands its own existence. Dasein lets itself become absorbed or 'fall' into the background of the cultural activities of *das Man*. Heidegger calls Dasein's everyday relationship to *das Man* 'falling' or 'unownedness.' In the world constituted by 'public' or cultural possibilities, Dasein passes over its-Self as an autonomous subject that can choose what to make of its own existence.

According to Heidegger, it is only when Dasein experiences anxiety that the worldhood of the world—the totality of practical meanings into which each individual Dasein is thrown— loses its significance. Anxiety discloses the fact that there are no possibilities written onto Dasein's existence, except the possibility of impossibility: death. As Lee Braver put it, this leads to the "ultimate breakdown of my projects which renders the formal structure of existence conspicuous, that I may authentically live in accord with it" (Braver 220). That is, this breakdown pulls Dasein out of the world of *das Man* and into what Heidegger terms the 'not-at-home.' In this breakdown, the world and its possibilities are disclosed on the basis of the existential structure of Dasein's Being. The particular or existentiell features of its existence are bracketed off, and Dasein thereby grasps the existential structure of its Being-in-the-world, Being-with-Others, and Being-towards-death.

This experience delivers Dasein over to *itself* and its freedom to choose what to make of its existence. That is, in the face of death, Dasein experiences its existence as its own, as 'mine,' and must own up to the possibilities of what it means to be. It reveals "not just any accidental

structures, but essential ones which, in every kind of Being that factical Dasein may possess,

persist as determinative for the character of its Being" (Heidegger, BT 38/17). It is only through

the experience of anxiety that Dasein is no longer 'fallen', as the possibilities of its existence are

no longer intelligible in terms of the network of social roles/norms or meanings made up by *das

Man*; there is no longer a standard to guide its possibilities.

Heidegger states that authentic Dasein comes to understand itself in terms of the

possibilities given over to it by its thrown existence,

> As thrown, Dasein has indeed been delivered over to itself and to its potentiality-for-
> Being, *but as Being-in-the-world.* As thrown, it has been submitted to a 'world', and
> exists factically with Others…The authentic existentiell understanding is so far from
> extricating itself from the way of interpreting Dasein which has come down to us [from
> *das Man*], that in each case it is in terms of this interpretation, against it, and yet again for
> it, that any possibility one has chosen is seized upon in one's resolution. (Heidegger, *BT*
> 435/383)

Heidegger claims that authentic Dasein discloses the factical possibilities of its existence in

terms of its being-with-others, or 'heritage.' The possibilities of its social existence do not fall

back into that of the everyday inauthentic *das Man.* Heidegger states, anxiety "brings the self in

all its nakedness to itself as the self that is there and has taken over the being-there of its Da-sein.

For what purpose? To be that Da-sein" (Heidegger, *FCM* 143). As Levinas stated earlier,

comprehension of the communal relation involves placing oneself beyond the particular—in this

case, the particular social relation— and understanding sociality on the basis of a "light projected

by universal knowledge on the world and human society", i.e., on the basis of the ontological

structure of being-with-others (Levinas 1984, 164). Heidegger states that Dasein hands down to

itself, inherits, i.e., chooses, its fate—a fate given to it as situated or thrown in its Being-in-the-

world and Being-with-Others (Heidegger, *BT* 435-6/384)

In *A Thing of this World,* Lee Braver outlines how this line of thought follows Kant's, stating,

> Kant insists that we must turn away from the material content of inclinations that come from our empirical self as illegitimate sources of morality, leaving nothing else to guide our actions but the formal structure of the rational self which prescribes the universal forms of lawfulness. For Heidegger, once anxiety brackets the roles given and enforced by "the real dictatorship of the 'they' (Heidegger, *BT* 164/126), we have nothing but the structural features of pure Dasein to give us guidance. Just like for Kant, this guidance is formal and needs to be applied to the specifics which can only be derived from concrete life, but the purified structure of the self gives us direction: specifically, roles need to be taken up in full acknowledgement of their contingency, our mortality, and so on (Braver, *TW* 220).

Delivered over to its *freedom* to choose what to make of its existence, resolute Dasein takes over its Being in its thrownness, i.e., its Being 'there' in the world (Heidegger, *BT* 434/383). The existential implication of Dasein's everyday possibilities are thereby illuminated against the horizon of its Being, what it means *to be* oneself as a Being-with-Others (Boedeker 2002, 85). The possibilities of Dasein's existence which are factically disclosed in terms of its thrown existence are thereby made authentic.

