

REVIEW ARTICLE

Judging Emmanuel Levinas? Some Reflections on
Reading *Levinas, Law, Politics*

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Marinos Diamantides (ed.), Levinas, Law, Politics, Abingdon: Routledge-Cavendish, 2007, 220 pp, hb £55.00.

Marinos Diamantides, in presenting these ten prescient essays – many of which have previously been published – highlights the pertinence of the wisdom of Emmanuel Levinas to understanding as well as ‘doing’ law and politics.¹ Reading Levinas requires enormous exegetical labours; the dense intertextuality of his corpus remains forbidding, even for the *cognoscenti*; and the fusion of the philosophic and messianic does not authorize any ‘cash and carry’ practices of reading. ‘Vulgar Levinasianism’ is as important to avoid as ‘vulgar Marxism’. C. Fred Alford (Chapter 6) renders the former as the phenomenon of the ‘Levinas effect’, that is the ‘ability of Levinas’ texts to say anything that the reader wants to hear’ (107). The work under review exemplifies for the most part the gains of understanding arising from resisting the ‘Levinas effect’. It also provides a safe harbour for those as yet unfamiliar with Levinas’ relation to legal and political theory. It also goes beyond understanding Levinas to the task of judging him, in the distinctive realms of contemporary political and jurisprudential theory.

Levinas constitutes an alien presence to both mainstream and subaltern legal theory and practice. Outside a niche of critical jurisprudential scholarship,² the reception of Levinas in Anglo-American legal theory remains minimal. Even more disappointing is the fact that the field of professional legal ethics is as yet uninformed by Levinas.³ How may we understand this not-so-benign neglect? Is it because Levinas does not directly address the genre of the modern/postmodern

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- 1 Levinas is both a sage and a philosopher, and this makes it difficult to think of him only as contributing to this or that domain of knowledge. Philosopher Levinas resists disciplinary appropriations; Sage Levinas commends ‘the wisdom of love’, from which one may develop the notion that disciplinary boundaries are justified only when ‘the notion of truth’ (the ‘exteriority of theory’) does not end the ‘reign’ of an ‘enrootedness’ (‘a primordial preconnection’) that would maintain ‘participation as a sovereign category of being’. Participation is a ‘way of referring to the other; it is to have and unfold one’s being without any point losing contact with the other’. E. Levinas, *Totality and Infinity* (Pittsburgh, Duquesne University Press, trans. Alphonso Lingis 1961), 60–61 and Levinas, *Otherwise than Being: Or Beyond Essence* (Pittsburgh, Duquesne University Press, trans. A. Lingis, 1998). I refer hereafter to these works respectively as ‘TI’ and ‘OTB’.
- 2 See, notably, C. Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of Century* (Oxford: Hart Publishing, 2000); C. Douzinas and R. Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (Harvester: Wheatsheaf, 1994); D. Cornell, *The Philosophy of the Limit* (New York and London: Routledge, 1992).
- 3 Because the practice of law increasingly resembles business, perhaps rethinking legal ethics may well start with business ethics: see, for example, J. Desmond, ‘Beyond Egoism in Marketing and

forms of law and jurisprudence?⁴ Is it because Levinas' meditations concerning justice seem, at first sight, unrelated to the theories of justice offered by, and since, John Rawls? Or is it the case that reading Levinas as re-engaging us all with an alternate imagination of reading law as another kind of ethical politics remains uncongenial to the legal-positivist style of doing jurisprudence? Or, further, is it the case that Levinas' thought requires us to pursue some deep ways of 'unthinking' the forms of *funded thought* in doing political theory as well as 'modern'/'postmodern' law and jurisprudence? The classical works in the genre required no recourse to the contemporary ways in which thinking original thoughts required mobilizing governmental or privately-sponsored resources! Or, is it simply the case that Levinas' thought provokes profound concern with the current legal pedagogic and curricular transformations, all too heavily inflected towards the agendum of equipping the tasks of lawyering in a hyperglobalizing 21st century CE? Instrumentalist conceptions about law thus continue to proliferate, often directed towards escalating the competitive edge in the global marketplace. In turn, they foster the 'Imperialism of the Same' (to evoke here a fecund phrase of Levinas⁵); or, put another way, the constructions of the 'empires of uniformity'. Or, finally, is it the case that Levinas' single-minded focus upon our 'infinite responsibility' towards the suffering other seems to undermine apparent certainties about the production of globalizing law? This, after all, suggests the potential for the *enjoyment* of life *within*, and even *after*, capitalism. That already endangered species – the shrinking communities of jurisprudes struggling to retain some dignified space within the law curriculum – confronted with 'hard-headed' managers of legal education everywhere may perhaps find some nurture in reaching out towards Levinas as inviting acts of spiritual resistance to the life of globalizing law in books and in action. Engaging with Levinas fully ruptures the *habitus* of institutionalized ethical irresponsibility of 'doing' law and politics; yet, as this volume suggests, we may not always remain secure in our grasp of where this engagement finally leads us towards.

SOME BASIC NOTIONS

At the outset, it is necessary to offer a few brief remarks concerning the ways in which some readings of Levinas may, after all, respond to these diverse interlocutions. I also offer these remarks as offering some ways of grasping the insights of the work under review.

