

**THE RIGHTS OF THE OTHER:
EMMANUEL LEVINAS' META-PHENOMENOLOGY
AS A CRITIQUE OF HILLEL STEINER'S AN ESSAY ON RIGHTS**

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List of Abbreviations*

Key works by and about Hillel Steiner

ER	An Essay on Rights
DR	A Debate over Rights
AJ	Hillel Steiner and the Anatomy of Justice

Key works by Emmanuel Levinas

TIHP	The Theory of Intuition in Husserl's Phenomenology
TIPH	La Théorie d'Intuition dans la Phenomenologie de Husserl
TI	Totality and Infinity
TeI	Totalité et Infini
OB	Otherwise Than Being or Beyond Essence
AE	Autrement qu'Etre ou au-delà de l'Essence
TO	Time and the Other
TA	Temps et l'Autre
OE	On Escape
DE	De l'Evasion
DEH	Discovering Existence with Husserl
DEHH	En Découvrant l'Existence avec Husserl et Heidegger
OS	Outside the Subject
HS	Hors Sujet

* I shorten references to a work after its first appearance in a footnote. This applies both to the abbreviated references listed here, and to all other references, which are composed in the standard Chicago short form.

Abstract

In contemporary philosophy about justice, a contrast between empirical and transcendental approaches can be identified. Hillel Steiner represents an empirical approach: he argues for building an account of justice-as-rights out of the minimal inductive material of psychological linguistic and moral intuitions. From this opening, he ultimately concludes that persons have original rights to self-ownership and to an initially equal share of natural resources. Emmanuel Levinas represents a transcendental approach: he argues that justice arises from a transcendent ethical relation of responsibility-for-the-Other. This relation underpins all subjective cognition, and makes rationality, reasoning, and rights possible.

Analysis of each of these positions reveals certain problems. On the one hand, Steiner's argument contains a number of latent methodological, conceptual, and structural presuppositions. These include the pretheoretical concepts of "person", "equality", and "consistency". These presuppositions prefigure and condition the conclusions which Steiner reaches. On the other hand, Levinas fails to provide a convincing account of how the self comes to be an object of my own deliberations about morality and justice. This amounts to an annihilation of the subject which undermines his argument for the subject as a site of responsible action. As Steiner identifies, justice encompasses *equal* moral agents. Levinas's hyperbolic description of the ethical relation's asymmetry must therefore be revised.

Nevertheless, what remains is the strength of Levinas's argument for the priority of the ethical relation over thematization, rationality, and consciousness. The hidden presuppositions supporting Steiner's work are evidence of Levinas's plausibility in this respect. Steiner's account of justice-as-rights requires a prior ethical relation in which we recognise one another as separate persons, each possessing an ethical status of their own; an attitude of justice motivates Steiner's description of justice. This attitude is evident in language, which is communication before it is thought. In that individual rights can be conceived only on the basis of a relation of responsibility, rights are primordially the rights of the Other.

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I the author hereby declare that no portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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To my father



it is indifferent to me whence I begin,
for there again shall I return

— Parmenides*

* Diels-Kranz fragment B5. See Jonathan Barnes, *Early Greek Philosophy*, rev. ed. (London: Penguin Classics, 2001), 85.

1. Introduction*

This is a thesis about justice, and two philosophers who approach it very differently. On the one hand, Hillel Steiner argues that, whatever else justice might mean, a necessary part of its meaning must be that it prescribes a distribution between persons of initially equal *rights*. However, Steiner is agnostic about the possibility of finding a “reason” to believe in justice.¹ I call his position “justice-as-rights”. Steiner focuses on the nature of just procedures, but brackets off questions about the foundations of a belief in justice. On the other hand, Emmanuel Levinas argues that the idea of justice is born of a prior need to distribute my *responsibility* towards the other person between multiple others. Levinas’s argument addresses the foundational underpinnings of justice almost completely to the exclusion of just procedures. I call his position “justice-as-responsibility”.

In the chapters ahead I explore these apparently remote positions, and find not only that they share important ground, but also that they can generate

* Owing to the number of abbreviations and cross-references in this thesis, for ease of reading I have included a Table of Figures (p. 5), a List of Abbreviations (p. 6). In the electronic version of this document, readers may also click to follow uniform resource identifiers. Wherever appropriate, page numbers and footnote numbers have been provided alongside cross-references. The manuscript set in 11.5pt on 20pt Trola, following the 16th edition of *The Chicago Manual of Style*.

¹ Words to this effect form the last paragraph of *An Essay on Rights*: “What I’ve tried to do in this book is to give reasons why that set of rights [it describes] is just. I’ve offered no reasons as to why we should be just. Nor do I think that any can be found.” Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), 282. Hereafter abbreviated to ER. See also Peter Jones, “Two Conceptions of Liberalism, Two Conceptions of Justice,” *British Journal of Political Science* 25/4 (October 1995): 544-545.

insightful perspectives upon one another. I present a comparative critical reading of Steiner and Levinas, which leads to a new perspective on justice as “the rights of the Other”.² Before embarking on this task, however, I first introduce Steiner and Levinas in a little more detail (1.1); then outline the argument, method, and terms of my thesis (1.2); and, finally, assess the key works, philosophical context, and critical reception of each thinker (1.3).

1.1. JUSTICE

1.1.1. Rights and Responsibility: Two Conceptions of Justice

“Justice”, and other ideas which approximate its sense, have been in dispute for thousands of years. Ancient Egyptian texts and inscriptions refer to *maat*;³ the ancient Greek philosophers Plato and Aristotle muse upon *δίκη*;⁴ and in modern political theory a wide range of formulations of justice have been attempted, some

² Levinas used this phrase in his essay “The Rights of Man and the Rights of the Other,” in *Outside the Subject*, trans. Michael B. Smith (London: Continuum, 2008 [1987]), 91-98. Hereafter abbreviated to OS; “Les Droits de l’Homme et les Droits d’Autrui,” in *Hors Sujet*, (Montpellier: Fata Morgana, 1987), 157-170. Hereafter abbreviated to HS. It has also featured in some recent French-language scholarship on Levinas, although not in systematic development. See Willy Bongo-Pasi and Richard Ongendangenda, *Les Droits de l’Homme Comme Droits d’Autrui: Une Radicalisation chez Emmanuel Levinas* (Sarrebruck: Editions Universitaires Européennes, 2011); Siméon Clotaire Mintoume and Emilio Baccarini, *L’Ethique Comme Philosophie Première ou la Défense des Droits de l’Autre Homme chez Emmanuel Levinas* (Paris: L’Harmattan, 2011). I examine these works in chapter six.

³ See, for example, discussion on the concept of *maat* in Anna Mancini, *Maat Revealed: Philosophy of Justice in Ancient Egypt* (New York: Buenos Books America, 2004), 5-23.

⁴ A discussion of justice is the point of departure in Plato’s *Republic*, although the term usually translated as “justice” (*δίκη*) is some distance from common contemporary understandings of the English word. As will become clear, though, Levinas’s interest in Plato concerns his understanding of the good, rather than justice. See Arthur W.H. Adkins, “The Greek Concept of Justice from Homer to Plato,” *Classical Philology* 75 (1980): 256-268.

of which I examine later in this chapter. So, given the number of options, why select Steiner and Levinas? In the next few pages, I provide a preliminary sketch of the arguments of these two thinkers, and then elaborate my reasons for choosing them.

Hillel Steiner is an active political philosopher, best known for his book *An Essay on Rights* (1994), as well as other significant works including *A Debate Over Rights* (1998), to which he contributes a defence of the “choice theory” of rights.⁵ Although Steiner articulates a conception of justice-as-rights, it is not his aim to produce another grand theory of justice to match the scale of John Rawls’s *A Theory of Justice* or Robert Nozick’s *Anarchy, State and Utopia*. Instead, Steiner aims to be minimal and synoptic: he works only with what he takes to be necessary features of any theory of justice.

