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**Levinas's contribution to the Law of Hospitality**

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## **Levinas's contribution to the Law of Hospitality**

### **Abstract**

This article examines the ethical thinking of Levinas, from which Derrida's Law of Hospitality is derived, to see if it is sustainable in the face of Badiou's claim that transcendence cannot be admitted into the body of philosophical thought. Is Levinas, as Badiou argues, seeking to smuggle religion into philosophy and if so does this attempt amount to no more than an anti-philosophy theology which has to be resisted for the integrity of philosophy? Dissenting from this view I return to Levinas and consider the problematisation with ethics which accompanies the arrival of the Third that, on the face of it supports Badiou's claim he is engaged in a form of virtue signalling which is without relevance to the concerns of life. I then go on and refute Zizek's claim that Levinas's Other shares an origin (conceptually) with the Nazi Other. The article concludes by examining the contribution of transcendence. I consider that it does have a place in philosophy and that it is dogmatic and unnecessary to suggest otherwise. I suggest that transcendence allows us to look at the concept of the Good in a way that the thinking of materialists, such as Badiou never can. Levinas allows us to conceive of a conscience of the law that introduces justice and holds the law to account by challenging its claims to be acting justly. This connects our thinking on the subject to Western tradition which materialism would rupture in its pursuit of philosophical purity claiming as it does to be a defence of philosophical integrity.

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Keywords: Levinas, Badiou, law, particularism, transcendence

### **Legal text and the necessity of engagement – the case of the refugees**

Douzinas and Warrington sought, through a Derridean-style deconstruction of two cases <sup>1</sup> to demonstrate how the House of Lords adopted a counter-narrative to override the Tamils' plea for asylum under Article 1 of the UN Convention on the Status of Refugees 1951 which obligated signatories to the Convention to offer asylum to any person who "owing to a well-founded fear of being persecuted for reasons of race, religion etc.... is outside the country of his nationality and is unable , or owing to such fear, is unwilling to avail himself of the protection of that country." The House of Lords held that even "a genuine fear of persecution could not suffice (as) the fears must have an 'objective basis' which could be 'objectively determined'". <sup>2</sup> Fear, in other words is a subjective emotion that can be objectively discounted because the courts were in possession of knowledge that revealed that fear to be baseless. In a second case the House of Lords determined that Tamil asylum seekers were illegal entrants into the UK who must be denied the right of appeal as otherwise it would discriminate against those who, as legal entrants, could only appeal after first leaving the UK. The question D&W posed was "are the judgments just?" <sup>3</sup> Even if it were possible to arrive at a satisfactory and universally accepted definition of justice it would still be easier to identify and proclaim an act of injustice than to assert with unshakeable confidence that the law had acted justly. The role for postmodernists, above all, is to disturb and disrupt the legal narrative by challenging the law's belief in itself as an instrument of justice, framed in

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<sup>1</sup> Douzinas and Warrington (1999)

<sup>2</sup> Supra. n. 1 at 219,

<sup>3</sup> Supra. n. 1 at 222.

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autopoietical terms, and its narrative that the greatest safeguard against a miscarriage of justice is the law itself. The arrogance and hubris that manifested in such certainty explains the law's reluctance to acknowledge and correct its errors.

A more recent examination of the same issue concerned a Dutch case where an asylum seeker was treated in a not dissimilar manner. According to Stronks <sup>4</sup>, clearly following Douzinas and Warrington, the case exposes the presence of "inclusionary and exclusionary forces...at the very threshold of hospitality". For Stronks, borrowing from Derrida, the impulse to generosity is to be discovered in the spirit of unconditional welcome which as the Law of Hospitality is both above (and constrained by) the laws of hospitality manifested in 'the condition of custom and legal boundaries' and which are in an antinomic relation as they simultaneously work to reinforce and resist each other. Thus "the laws are always, however, in contradiction with the Law; they threaten, undermine and deprave it. At the same time, the conditional laws would no longer be laws of hospitality if they were not guided, inspired and annexed by the Law of unconditional hospitality". <sup>5</sup> The antinomy, as identified by Derrida and applied by Stronks to this case, <sup>6</sup> is the conflict between the desire to do right by the Other as the stranger to whom I am drawn in the spirit of friendship and my innate resentment towards her encroaching presence, that place obligations upon me and steals my freedom, now that I am in a moral thrall to her. I am duty bound to come to her aid as a matter of compassion and in recognition of her vulnerability and yet I harbour scepticism within me towards her apparent frailty. What if she is abusing my hospitality and taking advantage of my generosity? A

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<sup>4</sup> Stronks (2012).