(a) The Distinction between 'Saying' and the 'Said'

Neither ethics nor politics may be fully understood outside the grasp and reach of the difficult Levinasian distinction between the '*said*' and the '*saying*'. '*Saying*' always exceeds that which is '*said*'. Every appellate court practitioner and judge intuitively

Management' and E. Karamali, 'Has the Guest Arrived Yet? Emmanuel Levinas, a Stranger in Business Ethics' (2007) 16 *Business Ethics: A European Review* 3.

4 As do Carl Schmitt, Walter Benjamin, Jacques Derrida, Michel Foucault and Giorgio Agamben.

5 TI, 87.

tively knows this. If the task of legal theory may be best conceived in terms of reflexively explicating this everyday understanding of what is already said by the (state) law, judicial and juridical interpretation expands the realm of 'saying' whatever has been at a first approximation already said by the *initial* law-giver. Interpretation thus entails law-saying beyond whatever has already been said. Reading Levinas thus extended to this constricted sphere of everyday interpretation helps us to enrich the conventional horizons of the canons of statutory interpretation and constitutional construction. Whatever may be averred in terms of the already constitutionally or legislatively said, judicial and juridical interpretation consists in 'saying' going beyond that which stands otherwise already 'said'. The endless debates concerning the limits of judicial review process and power thus stand recast. The posited/said 'law' speaks only to the power invested in the originary 'sovereign' law-giver; judicial and juridical must comprise acts of saying which simultaneously reinforce as well as disinvest the power of what stands thus already said. If judicial/juridical 'saying' must already be an act of excess over that which has been already 'said,' at least two questions arise. First, on what ethical platforms may justices and jurists proceed to 'unsay' that which has been 'said'? Second, and related, how may any overreach of Levinas help us grasp the ways in which, in the current ongoing war on 'terror,' judges continue to expand the power of what is legislatively 'said'?

The first question stands fully enlivened by Levinas. If the already 'said' of the law's truths consists in the enunciation and elaboration of the 'content exposed in it - entities and relations between entities in the theme', or if what is 'said' thematizes a 'modality of the approach to another' (OTB, 47), 'saying' offers richer narrative life-forms than the 'said' if only because, for Levinas, 'politics [of interpretation] must be controlled by ethics; the *other concerns me*' (TI, 96-99, emphasis added; see also OTB, 45-57). True, for justices and lawyers, in real life cases and controversies, that other remains marked by the concrete and singular presence always constituted by some real life adjudicative moment. If the practices of legislative politics must necessarily speak to the generalized otherness, adjudication occurs on the plane of heavily individualized forms of subjectivity. I think that reading this work under review in particular, and reading Levinas as a whole, furnishes some important markers for any sustained acts of differentiation between legislative and judicial, as well as juridical and ethical, forms of action. However, in so far as judicial interpretation also creates law, it must like legislation, speak to the abstract other not fully co-present in its range of interpretive concerns.

(b) Responsibly towards the Suffering/Vulnerable Others

'Modern' law (as legislation) typically converts languages of *responsibility* to the other in terms of *liability*. W. N. Hohfeld, in his classic work *Fundamental Legal Conceptions*, constructed liability in terms of subjection to power. He was careful enough to say that legal liability remains a form of subjection to power that may be pleasurable (as in the case of being subject to testamentary intention bequeathing property) as well as painful (as in case of punishment). However, the relations between legal liability and moral responsibility invite different modes of response in legal theory as well as the administration of justice, depending on the different zones constituted by 'civil' and 'criminal' law. We notice later the ways in which

some contributors to this volume engage Levinasian notions of responsibility to 'civil' liability. A similar engagement in the zone of criminal liability has yet to occur. How for example one may read H. L. A. Hart's meditations on guilt, punishment and responsibility from Levinasian perspectives? How may we address the celebrated criminal law defence of diminished responsibility, a state of affairs in which the alleged criminal conduct may still justifiably escape the award of legal punishment? Further, how may we relate the work of Alf Ross, (notably his *Guilt and Responsibility*), meditating versions of 'hard' and 'soft' determinisms, as influencing the itineraries of justified legal punishment?⁶

Both the constitution of the vulnerable other and the basis of legal liability construct notions of responsibility towards the other in terms of the distinction between the infliction of lawful harms and injuries and those that legislation or adjudication (or both) consider unlawful. 'Modern' law thus addresses the problematic of the limits of imposition of lawful harms/wrongs that may be inflicted on others. Obviously, the way in which this stands addressed matters a good deal (whether in terms of degree of agency, causation, scope, and forms of *ex ante* or *post facto* attribution of liability/responsibility, and the always uncertain futures of law reform concerning such matters). However, legal liability remains a distinct genre compared with moral responsibility. And never wholly at stake remains the issue: whether the constitution of the vulnerable others (those whom we may lawfully harm, hurt, and wrong) is, or ought to be, in the first place, 'ethical/moral'.

Unlike the dominant discourse of legal and political theory, Levinas foregrounds the domain of ethics as reconstituting 'our' responsibility towards the suffering and vulnerable others. Above all, Levinas enunciates a notion of '*justice among incomparable ones*' (OTB, 16, emphasis added). Justice here figures as a provocation of 'responsibility against my will' in which all 'my inwardness' stands signified and symbolized *par excellence* in 'the form of despite-me, for another' and in which 'I am ordered toward the face of the other' (OTB, 11). The call of responsibility remains 'antecedent to my freedom' for 'it is a sacrifice without reserve, without holding back', a form of an 'involuntary election not assumed by the elected one' (OTB, 15).