In this sense, Heidegger states:

> Authentic Being-one's-self does not rest upon an exceptional condition of the subject, a condition that has been detached from *das Man;* it is rather an existentiell modification of *das Man*—of *das Man* as an essential existentiale [being-alongside]. (Heidegger, *BT* 168)

Heidegger here distinguishes between the inauthentic 'fateless' horizon of *das Man* and the authentic 'destiny' of the community or the people, *das Volk*; *das Man* is modified in a way that makes the everydayness of its authentic existence. Dasein's authentic relationship to its community is thought of as "fateful destiny", where Dasein's authentic relation to itself, its authentic historicizing, is projected in and with its 'generation' (Heidegger, *BT* 436/385). The

possibilities of Daseins' Being-with are grounded in its engagement with the shared history, or

cultural projection, of its community—it is the co-historicizing, or projective-Being-alongside of

a community. Heidegger calls the resolute co-historicizing of a community its 'destiny'. He

states:

> Destiny is not something that puts itself together out of individual fates, any more than
> Being-with-one-another can be conceived as the occurring together of several subjects.
> Our fates have already been guided in advance, in our Being with one another in the same
> world and in our resoluteness for definite possibilities (Heidegger, *BT* 436/384).

The authentic community is not an aggregate of individual authentic Daseins—it is not

"something that puts itself together out of individual fates"— but is rather an authentic owning

or interrogation of the destiny and cultural inheritance of a community; the authentic community

is founded upon social ontology, the ontological structure of being-with-others (Heidegger

436/383; Boddam-Whetham).

The destiny, the authenticity of a community, is assumed under the ontological structure

being-with-Others. Heidegger states that here, the everyday *das Man* is modified into the *das

Volk*, an authentic community of beings that have a destiny. The resolute and definite

possibilities of a community form an arrangement, an Idea, a kingdom of ends on the basis of the

ontological structure. The individual counts only insofar as it is a part of the project, the

kingdom, the community, the 'we'; in other words, it is not a coming together of resolute

individuals, but an authentic community. Simon Critchley states, the authentic das Volk "masters

the powerlessness of its abandonment through the 'clear vision'" (Critchley, 140). Das Volk

masters the inauthentic mode of das Man. Heidegger states,

> Our fates have already been guided in advance, in our Being-with-one-another in the
> same world and in our resoluteness for definite possibilities. Only in communicating and
> in struggling does the power of destiny become free. Dasein's fateful destiny in and with

its 'generation' goes to make up the full authentic historicizing of Dasein. (Heidegger, *BT* 436/384)

The fates of authentic, individual Dasein are guided by the possibilities delivered over to them in their thrown Being-in-the-world with Others. However, the destiny, or authentic communal mode of *Mitsein*, only becomes free for itself in communication and struggle. The *Das Volk* masters the inauthenticity of *das Man* through collective destiny in a way that manifests a political realization that identifies with "the inner truth and greatness" of National Socialism (Critchley 140).

We now see that for Heidegger the existentiell, communal relation is one that has to be grasped beneath the ontological structure of Being-with-others. In other words, an authentic case of Being-with-others would be a community grounded in freedom and able to master the powerlessness of its situation. Insofar as the authentic community confronts its thrown-ness, the community is tasked with overcoming the powerlessness of its abandonment to existence—*das Volk* is confronted with the existential task of making something of its communal ontology. The existentiel ground of *das Volk* signifies the ontological nature of Heidegger's conception of community. What then does this have to say about justice? The ontological community is primarily concerned with generating a meaningful horizon for human life—for the ontological community, justice becomes an existential task.

Truth or theoretical knowledge in Heidegger's view presupposes the fundamental "openness" of Being. Justice thereby forms on the basis of an unconcealment that lets community show up beneath the ontological structure of being-with (even if it is as fallenness). It is only when the community of Dasein come into the 'clearing', in the light that discloses the ontological structure of being-with-Others, that they can authentically discuss what it means to

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do or be just. Justice, is thereby grounded an authentic appropriation of the thrown being-there of a community (that community always already exists under the ontological structure of being-with-others). Justice is not based on ethics, but ontological structure that community comprehended through. Justice is comprehended on the basis of a 'light' projected on human sociality—one that comprehends or discloses community on the basis of the ontological structure of Dasein's Being-with-Others.

According to Levinas, this hermeneutical approach to justice fails to address the anarchic moral responsibility for the multiplicity of the unique. That is, an authentic hermeneutical appropriation of justice is concerned primarily with the interrogation of the meaning of Being-with-Others. In justice, Others, like those who commit moral wrongdoing, are understood on the basis of this ontological community. Levinas states "*Mit* [being-with] is always being next to…It is not in the first instance the face, it is *zusammensein* (being-together), perhaps *zusammenmarschieren* [marching-together]" (Levinas, *RB* 177). Heidegger confirms this idea, in a struggle for justice under the truth of Being, the offender is seen as an enemy. Heidegger states,

> Enemy is the one and anyone from whom an essential threat to the being [Dasein] of a people [volk] and its individuals emanates... It can also look as if there is no enemy out there. In this case, the fundamental need is to find the enemy, to bring him out into the light or even first to create him, so that we can thereby assume a stance against the enemy and avoid the obtuseness of our being. The enemy can install himself in the innermost root of the being of a people, oppose himself to the latter's proper essence, and act against it. In such a case, the struggle is all the more severe and hard and difficult, since this struggle consists only minimally in striking against the enemy, often it is much more difficult and long-lasting to track down the enemy as such, to bring him to disclose himself as such, to get rid of the illusions about him, to remain ready to attack him, to cultivate and increase the constant readiness and to prepare the attack in a broad prospect with the goal of his complete annihilation (Heidegger, *SW* 90-1).

