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**SUBJECTIVITY AS CONFLICT: TAKING RESPONSIBILITY FOR
ETHICAL DILEMMAS**

A dissertation submitted in partial satisfaction
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

PHILOSOPHY

by

Cynthia M. Tibbetts

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Abstract

Subjectivity as Conflict: Taking Responsibility for Ethical Dilemmas

Cynthia M. Tibbetts

In this work, I show that we face deeply troubling ethical dilemmas whenever we decide how to prioritize our time in response to the needs of others in the course of our entirely ordinary lives. These dilemmas arise as the result of conflicts between obligations to multiple others—for example between our loved ones versus strangers. I argue that contemporary moral literature misunderstands the nature and consequences of conflicts of this kind.

To work out a more comprehensive analysis of everyday ethical dilemmas, I utilize Michael Sandel's critique of moral individualism as a springboard from which to make progress toward a theory that more adequately captures their regularity and force. Sandel's project is both interesting and promising because it focuses its constructive efforts on the conception of the individual underlying modern moral theory, questioning the role and limits of autonomy and responsibility in determining our moral obligations to others.

Ultimately, Sandel's project, while moving in the right direction, does not fully address the concerns that motivate his critique. A more satisfactory account requires a more radical rethinking of the relation between autonomy and responsibility, as found in the work of Emmanuel Levinas. Levinas' conception of responsibility as a necessary condition for autonomy illuminates the nature and

Abstract cont.

consequences of everyday dilemmas such that it becomes clear that, while they are necessarily inescapable, they require a proper response. This response, I argue, entails that each of us to take responsibility for the fundamental conflict of subjectivity by engaging in ethical discourse and navigating concrete dilemmas without appealing to predetermined moral norms.

This work is dedicated to Daniel – my partner, muse, and my proof of the possibility of living from infinite generosity in a less than generous world.

Chapter 1: When Goods Collide

Introduction

Over the past two years, I've had the great pleasure of serving as a Court Appointed Special Advocate for a foster youth whom I'll refer to as Ali. Ali was removed from her home and placed in the care of a family friend where she stayed for a short time before bouncing from one group home to the next. At one point, Ali was at risk of being kicked out of the last group home in the county. Moving placements was no longer a matter of moving to a different neighborhood, it now entailed moving to a different county, a three-hour drive from her friends, family, school, and the city she calls home.

Ali was resigned to run away if her social worker attempted to move her out of the county. She planned to live on the streets, on her own terms. Ali was unmotivated to follow the group home rules in part because she viewed living on the streets as an inevitability; for her, it wasn't a question of *whether or not* she will become a homeless runaway teen, but simply a matter of time until she did. She may as well do what she wants and come and go as she pleases in the meantime.

I had many conversations with Ali about her long-term goals and the changes she would need to make in the short-term in order to realize those goals. A very bright individual, Ali was acutely aware of the conflict between the choices she was making in the present and the kind of life she hoped to live someday. After one such conversation, I dropped Ali off at school (the third day she had attended in as many

weeks) and as I watched her walk toward her classroom I was overwhelmed by how unfair and intolerable the whole situation was. This intelligent, resilient, empathetic child had been placed, through no fault of her own, in a system in which she was floundering. She was here because she had never been adequately cared for.

Abandoned by her parents, neglected by her grandfather, and shuffled around the foster care system, no one had taken the kind of special interest in her that one hopes every child will experience – the privilege of being the most precious and important part of someone else's life.

This example illustrates the conflict that arises between what one takes to be one's various obligations to others. On the one hand, I felt as though I ought to drop everything and take Ali home with me for good – for what could be more important than striving to give this child the care she needed and deserved? On the other hand, I knew that I couldn't possibly take on this level of responsibility for Ali's needs since doing so would require that I prioritize the obligation I felt I had to her over the obligations I felt I had to other important people in my life; like, for example, my partner whom I lived with and who, for countless valid reasons, could not agree to take in a troubled teenager. I felt as though I was being forced to make an impossible decision – to rank my obligations to these two others in order to determine which (and thus *whom*) I ought to prioritize.

The consequences of either choice, prioritizing my obligation to Ali over my obligation to my partner or vice-versa, seemed equally unacceptable. Prioritizing my

obligation to Ali entailed disrespecting my partner's boundaries and violating his trust, whereas prioritizing my obligation to my partner entailed standing by as Ali inched closer and closer to a life on the streets. Of course, there were other practical considerations beyond my obligations to these two individuals that weighed on my decision not to take Ali home with me, including especially legal considerations. I do not take the consideration of the various relevant obligations to serve as an exhaustive description of the decision-making process or the experience more generally. What I'm concerned with, and what I hope this example helps to illustrate, are those situations where the meaning of the world *dilemma* hits home – situations where it is not a matter of simply weighing the consequences of two different actions and determining which we can accept, because the consequences of either action strike us as *wholly unacceptable*.

Of course, consequences are not the only relevant consideration when facing moral dilemmas, or decisions of any kind for that matter. I do not take myself to be putting forth a consequentialist thesis or defending a consequentialist approach to moral deliberation. Rather, I hope to illustrate what I take to be so troubling about the most troubling kind of moral dilemmas: the impossibility of reconciling ourselves to the consequences of either decision and yet having to decide nonetheless.

What does it mean, exactly, for it to be impossible for us to reconcile ourselves to the consequences of an action? I take this to be a symptom of the more

foundational conflict of goods, or, what happens when goods collide. We cannot bring ourselves to accept the consequences of an action when we feel that it violates a good. We may view those consequences as inevitable, or even necessary, but we recognize them as nonetheless unacceptable. In the case of Ali, the consequence of standing by while she became homeless violates the good of helping those who are among the most vulnerable. The consequences of bringing Ali into my home, on the other hand, violates the good of showing basic respect and compassion for my partner. As my aim here is neither to specify nor to argue for the existence of any particular good or goods, one need not agree with the goods and the related obligations I've identified above to agree with the basic structure of the conflict as described. Put another way – if there is more than one type of good, whatever those goods happen to be, there will be more than one type of related obligation, and conflicts between those goods and obligations will force us to decide amongst actions that result in various equally unacceptable consequences.¹

I've specified above that moral dilemmas arise when goods collide. But *why* do goods collide? Are the resulting conflicts inevitable or could they be avoided? Are they necessary, or perhaps even *good*? In light of our answers to these questions, what are we to do about moral dilemmas? In asking these questions, my aim is not to work out a principle or norm which can be used to guide our actions when faced with

¹ By “equally unacceptable” I do not mean to introduce a spectrum of unacceptability or anything of the sort. Rather, I mean that they are equal insofar as they are unacceptable – one unacceptable thing cannot be more (or less) unacceptable than another unacceptable thing.

concrete moral dilemmas. Rather, my chief aim is to work out how best to understand moral dilemmas in principle. Any norm meant to serve as a guide for navigating concrete moral dilemmas must, after all, presuppose some understanding of moral dilemmas in principle; so *even if* the present aim was to work out such a norm, this would require first working out the foundations upon which such a norm could be grounded. Nevertheless, for reasons that I aim to make clear in later sections, no such norm will be developed or specified. Rather, what I hope to accomplish in this work is a careful consideration of the nature of what I take to be the most fundamental moral dilemma – the dilemma that arises between conflicting responsibilities for others and the question of whether these responsibilities must (or even ought to) remain in conflict.

Before proceeding, I will address some possible objections to the project thus far. By doing so, I hope to show how and why the dilemma is even more pressing than it looks as outlined above. The first possible objection is that, in outlining the conflicts that arise when goods collide, I've constructed a false dichotomy – surely, one might argue, in the real world, when facing a concrete moral dilemma, there will be more than just two possible ways of acting; some of which perhaps will not require violating any good. The second objection, which I take to be separate though closely related to the first, is that, when facing a moral dilemma, one need not act in a way that causes one to be unable to reconcile themselves to the consequences, since one may opt not to act at all, and thus not violate any goods. These objections prove problematic for the present project insofar as they threaten to undermine the

conflicting nature of moral dilemmas as described. After all, if the conflict can be circumvented or avoided, it is not clear what work, if any, is left to be done since it is not at all clear that genuine moral dilemmas exist in the first place.

However, if we recognize the good of justice (understood in terms of equality, or concern for all others) and the good of care (understood in terms of partiality, or concern for an individual), then nearly all of our interactions with others will require a ‘violation’ of one of these goods. Every time we respond to the needs of an individual, we violate the good of justice by failing to give equal consideration to all. And every time we act in accordance with justice, we neglect the individual by failing to care for their specific needs. These ‘violations’ occur whenever a parent leaves work early to pick up their sick child, when a professor leaves student emails unanswered in order to spend an evening with their partner, and when someone passes by a person begging on the street. It may also occur when an individual deliberates volunteering for a historical versus humane society, when a law student decides whether to specialize in tax law versus civil rights law, or when a couple determines if they will grow their family via adoption versus procreation.²

On one hand, it seems so obvious and necessary that we should be prudential in determining to whom and to what extent we will devote our care and attention.

² These examples are not meant to insinuate that there is some proper way to prioritize one’s obligations such that one will come to the ‘right’ answer (e.g. choosing civil rights law over tax law, or adoption over procreation). The point is, rather, that the *way* one prioritizes their obligations – and indeed there are many different ways one could do so – will affect the outcome of these deliberations and, as such, how one organizes one’s everyday life.

We would not, for example, fault a parent for prioritizing their obligations to their own child over any obligations to other children, generally and for the most part.³ In fact, we would likely judge a parent who *doesn't* generally prioritize their obligations to their own child to be irresponsible or negligent. On the other hand, however, there is something deeply troubling about the prejudice inherent in this kind of partiality. After all, it is never a neglected child's fault that their needs were never prioritized by a caregiver. While partiality seems natural and defensible where it is working well, its failures leave it open to criticism of the efficacy and implications of the practice as a social norm.

In this chapter, I present a critical analysis of contemporary moral theory where it deals with issues of the apparent irreconcilability of justice as equality and care as partiality. I will begin by surveying the foundation and topology of the justice-care debate—a debate which Leslie Cannold, Peter Singer, Helga Kuhse, and Lori Gruen argue is really about partiality rather than gender⁴—then take a closer look at arguments for and against partiality. Finally, I will argue that, within the contemporary debate, much of the literature misconstrues the nature of the problems

³ We might fault a parent for prioritizing their own child's everyday needs over another child's acute needs where that parent is capable of responding to the latter child's needs such that, in doing so, no serious harm would come to their own child – for example, a parent who refused to stop feeding their own young child for a moment in order to stop another child who they noticed was about to run face first into a park bench. But I take situations like these to be special. Not special in the sense that it is unusual for young children to run face first into park benches (having been a preschool teacher and aunt, I know first-hand that it is, unfortunately, not at all unusual) but in the sense that this seems to be one of a limited exceptions to our intuition that parents ought to, *generally and for the most part*, prioritize the needs of their own child over the needs of other children.

⁴ Leslie Cannold et al., “What Is the Justice-Care Debate Really About?,” *Midwest Studies in Philosophy* 20, no. 1 (September 1995): 357–77.

of partiality and impartiality. In framing the conflict in terms of dilemmas between responsibility to kin—as those with whom we share (among other things) a personal history—versus strangers—as those with whom we share little to no personal history—the literature fails to capture certain critical aspects of the nature of these dilemmas. I then point to a different approach to understanding these dilemmas, one that reverses the order in which contemporary theoretical considerations of moral dilemmas typically precedes.

1. Justice-Care Debate

In 1958, Elizabeth Anscombe called for a halt to moral philosophy which, she insisted, “it is not profitable at present for us to do...” and ought to be “laid aside... until we have an adequate philosophy of psychology.”⁵ A revolutionary response to Anscombe’s call was developed by Carol Gilligan in the form of a feminist critique of leading theories of moral reasoning.⁶ Gilligan’s alternative account, which emphasized the moral psychology of women, contrasting it with that of men, sparked a lively debate between two seemingly contradictory views of morality. The debate, known as the Justice-Care Debate, generated countless works in moral philosophy and the philosophy of psychology.

⁵ Elizabeth Anscombe, “Modern Moral Philosophy,” *Philosophy* 33, no. 124 (1958), 1.

⁶ Carol Gilligan, *In a Different Voice* (Cambridge, MA: Harvard University Press, 1982).

Gilligan's account of moral reasoning was, first and foremost, a critique of contemporary moral psychology's focus on male-dominated moral reasoning.

Flanagan and Jackson summarize her position as follows,

Gilligan describes a moral universe in which men, more often than women, conceive of morality as substantively constituted by obligations and rights, as procedurally constituted by the demands of fairness and impartiality, while women, more often than men, see moral requirements as emerging from the particular needs of others in the context of particular relationships. Gilligan has dubbed this latter orientation the 'ethic of care,' and she insists that the exclusive focus on justice reasoning has obscured both its psychological reality and its normative significance.⁷

Justice reasoning, Gilligan argues, dominates both contemporary moral theory and moral psychology. As such, the research overlooks alternative approaches to moral reasoning—most notably, the approach Gilligan cites as more often utilized by women.⁸ These different approaches result in distinctly different analyses of moral dilemmas. “Whereas justice as fairness involves seeing others thinly, as worthy of respect purely by virtue of common humanity, morally good caring requires seeing others thickly, as constituted by their particular human face, their particular psychological and social self.”⁹ Justice as fairness, or the ‘justice ethic’, is distinctly cosmopolitan in the sense that all persons are considered equally as citizens of the

⁷ Owen Flanagan and Kathryn Jackson, “Justice, Care, and Gender: The Kohlberg-Gilligan Debate Revisited,” *Ethics* 97, no. 3 (April 1987), 623.

⁸ Gilligan, *In a Different Voice*.

⁹ Flanagan and Jackson, “Justice, Care, and Gender”, 623.

world; whereas caring, or the ‘care ethic’, is distinctly interpersonal in the sense that individuals are considered in terms of their personal relations to others.

...Gilligan characterizes the two ethics as “different ways of viewing the world” that “organize both thinking and feeling.... The justice orientation organizes moral perception by highlighting issues of fairness, right, and obligation... The care orientation... focuses on... the interconnections among the parties involved, on their particular personalities...”¹⁰

While distinct enough that both orientations cannot be taken up at once, Gilligan argues that either orientation can be utilized in the analysis of moral dilemmas.¹¹ A person can choose to consider a dilemma primarily in terms of fairness and right or they can choose to consider it primarily in terms of the particularities of individuals. Empirical studies suggest that we are quite adept at switching between these two perspectives.¹² Flanagan and Jackson claim, however, that,

...not all moral issues are so open to alternative construals... there may be both normative reasons and reasons of cognitive economy for teaching moral agents to be sensitive to certain saliences (e.g. anonymity among parties, prior explicit contracts) in such a way that these saliences are more or less sufficient to generate one construal (e.g. a justice construal) rather than some other.¹³

Additionally, the authors claim that “the description under which a particular problem is best understood is at least partly constrained by the kind of problem it

¹⁰ Flanagan and Jackson, “Justice, Care, and Gender, 624.

¹¹ *In a Different Voice*.

¹² Flanagan and Jackson, “Justice, Care, and Gender, 624.

¹³ *Ibid*, 626.

is...”¹⁴ and that Gilligan’s reliance on visual metaphors to illustrate the incompatibility of the two construals is problematic since “whereas it is impossible to see both the duck and the rabbit at the same time in the duck-rabbit illusions, it is not impossible to see both the justice and care salencies in a moral problem and to integrate them into moral deliberation.”¹⁵ And, in fact, empirical studies indicate that we are quite adept at alternating between the two construals, which lends support to the suggestion that we can incorporate both perspectives into our moral reasoning.¹⁶

Still, Flanagan and Jackson acknowledge that something is troubling about the apparent irreconcilability of the two views. They write:

Although there may be no logical incompatibility between the concepts of justice and care... Gilligan suggests in many places that there is a deep-seated psychological tension between the two perspectives, a tension rooted in the fact that the two ethics are built out of etiologically distinct underlying competencies which make different and competing psychological demands on moral agents.¹⁷

The two ethics emerge on the basis of two distinct aspects of human psychology. Early experiences of “powerlessness and inequality, provide fertile ground for the notions of fairness and autonomy...” essential to the disposition to justice, whereas “...experiences of deep attachment and connections, of moving and being moved by

¹⁴ Ibid, 624.

¹⁵ Ibid, 626.

¹⁶ Ibid, 624.

¹⁷ Ibid, 628.

others, provide the ground for... compassion, love, and altruism” essential to the disposition to caring.¹⁸

If we accept this psychological account, the central question of the justice-care debate becomes one of how to understand the relation between the ethic of justice and the ethic of care. Even if the two are not logically incompatible, the question of their logical relation remains. Where contemporary moral theory has typically taken the disposition to justice to be a necessary condition for caring¹⁹, Gilligan and her proponents argue that, in fact, caring is necessary for justice since before one is capable of being disposed to justice as equality as an adult, one must first be cared for in childhood.²⁰ Flanagan and Jackson assert that “...all societies, just or unjust, stable or unstable, egalitarian or nonegalitarian, presuppose prior relation of care between new members and those members involved in child-rearing. There is, in the end, something misleading in the widely held view that justice is the first virtue of society.”²¹

If caring is a necessary condition for the disposition to justice, then contemporary moral psychology, which privileges the justice orientation to the point

¹⁸ Ibid, 629.