<sup>5</sup> Supra. n. 4 at 3.

<sup>6</sup> Sheekh v Netherlands (1948/04) (2007) 45 E.H.R.R. 50 (ECHR).

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creeping awareness that she might be deceiving me fuels my suspicion of her motives. She must be tested in order that I will not be duped.

Stronks notes that the Dutch government's asylum procedure was to deconstruct the refugee's story even to the extent of substituting his date of birth with a more 'plausible' one and overriding 'his-story' with 'our-story' which, as national inquisitor, acting in the interests of its people under the laws of hospitality, it was required to do upon establishing the 'facts'. If the refugee could be proved to have offered a false narrative about how he had reached the Netherlands then it was just as likely that his claim to be in fear of persecution was similarly suspect. It followed that the objective and dispassionate approach of the government must produce a version of events approximating to the 'truth' more closely than the one presented by the refugee. The case was successfully appealed to the European Court of Human Rights (ECHR) which held that that the intended expulsion of the refugee was in breach of Article 3 of the European Convention on Human Rights.<sup>7</sup> The contrasting approaches at the national level (UK judicial and Dutch ministerial) and at the supranational (ECHR) accounts for the different outcomes: the former being more directly accountable to popular sensitivities on the subject and the latter, perceived to be more detached and remote, adhering to the core values of the European Community with its insistence on overarching principles that resist the violence of the law. According to Stronks Article 3 is a bulwark against a sovereign state's attempts to apply an unfettered right to exclude aliens

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<sup>7</sup> Article 3 Prohibition of torture: No-one shall be subjected to torture or to inhuman or degrading treatment or punishment.

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and serves as a prohibition which “according to the Court, enshrines one of the more fundamental values of democratic societies and is furthermore absolute.”<sup>8</sup>

### **Levinas’s contribution to the Law of hospitality**

The forms of hospitality discussed by Derrida derive in essence from ethics developed from the ethical thinking of Emanuel Levinas as conceived through his account of the Self’s relationship with the Other. Almost all readers of Levinas acknowledge that his philosophy is problematised from the outset and hence it is invariably accompanied by an attempt to return it to an ontological setting which Levinas is always trying to break free from in an attempt to formulate a transcendental ethics in order to develop a conception of an unassailable morality. Levinas does not discount the possibility that we live in a amoral universe<sup>9</sup> which we seek to master through the imposition of order but for him the discovery of the Good through meaning is ultimately meaningless; the equation needs to be reversed so that we arrive at meaning through first establishing the Good. Only then is it possible to fix an absolute moral reference point that is not diminished or tainted by the inevitable compromises that existence requires the Self to make. The Self’s encounter with the Other is the defining, if not to say decisive, event because in Levinasian ethics it is her face that establishes the conditions for an ethical relationship from which it is possible to derive a moral foundation and purpose for existence. It gives rise to the possibility of the Self being selfless, being obsessed with the Other to the exclusion of all thought of self. It recognises and venerates the Other’s difference as ethically unassimilable and utterly ineradicable.

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<sup>8</sup> Supra. n. 4. at 18.

<sup>9</sup> In the very first sentence of *Totality and Infinity* Levinas states that “everyone will readily agree that it is of the highest importance to know whether we are not duped by morality”.

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According to Levinas whatever assumptions I have of the Other, one thing that I can never  
Furthermore, I deceive myself in the attempt while ethically violating the Other by seeking to  
extinguish her otherness.