The enemy—that which distinguishes us from them—is unconcealed on the basis of the social identity of the ontological community. The enemy, exterior to this social identity, opposes

himself against the proper essence, or ontological structure of co-Dasein. The struggle against the enemy, to disclose and comprehend the Other as enemy, is one that is required under the authentic *das Volk*.

The Other that disrupts the homogeneity of the community—the organic unity between co-Dasein's in community—is neutralized in its opposition. Justice is thereby an attempt to efface, nullify and annihilate this external disruption. The communal ontology—the integration of individuals into a 'we' as fellow-Dasein—justifies a system of justice on the basis of ontology rather than ethics. Justice is that which would harmonize antagonistic forces that disrupt the homogeneous space of community. The enemy is thereby, once again, approached on the basis of the universal; the existentiell relation to Others within the world is subordinated to the 'truth' of the relation disclosed on the basis of the authentic, existential relation to the ontological structure of being-with. Justice is again founded on a non-human universal principle professed on the basis of a spontaneity: the spontaneous comprehension of Dasein as the 'light' projected onto the world as thrown being-in-the-world. The Other is thereby in the field of freedom, power, and property—grasped, enveloped, and dominated on the basis of a framework of its surroundings.

As Levinas puts it, Heidegger failed to see that,

A face has a meaning not by virtue of the relationships in which it is found, but out of itself; that is what expression is…a face does not expose, not does it conceal an entity. Over and beyond the disclosure and the dissimulation which characterize forms, a face is expression (Levinas 1953, 20).

Even if man's existence—the being-there—consisted in existing in view of that existence itself, that ex-sistence, all those movements and reversals arousing and situating the human would be dedicated to caretaking or illuminating or obscuring or forgetting Being [letre], which is not in the being [etant] (Levinas, *HO* 47).

Heidegger's philosophy fails to grasp the multiplicity of the unique and the fact that it is man with a proper vocation—a man responsible or in response to the Other—who invents or seeks to possess truth in the name of justice. That is, justice does not first rest on ontology, but the ethical relation. In the next section, I will argue that the universality of the laws and the application of justice are not manifested through the comprehension of the ontological community, where individuals represent elements of a whole. Instead, we will see that truth and reason, which presents itself as the possibility of justice, does not precede proximity; rather, the anarchic relation to the Other, anterior to comprehension (as seen in both Kant and Heidegger), constitutes reason as the possibility of truth in theoretical discourse.

Levinas on the 'Origin' of Justice: Community as a Rupture

In "Enigma and Phenomenon," Levinas states that the Other does not appear within-the-world but is rather as an interruption or disturbance of it. She is therefore not comprehended in terms of a cultural horizon, nor does she refer to the concreteness of a cultural totality (Levinas 1964, 52). The Other does not appear as a phenomenon or as a being-alongside Dasein, and cannot be disclosed on the basis of her relation to a cultural horizon or the network of shared meanings of a community. Therefore, she cannot be understood or manifested beneath the ontological structure of Being-with, but signifies an "irreducible disturbance" in it (Levinas 1965, 67). Levinas states,

> The cultural meaning which is revealed—and reveals…from the historical world to
> which it belongs, and which, according to the phenomenological expression, reveals the

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horizons of this world—this mundane meaning is disturbed and jostled by another presence that is abstract and not integrated into the world. (Levinas 1964, 52)

Where a phenomenon manifests as a mute form, the Other appears as a non-phenomenon; the face of the Other appears as infinitely expressive, signifying an alterity without reference to any context which is impossible in Heidegger's totalizing structure of Being-with. The Other is not the phenomenological co-Dasein of Dasein's world-horizon. She evades all phenomenological descriptions and the gaze of Dasein who synchronizes Others into the order of Being, disclosure, and understanding. Heidegger claims that significance depends on the horizon of Dasein's Being, but, according to Levinas, the face of the Other signifies 'otherwise than Being'. He states "when the other is grasped in terms of the opening of being, as an element of the world where I stand, I have seen him on the horizon, I have not looked at him in the face" (Levinas 1951, 9).