¹⁹ Whereas the opposite is not the case for Lawrence Kohlberg, one of the central targets of Gilligan’s critique. Ibid, 633-634.

²⁰ This is both logically and practically the case. Without care, human beings do not survive past infancy, and therefore cannot develop a disposition toward anything, let alone justice. But additionally, without proper care, the neglected child may fail to develop a general concern for others—a consequence I’ve unfortunately seen first-hand in the case of Ali, who is remarkably unconcerned about issues of justice and equality in contexts where she feels no special sense of care for affected parties.

²¹ Ibid, 634.

of overlooking the phenomenon and value of caring, is deeply flawed; and the consequences of such a flaw would be significant. To return to Anscombe, one consequence of inadequate moral psychology is the inability to make a cogent argument for considering an unjust action to be a bad action. Anscombe writes,

In present-day philosophy an explanation is required how an unjust man is a bad man, or an unjust action a bad one; to give such an explanation belongs to ethics; but it cannot even be begun until we are equipped with a sound philosophy of psychology. For the proof that an unjust man is a bad man would require a positive account of justice as a ‘virtue.’ This part of the subject-matter of ethics is, however, completely closed to us until we have an account of what *type of characteristic* a virtue is—a problem, not of ethics, but of conceptual analysis—and how it relates to the actions in which it is instanced... For this we certainly need an account at least of what a human action is at all, and how its description as ‘doing such-and-such’ is affected by its motive and by the intention or intentions in it...²²

From this perspective, modern philosophy has its work cut out for it. Before it can offer intelligible arguments for why an action (let alone a person) is *bad* or *good*, it must first give an adequate descriptive account of the character and role of the motivations and intentions behind our actions. If caring is a key motivating factor behind even just some of our actions, any moral theory that overlooks it as such will prove to be seriously inadequate.

²² Anscombe, “Modern Moral Philosophy,” 4-5.

Gilligan, however, is less concerned with the issues that trouble Anscombe than with legitimizing and valuing methods of moral reasoning commonly excluded from contemporary moral theory. While she cashes out her argument in terms of gender-based differences, it has been argued that the critique is not simply “the question whether virtually all of philosophical ethics is oriented toward the way in which men, rather than women, think about ethics” but, rather “...echo[s] another important—and far older—critique of one mainstream approach [to ethics]: the partialist critique of the impartialist ethical tradition.”²³

The impartialist ethical tradition conceives the moral agent “...in the abstract, apart from and without any reference to even the most basic and necessary relationships between people.” Notably, for Kant, morality “... springs from the universal capacity of individuals to reason rather than from the connections individuals have with one another.”²⁴ By abstracting the individual from her particular relations and requiring universalizable moral precepts, Kant’s morality ensures “impartiality in moral judgement.”²⁵

Care ethicists, on the other hand, “deny that a decision-maker who remains situated will make a biased and thus unjust decision; rather they claim that she will be able to use her reactions to the situation to make a more responsive and thus

²³ Leslie Cannold et al., “What Is the Justice-Care Debate Really About?,” *Midwest Studies in Philosophy* 20, no. 1 (September 1995): 357–77, <https://doi.org/10.1111/j.1475-4975.1995.tb00322.x>.

²⁴ Ibid, 363.

²⁵ Ibid, 365.

better moral decision.”²⁶ Abstracting the individual from her particular relations will not necessarily lead to better moral judgement. In fact, doing so is likely to *impair* moral judgement since it depends for its existence on caring which is “by its very nature... not impartial.”²⁷ Thus, the care critique may be characterized as “...a critique of impartialism.”²⁸

For Gilligan, care is at least as essential to morality as is justice. Both partiality and impartiality—the ethic of care and the ethic of justice—serve as the foundation for morality and principles of moral reasoning. Gilligan does not call for a replacement of justice with care, but rather something like equal recognition of their validity and roles in moral thinking. Doing so requires recognition and careful consideration of the inevitable tension that arises at the intersection of care and justice. First, however, it will be necessary to consider the nature and character of partiality more carefully.

2. Partiality

As one might expect, there is no single, unified definition of partiality at play in contemporary moral theory. Rather, various partialist positions can be understood as ranging from conservative to radical. In “Morality and Reasonable Partiality”, Samuel Scheffler explains that if partiality means, “...mean[s] bias or prejudice, then surely morality and partiality are not compatible, for bias and prejudice are

²⁶ Ibid, emphasis added.

²⁷ Ibid.

²⁸ Ibid, 375.

antithetical to the kind of *impartiality* that is a fundamental feature of moral thought.”²⁹ Understood as prejudice, partiality would represent the antithesis of, for example, the universalization principle at the heart of Kant’s categorical imperative and would undermine impartial utilitarian calculus.

If, however, partiality is understood as “a preference or fondness or affection for a particular person...” then partiality and morality are not necessarily incompatible.³⁰ In “The Practice of Partiality”, Marilyn Friedman aptly quips, “...partiality toward loved ones is lately gaining wide philosophical acclaim... Ordinary people, fortunately, have held this view for quite some time.”³¹ Though the dominant Western ethical tradition tends to (at best) overlook and (at worst) deride the nature and role of special feelings toward particular others, these special feelings are not only accepted but prized in our everyday dealings with one another. Partiality plays a central role not only in the formative relationships between children and caregivers but also in relationships between friends and fellows. It is, as Scheffler puts it, “a deeply entrenched feature of human valuing.”³² So long as it is not construed as gratuitous bias or bald prejudice, it would seem that “any coherent morality will make room for partiality... it will treat reasons of partiality as having

²⁹ Samuel Scheffler, “Morality and Reasonable Partiality,” in *Partiality and Impartiality: Morality, Special Relationships, and the Wider World*, ed. Brian Feltham and John Cottingham (Oxford: Oxford University Press, 2010), <https://doi.org/10.1093/acprof:oso/9780199579952.003.0006>, 2 (emphasis in original).

³⁰ *Ibid.*

³¹ Marilyn Friedman, “The Practice of Partiality,” *Ethics* 101, no. 4 (July 1991), 818.

³² *Ibid.*, 8.

direct moral significance,” meaning they will “... bear directly in the rightness or wrongness of actions.”³³

Why is it, then, that partiality is not as pervasive throughout contemporary moral theory as it appears to be in our ordinary lives? The explanation for this is (at least) two-fold. On the one hand, partialist critiques of impartial moral theories are often heavy-handed, overinflating the demands of impartiality to make them appear obviously foolish. On the other hand, the practical application of partiality (in a less than ideal world) raises several serious concerns, most notably with respect to the question of responsibility between distant strangers and the issue of ensuring protections for the most vulnerable among us.

With respect to partialist critiques, Friedman explains how they,

...frequently construe the impartialist requirement of equal consideration for the interest of all persons as the requirement that we each attend constantly to the moral interests of all persons in the world. Such a moral requirement would, of course, be impossibly demanding. It would call for us to consider all interests of all strangers and unloved acquaintances equally with the interests of loved ones... And, it would call for the humanly impossible division of one’s time, energy, and resources into microscopic shares to be distributed to each of those inhabitants.³⁴

³³ Scheffler, “Morality and Reasonable Partiality,” 3-4.

³⁴ Friedman, “The Practice of Partiality,” 831.

While this construal of impartialism appears to support the notion that impartialist moral theories are inadequate, it does so on the basis of a misrepresentation of impartialism which, in actuality, is rarely so extreme.³⁵

With a focus on bringing down unrealistically extreme impartialist views, partialist critics fail to adequately attend to issues of moral responsibility extending beyond loved ones. “At best, some partialist... acknowledge some moral responsibilities to distant others and strangers...” writes Friedman; while “...at worst, partialists simply neglect to mention any such responsibilities.”³⁶ In response to a supposed attack on the moral worth of special relationships with loved ones, partialists become overly concerned with defending those relations such that they end up disregarding the moral worth of relations between distant others—between those, in other words, without an established history of interpersonal dealings. As a result, “moral exemplars are limited to parents, children, spouses, and friends, insofar as they devote themselves to loved ones...” at the expense of devaluing “...very ordinary notions of moral heroism... such as efforts by European Gentiles to save Jews from death camps in Nazi Germany.”³⁷

Still, arguments for partiality are supported by the notion that partiality is remarkably effective in ensuring that the most vulnerable among us are cared for, most notably children. “Knowing that I am related to someone in a particular way,”

³⁵ Friedman cites Singer’s early work as a rare example of this kind of extremism, *ibid* 831-32.

³⁶ *Ibid*, 832

³⁷ *Ibid*, 834.

as in the case of a parent to a child, “alerts me to the fact that... I am the one who *must* care for her since I am the only one who *might* care for her.”³⁸ Partiality, accepted and expected as a social convention, may, in fact, *create* obligations to care for one’s close relations. But whether partiality as a social convention can be morally justified, Friedman argues, “depends on the extent to which the relationships in question really do protect those who are vulnerable.”³⁹

Upon closer examination, the failures of partiality abound - as in the case of Ali, who was not cared for by her own parents. Partiality as a social convention creates a situation in which we are “particularly vulnerable to harm by kinfolk”⁴⁰ since caring requires not only special feelings of sentiment and responsibility but also *resources*. And resources, “...are distributed in a vastly unequal manner in virtually any society...” such that,

whether or not, and to what extent, someone benefits from certain partialist relationship conventions has a lot to do with her ‘social location,’ the sort of luck she had in being born to, adopted by, or linked by marriage to, relations with adequate resources for caretaking, nurturing, and protecting.⁴¹

Assuming Ali’s parents felt did special sentiment and obligation with respect to her, if they lacked adequate resources—viable career opportunities, a safe home

³⁸ Ibid, 823 (emphasis added).

³⁹ Ibid.

⁴⁰ Ibid, 824.

⁴¹ Ibid, 829.

environment, a support system, etc.—they would have been incapable of rendering sufficient care.

Even if partiality is sometimes exceedingly beneficial, Friedman argues that “The justification of [social] practices requires us to consider people who are not our friends or relations, people for whom we feel no particular affection, and whom we may not even know,” including, and perhaps especially, those who “lack the minimum resources” to enjoy the assumed benefits of said practices.⁴² If partiality as a social practice confers unequal benefits based on factors that are, for the most part, out of an individual’s control⁴³ then arguments in support of partiality which rely on its practical utility are found wanting.

Partiality, in this light, seems not only unjust but utterly *unjustifiable*. No reason nor argument could excuse such inequitable treatment solely determined by chance or luck. And yet, as Friedman points out, partiality not only plays a central role in our everyday lives, it is a *fortunate* aspect of said lives.⁴⁴ So, while existing theoretical defenses of partiality prove unsatisfactory in their analysis of impartialist views and failure to extend beyond close personal relationships, a moral theory that affords partiality a central role in determining one’s obligations to others may still prove advantageous over theories that privilege impartialism. One such advantage identified by Scheffler is, “...the capacity of a relational view to provide a non-

⁴² Ibid, 830.

⁴³ As, for example, the factors that may have made Ali’s family incapable of caring adequately for her.

⁴⁴ Friedman, “The Practice of Partiality,” 818.

skeptical interpretation of the deontic character of morality...”; or, in other words, the view that we not only have *good reason* to take responsibility for others but we are *obliged* to do so.⁴⁵ Another advantage is the capacity for partialist views to account for early life experiences of dependence on caregivers and later life experiences of special feelings for loved ones.

These advantages, however, will not make up for partialist downfalls unless it can be “...establish[ed] that the relational view of morality can be convincingly applied outside the context of actual interpersonal relationships.”⁴⁶ And yet, partiality is something that we not only engage in but also *rationalize* in our everyday lives. While our rationalizations vary, they generally function by appealing to various constraints that we are bound by, such as the constraints of space and time – there is, after all, only so much time one can devote to others and one cannot be in two different places at once; one must, therefore, divvy up one’s attention and care. Other constraints are more specific – as a product of the mechanisms of natural selection, one is constrained to behave in self-preserving ways; one is, therefore, capable of helping others only insofar as one’s genes will benefit reciprocally from one’s care for others.⁴⁷

What is interesting about these rationalizations is that each operates on the basis of certain conceptions of our fundamental limits as human persons. We know

⁴⁵ Scheffler, “Morality and Reasonable Partiality,” 26.

⁴⁶ Ibid.

⁴⁷ As, for example, in Richard Dawkins’ ‘selfish gene’ theory.

(or think we know) that we cannot do X because we know (or think we know) that we are bound by limitation Y. These limitations, in turn, are founded on specific conceptions of the self; conceptions that are distinct not only in terms of their descriptions of the human psyche but in terms of their underlying assumptions of the nature and essence of the human person.

If we accept that there are multiple ways of conceiving of the self, then we must also accept that there are different kinds of limitations we may or may not recognize, depending on the conception of the self we appeal to. In other words, what we imagine ourselves to be *capable* of, including whether we can care well for our loved ones and remain open and responsive to others (and vice versa), is at least partially dependent upon how we understand ourselves. It is not, therefore, an adequate *descriptive psychology* that is needed for an adequate moral theory but, rather, a *normative metaphysics*.

3. Analysis

Both proponents and critics of partialist theories overlook the potential of its application beyond the scope of dilemmas that pit established personal relationships with kin against relationships (or lack thereof) with strangers. Proponents argue that we have every reason to act partially toward kin versus strangers and critics argue that, while a certain degree of partiality toward kin is both necessary and desirable, partialist moral theories leave little room for global moral concern for those beyond each individual's circle of friends and family. Both sides of the debate fail to

consider the various ways in which we ordinarily feel special concern for, and subsequently act partially toward, those with whom we share no history of personal interactions; in other words, they fail to consider the possibility of partiality toward strangers. Furthermore, partialist proponents and critics fail to recognize a key consequence partiality may have for our relationships with kin; when we act partially toward one individual, we estrange ourselves from another. In some cases, this estrangement may occur with kin. As in the example above, to take Ali in would be to distance myself from my relationship with and responsibility for my partner. Similarly, if a parent acting partially toward their child may distance themselves, even if only momentarily, from their spouse.

While extending partiality to strangers doesn't necessarily simplify the moral situation (on the contrary, it may only further complicate it), it would specifically address, if not put to rest, concerns regarding broader global moral concern appealed to by critics of partialism. A partialist theory that could incorporate particular concern for those with whom we have no history of personal dealings would do theoretical justice to our everyday experiences and endorsement of the practice of partiality toward loved ones without necessarily jeopardizing others. In the following chapter, I explore just such a theory.

Chapter 2: The Moral Agent and Her Obligations

Introduction

In Michael Sandel's works on justice, his critique of the moral individualism of Immanuel Kant and John Rawls leads to a reimagining of the nature of the subject and a reevaluation of the moral agent's responsibility for others. Sandel argues that the liberal conception of the subject fails to adequately account for certain moral obligations that we often recognize and prize in practice. This failure, he shows, results in an inability to make sense of a particular type of moral dilemma for theories of morality grounded in the liberal conception of the subject. The type of dilemma that is overlooked in these accounts is precisely the kind of dilemma I describe in Chapter 1 – dilemmas that arise as a result of conflicting obligations to various others.

In this chapter, I argue that while Sandel's revision makes some progress toward a moral theory that captures the full depth and force of moral dilemmas, by overlooking a key aspect of the critical work he relies on for this revision, Sandel ultimately comes up short of a satisfactory account of moral dilemmas. The issue with his revision, as I show in section 4, is that it does not adequately distinguish between mere conflicts and dilemmas and is thus not superior to the voluntarist accounts he is critical of when it comes to making sense of moral dilemmas as genuine dilemmas.

1. Sandel's Criticism of Moral Individualism

In the first Harvard course to be made available to the general public, Michael Sandel delivers a series of lectures on justice, with topics ranging from “The Case for Cannibalism” to “The Good Life”.⁴⁸ These lectures were subsequently adapted for the New York Times Bestselling book *Justice: What's the right thing to do?*.⁴⁹ One chapter in particular, “Dilemmas of Loyalty” stands out in terms of its methodology. In this chapter Sandel explores “three categories of moral responsibility”—natural duties, voluntary obligations, and obligations of solidarity—and invokes a number moral dilemmas (both hypothetical and actual) to illustrate the third type of obligation, which he variously refers to as “obligations beyond consent”.⁵⁰

One such example is that of General Robert E. Lee who, ...opposed succession—in fact, he regarded it as treason. When war loomed, President Lincoln asked Lee to lead the Union forces. Lee refused. He concluded that his obligation to Virginia outweighed his obligation to the Union, and also his reported opposition to slavery... Lee could not countenance a role that would require him to inflict harm on his relatives,

⁴⁸ *Justice Course – Harvard Justice*, accessed October 9, 2018, <http://justiceharvard.org/justicecourse/>.

⁴⁹ Michael Sandel, *Justice* (New York: Farrar, Straus and Giroux, 2009).

⁵⁰ *Ibid*, 225.

children, his home. But his loyalty went further, even to the point of leading his people in a cause he opposed.⁵¹

Sandel argues that making sense of this example as a genuine moral dilemma—that is, a genuine conflict between a moral responsibility to oppose treason and a moral responsibility to refrain from taking up arms against one’s neighbors—requires recognizing and affirming obligations of solidarity that arise other than on the basis of consent and yet bear equal force as universal and voluntary obligations.