Steiner argues that every theory of justice ultimately serves to prescribe a particular arrangement of morally or legally assigned liberties and restrictions on personal action.⁶ Following Wesley Hohfeld’s scheme of jural relations, Steiner uses the terms “rights” and “duties” to refer to the arrangement of such liberties and restrictions.⁷ In Steiner’s account, a right vests the right-holder with both a claim and a power.⁸ A claim correlates to another person’s duty to perform, or to forbear from performing, a particular action. A power vests the right-holder with

⁵ Hillel Steiner, Matthew H. Kramer and Nigel E. Simmonds, *A Debate Over Rights* (Oxford: Oxford University Press, 1998). Hereafter abbreviated to DR. I fully explain the significance of the choice theory of rights, also known as the will theory, in chapters two and three.

⁶ An outline of different conceptions of justice is presented in Tom D. Campbell, *Justice* (Basingstoke: Palgrave Macmillan, 2000). He includes brief accounts of justice as entitlement, rights, contract, criminal justice, desert, Marxian critique of exploitation, empowerment, and democracy.

⁷ ER 59. See Wesley N. Hohfeld, “Fundamental Legal Conceptions as Applied in Judicial Reasoning,” *Yale Law Journal* 26/8 (June 1917): 710-770.

⁸ ER 60-62

a choice to waive or enforce such a duty.⁹ In that all conceptions of justice must involve assigning such rights and their concomitant claims and powers, Steiner maintains that his theory of justice-as-rights is implicitly present in all theories of justice.¹⁰

Building on this analysis of the concepts “justice” and “rights”, Steiner argues that any prospective set of rights which produces correlative duty-conflicts is an incoherent set.¹¹ For example, if a putative set of rights imposes two duties on a person to be in different places at the same time, then the fulfilment of one of those duties is rendered impossible.¹² In other words, those two duties are “impossible”.¹³ Following from this, Steiner claims that any theory of justice which prescribes an impossible set of rights is implausible as a theory of justice: since rights must *by definition* be enforceable, rights that are not enforceable are not truly rights.¹⁴

From this minimal, synoptic conception of justice-as-rights, Steiner builds up a description of the necessary conditions for a “mutually consistent” or “compossible” set of rights.¹⁵ His conceptual analyses of the terms “liberty”,

⁹ ER 68-73

¹⁰ ER 2-3

¹¹ Kramer describes this as Steiner’s “Permissibility Theorem”. See Matthew H. Kramer, “Consistency is Hardly Ever Enough: Reflections on Hillel Steiner’s Methodology,” in *Hillel Steiner and the Anatomy of Justice: Themes and Challenges*, ed. Stephen de Wijze, Matthew H. Kramer, and Ian Carter, 201-213 (London and New York: Routledge, 2009). Hereafter abbreviated to AJ. I choose to call this Steiner’s “consistency principle”, as it is ER’s requirement for consistency that is of particular interest to this thesis — in particular, the fact that Steiner (at the time of writing ER) took this to be an axiomatic requirement of persons’ moral codes. I examine the exchange between Kramer and Steiner further in 1.3 below, and also in chapter three.

¹² Kramer and Steiner discuss the problem of mutually exclusive contractual duties during their exchange in AJ. See Kramer, “Consistency,” 204-205; Hillel Steiner, “Responses,” in AJ, 237-238.

¹³ ER 36-38

¹⁴ ER 2-3

¹⁵ ER 228

“rights”, and “justice” support an argument that the assignment of basic rights must be distributed *equally* between persons.¹⁶ In his epilogue to ER, Steiner makes a number of normative prescriptions in favour of global economic redistribution to restore equal shares of the value of initially unowned natural resources.¹⁷

Emmanuel Levinas (1906-1995) worked as head of the École Normale Israélite Orientale in Paris, and later in his career taught at the Universities of Poitiers, Paris and the Sorbonne.¹⁸ He is best known for his two books *Totality and Infinity* (1961)¹⁹ and *Otherwise Than Being or Beyond Essence* (1974).²⁰ Levinas does not attempt to defend any precise definition, conception, or theory of justice. As I explain in chapters four and five, Levinas takes a radically different approach to justice. He engages in no substantial discussion of just procedures or outcomes. Instead, he is concerned with what I call the “foundations” of justice, and of what could be provisionally understood as the human attitude of justice. Through a searching critique of Husserlian phenomenology, Levinas arrives at fundamental questions about the ethical constitution of human consciousness: How is it that we come to be concerned with justice? Why is it that we find it meaningful, and of

¹⁶ ER 229-265

¹⁷ ER 266-282

¹⁸ See Salomon Malka, *Emmanuel Levinas: His Life and Legacy*, trans. Michael Kigel and Sonja M. Embree (Pittsburgh PA: Duquesne University Press, 2006). Malka was a student for three years at the École Normale Israélite Orientale, a high school, while Levinas served as its head. See also Marie-Anne Lescourret, *Emmanuel Levinas*, 2nd ed. (Paris: Flammarion, 2005).

¹⁹ Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. Alphonso Lingis (Pittsburgh PA: Duquesne, 1969 [1961]). Hereafter abbreviated to TI; *Totalité et Infini: Essai sur l'Extériorité* (Dordrecht: Kluwer Academic/Martinus Nijhoff, 1971 [1961]). Hereafter abbreviated to TeI.

²⁰ Emmanuel Levinas, *Otherwise than Being or Beyond Essence*, trans. Alphonso Lingis (Dordrecht, Boston and London: Kluwer Academic, 1978 [1974]). Hereafter abbreviated to OB; *Autrement qu'Etre ou au-delà de l'Essence* (Paris: Kluwer Academic, 1990 [1974]). Hereafter abbreviated to AE.

the utmost moral importance, to theorize about justice? What is it to be concerned for the other person?

Levinas's overarching claim is that the ethical relation with the other person ("the Other")²¹ is the condition of possibility for all human consciousness. The "face" or gaze of the Other is the first meaning.²² The face signifies a commandment, "do not kill me", and opens discourse and language to the subject under the weight of responsibility-for-the-Other. Consciousness and freedom begin under this accusation:²³ freedom arises as the freedom to fulfil my responsibility. A need for justice arises, however, when the self's responsibility-for-the-Other is interrupted by "the third party", or "the Third",²⁴ by whom the self sees the Other engaged. The self's responsibility must be shared; its powers of rationality are generated in order to distribute responsibility between multiple others.²⁵ Universality, concepts, comparison, and deliberation all issue from the need for a distribution by the self between the Other and the Third. The constitution of an objective world for consciousness serves justice, because it can thus be ordered, governed, and shared. Levinas claims that the status of the self as

²¹ TI 39; TeI 28: "Autrui"

²² Levinas's use of the word *visage* is uniformly translated, with perfectly good reason, as "face". However, the French *visage* also carries connotations of the "look" or "gaze" of eye contact — references which are not conveyed by the English "face". *Visage* is etymologically derived from the Latin *visus* (a look, a vision) and *videre* (to see). See "Visage," *Oxford Dictionaries*, accessed October 17, 2012, <http://oxforddictionaries.com/definition/english/visage>.

²³ OB 110-113; AE 174-178.

²⁴ OB 161; AE 251. Throughout this thesis, I have chosen to translate "le tiers" as "the Third", rather than as "the third party", in order to mirror the personality and ethical status of the Other. This is a convention followed by some scholars, including William P. Simmons and C. Fred Alford.

²⁵ OB 16; AE 32-33.

a candidate in this distribution is derived from the universalization prompted by the Third.²⁶

1.1.2. Reasons for Selecting Steiner and Levinas

Out of all the philosophical positions that could be engaged in a conversation about justice, there are three key reasons for selecting Steiner and Levinas. First, while I cannot hope in this thesis to summarise the long and rich philosophical debate over justice historically, in their different ways both Steiner and Levinas do attempt to summarise it philosophically: Steiner argues that rights are the “elementary particles” of any plausible theory of justice;²⁷ and Levinas describes how the attitude of justice underpins all cognition, and all concretions of justice into a moral or legal code.

Second, Steiner and Levinas serve as examples of what I take to be two general philosophical methods. On the one hand, Steiner represents what I term an “empirical” approach. By this I mean a method which resembles that of the natural sciences, moving from positive evidence, through analysis, to logical conclusions. As I explain in chapters two and three, Steiner’s approach is empirical in that he works from the evidence of “moral intuitions” and “linguistic intuitions”, which are subsequently analysed, refined, and reasoned about. On the other hand, Levinas represents what I term a “transcendental” approach. I understand transcendental methods to be concerned with the analysis of the

²⁶ OB 158; AE 247.