How may 'one' grasp this call to justice overflowing the banks of legal liability? The nearest categories of law one comes across are of course those that urge strict liability (liability without the need to prove intentional fault or default) even some standards of absolute liability (where no defense whatsoever may be permitted). There are no clear, or easy, ways of transporting this call of Levinas for 'sacrifice without reserve' and my responsibility for the vulnerable other into the cultures and practices of modern law and politics. Nor, as far as I grasp Levinas, the singular 'I' - owing to others 'responsibility against my will' - may fully be made to address the differently constructed orders of our 'we-nesses'. Modern law constructs different orders of cascading 'we-nesses' via the invention of artificial legal

6 W.N. Hohfeld, *Fundamental Legal Conception as Applied in Legal Reasoning* (New Haven, Yale University Press, 1978); H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford, Oxford University Press, 1968); A. Ross, *On Guilt, Responsibility, and Punishment* (Berkeley, University of California Press, 1985).

personality, whether comprising orders of collectivized business associations, labour movements, political parties and related para-communities – such as epistemic communities, or even diverse human rights and social movement entities. How far does the Levinasian 'I' thus fully situated proceed to any authentic response to calls for radical responsibility, for, and in the face of, the vulnerable other?

Human rights and social movement folks radically and rightly insist that public power ought to constitute new radical estates of power as public trust. In this Levinasian moment emerges as a crucial difference between forms of *suffering* and *sanitized* thought-ways (a distinction still surviving Martin Heidegger, despite his callous and unforgivable Nazi endorsement). In one swift and sure move, Levinas cancels as well as perhaps reconstitutes the idea of nomadic, and monadic, bourgeois (and now its variously globalizing) forms of selfhood (sameness), which ruptures fully the thus erected existential and ethical distance between the 'same' and the 'other'. Put another way, Levinas challenges the figuration of *homo economicus* embodying the logics and paralogics of the common law.

Levinas always remained concerned not just with the problematic of the 'self' and the other but also with the co-equal presence of the 'third', the distant 'other other', almost always presenting the great risks of deformation in the 'sciences of man' (OTB, 57). The other is both my neighbour as well as a distant third, who all too often 'presents himself [herself] to me' as the 'temptation to murder', a passion for killing which often results in war, which renders 'morality derisory', and in 'the diabolic criminality of absolute evil' manifest in genocide and other 'horribly perfect'⁷ forms of racism. The temptation also presents itself via various forms of 'reduction of the other to the same'. The construction of an ethic of goodness in Levinas remains haunted both by quotidian and radical forms of evil. This leads him to invent the discourse of ethics as 'the first philosophy' casting an infinite responsibility on each one of us to confront the face of the suffering and vulnerable other. 'Infinite' for Levinas signifies a desire 'in which the desirable arouses rather than satisfies' (TI, 50). The desire for human justice via human law illustrates perfectly well the ceaseless pursuit that may never be fulfilled except in approximation and yet without which the law will always signify enmity towards the suffering and vulnerable others. It is unlimited 'not only in the sense that men are obligated without having consciously placed themselves under obligations, but in the sense that their very effort to discharge them only increases their commitments'⁸ and arises beyond any 'prior relationship or any obligation at all' (Manderson, 153). Levinas himself expressed it as constituting an '*original*' right, *before all law and politics* from which all human rights flow.⁹ Put another way, the

7 R. Burggraeve, 'Violence and the Vulnerable Face of the Other: The Vision of Emmanuel Levinas on Moral Evil and Our Responsibility' (1999) 30 *Journal of Social Philosophy* 29, 30.

8 R. P. Blum, 'Emmanuel Levinas' Theory of Commitment' (1983) XLIV *Philosophy and Phenomenological Research* 145, 147.

9 Levinas' brief essay 'On the Rights of Man and the Rights of Others' in Levinas, *Outside the Subject* (Stanford, Stanford University Press, 1994; M. B. Smith, Trans.) though seldom cited in human rights scholarship, remains a germinal text not only because it articulates a fuller understanding of this 'original right' of the other but because it also furnishes some terminal bases of critique of both the 'modern' and the 'contemporary' paradigm of human rights. See Douzinas, above n. 2,

suffering and vulnerable other, far from signifying a state of 'misfortune', constitutes an affair of 'injustice'.¹⁰ Levinas makes it fully possible for us to think of the ethical as a passage from the 'universal-all' to 'universal-each',¹¹ a difficult passage that offers wisdom necessary for the unravelling of the otherwise exasperated outpourings concerning the 'universality' and 'relativity' of human rights and much else besides.

Levinas offers little scope for what Edward Said commended as a virtue of 'traveling theory',¹² even when the notion of 'hospitality' in Levinas necessarily speaks to us of the suffering and vulnerable others in constantly coerced and enforced movement. This essay does not provide space for narrating linkages between Levinas and Said, especially in terms of Said's monumental provocation disturbing what he named as the interlocution of the 'authority of authority'.¹³ However, and here only tangentially, I may add that a comparison between the thought-ways of Levinas and Said, thus far an untravelled terrain, may after all offer some useful insights concerning the politics¹⁴ and the poetics¹⁵ of dispossession.

SOME NOTABLE, AND WELL-CULTIVATED, DISINCLINATIONS

At the very same moment, the notable disinclination of Levinasian scholarship to speak to the feminine, to Marx, and to discourse of suffering in traditions other than the Juadeo-Christian puzzles, were Levinas' insights considered to be a contribution towards a new discourse concerning responsibility in law and politics.