On the moral individualist picture of responsibility, Sandel argues, there is little room for obligations of solidarity—that is, *particular* obligations *beyond* consent; or, in other words, specific obligations of which I am not the author.⁵² For the moral individualist, a person cannot, for example, be held personally responsible for their failure to do some particular thing they *did not* promise or agree to do. The appeal of this view of obligation, where particular obligations beyond consent are not recognized, is that it fits a certain conception of the individual as an autonomous, self-legislating being. There is something to be said, after all, for refusing to recognize specific responsibilities an individual did not willingly take on, while still holding them accountable for the universal responsibilities to which all individuals

⁵¹ Ibid, 237.

⁵² “The doctrine of moral individualism does not assume that people are selfish. It is rather a claim about what it means to be free. For the moral individualist, to be free is to be subject only to obligations I voluntarily incur; whatever I owe to others, I owe by virtue of some act of consent...” Ibid, 213.

are bound. The problem with this view however, according to Sandel, is that it affords us an “account of obligation [that] is too thin.”⁵³

On the corresponding view of responsibility, Sandel argues, we are bound to run into serious difficulties articulating the various, complex, and very real obligations we have to others, especially where those responsibilities conflict. The case of Lee is meant to illustrate this very point. Sandel writes, “Unless we take loyalty seriously, as a claim with moral import, we can’t make sense of Lee’s dilemma as a moral dilemma at all,” and further that, if we do not recognize it as such (but conceive of it instead as something like a conflict between morality and prejudice) then we “misunderstand the moral stakes.”⁵⁴

Put another way, Sandel argues that making sense of a certain variety of moral dilemma as such requires recognizing not only the existence⁵⁵ but also the *force* of particular obligations beyond consent, the kind of obligations that are, at best, undervalued and, at worst, excluded from the picture of the moral agent painted by modern liberal thinkers. Even if one takes issue with Sandel’s categorization of obligation and analysis of moral dilemmas⁵⁶, the method by which Sandel carries out this analysis is what interests us here. Rather than arguing that liberal thinkers have

⁵³ Ibid, 224.

⁵⁴ Ibid, 237.

⁵⁵ Which, one could argue, is indeed recognized by those liberal thinkers Sandel is critical of.

⁵⁶ One may problematize his analysis of moral dilemmas in a number of ways. In the example of the Lee, it might be argued that there exists a universal obligation to refrain from taking up arms against our neighbors, or that each of us does consent, in some way, not to harm our own specific communities. In either case, it appears one could make sense of the dilemmas as such without recognizing any particular obligation beyond consent.

simply *made a mistake* in their account of our obligations to one another, Sandel turns to the conception of the subject upon which the liberal account of obligation is founded. There he identifies, as the source of the distorted view of obligation, an over-emphasis of the subject's autonomy such that all universal and all particular voluntary obligations will always outweigh particular obligations beyond consent.

For Kant, Sandel explains, "acting morally means acting out of duty"⁵⁷ and acting out of duty means "to act according to the law I give myself".⁵⁸ The moral law, properly understood and strictly speaking, is autonomous – I act morally only when my will is not dictated by external forces but rather by the law I "prescribe" for myself.⁵⁹ But, Sandel argues, "*If we understand ourselves as free and independent selves, unbound by moral ties we haven't chosen, we can't make sense of a range of moral and political obligations that we commonly recognize, even prize.*"⁶⁰

His criticism, in other words, is formulated not as a claim about the truth or falsity of the liberal conception of the person, but rather as a conditional statement: if we understand ourselves in manner X, we are bound to face consequences Y. But, other than a *theoretical* limitation in accounting for certain types of moral obligations and dilemmas that we otherwise recognize, one might wonder whether any meaningful consequences arise as the result of a liberal conception of the person.

⁵⁷ Ibid, 125

⁵⁸ Ibid, 109

⁵⁹ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed. Mary Gregor, trans. Jens Timmermann, 2nd ed., Cambridge Texts in the History of Philosophy (Cambridge: Cambridge University Press, 2012), 52.

⁶⁰ Sandel, *Justice*, 220 (emphasis mine).

If, after all, we recognize obligations beyond consent *in practice*, perhaps it makes no difference whether we can account for them *in theory*. Is anything of moral significance at stake here?

Sandel's response to this question is, in a word: yes. There is, in fact, much at stake in affirming a liberal conception of the individual at the foundation of our moral thought. In fact, it is this very conception of the individual that grounds modern democratic societies. Sandel writes, "...an assumption shared by libertarian and egalitarian liberals alike... is the idea that the government should be neutral among competing conceptions of the good life. This idea, central to the liberalism of Kant, Rawls, and many contemporary liberals, is summed up in the claim that the right is prior to the good."⁶¹ Prioritizing the right over the good entails leaving open our conception of how one ought to live a good life to make space for basic inalienable rights, even in the face of conflicting notions of the good.

Our judgements regarding the proper relation between the right and the good are closely tied to our conception of who we are as persons. Sandel writes, "...the debate about the priority of the right has focused on competing conceptions of the person and how we should understand our relation to our ends"⁶² and, according to both Kant and Rawls, Sandel explains

...we are free and independent selves, unbound by antecedent moral ties, capable of choosing our ends for ourselves... to base rights on some

⁶¹ Sandel, "Political Liberalism", 212.

⁶² Ibid, 213.

conception of the good would impose on some the values of others and so fail to respect each person's capacity to choose his or her own ends.⁶³

Prioritizing the right over the good makes possible a common system of justice in a society *without* a common view of the kind of life one ought to live. The liberal view of the person thus plays a central role in establishing and supporting the most basic tenants of political liberalism, the foundation of modern democratic societies, such as religious tolerance and pluralism.

While the distortion in the resulting conception of the moral agent's responsibilities may not prevent us from recognizing certain important moral obligations in practice, other consequences arise in a political system grounded in the liberal conception of the person. One of those consequences Sandel describes as the impoverishment of political discourse.⁶⁴ When the question of the good is "bracketed" from questions of political justice, Sandel argues, political discourse cannot appeal to religious or other moral perspectives to motivate or support arguments about what is just or unjust. Sandel writes,

...the political life that political liberalism describes leaves little room for the kind of public deliberation necessary to test the plausibility of contending comprehensive moralities—to persuade others of the merits of our moral ideas, to be persuaded by others of the merits of theirs.⁶⁵

⁶³ Ibid, 214.

⁶⁴ Ibid, 224.

⁶⁵ Ibid, 240.

Political liberalism is thus less tolerant and pluralistic than it first appears and, more generally, overly restrictive for deliberations of justice.

This restrictive nature of political liberalism is a direct consequence of the underlying liberal conception of the person – a conception which prioritizes the right over the good in the name of personal autonomy. Sandel’s solution to these issues is thus to revise the underlying conception of the person. The key to this revision lies in the work of Alasdair MacIntyre.

2. MacIntyre’s Criticism of the Modern Self

Sandel’s proposal in response to this critique is to reconsider the moral agent’s responsibilities on the basis of a revised conception of the subject, one that allows for an understanding of the moral agent as being bound by all three types of duties (natural duties, voluntary obligations, and obligations beyond consent). For this Sandel draws on the narrative view of the subject appealed to by Alasdair MacIntyre in the context of the latter’s critique of emotivism. MacIntyre argues that the “democratized self”⁶⁶ that accompanies the flawed emotivist hypothesis paints the picture of a subject who is capable of (and permitted to) “stand back from and every situation in which one is involved... and to pass judgement on it from a purely universal and abstract point of view that is totally detached from all social particularity.”⁶⁷ This decidedly modern conception of the moral agent, along with the

⁶⁶ Alasdair C. MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd ed (Notre Dame, Ind: University of Notre Dame Press, 2007, 32.

⁶⁷ Ibid, 32.

apparent interminability of contemporary moral debate (affectionally labeled *pluralism*), is not the result of cultural progress and moral gain, argues MacIntyre, but rather symptoms of cultural decline “moral disorder”.⁶⁸

Like Sandel, MacIntyre is critical of modern claims regarding pluralism. The crux of his critique is this,

“...the notion of pluralism is too imprecise. For it may equally well apply to an ordered dialogue of intersecting viewpoints and to an unharmonious mélange of ill-assorted fragments. The suspicion... that it is the latter with which we have to deal is heightened when we recognize that all those various concepts which inform our moral discourse were originally at home in larger totalities of theory and practice in which they enjoyed a role and function supplied by contexts of which they have now been deprived.”⁶⁹

Contemporary normative language and its use, MacIntyre argues, is estranged from the context in which it had meaning. The theory of emotivism—the view that when we assert normative claims all that we’re doing is expressing preferences or sentiments with which others ought to agree—it’s content but also and perhaps especially its unrecognized assumptions, is a telling symptom of this estrangement.

⁶⁸ Ibid, 11.

⁶⁹ Ibid, 10.

Traditional emotivism (not to mention the analytic moral philosophies that are critical of yet highly influenced by emotivism⁷⁰) fails to make two important distinctions. The first distinction is between persuasion and appeals to “impersonal [normative] criteria”; the Kantian distinction, in other words, between treating someone as a mere means by attempting to compel them to agree with my normative claim “by adducing whatever influences or considerations will, in fact, be effective on this or that occasion” versus treating them as an end in themselves by appealing to standards of normative rationality “the validity of which each rational agent must be his or her own judge”⁷¹ There is no meaningful difference, therefore, between manipulating someone in order to obtain their agreement with my normative stance and respecting their autonomous rationality by presenting my reasons for taking a normative stance and allowing them to decide for themselves whether they agree to disagree. The second distinction is between the meaning and use of a language. MacIntyre writes,

“The emotivist theory... purports to be a theory about the meaning of sentences; but the expression of feeling or attitude is characteristically a function not of the meaning of sentences, but of their use on particular

⁷⁰ MacIntyre cites Hare, who asserts that moral reasoning does in fact occur but that there is a point in any moral argument at which a reason can no longer be given for a first principle that, at bottom, the moral viewpoint is founded on. Ibid, 20.

⁷¹ Ibid, 24.

occasions... [and] the use of [a] sentence to express feelings or attitudes has nothing whatsoever to do with its meaning”⁷²

A more careful and less contentious framing of this point would be thus: the use of a sentence to express feelings or attitudes need not have any logical relation to its meaning. This is precisely the case for idiomatic phrases like, for example, ‘break a leg’ or ‘bite the bullet’.⁷³

“If emotivism is true,” MacIntyre claims, the first distinction “is illusory.”⁷⁴ Emotivism and its unwitting successors admit of no impersonal criteria whatsoever. Even where moral reasoning is recognized, it is limited to conditional statements while excluding rational justifications for first principles. MacIntyre writes, drawing on Hare, “The terminus of [moral] justification is... a not further to be justified choice, *a choice unguided by criteria*. Each person individually implicitly or explicitly adopts his or her first principles on the basis of such a choice.”⁷⁵ The difference between compelling another person to agree with a moral percept via persuasion versus allowing them to be guided by their own rational judgements via appealing to impersonal criteria is a false distinction since there are no impersonal criteria to appeal to in the first place. There is no way, on this view, to treat others as ends in themselves with respect to moral deliberation.

⁷² Ibid, 13.

⁷³ MacIntyre illustrates this point via Gilbert Ryle’s example of a schoolmaster shouting the correct answer of a multiplication problem at a student who got it wrong. Ibid, 13.

⁷⁴ Ibid, 24.

⁷⁵ Ibid, 20 (emphasis added).

A direct result of the failure to make the second distinction, according to MacIntyre, is that emotivists fail to consider their main hypothesis as a claim about the *use* rather than the *meaning* of language.⁷⁶ As a theory of the *meaning* of language, emotivism is a symptom of moral disorder. As a theory of the use of language, however, emotivism is useful in diagnosing moral disorder – it helps to inform us of the manner of and the extent to which normative language has become estranged from meaningful context as, for example when we “continue to use moral and other evaluative expression *as if* they were governed by objective and impersonal criteria, when all grasp of any such criterion has been lost.”⁷⁷ MacIntyre argues that while, as a universal theory of the meaning of moral language emotivism “plainly fails”⁷⁸, as “a thesis about a certain kind of moral utterance at Cambridge after 1903” it is indicative of a distinctly modern moral disorder.

But what is this moral disorder? It is precisely that estrangement that occurs when pluralistic morality relies on “ill-assorted fragments” of *once comprehensive* moral systems.⁷⁹ Pre-modern moral systems were comprehensive in that they examined and evaluated particular actions not in isolation but on the basis of a whole human life. MacIntyre points out that these pre-modern teleological views evaluate a whole human life in relation to a *given end*.⁸⁰ The self is not free, on this view, to

⁷⁶ Ibid, 13.

⁷⁷ Ibid, 18 (emphasis added).

⁷⁸ Ibid, 12.

⁷⁹ Ibid, 10.

⁸⁰ Ibid, 34.

choose his or her own ends but, instead, must determine how to move through life so as to make progress toward a given end.

By contrast, the modern “democratized self” is estranged from any given ends. The modern self is free to choose her ends for herself. Indeed, this freedom “... is celebrated historically for the most part *not as a loss*, but as self-congratulatory gain, as the emergence of the individual freed on the one hand from the social bonds of those constraining hierarchies which the modern world rejected at its birth and on the other hand from what modernity has taken to be the superstitiousness of teleology.”⁸¹ Freedom from given ends is widely understood as *moral progress* – making possible essential features of equality such as social mobility and religious tolerance – so what possible role could it have to play in the kind of *moral decline* that is indicated by moral disorder?

MacIntyre argues that something significant is actually *lost* as a result of this freedom. In addition to being estranged from her ends and a comprehensive moral perspective, the democratized self is also estranged in a certain sense from *herself*. MacIntyre writes,

“...one way of re-envisioning the [modern] emotivist self is as having suffered a deprivation, a stripping away of qualities that were once believed to belong to the self. The self is now thought of as lacking any necessary social identity... because the kind of telos in terms of which it once judged and

⁸¹ Ibid, 34 (emphasis added).

acted is no longer thought to be credible. What kind of identity and what kind of telos were they?”⁸²

On this view moral evaluation takes place in isolation, without reference to a whole human life as making progress toward a certain end. Without this broader context in which to situate normative evaluation, the modern self is free to choose the perspective from which he conducts his evaluation. Whether he chooses a principle, a value, or something else as the basis for his evaluation, he is unable to and is therefore not accountable for justifying his choice beyond assuming and affirming it as a first principle. And there is nothing to prevent him from making and justifying a different choice—either to evaluate the same phenomenon from a different perspective or to evaluate a different phenomenon. And yet, when he expresses the normative claims he arrives on this basis of this seemingly arbitrary choice of first principles, he does so using the kind moral language that was once grounded in comprehensive, non-arbitrary moral systems as if it means something like what it did when it was so grounded—namely, that it expresses normative claims that are guided by “impersonal criteria”; or, “standards of justice or generosity or duty” which are independent of “the preferences or attitudes of the speaker and hearer...”⁸³

This estrangement from the teleological self is, in other words, precisely what allows that modern individual to step back and judge any action whatsoever from whatsoever point of view she chooses and to *use* moral language *as if* it reflects an

⁸² Ibid.

⁸³ Ibid, 9.

objective and impersonal *meaning* of normative judgements when, in actuality, it has no objective criteria at its disposal since it can be grounded in nothing other than a personal choice that is “unguided by criteria.”⁸⁴ An unavoidable consequence of this modern conception of the self “...if and insofar as emotivism is true,” is that “moral language is seriously misleading...”⁸⁵

In a breath, MacIntyre’s thesis is this: the modern individual’s estrangement from herself and her ends results in the estrangement of the use of modern moral language from its meaning. Setting aside the implications, the modern conception of the democratized self is inherently problematic. The distinction between the socially situated self and the abstract self is, on pre-modern views, a false one. Social identities—memberships in particular communities and concrete relations to others—cannot be abstracted from the person. MacIntyre writes, “These are not characteristics that belong to human beings *accidentally*, to be stripped away in order to discover the ‘real me’. They are part of my substance, defining partly at least and sometimes wholly my obligations and my duties.”⁸⁶ It is precisely on this pre-modern, narrative conception of the individual’s non-accidental situatedness with respect to particular others (and particular groups of others) that Sandel bases his own revision of the moral agent in order to account for beyond consent.

⁸⁴ Ibid, 20.

⁸⁵ Ibid, 20.

⁸⁶ Ibid, 33 (emphasis added).

3. Sandel's Proposal

The narrative conception of the subject challenges the notion that universal and particular voluntary obligations necessarily outweigh obligations of solidarity since, according to the view, the individual is not as autonomous (or, in other words, not quite so *self*-legislating) as moral individualism claims. MacIntyre writes,

In many pre-modern, traditional societies it is through his or her membership in a variety of social groups that the subject identifies himself or herself and is identified by others. I am brother, cousin and grandson, member of this household, that village, this tribe.⁸⁷

On this view of the subject, we may readily recognize the force of obligations beyond consent; that is, "...those loyalties and responsibilities whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are..."⁸⁸

By placing greater limits on the moral agent's autonomy as compared to the modern liberal conception, the narrative conception of the subject positions obligations of solidarity on a par with universal and voluntary obligations, resulting in a greater capacity to make sense of moral dilemmas as such. It helps us understand why, for example, the dilemma faced by Lee is a moral dilemma (and not, rather, a conflict of emotion or sentiment) by recognizing two distinct but *equally legitimate* types of moral responsibility underlying the conflict. In other words, we are able to

⁸⁷ Ibid.