²⁷ ER 2

“conditions of possibility” for an empirical state of affairs.²⁸ This approach attempts to identify principles underpinning natural evidence, or supporting ordinary modes of thinking and perceiving. My categories “empirical” and “transcendental” approximate to what are often called “analytic” and “continental” approaches. However, I avoid those labels, partly because they are sometimes used pejoratively, and can therefore generate more heat than light. Mainly, however, it is simply because they fail as descriptors: analytic philosophy is practised in many universities in continental Europe, and continental philosophers also conduct plenty of analysis. While “empirical” and “transcendental” do not solve the central difficulty — of describing a wide range of approaches with a single word — I believe that for the purposes of this thesis they serve as more descriptive terms.

Third, Steiner and Levinas represent two common-sense views of justice, and considering them together reflects certain contemporary public debates about justice. Is a just society defined by the enforcement of individual rights, or by individuals fulfilling their responsibility to others? Is a just society characterised by personal liberty, or public virtue for the common good? Are these perspectives merely two sides of the same coin? In the chapters which follow, I contend that a comparative and critical reading of these contrasting accounts of justice demonstrates a deep connection between Steiner and Levinas.

²⁸ The notion of a condition of possibility is found in the work of Immanuel Kant. See Immanuel Kant, *Critique of Pure Reason*, trans. F. Max Müller (London: Macmillan, 1922 [1787]), 12. Concluding the introduction, he writes: “the doctrine of this transcendental sense-perception would necessarily form the first part of the doctrine of elements, because the conditions under which alone objects of human knowledge can be given must precede those under which they are thought”; *Kritik der Reinen Vernunft*, ed. Theodor Valentiner (Leipzig: Verlag von Felix Meiner, 1919 [1787]), 71: “Die transscendentale Sinnenlehre würde zum ersten Theile der Elementar-Wissenschaft gehören müssen, weil die Bedingungen, worunter allein die Gegenstände der menschlichen Erkenntniss gegeben werden, denjenigen vorgehen, unter welchen selbige gedacht werden.”

1.2. OUTLINE

1.2.1. Argument

In chapter two, I argue that a number of necessary foundational presuppositions can be identified in Steiner's *An Essay on Rights*. These include conceptions of intuition, language, time, and personhood. In chapter three, I claim that Steiner's negative justification of interpersonal equality is problematic. In chapter four, I argue that Levinas's philosophy can be understood as a "meta-phenomenology" which asserts the relation with the Other as the condition of possibility for Husserlian phenomenology. In chapter five, I claim that there is a paradox in the fact that Levinas both builds upon and undercuts the phenomenological technique of reflection upon, and analysis of, subjective experience. I then suggest that this problem is implicated in other areas of contention in Levinas's works, such as malevolence, gender, and justice. In chapter six, I contend that, in spite of the problem of the self in Levinas, his meta-phenomenology provides a compelling explanation for the presuppositions underpinning Steiner's argument. The concepts of consistency, compossibility, and equality are, I suggest, reflections of an attitude of justice prior to logic. I conclude that justice can be understood as primordially the rights of the Other. Only in a world already illuminated by the ethical relation with the Other is justice conceivable.

1.2.2. Method

My core method during this research project has been close and repeated reading, analysis, and critique of the main works of Levinas and Steiner — a process which

is reflected in the chapter structure of this volume. I first examined many of Levinas's articles and essays,²⁹ and identified the possibility of attempting a political reading of his thought. I conceived of this initially as a "Levinasian critique of liberalism". I then read works by some of the main contemporary theorists of political liberalism, including John Rawls, Robert Nozick, Hillel Steiner, and Michael Sandel. During my reading of Steiner's *An Essay on Rights*, I began to consider the possibility of forming some specific connections between the arguments of Levinas and Steiner.

Subsequently, I planned the thesis as a conversation or comparison between these two thinkers (although I still imagined ER as a case study in the interpretation of Levinas as a critic of liberal political theory). My study of Steiner's work was also informed by his willingness to co-supervise this project personally, which brought the benefit of direct discussion with ER's author. As my understanding of the key texts improved over the next couple of years, and as I began to think more critically about Levinas's philosophy, it became clear that Steiner and Levinas could just as well be read as *mutual* critiques of one another. Moreover, I considered how these mutual critiques might present in microcosm the larger methodic and epistemic schism between empirical and transcendental approaches to philosophy. I also considered the possibility of reading Steiner and Levinas as each offering a completion of the other account: Levinas explaining pretheoretical assumptions in Steiner, and Steiner demonstrating how the meta-phenomenological ethical attitude must be rationalized and codified into just

²⁹ Specifically, those found in the three main readers on Levinas widely available: Seán Hand, ed., *The Levinas Reader* (Oxford: Blackwell, 1989); Adriaan T. Peperzak, Simon Critchley and Robert Bernasconi, eds., *Emmanuel Levinas: Basic Philosophical Writings* (Bloomington IN: Indiana University Press, 1996); and Alphonso Lingis, ed., *Emmanuel Levinas: Collected Philosophical Papers* (Dordrecht: Martinus Nijhoff, 1987).

procedures. Elements of this interpretation remain in what follows, but in the end I have not departed from the initial focus of this project: to produce a reading of Levinas's philosophy as a critique of liberalism.

The fact that my research has taken this path creates a risk of presenting Steiner's philosophy in a secondary or prejudiced manner, in order to help support the initial hypothesis that I formed about Levinas and liberalism. Since this is categorically not my intention, I have taken two key precautions. (It is, of course, for the reader to judge how effective these have been.) First, during my reading of Steiner and Levinas, I aimed to understand each position on its own terms, and to become clear in my own mind about when I was asking questions of the "internal" rationale of a position, and when I was imagining questions about one position from the perspective of the other. Accordingly, I have included independent sections on both Steiner (chapters two and three) and Levinas (chapters four and five). In each of these sections, I present an exposition, analysis, and critique of each philosopher's argument. Second, I strive to keep the terms used within each section consonant with the chosen terms of each philosopher. The points of criticism presented in chapters three and five are endogenous ones, arising directly from the rationale of the position under discussion (although I also refer to secondary scholarship directly engaging with that position). The result is, I hope, that neither analysis presupposes the other, and that each is written in such a way that it could form a coherent standalone text. All confrontation *between* the two philosophical positions in question, and between their two sets of terminology, is reserved for the final two chapters.

1.2.3. Standpoint

Having set out the rationale supporting the terms and structure of the thesis, I now outline how I understand my own standpoint as an interpreter of the positions in question. Although I attempt to treat Steiner and Levinas as dispassionately as possible, it remains the case that I am in this text attempting to build a philosophical argument of my own, using a particular set of terms and approaches that developed out of this research. The analyses and critiques I attempt in chapters two to five depend on a labour of interpretation, and this interpretation is bound to be guided in some way by the various conclusions I have considered reaching along the way. My standpoint in respect of Steiner and Levinas is therefore not one of an onlooker, but of a writer mired in the same philosophical uncertainties that animate and divide Steiner, Levinas, and several thousand years of thinking about justice. I hope that the transparent structural divisions imposed between the analytic and constructive parts of my argument will at least enable the reader to identify the points at which my interpretation might be tendentious.

Given that “language”, “morality”, “linguistic intuitions”, “moral intuitions”, “concepts”, “conceptions”, “ideas”, “notions”, and “terms” are themselves important topics of debate in this thesis, one of the most immediately relevant ways in which my own interpretative standpoint has the potential to prejudice the analysis which follows is through my own choice of terms, and how I assume those terms to be defined. It is impossible to write without making such choices and assumptions; the very labour of writing is in large part an exercise in doing just that. What it is possible to do, however, is to try to explicate what I believe some of my choices and assumptions to be. Here I focus on three important terms: “morality”, “intuition”, and “person”.

First, I understand the words “moral” and “morality” to refer to norms of human conduct, primarily towards other persons (whether or not they are themselves capable of action guided by such norms), but also towards animals and the natural environment. I take the words “immoral” and “immorality” to refer to conduct perceived to violate such norms. I also understand that my conceptions here are in competition with the those of others: above all, conceptions of morality which also cover private conduct that has no harmful effect on others.

