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LEVINAS AND KANT: RIGHT, LAW, AND THE OTHER¹

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ABSTRACT. Beyond the deep affinities linking Immanuel Kant's declared "primacy of practical reason" and Emmanuel Levinas's "ethics as first philosophy," these thinkers radically diverge, as do modern rationalism and contemporary phenomenology. The paper shows that Kant, despite his declaration, continues to give primacy to epistemology and reason, as evidenced by the supreme status of law – both in nature, to be sure, and in the autonomy of rational self-legislation. This contrasts with Levinas who recognizes as "original right" a moral imperative more exigent than the rule of law, emanating from the alterity or face of the other person. Such original right orders the self pre-originally or "an-archically" to a moral responsibility to and for the other person before all else. In this way, Levinas, in contrast to Kant, understands the source of intelligibility – including the rationality of logic and science – in and as the goodness of the priority of moral obligation.

KEYWORDS: law, ethics, right, alterity, responsibility.

LEVINAS IR KANTAS: TEISĖ, ĮSTATYMAS IR KITAS

SANTRAUKA. Nepaisant gilių giminystės ryšių, siejančių Immanuelio Kanto deklaruojamą „praktinio proto pirmenybę“ ir Emmanuelio Levino „etiką kaip pirmąją filosofiją“, šie mąstytojai radikaliai skiriasi, kaip skiriasi modernusis racionalizmas bei šiuolaikinė fenomenologija. Straipsnyje parodoma, kad Kantas, nors ir deklaruodamas praktinio proto pirmenybę, toliau

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ją teikia epistemologijai ir protui, ką liudija aukščiausias įstatymo / dėsno statusas tiek gamtoje, tiek kaip įstatymą leidžiančio proto autonomija. Tai kontrastuoja su Levino požiūriu, kuris „pirmine teise“ pripažįsta esant moralinį imperatyvą, reiklesnį nei įstatymo taisyklė, kylantį iš kito asmens kitybės ar veido. Tokia pirminė teisė dar anksčiau arba „an-archiškai“ įpareigoja mane visų pirma prisiimti moralinę atsakomybę prieš ir už kitą asmenį. Straipsnio autorius daro išvadą, kad tokiu būdu Levinas, priešingai nei Kantas, inteligibilumo – įskaitant logikos ir mokslo racionalumą – šaltinį mato moralinio įsipareigojimo pirmenybės gerume ir kaip gerumą.

RAKTAŽODŽIAI: įstatymas, etika, teisė, kitybė, atsakomybė.

“For if justice perishes, there is no further point in men living on earth” (Kant 2007b: 155 [Ak 6: 332]).

“[...] begins with the universality of the moral law: the great Kantian idea. [...] My manner of approaching the question is, in effect, different. It takes off from the idea that ethics arises in the relation to the other and not straightaway by a reference to the universality of a law” (Levinas 2001b: 114).

“I like the second formulation of the categorical imperative, the one that says to respect man in myself when I respect the other. In this expression, we are not in pure universality, but already in the presence of the other” (Levinas 2001a: 163).¹

1. Introduction

Immanuel Kant and Emmanuel Levinas, along with almost all philosophers, use, endorse and reflect upon science, on knowledge in its most rigorous sense, *episteme*, justified opinion, truth supported by logic and evidence. Unlike almost all other philosophers, however, they declare for the *primacy* not of knowledge but of ethics, of the good before the true: Kant’s “primacy of pure practical reason” and Levinas’s “ethics as first philosophy.” Elevating the good above the true, conditioning the true by the good, without thereby denying the truth of the true but via ethics supporting truth, such a hierarchy as well as the ingeniously original ways each respectively argues and elaborates this reorientation, is what binds Kant and Levinas so intimately to one another.