⁸⁸ Sandel, *Justice*, 224.

account for what Sandel refers to as the “moral force” of certain dilemmas.⁸⁹ Sandel writes,

From the standpoint of the narrative conception of the person, the liberal account of obligation... fails to account for the special responsibilities whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are—as members of this family or nation or people; as bearer of that history; as citizens of this republic. On the narrative account, these identities are not contingencies we should set aside when deliberating about morality and justice, they are part of who we are, and so rightly bear on our moral responsibilities.⁹⁰

Without taking into consideration how Lee understands himself as the particular person he is, situated in the particular manner he is—namely, as partially constituted by the particular relationships between himself and his Virginian neighbors—we cannot “make sense” of the moral force of the conflict he faces.⁹¹ We may still understand it as a conflict, certainly, but a conflict without moral weight, like that faced by someone who must choose between their two favorite flavors of ice-cream. Such a comparison is, however, obviously absurd. There is a significant qualitative difference between the conflict faced by Lee and the one faced by the ice-cream

⁸⁹ Ibid, 225.

⁹⁰ Ibid, 224.

⁹¹ Ibid, 237.

lover. Even if we are critical of Lee's decision, even if we ultimately cannot condone his actions, there is something admirable about them.⁹²

But what could be admirable about Lee fighting for the South in the American Civil war? In doing so, he supported slavery and (in his own words) treason. Yet there is a certain quality of character exhibited by Lee in refusing to abandon his community, even when this required acting against his (other) personal convictions, and even when much of that community is made up of strangers, individuals with which Lee has no history personal dealings. Sandel writes, "What is admirable is *the disposition to see and bear one's life circumstances as a reflectively situated being*—claimed by the history that implicates me in a particular life, but self-conscious of its particularity, and so alive to competing claims and wider horizons. To have character is to live in recognition of one's (sometimes conflicting) encumbrance."⁹³ This is one example of the kind of moral stakes that are overlooked or misunderstood on voluntarist accounts of moral obligation.

Sandel's method of rethinking the moral agent by appealing to the narrative conception of the subject helps us get to the bottom of a broader range of moral dilemmas insofar as it accounts for the conflicting responsibilities that underly those dilemmas. It affords us a theory of moral responsibility that captures the moral force of these dilemmas, the moral significance we perceive when analyzing them, and

⁹² And I say this as a decedent of General George Gordon Meade, who defeated Lee at the Battle of Gettysburg.

⁹³ Ibid, 237.

especially when faced with them ourselves, by showing that these dilemmas are genuine. Lee's dilemma is a moral dilemma because he faces conflicting moral obligations. On a voluntarist conception of the subject, on the other hand, Lee's perceived obligations to his fellow Virginians may be understood as the product of sentiment rather than moral responsibility and thus not in conflict (in any morally significant way) with the moral obligation to oppose slavery and treason. In this case, no moral dilemma exists at all.

To summarize, if the person I am is partially defined by my non-accidental relationships to others, then whether or not I voluntarily take on responsibility for those others, I have special obligations to them. A theory of moral responsibility grounded in this conception of the subject is readily reconciled with the specific type of moral dilemma that arises as a result of conflicting obligations where one such obligation is an obligation of solidarity, an obligation beyond consent. On voluntarist views of moral responsibility grounded in the liberal conception of the subject, moral dilemmas like these would not be recognized as dilemmas in the first place, since voluntary and universal obligations could never conflict with obligations beyond consent (because the existence of the latter is not possible).

4. Analysis

By recognizing the equal force of obligations of solidarity, Sandel demonstrates the myriad ways our various moral obligations may genuinely conflict. This analysis more adequately captures our experiences of moral dilemmas, of the

moral force that weighs on us when we face dilemmas that pit multiple obligations against one another than the voluntarist views Sandel is critical of. If we are at all concerned with the ways in which and the reasons why our responsibilities to others come into conflict (a concern I motivated in Chapter 1), Sandel's view appears to be especially well-suited for consideration of the nature of such conflicts.

There is, however, something entirely unsatisfying about his account. If we are at all concerned with whether or not our responsibilities to others *must* (or ought to) conflict, this concern is only made more pressing in light of Sandel's analysis. While Sandel goes a long way toward accounting for conflicting responsibilities by showing that, when we do not voluntarily choose all of our responsibilities and obligations to others, we should expect that they will come into conflict with one another, his analysis still fails to capture the full depth and, in his own words, *force* of conflicts of responsibilities to others.

On Sandel's view, while moral dilemmas are certainly troubling, the narrative conception of the subject, though less autonomous than the liberal conception, still allows the subject sufficient autonomy to readily reconcile such dilemmas. General Lee, for example, could recognize and feel the weight of his obligations to his community and his obligations to the Union and subsequently subordinate either one to the other. He could, in other words, resolve the conflict by organizing his obligations into a hierarchy such that when he experiences tension between any two obligations, he chooses to meet whichever obligation he views as

greater than the other. If he views his obligations to his community as greater than his obligation to oppose treason, he will fight for Virginia and the South. If, on the other hand, he views his obligation to oppose treason as greater than his obligation to his community, he may accept Lincoln's invitation to lead the Union army.

On the narrative conception of the subject, the moral agent is perfectly capable of organizing her obligations such that she readily resolves any conflicts; and while this may appear to be advantageous, its fatal flaw is that it fails to capture our experiences of genuine moral dilemmas, of those (as I've argued in the previous chapter, quite *common*) instances where we experience the depth and force of a moral dilemma as just that impossible situation which *cannot* be resolved or reconciled. This aspect of moral dilemmas, that is, their inextricability, is captured by Walter Sinnott-Armstrong, who defines moral dilemmas as genuine when no conflicting obligation "overrides" the other(s).⁹⁴

Where Sandel defines *genuine moral dilemmas* as situations in which two or more moral obligations conflict and one does not necessarily override the other, rather than the case where a moral obligation conflicts with sentiment or feeling, Sinnott-Armstrong defines them as situations in which it is *not possible* for either obligation to take precedence over the other. For Sandel, what is *genuine* is the moral significance of each of the conflicting obligations – they both (or all) arise on the basis of moral responsibility rather than mere sentiment and that the category of

⁹⁴ Walter Sinnott-Armstrong, "Moral Dilemmas and Incomparability," *American Philosophical Quarterly* 22, no. 4 (October 1985), 321-29.

responsibility they fall under (whether universal, particular, or beyond consent) does not *ipso facto* determine their moral significance or worth relative to one another.

For Sinnott-Armstrong, what is *genuine*, in addition to the moral significance of each of the conflicting obligations, is the fact that these obligations *necessarily do not* override one another. On the latter view, the dilemma presents not just a *difficult* choice, but an *impossible* one.

This is precisely the difference between a conflict and a dilemma—a crucial distinction in the context of this work. In the case of the former, a sort of contest occurs between competing moral obligations, and ultimately a victor is declared. In the case of General Lee, Sandel describes the obligation to Virginia as said victor, “[Lee] concluded that his obligation to Virginia outweighed his obligation to the Union, and also his reported opposition to slavery.”⁹⁵ While Sandel’s proposal allows us to capture a broader range of moral conflicts, genuine in the sense that there are multiple moral obligations at odds, it does not adequately capture the deeply troubling inextricability of genuine moral dilemmas.

What does it mean, however, for a dilemma to be inextricable or for a choice to be impossible; and what would be required of a moral theory to capture this feature of moral dilemmas? It cannot, of course, mean that an individual facing such a dilemma is incapable of acting. If we view Lee’s dilemma as genuine in the Sinnott-Armstrong sense, this does not preclude the possibility of a choice

⁹⁵ Sandel, *Justice*, 236.

nonetheless being made. What *is* impossible, on this view, is just that the decision for how to act can be made on the basis of prioritizing one obligation over another – that one obligation overrides or outweighs the other.

If Lee's dilemma is genuine, then such a criterion is not at his disposal. And yet, in a letter to his sons, he seems to justify his choice on precisely this basis. Lee writes, "With all my devotion to the Union, I have not been able to make up my mind to raise my hand against my relatives, my children, my home..."⁹⁶ His obligation to Virginia, in other words, outweighs his obligation to the Union—this is precisely how Sandel caches out Lee's choice. But how could the dilemma be genuine in the Sinnott-Armstrong sense if Lee himself reports that he resolves it by identifying an obligation that overrides the other?

While Sandel takes to heart MacIntyre's description of the pre-modern subject as bound by unchosen but non-accidental personal ties to others and uses this conception to motivate obligations of solidarity as arising from genuine moral responsibility, he fails to consider how the MacIntyre's criticism of modern moral language applies in the case of Lee. If we take seriously MacIntyre's thesis regarding moral decline and the estrangement of the use of moral language from its meaning, we may view Lee as speaking *as if* his choice is (and ought to be) guided by an impersonal criterion—namely, that when obligations conflict, one should act in accordance with whichever obligation overrides the other—when that choice is

⁹⁶ Quoted in Sandel, *Ibid.*

actually unguided by any impersonal criteria whatsoever since no such criteria exist. It is not difficult to imagine, after all, that the estrangement from the broader teleological context that once gave moral language its meaning at play in “moral utterance at Cambridge after 1903” was also at play in moral utterance in the North American colonies a mere 50 years earlier.

To summarize, a moral dilemma may be genuine in the Sinnott-Armstrong sense despite an individual self-reporting that it was resolvable by appealing to the impersonal criterion of acting in accordance with the obligation that overrides the other. In overlooking the implications of MacIntyre’s broader critique, Sandel’s proposed narrative account of the subject and the resulting conception of the moral agent’s responsibilities for others overlooks what I argue is the most troubling and significant aspect of moral dilemmas: their irreconcilability. In conceiving the subject as less self-legislating than liberal accounts presume, Sandel moves closer to capturing what is so troubling about moral dilemmas – that is, that we cannot avoid these conflicts in large part because we are not as free to prioritize our moral obligations as we might have imagined. However, moving closer still will require a revision of a different kind with respect to the subject’s autonomy, one that does not simply limit the moral agent’s capacity for self-legislation but instead reconceives the conditions for the very possibility of self-legislation.

Chapter 3: The Infinite Responsibility of the Subject

Introduction

As detailed in the previous chapter, Sandel aims his criticism at the likes of liberalist thinkers such as Kant and Rawls. Levinas' critique, on the other hand, targets the entire history of Western philosophical thought, from Socrates to Heidegger.⁹⁷ Though the scope of Levinas' critique is broader and the implications more radical, the structure of his analysis closely parallels that of Sandel's in three key ways. First, Levinas is critical of the way that ancient and modern theories of ethics, morality, and politics construe the nature and limits of the moral agent's responsibilities, just as Sandel is critical of voluntarist and contractarian theories that fail to recognize the equal force of our various moral obligations to others. Second, like Sandel, Levinas turns to the underlying conception of the subject as the source of the problems he perceives with conventional ethical theory. Third, as in Sandel's analysis, Levinas appeals to another philosopher's characterization of the subject, in this case, Descartes', which conceives of the subject's autonomy differently as compared to the conceptions underlying the moral theories that he is critical of.

The two critiques differ, however, in the way that they reconceive autonomy. Unlike Sandel, rather than calling for a restriction of the subject's autonomy, Levinas

⁹⁷ With a special emphasis on Heidegger, to be sure. It is also worth noting, at the very least, that Levinas' relationship to Kant is quite complex and difficult to untangle. In some place, the former seems to be entirely critical of Kant while, in others, he compares Kant's thought favorably to his own. See, e.g., Miriam Bankovsky, "Derrida Brings Levinas to Kant: The Welcome, Ethics, and Cosmopolitical Law," *Philosophy Today* 49:2, no. 5 (2005).

makes responsibility for others a *condition for* autonomy. As a result of this reversal of the traditional relation between responsibility and autonomy, Levinas' ethics conceives responsibility for others, both loved ones and strangers, as infinite. Because responsibility for others cannot be limited and because the infinite conception of responsibility is ethically superior to a restricted conception, responsibility, on Levinas' view, conflicts both fundamentally and necessarily. It is this conflicting nature of responsibility that allows Levinas' theory to capture what Sandel's view doesn't—the irreconcilability of genuine moral dilemmas.

Levinas' Critique

Levinas' criticism of the history of Western philosophy centers on the tradition's fixation on the cognitive powers of the ego. The capacity to comprehend that which is beyond the self is regarded as the principal mode in which the human person engages with the world. On this picture, everything the ego encounters is identified with the ego's idea of it and thus taken in hand, seized. Levinas writes, "...in the last analysis everything is at my disposal, even the stars, if I but reckon them... everything *belongs to me*..."⁹⁸

These philosophies of totality strip the world of its otherness, of its alterity. One of the most concise explanations of Levinas' central criticism of totalizing

⁹⁸ Modern English colloquialisms such as *I get it* and *I've got it* still reflect this view of understanding. Levinas, *Totality and Infinity*, 37 (emphasis added).

philosophies can be found in *Ethics and Infinity: Conversations with Philippe Nemo*.

Nemo asks what characterizes philosophies of totality, to which Levinas responds,

Absolute knowledge, such as it has been sought, promised or recommended by philosophy, is a thought of the Equal. Being is embraced in truth. Even if the truth is considered as never definitive, there is a promise of a more complete and adequate truth. Without doubt, the finite being that we are cannot in the final account complete the task of knowledge, but in the limit where this task is accomplished, it consists in making the other become the Same.⁹⁹

Access to truth is gained, in other words, by exerting autonomous egoist powers that capture and possess (in knowledge) the world outside of the self. Levinas cites Plato's *Meno* as a paradigmatic example of knowledge functioning in this manner. In the dialogue, Socrates demonstrates the maieutic method of uncovering truth, showing Meno how his slave, who has never been taught geometry, is able to recognize his ignorance and then learn how to accurately double the area of a square while arguing that he, Socrates, has done "nothing more than ask questions" and not given any knowledge to the slave but, instead, simply prompted him to recollect that which he already knows.¹⁰⁰ This exercise serves as a demonstration of a conception of knowledge which assumes that the slave need not be supplied with anything from

⁹⁹ *Ethics and Infinity: Conversations with Phillippe Nemo*, trans. Richard A. Cohen (Pittsburg, PA: Duquesne University Press, 1982), 91-92.

¹⁰⁰ Plato, "Meno," in *Five Dialogues*, trans. G. M. A. Grube and John M. Cooper, 2nd ed. (Indianapolis: Hackett Publishing Company, 2002), 77-78

without in order to deduce geometrical truths he was not previously cognizant of. For Levinas, “The ideal of Socratic truth thus rests on the essential *self-sufficiency* of the same, its identification in ipseity, its egoism. Philosophy is an egology.”¹⁰¹ On this view, philosophy is reduced to a study of an autonomous ego and the ways the ego comprehends and therefore takes possession of, all aspects of its world.

Western philosophy proves to be a history of philosophies of totality insofar as the subject is conceived as essentially autonomous, or *autochthonous*, with respect to knowledge and truth. “Knowledge” Levinas insists, “is always an adequation between thought and what it thinks. There is in knowledge... an impossibility of escaping the self...”¹⁰² However, engagement with another person—sociality—Levinas insists, cannot be explained in the language of knowing, of conceiving, of seizing, of making one’s own insofar as the idea of what is thought, the idea of the other person, is adequate to what it aims at: the other person *herself*. Thus, “...sociality cannot have the same structure as knowledge”; not, however, because one *cannot* equivocate one’s conception of another person with the person herself but rather, because one *ought not to*.¹⁰³

Levinas writes, this time aiming the thrust of his critique at Heidegger in particular, “...Heidegger, with the whole of Western history, takes the relation with the Other as enacted in the destiny of sedentary peoples, the possessors and builders

¹⁰¹ Levinas, *Totality and Infinity*, 44 (emphasis added).

¹⁰² Cohen, *Ethics and Infinity*, 60.

¹⁰³ Ibid.

of the earth. Possession is preeminently the form in which the other becomes the same, by becoming mine.”¹⁰⁴ To *know* the Other is to exercise the power of autonomous understanding, to strip away her alterity and make her the same, to conceive of her as equivalent to my understanding of her and, as a consequence, to affirm the free exercise of my power over any responsibility for her.

Levinas’ criticism of Western philosophical thought is, first and foremost, a criticism of the theoretical privileging of autonomy, motivated by a concern for what this privileging amounts to; namely, the degradation of responsibility. To assume autonomous knowing is to privilege personal freedom over responsibility for the other. On such a view, “Anything that is *possible* is permitted”.¹⁰⁵ It matters not whether something *ought* or *ought not* to be done, only that it *can* be done. Sociality understood according to the logic of autonomous knowing, on Levinas’ account, precludes any possibility of genuine ethics.

Levinas’ criticism is echoed in Sandel’s critique of moral individualism which “assumes that... the free choice of each individual is the source of the only moral obligations that constrain us”, thus sacrificing the force of certain types of moral responsibilities for the sake of freedom.¹⁰⁶ Like Sandel, Levinas insists on the importance of revising our thinking about morality, ethics, and politics by reconceiving the conception of the subject underlying dominant moral theories.

¹⁰⁴ Ibid, 46

¹⁰⁵ “Ethics as First Philosophy” in *The Levinas Reader*, ed. Séan Hand (Oxford: Basil Blackwell, 1989), 78 (emphasis in original).