Conceptions of justice and law are often criticised for being “moralized”. Such a criticism may be aimed at either or both of these understandings of morality: on the one hand, law which attempts to enforce moral norms concerning human conduct towards others, and, on the other hand, law which attempts to enforce moral norms governing private conduct. My conception of morality clearly presupposes that it fundamentally concerns persons. I take persons to be the only beings capable of moral action, and I take persons to be the primary (but not the only) objects of actions guided by such norms.³⁰

Second, I take the word “intuition” to refer to something that is experienced as “given” or simply “known” without requiring reflection or reasoning. This understanding encompasses the usages of both Steiner and Levinas, each of whom has a more particular and technical understanding of intuition. Although Steiner finds ethical intuitionism to be flawed and incomplete as a theory of moral decision-making,³¹ he nevertheless works from an opening in moral and linguistic intuitions, over which a process of analysis and clarification

³⁰ Similar contrasts in morality and ethics are can be found in Bernard Williams, *Ethics and the Limits of Philosophy* (Abingdon: Routledge, 2011 [1985]) and Thomas M. (Tim) Scanlon, *What We Owe To Each Another* (Cambridge MA: Belknap, 1998).

³¹ ER 113-116

then presides.³² As I explain in chapters two and three, Steiner implicitly treats intuitions as reducible to psychological events: a “linguistic intuition” can be understood as “what I think a word means”. By contrast, Levinas’s conception of intuition is inherited from two major predecessors in the tradition of transcendental philosophy, Kant and Husserl.³³ This disagreement between empirical and transcendental conceptions of intuition is, of course, also a reflection of a more general disagreement between empirical and transcendental philosophical methods concerning the proper task of philosophy.

Third, an important concentration of this thesis is the work done for both Steiner and Levinas, whether implicitly or explicitly, by the concepts of person and personhood. I am far from clear about my own conception of the person, but simply note here simply that the question of what constitutes a person, and when, are amongst the most contentious issues both of moral philosophy and practical politics. At the heart of this controversy is whether, and to what degree, *qualities* (such as agency, independence, rationality, and potentiality) determine personhood; and whether, and to what degree, the assignment of personhood transcends such judgements.

³² See Michael Ridge, “Moral Non-Naturalism,” *Stanford Encyclopedia of Philosophy* (2008). Accessed October 23, 2012. <http://plato.stanford.edu/entries/moral-non-naturalism>; Stephen W. Ball: “Linguistic Intuitions and Varieties of Ethical Naturalism,” *Philosophy and Phenomenological Research* 51 (1991): 1-30.

³³ See Kant’s account of representation and intuition in *Critique*, trans. Müller, 260; Kritik, ed. Valentiner, 332-333; see also Emmanuel Levinas, *The Theory of Intuition in Husserl’s Phenomenology*, trans. André Orianne (Paris: Alcan, 1973 [1930]). Hereafter abbreviated to TIHP; *Théorie de l’Intuition dans la Phénoménologie de Husserl* (Paris: Librairie Philosophique J. Vrin, 1930). Hereafter abbreviated to TIPH.

1.3. CONTEXT: KEY WORKS BY STEINER AND LEVINAS, AND THEIR CRITICAL RECEPTION

What is the philosophical and scholarly context of the philosophical arguments offered by Steiner and Levinas? In this section, I first provide an overview of philosophical debates which are relevant to each thinker, and to the development of their work, and then I survey their critical reception amongst contemporary philosophers and scholars.

1.3.1. Steiner in Philosophical Context

a. Political Theory, Nature, and Natural Rights

Steiner describes the position set out in ER as a “classical *laissez faire* liberalism of the natural rights-based kind”.³⁴ Natural rights are typically understood as rights which exist outwith any political arrangement which might codify them, and supplement them with further legal rights.³⁵ The association between nature and justice dates back at least as far as Cicero (106-43 BCE), who writes in *De Legibus* that “we are born for Justice, and that right is based, not upon one's opinions, but upon Nature”.³⁶

In the early modern era, Francisco Suárez (1548-1617), Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679), Samuel von Pufendorf (1632-1694), and John

³⁴ ER 282

³⁵ See John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), 198-226 and *passim*; see also Leif Wenar, “Rights,” *Stanford Encyclopedia of Philosophy* (2007). Accessed May 6, 2010. <http://plato.stanford.edu/entries/rights/>; Leif Wenar, “The Nature of Rights,” *Philosophy and Public Affairs* 33/3 (2005): 223-253.

³⁶ Quintus Tullius Cicero, “De Legibus,” in *De Re Publica, De Legibus*, ed. Clinton W. Keyes (Cambridge MA: Harvard University Press, Loeb Classical Library, 1928), 1.28; Cicero, *De Legibus* 1.28: “nos ad iustitiam esse natos, neque opinione sed natura constitutum esse ius”.

Locke (1632-1704) each made a case for the existence of natural rights of some sort.³⁷ Grotius wrote that the law of nature “proceeds from the essential traits implanted in man”.³⁸

The Will of God is revealed, not only through oracles and portents, but above all in the very design of the Creator; for it is from this last source that the law of nature is derived.³⁹

Rather than understanding rights as a “right” state of affairs, Grotius understands rights as properties of individuals, associated directly with the powers or means of an individual subject.⁴⁰ The development of this concept of individual rights is a precedent for Steiner’s distinction in ER between rights and correlative duties, which requires the separation and self-determination of moral agents.⁴¹

Hobbes describes a “state of nature” in *Leviathan* (1651), characterising it as “that condition which is called war; and such a war, as is of every man, against every man”.⁴² For Hobbes, the only natural “right” in the state of nature is man’s right to the liberty to protect his own life; until curtailment by a state, this means that everyone has the right to do anything to others in pursuit of this end.⁴³

³⁷ Natural law theories from this period are explored in Tim Hochstrasser and Peter Schröder, *Early Modern Natural Law Theories: Context and Strategies in the Early Enlightenment* (Dordrecht: Kluwer Academic, 2003). See also Nigel E. Simmonds, “Grotius and Pufendorf,” in *A Companion to Early Modern Philosophy*, ed. Steven Nadler (Oxford: Blackwell, 2002), ch. 15. For a briefer overview of the precursors to contemporary theories about rights, see Wenar, “Rights”.

³⁸ Hugo Grotius, *The Rights of War and Peace, including the Law of Nature and of Nations*, trans. Archibald C. Campbell (New York: M. Walter Dunne, 1901), prol. §12.

³⁹ Hugo Grotius, *De Iure Praedae Commentarius*, trans. Gwladys L. Williams. *Classics of International Law* series (Oxford: Oxford University Press 1950 [1604]), ch. 2.

⁴⁰ See Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume* (Oxford: Clarendon Press, 1993); see also Grotius, *The Rights of War and Peace*.

⁴¹ ER 55-108

⁴² Thomas Hobbes, *Leviathan*, ed. John C.A. Gaskin (Oxford: Oxford University Press, 1996 [1651]), 84; 82-86 (ch. 13; §8).

⁴³ Hobbes, *Leviathan*, 85 (ch. 13; §13): “To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and

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Locke conceives of the state of nature differently from Hobbes, articulating a positive “natural law”: “The state of Nature has a law of Nature to govern it, which obliges everyone”.⁴⁴ For Locke, the law of nature is characterised by reason. He argues in the *Second Treatise on Civil Government* that reason will dictate “no one ought to harm another in his life, health, liberty or possessions”.⁴⁵ Thus, Locke identified natural rights to “life, liberty, and estate”.⁴⁶ An appeal to similar “self-evident” rights is also made in the American Declaration of Independence (1776).⁴⁷

In contemporary political philosophy, H.L.A. Hart’s writings on natural rights have been particularly important, and Steiner acknowledges that his work was “heavily influenced” by them.⁴⁸ Hart’s essay “Are There Any Natural Rights?” advances “the thesis that if there are any moral rights at all, it follows that there is at least one natural right[:] the equal right of all men to be free”.⁴⁹ He also argues that these rights are restricted to “any adult human being capable of choice”, i.e. excluding children and those incapable of choice. There are also important parallels between the work of Hart and Steiner in their treatment of language.

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injustice have there no place. Where there is no common power, there is no law: where no law, no injustice. Force, and fraud, are in war the two cardinal virtues.”

⁴⁴ John Locke, *Second Treatise of Government* (Indianapolis IN: Hackett, 1980 [1690]), 9-14 (ch. 2).