Nevertheless, despite their deep affinities, these two philosophers diverge from one another radically, which is to say, fundamentally. There are several explanations for this, but at root it derives from their disagreement over the nature of intelligibility, a difference that from Levinas’s perspective leads Kant to renege on his revolutionary declaration for the primacy of ethics, to betray it precisely because Kant continues to give primacy to scientific knowledge. To be sure, to give primacy to knowledge is *the*

¹ Translation slightly altered.

typical philosopher's prejudice and error, a nearly defining philosopher's prejudice and error – the blindness of brilliance, as it were, the arrogance that poisons the pride of knowing. But the price is too high: not only a distortion of knowledge, but a denigration, if not an extinguishing of ethics – even if some philosophers – Baruch Spinoza, Julien Offray de la Mettrie, the Marquise de Sade, Friedrich Nietzsche, et al. – seem to relish the cruel logic of superior intellect. In Kant's case knowing asserts itself by restricting ethical agency and efficacy to a freedom bound to the same universality by which scientific knowing – natural science – grasps nature, now understood as “autonomy” achieved through rational self-legislation, as an unflinching respect for law, the absolute authority of a “categorical imperative” understood as unbreakable lawfulness, as respect for law, a lawfulness and respect *analogous to, modelled upon, and borrowed from* scientific knowing of nature. Ethics as respect for universal law, then, is science transposed from natural causality to willful freedom. Such is the authority of natural science that what is lost in such a transposition – the singular alterity of the other person – is not only not noticed, but is positively celebrated, as a rational purification of ethics.

For Levinas, in contrast, more faithful to the phenomenological than the rational, faithfulness to the primacy of the exigency of the good means recognizing that the moral imperative originates and emanates not from the borrowed epistemic authority of universal law, but from the more concrete, more pressing vulnerability of the other person – the “face,” “proximity,” as my responsibility to and for another, condition of all worth, including the worth of the real. For Levinas the “face” of the other person not only stimulates and elicits my responsibility, but, in so doing, also lends weight to word and world, to the significance and not just the signification of sense and importance. Ethics as respect for the other person is the source of the valence which makes intelligibility meaningful, situating it as good above evil, right above wrong, as truth above false, pleasing above painful, beauty above ugliness, and so on. In brief, the uplifting valence of an ethics of responsibility to and for the other and others – ordered by the good – precedes and conditions the horizons of being and thinking. Not “thinking and being are one,” but the “good above being.” Or, to invoke another of Levinas's formulations: whatever is or can be said (*dit*), including the true, but not limited to the true, depends upon and is first traced in saying (*dire*), response, the proximity of one for-the-other – ethics as first philosophy – or why speak in the first place?

Kant and Levinas, thus, differ from one another over the source and nature of intelligibility. We do not need a philosophy textbook to know that Kant is a rationalist, indeed the culmination of a rationalism begun in Greek antiquity. He rationally refutes both theological-dogmatism and empirical-skepticism, justifying

the legitimacy of modern mathematical science by affirming rather than fudging the ineluctable and unsurpassable “dialectical” conflicts harbored within rationality itself, i.e., the inevitability and the incompatibility of *Verstand* and *Vernunft*, Understanding, seeking causes, and Reason, seeking wholeness, by the discipline of “transcendental idealism.”² In contrast, Levinas follows Edmund Husserl, for whom science is not determined by mathematics alone but by *evidence*, by the researcher’s rigorous, unprejudiced, and publicly repeatable openness to “the things themselves.” Furthermore, while accepting Husserl’s idea of science as evidential, descriptive as well as quantitative, Levinas discovers *beyond* the horizons of “intentionality” (*noema-noesis*) as “meaning-bestowal” (*Sinngebung*) which limit Husserl’s phenomenology, the wrench or disruption of an ineluctably singularized and singularizing exigency – moral obligation – imposed even more immediately by the other person, the “face,” as “saying,” as “command.”