### **Badiou's critique of ethical thinking**

One of the problems identified by Critchley is that Levinas offers no dimension of sublimation  
as "there is an excessive masochism in (his) discourse, where I am not only responsible for  
my own persecution but also for my own persecutor".<sup>10</sup> This accounts for one of Badiou's  
criticism of Levinas and all forms of ethical thinking and why he seeks to sweep away all  
"theoretical associations of ethics with a goodness too good for the world".<sup>11</sup> Badiou's  
principal objection to Levinas's ethical thinking is that he sees it as an attempt to smuggle  
religion into philosophy; itself an admission that traditional religious thought can no longer  
be sustained. Levinas is simply clothing religious sentiments within the idiom of philosophy  
<sup>12</sup> and although Badiou refers to Levinas as a "coherent and inventive thinker" nothing can  
obscure the truth that "taken in general, ethics is a pious discourse". For Badiou, piety is mere  
sentiment; he observes that not only does Levinas not present us with a philosophy, his  
"ethical dominance of the Other over the theoretical ontology of the same is entirely bound  
up with a religious axiom ... in truth, Levinas has no philosophy – not even philosophy as the  
'servant' of theology" of and consequently we are left with "a pious discourse without piety  
and a cultural sociology preached in line with new-style sermons, in lieu of the late class

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<sup>10</sup> Critchley (2015) p. 90.

<sup>11</sup> Badiou (2012) p. xxxvi.

<sup>12</sup> See also Rose (1992) p. xi.

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struggle”.<sup>13</sup> According to Hutchens, Badiou’s objection to ethical thinking, manifested in the vehemence with which it is expressed, stems from his view that far from amounting to philosophical reasoning it is more properly to be regarded as an anti-philosophy theology which for all its hyperbolic rhetoric is “merely mumbling over the corpse of divinity, a forlorn theology obsessed with a god that has absconded with the truth.”<sup>14</sup> Badiou’s uncompromising opposition to Levinas’s ethical thinking is based on his understanding that anything that is not a “militant resolution to persist with the truth as best one can”<sup>15</sup> does not belong to the discipline of philosophy and is to be resisted strenuously as the enemy of philosophy working to undermine it through a playful but ultimately vacuous sophistry all the more dangerous because of its seductive allure.

Badiou considers nothing less than the integrity of philosophy as a discipline is at stake. The quest for Truth, a solemn duty falling to philosophy, cannot be discarded by introducing unfounded propositions that belong to the realm of speculation and superstition. Badiou’s insistence on defending the ‘honour of philosophy’ is an attempt to preserve the integrity, as he sees it, of the discipline by thrusting to the outside of philosophical debate any discussion that does not rigorously adhere to its obligation to uncover meaning. Whereas formerly religion had its place within that debate, scientific knowledge feeding into philosophy (post Darwin’s discoveries and Nietzsche’s insights) now precludes it from inclusion because every factual discovery leads us away from any need to rely on a concept of the divine. Ethical thinking is populated by “opinions *without an ounce of truth*”<sup>16</sup> There is clearly much to applaud in Badiou’s rigorous adherence to the pursuit of truth, his willingness to acknowledge

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<sup>13</sup> Supra. n. 12 at 22 -23.

<sup>14</sup> Hutchens 2004.

<sup>15</sup> Supra. n. 14 at 163.

<sup>16</sup> Supra. n. 12 at Supra. 12 p 51

[Type text]

his abandonment of positions no longer tenable <sup>17</sup> and his injunction to ‘continuez’ (‘keep going!’). Less admirable is his insistence that any thinking, specifically ethical thinking, that is not truth led adds no value to philosophical debate and, worse than that, is dangerously subversive of philosophy as a whole; hence his designation of it as anti-philosophy. Indeed Badiou’s stance is reminiscent of the position within jurisprudence taken by the Scandinavian realists, towards the opposite end of the political spectrum, who were vehemently opposed to human rights because, as Alf Ross has argued, the very notion is derived from natural rights and owes more to the sensibilities of the individual rather than empiricism where “evidence as a criterion of truth explains the utterly arbitrary character of the metaphysical assertions”.<sup>18</sup> Ross was dismissive of the demand for justice because he considered it to harbour a fundamental dishonesty in its attempt to mask the reality at its core; that the demand is not driven by self-interest in conflict with opposing interests “but that it possesses a higher absolute validity...(precluding) all rational argument and discussion of settlement.”<sup>19</sup> Ross’s repudiation of the metaphysical within the law, a theme common among the proponents of Scandinavian realism <sup>20</sup>, is couched in such emotive and pejorative terms that Escorihuela has referred to it as the ‘rhetorical rage of science’ characterised as it is by ‘theoretical deprecation’ and “offensive accusations both aimed at the conceptual edifice of current legal systems, and thrown at the face of canonical scholarly references in the field.”<sup>21</sup> While it would be grossly inappropriate to accuse Badiou of plumbing such depths there is a