⁴⁵ Locke, *Second Treatise*, 9-14 (ch. 2). This is a similar formulation to Mill’s harm principle. See John Stuart Mill, *On Liberty and Other Essays* (Oxford: Oxford University Press, 2008 [1859]).

⁴⁶ Locke, *Second Treatise*, 14-16 (ch. 3).

⁴⁷ See “Declaration of Independence, July 4, 1776”. Library of Congress. Accessed April 3, 2013. <http://www.loc.gov/rr/program/bib/ourdocs/DeclarInd.html>. “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness.”

⁴⁸ Hillel Steiner, “Are There Still Any Natural Rights?” in *The Legacy of H.L.A. Hart: Legal, Moral, and Political Philosophy*, ed. Matthew H. Kramer (Oxford: Oxford University Press, 2008), 239-250.

⁴⁹ H.L.A. Hart, “Are There Any Natural Rights?” *Philosophical Review* 64 (1955): 175.

Hart's essay also rests on an implicit theory of conceptual analysis. He writes that it is

clear to me that the moral justification for interference which is to constitute a *right* to interfere [...] is restricted to certain special conditions and that this is *inherent in the meaning* of "a right"[.]⁵⁰

The idea of a moral rule being "inherent in the meaning" of a word is one which Steiner articulates more fully in ER.⁵¹ It nevertheless raises questions about the basis upon which a particular meaning is decided to command authority over other meanings, and how anything can be said to inhere in the meaning of a term. It will be important to examine in chapters two and three the question of how linguistic intuitions differ from and relate to moral intuitions.

b. Competing Liberalisms: Rawls, Nozick and Steiner

ER can also be understood as a response to two formidable works of political theory which appeared in the 1970s. John Rawls's *A Theory of Justice* (1971) marked a renaissance for the tradition of grand treatise-writing in the mould of Hobbes and Locke.⁵² Rawls deduces two "just principles" from a hypothetical rational-choice situation which he terms the "original position".⁵³ These are the "equal liberty" principle and the "difference" principle. Rawls claims that a rational person would opt for these principles if they were choosing from behind a "veil of ignorance", which concealed knowledge of their social position. In *Political Liberalism* (1993), Rawls defines the equal liberty principle as follows:

⁵⁰ Hart, "Natural Rights," 190. My emphasis.

⁵¹ ER 3-4: "it's simply untrue that exploring the meaning of words can furnish little assistance in assessing these competing theories"

⁵² John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1971).

⁵³ Rawls, *Theory*, 17-22.

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all.⁵⁴

This principle is similar to that advanced in Hart's 1958 essay on natural rights, and is also similar to the harm principle articulated by John Stuart Mill in *On Liberty*: "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others".⁵⁵ Second, Rawls specifies the difference principle:

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.⁵⁶

Rawls advocates both the limitation and redistribution of wealth, in the sense that societies combining lower levels of relative inequality with higher levels of wealth amongst the least advantaged are to be favoured over more collectively wealthy but less equal societies.⁵⁷

Robert Nozick's *Anarchy, State and Utopia* (1974) is in many ways a response to Rawls's *Theory of Justice*.⁵⁸ Nozick defends a minimal conception of the state (but rejects an "ultra-minimal" conception of the state, which he advances and discounts).⁵⁹ The role of the minimal state is "limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and

⁵⁴ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 5. See also Rawls, *Theory*, 195-257; Julian Lamont and Christi Favor, "Distributive Justice," *Stanford Encyclopedia of Philosophy* (2007). Accessed October 23, 2012. <http://plato.stanford.edu/entries/justice-distributive>.

⁵⁵ Mill, *On Liberty*.

⁵⁶ Rawls, *Political Liberalism*, 6. See also Rawls, *Theory*, 75-83.

⁵⁷ Rawls reiterated these principles throughout his career. See Rawls, *Political Liberalism*, 5-6; *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge MA: Harvard University Press, 2001), 42-43.

⁵⁸ Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).

⁵⁹ Nozick, *Anarchy*, 26-33; 113-115.

so on”.⁶⁰ One of Nozick’s best-known and most important claims is that “[w]hatever arises from a just situation by just steps is itself just”.⁶¹ Rawls replies in *The Law of Peoples* that, on the contrary, the accumulation of inequalities created in just transfers creates unjust inequalities in persons’ property and position.⁶²

Steiner’s relation to this debate between the positions of Rawls and Nozick is not straightforward. Ian Carter describes Steiner as an “unorthodox libertarian”, in that he holds to a more austere, physicalist account of negative freedom than earlier libertarians like Nozick and Friedrich Hayek.⁶³ (I analyse and critique Steiner’s “pure negative concept of liberty” in chapters two and three.) However, Steiner also advocates “just redistributions” to restore equal shares of initially unowned natural resources. This is in contrast with the sort of redistribution advocated by Rawls: he argues that injustices will develop even as side-effects of just transfers made from a situation of initial equality. The scope of Steiner’s redistributions, or “redress transfers”, is also global, rather than being limited to particular political societies.

Steiner’s basis for this is not to be found in a refutation of Nozick’s principle that “[w]hatever arises from a just situation by just steps is itself just”. Rather, Steiner identifies two different challenges to right-libertarian positions such as Nozick’s. First, he queries how a libertarian position like Nozick’s can justify inequalities in the *original* distribution of holdings in a society: i.e. how

⁶⁰ Nozick, *Anarchy*, ix. See also Jonathan Wolff, *Robert Nozick: Property, Justice, and the Minimal State* (Stanford: Stanford University Press, 1991), ch. 3.

⁶¹ Nozick, *Anarchy*, 151.

⁶² John Rawls, *The Law of Peoples* (Cambridge MA: Harvard University Press, 1999), 49. “Without institutions [...] excessive and unreasonable inequalities tend to develop.”

⁶³ Friedrich A. Hayek, *The Road to Serfdom* (London and New York: Routledge, 2001 [1944]); *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960).

there can be some (whom Steiner calls “over-appropriators”) who historically appropriated more initially unowned things than others. An initially *unequal* distribution of natural resources, caused by an unequal pattern of appropriation, would lead to unjust inequalities in the present. Thus Steiner argues for two “original rights”: to the ownership of one’s own body (self-ownership), and to an equal share of the value of initially unowned natural resources.⁶⁴ Second, he disputes the right-libertarian account of what transfers can be considered just. Unconventionally amongst libertarians, Steiner denies that there exists a right of bequest. This is one of the most distinctive aspects of “left-libertarianism”.⁶⁵ He accepts, however, that while they are still alive a person may transfer their estate to others (presuming that the person in question has a vindicable moral entitlement to the estate that they wish to transfer).⁶⁶

c. Critics of Contemporary Liberalism

There are critics of the contemporary liberal-libertarian consensus within political theory. For example, in *Liberalism and the Limits of Justice* (1982), Michael Sandel argues that liberalism ultimately cannot operate without committing to some substantive position about the good life.⁶⁷ In contrast to the “discontinuous” justice theories of Rawls and Steiner, which propose ways of separating the right from the good, Sandel’s view is a “continuous” theory of justice: it regards the principle of justice as itself entailing substantive claims about the nature of the

⁶⁴ ER 229-265

⁶⁵ See Hillel Steiner and Peter Vallentyne, eds: *Left-Libertarianism and its Critics* (Basingstoke and New York: Palgrave, 2000).

⁶⁶ ER 266-282

⁶⁷ Michael Sandel, *Liberalism and the Limits of Justice*, 2nd ed. (Cambridge: Cambridge University Press, 1998 [1982]).

good.⁶⁸ This is a problem for liberalism, Sandel argues, since its attraction, both theoretically and politically, is that it accommodates diversity of value.⁶⁹

The problems raised by the discontinuous strategy are also apparent in Rawls's *Political Liberalism* (1993). In this work Rawls attempts to address the communitarian critique of *A Theory of Justice* by theorizing politics as a realm of "overlapping consensus" from which individuals must exclude aspects of their personal beliefs ("comprehensive doctrines") which are incompatible with consensus-based public reason.⁷⁰ Amartya Sen has taken a different approach to managing the diversity of value within societies. In *The Idea of Justice* (2009), Sen writes that his "aim is to clarify how we can proceed to address questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice".⁷¹ This is in contrast to Steiner's "disarming apologies" in the introduction to ER, where he emphasises that "[u]nedifying gallops, from fragmentary moral convictions to full-blown institutional and policy prescriptions, can be avoided only through preliminary conceptual analysis".⁷²

⁶⁸ See Ronald Dworkin, "Foundations of Liberal Equality," in *The Tanner Lectures on Human Values* 11, ed. Grethe B. Peterson (Salt Lake City: University of Utah Press, 1990), 16-22.