By way of contrast, then, we can say that Kantian intelligibility is not only a justification of *modern* science in its mathematical telos, but also of the broader reign of scientific rationality as the exclusive legitimizing model of all registers of signification, not only of science proper but also of ethics, politics, aesthetics, culture and religion. Scientific rationality as master narrative – positivism. Levinas, in contrast, is post-Kantian, a *contemporary* philosopher, attentive to the concrete – to temporality, language, embodiment – not measured and judged by their conformity to natural scientific rationality, whose primacy is thus presupposed, but taken according to their own exigencies, which is to say, for Levinas, as moral exigencies, not simply questions, epistemic puzzles, but a putting of the self in question, as solicitations of moral responsibility, the ethical priority of the other person. Two intelligibilities: the rule of law in Kant, in ethics as in nature; responsibility to and for the other person in Levinas, a sensitivity to the concrete vulnerabilities which impose moral obligations.

We detect this difference of approach already in their different formulations for the alleged primacy of ethics: Kant’s “primacy of pure practical reason,” Levinas’s “ethics as first philosophy.” Kant seems to be exalting the practical, the ethical, but in truth it is the practical already in conformity to and as a type of *reason*, despite his explicit intention to differentiate “theoretical” or “pure” reason, as found in the *Critique of Pure Reason*, from “practical” reason, as found in his ethical writings. In an important sense, and not merely verbally, both theoretical and practical reason are still reason, reason as conformity to law, whether as natural beings or free beings, because, as Kant puts it, “morality serves as a law for us only as rational

² The descriptive label is Kant’s own. See Allison 2004.

being” (Kant 1980: 66 [Ak 4: 447]). Kant is not concerned with the humanity of the human, whatever that might mean, but with the rationality of rational beings, of humans as rational beings, creatures endowed with rationality and acting rationally – this is what is decisive for Kantian ethics.

In the following we will examine this great divide between Kant’s rational ethics, which is to say, the imperative of law, and Levinas’s more concrete ethics, the imperative of the other person. We are guided by the following broad and critical overview Levinas articulated in a talk he gave at Ben Gurion University in 1978:

Kantian philosophy itself, which has lent reason its form and figure, was still misled by the traditional logic accepted as fixed, and needed a phenomenology, whether Hegelian – overcoming the separations of logical understanding by a form of reason in movement, or, more humbly but more radically, Husserlian – seeking full lucidity on the hither side of logic in a living present, in its proto-impressions and their syntheses and “passive explications.” In Husserl’s view, that full lucidity has already been diminished by the first constituted structures of objectivity, which block the horizons of critical scrutiny (Levinas 1994: 31; cited in Cohen 2010: 27).

First, let us note the high stakes between rationalism (today often labelled “positivism” to underscore its totalizing nature) and phenomenology broadly speaking, that is, between abstract and concrete intelligibility. Because each not only gives rise to a different conception of ethics, Kant exalting conformity to law, Levinas elevating sensitivity to suffering, but also because the very enlightenment of the former *occludes* the obligations and critical approach of the latter: “that full lucidity has already been diminished by the first constituted structures of objectivity, which block the horizons of critical scrutiny” (Levinas 1994: 31). Fortunately, the occlusion is not reciprocal: phenomenology does not destroy science but rather limits its extension. Second let us note that to acknowledge Levinas as a student of Husserl, albeit a dissenting student, one for whom the transcendence of the other person precedes and undergirds the meaning-bestowing of consciousness, is obvious and indisputable. But to say also that a broader post-Kantianism intelligibility is served as well by George Hegel’s phenomenology, given Levinas’s well known criticisms of Hegel, not to mention Hegel’s fundamental commitment to the mind, may come as a surprise to many, but here too we must keep in mind that Levinas is again the dissenting student. Just as Levinas criticizes the transcendental egoism which distorts Husserlian phenomenology, Levinas is no less an unsparing critic of totalizing consciousness in Hegel, and hence also a critic of that Hegelianism in the political thought of George Lukacs, say, or of Louis Althusser, indeed of all totalizing or so-called right-wing Hegelianism. What this means positively – though

commentators have infrequently appreciated or even acknowledged it – is that from the perspective of political philosophy, also a branch of ethics, Levinas is quite open to non-totalizing or so-called “left wing” Hegelianism, and more specifically, to the critical social theory of the Frankfurt School (Cohen 2024).