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<sup>17</sup> Supra. n. 11 at 95- 97. Badiou discusses how previously “I defended the idea that an emancipatory politics presumed some kind of political party”. He accepts that while the Marxist classification of political classes remains a valuable tool the status of class has now changed so that while there is no need to revise Marxist analysis but more “a matter of going beyond the idea that politics represent objective groups that can be classified as classes.”

<sup>18</sup> Ross (1959) p. 261.

<sup>19</sup> Supra. n.18. at 263.

<sup>20</sup> Spaak (2014)

<sup>21</sup> Escorihuela ( 2003).

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harshness to his rhetoric and an exasperation with ethical thinking that harbours certain similarities, not least of which is the insistence that a subject such as philosophy, just as jurisprudence has to be for Ross, must be *pure* and true to itself.

### **Badiou's rejection of transcendence within philosophy**

In his demand for philosophical integrity Badiou rejects any synthesis of theology and philosophy and this prompts the question, how do we recognise 'Evil' and does the very notion even exist? If morality is not derived from a transcendental source, by what means may we discern that we are in its presence? According to Badiou "the only genuine ethics is of truths in the plural" or rather "ethics does not exist. There is only the *ethic-of* (of politics, of love, of science of art" for there are "as many subjects as there are truths." <sup>22</sup> Badiou's conclusion is that the "ethic of truths aims neither to submit the world to the abstract rule of a Law, nor to struggle against an external and radical Evil. On the contrary, it strives through its own fidelity to truths, to ward off Evil – that Evil which it recognises as the underside, or dark side, of these very truths." <sup>23</sup> While Badiou despises particularism in general he accepts that it may be put to service of the Good in the particular. For "while every invocation of blood and soil, of race, of custom, of community, works directly against truths" <sup>24</sup> when advancing the "progressive formulation of a cause which engages cultural or communal predicates linked to incontestable situations of oppression...these particularities, these singularities, these communal qualities (may be) situated in another space and become heterogeneous to their ordinary oppressive operations." <sup>25</sup> Badiou provides the example of Cuba which despite its "outmoded conception of politics" is to be respected as one of "the

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<sup>22</sup> Supra. n. 12 at 28.

<sup>23</sup> Supra n.12 at 91.

<sup>24</sup> Supra n.12 at 76.

<sup>25</sup> Supra n.12 at 108.

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forms of resistance to the hegemony of the global market, and to its principal organizer: American imperialism".<sup>26</sup> However, "incontestable situations of oppression" are not as frequently obvious as Badiou's formulation might suggest as the process of decolonisation serves to illustrate and, more importantly, can mask different forms of oppression. Not all anti-colonialist movements will inevitably be morally superior to their 'oppressors' to which numerous crimes and atrocities can attest. The presentation of imperialism as an intrinsically criminal venture against humanity does not of itself invariably provide moral validation for all forces seeking to oppose it. And one should be cautious of accepting that claims that the crimes of one side can be mitigated or excused if they are committed in the service of some overarching and redemptive goal. Bowring cites Badiou's acclamation of the Revolutions of 1792 and 1917 as 'true universal events' that permit the 20<sup>th</sup> century to be viewed as one not of 'promises' but of 'accomplishments' in that the victories won in the struggles against colonialism in Algeria and Vietnam vindicate previous unsuccessful uprisings and "compensate for the massacres of June 1848 or the Paris Commune".<sup>27</sup> This exoneration of sacrifice and martyrdom attempts to place value on the countless individuals who have died in a cause as the price of progress but from a Levinasian perspective the life of a single individual is thematically irreducible.