⁶⁹ Sandel, *Limits*, 206.

⁷⁰ See Sandel, *Limits*; Alasdair MacIntyre, *After Virtue* (Notre Dame IN: University of Notre Dame Press, 1981); Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame IN: University of Notre Dame Press, 1988); Rawls, *Political Liberalism*, 212-254.

⁷¹ Amartya Sen, *The Idea of Justice* (Cambridge MA: Belknap Press/Harvard University Press, 2009), ix.

⁷² ER 3

1.3.2. Critical Responses to Steiner

The reception of Steiner's ER indicates the importance of his contribution to contemporary political theory. He won the Political Studies Association's Best Book prize for the year of ER's publication, and the work prompted a number of scholarly responses. One of the first was from Peter Jones (1995), who reviewed ER alongside Rawls's *Political Liberalism*.⁷³ Jones raised a number of critical questions, to which Steiner subsequently published a short reply article.⁷⁴

a. Self-Ownership

Jones highlights Steiner's approach to language, and notes in particular his method of allowing analytic arguments to settle substantive questions: for example, allowing a conceptual analysis of the term "right" to settle the substantive moral issue of bequest.⁷⁵ Jones suggests that, even if it were to be conceded that the language of rights is not properly applicable to bequest, it may be that morally we still "have an overriding duty to respect the wishes of the dead in disposing of their estates".⁷⁶ Jones doubts that the analysis of linguistic intuitions alone can speak with sufficient philosophical authority to support persuasive normative conclusions.⁷⁷

Jones also responds to Steiner's unconventional modifications to the usual account of self-ownership.⁷⁸ Steiner argues that, although parents do not have full

⁷³ Jones, "Two Conceptions."

⁷⁴ Hillel Steiner, "Two Comments on 'Two Conceptions of Liberalism'," *British Journal of Political Science* 26/1 (January 1996): 140-142.

⁷⁵ Jones, "Two Conceptions," 541.

⁷⁶ Jones, "Two Conceptions," 541.

⁷⁷ Jones, "Two Conceptions," 544.

⁷⁸ Jones, "Two Conceptions," 542-544.

liberal ownership of their offspring, they do have “encumbered” ownership of them.⁷⁹ He makes a historical and evolutionary argument for this, on the basis that the germ-line genetic material from which human beings evolved predates the human race, and is therefore a natural resource to which all have an equal original right. Jones is sceptical about the reasoning that leads Steiner to a theory of rights in which the protection of children’s interests is but a legal convention, and in which self-ownership is compromised by the fact that everyone has a small stake in each other’s bodies.⁸⁰ Jones concludes that this approach to the self risks defeating ER as a theory of rights, stating that “[o]nce we start disintegrating the self, we begin to threaten the very notion of self-ownership and the liberal character of a moral theory based upon it”.⁸¹ In Steiner’s reply to Jones, he emphasises that “it is the parents of the fortunately endowed who must transfer to the parents of the less fortunately endowed”. This, Steiner explains, implies no limitation on the right of self-ownership,⁸² since persons become full self-owners at the age of majority. (I return to Jones’s criticisms of Steiner in chapter two.)

In a recent collection of essays on Steiner’s work, *Hillel Steiner and The Anatomy of Justice* (2009), Michael Otsuka presents a more developed version of Jones’s objection.⁸³ In “Owning Persons, Places and Things”, Otsuka writes that

Steiner’s argument that parents do not fully own the adult child that arises from the zygote they plant in the mother’s uterine wall is undermined by his commitment to the claim that one can

⁷⁹ ER 246-248

⁸⁰ Jones, “Two Conceptions,” 533, 543.

⁸¹ Jones, “Two Conceptions,” 543. The issues of the integrity of persons’ mind and body is thematic in Benedict Spinoza, *Ethics*, trans. Robert H.M. Elwes (Project Gutenberg, 2001 [1901]), pt. 2. Accessed April 22, 2013. <http://www.gutenberg.org/files/3800/3800-h/3800-h.htm>.

⁸² Steiner, “Two Comments,” 141.

⁸³ Michael Otsuka, “Owning Places, Persons and Things,” in AJ, 132-144.

fully own the fully-grown tree that arises from an acorn that one plants on soil one owns.⁸⁴

Otsuka argues that many actions which are typically prohibited in an arrangement of basic rights, such as the issuing of threats to kill, do not on Steiner's argument amount to a "boundary-crossing" or violation of self-ownership (although acting on such threats clearly would). Otsuka thus queries the physicalist boundaries of self-ownership established by Steiner, and questions whether self-ownership can do all of the work that Steiner requires in order to explain permissible and impermissible action.⁸⁵

b. Respect for Persons

Ian Carter addresses another theme of this thesis in his chapter "Respect for Persons and the Interest in Freedom" in AJ.⁸⁶ Carter notes that Steiner's philosophy is explicitly built on a Kantian principle of "respect for persons", citing ER: "[it] is generally interpreted as requiring one to respect the agency of others by performing no action that subordinates their sets of purposes to one's own".⁸⁷ He also notes that in ER and other works, Steiner

almost wholly ignores the question of whether and, if so, why, freedom should be thought of as a good thing, either for those who possess it or for the society they live in or for any other individual or group.⁸⁸

Carter also argues that Steiner's "law of conservation of liberty" (LCL) fails. Since the amount of liberty can, Carter claims, increase and decrease, it is necessary to

⁸⁴ Otsuka, "Owning Places," 133.

⁸⁵ Otsuka, "Owning Places," 140-142.

⁸⁶ Ian Carter, "Respect for Persons and the Interest in Freedom," in AJ, 167-184.

⁸⁷ ER 221

⁸⁸ Carter, "Respect for Persons," 168.

explain whether, and if so, why, more freedom for persons is better than less.

Carter maintains that this inevitably means recognising the value of freedom for persons:

[The] deduction of the equal liberty principle from the ideal of respect for persons is valid even if LCL is not, and that such a deduction can be combined with an appeal to the non-specific value of freedom.⁸⁹

In chapter three, I defend Steiner against some existing criticisms of LCL, and also make a number of new ones. Carter draws on Darwall's ideas of "recognition respect" and respect for "moral personality", which are also explored by Thomas E. Hill.⁹⁰ Darwall's account of the "second-person standpoint" is also an important point of thematic connection between Levinas and empirical philosophy, as I illustrate in the concluding chapters of this thesis.⁹¹

c. Consistency, Compossibility, and the Rights of Non-Agents

Cécile Fabre explores another theme in AJ, in an article on Steiner entitled "Preconception Rights".⁹² Fabre endorses Steiner's choice theory argument, and argues that children, the severely disabled, and the comatose cannot be accommodated within the choice theory of rights. Anna-Karin Andersson also explores this theme in a doctoral thesis which critiques Steiner and other

⁸⁹ Carter, "Respect for Persons," 175.

⁹⁰ Carter, "Respect for Persons," 175. See also Darwall, *Second Person Standpoint*, 119-150, and Thomas E. Hill Jr., *Respect, Pluralism, and Justice: Kantian Perspectives* (Oxford: Oxford University Press, 2000), 9-56.

⁹¹ See Michael D. Barber, "Autonomy, Reciprocity, and Responsibility: Darwall and Levinas on the Second Person," *International Journal of Philosophical Studies* 16/5 (2008): 629-644.

⁹² Cecile Fabre, "Preconception Rights," in AJ, 53-69.

libertarian positions.⁹³ Contrary to Steiner and Fabre, Andersson argues that, if moral agency is a prerequisite for holding rights, then a being's potential to become a moral agent is relevant to their status in respect of justice. On this basis, Andersson argues that abortion is morally impermissible on libertarian grounds, since it involves violating the basic rights of another potential person. The status of children and the unborn is an important case study in the constraints of Steiner's theory, and of approaches to justice more generally. I return to it in chapters three and six.