As a contemporary, then, our contemporary, for Levinas ethics is not originally a function of rationality or knowing, but is another sort of alertness, another kind of attentiveness, stung, pricked, for-the-other, more wakeful, as it were, than self-consciousness! Obedient to the other person, arising in and as responsibility to alleviate the other’s suffering, responding – without prior fault – to the other’s vulnerability and mortality. Levinas describes the ethics based in the excess of such responsibility “difficult,” at once bound and free, already obligated before contracting this or that obligation, always already guilty without having committed any particular fault, and by this same term highlights the extreme urgency and exigency of ethics, beyond the rationalists conception of unbound freedom, in the title of one of his early books – no doubt with a critical side glance at Jean-Paul Sartre – *Difficult Freedom*. As I have written of this elsewhere: “That freedom is *difficult* rather than *pure* indicates from the start that it is enmeshed in an embodied subjectivity. [...] Freedom, for Levinas, is not found in autonomy but in responsibility, responsibility in the face of the other person. And such responsibility is not intelligible but sensible: a giving based in a ‘suffering for the suffering of the other’” (Cohen 2010: 27–28).³ Or to cite Peter Atterton: “What is it that makes the will (*Wille*) good? Kant’s answer to this question is its rationality, its unconditional determination to act in accordance with the Moral Law, a principle of pure practical reason. For Levinas, on the other hand, it is not rationality that makes the will good but responsibility for the Other (“To be for the Other is to be good.”⁴)” (Atterton 1999: 248).

2. Kant, Ethics and Law: three citations in lieu of explication

In his critical philosophy, from start to finish Kant never wavers in taking free rational or non-contradictory conformity to law as the supreme principle – “categorical imperative” – of ethics, from his early *Groundwork of the Metaphysics of Morals* (1785) to his later *Religion Within the Bounds of Reason Alone* (1793), to his late *The Metaphysics of Moral* (1797). Accordingly, the following are representative citations taken from each of these three volumes.

³ Cohen on Kant, see, Cohen 2010: 17–36 (Chapter One, “The End of the World: Heidegger, Kant, and Levinas”).

⁴ Levinas citation within citation is to Levinas 1969: 261.

From Kant, *Groundwork of the Metaphysics of Morals*:

But when I think of a *categorical* imperative I know at once what it contains. For, since the imperative contains, beyond the law, only the necessity that the maxim be in conformity with this law, while the law contains no condition to which it would be limited, nothing is left with which the maxim of action is to conform but the universality of a law as such; and this conformity alone is what the imperative properly represents as necessary. There is, therefore, only a single categorical imperative and it is this: *act only in accordance with that maxim through which you can at the same time will that it become a universal law* (Kant 1999: 73 [Ak 4: 421]).⁵

From Kant, *The Metaphysics of Morals*:

Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law (Kant 2007b: 387 [Ak 6: 230]).

From Kant, *Religion Within the Limits of Reason Alone*:

[T]he highest goal of moral perfection of finite creatures – a goal to which man can never completely attain – is love of the law (Kant 1960: 136; Kant 2018: 171 [Ak 6: 145]).

What these citations indicate, and what their further elaboration – including all that Kant would introduce under the label “anthropology” – confirms, is that for Kant *universal law* rules supreme in ethics because, under the unswerving rule of reason – characteristic of Kant's critical philosophy – the freedom essential to ethics, which Kant calls “practical reason,” can only operate as “autonomy,” i.e., as rational self-legislation, rationality as obedience to rational law, just as in natural science, the science of reality, of necessity rather than freedom, knowing is no less bound to lawfulness.