The materialist viewpoint is that 'martyrdom' is not a celebration of violence per se, as was the case of the Nazi glorification of the 1923 Munich Beer Hall Putsch, but that it is a veneration of the victims of reactionary violence; that progress cannot be put on indefinite hold by an abhorrence of countering violent oppression with violence. However, the

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<sup>26</sup> Supra n.12 at 106.

<sup>27</sup> Bowring (2009) p.3.

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readiness to resort to violence in defence of a progressive cause exposes that cause to an almost inevitable contamination from Badiou's 'underside' so that violent means are all too likely to become the only considered means of securing the desired end. The paradox, and the irony, is that in decrying the hypocrisy of ethical ideology's thinking of the Other Badiou does not offer an alternative vision of the Other that respects difference. If difference is, as he suggests, "all there is" then the goal of progress is to find common cause in a sameness which leads even more strongly to an eradication of difference for not only must the Other become like me, she must learn to *think* like me as well.<sup>28</sup> The assumption of difference as the starting point has a beguiling allure but the search for sameness risks difference's annihilation as intolerance for all forms of falsehood (religious, political and ideological) takes hold. The desire to proselytise, to recruit to one's own version of the truth, is embedded in modernism in the form of the competing attempts to spread liberal democratic ideals or to resist Western imperialism through revolutionary struggle bear witness. Can Badiou even assert that there is an ethic-of philosophy as a means of working towards truth for surely what we discern time and time again is that what has the appearance of truth is but an illusion? Badiou is astute enough to realise this when he refers to verisimilitude as that which passes for truth as discerned by logic and rational enquiry. However, the possibility arises that not only may we be duped by morality but also by the limits of our capacity to reason and what is claimed to be true may be no more than a manifestation of our desire for what we wish to be true.

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<sup>28</sup> Supra. n. 12 p 24, 25 Badiou states that "it might well be that ethical ideology, detached from the religious teachings which at least conferred upon it the fullness of revealed identity, is simply the final imperative of a conquering civilization: 'Become like me and I will respect your difference.'" It is not clear why Badiou ascribes this sentiment to ethical ideology when it is symptomatic of all political ideologies, progressive and reactionary, which despite their disclaimers, strive for sameness.

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### **How Levinas accounts for the disruption of the dyadic relationship**

For Levinas the origin of ethics is to be found in the Self's encounter with the Other which can only occur in a dyadic relationship that is undisturbed by the presence of another party. It is clear, however, that ontologically the Self can never be free to be alone with the Other. On the face of it this supports Badiou's dismissal of Levinas's thinking as a pious discourse that amounts to little more than an intellectual exercise in virtue signalling. A problem commences with the arrival of the Third and from that point onwards, for many critics, Levinasian ethics is beset by an aporia that it cannot hope to resolve. The purely ethical encounter with the Other can never take place as the Self is surrounded by a multiplicity of Others and how is it possible to accept Levinas's quotation from Dostoyevsky in *Brothers Karamazov* that "each of us is guilty before everyone, and I more than the others"?<sup>29</sup> The Third brings the problematisation of alterity for she forces choice upon me. What if the Third is in competition with the Other? There are two parties now to contend with both as Other and Third. If the Self treats both equally she fails to make good on her boundless obligation to either, yet to favour one Other at the other Other's expense means she will be guilty of an ethical betrayal of at least one the parties. To address the dilemma Levinas introduces us to his conception of the Neighbour.

According to Levinas, "in the responsibility for the Other, for another freedom, the negativity of this anarchy, this refusal of the present, of appearing, of the immemorial, commands me and ordains me to the other, to the first on the scene, and makes me approach him, makes me his neighbor ... It provokes this responsibility against my will, that is by substituting me for

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<sup>29</sup> Levinas (1981) at 146.