¹⁰⁶ Sandel, *Justice*, 213.

Levinas' revision is, however, more radical than Sandel's. Levinas writes, "*Being* before the *existent*, ontology before metaphysics, is freedom (be it the freedom of theory) before justice. It is a movement within the same before obligation to the other. *The terms must be reversed.*"¹⁰⁷

Like Sandel, Levinas' revision entails a reconsideration of the autonomous subject and her relation to others. However, rather than conceiving of the subject as simply *less autonomous*, Levinas calls for a conception of the subject as *first and foremost* responsible for others, a conception that would prioritize responsibility over personal freedom and thus depart from the egological conception of a subject whose, to borrow from Sandel, "free choice..." would be "...the source of the only moral obligations that constrain [him]."¹⁰⁸ Echoing Socrates argument in support of the maieutic conception of knowledge, Levinas insists that a conception of the subject which prioritizes relation to and responsibility for the other over personal freedom is superior to egological conceptions because it avoids the negative consequences that arise as a result of the latter; that is, an incentive and justification for *inaction* – in Socrates' case, inaction with respect to seeking knowledge, and in Levinas' case, inaction with respect to taking responsibility for others.¹⁰⁹ It is Descartes'

¹⁰⁷ Levinas, *Totality and Infinity*, 47 (emphasis added).

¹⁰⁸ Sandel, *Justice*, 213.

¹⁰⁹ Socrates contends that "we will be better men, braver and less idle, if we believe that one must search for the things one does not know, rather than if we believe that it is not possible to find what we do not know and that we must not look for it," Plato, "Meno." While Levinas insists that first philosophy must be reconceived since the throughout the west, it has been historically, "reduced to self-consciousness"; as a consequence of this so-called 'wisdom', "modern man persists in his being as a sovereign who is merely concerned to maintain the *powers of his sovereignty*," and, therefore, "everything that is possible is permitted." "Ethics as First Philosophy", 78 (emphasis in original).

Meditations that Levinas finds an account of the subject that departs from the Western tradition in precisely this crucial way.

Levinas' Descartes

Levinas' interpretation of Descartes' *Meditations* repeatedly stresses the importance of the third meditation, where the existence of God is proven via the idea of infinity, an idea that could not have originated from a finite being and must, therefore, be given by god. It is this realization that grounds the radical doubt of the first meditation and is therefore crucial to the cogito's certainty of its own existence.

The Cartesian idea of the infinite, Levinas writes,

...implies a thought of the Unequal... where the *ideatum* of this idea, that is, what this idea aims at, is infinitely greater than the very act through which one thinks. There is a disproportion between the act and that to which the act gives access. For Descartes, this is one of the proofs of God's existence... One must admit to an infinite God who has put the idea of the Infinite into us. But it is not the proof Descartes sought that interests me here. I am thinking here of the astonishment... of the idea of God, of the very paradox – so anti-Greek – of an idea 'put' into me, even though Socrates taught us that it is impossible *to put* an idea into a thought without it already having been found there.¹¹⁰

In Western philosophy, as demonstrated in the *Meno*, the acquisition of knowledge and truth is traditionally conceived as phenomenologically and ontologically autonomous. To know is to have possession of an idea that cannot have come from

¹¹⁰ Cohen, *Ethics and Infinity*, 91-92.

beyond the powers of consciousness itself. For Descartes, however, certainty of the absolutely other (or God) is necessary for self-certainty. Without the presence of infinity in finite thought, “consciousness would be unable to posit and conceive its own finitude, its own doubt. It would be unable to be certain of its own doubt...” and the meditator therefore incapable of carrying out the radical doubt of the first meditation.¹¹¹

Though the idea of God appears subsequently to the meditator’s radical doubt, the former is a necessary condition for, and therefore logically prior to, the latter. As such, in Descartes, Levinas reads a conception of human consciousness that is predicated on the encounter with the infinite, with alterity, with that which is absolutely other than the self: the Other. Levinas describes the “ambiguity of Descartes’ first evidence” as “revealing the I and God without merging them, revealing them as two distinct moments of evidence *mutually founding one another...*”¹¹² The relation with God is neither accidental nor incidental. This relation, which is a relation with exactly that which necessarily exceeds the possessive powers of cognition, has a different character entirely. Levinas writes of it as the “...relation of the same with the other, where the transcendence of the relation does not cut the bonds a relation implies, yet where these bonds do not unite the same and the other into a Whole,” which is found precisely in “...the situation

¹¹¹ Keenan, Dennis King, “Reading Levinas Reading Descartes’ Meditations” in *Emmanuel Levinas: Critical Assessments of Leading Philosophers*, ed. Claire Katz, vol. 2 (Abington, Oxon: Routledge, 2005), 163.

¹¹² Levinas, *Totality and Infinity*, 48.

described by Descartes in which the ‘I think’ maintains with the Infinite *it can nowise contain* and from which it is separated a relation called ‘idea of infinity.’”¹¹³ Because what the idea of infinity aims at always surpasses the thought of infinity, because the infinite cannot be contained in a finite thought, the thought is not adequate to its referent and the subject is thus incapable of genuinely comprehending it, of possessing it, stripping it of its alterity and claiming ownership of it. The thought and its referent cannot be conceived as a singular whole – a totality. The relation to the infinite, to God, is necessarily non-totalizing.

For Levinas, this is also true in the case of the relation to the Other. Levinas writes, “in the face such as I describe its approach, is produced the same exceeding of the act by that to which it leads.”¹¹⁴ In the encounter with the Other, the Other always exceeds the subject’s cognitive powers, exceeds any idea the subject may *have* of her. “The face of the Other at each moment destroys and overflows the plastic image it leaves me, the idea existing to my own measure... *the condition for theoretical truth and error* is the word of the other...”¹¹⁵ The Other, rather than the self, is the ground of truth. Man is indeed ‘the measure of all things’ but, in Levinas, it is the *other man* who sets the standard of measure. Thus, just as “the *cogito* in Descartes rests on the other who is God and who has put the idea of infinity in the soul...” subjectivity in Levinas rests on the Other who faces me.¹¹⁶

¹¹³ Ibid, 48 (emphasis added).

¹¹⁴ Cohen, *Ethics and Infinity*, 92.

¹¹⁵ Ibid, 50-51 (emphasis added).

¹¹⁶ Levinas, *Totality and Infinity*, 86.

The Subject, the Other, and the Good

Rather than starting from a conception of an autonomous subject whose experiences of the world and others are always mediated by his understanding (and whose responsibilities to others are therefore a consequence of his freedom of and capacity for possession), Levinas describes subjectivity in terms and as a consequence of the essential relation between the subject and that over which cognition has (and can have) no power: the Other, alterity, infinity—the origin of all responsibility.¹¹⁷ Levinas writes,

the awakening of an existence that takes charge of its own condition... comes from the other. Before the *cogito* existence dreams itself, as though it remains foreign to itself. It is because it suspects that it is dreaming itself that it awakens. The doubt makes it seek certainty. But this suspicion, this consciousness of doubt, implies the idea of the Perfect. The knowing of the *cogito* thus refers to a relation with the Master—with the idea of infinity or of the Perfect. The idea of Infinity is neither the immanence of the *I think* nor the transcendence of the object. The *cogito* in Descartes rests on the other who is God and who has put the idea of infinity in the soul....¹¹⁸

Preceding and enabling the very subjectivity of the subject is the encounter with the absolutely Other. The experience of the face of the Other, an experience of

¹¹⁷ Levinas, *Totality and Infinity*, 39.

¹¹⁸ Levinas, *Totality and Infinity*, 86.

infinity or alterity, overflows the initially self-enclosed existence of enjoyment—of living from the earth and the fruits of one’s labor¹¹⁹—drawing the autochthonous I away from itself.¹²⁰ Only once the ego “leaves itself” does it gain the perspective necessary for awareness and judgement of itself.¹²¹ Self-awareness and the conscience, the marks of subjectivity, and the necessary conditions for the self-legislation of the autonomous subject, are born from the relation between the self and the Other. Thus, for Levinas, insofar as one is a subject with any capacity for autonomy, one is *always already* indebted to the Other.

The Other, however, is not indebted in the same way. The relation of the subject to the Other, for Levinas, is necessarily asymmetrical, such that the subject’s responsibility for the Other is always greater than the Other’s responsibility. The Other demands the responsibility—responsiveness or, simply, a response—from the subject and the subject is responsible—*capable of response*—regardless of whether or not the Other responds in kind. “Reciprocity” Levinas insists, “is his [the Other’s] affair.”¹²² This asymmetry, among other differences between the I and the other, Levinas writes, is

... due to the I-Other conjecture, to the inevitable *orientation* of being

“starting from oneself” toward “the Other.” The priority of this orientation

¹¹⁹ Ibid, 127-130.

¹²⁰ Ibid, 39.

¹²¹ Ibid.

¹²² Cohen, *Ethics and Infinity*, 98.

over the terms that are placed in it (and which cannot arise without this orientation) summarizes the theses of [Totality and Infinity].¹²³

The subject is oriented toward the other in a metaphysical relation upon which the ego, thinking, theorizing, judging, and self-legislating are based. Thought itself “begins with the possibility of conceiving a freedom exterior to my own... To think a freedom exterior to my own is the first thought. It marks my very presence in the world.”¹²⁴ Here ‘presence in the world’ is understood as presence in the ontological world, presence within being (as opposed to the ‘metaphysical’ relation, which does not ‘exist’ within being but is ‘otherwise’ or ‘beyond’ being), or, existence as an entity in a world populated by other entities.

Because this relation is essential, while the autonomous subject has the freedom to decide not to respond *ethically* to his responsibility for the Other, he can never escape his responsibility, since even a refusal to respond is, in itself, a response that presupposes his metaphysical condition as a subject of the other, as one who *must* respond (in some way or another). The irresponsible human being is still an ethical being in the sense that the very orientation of his being burdens him with ethical responsibility and this burden of responsibility is the condition for the possibility of acting *irresponsibly*.

¹²³ Levinas, *Totality and Infinity*, 215.

¹²⁴ Emmanuel Levinas, “The I and the Totality” in *Entre nous: on thinking-of-the-other*, trans. Michael B. Smith and Barbara Harshav (New York: Columbia University Press, 2000), 17.

Moreover, his responsibility is *infinite* insofar as it is issued from without and precedes his capacity to consciously recognize it. Because the call to responsibility precedes any understanding of it, the subject is incapable of escaping it and, more importantly, of placing limits on it. Levinas describes obedience as “...preceding the hearing of the order – which gauges or attests to an extreme urgency of the commandment... an urgency by which the imperative is, ‘dropping all other business,’ categorical...”.¹²⁵ The *categorical imperative* to respond to the other, issued from the face of the other, is the ground of all responsibility, but also *the good*. Levinas writes, “...the idea of the good arises, merely by the fact itself that, in the encounter, *the other counts above all else*”¹²⁶. The Other takes precedence over whatever else the subject might have concerned herself with – her projects, her goals, even (and especially) her own persistence in being (i.e. her own survival). The good is thus defined as the precedence of the Other such that the subject is converted from a being living “for-itself” to a being living “for-the-other”.¹²⁷ The opening of the ethical, the dimension of height, marks an election to humanity – one becomes human insofar as one is invited to live *beyond being*, beyond the ego-logical realm in which being is directed primarily by a will to *persist in being* at all costs, to the metaphysical realm where responsibility for the Other takes precedence over the

¹²⁵ Emmanuel Levinas, *Alterity and Transcendence*, trans. Micahel B. Smith, (Stanford: Stanford University Press, 1998), 147.

¹²⁶ Emmanuel Levinas, *Of God Who Comes to Mind*, trans. Bettina Bergo, ed. Werner Hamacher and David E. Wellbery (London: The Athlone Press, 1999), 33-34 (emphasis added).

¹²⁷ Levinas, *Of God Who Comes to Mind*, 35.

subject's freedom to persist in being and the face of Other issues normative commandments such as *thou shall not kill*.

Crucially, this infinite responsibility is not incidental to the subject's identity. It is insofar as the ethical relation is asymmetrical, insofar as the subject "always has one responsibility more than all the others", that the subject is *individuated*.¹²⁸ "I am I" Levinas insists, "in the sole measure that I am responsible, a non-interchangeable. I can substitute myself for everyone, but *no one can substitute himself for me*. Such is my inalienable identity of subject."¹²⁹ Infinite responsibility cannot be outsourced to others, no one else can answer for the subject, even to the extent that the subject is responsible for events that cannot be traced to her own past, or her own agency. She is responsible even for what she had no hand in bringing about. Levinas writes,

It is... a past irreducible to the present that seems to signify in the ethical anteriority of responsibility-for-the other, without reference to my identity assured of its right. Here I am, in that responsibility, cast back toward something that was never my fault, never my doing... toward something that does not come back to me from memory. Ethical significance of a past that concerns me... outside... all reference to a remembered past. Originary significance of an immemorial past, based on responsibility for the other man. My non-intentional participation in the history of humanity, in the past of others, who are my business.¹³⁰

¹²⁸ Cohen, *Ethics and Infinity*, 98 (emphasis in original).

¹²⁹ Cohen, *Ethics and Infinity*, 101 (emphasis added).

¹³⁰ Levinas, *Alterity and Transcendence*, 32

Responsibility arises not on the basis of free choice, as in an agreement or a promise, but on the basis of a “commitment” to the Other that occurs before the subject is *capable* of committing¹³¹ before she is capable of pledging herself to any cause whatsoever. Regardless of the subject’s projects, goals, or intentions, in encountering the Other, her practical concerns are suspended; she becomes “dis-inter-ested”¹³² in the “unconditional perseverance of being in [her] being”¹³³, or unconcerned with her own being and, instead, concerned for the Other.

Goodness, for Levinas, is precisely this transcendence from the ontological condition to the metaphysical, from laboring to provide security for one’s own being to disinterestedness in own’s own needs for the sake of the Other. It is this “attention” to and “receiving of” the Other in the subject’s conversion to being-for-the-other which “mark the priority of good in relation to evil”.¹³⁴ The subject is, first and foremost, responsible for the Other. Her responsibility *precedes* her self-interestedness, logically if not temporally. On Levinas’ account, ‘the good’ is defined as the individual’s essential responsibility for the other.

Already, a certain affinity between Levinas and Sandel’s proposals becomes apparent. One of Sandel’s most forceful criticisms of the liberal conception of

¹³¹ Ibid, 31-32.

¹³² Cohen, *Ethics and Infinity*, 100.

¹³³ Levinas, *Alterity and Transcendence*, 35.

¹³⁴ Ibid, 98.

freedom is the flawed notion that rights can be defined independently of the good.

Sandel writes,

...for Kant, the right is prior to the good in two respects... first... certain individual rights ‘trump,’ or outweigh, considerations of the common good. Second, the right is prior to the good in that the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life.¹³⁵

This notion is problematic because, taken to be true, it necessitates an impoverished political discourse that must remain isolated from any “reflections about the nature of the good life and the highest human ends”.¹³⁶ Its successful application in practice, in other words, necessitates a politics which MacIntyre describes in terms of “interminable” debate unguided by “impersonal criteria” precisely because the justification of rights cannot depend on any comprehensive moral system and thus there is nothing to appeal to in order to justify them other than arbitrarily chosen first principles.¹³⁷

Yet, simultaneously, those comprehensive moral systems that have been purged from public political discourse still serve as the basis for the private considerations of rights, since it is inconceivable for rights to be “identified and justified in a way that does not presuppose any particular conception of the good.”¹³⁸

¹³⁵ Sandel, Michael “Political Liberalism” in *Public Philosophy*, (Cambridge, MA: Harvard University Press, 2005), 212.

¹³⁶ Sandel, “Political Liberalism”, 213.

¹³⁷ MacIntyre, *After Virtue*, 20.

¹³⁸ Sandel, “Political Liberalism”, 213.

Thus, individuals bring considerations of rights grounded in comprehensive moral systems to the political arena without being able to appeal to their foundations for justification. Political debate surrounding rights is, therefore, marked by sophistry, propaganda, and other means of coercion.

The seemingly noble goal of leaving the definition of the good open to preserve personal autonomy is largely untenable but also undesirable. Sandel writes,

Deciding important public questions while pretending to a neutrality that cannot be achieved is a recipe for backlash and resentment. A politics emptied of substantive moral engagement makes for an impoverished civic life. It is also an open invitation to narrow, intolerant moralisms.

Fundamentalists rush in where liberals fear to tread.¹³⁹

Conscientious individuals, in other words, will withdraw from what they perceive to be sophisticated and duplicitous political discourse, leaving public issues to be *at best dominated* and *at worst decided* by the least conscientious and most dogmatic.

In addition to the myriad of practical consequences this type of politics has for justice, the effort to leave the definition of the good open for the sake of autonomy is self-undermining. When fundamentalist voices are loudest, rights and other issues will not be decided in a manner that allows for the greatest freedom for individuals to choose and pursue their own conception of the good life. Instead,

¹³⁹ Sandel, *Justice*, 243

fundamentalist views will be imposed through laws and regulations that no longer protect individual rights but instead infringe on personal autonomy.

Levinas, unlike Sandel, goes as far as denying the logical possibility that the definition of the good can be left open for the sake of personal autonomy by reconceiving autonomy as freedom from the perpetual cycle of self-enclosed being.