3. Levinas, Ethics of the Other Person

Levinas is constantly and acutely aware of Kant, who no less than Husserl and Heidegger, though perhaps named less, is a regular critical foil throughout his writings. In the mid-1980s, for instance, between the publication of two collections, *Transcendence and Intelligibility* (1984) and *In the Time of the Nations* (1988), Levinas published three short articles on human rights in which Kant figures explicitly and centrally: “The Rights of Man and Good Will” (1985), four pages included in Levinas' *Entre Nous* (1991) (Levinas 1998: 155–158); “The Rights of Man and the Rights of the Other” (1985), ten pages, included in Levinas' *Outside the Subject*

⁵ See, also, Allison 2013.

(1987) (Levinas 1995: 116–125), which is our primary text in the present paper; and “The Rights of the Other Man” (1988), five pages, included in a posthumous volume of 1995, *Alterity and Transcendence*, edited by Pierre Hayat (Levinas 1999: 145–149)⁶.

“The Rights of Man and the Rights of the Other” comprises three subsections, the first and third of which are most relevant to our current inquiry. Taking up the topic of human rights, in the first subsection Levinas invokes what he names “original right,” beginning not with my rights but with “the rights of the other,” thus understanding rights along the lines of his most original and basic teaching regarding the primacy of the other person as moral imperative, proximity, responsibility and justice. In subsection two, which we have not the space to review here, Levinas argues for the positive contribution of science and technology in the implementation of rights: “Science and the possibilities of technology are the first conditions for the factual implementation of the respect for the rights of man” (Levinas 1995: 119).⁷ Such a claim is clearly directed against Heidegger, who, however, is not named. Finally, the third subsection returns to “original right,” but now explicitly and critically contrasted to Kant’s rational idea of right based in universal law modelled on natural law.

Because Levinas is here discussing not only morality but right, let us preface our commentary with a citation of especial relevance to Kant, critical of the rational purity of his conception of freedom, taken from an earlier article by Levinas, from 1953, entitled “Freedom and Command”:

Freedom consists in instituting outside of oneself an order of reason, in entrusting the rational to a written text, in resorting to institutions. [...] Freedom, as obedience to law, certainly is bound to the universality of maxims, but also to the incorruptibility of the exterior existence of law [...]. The supreme work of freedom consists in guaranteeing freedom. It can only be guaranteed by setting up a world where it would be spared the ordeals of tyranny. [...] 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 categorial imperative, which is defenseless against tyranny; it must be [...] armed with force against tyranny. Such are commands as the political condition for freedom (Levinas 1987: 17).

As a contemporary thinker, and in particular as a philosopher trained in phenomenology, Levinas opposes abstraction in ethics, first of all regarding the *singularity* of the moral agent, of a responsibility not simply morally beholden to

⁶ In a preface Pierre Hayat thanks “Monsieur Michaël Levinas for his discreet and invaluable assistance” (xxiv).

⁷ For an explication of the second subsection, with a view toward the significance of embodiment in Levinas’s ethics, see Cohen 2025.

universality but first of all morally beholden to the other person. Nor less beholden to the singularities of social solidarity, of historically and communally particular publics and institutionally established justice which strive to ensure and guarantee justice, even without finishing or fully succeeding in doing so. Thus, in contrast to giving primacy to logical-intellectual operations, Levinas demands freedom responsible to humanity, or more exactly, freedom burdened because solicited by the one who faces, a singular freedom in the face of a singular alterity, which nonetheless also and no less demands equality, law, institutions, the solidarity of justice, in a justice always requiring more justice.