As concerns the feminine, Tina Chanter laments that the 'feminine is the unthe-matized, silent, and the unspoken face of Levinas' ethic' (74). The 'feminine is other without being radically other, other without making any demands on the I that is figured as masculine' (77). She concludes that 'Levinas's hands appear to be tied. In order for the hand that grasps to become the hand that gives, the passage through the feminine cannot be said, except as a betrayal' (79). No contribution to this volume engages with this anguished critique,¹⁶ illustrat-

343–369; see also as concern the modern and contemporary paradigms of human rights U. Baxi, *The Future of Human Rights* (Delhi, Oxford University Press, 3rd ed., 2008), Preface and Chapter 2.

10 Judith Shklar deconstructs this distinction in an illuminating way in *The Faces of Injustice* (New Haven, Yale University Press, 1991).

11 A distinction that Oona Aizenstat so powerfully suggests in *Driven Back to the Text: The Premodern Sources of Levinas' Postmodernism* (Pittsburgh, Duquesne University Press, 2001), 244.

12 See, M. Bayoumi and A. Rubin (eds), *The Edward Said Reader* (New York: Vintage Books, 2000).

13 Quoted in J.M. Bernstein, *The Philosophy of Novel: Lukács, Marxism, and the Dialectics of Form*, (University of Minnesota Press, 1984), 193.

14 E. Said, *The Politics of Dispossession: The Struggle for Palestinian Self-Determination 1969–1994* (New York, Vintage Books, 1995).

15 S. Levin, *The Poetics of Military Occupation: Mzeina Allegories of Bedouin Identity Under Israeli and Egyptian Rule* (Berkeley, University of California Press, 1991).

16 To be fair, at least one author engages the feminist critique elsewhere: see S. Critchley "'Bois" – Derrida's Final Word on Levinas' in R. Bernasconi and S. Critchley (eds), *Re-Reading Levinas* (Bloomington, Indiana, Indiana University Press, 1991), 178–187.

ing yet again the difficulty of relating Levinas to feminist political theory and jurisprudence.¹⁷

Likewise, the solitary and entirely indeterminate reference to 'Marxism' (181–2) fails to disturb the puzzling disinclination towards juxtaposing Marx (for whom suffering constituted immiseration by the capitalist mode of production) and Levinas (who offers meditation on suffering as such).¹⁸ Levinas too attends to the materiality of suffering,¹⁹ but offers a radically different spiritual and ethical understanding of addressing suffering. Surely, a companion volume needs to offer a 'dangerous supplement' comparing the ethics of Levinas and Marx.

Levinas' exuberant offerings also invite comparison with notions of the responsibility for the other outside the frame of Judeo-Christian traditions. In a bare silhouetting of affinities of thought I here offer four hurried references: the Buddhist meditations concerning *dukkha* ('suffering') *karuna* (literally 'compassion') leading to *nirvana*; the Jain conceptions of *ahimsa* (literally 'non-violence'); the distinction in Islam between 'little' (comprising practices of belligerence against the aggressive other) and 'great' *jihad* (conceived as a struggle against the evil in, and even of, practices constituting the self); and finally the ways of relating Sage Levinas with Mahatma Gandhi (and his residuary legatees worldwide). Like Sage Levinas, the Mahatma also engaged ethics as 'anarchy', not in the quotidian sense of 'law and order' which remains 'but another order', but as constituting ways 'over and beyond' the alternatives of order and disorder.²⁰ The question then is this: how may we relate the majesty of the Occidental thought-ways of Levinas to these traditions of the non-European 'other others'?

Further, any current reading of Levinas remains situated amidst the 21st Century CE wars *of* and *on* 'terror'²¹ and the emergence of the liberal 'anti-pluralisms' of contemporary economic globalization. Both these phenomena produce forms of the other, and the third as 'a bearer of monstrous' otherness, to somewhat extend Žižek's notion.²² This volume remains justly preoccupied with the problem of Levinas' 'philosophic silence' concerning the actions of Israeli forces at Sabra and Shatila.²³ The question is: what messages may draw from equivalent

17 See L. Irigaray, 'Questions to Levinas: On the Divinity of Love,' and C. Charlier, 'Ethics and the Feminine,' in Bernasconi and Critchely, above n. 16; S. Sandford, 'Levinas, Feminism and the Feminine,' in S. Critchley and R. Bernasconi (eds), *The Cambridge Companion to Levinas* (Cambridge: Cambridge University Press, 2002); S. Villarrea, 'The Provocation of Levinas for Feminism' (1999) 6 *European Journal of Women's Studies* 291. Claire Elise Katz suggests via narratives of 'empirical women . . . the women of the Hebrew Bible' that Levinas 'offers the paradigm of the ethical as maternal, the possibility to create and sustain a new life': see Katz, *Levinas, Judaism, and the Feminine* (Bloomington, University of Indian Press, 2003), 57 & 153.

18 L. E. Wolcher, 'Ethics, Justice, and Suffering in the Thought of Levinas: The Problem of the Passage,' (2003) 14 *Law and Critique* 93.

19 See Wolcher, above n. 18.

20 S. Head (ed.), *The Levinas Reader* (Oxford, Blackwell, 1989), 91.

21 For this distinction see, U. Baxi, *Human Rights in a Posthuman World* (Delhi, Oxford University Press, 2007), Chapter 5.