Cheryl Hughes articulates this self-enclosed being as,

...enchained to itself in solitude, locked into self-reference in the monotonous series of instants that make up the present of economic time, and related to a world that is merely part of that solitude. The solitude of material existence is a circle of desire, labor, possession, consumption, and new desire.¹⁴⁰

As a being-for-itself, the ego's actions are governed by its *conatus essendi*, its struggle to preserve its own being. Alone, it has no hope of escaping this determinist existence. "Levinas insists", Hughes explains, "that this solitude is a problem" since the solitary ego "...is a burden to itself, occupied with itself, responsible for itself... closed upon itself in solitude."¹⁴¹ But, Levinas explains, "...solitude... is only one of the marks of being. It is not a matter of escaping from solitude, but rather of escaping *from being*."¹⁴² It is the Other who offers freedom, and thus salvation, from the "anonymous and senseless rumbling of being."¹⁴³ Once the ego is converted to a

¹⁴⁰ Cheryl L Hughes, "The Primacy of Ethics: Hobbes and Levinas," *Continental Philosophy Review* 31 (1998), 84.

¹⁴¹ Ibid.

¹⁴² Cohen, *Ethics and Infinity*, 59 (emphasis in original).

¹⁴³ Ibid, 52.

being-for-the-other, it is no longer necessarily determined by the nihilistic effort to preserve its own being.

The source of the good (or the ‘moral law’), for Levinas, is beyond the self. He writes, “The heteronomy of ethical obedience... is not the unfolding of a vis a tergo: it comes from in front [de face]: submission to the order issued [signifié] in the face of the other man which is not approached as a theme.”¹⁴⁴ Yet it is simultaneously the condition for autonomy, the condition for the freedom to choose the maxim for one’s actions. Being-for-the-other, subject to the Other, and therefore freed from solitary existence, one may *determine* whether to act on the basis of her ability to respond to the Other or on the basis of her struggle to preserve her own being, as opposed to *being determined* by the latter. “It is therefore not freedom that accounts for the transcendence of the Other, but the transcendence of the Other that accounts for freedom...”¹⁴⁵ Because the precedence of the absolutely Other, *the good*, is the condition for the freedom required for self-legislation, its definition cannot be left open for the sake of preserving autonomy.

Autonomy is a consequence of the encounter with the Other in which the subject is oriented toward the other based on goodness. Levinas writes,

All encounter begins with a benediction, contained in the word ‘hello’... This greeting addressed to the other man is an invocation. I therefore insist on the

¹⁴⁴ Levinas, *Alterity and Transcendence*, 35.

¹⁴⁵ Levinas, *Totality and Infinity*, 225.

primacy of the well-intentioned relation toward the other... the attention, the receiving of the other... mark the priority of good in relation to evil.¹⁴⁶

The encounter with the Other is a blessing, an interruption of the *conatus essendi* and an invitation to escape the solitude of self-enclosed, deterministic being,

“wresting...the I from unconditional perseverance of being in its being”.¹⁴⁷ It is an invitation to consider the implications of one's effort to preserve one's being, to consider “the question *par excellence* or the question of philosophy. Not ‘Why being rather than nothing?’, but *how being justifies itself*.”¹⁴⁸ Face to face with the Other, the ego gains the distance from itself that is necessary to recognize the violence inherent in being preoccupied with preserving it's being and, further, to consider not whether this is ontologically necessary but whether it can be ethically justified.

Levinas “name[s] this calling into question of my spontaneity by the presence of the Other, *ethics*”¹⁴⁹ and describes all language as presupposing the ethical encounter.

He writes,

To address someone expresses the ethical disturbance produced in me, in the tranquility of the preservice of my being, in my egotism as a necessary state, by the interruption of the ‘conatus essendi’...¹⁵⁰

¹⁴⁶ Levinas, *Alterity and Transcendence*, 98.

¹⁴⁷ Levinas, *Alterity and Transcendence*, 35.

¹⁴⁸ Levinas, *Ethics as First Philosophy*, 86 (emphasis added).

¹⁴⁹ Levinas, *Totality and Infinity*, 43.

¹⁵⁰ Levinas, *Alterity and Transcendence*, 97.

The response, the ability to respond, response-ability, is the expression of the ego's conversion from being-for-itself to being-for-the-other, to a subject (of the Other). Hughes contrasts the expression of this disturbance, the response, with the self-enclosed operations of the ego; "face to face with the Other," she writes, "I do not simply contemplate in silence, I respond."¹⁵¹

2. The Third Party

Levinas ethics is (further) complicated by the empirical fact that the Other is not the only other person for whom the subject is responsible. Though the Other demands infinite responsibility, the subject's responsibility does not stop there. Levinas writes, "To love is to exist as if the lover and the loved one were alone in the world... the love of one's neighbor, determined by chance proximity, and consequently, a love of one being to the detriment of another; always privilege, even if it is not preference."¹⁵² To respond to the infinite responsibility demanded by the Other with infinite responsiveness, to give everything one has to the Other, is to act *as if* there is no one else in the world. In a universe of two, one could live a perfectly ethical life, always responding to the demands of the Other by offering whatever the Other needs. However, in a world of more than two individuals, the interactions between the lover and the loved one necessarily impact others, even to the extent

¹⁵¹ Hughes, "The Primacy of Ethics," 86.

¹⁵² Levinas, "The I and the Totality," 20-21.

that, according to Levinas, “*everything* that takes place here ‘between us’ *concerns everyone...*”¹⁵³

While one does not experience one’s responsibility for all others directly, as in the face to face encounter with the Other, this responsibility for others is experienced *through* the face of the Other. Levinas writes, “the third party looks at me in the eyes of the Other.”¹⁵⁴ Through the relation to the neighbor—the proximate other and therefore the privileged one—the subject recognizes the third party as “other than the neighbor, but also another neighbor, and also a neighbor of the other, and not simply his fellow.”¹⁵⁵ He recognizes that there are others in relation to the Other, others who may have helped or harmed the Other for whom he is infinitely responsible, others in relation to his responsibility for the Other and, therefore, others in relation to himself despite the fact he may have had no personal interactions with them whatsoever.

Through the face of the Other, the subject feels the weight of the demands of strangers and thus his responsibilities to them, as well as the impossibility of responding to those demands if he chooses to give everything he has, all of his attention and care, to the Other who faces him. “Earthly morality,” Levinas writes, “invites us to take the difficult turn leading toward third parties who remain outside

¹⁵³ Levinas, *Totality and Infinity*, 212 (emphasis added).

¹⁵⁴ Ibid, 213.

¹⁵⁵ Emmanuel Levinas, *Otherwise than Being or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh, Pa: Duquesne, 1998), 157.

of love.”¹⁵⁶ This is the first concern for justice, the recognition of the “necessity to moderate this privilege of the Other.”¹⁵⁷

...the Other who faces me is already obliged by another... I am commanded to join in this obligation to the third and thereby join in a whole network of relations to Others. The fact of the third party does not diminish my responsibility to the Other but multiplies it so that my ethical responsibility is extended to concern for the needs of all the Others...I am thus answerable for all.¹⁵⁸

In making the turn toward the third, or toward all others, the necessity of comparison is realized. To determine how to respond in the face of conflicting responsibilities, one is forced to compare individuals, their needs, and possible responses; one “must judge, where before [one] was to assimilate responsibilities.”¹⁵⁹ The necessity of comparison, born of the concern for the third, a concern felt through the relation to the Other, is for Levinas the necessary and sufficient condition for all theoretical activity. One theorizes – scrutinizes, measures, compares – once one recognizes the fact that prioritizing the needs of the Other over all others at all times is unacceptable.

¹⁵⁶ Levinas, “The I and the Totality” in *Entre nous: on thinking-of-the-other*, trans. Michael B. Smith and Barbara Harshav (New York: Columbia University Press, 2000), 23.

¹⁵⁷ Cohen, *Ethics and Infinity*, 90.

¹⁵⁸ Cheryl L Hughes, “The Primacy of Ethics: Hobbes and Levinas,” *Continental Philosophy Review*, no. 31 (1998), 89.

¹⁵⁹ Emmanuel Levinas, “Philosophy, Justice, and Love” in *Entre nous: on thinking-of-the-other*, trans. Michael B. Smith and Barbara Harshav (New York: Columbia University Press, 2000), 104.

What makes the privileging of the Other unacceptable in Levinas is that there seems to be no other way to account for the privileging of one over another than to appeal to chance or luck. Again, Levinas writes, “the love of one’s neighbor, *determined by chance proximity*, and consequently, a love of one being to the detriment of another.”¹⁶⁰ That I privilege the needs of my loved one over the needs of all others is not the result of conscious deliberation, but rather of chance – it just so happens that this person, as opposed to another, is my loved one or neighbor, the one who is closest to me. It very well could have been the case that I was neighbor to someone else, that the love I feel and the privilege I give to one could have been felt and given instead to another had they just been in the right place at the right time in place of my neighbor. Levinas writes,

Human multiplicity does not allow the *I*—let us say does not allow *me*—to forget the *third party* who pulls me away from the proximity of the other: away from responsibility prior to all judgement... The *third party*, different from my fellowman, is also my fellowman. And he is also the fellowman of the fellowman. What are they doing, these unique ones, what have they already done, to each another? For me, it would be to fail in my first-person responsibility... were I to ignore the wrongs of the one toward the other because of this responsibility, prior to all judgement, of proximity. This means... not ignoring the suffering of the other, who falls to my

¹⁶⁰ Levinas, “The I and the Totality,” 20-21 (emphasis mine).

responsibility. It is the moment of justice. The love of one's fellowman, and his original right, as unique and incomparable, for which I am answerable, tend of their own accord to make appeal to a Reason capable of comparing incomparables, a wisdom of love.¹⁶¹

In conflict with the experience of one's infinite responsibility for kin is the realization that organizing one's life solely around this responsibility of proximity entails ignoring the needs of others for no reason other than that they happen to be, through no fault of their own, at a distance. To prioritize the needs of my kin over all others on the basis of "chance proximity" seems utterly unjustifiable. Yet it is also *unavoidable*. For Levinas "...it is always starting out from the Face, from the responsibility for the other that justice appears".¹⁶² The concern for all others is born through the face of the proximate other who demands everything of me. Since one cannot escape the basic foundations of one's own subjectivity, insofar as one must respond one cannot escape the necessity of weighing and adjudicating one's responsibility for others.

Importantly, the encounter with the Other takes place "between strangers... otherwise it would be kinship."¹⁶³ Face to face with Ali, I cannot be face to face with and am therefore placed at a distance from, Daniel. In that moment, *she* is the ground

¹⁶¹ Emmanuel Levinas, "Uniqueness," in *Entre Nous: On Thinking-of-the-Other*, trans. Michael B. Smith and Barbara Harshav, European Perspectives (New York: Columbia University Press, 1998), 195.

¹⁶² Levinas, "Philosophy, Justice, and Love," 104.

¹⁶³ Levinas, *Alterity and Transcendence*, 97.

of my responsibility. But this responsibility is, of course, infinite. “I am responsible even for the Other’s responsibility” and my obligations are therefore not limited to those I feel compelled to fulfill for Ali’s sake, even if they are experienced the most straightforwardly. “My ‘close relations’ or ‘my people’ are already the others and, for them, I demand justice.”¹⁶⁴ In the face of the immeasurable weight of my responsibility for Ali, I demand justice for Daniel. My obligations to each of them come at once, originate from a common source, and are therefore inseparable in a way that precludes prioritizing one over the other. Because neither obligation does nor can override the other, I face an irresolvable conflict. My responsibility to care for this neglected child carries equal force to my responsibility to respect my partner’s perfectly justified boundaries.

And yet, *something must still be done*. I must act on the basis of some decision. I can, as a matter of fact, *claim* that one responsibility precedes the other in importance, and act on this supposed precedence.¹⁶⁵ But, at in Lee’s dilemma, I may presume or claim that my choice is guided by an impersonal criterion—namely, that when obligations conflict, one should act in accordance with whichever obligation overrides the other—when that choice is actually unguided by any impersonal criteria whatsoever since no such criteria are at my disposal. The opposing

¹⁶⁴ I am, in other words, *partial to the stranger to the detriment of my own kin* – an issue that is overlooked in the partialist-impartialist debate (see Chapter 1 above).

¹⁶⁵ I can also, in various ways, refrain from making any such decision, but this does not negate the necessity to act in some way or another, even if that action is an expression of an attempt to avoid or ignore the conflict. In the words of Geddy Lee from the Canadian rock band *Rush*, “if you choose not to decide, you still have made a choice,” *Freewill*, Permanent Waves (Morin Heights, Quebec: Anthem, 1980).

obligations can be weighed against one another only for the sake of and up to the point of recognizing the conflict as interminable. They cannot be separated and arranged into a hierarchy without undermining their common source and essentially conflicting nature.

What's more, for Levinas, this conflict is not simply an unfortunate circumstance of our ontological situation, rather, it is ethically *ideal*. Without this tension, obligations to others would be determined on the basis of chance. The preference given to the proximate Other would remain unchecked, such that those "who remain outside of love" are given little to no consideration.¹⁶⁶ Further, face to face with the stranger, one would have little to no regard for one's own kin. Without the conflict, in the face of my infinite responsibility for Ali, it would never occur to me to demand justice for Daniel. The tension that arises from this conflict is the necessary and sufficient condition for the *concern* for justice and thus for all genuine *critique* of systems of justice.¹⁶⁷ To resolve the conflict between my responsibility for the Other and my responsibility for others by means of a hierarchy of obligations (or by any other means) would entail the obliteration of the possibility of the demand for justice and the critical assessment of institutions of justice in terms of both their form and function.

In Sandel's analysis, dilemmas of obligation are irresolvable because none of the competing obligations necessarily outweighs the others. In Levinas' analysis,

¹⁶⁶ Levinas, "The I and the Totality", 23.

¹⁶⁷ More on this in the next chapter.

these dilemmas are irresolvable because the conflict is a necessary condition for subjectivity—the very condition from which one may experience a dilemma in the first place. Rather than calling for a conception of the subject which emphasizes relationality and restrictions autonomy, Levinas proposes relationality, and thus responsibility, as the basis of autonomy. In doing so, he simultaneously sheds light on and complicates our understanding of the dilemmas we face in our everyday lives. Levinas' view gets to the root of why these dilemmas are so troubling – they are both unavoidable and irresolvable, necessary for our having subjective experience of anything at all simultaneously impossible to resolve. But it also intensifications the urgency of the question of how we ought to respond in the face of such dilemmas.

Chapter 4: Taking Responsibility for Infinite Responsibility

“One belongs to the messianic order when one has been able to admit others among one’s own.”

- Levinas, “In the Time of Nations”

Introduction

In chapter 2, I argued that Sandel’s reliance on the narrative conception of the individual neither solves the problems he identifies in the liberal conception nor does the kind of justice to our normal experiences of dilemmas of responsibility which he aims for. In chapter 3, I showed how, unlike Sandel, Levinas’ reimagining of subjectivity, in prioritizing responsibility over freedom, does not allow for ranking responsibility to the Other and others with respect to one another and, therefore, more adequately captures the depth of the most fundamental moral dilemmas. Levinas brings out the force of these dilemmas by arguing that our conflicting responsibilities (to the Other and others) are necessarily in tension and, perhaps more importantly, that they *ought to be*. I concluded that, on Levinas’ view, any hierarchization of responsibilities is incoherent. Those responsibilities in conflict arise ‘in the same moment’, with equal weight and significance. The Other does not precede—whether temporally, logically, or as a matter of importance¹⁶⁸—the Third and, likewise, the Third does not precede the Other. They come at once, each with a

¹⁶⁸ The last of which, Levinas explains, is what he means when he says “metaphysics *precedes* ontology” (Nat Lilienstein, “Penser Aujourd’hui, Emmanuel Levinas,” TV Film, 1991).

force that cannot be ignored. The individual must respond to both demands *at once*.¹⁶⁹

Derrida refers to this conflict as “the terrible ineluctability of a double constraint” or a “double bind.”¹⁷⁰ To respond to one’s infinite responsibly to the Other—to respond *ethically*—would require giving everything one has, all of one’s time, energy, and resources, to the Other. But to do so would be to shirk one’s responsibility to all others. Conversely, to respond to one’s responsibility to others—to respond *justly*—would require measuring, analyzing, and the “comparison of incomparables”¹⁷¹, the very violence of thematization that is directly opposed to the revelation of the Other.

In the present chapter, I explore further the ‘turn’ toward the Third Party – an essential element in the passage from ethics to justice and the progression from the autochthonous I to the subject. I aim to work toward a theoretical solution¹⁷² to the question of how to respond to the double bind by exploring the relation between

¹⁶⁹ Of course, we may and perhaps must ask: *but how? What constitutes an acceptable response in the face of such dilemmas?* We’ll return to this question later in this chapter.

¹⁷⁰ Jacques Derrida, “A Word of Welcome,” in *Adieu to Emmanuel Levinas*, trans. Pascale-Anne Brault and Michael Naas (Stanford, CA: Stanford University Press, 1999), 33.

¹⁷¹ Emmanuel Levinas, “Peace and Proximity,” in *Emmanuel Levinas: Basic Philosophical Writings*, ed. Adriaan T. Peperzak, Robert Bernasconi, and Simon Critchley, trans. Simon Critchley, Peter Atterton, and Graham Noctor, Studies in Continental Thought (Bloomington: Indiana University Press, 1996), 168.