In “The Rights of Man and the Rights of the Other Person” Levinas begins neither with cerebral machinations nor with selfish desires, but with what he takes to be the absolute source-point of meaning, which is to say of meaningfulness, namely, the face of the other person as “original right.” Not the rational, as with Kant, or the experiential, as with David Hume, but the human – as imperative. Original right is coterminous with humanity as vocation, aspiration, responsibility. *Humanity* – a proximity beginning with the other person, for-the-other before oneself, is like language (“saying”), embodiment (“vulnerability”), and time (“diachrony”⁸), one of the keys of contemporary philosophy – is for Levinas from the first an ethical category or, more precisely, an ethical imperative and paradigm, humanity as calling, exigency, imperative. The human is not originally an abstraction, a matter of genus and species, say, or an instance of the rational, but from the first the imperative priority of the other person, as goodness, an ethical prod, the sting of obligation – imperative before nominative.

“These rights of man,” Levinas continues, “that do not need to be conferred, are thus irrevocable and inalienable” (Levinas 1995: 117). Original right, like Kantian freedom, breaks with the efficient causality that scientific knowing discovers in nature, but contrary to Kant it also breaks with the pure or noumenal freedom to which Kant’s transcendental idealism confines it. The original right of the other person is more pressing, more exigent, a more shattering imperative, a greater higher surplus – than law or freedom.

Rights that independently of any conferral, express the alterity or absolute of every person, the suspension of all reference: a violent tearing loose from the determining order of nature and the social structure in which each of us is obviously involved:

⁸ The Kantian rational-epistemological account of time, for instance, as “the form of subjectivity,” would therefore have to be recast, beyond its contemporary existential prolongations, *mutatis mutanda*, as synthesizing-ecstatic temporality, such as elucidated by Henri Bergson, Edmund Husserl and Martin Heidegger, but rather and even more profoundly ethically, across the exigencies of responsibilities arising from the “immemorial past” of the other and the outstanding “not yet” accomplished justice for all others, as Levinas has understood.

an alterity of the unique and the incomparable, due to the belonging of each one to mankind, which ipso facto and paradoxically, is annulled, precisely to leave each man the only one of his kind (Levinas 1995: 117).

Prior and more urgent than the truth of universality, such is the ethical singularity of each person, not like the external differentiation of things or objects, not the uniqueness of a fingerprint or snowflake, but the indeclinable deposition of responsibility, “guiltless responsibility” (Levinas 2005: 83)⁹ responsible without prior fault, without contract, responsibility as *election* – chosen rather than choosing – to alleviate the other’s person’s suffering, an always singular responsiveness to an always singular vulnerability and mortality. Levinas continues:

A uniqueness that is not forgotten, beneath all the constraints of Being, History, and the logical forms that hold it in their grip. It remains concrete, precisely in the form of the various rights of man, claimed unconditionally, under the various necessities of the real, as various modes of freedom (Levinas 1995: 117).

Levinas goes on to present a partial but specific list the rights of man, derived prior and beyond the law from the rights of the other, rights exceeding a merely liberal and legalistic conception of right, which would reduce rights to their legal formulations.

Behind the rights to life and security, to the free disposal of one’s goods and the equality of all men before the law, to freedom of thought and its expression, to education and participation in political power – there are all the other rights that extend these, or make them concretely possible: the right to health, happiness, work, rest, a place to live, freedom of movement, and so on. But also, beyond all that, the right to oppose exploitation by capital (the right to unionize) and even the right to social advancement; the right (utopian or Messianic) to the refinement of the human condition, the right to ideology as well as the right to fight for the full rights of man, and the right, to ensure the necessary political conditions for that struggle (Levinas 1995: 120).

We should recall here the discussions and arguments in early American constitutional history, in the *Federalist Papers* and elsewhere, which opposed inclusion of a “Bill of Rights” in the United States Constitution not because of an opposition to such rights but quite to the contrary and precisely because of opposition to limiting rights to this or that written formulations, which might then be treated as exhaustive and exclusive by a *legalism*, well-intentioned or mean spirited, oblivious to their inalienability and pre-originality, their exceptional immediacy and applicability, as well as the infinity of their ongoing development.

⁹ See, also, Saldukaitytė 2022: 95–110.