Levinas here argues that community cannot be founded on an ontological relation, but is primarily and fundamentally ethical. We have seen that social life, as described by Heidegger, rests on the comprehension of the ontological structure of being-with-others, even if it is as forgetfulness. Heidegger believes that ontology primordially and fundamentally grounds philosophy, knowledge, and as we have seen—justice. Levinas, on the other hand, argues that this phenomenological mediation of truth is one in which the Other is defaced, comprehended and measured against a horizon upon which it is profiled (Levinas, *TI* 44): "From this luminous horizon where it has a silhouette, but has lost its face, an existent in the very appearance that is addressed to comprehension" (45). Rather, Levinas argues that the face does not appear as a phenomena that exposes or conceals an entity, but is rather an expression. It is an expression that "invites ones to speak" (Levinas 1953, 21).

Levinas states, "society does not proceed from the contemplation of the true; truth is made possible by relation with the Other…Truth is thus bound up with the social relation, which is justice" (72). This idea opposes Heidegger, who subordinates the relation with the other to ontology. Levinas states, "the existence of the Other does not concern us in the collectivity by reason of his participation in the being that is already familiar to us all…The Other does not affect us as what must be…enveloped, dominated, but as other, independent of us" (89). In Heidegger, the Other is not comprehended or grasped through the "I think", but more fundamentally as "I can;" the Other is disclosed against the horizon of Being (Levinas *TI* 46).

A phenomenological mediation of truth is one that views an understanding of the *a priori* structure of being-with as logically proceeding encounters with particular Others. For example, Heidegger states,

> When we interpret Dasein without any theoretical distortions we can see it immediately as 'being alongside' the world with which it concerns…They are not encountered as person-things present-at-hand: we meet them 'at work,' that is, primarily in their Being-in-the-world (Heidegger, *BT* 156/120).

We thereby comprehend the Other in our being-alongside her as situated in the world; "because Dasein's Being is Being-with, its understanding of Being already implies the understanding of Others" (Heidegger, *BT* 161/123-4). This subordination of relations between the multitude of unique beings to Being, ontology, affirms the spontaneity of comprehension over the immediacy of the ethical relation. Levinas argues that the truth of knowing does not absorb the subject in the truth of its 'move' (for Heidegger, to exist is to comprehend), but leads back to the relation with the Other, that is, to language: "Speech founds community by *giving*, by presenting the phenomenon as given; and it gives by thematizing" (98).

Levinas, in response to Kant, clams that the Other calls into question the egoist spontaneity of the same through the force of her alterity. Levinas calls this questioning of spontaneity ethics: "the strangeness of the Other, his irreducibility to the I, to my thoughts and my possessions, is precisely accomplished as a calling into question of my spontaneity, as ethics" (Levinas, *TI* 43). This idea extends into Heidegger's thought as the spontaneity of a situated being that comprehends and acts (with a pre-ontological understanding) on the basis of the ontological disclosure of its being-in-the-world and being-with-others. Justice, Levinas argues, involves an ethical obligation that precedes the freedom of the situated being. We have seen this to be the case in reference to the autonomy of the individual in Kant's thought, and this extends into Heideggerian ontology as well. Heidegger's philosophy affirms the "freedom that possesses man" as that which is primordial to ethics. Levinas states,

> To affirm the priority of *Being* over *existents* is to already decide the essence of philosophy; it is to subordinate the relation with *someone,* who is an existent, (the ethical relation) to a relation with the *Being of existents,* which, impersonal, permits the apprehension, the domination of existents (a relationship of knowing) subordinates justice to freedom…It would be opposed to justice, which involves obligations with regard to an existent that refuses to give itself, the Other, who in this sense would be an existent par excellence. In subordinating every relation with existents to the relation with Being, the Heideggerian ontology affirms the primacy of freedom over ethics (Levinas, *TI 45*).

Truth, as that which would provide a system of justice with a proper justification in law and judgment, thereby results in the effacing of man behind the "structures that *think themselves out* in him (Levinas, *OB* 58). Truth, in Heidegger, follows Kant in that it proceeds from a comprehension of the world on the bases of a 'light' projected on human society. In Heidegger's case, the truth of justice depends on the way the subject understands its thrownness as

fundamentally being-in-the-world and being-with-others. Levinas argues that the philosophical

tradition has substituted ideas for persons, the theme for the interlocutor. He states "Heidegger,

with the whole of western philosophy, takes the relation with the Other as enacted in the destiny

of sedentary peoples, the possessors and builders of the earth. Possession is preeminently the

form in which the other becomes the same, becomes mine" (Levinas, *TI* 46). Instead, Levinas

argues that the fundamental meaning of knowing is not derived on the basis of a light projected

on the world, but a putting into question of the spontaneous self. Prior to comprehension, the

Other's presence is a calling into question that accomplishes and founds the critical essence of

knowledge. Knowledge is thereby *promised* in response to the infinite responsibility for the

Other, which reflects the youthful creator of Nietzsche's perspectivalism: "infinitely more has to

be promised than can ever be fulfilled..." (Nietzsche, *GS* 170/300). Knowledge, as straightaway

a response to the face-to-face relation in justice will ensure that the alterity of the Other is not

reduced to the same (to what each has in common).