22 Scattered variously in his writings and more recently codified in S. Žižek, *The Parallax View* (Cambridge, MIT Press, 2006).

23 Head, above n 20, 269–297, provides the full text of the Sholmo Malka interview with Emmanuel Levinas and Alain Finkielkraut. At issue here was the clandestine Israeli violence, which 'responded' to the bombing of a party headquarters, killing Basir Gernyal, the Lebanese President, and 26 others. The Israeli Defense Forces (IDF) introduced Christian militia called the Phalangists into

silences in this volume concerning the two 'terror' wars and some genocidal forms of contemporary economic globalization?

Provocatively, Part II of the work under review stands captioned as a 'dangerous liaison' between 'political theory' and Levinas, and Part III as a 'welcome intrusion' relating Levinas to legal theory. In what may the 'danger' and 'intrusion' consist? As concerns 'politics', Simon Critchley suggests that Levinasian 'ethics' is a meta-political disturbance of politics which poses the question how, if at all, one may arrive at a 'non-foundational' and 'non-arbitrary' conception of politics? (99) Julia Ponzio likewise suggests that the Levinasian theme of the death of 'interiority' via its absorption into 'public order' and the 'universality of laws' is an un-redeeming achievement of 'politics left to itself' (46) and commends a view of justice as lacking its own 'justification', which raises in turn the space of 'the possibility of a dialogue that is not a ratification of position, the possibility of asking non-rhetorical questions' (47). In a different vein, Alford reminds us that when 'Wittgenstein said that philosophy leaves everything as it were, Levinas would leave the institutions of liberal democracy much as they are, so that *everything else might change*' (123, emphasis added). Brian Schroeder poses the sovereign question as 'stemming the reduction of political to politics' (139). It is thus clear that Levinas poses a moment of danger not just to 'politics left to itself' but, if I may say so with due deference, also to political theory left to its own narrative habits and devices.

THE RIGHT TO DIE THAT CANNOT 'WAIT'

Suffering and responsibility towards the death of the other remains a central pre-occupation for Levinas. In a poignant contribution, Drucilla Cornell speaks of her mother's 'insight into the moral basis of her right to die' and the responsibility thus cast upon her as 'witnessing to the dignity of her suffering' (165). She meditates the contrast, even the contradiction, between Levinas' notion concerning the 'time of devotion' as constituting a 'being answerable for the death of the other' (166) confronted by juridical temporalities. This reference to 'devotion' exposes the bareness, even the baseness, of constitutional legal reason that (in Levinas' words) lacks the 'strength to suppose that under the visible that is history, there is the invisible that is the judgment' (166). Cornell offers a nuanced understanding of the hermeneutics of the right to die with dignity poignantly manifest in the United States adjudicatory discourse concerning the nature and limits of the 'liberty' interest/right in physician-assisted forms of termination of one's own life. The 'time of devotion' (the call of the suffering/vulnerable on me) stands sequestered by anonymous public legislative will-formation as well as adjudication (even when the latter also perpetuates archives of named anonymities, in which the very practice of individual naming of cases and controversies serves to obliterate the memory of suffering other). When individual agency is seen as disruptive of state/law combinatory prowess, political performances aim at 'hammering' out legislative/adjudicative policies, ostensibly oriented to decisions aimed to 'prevent'

Palestinian camps with the mission of clearing out of the suspected *fedayeen* and massacred several hundreds of people in these two camps.

abuse (169–170). Silenced thus remains forms of alterity, molesting, when not cruelly outlawing, ‘an open-ended’ ‘inclusion’ of a human right to choose one’s way of choosing one’s death (171). The difficult yet worthwhile excursus entailing further meditations on Heidegger, Levinas, and Derrida (171–6), however, still leads Cornell to conclude that we ‘cannot wait for the right to die’ if only because ‘there are “certain moral rights that are basic to how we claim our own person” and the law would “once again” on this register, be an imperfect approximation of justice’ (176).

How outside the arc of terminal illness may we also ‘rethink death’? The contemporary figure of a suicide bomber as a ‘being towards death’ may show how complex and contradictory the task of rethinking death could be.²⁴ Does the suicide bomber’s death signal a ‘proper death’ for her and constitute, in killing others, ‘the passion for death’ (in Derrida’s words)? Or does she merely enact in such practices of disembodiment the Kantian curse upon ways of being, translating *homo noumenon* into *homo phaenomenon*? (170) Does this figure remain always ‘debasement’ especially if we bear in mind Levinas’ insight that even in a ‘consciousness of the hostility’ of the other is retained an ‘appeal to the Other, to his friendship’ as though the approach of death remained one of the modalities of the relationship with the Other?

PROXIMITY AND RESPONSIBILITY

Levinas’ theme of the infinite responsibility for the suffering other is meditated upon in this volume. Julia Ponzio and Marty Slaughter (Chapters 1 and 2) tease and test Levinas’ distinctions between acts of ‘pardon’ and of ‘mercy’. If pardon, as Levinas says, ‘acts upon the past, somehow repeats the event, purifying it’, in ways that always reiterate that the ‘pardoned being is not the innocent being’, ‘mercy’ conceived as forgiveness entails on the part of the one who seeks to be forgiven the ‘recognition of the absence of justification of the act’ as a remarkable performance of its ‘un-justifiability’ (40–1). Criminologists concerned with the ethics of clemency and human rightists concerned with truth and reconciliation processes, as well as some proponents of global reparative justice,²⁵ may find the discourse of Levinas on this point richly rewarding. Were one to seek to understand the aesthetics of law, and beyond law, Slaughter offers an exciting pathway of understanding (to here offer a crude summation) of the tasks of relating ‘decorative arts’ to mercy *in* (justice).