The “an-archic” beginning of right in the for-the-other, in the “rights of the other person,” also means that the state, that power, that politics are necessary, that justice requires the power and the state for its realization, yet at the same time – always critically – that justice cannot be confined by or to power and the state. Levinas elaborates:

This also means (and it is important that this be emphasized) that the defense of the rights of man corresponds to a vocation outside the state, disposing, in a political society, of a kind of extra-territoriality, like that of prophecy in the face of the political powers of the Old Testament, a vigilance totally different from political intelligence, a lucidity not limited to yielding before the formalism of universality, but upholding justice itself in its limitations. The capacity to guarantee that extra-territoriality and that independence defines the liberal state and describes the modality according to which the conjunction of a politics and ethics is intrinsically possible (Levinas 1995: 123).

Justice *of* the state yet *beyond* the state. Legal but better than legalism. A self-critical justice, never content, always open to improvement. Self-satisfied justice, in contrast, Hobbesian justice, makes mockery of rights, twisting the law, twisting the sense of right against right (e.g., in America today so-called “right to work” laws which undermine unions, or a “right to bear arms” which imperils citizen lives). Pretending to defend rights, rights are destroyed, in a political duplicity Kant had already exposed as “political moralism” in the Appendix (1796) to his article on “Perpetual Peace.”¹⁰ A deception and duplicity endemic to late capitalism, exposed by the Frankfurt School’s critique of “ideology” and “false consciousness.” Exposed as well in Domenico Losurdo’s critical counter-history of liberalism¹¹, whose pretensions are no less shattered by the absolute imperative, to and for the other person, driving Levinas’s ethics.

In the final subsection of his 1985 article Levinas suggests that an unjustified equation of will and reason is the root intellectualist error of Kantian ethics (with a rhetorical question reproduced verbatim in all three articles): “Is it so certain that the entire will is *practical reason* in the Kantian sense?” (Levinas 1995: 122). That is, is the will, is freedom, truly a function of reason? Levinas answers with another rhetorical question: “Does the will not contain an *incoercible* part that cannot be

¹⁰ See, Kant 2007a: 116–125 (“Appendix: On the Disagreement Between Morals and Politics in relation to Perpetual Peace”).

¹¹ See especially, Domenico Losurdo *Liberalism: A Counter-History* (Losurdo 2014), first published in Italian, 2006. To be sure, this has been noted by others as well, even those opposed to the Frankfurt School, e.g., Leszek Kolakowski, who in 1979 in “The Self-Poisoning of the Open Society” (1980), spoke critically of such twisting, “the institutions which make the survival of the pluralist society possible – the legal system, the school, the family, the university, the market – are attacked by totalitarian forces using liberal slogans, in the name of freedom in other words Freedom appears as the absence of law and responsibility” (Kolakowski 1990: 172).

obligated by the formalism of universality?” (Levinas 1995: 122, *italic added*) Does not the will – obligated by the other for the other – know better, as it were, than knowing? Is not responsibility deeper than free choice?

To be sure, one could argue in Kant’s defense that he does not conflate will and reason, or that he does not simply conflate will and reason. That it is precisely the difference between *human will* and a purely *rational will*, after all, that gives rise to the Kantian ethics in the first place. Whereby human will, obeying an imperative, acts *dutifully*, resists its inclinations, respects law, in contrast to a purely rational will which in theory conforms necessarily and automatically, like an angel or robot, but not therefore morally. This topic exceeds the confines of the present article, but ultimately, such is our view, Kant’s rationalism prevails over his anthropology. Levinas’s point holds up, it seems to me, because goodness and evil for Kant, despite the finitude they regulate, are measured by the standard of a perfect or purely rational will, which is why Kant speaks not of “ethics as first philosophy”, as does Levinas, but of “the primacy of pure practical *reason*.”¹² Reason, rational necessity, and the rule of law in science *and in ethics* – such is the outcome, or the price, of a philosophy whose fealty is to rationality first.