Levinas argues that in justice and injustice, there is a "primordial access to the Other

beyond all ontology" (Levinas, *EI* 89). That is, the Other is not intelligible in terms of

coinciding, our together-ness, but as a non-coinciding. In fact, we will see that it is only if we

conceive justice and philosophy outside of the ontological relation that the injustices inherent in

these totalizing thoughts can be prevented. Levinas states,

> Before any participation in a common content by comprehension, it consists in the
> intuition of sociality by a relation that is consequently irreducible to comprehension. The
> relation with the other is not therefore ontology. This tie to the other, which does not
> reduce itself to the representation of the Other but to his invocation, where invocation is
> not preceded by comprehension… (Levinas 1951, 7)

Proximity is irreducible to comprehension, whether on the basis of categories of understanding, or the pre-ontological disclosure of the situated Being. How then, in justice, is sociality between individuals to be conceptualized, which is necessary for the order of justice? How then, according to Levinas, can the Other abide both in community and in proximity without reducing difference to co-presence? Levinas admits that there is a rational necessity of a coherent discourse in order for justice to be possible (Levinas, *OB* 160).

In order to understand proximity in a social-totality—i.e., as a communal relation—a *concept* of justice is necessary. By the fact that the face-to-face relation always takes place within social contexts, we are always face-to-face with many particular Others. Levinas states: "We are never, me and the other, alone in the world. There is always a third: the men who surround me. And this third is also my neighbor" (Levinas, *OB* 157). Levinas calls the 'third' the people who make up the social world, the members of the community.

Justice calls for the "comparison of the incomparable", "coexistence, assembling, order, thematization, the intelligibility of a system…copresence on an equal footing, togetherness in a place" (Levinas, *OB* 157). In justice, proximity reverts to Being, to co-presence in a social-horizon, to thought, to "history" (Levinas 1974, 122). However, Levinas conceptualizes community in a different direction than Heidegger, arguing that primordially, since the intersubjective relation is ethical—not ontological—community is the result of a plurality of individual, unique Others who affirm their responsibility as social-beings. There is always a 'subject at the service of the system'. It is therefore only on the basis of proximity (language or ethics) that the intelligibility of justice can be disclosed.

In the call for justice, truth does not present itself phenomenologically, but is rather,

> The position of the one with regard to the other, the relativity in which the one makes a sign to the other, the reciprocal signifyingess of the one with respect to the other, that is equivalent to the coming to light…the regrouping of all these significations or structures into a system, intelligibility, is the disclosure itself (Levinas, *OB* 132).

Justice necessitates the intelligibility or rationality of an order of sociality, and this intelligibility relies on communication: the way that one makes a sign to the Other and the reciprocity of this communication.

As a dialogue, as reasoning-with, a system can be made intelligible, but Levinas qualifies it as an abstraction, a perspective. He states that the elements of the structure—the unique individuals who are in society together—taken outside of the structure are 'veiled'. That is, the intelligibility of the structure is not independent of the truth of which it serves: ethics. Whereas in Kant and Heidegger, the intelligibility of the structure depends on the truth of spontaneous disclosure—where nothing external can make contact without being comprehended in the 'truth' of this disclosure—Levinas argues that truth's ultimate signification does not lie within the comprehension of the ontological, but through the relation to the Other (that is language), irreducible to comprehension. He states,

> True discourse can come to its own assistance: the content that is presented to me is inseparable from him who has thought it—which means that the author of the discourse responds to questions. Thought…is not reducible to an impersonal concatenation of true relations, but implies persons and interpersonal relations (Levinas, *TI* 71).

The need for a true discourse is conditioned by the face of the Other and the work of justice—a relation irreducible to the knowledge of the Other to the same and fundamentally different from disclosure (28). Levinas states, "a structure is precisely an intelligibility, a rationality or a signification whose terms by themselves do not have signification (except through the already kerygmatic ideality of language)" (Levinas, *OB* 132-3); the language that constructs or signifies

the idea of justice does not manifest itself in a silent or nonhuman language. The necessity of the discourse presupposes the pre-original, non-presentable, anarchic responsibility for Others (Levinas, *OB* 160). The ability to communicate, which is the way in which we become conscious and conscious of reason, is developed on this *need* to communicate in proximity to the third. As Nietzsche put it, this need has left us with a surplus in the "art of expression;" this need waits for an artist, creators, writers. We must impose a structure on the world, but break with the totality of understanding for perspectives of 'truth'. Knowledge is not that which "uncovers among everything strange, unusual, and doubtful something which no longer unsettles us," an exteriority reduced to the spontaneity of the subject, at-home with oneself (Nietzsche, *GS* 214). We must do something different with our beliefs besides 'making them True', but rather, making them good.