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the other as hostage.”<sup>30</sup> The Neighbour is the Other who has a claim on the Self’s moral responsibility as ‘the first on the scene’ as the Other *par excellence* as now the Self has choice forced upon her and because I am compelled to protect and defend her in an ethical sense it is a choice of no choice. The Self gains the freedom to be a moral (ethical) being at the expense of her personal freedom. Could it be that Levinas is opening the door to the worst form of particularism such as his criticised exoneration of Zionism? Isn’t the Neighbour, under the guise of all humanity, merely shorthand for the Jew? This is clearly the view of Žižek who reminds us of the “traumatic character” of Levinas’s Neighbour, as the favoured Other, that conjures up a very different conception of the Other; not the Other whose vulnerability stirs my compassion and invites the Self’s protection but rather as the implacable enemy with whom no relationship is possible as the one who will not be appeased or mollified by anything short of the Self’s destruction. “Horrible as it may sound, the Levinasian Other as the abyss of otherness from which the ethical injunction emanates and the Nazi figure of the Jew as the less-than-human Other-enemy originates from the same source.”<sup>31</sup> While the attempt to conflate Zionism with Nazism may grate, more importantly I think, it is mistaken for not only does it not bear comparison in terms of scale and degree its outlook on the Other is directed to a very different end.

### **A place for particularism**

It is true that Levinas has addressed the problem in a way that created difficulties for readers of his works as it appears to run counter to the exorbitant generosity of his ethics. The passage that has attracted the sharpest criticism is his answer to the question: “isn’t the

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<sup>30</sup> Supra n.29 at 11.

<sup>31</sup> Žižek (2008) p. 47.

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‘other’ above all the Palestinian?” There is no doubt that his response is evasive; not only does he not refer to the Palestinians by name but directs his attention to the Israeli as Neighbour for “if your neighbour attacks another neighbour or *treats him unjustly*, (this author’s emphasis) what can you do? Then alterity takes on another character; in alterity we can find an enemy, or at least then we are faced with the problem of knowing who is right and who is wrong. There are people who are wrong.”<sup>32</sup> What appears to be a rallying cry to defend Israel (following widespread international condemnation for its failure to protect the Palestinian refugees from the massacres by Falange militia at the Sabra and Chatila camps in Lebanon) actually contains a far more nuanced message. For implicit in Levinas’s statement is the acknowledgment that the unnamed Palestinian can be the Neighbour for what else can he mean when he refers to the situation “where your neighbour attacks another neighbour”? It is a conflict between two neighbours where the immediate threat of violence from one Neighbour is to be condemned *as is* the injustice of the other Neighbour. The affinity of kith, kin and culture that draws Levinas to Israel as a refuge for Jews is conditional upon their just treatment of all the inhabitants that live within its borders and beyond for, in their failure to fulfil their messianic destiny, they will suffer the consequences. “In this light, Levinas’s last words are a warning that the State of Israel is only justified if it obeys the prophetic call to justice.”<sup>33</sup> While critics may justly accuse of Levinas of failing to rise to the challenge to take an unequivocally moral stance, on the atrocities committed in the refugee camps, a close analysis of his reply reveals that Levinas is refusing to permit the defence of a lack of culpability on Israel’s behalf as he insists that it is the duty of the Jew of the Diaspora to hold the Israeli, her Neighbour, to account and to shoulder “a responsibility that concerns and

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<sup>32</sup> Hand (1989) p.294.

<sup>33</sup> Caygill (2002) p. 194.

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engages even innocence”<sup>34</sup> Moral responsibility is not given a free pass even if guilt be absent.

Even when Levinas is engaged in some ethical backpedalling where Israel is concerned he never, as Žižek would appear to suggest, presents the Palestinian as irredeemably alien or belonging to “the abyss of otherness” but rather takes the position that affinity or proximity force him to come down on the side of the Israeli. Because that support is borne of political necessity, rather than ethical exigency, it isn’t boundless but rather contingent upon the extent to which political actions can ultimately have a moral justification. This is a stance that is far removed from the social Darwinism that fed Nazi ideology although it must be acknowledged that Israel’s moral case is seriously compromised by its constitution as an ethnocracy which calls its democratic credentials into question giving rise to the accusation that it is a racist state that ferociously protects its borders.<sup>35</sup> Israel’s reliance on force is only acceptable to Levinas if it faces a genuine existential threat and even then only if it remains true to its messianic calling. All states police their borders to a greater or lesser extent and while Badiou is ‘absolutely for’ the withering away of the state he acknowledges that “we still belong to a historical era dominated by states and borders” and that “there is nothing to suggest that the situation is going to change completely in the near future. The real question is whether the regulations [*réglementation*] at issue are more or less consistent with egalitarian aspirations.”<sup>36</sup> For Badiou the question of immigration is an extension of the class struggle as the projection of the alien has shifted from first workers, then immigrants (and)

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<sup>34</sup> Supra n. 33 at 293.