Matthew H. Kramer contributes an essay to AJ which challenges Steiner's method.⁹⁴ Of all the criticisms mounted against Steiner in *Anatomy*, Kramer's is perhaps the most radical, in that he attempts to undermine what he believes to be Steiner's theoretical bedrock, the "Permissibility Theorem" (or what I call the "consistency principle"). He argues, unequivocally, that

[l]ogical consistency is obviously a key desideratum for any theory. However, that desideratum cannot bear the weight that Steiner places on it [...] it is decidedly not sufficient in itself as a basis for selecting among rival theories [...] Steiner's methodology is to be rejected comprehensively.⁹⁵

Kramer claims both that serious systematic inconsistency or theoretical incoherence is not so commonplace amongst theories of justice as Steiner implies, and that, in any case such, inconsistency is not necessarily as serious a problem as Steiner suggests. This is important, as it means that the function of the consistency principle as a "filter" of incoherent theories is potentially weakened. It is a fact of life, Kramer suggests, that people take upon themselves mutually

⁹³ Anna-Karin Andersson, "Libertarianism and Potential Agents: A Libertarian View of the Moral Rights of Foetuses and Children," *Stockholm Studies in Political Science* 30 (Stockholm: Stockholm University, 2007).

⁹⁴ Kramer, "Consistency," 201-213.

⁹⁵ Kramer, "Consistency," 201, 211-212.

impossible duties, and that courts of justice are indeed called upon to arbitrate in such cases.⁹⁶ Kramer gives the example of a person who has contractually committed to be in two places at the same time. In his reply to that article, Steiner accepts that “[c]oherent sets of normative statements — or what I more simply call codes — can, without contradiction, generate duty-conflicts”.⁹⁷ However, he disputes that this has any serious repercussions for his theory, since compossibility remains a necessary condition of a set of rights, even if it is not a requirement of a person’s moral code. He maintains:

it’s plain that duty-conflicts are a Bad Thing and that leaving conceptual space for their occurrence is best avoided in the construction of any theory of duties. But, more than that, it seems reasonable to suppose that most persons would regard codes that generate duty-conflicts as being, in some clear sense, deficient.⁹⁸

As will become clear in the chapters which follow, the role of consistency and compossibility as axioms of Steiner’s conception of rights is his key philosophical connection to Levinas. For Levinas, justice is the very attitude that regards others as equal, and institutes the ethical possibility of consistency between them. I now turn to examine the context of his philosophy.⁹⁹

⁹⁶ Kramer, “Consistency,” 203-204.

⁹⁷ Steiner, “Responses,” 237.

⁹⁸ Steiner, “Responses,” 237.

⁹⁹ There are, of course, further important contributions to the critical reception of Steiner’s work. Cohen, Raz, and Wolff each contributes an essay to *AJ* on the value of equality. See G.A. Cohen, “Fairness and Legitimacy in Justice,” in *AJ*, 3-21; Joseph Raz, “On the Value of Distributional Equality,” in *AJ*, 22-33; Jonathan Wolff, “Global Justice and Norms of Cooperation,” in *AJ*, 34-52. Stephen de Wijze also comments upon Steiner’s one-time engagement with the question of how to understand the concept of evil within an empirical account of morality and rights. This discussion is marginal to my analysis of Steiner, but nevertheless illustrates the difficulty of accounting for the full range of moral concepts within an empirical approach. See Stephen de Wijze, “Recalibrating Steiner on Evil,” in *AJ*, 214-234.

1.3.3. Levinas in Philosophical Context

In this section I explore the background to Levinas's work. I first examine Levinas's philosophical relationship to Husserl's phenomenology, and then situate Levinas within the context both of other philosophers, and of his wider output.

a. Husserl's Phenomenology

Levinas's early studies were with Edmund Husserl (1859-1938), who is often regarded as the father of modern phenomenology.¹⁰⁰ I examine Husserl's philosophy in some detail here, as a grasp of it is essential for the analysis which follows. Before Husserl turned to specifically philosophical concerns, he studied mathematics and logic. His contemporary Gottlob Frege (1848-1925) shared this mathematical background, and is widely regarded as an important founding figure in what became known as analytic philosophy. Indeed, it is interesting to note that, in the early 1890s, Frege and Husserl are both very much on the empirical side of the empirical-transcendental divide, which I described earlier. As Smith and Woodruff Smith note, Husserl articulated a distinction between sense and reference in 1891, a year before Frege's famous essay of 1892.¹⁰¹

¹⁰⁰ See Dermot Moran, *Introduction to Phenomenology* (London: Routledge, 2000), ch. 2-5.

¹⁰¹ Gottlob Frege, "On Sense and Reference," in *Meaning and Reference*, ed. Adrian W. Moore (Oxford: Oxford University Press (1993 [1892])), 23-42. See also Barry Smith and David Woodruff Smith, introduction to *The Cambridge Companion to Husserl*, ed. Barry Smith and David Woodruff Smith (Cambridge: Cambridge University Press, 1995), 18; and Jihendra Nath Mohanty, "Husserl and Frege: A New Look at their Relationship," *Research in Phenomenology* 4/1 (1974): 51-62. Husserl employed different terminology from Frege and, upon reading Frege's essay, remarked that establishing a technical difference between the German word "Sinn" and "Bedeutung" was dubious on account of their synonymy in ordinary language. See Peter Simons, "Meaning and Language," in *The Cambridge Companion to Husserl*, ed. Barry Smith and David Woodruff Smith, 112-113.

Levinas's 1964 essay "Meaning and Sense" also echoes Frege and Husserl: "The Desire for the Other, which we live in the most ordinary social experience, is the fundamental movement, a pure transport, an absolute orientation, sense. In all its analyses of language

[cont'd]

Christian Beyer explains that Husserl became “interested in developing a general theory of inferential systems, which [...] he conceived of as a theory of science”.¹⁰² Moran agrees that, like Merleau-Ponty later on, “Husserl thought of [phenomenology] as supporting and clarifying science in its fullest sense”.¹⁰³ For Husserl, phenomenology is “conceived of as a science of the essential structures of pure consciousness”, as a “science of science”.¹⁰⁴

Husserl understands phenomenology as the exploration of the conceptual foundations required for any kind of knowing or cognising, without invoking or grappling with traditional philosophical theories or positions.¹⁰⁵

Husserl is concerned that the foundational assumptions governing scientific method should be fully articulated for what they are; that the manner in which the pretheoretical intuitions of science arise in consciousness should be described fully and precisely. Husserl had become dissatisfied with the psychologism of Brentano,¹⁰⁶ believing the location of logical laws in human psychology to be

cont’d]

contemporary philosophy insists, and indeed rightly, on its hermeneutical structure and on the cultural effort of the incarnate being that expresses itself. Has a third dimension not been forgotten; the direction toward the Other who is not only the collaborator and the neighbour of our cultural work of expression or the client of our artistic production, but the interlocutor, he to whom expression expresses, for whom celebration celebrates, both term of an orientation and primary signification?” Emmanuel Levinas, “Meaning and Sense,” in *Emmanuel Levinas: Basic Philosophical Writings*, ed. Peperzak et al., 52.

¹⁰² Christian Beyer, “Edmund Husserl,” *Stanford Encyclopedia of Philosophy* (2007). Accessed January 31, 2010. <http://plato.stanford.edu/entries/husserl/>.

¹⁰³ Moran, *Introduction*, 14; Dermot Moran, “Husserl’s Transcendental Philosophy and the Critique of Naturalism,” *Continental Philosophy Review* 41/4 (2008): 401-425. See also Maurice Merleau-Ponty, *The Phenomenology of Perception*, trans. Colin Smith (Abingdon and New York: Routledge, 2002 [1945]), 3-14.

¹⁰⁴ Moran, *Introduction*, 60.

¹⁰⁵ Moran, *Introduction*, 92.

¹⁰⁶ See Franz Brentano, *Psychology from an Empirical Standpoint*, ed. Linda L. McAlister (London: Routledge, 1995 [1874]).

mistaken.¹⁰⁷ Frege shared a variation of this view.¹⁰⁸ Having rejected psychologism, Husserl requires a new way of accounting for logic, and phenomenology is his response.