Levinas appropriates Dostoevsky, claiming that in the need for justice, I find myself "responsible for everyone and everything, and I more than the Others" (Levinas, *RB* 56). In the need for justice, the infinite responsibility goes in more than one direction, and makes a demand for a new infinite. To become conscious and to reason lies in one's responsibility to respond—to bear the weight of existence as a subject, *sub-jectum.* The concreteness of this primordial situation puts in doubt the move to authenticity, the authentic mastery of our Being-with, and summons us to a responsibility before a projective disclosure or light on existence and understanding. We will see that, as a member of a community, responsibility for all Others must be embodied in the institutions that represent the primordiality of the ethical relation.

Chapter 4: Conclusion

The concept of justice plays a crucial role in Levinas' philosophy; justice is that which gives rise to theory, philosophy, ontology, and truth, but more importantly, it is that which provides us with a means to *know* how to respond to the Other person. It gives us the capacity to judge our actions, to judge the actions of others, to develop *an* ethics, a universal law, and a concept of moral responsibility. In other words, justice makes an ethical community possible, for a human multiplicity requires a political structure. It is through justice that the "for-the-other" of subjectivity enters with the dignity of a citizen into the reciprocity of political law (Levinas 1984, 168); it ensures the equality of individuals before the law; it establishes rights and duties among citizens; and grants institutions the capacity to judge. It is in the name of justice, that "one must perceive the individuals of a genus, one must compare them, judge them, condemn them" (Levinas, *RB* 205).

I have argued that community, as it is approached ontologically, has corrupted and nullified responsibility for the Other. That is, a society in which peace, freedom, and well-being are promised on the basis of a "light projected by universal knowledge on the world and human society," is one that leads to injustice (Levinas 1984, 164). We have seen this in the philosophy of Kant, who argues that the dignity of persons lies in his or her capacity to act as an autonomous, rational being—one in which the Other is stripped of her very alterity; it is one in that grounds moral responsibility, not in the face of the one who commands, but in the spontaneity of the subject as if the command came from himself. We have seen this in Heidegger's conception of the authentic community—*das Volk*—as one which privileges the

ontological structure of community over the particularity of the individuals that make up that community; that is, it is one which masters sociality under the authentic ontological comprehension of being-together, perhaps as "marching-together" (Levinas, *RB* 177). These philosophies have privileged ontology over ethics, and by doing so, have *absorbed* the "gravity of murder committed and the scandal of indifference of the suffering of the Other" (Levinas 1984, 164).

Community is not an ontological concept, but a relation to a third—a third party that interrupts the asymmetrical and unquestioned responsibility for the Other (Levinas, *OB* 150). Levinas states that this 'thirdness' is not understood as the perspective of a third person, but an interruption of proximity—one that "introduces a contradiction in the saying whose signification before the other until then went in one direction" (157). It is in this relation to the third that the first question, the question of justice, is borne; the *truth* of justice is thereby bound to the third that 'looks at me through the eyes of the Other' (157). Levinas states, "as responsible for the other and the third, I cannot remain indifferent to their interactions, and in the charity of the one cannot withdraw its love from the Other" (Levinas, *RB* 205). Thereby, we have seen that in justice, the unique must be sought as a member of a genus, as a person capable of being held morally responsible and as an individual in society with others that must be protected against injustice. Levinas states,

> In the comparison of the incomparable…everything is together, one can go from the one to the other and from the other to the one, put into relationship, judge, know…Out of representation is produced the order of justice moderating or measuring the substitution of my for the other…(Levinas, *OB* 158-9).

That is, justice can only be just if the I can become an Other like the Others, that is "for itself." Justice requires moral responsibility to be thematized: it must be put into law, it must structure

the state and its institutions, it must promote equality among individuals so that they may have equal rights under the law.

Levinas' concept of justice is not an order instantiated to *restore* reciprocity between the I and the Other, but arises from the "face of the third who, next to the one who is an Other to me, is "another other" to me" (Levinas, *RB* 205). Therefore, it differs from the integration of individuals into a "we", or a realm of ends issued under a communal ontology. The reciprocity of law in Levinas' concept of justice is not the result of an equilibrium or the harmonizing of antagonistic forces. Justice thereby cannot simply be reduced to a retributive, rehabilitative, or restorative approach to wrongdoing. Levinas states "justice is not a legality regulating human masses, from which a technique of social equilibrium is drawn, harmonizing antagonistic forces. That would be a justification of the State delivered over to its own necessities" (Levinas *OB* 159; see also Levinas 1984, 169). To limit justice to rehabilitation or restoration would limit it to the necessities of the State, which would lead to a totalizing conception of justice underneath the ontological area of the communal. Justice is not that which serves harmonize two separate freedoms or forces into the archaic unity of communal existence.