¹⁷² At the very least; along with the beginnings of a practical solution. Of course, any such solutions would not *resolve* the issue but, rather, offer a means of dealing with it that is at least preferable to ignoring it.

ethics and politics via past considerations of the possibility and character of an ethically grounded politics and the subject's role in the critique of the state.

Derrida's Politics Otherwise

In "A Word of Welcome" Derrida interprets the conflict between our responsibilities for the Other and others as an invitation to consider the meaning of the relation between ethics and justice (or law, or politics¹⁷³) in Levinas' work. The question of the relation between ethics and justice and the possibility of conceiving of (or, more properly, *inventing*¹⁷⁴) a non-totalizing politics of hospitality is one and the same as the question of the relation between the responsibility to the Other and the responsibility to the Third Party and the possibility of a responding, at once, to both demands. Derrida writes,

Perhaps we would, in truth, be put to another kind of test by the apparent negativity of this lacuna, by this hiatus between ethics (first philosophy or metaphysics—in the sense, of course, that Levinas has given these words), on the one hand, and, on the other, law or politics. If there is no lack here, would not such a hiatus in effect require us to think law and politics otherwise?¹⁷⁵

Derrida endeavors to do just that by interpreting *Totality and Infinity* as a "treatise of hospitality."¹⁷⁶ In doing so, he offers a reinterpretation of the

¹⁷³ Derrida notes that, though not equivalent, the concepts justice, law, and politics cannot be separated from one another. To think the relation between ethics and justice is also to think the relation between ethics and law or ethics and politics. "A Word of Welcome," 33, 48.

¹⁷⁴ "...a politics beyond the political... a 'political invention.'" Derrida, "A Word of Welcome," 79.

¹⁷⁵ Derrida, "A Word of Welcome," 20-21.

¹⁷⁶ Ibid, 21.

‘interruptions’ that mark the major movements of Levinas’ subject between *ipseity* and *illegality*. This reinterpretation features a “feminist manifesto”¹⁷⁷ reading of the figure and role of the feminine other and seamlessly weaves together the distinct characterizations of the subject as “host” in *Totality and Infinity* and as “hostage” in *Otherwise Than Being or Beyond Essence*.¹⁷⁸

The upshot of Derrida’s reinterpretation of Levinas’ subject is the possibility of thinking a “politics otherwise.”¹⁷⁹ A politics otherwise would be unlike any notion that comes to mind in relation to the term ‘politics’ – a politics that is foreign to any contemporary idea of the political which guards the boundaries of a state and restricts the movement of persons across those boundaries. A politics otherwise would be a politics of hospitality, one which welcomes the stranger, the orphan, and the stateless. A “messianic politics”, unlike the totalizing and thus violent politics to which we are so accustomed, would offer hospitality to the Other but also the Third Party, to all others.¹⁸⁰

Derrida’s point of entry into Levinas’ thought, and the basis for his interpretation of the relation between an ethics of hospitality and a politics of

¹⁷⁷ Ibid, 44.

¹⁷⁸ In fact, Derrida finds the two characterizations *readily* compatible, unlike, e.g. Robert Bernasconi. See: Bernasconi, “What Is the Question to Which ‘substitution’ Is the Answer?,” in *The Cambridge Companion to Levinas*, Cambridge Companions to Philosophy (Cambridge: Cambridge University Press, 2002), 246, where the author argues that the conception of the host as hostage is a reformulation, rather than an elaboration, of the conception of the subject as host. See also: Daniel Smith, ““After You, Sir!’: Substitution in Kant and Levinas,” *Journal of the British Society for Phenomenology* 48, no. 2 (April 3, 2017): footnote 31, where the author takes the argument made by Bernasconi for granted.

¹⁷⁹ Citation req. – politics otherwise.

¹⁸⁰ Citation req. – messianic politics.

hospitality (and the possibility thereof), is that “hiatus” that perhaps “require(s) us to think law and politics otherwise...”.¹⁸¹ This hiatus—or, this “leap without transition”—between ethics and politics opens a space of possibility for considering and *reconsidering* the relation between ethics and politics.¹⁸² Because this hiatus is grounded in the interruptions and respective movements that take place ‘between’ the encounter with the Other and the ‘turn’ toward the Third Party, Derrida devotes much attention to Levinas’ description of these events, recounting each interruption and movement along the “threads” of hospitality he traces through Levinas’ works.¹⁸³

“One will understand nothing of hospitality,” Derrida writes, “if one does not understand what ‘interrupting oneself’ might mean, the interruption of the self by the self as other...”.¹⁸⁴ Self-interruption, the ‘initial’ interruption in the movements between ipseity and illeity, orients the subject toward otherness. The subsequent feminine welcome—the originary welcome which receives one in one’s home—renders both *guest* and *host*; and, as host, capable of receiving the Other.¹⁸⁵ Once welcomed into the home by the feminine other and made host, the subject “comes to

¹⁸¹ Derrida, “A Word of Welcome,” 20-21.

¹⁸² “The leap without transition, the rupturing mutation of the ‘without question’ at the birth of the ‘first question,’ defines at the same time the passage from ethical responsibility to juridical, political—and philosophical—responsibility.” Ibid, 31.

¹⁸³ Citation req. – threads.

¹⁸⁴ Derrida, “A Word of Welcome,” 52.

¹⁸⁵ Derrida does not view the feminine welcome as subordinate to the masculine welcome but, rather, as a necessary condition for the latter.

itself in the movement whereby it welcomes the Wholly Other as the Most High.

This subordination ordains and gives the subjectivity of the subject.”¹⁸⁶

This *subordination* of the subject, first developed in *Totality and Infinity*, Derrida argues, is “carrie[d] forth quite continuously” by the *substitution* of the subject in *Otherwise Than Being*.¹⁸⁷

The host is a hostage insofar as he is a subject put into question, obsessed (and thus besieged), persecuted, in the very place where he takes place, where, as emigrant, exile, stranger, a guest from the very beginning, he finds himself elected or taken up by a residence before himself electing or taking one up.¹⁸⁸

The subject is, in other words, substituted for the Other in the sense he is thrust into the place of the Other—into the Other’s home, community, or country—to serve at the Other’s pleasure.

The interruption of the Third in the encounter with the Other, an interruption of the subject’s infinite responsibility to the Other “reintroduces us, as if by force, into places ethics should exceed: the visibility of the face, thematization, comparison, synchrony, system, co-presence ‘before a court of justice’.”¹⁸⁹ Where the ethical relation disallows conceptualization of the Other, the interruption of the

¹⁸⁶ Ibid, 54.

¹⁸⁷ Ibid, 56.

¹⁸⁸ Derrida, “A Word of Welcome,” 56.

¹⁸⁹ Ibid, 30.

Third *demands* it.¹⁹⁰ This incompatibility between ethics and justice is the basis of what Derrida refers to as the “double bind” or “double constraint”.¹⁹¹ Levinas’ subject is bound by the *infinite* responsibility to the Other but also by the demand of the *limit* of responsibility arising from the Third. The subject cannot act, cannot even *be*, without violating one or the other of these demands. Levinas readily identifies these consequences of the demand for justice, despite their obvious opposition to ethics, a move which Derrida appears to admire when he credits Levinas for “not shrink[ing] away from analyzing the consequences” of the necessity of justice.¹⁹²

It is at this point in Levinas’ work, the point of the “leap without transition” from ethics to justice, where Derrida finds the space for thinking a politics otherwise.¹⁹³ Such a politics would, somehow, embody the hospitality of the ethical welcome, extending it to others irrespective of proximity – to the neighbor but also to the foreigner¹⁹⁴ – *without* resorting to a totalizing or universalizing view. Derrida readily recognizes, however, the difficulty of such a formulation when he admits that “There is here... a daunting logic of election and exemplarity operating between the assignation of a singular responsibility and human universality.”¹⁹⁵ And yet, Levinas also does not shy away, Derrida argues, from the idea of a messianic politics, going

¹⁹⁰ “Justice is necessary, that is, comparison, coexistence, contemporaneousness, assembling...” Emmanuel Levinas, *Otherwise than Being or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh, Pa: Duquesne, 1998), 157.

¹⁹¹ Derrida, “A Word of Welcome”, 33.

¹⁹² Ibid, 30.

¹⁹³ Ibid, 31.

¹⁹⁴ Ibid, 72.

¹⁹⁵ Ibid, 72.

so far as to conceive the possibility of transcendence of the political *within* the political. Derrida writes,

Beyond-in: transcendence in immanence, *beyond* the political, but *in* the political. Inclusion opened onto the transcendence that it bears, incorporation of a door the bears and opens onto the beyond of the walls and partitions framing it. At the risk of causing the identity of the place as well as the stability of the concept to implode...”

Derrida’s interpretation of Levinas’ messianic politics—a politics which goes beyond the political *in* the political via its orientation toward the interruptions of the ethical relation, of *revelation*—mirrors that of Levinas’ subject: a subject who transcends subjectivity within subjectivity via its orientation toward the Other.

In some ways, Derrida’s reading appears less an interpretation and more a restating of Levinas’ own views. However, as Miriam Bankovsky expertly points out, “Derrida does something Levinas would never do: he affirms the formal unconditional universality of the ethical law as ‘cosmopolitical,’ in other words, a law that is equally relevant to all of humanity...”¹⁹⁶ This is something Levinas did not, and, as Bankovsky argues, would not do, since, for Levinas, the hospitality of the ethical relation is explicitly and necessarily *non-universalizable*.¹⁹⁷

¹⁹⁶ Bankovsky, “Derrida Brings Levinas to Kant: The Welcome, Ethics, and Cosmopolitical Law,” *Philosophy Today* 49:2, no. 5 (2005), 166.

¹⁹⁷ Derrida also explicitly recognizes these departures from the letter of Levinas’ works when he writes, e.g.: “The hypothesis I am venturing here is obviously not Levinas’s, at least not in this form, but it seeks to move in his direction—perhaps to cross his path once more,” in “A Word of Welcome”, 67.

Nevertheless, Derrida finds the space to explore and takes Levinas to invite us to explore, the possibility of a politics that is, at once, contrary to and compatible with the ethics of the face. A politics beyond politics – beyond what we may presently be capable of conceiving as being specified by this term ‘politics’ but also beyond all possible boundaries of the political – yet remaining within the realm of the political, opening an “enclave of transcendence.”¹⁹⁸ Though these contradictions may appear, at first blush, needlessly obfuscating, they are firmly grounded in Derrida’s reading of Levinas’ conception of the “transcendence *in* immanence” that is necessary for illeity.¹⁹⁹ In Derrida’s harmonious interpretation of the host-hostage subject there exists, through each interruption of the self, a trace of the Other—the other within and yet beyond the self, “the interruption of the self by the self as other.”²⁰⁰ Thus Derrida feels (or at least seems to feel) justified in questioning and pushing the limits of the political, asking us to consider whether the boundary between politics and ethics is fluid or permeable. To do so without losing one’s way, however, requires a method for navigating convoluted waters. To this end, Derrida writes,

So many hypotheses, and the question of what is to be understood by this word ‘political,’ and whether the borders of this concept today resist analysis, remains open. We cannot directly approach this question here. We would need a guiding thread or touchstone in the context that concerns us.²⁰¹

¹⁹⁸ Ibid, 99.

¹⁹⁹ Ibid, 76 (my emphasis).

²⁰⁰ Ibid, 53.

²⁰¹ Ibid, 80.

The ‘guiding thread’ for Derrida’s approach is hospitality.²⁰² The hospitality of the welcoming – present in the feminine welcome of the dwelling and the masculine welcome of the face to face, but also pre-originary, an election that occurs ‘before’ all else, in the interruption of the self by the self as other. Derrida models a politics that is “interrupted” and “deconstructed” on the Levinasian subject who is similarly interrupted and deconstructed by hospitality.²⁰³

Derrida’s *politics otherwise* would allow for a cosmopolitical order while requiring something like the continuous reimagining of the boundaries and limits of the political in relation to the ethical.

Ethics enjoins a politics and a law: this dependence and the direction of this conditional derivation are as irreversible as they are unconditional. But the political or juridical *content* that is thus assigned remains undetermined, still to be determined beyond knowledge, beyond all presentation, all concepts, all possible intuition, in a singular way, in the speech and responsibility *taken* by each person, and in each situation, and on the basis of an analysis that is each time unique...²⁰⁴

In practice, this would require acknowledging every concrete ethical dilemma as unique and approaching it in a deeply personal way. This personalism, however, does not entail limitless subjectivism; it is not the case that ‘anything goes.’ Rather, it entails limitless responsibility in the Levinasian sense: the subject facing the

²⁰² Derrida refers to a number of “threads” in Levinas thought which create “a tangle that is difficult to undo”, yet all of which, “...undeniably pass through the knot of hospitality. There they are tied together, and there they come undone.” Ibid, 41.

²⁰³ Ibid, 80.

²⁰⁴ Ibid, 115 (emphasis in original).

dilemma is infinitely responsible not only for the consequences of his own actions but also the consequences of the actions of others and the situation itself.

Further, it would require any engagement in ethical discourse to be constructive and deeply personal. Again, personalism in this sense is not a license for absolute freedom, but an individual responsibility to contribute personally to ethical discourse – to move the conversation forward, to make progress in a collective pursuit for always evermore adequate and more ethical conceptions of morality, as in Derrida's effort to establish a politics otherwise. In the next section, we will turn to a more contemporary contribution of this kind.

Simmons and Simmons

In "The Third: Levinas' Theoretical Move from An-archival Ethics to the Realm of Justice and Politics", William Paul Simmons posits the relation between the saying and the said as analogous to the relation between ethics and justice in order to elucidate Levinas' position with respect to the possibility of an ethical politics. Simmons writes,

In *Totality and Infinity*, Levinas' ethics hinged upon the dual structure of separation and relation... In his second major work, *Otherwise than Being*, Levinas' ethics hinged upon the oscillation between the saying and the said.

Both of these theoretical structures will be shown to be pivotal for Levinasian politics, in particular the relationship between ethics and politics.²⁰⁵

Simmons, like Derrida, grapples with what appear to be conflicting or competing ‘realms’ of responsibility – the realm of ethics, where the subject is infinitely responsible for the Other, and the realm of justice, where the subject is also responsible for others. The question that arises, according to Simmons, is whether and how justice “limits the responsibility for the Other.”²⁰⁶ An adequate response to this question will be necessarily complex since, if ethics and responsibility for the Other are supposed to act as the ‘ground’ which founds and animates the work of justice, justice cannot reduce or nullify ethical responsibility lest the relation prove self-defeating. This apparent “contradiction”, Simmons writes,

is resolved by considering... Levinas’ theoretical emphasis on the separation and oscillation between the saying and the said. Ethics is found in the an-archival realm of the saying, while justice is a part of the totalizing realm of the said. Ethics and justice exist in both relation and separation. Neither can be reduced to the other.²⁰⁷

It is unclear, however, what the “the oscillating, but non-encompassing, relationship between the saying and the said”, as explicated in *Otherwise than Being*, adds to Simmons’ analysis of the relation between ethics and justice which could not be

²⁰⁵ William Paul Simmons, “The Third: Levinas’ Theoretical Move from An-archival Ethics to the Realm of Justice and Politics,” *Philosophy and Social Criticism* 25, no. 6 (1999): 83-104. p 84.

²⁰⁶ Simmons, “The Third,” 94

²⁰⁷ *Ibid*,

found already in *Totality and Infinity*; for example, in the relation between totality and infinity, the subject and the Other, or metaphysics and ontology – each of which can be understood as characterized by the same “mutually interdependent relationship” as that of the saying and the said.²⁰⁸

In *Totality and Infinity*, the asymmetrical relation of the subject and the Other is described as a relation between beings that are *separated in relation*, beings which “absolve” themselves of the relation without negating the orientation which maintains the relation. Levinas writes,

To be in relationship while absolving oneself from this relation is to speak... the I disengages itself from the relationship, but does so without relationship with a being *absolutely* separated. The face with which the Other turns to me is not reabsorbed in a representation of the face.²⁰⁹

Analogously, justice ‘speaks’ via institutions and legislation, disengaging without separating itself from (its orientation toward) ethics. As in the relation between the subject and the Other, the priority is given to the orientation which animates the relation – the subject toward the Other, justice toward ethics – over the terms of the relation.²¹⁰ This prioritizing of relationality over relational terms, which we also find in Levinas’ discussion (and WP Simmons’ explication) of the relation between the saying and the said, is key to understanding how Levinasian ethics and justice can

²⁰⁸ Simmons, “The Third,” 89-90, 99

²⁰⁹ Levinas, *Totality and Infinity*, 215 (emphasis added).

²¹⁰ Ibid.