Levinas, in contrast, as an observant phenomenologist, attentive “to the things themselves,” does not first impute to human will a lack relative to a presupposed rational perfection. Rather, he sees in what otherwise might be reduced to an “an incoercible part that cannot be obligated by the formalism of universality” not simply an evil relative to rational good, particularity rebelling against universality, but rather and more positively an openness – pre-original, an-archic – to the surplus of morality, hence an “incoercible spontaneity” as both positive and worthy *in its own right*, as a “dignity other than that which attaches to respect for universal laws” (Levinas 1995: 122). Responsibility “knows” better than rationality, without therefore affirming the irrational. Law, the very best law, treating the unequal equal, remains also harsh. Or as Levinas puts this point:

There also remains the question of determining whether the limitation of rights by justice is not already a way of treating the person as an object by submitting him or her (the unique, the incomparable) to comparison, to thought, to being placed on the famous scales of justice, and thus to calculation. Whence the essential harshness of a

¹² This explains why in his final book, *Religion within the Boundaries of Mere Reason* (1793), where religion is subordinated to ethics, precisely in acknowledgement of the ineradicable inferiority of human rational will in relation to purely rational will, as the basic condition for the existence and need for ethics at all, Part I is entitled “Concerning the indwelling of the Evil Principle alongside the Good, or, Of the Radical Evil in Human Nature”; and Part II, for the same reason, is entitled “Concerning the Battle of the Good against the Evil Principle for Dominion over the Human Being”; and Part III too, named for ethical-religion’s goal if not its reality, is entitled “The Victory of the Good over the Evil Principle, and the Founding of a Kingdom of God on Earth.” See, Kant 2018: 50 [Ak 6: 15].

law that offends, within the will, a dignity other than that which attaches to respect for universal laws. The dignity of goodness itself! The universality of the maxim of action according to which the will is assimilated to *practical reason* may not correspond to the totality of good will (Levinas 1995: 122).

4. The Inextinguishable Insomnia of Responsibility

Original right! More right than right. While justice is a necessary and legitimate rectification of morality, because the world is not confined to two persons, to a face-to-face, to proximity, and therefore requires equality and law for all, at the same time inherent in justice is a betrayal of right, injustice, because law as law, as universal, also runs roughshod over the singularity of each. Thus law, even the best law, both protects singularity and betrays singularity. *Such is the fundamental and moving dialectic of justice* – always a struggle for more justice, for law more attuned to morality. Hence a demand for justice, for more and better justice, originating in morality outside the state, in an original right beyond the state, in critical contention with the rigidified purely political right of Hobbesian justice, which is rule of the state by and for the state, ceasefire but not peace. Peace is a constant struggle for greater justice.

For this reason, too, Levinas, rejects the truncated freedoms of a liberalism reduced to the *legalism* of “liberty and equality” at cost of the more concrete, complex and demanding justice of “liberty, equality and fraternity.” Levinas writes:

Should not the fraternity that is in the motto of the [French] republic be discerned in the prior non-indifference of one for the other, in that original goodness in which freedom is embedded, and in which the justice of the rights of man takes on an immutable significance and stability, better than those guaranteed by the state? [...] Their original manifestation as rights of the other person and as duty for an I, as my fraternal duty – that is the phenomenology of the rights of man (Levinas 1995: 125).

Levinas’s opposition to Kant and a legalistic liberalism, then, is not an opposition to law or universality, but an argument for their proper appraisal, their constant improvement and humanization. It is an argument for an ever renewed responsive to the irrepressible surplus of humanity in the face of the other and of all others, the “saying of the said,” which laws are meant to secure and protect against their betrayal in the “inevitable ceremonial” (Levinas 1969: 30) of a said divorced from its saying, which despite all its rationalizations reduces law to a dehumanizing legalism, into which even the best-intentioned laws congeal and wither. Positively, “in human fraternity. An inexhaustible responsibility: for with the other our accounts are never settled” (Levinas 1995: 125).

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