The order of justice is *a call* to create something; to create a social order that does not first adhere to Truth, but to the good (ethics), which is the reason we want truth to begin with. Justice, as founded on one's responsibility for the Other, is a social institution that must always 'anticipate a justice which is more just.' That is, Levinas argues, justice is not a universal principle—"if it were a universal principle, it would be a moment of justice, a law" (Levinas, *RB* 134). It is rather an openness or a way to create value; Levinas states, where "the Saying brought down to the Said enters into conjunction with its own conditions, builds into its contexts and

loses the youth of saying, youth that is rupture of the context, cutting word, Nietzschean word,

prophetic word, word that has no status in being but has nothing arbitrary, because it comes from

sincerity, that is, the very responsibility for others" (Levinas, *HO* 69). This limitless, youthful,

call to create, a youth 'defined by sincerity' as an approach to others and a taking charge in

response to human vulnerability (69).

In this openness is the idea of progression, a better justice that can better reduce the

suffering of Others. Levinas states "this is perhaps the very excellence of democracy, whose

fundamental liberalism corresponds to the ceaseless deep remorse of justice: legislation always

unfinished, always resumed, a legislation open to the better (Levinas, *RB* 206). He states

elsewhere,

> A danger of being extinguished (responsibility for the other) in the system of universal
> laws which these laws require and support. But also the eventual possibility for
> "goodness" to be understood in the guise of prophetic voices reverberating imperiously
> beneath the profundity of established laws. Voices that do not come, like a legislation
> beneath a legislation, to be formulated once again in the guise of logical rules, whatever
> be their invitations to generosity and mercy. mercy-for-the-other-man, going beyond the
> rigorous limit which designates justice responds to these invitations, whether by the
> resources—or by the poverty—of my uniqueness as an I. (Levinas, *RB* 116)

Justice, as a system of thought, must be understood through the signification of proximity. It is

not the voice of reason, "a legislation beneath a legislation," a universal principle professed on

the basis of autonomy. Rather, "in the name of that responsibility for the other, in the name of

that mercy, that goodness to which the face of the other man appeals, that the entire discourse of

justice is set in motion, whatever limitation and rigors of the dura lex it may bring to the infinite

benevolence toward the other" (Levinas, *RB* 206). Justice arises in the face of the limitless

responsibility expressed in the face of the Other, but interrupted by the third who demands

justice; it is the anarchical pro*vocation* that leads to the thematization of moral responsibility. A judicial order founded on ethics would necessarily restructure the way we approach justice, and I am going to explore some of the implications that this restructuring will have on how we approach wrongdoing.

As system that imposes judgment under a theoretical conception on what it means to *be responsible*, justice leads to the defacement and condemnation of individuals; justice requires the neighbor that I am responsible for to become visible, to be looked at, so that justice can be upheld. How can the face appear as a phenomena, how can it abide both in representation and in proximity? How can we hold the Other morally responsible for his or her actions when Levinas states, "uniqueness of the self is the very act of bearing the fault of another (Levinas, *OB* 112). In the interviews, Levinas repeatedly references the Talmudic apologue that, in the tractate of Rosh Hashanah, attempts to reduce the contradiction between two verses of the scripture: Deuteronomy 1:17, which states "The judge does not look at the face of everyone" and Numbers 6:25, which states "May the Eternal turn his face toward you." Levinas states:

> The first text teaches the rigor and strict impartiality of justice by God: all regarding of persons is excluded from it, or, more literally, He doesn't favor the face. The second text, where God precisely "turns his face toward you" profers another language and teaches a contrary sense. It foresees the luminous Face of God turned toward the man undergoing judgment, illuminating him, welcoming him…the first text concerns justice as it develops before the verdict, and the second specifies the possibilities of the after-verdict. Justice and charity. This after-verdict, with its possibilities of mercy, still fully belongs—with full legitimacy—to the work of justice. On the condition that the death penalty no longer belongs to the categories of justice (Levinas, *RB* 207).

In other words, the actions committed by the wrongdoer are judged on the basis of whether or not they respect the rights of others and adhere to the laws of the community. By not "looking at" the face, the judge can maintain impartiality when taking account of the violence caused by

the wrongdoer. To give a fair verdict, the face of the Other cannot be taken into account. However, the impartiality of the judgment presupposes the language expressed in the face-to-face relation. After the verdict is passed, in responding to the wrongdoer, the face makes its demand, and justice becomes an act of charity. Levinas states, "it is in the name of that responsibility for the other, in the name of that mercy, that goodness to which the face of the other man appeals, that the entire discourse of justice is set in motion, whatever limitations and rigors of the *dura lex*[1] it may bring to the infinite benevolence toward the other" (Levinas, *RB* 206). Levinas states elsewhere, a "reasonable justice is bound by legal strictures and cannot equal the goodness that solicits and inspires it" (207). It still emerges in the name of the goodness found in the anarchic response to the call of the face, so one must find "ways to approach the suffering other—without contradicting the verdict" (207).