Desmond Manderson (Chapter 8) attempts to relate Levinas’ ethic to tort law in a manner ‘which neither corrects or replaces the other but rather sheds new light on their meanings and possibilities’ (148). To be sure, Levinas offers here an insight that it is ‘proximity, not privity that first connects us’ (161). Even as tort decisions disengage the perspectives of radical ethical neighborhood, there is no

24 See, U. Baxi, ‘Siting Truth, Justice, and Rights Amidst the Two “Terror” Wars, in Esperança Bielsa (ed.), *Globalisation, Political Violence and Translation* (Palgrave –Macmillan, 2009). See further the germinal essay by T. Asad, *On Suicide Bombing* (New York, Columbia University Press, 2007).

25 See J. Thompson, *Taking Responsibility for Past: Reparation and Historical Injustice* (Cambridge, Polity Press, 2002).

exit from a searching Levinasian enquiry about the deficiency of the continual reconstruction of legal otherness, especially via judicial and juridical justifications of the imposition of tortious liability not just for 'injury to others' but also to the 'actions of others' (the 'third parties': 151 & 153–156).

Because (Anglo-American) courts have been 'especially cautious not to overburden the extent of our responsibility . . . for actions of others', these adjudicatory cultures pose 'considerable problems in engaging an applied ethics through Levinas' optics' (147). Manderson proposes that we consider distinctions which celebrate the limits of no-fault liability as somehow still 'necessary' for the 'law's functioning' (158). His scintillating analysis of some tormented as well as rather 'exotic' Australian adjudicatory theatres negotiating this impasse of injury caused to third parties by actions of others should make this text prescribed reading for first year law students.

Moving beyond this pedagogic referent, many basic concerns emerge. Manderson argues that the Levinasian insistence on our infinite responsibility towards the suffering/vulnerable other may not be read as suggesting an ethic of 'some monstrous sump of duty'. Put more directly, infinite responsibility is 'insatiable, so to speak, but *not* in the sense that it is indiscriminate' (153). At least as I read Levinas, the emphasis remains on the 'insatiable' rather than the indiscriminate. In any event, the question is: who is the 'third' thus authorized to intermediate proximity in ways that conflate the issue of *responsibility* with legal *liability*? That third at first approximation is the figure of a common law judge; however, she comes into being as a responsive figuration only after-the-event of the material constitution of the suffering/vulnerable other. Thus, after all, the 'efficient causes' (to invoke here Aristotle) already construct the discourse of 'proximate' causation in the genre of the 'law of accidents'.

Speaking out of turn, as it were, having dedicated a quarter of a century to the struggles of the Bhopal violated²⁶ and other communities constituted by the depredations of MNCs, this judicially-crafted discourse emerges at times as monstrous.²⁷ I may even go so far as to suggest an uncanny order of resemblance between outsourcing adjudication of mass torts via myriad operations of *lex loci delicti* and *forum non conveniens* (summarised in the Queen's English as the 'proper law of torts'²⁸) and the practices of 'rendition', of outsourcing torture amidst the war on terror. Like the coalition of the willing, multinational cartels continue proliferating communities of hurt and harm beyond responsibly, liability and redress. Given this global social fact, relating Levinas to tort law ought to move beyond Manderson's claim that the 'common law here offers to us a different language of

26 See, for a recent retrospect, U. Baxi, 'The "Just War" for Profit and Power: The Bhopal Catastrophe and the Principle of Double Effect', in L. Bomann-Larsen and O. Wiggen (eds), *Responsibility in World Business: Managing Harmful Side-effects of Corporate Activity* (Tokyo, The United Nations University Press), 175–201.

27 I have particularly in view Lord Denning's entomological jurisprudence when he compared alien victims of mass torts seeking judicial relief in foreign courts as flocking of moths to the light. Denning, in the face of his celebrated judicial activism, made this observation in terms of a vigilant preservation of the other—disregarding *forum non conveniens* doctrine.

28 See U. Baxi, 'Geographies of Injustice: Human Rights at the Altar of Convenience', in C. Scott (ed.), *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation* (Oxford, Hart Publishing, 2001).

responsibility, and connects the most ordinary of our interactions, connecting with the most profound, enabling us to recognize the each in each' (161). Indeed, it remains eminently arguable that as concerns the non-European others the conflict of laws tortious liability regime really affirms infinite lack of responsibility, engendered by the capitalist notion of human rights as a license to cause 'lawful' harm to others.²⁹ Diamantides tellingly extends Levinas' notion of 'foolish excellence' to modes of activist lawyering and justicing. Rather than being concerned with the efficient operation of the legal system or whatever may be considered as necessary for the 'law's functioning', an activist judge (in ways that Levinas would have approved) acts 'foolishly' by disturbing the 'excellence' of the law as a going enterprise. The activist figuration disrupts juristically and judicially crafted responses which, after all, end up in ventures aimed (to invoke Harold Laski's stunning phrase) at the 'beatification of the status quo'.