‘coexist’ in tension with one another without justice undermining its foundation in ethics. Simmons writes,

Politics does not subsume ethics, but rather it serves ethics. Politics is necessary but it must be continually checked by ethics. Levinas calls for a state that is *as ethical as possible*, one which is perpetually becoming more just.²¹¹

A state which is “perpetually becoming more just” is a state in which the ethical relation informs continual critique of the work of justice carried out by the state and its institutions – a process author J. Aaron Simmons illustrates as “recursive hermeneutics.”²¹²

The Ethical Critique of Justice: Recursive Hermeneutics

Because the state is both necessary in a world where the subject is responsible not only for the Other who faces him directly but also for those others who do not and necessarily characterized by the totalizing force of comprehension and comparison, the state and its institutions are ethically inescapable and ethically unbearable on the Levinasian picture. Levinas writes, “There is a certain measure of violence necessary in terms of justice; but if one speaks of justice... it is necessary to allow institutions and the state; to live in a world of citizens, and not only in the

²¹¹ Simmons, “The Third,” 98

²¹² Simmons, J. Aaron. "Violence and Singularity : Thinking Politics Otherwise with Rorty, Kierkegaard, and Levinas ." ResearchGate. Vanderbilt University. Web. 24 Dec. 2016. P 10

order of the Face to Face.”²¹³ An ethical politics appears, in light of this, not only improbable but impossible. Because political institutions cannot be truly ethical, it would be a mistake to evaluate them using the standards of infinite responsibility. This does not entail, however, that the state and its institutions are beyond judgement.

From the perspective of Levinasian ethics, inquiring into the legitimacy of political institutions is not a question of whether the existence of the state and its institutions is ethical—again, the existence of the state is unavoidable and, furthermore, the state and its institutions are inherently violent. The question is, rather, what type of state is the type that, though unethical, orients itself toward the ethical such that ethics may continually animate the work of the state and its institutions. First and foremost, Levinas stresses that the state must be set up not with the aim of limiting violence, as in Hobbes’ account, but with the aim of limiting the consequences of responding to the infinite demand commanded by the Other at the expense of others.

To put it simply, a state grounded in and by its orientation toward the ethical will be guided by the aim of addressing the consequences of and reducing instances of unchecked preferential treatment rather than preventing and punishing outright

²¹³ Levinas, *Entre Nous*, 105

violence. Only in the case of the former is it possible, per Levinas, to “speak of the legitimacy or illegitimacy of the state”, or to “set a limit on the state”.²¹⁴

To speak of the legitimacy and the limits of the state is to take a critical stance toward justice – a task which can only be properly accomplished, according to Levinas, from the perspective of the ethical relation and the infinite responsibility it demands. A just state, grounded in and animated by the ethical, is a state that is critical of its own work, aware of its inherent violence, and continually striving to reduce that violence even if violence can never be eliminated. Simmons writes,

Even when the state functions perfectly it is, by its very nature, opposed to ethics... The state must be constantly reminded of its inherent violence.

Levinas finds just such a self-critical state in the modern liberal state. The liberal state ‘always asks itself whether its own justice really is justice.’²¹⁵

This perpetual self-critique is what JA Simmons refers to in *Violence and Singularity* as “recursive hermeneutics” – the act of “continuously translat[ing] ethico-religious obligation into the sphere of political life” via the perpetual ethical critique of the justice of the state.²¹⁶ For Levinas, the liberal state is the best possible candidate for a just state due to its capacity for continual self-criticism. This capacity can be attributed to two factors – first, the liberal state recognizes that human rights are distinct from political legislation and, as such, the state has the potential to (at least

²¹⁴ Levinas, *Entre Nous*, 105.

²¹⁵ Simmons, “The Third,” 98-99.

²¹⁶ Simmons, “Violence and Singularity,” 10.

attempt to) hold its institutions to the standards of human rights; second the liberal state is structured to allow for, perhaps even encourage, self-critique (or, in JA Simmons' terms, it "display the qualities of dialogical openness, perpetual criticism, and the constant possibility of revision").²¹⁷

Importantly, this criticism and revision take place only after justice has been 'carried out'. JA Simmons cites Levinas' example of a court ruling that can be appealed in order to demonstrate how recursive hermeneutics might occur in practice.²¹⁸ The institution, in this case, the court system, carries out justice in accordance with current practices and, once a ruling is determined, there remains the possibility of appealing the judgement. Whereas justice "only occurs in [or through] the 'legislation' enacted by individuals and states", charity, the basis for the ethical critique of justice, arises as a result of the "daily interactions of particular individuals".²¹⁹ Recursive hermeneutics "occurs at the level of legal reconsideration, charity after justice, and working to eliminate the hunger of the homeless child".²²⁰ Charity works to combat the violence that justice necessarily commits both by coming to the aid of the individual harmed and by opening a dialogue about how institutional practices can be improved in order to reduce harm.

(How) Does Recursive Hermeneutics Translate to Institutional Change?

²¹⁷ Simmons, "Violence and Singularity," 277.

²¹⁸ Ibid, 276.

²¹⁹ Ibid, 267 (emphasis mine), 278.

²²⁰ Ibid, 281.

While JA Simmons provides some illustrative examples of how Levinasian recursive hermeneutics might operate in the liberal state, via acts of charity occurring after justice has been served, what appears to be missing from the account is a clear explication of how the act of charity, which is said to occur in the everyday lives of individuals or between man and man, translates back to the institution as pressure for change. Simmons references Levinas' suggestion that the overturning of capital punishment serves as a hypothetical example of this process; quoting Levinas, "When the verdict of justice is pronounced, there remains for the unique I that I am the possibility of finding something more to soften the verdict" which Levinas follows with the suggestion that, in the democratic state, individuals come together, inspired by concern regarding the violence of justice, to discuss the abolition of the death penalty.²²¹

Simmons cites this as a complete process of recursive hermeneutics which moves "from the ethical relation as condition for justice... through... political critique as the existential actualization of justice... and arrives at the concrete... need to rethink the death penalty".²²² However, if the just state is that state which is always open to the ethical critique of its institutions and policies, then a critical aspect of this 'openness' would be the state's ability (and perhaps also willingness) to respond to critique via legislative change. In Levinas' example of rethinking the death penalty, he suggests that the actual abolition of the policy, or some other

²²¹ Ibid, 272.

²²² Ibid.

legislative change, must occur in order for a state to demonstrate the capacity for true self-criticism. Simmons seems to end his analysis of this process as an example of recursive hermeneutics one step too early, neglecting the question of how the ethical critique, even if it does create ethical pressure to change policies, concretely influences the policies of the state, or, how the ethical critique translates back to the state as pressure for legislative change and how that change takes place.

It is unclear, in Simmons' analysis, what the subject's role is in the actualization of the state's response to ethical critique. For example, as an individual operating within an institution like the foster care system, is one's influence limited by bureaucratic and procedural norms and regulations? If, for instance, the individual is not empowered to make certain policy changes because the position he holds does not grant him the institutional authority to do so, does this bear on how we ought to conceive of the limits of his responsibility or the possibility of concrete change as a result of ethically grounded critique.

The absence of any thorough analysis of this issue by Simmons is perhaps in part due to a similar absence in Levinas' work. It is unclear how Levinas conceives of the subject as a 'member' or 'part' of the state and thus what sort of limitations the ethically oriented state and its institutions place on the subject in terms of his possible responses to instances of political injustice. If the subject must make comparisons, as Levinas insists, those comparisons must be at least partially

conditioned and limited by the institutional environment²²³, such that the subject is not free to make comparisons in whatever manner he may choose. For example, the foster care system is structured such that court-appointed advocates are permitted to make comparisons of a certain type; as an advocate, I could recommend actions to better meet Ali's needs, but I could do so only on the basis of a comparison between the services she is receiving and those she is eligible to receive but not yet benefiting from. I cannot, however unfortunately, make recommendations on the basis of a comparison between the services she is receiving and the care she deserves as a neglected youth.

Though these methods of comparison may be disappointing, or even unacceptable, there is little more an advocate can do. Demanding special treatment for Ali would likely entail diverting essential resources away from other foster youth. What is ethical and what is just, given the institutional context, is once again at odds. But what is also apparent here is that it is quite unclear what role an advocate—or any one individual—plays in the larger institution of foster care—or any other institution—with respect to generating pressure for change. It is not difficult to imagine an advocate treating every conflict in the course of their work with foster youth as unique and approaching it in a deeply personal way. But is it difficult to imagine how an advocate might create pressure for change within the institution of foster care. For now, at the very least, we have identified another key question in the

²²³ A consideration we do not find in Levinas' own work.

discourse surrounding a politics founded on infinite responsibility, a question that commands a response.

Response

In order to respond to the key questions identified above—(i) how should one respond to the unavoidable conflict between ethics and justice and (ii) broadly, how does one participate in the ethical critique of the justice of the state—it will be helpful to return briefly to Derrida’s analysis of a politics otherwise. To recap, Derrida explicates the tension between Levinasian ethics and politics (and ventures the beginnings of a suggestion for how one ought to respond to said tension) thusly,

Ethics enjoins a politics and a law: this dependence and the direction of this conditional derivation are as irreversible as they are unconditional. But the political or juridical *content* that is thus assigned remains undetermined, still to be determined beyond knowledge, beyond all presentation, all concepts, all possible intuition, in a singular way, in the speech and responsibility *taken* by each person, and in each situation, and on the basis of an analysis that is each time unique...²²⁴

An adequate response cannot be based on any systemization of Levinas’ thought applicable to all: no singular rule or norm is permissible here, let alone sufficient. To attempt to untangle these threads, to offer a definite description of the intricacies of these relations, would be antithetical to Levinas’ deepest concerns regarding totalization. To draw more definite borders between ethics and justice would be to

²²⁴ Derrida, “A Word of Welcome,” 115 (emphasis in original).

alienate them from one another – a situation in which ethics could no longer interrupt and deconstruct (and thus guide and limit) the work of politics – such that “nothing could make us more irresponsible; nothing could be more totalitarian.”²²⁵ Further, no sweeping normative claims can be made regarding how *others* ought to respond since the responsibility to respond (and thus to determine *how* to respond) is as deeply personal and singular as one’s own identity. Derrida describes the “silence between ethics and politics, ethics and law”, as that silence which marks,

...a discontinuity between two orders... the between-time or meantime of an indecision, the only basis on which responsibility and the decision are to be *taken* and determined... [and which] conditions my responsibility, there where *I alone* must respond.²²⁶

But *how* is one to respond?

Like Derrida, it will be helpful to choose a thread to guide our response to this question. Unlike Derrida, we will return to the central theses of Levinas’ earlier work for our guiding thread. In *Totality and Infinity*, Levinas criticizes Western philosophy for continuously privileging the same over the other. Levinas writes, “... the dialectic which... reconciles freedom and obedience in the concept of truth presupposes the primacy of the same, which marks the direction of and defines the whole of Western Philosophy”. Shortly after, Levinas declares, “the terms must be reversed”.²²⁷ The other *must* be prioritized *over* the same – failure to do so will result

²²⁵ Ibid, 117.

²²⁶ Ibid, 116-17 (emphasis added).

²²⁷ Emmanuel Levinas, *Totality and Infinity*, 46-47.

in a perpetuation of a tradition of “philosophy of injustice”, which is antithetical to ethics as first philosophy.²²⁸ The standard here is not that of correspondence to the world nor understanding of Being, but the very possibility of the ethical. Whichever choice maintains the possibility of ethics is the ‘good’ choice – this is the essence of ethics as first philosophy.²²⁹

The reversal of the terms ‘same’ and ‘other’ provides the foundation for, as Derrida refers to it, Levinas’ “treatise of hospitality.”²³⁰ The possibility of ethics is maintained first and foremost by the inverted conception of the subject – by positioning the Other as the ground of subjectivity, the subject is subordinated to the Other, thus autonomy is subordinated to responsibility and freedom is subordinated to justice. Where Derrida follows the thread of hospitality—understanding the major themes, movements, and interruptions of Levinas’ work in terms of hospitality—we can, instead, understand those themes, movements, and interruptions in terms of the reversal.

In reversing the terms of the relation between sameness and otherness, Levinas continually rethinks the role that autonomy and responsibility play in the constitution of the subject and her responsibility to others. The conscious subject cannot be understood in isolation at all. For Levinas, one *is* insofar as one is elected,

²²⁸ “A philosophy of power, ontology is, as first philosophy which does not call into question the same, a philosophy of injustice,” Levinas, *Totality and Infinity*, 46.

²²⁹ “A calling into question of the same... is brought about by the other. We name this calling into question of my spontaneity by the presence of the Other ethics” Levinas, *Totality and Infinity*, 43. See also: Emmanuel Levinas, “Ethics as First Philosophy, 85: “It is in the laying down by the ego of its sovereignty... that we find ethics and also probably the very spirituality of the soul...”.

²³⁰ “A Word of Welcome,” 21.

interrupted, faced by the Other. Even one's responsibilities to those one will never meet face to face—those with whom one will never share a communal identity, let alone a history of personal dealings—is conceived in terms of the relation to the other: “The third party looks at me in the eyes of the Other.”²³¹ It is through the Other that I encounter the third party – my kin or loved one distanced from me by the intervening command to respond issued from the Other. Even if neither the Other nor the third party come “first”, even if there is no coherent chronology to these events, and even if Levinas would not put it this way – I am *introduced* to others as third parties by the Other.

With this introduction comes the possibility of turning toward the third party, the invitation “to take the difficult turn leading toward third parties who remain outside of love.”²³² For Levinas, since the third party as such is never encountered face-to-face, the relation between the subject and the third party must always be mediated by understanding. The third party is not (properly) *encountered*, as is the Other, but is perceived and, thus, *represented*. Such representation makes possible the “comparison of incomparables”, the measuring and weighing of what cannot properly be measured nor weighed—the comparison of my loved to the Other that faces me, the comparison of my responsibility for my kin to the infinite responsiveness commanded of me by the stranger.²³³ This is an impossible and

²³¹ *Totality and Infinity*, 213.

²³² Levinas, “The I and the Totality” 23.

²³³ Emmanuel Levinas, “Peace and Proximity”, 68.

deeply troubling comparison yet a comparison that nonetheless occurs frequently in the course of our everyday lives.

What's more, one's responsibility is always greater than the Other's. Levinas writes,

One of the most fundamental themes of *Totality and Infinity*... is that the intersubjective relation is a non-symmetrical relation. In this sense, I am responsible for the Other without waiting for reciprocity, were I to die for it... I am responsible for a total responsibility, which answers for all the others and for all in the others, even for their responsibility. The I always has one responsibility *more* than all others.²³⁴

Responsibility, for Levinas, cannot be traded away. The individual is individuated by that very responsibility that is non-transferable and greater than the responsibility of all others.²³⁵ The responsibility of the Other is not a condition for my own and I cannot appeal to his non-response in order to excuse myself from the responsibility that is uniquely mine. Ethics and justice—and, as such, law and politics—obtain regardless of the other's actions, regardless of whether the other recognizes his own responsibility.

Responding to the unavoidable conflict between ethics and justice and participating in the ethical critique of the justice of the state thus requires taking

²³⁴ Emmanuel Levinas, *Ethics and Infinity*, 98-99.

²³⁵ "In the face, it is a matter of saying the very identity of the human I starting from responsibility, that is, starting from this position or deposition of the sovereign I in self-consciousness, a deposition which is precisely its responsibility for the Other... This charge is a supreme dignity of the unique. I am I in the sole measure that I am responsible..." Levinas, *Ethics and Infinity*, 101.

responsibility not only for myself and my own actions but also for others and the conflicting character of responsibility. There are several ways I may do so. First, I may refuse to subscribe to any preestablished prescriptive moral system. In doing so, I acknowledge that each situation is unique—since every individual is unique—and, as such, any actions that affect others cannot be properly guided by a moral theory that abstracts from the particulars of a given dilemma by distilling a principle that can be applied in any case. Additionally, I affirm that genuine ethics cannot specify moral norms because the work—both theoretical and practical—of ethics is never done. Genuine ethics cannot claim to have found the answers, as if they are unassailable, impervious to critique, and beyond revision. Not because ethics is relative or a matter of opinion; but because critique—interruption, disruption, and reorientation—is the essence of ethics. Where critique is no longer possible, ethics and the legitimacy of the state is no longer possible.

Second, I may do so by engaging in the discourse surrounding ethical and political theory. In doing so, I acknowledge that I have a personal responsibility to contribute to the underlying theory that guides and shapes the practical application of the concepts of ethics, morality, justice, law, and their related terms. Additionally, I affirm the open-ended nature of ethics by raising questions, articulating concerns, and suggesting new ways of thinking through and about ethics, a process that is integral to the existence of a critical (and thus genuine) ethics and the legitimate state.

Third, I may do so by taking responsibility for my personal contribution; that is, by grounding and evaluating my contribution in and against my responsibility for others. In doing so, I acknowledge that my responsibility to others precedes my autonomy and that it is by the grace of others that I am both capable of and obligated to contribute to this discourse. The standard for this kind of evaluation is ever more responsiveness to others. In the wake of Levinas, this requires acknowledging the prevalence of the fundamental conflict in our daily lives and refraining from explaining it away. It also requires remaining ever critical of psychological theories that pronounce the so-called ethical limitations of a people or of the individual as well as political theories grounded in limiting the consequences of a presumed propensity for violence.

Finally, and most practically, taking responsibility for the conflicting character of responsibility means acknowledging that, when facing moral dilemmas, in deciding how to respond, we cannot simply prioritize one obligation over another. We may act on the basis of one rather than another, but there will always be room for criticism, either from ourselves or from others, as to whether this was the right action. In the face of genuine dilemmas, the right thing to do is to act with full knowledge that there isn't a single right thing to do. To act with full knowledge that one's actions are never beyond reproach. To act with full knowledge that one can never be fully responsible yet nonetheless endeavor to remain responsive. Taking responsibility for the irreconcilability of responsibilities means recognizing a boundless opportunity to be—or, at least, to strive to be—always more responsible.

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