<sup>35</sup> See the Haaretz report 30.12.18 <https://www.haaretz.com/1.5019574> on the shooting of Syrians attempting to storm the frontier

<sup>36</sup> Supra n. 12 at 104.

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finally illegal aliens".<sup>37</sup> Particularism is an instrument of oppression that is a continuation of class struggle as individuals searching for work are isolated from a category to which they can stake a legitimate claim and stripped of status if, for example, they lack residence papers, and (in France) count for less if indeed they are counted at all.

While Badiou suggests that particularism is a pernicious mindset he acknowledges that it can be harnessed to the benefit of certain events (ie the "the people's struggle in Vietnam, or the national struggle in Vietnam" or the French anti-Nazi resistance) where the designation of "even 'Arab', even 'Islam', even 'Jew' even 'French' can, at a given moment, have a progressive political signification"<sup>38</sup> He sees philosophy as a conflict of ideas as "a struggle of universalism against universalism, not of particularism against universalism"<sup>39</sup> as a working towards Truth as a multiplicity of 'truth-processes' because what matters are the processes, in their integrity, rather than the Truth at which we may no more ever arrive than the end of a rainbow.

### **The contribution of transcendence**

What Badiou is arguing for, above all else is that for thinking to be worthy of the name of philosophy, there must be both adherence and fidelity to it as a discipline that only admits propositions that meet the test of rigorous intellectual scrutiny and which discards or expels those which, by that measure, are untenable: perhaps an overly restrictive view of what passes for philosophy for a proposition need not be truth-based as long as it is not passed off as the truth. Levinas's concept of a transcendental Good is derived from Jewish theology but is not accompanied by any need to believe in a divine authority. It is unassailable and self-

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<sup>37</sup> Supra n. 12 at 103.

<sup>38</sup> Supra n. 12 at 112.

<sup>39</sup> Supra n. 12 at 114.

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evident within its own terms as memorably and succinctly expressed by Bauman when he declares “I am ready to die for the Other is a moral statement; He should be ready to die for me is clearly not”.<sup>40</sup> It is a proposition that we are free to refute, as indeed Badiou does, but it is one that helps to avoid the difficulties of an excessively materialist approach<sup>41</sup> that emphasises that human beings are animals, however plausible in scientific terms that may be.

The paradox of Badiou’s approach to particularism is that far from amounting to its intellectual dismantlement it risks fortifying it instead by overriding an instinct for togetherness and social cohesion as a community that is intrinsic to all humans. In contrast Levinas’s concept of the Neighbour not only acknowledges the inevitability of a choice, forced upon Self by being-in-the-World, but presents that choice in positive ethical terms. However, while currently politics is resurrecting the dark underside of particularism the Levinasian Other is never irreducibly alien as Žižek infers or close to the product of Nazi loathing for the outsider together with the extreme racial narcissism that accompanied it<sup>42</sup>. Every individual is irreducibly Other and every Other is a Neighbour to whom the unbounded ethical obligation of the Self is owed. But justice cannot be delivered equally to all for in the presence of two unique beings the genre appears and the terminology of Greek logic and politics prevail “but what I say, quite simply, is that it is, ultimately, based on the relationship to the other, on the ethics without which I would not have sought justice.”<sup>43</sup> It is this obsession for the well-being of the Other, in response to her vulnerability that responds to “a face in suffering (which) issues a command, a decree of specific performance: ‘Do not kill me’, ‘Welcome me’, ‘Give

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<sup>40</sup> Bauman (1993) p. 220.

<sup>41</sup> “I think that human beings are animals, animals which have at their disposal, a singular aleatory, and partial ability, which identifies them philosophically as human within the animal sphere” *Supra* n. 12 at 132.

<sup>42</sup> Derrida (1999) p. 147.