Manderson, in a finely calibrated mode, conflates *judgment* in law with ethical *judgement*. In contrast, Diamantides provokes the thought that while '*judgment*' remains the 'product of an excellent judge' a *judgement* is 'the trace of an Infinity-stricken, dumbfounded, "excellent" Levinasian judicial "fool"' (193). An activist judge is a being who may take human rights seriously only as a way of taking suffering seriously.³⁰ To be fair to Manderson, the narrative of the missing 'e' in judicial judgments always raises the question: what kind of *judgment* is required for the law's functioning? I agree with Manderson that *judgement* with all its partiality, imperfection, and pollution, is a central part of the troubling power of ethics (159). Even so, the question persists: how may the law, and jurisprudence, of tort survive the performances of this troubling power?

One may further ask some intransigent questions concerning 'whose' and 'what' law? Manifestly, contemporary adjudicatory discourse concerning 'civil' wrongs (torts) inherent to life in an industrial/post-industrial society is a genre that necessarily remains concerned with the distributions of uncompensable harm and hurt in which the vulnerable and the suffering other stands situated as a necessary vehicle and vessel of economic advancement and social 'development'. The common law of tortious liability after all celebrates the justificatory logics, paralogics and rhetorics of causing lawful harms entailed in the capitalist modes of production. It thus operates endless and indeterminate circuits of exchange

29 I do not address here the distinction between legal liability and ethical responsibility, especially articulated by I. M. Young, 'Responsibility and Global Labor Justice' (2004) 12 *The Journal of Political Philosophy* 365; see also Gregory C. Keating, 'Distributive and Corrective Justice in the Tort Law of Accidents' (2000) 74 *Southern California Law Review* 193. On a more poignant personal note, I may recall here what turned out to be a last conversation with my teacher and friend Professor John Fleming. Fleming, a doyen of tort law, addressed the problematic of mass torts. Yet John was so perturbed by what he thought to be my anarchic role in fashioning the principle of the absolute liability of 'ultrahazardous MNCs' (urged by India, as a sovereign plaintiff, against the Union Carbide Corporation) as to instantly, and abruptly, close this conversational route. (He said to me: 'Let us talk about anything else but Bhopal!') There is simply no way of knowing how Professor Fleming may have responded to any Levinasian re-visitation of his complex narrative of 'mass torts'.

30 See, U. Baxi, 'The Promise and Peril of Transcendental Jurisprudence: Justice Krishna Iyer's Mortal Combat with the Production of Human Rightlessness in India,' in C. Raj Kumar and K. Chockalingam (eds), *Human Rights, Justice, and Empowerment* (Delhi, Oxford University Press, 2007).

between the orders of compensable injuries to parties directly implicated as distinguished from what are, in common convention, named as 'third parties'.

Prescinding all this, what remains of decisive importance is the deft textual move that addresses the problematic of understanding Levinas' silence (or, the scrupulous equivocation) in an infamous interview concerning the 1982 massacre at Sabra and Shatila refugees camps by the Israeli Defense Forces. What this move seeks to achieve, of course, is a sort of community of concerns between adjudicatory *judgment* and ethical *judgement*. All this, in turn, offers an interesting comparison between jurisprudentially and political theory informed genres of 'judging' Levinas.

MIXING OIL AND WATER

Manderson seems to maintain that ethics and politics remain for Levinas as 'unmixable as oil and water' (157). Because Levinas found no 'easy reconciliation between his ethical and political impulses', Manderson proceeds to suggest more comprehensively that assuming and attributing responsibility always remains a task of judgement which entails 'for doing nothing here and our doing nothing somewhere else, between the neighbour and neighbour, the other and all the "other others"' (158). How then may one *adjudge* rather than *adjudicate* the act of Levinas' 'difficult' or 'philosophic' silence concerning the massacre at Sabra and Shatila? This question stands very differently meditated in Part II of this collection in terms of the relevance of Levinas to political theory.

Clearly, understanding Levinas as a spokesperson for the State of Israel remains tempting but at the very same moment entirely unworthy, as the contribution of Brian Schroeder demonstrates by alerting us against the distinctively problematic reduction of the 'political' to 'politics' (Chapter 7).³¹ Howard Caygill (Chapter 4) mediates on the complexity and contradiction inherent to Levinas' 'difficulty in achieving responsible speech in the case of the State of Israel'. The ideal state, 'whatever the ephemeral political philosophy of its greatest workers', remains a 'state [not] like any other', but rather a marker of 'protest against the world' and has 'a density and depth that greatly surpasses its scope and its political possibilities' (84–5). The contrast here, as defined elsewhere by Levinas, is 'between those who seek to have a State in order to have justice and those who seek justice in order to seek the survival of the State'.³²

Levinas' difficulties here are immense. The uniqueness of the historic sufferings of the Jewish peoples endows a poignant ethical character to the State of Israel. It has a right to exist as an exemplar of a political formation in quest of justice. When this potential is threatened by neighbours (who contest even the right of the Israeli state to exist) it becomes possible even to say 'in alterity we can find an enemy' (90). Levinas' difficulties are ours too, because the coalitions/cartels of the

31 One may say the same concerning the reductive readings of the juridical in terms of politics, rather than the political.

32 E. Levinas, *Difficult Freedom: Essays on Judaism* (Baltimore, Johns Hopkins University Press, trans. S. Head, 1997), 228.

willing states which now wage an endless war on 'terror' also seek to present themselves as exemplars of ethical communities seeking a global equivalent to the right of the Israeli state to exist, now said denied to them by cross-border acts of 'terrorism.'