Levinas states "in suffering by the fault of the other dawns suffering for the fault of others, supporting" (Levinas, *OB* 125). To be responsible for the Other is to "be responsible for the other's responsibility, even for the other's evil." He argues that this goes as far as "bearing the burden of the misery and failures of the other, and even the responsibility that the other can have for me" (125). Justice can no longer be seen as a legal structure that seeks to satisfy universal principles; justice as derived from the value of spontaneity, whether on the basis of autonomy or the existential freedom of the *das Volk,* is one where "the stranger is assimilated" underneath a totality from which everything is justified and understood; responsibility for the Other is nullified under a sense of justice disclosed on the basis of an ontological idea. Nor can

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[1] Latin for 'the law is'

justice been seem as restorative, in the sense that the archaic or original bond between the I and thou, between the victim and the offender, could be harmonized or unified once again. The very face of the Other, of the wrongdoer and the victim, and the suffering each face expresses is that what justice seeks to respond to. Justice must thereby be seen as a way to approach the effects that wrongdoing has had in the past, in order to transform those actions into something good. He states,

> Pardon refers to the instant elapsed; it permits the subject who had committed himself in a past instant to be as though that instant had not passed on...as though he had not committed himself. Active in a stronger sense than forgetting, which does not concern the reality of the event forgotten, pardon acts upon the past, somehow repeats the event, purifying it. But in addition, forgetting nullifies the relation with the past, whereas pardon conserves the past pardoned n the purified present. The pardoned being is not the innocent being. (Levinas, *TI* 283)

In reparation for an injustice, the effects that that actions had on the past had are not nullified in the exculpation, on the basis of principles that seeks harmony once again. Rather, justice as that which seeks to reproach actions committed and reconcile wrongdoing 'acts upon the past, somehow repeats the event, purifying it.' One does not seek the innocence of the archaic past in justice, but a way to give the past a new meaning—to repair it.

A justice that reprimands wrongdoing on the basis of the subsuming of particular beings under a general rule, viewing Others simply as members of a genus—as such and such a type—nullifies the anarchic responsibility we have for the Other. The law and justice must weigh its account in proximity. Levinas states, "I am in reality responsible for the other even when he or she commits crimes" (169). In justice, the moral responsibility we have for the offender is one that extends into how we respond to wrongdoing. That is, in the after-verdict, justice has to be "perfected against its own harshness" (206). A proper response to wrongdoing is one that returns

to charity and mercy—that listens to the personal appeal of the Other by calling its own verdict into question and responding to the judged with infinite responsibility: responsible for everyone and everything and I even more so than all the others.

The anarchic responsibility we have for the Other demands an approach to justice not based on an ontological idea of community as a harmonious unity—a pure social identity—but on ethics and sociality of this anarchic relation. Justice, as we have seen in response to Kant, cannot be retributive.

> Violence calls upon violence, but we must put a stop to this chain reaction. That is the nature of justice. Such is at least its mission once the evil has been committed. Humanity is born in man to the extent that he manages to reduce a mortal offence to the level of a civil lawsuit, to the extent that punishing becomes a question of putting right what can put right and re-educating the wicked (Levinas, *DF 147*).

There is no "happy end" in justice. The obligation of the good stems from the face of the Other, from a burden of responsibility. Its source cannot be deduced from a 'happy end'. This responsibility we have for an offender "is not pleasant, its not enjoyable, but it is "good". (Levinas, *RB* 135). An approach to wrongdoing determined on the basis of autonomy, reciprocity, or a 'truth' disclosed on the basis of an ontological structure fails to recognize the exigency of moral responsibility for the Other.

We can get a sense of this approach through Levinas' response to the horrors of the holocaust; he states, "the trials undergone by humanity over the course of the twentieth century are, in their horror, not only a measure of human depravity, but also a renewed reminder of our vocation" (Levinas, *RB* 226). That is, even in response to the holocaust, one must recognize that even the SS officer has a face (208), for a justice based on peace and kindness is necessary and the only possible form of justice (Levinas, *DF* 147). The order of justice must be constructed on

the idea of the good, which is not based on its universality, but "the moral uneasiness elicited by individual lives, precarious lives always at the mercy of the violence of principles" (Chalier, *LK* 23). It is not justice based on truth, where the diverse is unified, the stranger assimilated under the State, "participating in the same truths," but a peace of proximity.

Levinas argues that there needs to be a humanizing of justice. The humanism of man is not found in respect for autonomy—one's capacity to act according to the universal law, but in one's responsibility for the Other. In this sense, respecting the dignity of the offender is not first and foremost a moral obligation towards autonomy. This responsibility for the Other is that alone which establishes the dignity of the individual: to be provoked as irreplaceable and accused as unique in a responsibility that one cannot slip away from. Levinas states, "men stand who have never been more moved…than by other men…before whom they find themselves irreplaceable and unique in responsibility" (Levinas, *OB* 58). It is not on the principle of justice that we strive for the good, for a better justice, but for the Other person, for whom one is unique for.

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