<sup>43</sup> Wright and Hughes (1988) p. 174

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me Sanctuary', 'Feed me'" that pricks the conscience of the law and disrupts the "neutral element of the universal." <sup>44</sup>

Douzinias and Warrington have offered, in their response to Levinasian ethics, the "momentary principle of justice, inscribed at the heart of the judgment but always before the law (and) is what turns force into justice and force that does not heed its call to violence". <sup>45</sup>

The judge as the critical figure "is always involved and implicated" and as such is called upon to respond to the ethical relationship, when he judges." <sup>46</sup> But, however, appealing this may seem, Levinas himself would probably reject such a solution. Alterity is unthematizable and cannot be grafted onto the law in any prescriptive sense and will always defer to Greek logic. The Judge is not free to be alone with the Other and cannot judge her as Neighbour without reference to the Third as she cannot act out of her own free will but merely as an agent or instrument of state to whom she is accountable for her decisions; albeit decisions that must be weighed against her ethical duty to the vulnerable single Other especially when she appears in the guise of the refugee. To that end alterity offers a means of challenging incessantly and with rigorous insistence that the law has a duty towards the Other that exceeds the minimum accorded by rights and in conscience impels the law to recognise that anything less than the maximum is in some measure an ethical betrayal even though that betrayal may be all too frequently unavoidable. In contrast to materialist analyses it is only a transcendental rendering of ethics that makes such an insight possible.

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<sup>44</sup> Supra n. 1 at pp 174- 5.

<sup>45</sup> Supra n.1 at 240.

<sup>46</sup> Supra n.1 at 184.

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## References

- Badiou, A. 2012. *Ethics, an essay on the understanding of Evil*.
- Bauman, Z. 1993. *Postmodern Ethics*. Blackwell Publishers, Cambridge.
- Bowring, B. 2009. *Global Law and Human Rights: Marxist Reflections: How can a political account of human rights avoid Eurocentrism?*. Paper given at Historical Materialism Annual Conference, 27-29 November 2009.
- Caygill, H. 2002. *Levinas and the Political*. London: Routledge.
- Critchley, S. 2015. *The Problem with Levinas*. Oxford University Press.
- Derrida, J. 1997. *Adieu to Emmanuel Levinas* (trans Bault P. and Naas M.) USA, Stanford University Press.
- Douzinas, C., and Warrington R. 1994. *Justice Miscarried, Ethics and Aesthetics in Law*. Harvester Wheatsheaf.
- Escorihuela, A.L. 2003. *Alf Ross: Towards a Realist Critique & Reconstruction of International Law*. European Journal of International Law 14(4) p 703-766. Oxford Academic.
- Hand, S. (ed). 1989. *The Levinas Reader*. Oxford: Blackwell.
- Harris, J.W. 1981. *Legal Philosophies*. Butterworths.
- Hutchens, B.C. 2004. *Levinas a guide for the perplexed*. London and New York, Continuum Books.
- Levinas, Emmanuel. 1969. *Totality and Infinity* (trans. Lingis, A.). Pittsburgh, PA: Duquesne University Press, reprint 2006.
- Levinas, Emmanuel. 1981. *Otherwise than being, or beyond essence* (trans. Lingis, A.) Pittsburgh, PA: Duquesne University Press, reprint 2006.
- Rose, G. 1992. *The Broken Middle, Out of Our Ancient Society*. Oxford: Blackwell.
- Ross, A. 1959. *On Law and Justice*. Berkeley and Los Angeles: University of California Press.
- Spaak, T. 2014. *A Critical Appraisal of Karl Olivecrona's Legal Philosophy*. Law & Philosophy Library, Vol 108. Springer Cham.
- Stonks, M.C. 2012. *The question of Salah Sheekh: Derrida's hospitality and migration law*. International Journal of Law in Context 8(1) p 73-95.
- Wright, T. and Hughes, P. 1988. *The paradox of morality*. Contribution to *The provocation of Levinas. Rethinking the other*. (ed Bernasconi, R. and Wood D.) London, Routledge.
- Zizek, S. 2008. *Violence, Six Sideways Reflections*. Big Ideas Series, Profile Books, London.