This community of states represents itself as 'ethically and politically obliged' (91) to annihilate the terrorist other physically and morally. The empirics of harrowing belligerency thus entailed are now presented as signifying a 'commitment to absolute justice' (note that the first operation of the war on terror was christened 'Operation Infinite Justice'). No normative constraints of human rights or international humanitarian law operate in this war against the 'other' constructed as an enemy of peace, freedom, rights, justice and even 'civilization'. The enemy within must also be contained, cribbed, and confined, if not destroyed; ordinary and decent citizens may now never know when their right to freedom of speech, expression and dissent may be regarded as bordering on sedition and even treason, when they fail to appreciate (here to tear somewhat out of context Caygill's formulation) the idea 'that a particular people must always form a majority in its political structure' (89). In relation to Levinas' 'philosophical silence', Caygill helpfully suggests the ethical possibility of speaking in another voice 'but still maintaining a distance from it – speaking while remaining silent' in the face and call of the vulnerable and suffering other (89). However, the two 'terror' wars render 'speaking while remaining silent' a very difficult virtue. Suffering with others often silences saying. As Louis Wolcher poignantly concludes: 'To the extent that Levinas' words *are* profoundly intelligible, this may be the worst thing that ever happened to them'.³³

DIAMANTIDES ON LEVINAS

Diamantides' chapter paradoxically illustrates as well combats the 'Levinas Effect'. His scintillating reflections on the critical legal studies tradition (CLS) must be read in an ironic mode. He is right when he says that the CLS 'is for lawyers who feel they have no voice and yet cannot stop speaking' and for people 'who at least suspect that the time of resistance and charity is gone and yet act as rebels in the service of every marginalized, vulnerable Other they can find' (184). Lest the uncharitable misappropriate the spirit of this delicious critique, Diamantides instantly proceeds to rescue and even redeem the 'we-ness' of the robust – yet presenting itself as ever so permanently (as it were) nascent and fragile – CLS tradition in terms of narrative identification. He concludes that 'in so far as we speak against injustice without defining justice we echo both Levinas' philosophy of the body and his ethics' and 'we engage in *saying* rather than settle for the "said"' (186).

It would be churlish, indeed, to chafe at the spirit of solidarity animating this construction of CLS. Yet at the same moment CLS constitutes a fine example of the surrender of responsibility for some immense orders of pedagogic suffering caused to the global South learner in the CLS citadels of the North. As far as I know, there exists no CLS equivalent that engages Levinas' 'educational philoso-

³³ Wolcher, above n. 18, 116, concerning the distinction between the 'saying' and the 'said'.

phy',³⁴ despite its distinctive American origins protesting the case-method pedagogy.³⁵ This absence raises the question: 'Can we forget our human pain, which is beyond redemption but demands relief?' (189)

Importantly, Diamantides' essay, read alongside some previous contributions, further raises the contestation concerning modes of inflicting pain and suffering on the 'companion-species' and the 'posthuman' subjects,³⁶ and approaches toward grasping human 'perpetrator' and 'victim' agency. Space constraints prevent discussion of Diamantides' critique of 'law and literature' and 'law and economics'. Yet, it may be said overall that both these may still stand immensely enriched by a fine regard for the wisdom of Sage Levinas.

A CONCLUDING REMARK

Levinas has always illuminatingly reiterated the immense contrast between the 'work of state' and the 'work of justice'.³⁷ This radical distinction marks an alluring as well as deeply perplexing contrast, exemplified by Levinas in his classic text *Difficult Freedom: Essays in Judaism*. Levinas' message, directing our other-constituted attention towards the 'refinement of the human condition,' via the fuller recognition of 'the human right to ideology' directed to 'the right to fight for the full rights of man [and women], and the rights to ensure the necessary conditions for that struggle',³⁸ deepens (rather excitingly) the contrast between the work of state and justice.

How may we narrativize the 'work of justice' as well as the work for justice? Put another way, how may we best narrate an 'indispensable and unforgettable moment' towards the 'movement of morality' in the interest of 'limiting politics'?³⁹ No further word may be said concerning the claim of this radical power enunciating the 'truths' of the 'work of justice', which also encodes the enduring significance of the politics *for* human rights, always contrasted with the production of the politics *of* human rights. The question amidst all this is one that concerns the achievement of 'responsible speech'. Failure to achieve this makes each one of us equally liable to judgement (and perhaps with even greater reason) than the perplexities constituted by Levinas' 'philosophic' silence.

34 See S. Todd, *Learning from the Other: Levinas, Psychoanalysis, and Ethical Possibilities in Education* (New York, State University of New York Press, 2003).

35 Thus, when Diamantides laments the figuration of the law student as a 'kind of "human funnel", the input of which is 10,000 legal judgments may be more, and lots of theory, while the output is political legal centrist legal bureaucrat who knows law's insanity but performs its anyway' (188), he does seem to have primarily in view only the UK's 'home-students.' How pedagogic CLS 'universals' might respond to the face of the suffering South overseas learner, is not unfortunately an issue foregrounded in CLS discourse.

36 See the discussion in U. Baxi, *Human Rights In a Posthuman World* (Delhi, Oxford University Press, 2007), chapter 6. See also, Baxi above n 24.

37 See further, W. P. Simmons, 'The Third: Levinas' Theoretical Move from An-archival Ethics to the Realm of Justice and Politics,' (1999) 25 *Philosophy & Social Criticism* 83.

38 Levinas, as quoted by Caygill, 153.

39 Levinas, as quoted by Caygill, 157.