It is important to note that Husserl does not conceive of phenomenology as a form of skepticism; the appearance of skepticism created by digging beneath the surface integrity of the natural sciences' empirical methods is, in Husserl's judgement, an authentic analytical step which separates the deductive use of a logical law from the understanding and description of the laws that themselves govern logic.¹⁰⁹ Indeed, Husserl holds that philosophical skepticism is systematically self-contradictory.¹¹⁰ To doubt my own existence as a thinking being would be to presuppose and require in my doubting the very thinking being that I doubt. Husserl offers, in effect, a more rigorous statement of Descartes' "I

¹⁰⁷ Husserl outlines problems with psychologism in vol. 1 of *Logical Investigations*, trans. John N. Findlay, ed. Dermot Moran (London: Routledge, 2001 [1900/1913]), 40-69 (ch. 3-5).

¹⁰⁸ John Aach presents an approachable summary and critique of the arguments of Husserl and Frege against psychologism. See John Aach, "Psychologism Reconsidered: A Re-Evaluation of the Arguments of Frege and Husserl," *Synthese* 85 (1990): 315-338. See also Dan Zahavi's essay on answering phenomenological questions with naturalised psychological solutions. Dan Zahavi, "Naturalized Phenomenology," in *Handbook of Phenomenology and Cognitive Science*, ed. Shaun Gallagher and Daniel Schmicking (Dordrecht: Springer, 2010), 3-19; and Smith, "Transcendental Intersubjectivity," 91-111.

¹⁰⁹ See Edmund Husserl, "Philosophy as a Rigorous Science," in *Phenomenology and the Crisis of Philosophy*, trans. Quentin Lauer (New York: Harper & Row, 1965), 71-147. For a discussion of whether Husserl's philosophy should be considered a form of skepticism, see Abraham D. Stone, "On Husserl and Cavellian Scepticism," *The Philosophical Quarterly* 50/198 (January 2000), 1-21; James P. Moreland, "Was Husserl a Nominalist?" *Philosophy and Phenomenological Research* 49/4 (June 1989): 661-674.

Such questions are sometimes prompted by Husserl's use of "epochē" ("bracketing", or "suspension") as part of his method of phenomenological reduction. Epochē was used by Pyrrho (c. 360-c. 270 BCE) and subsequent exponents of Pyrrhonian skepticism. However, see Richard Bett's account of Pyrrho as a "non-sceptic": Pyrrho, *his Antecedents, and his Legacy* (Oxford: Oxford University Press, 2003), 14-62.

¹¹⁰ See Husserl, "Psychologism as a Sceptical Relativism," in vol. 1 of *Logical Investigations*, 75-100 (ch. 7).

think, therefore I am”, which also claims the necessity of existence.¹¹¹ As Richard Tieszen puts it, skepticism involves holding a theory which claims the essential conceptual conditions for that theory are invalid or non-existent.¹¹² Levinas, who expresses both continuity and discontinuity with phenomenological method, states that “scepticism [...] always returns as philosophy’s illegitimate child”.¹¹³ The question of whether Husserl would regard Levinas as producing valid philosophy is, therefore, important, and I return to it in chapter five.

Husserl’s approach is to strip back the accumulated layers of conceptualization at work in everyday human experience to the point where we can remove no more layers without lapsing into skeptical self-contradiction. By planing down our lived experience to its essential components in consciousness, Husserl believes, we will permit the description of our most basic and self-evident intuitions as they arise in consciousness without the distortion of everyday reasoning and ordinary experience. Husserl describes this method as the “phenomenological reduction” or “epochē”.¹¹⁴ Using this technique, an experience is treated as an object of study, and under the phenomenological reduction all “thetic”, veridical or truth-assigning assumptions about the experience are bracketed off or suspended. The aim of this process is to allow description of the experience itself down to its most basic components in intuition.

This is an immensely challenging task, since these constraints reduce the kinds of experience admissible to philosophical examination. Phenomenology is

¹¹¹ René Descartes, *Meditations on First Philosophy*, rev. ed., trans. Desmond M. Clarke (London: Penguin, 2000 [1641]), 23-30 (second meditation): “cogito ergo sum”.

¹¹² Richard Tieszen, “Mathematics,” in *The Cambridge Companion to Husserl*, ed. Barry C. Smith and David Woodruff Smith (Cambridge: Cambridge University Press, 1995), 449.

¹¹³ OB 43. Translation altered. See also Lingis, translator’s introduction to OB, xxxvi-xxxix.

¹¹⁴ Edmund Husserl, vol. 1 of *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, trans. Fred Kersten (Dordrecht: Kluwer Academic, 1983 [1913]), 131-146 (pt. 2, ch. 4; §§56-62).

the method Husserl offers: a way of describing the most essential and irreducible units of my experience exactly as they appear to me in consciousness. Through such descriptions, Husserl hopes to account for my entire apparatus of experiential intuition, meaning-bestowal and meaning-fulfillment.¹¹⁵

Husserl names my ordinary mode of experiencing the world — my situation within a conscious, time-governed, social life — the “natural attitude”.¹¹⁶ He regards naturalism as a systematic epistemic endorsement of this attitude; naturalism presents the ordinary experience of a physical spatio-temporal world as a reliable or essential way of obtaining knowledge. For Husserl, naturalism

sees only nature, and primarily physical nature. Whatever is either itself physical, belonging to the unified totality of physical nature, or it is in fact psychical, but then merely as a variable dependent on the physical, at best a secondary “parallel accomplishment”. Whatever belongs to psychophysical nature, which is to say that it is univocally determined by rigid laws.¹¹⁷

Husserl rejects naturalism alongside psychologism. As he suggests in this passage, they are one and the same in that they conflate the physical world with the mode of its apprehension in consciousness, and its constitution as a world in which life is lived. Moran remarks that “naturalism has again become a very central concept primarily in contemporary analytic philosophy, largely due to W.V.O. Quine’s call for a *naturalised epistemology*”.¹¹⁸ Levinas concisely summarises the distinction of phenomenology as naturalism in *The Theory of Intuition*:

Both phenomenology and psychology study one and the same consciousness. However, the meaning of the two sciences is

¹¹⁵ Edmund Husserl, *The Crisis of European Sciences and Transcendental Phenomenology*, trans. David Carr (Evanston IL: Northwestern University Press, 1970 [1954]), 167-170 (pt. 3; §49).

¹¹⁶ Husserl, vol. 1 of *Ideas*, 51-104 (pt. 2, ch. 1-2; §§27-46).

¹¹⁷ Husserl, “Rigorous Science.”

¹¹⁸ Moran, *Introduction to Phenomenology*, 142-143. Original emphasis.

different: one is philosophy and studies pure consciousness, the other is psychology and studies a “naturalized” consciousness.¹¹⁹

It is Husserl’s rejection of naturalism that marks his decisive deviation from empirical philosophy, and characterises the key constraint on phenomenological method.¹²⁰

b. Wider Philosophy and Literature

Throughout TI and OB, Levinas also draws on the work of a large number of other major figures in western philosophy. He usually does so, however, without making explicit or formal reference to particular works or sections; instead, his technique is to make allusive and thematic references. In chapter four, I address the reasons for this, which concern Levinas’s conception of language and the resulting composition of his texts.¹²¹ One exception to this pattern is Franz Rosenzweig, whose influence upon the composition of TI Levinas hymns in that work’s preface.¹²² He praises Rosenzweig’s “opposition to the idea of totality” in *The Star*

¹¹⁹ TIHP 145

¹²⁰ See also W.V.O. Quine, “Epistemology Naturalized,” in *Ontological Relativity and Other Essays* (New York: Columbia University Press, 1969), 69-90.

¹²¹ In TI, for example, Levinas refers to Husserl and Heidegger throughout. Other references include Parmenides (50, 102-104), Socrates (43, 48, 191), Aristotle (especially 38, 49, 80), Plato (*passim*), Descartes (*passim*, especially 25, 48-49, 210), Spinoza (119), Berkeley (44, 52), Kant (*passim*, especially 135-136), Hegel (*passim*), Kierkegaard (40, 305), Freud (176, 272, 276), Rosenzweig (28), Buber (68-69), Bergson (218), Marcel (68), and Merleau-Ponty (11-12, 19, 205, 207).

¹²² TI 28: “Rosenzweig’s *Stern der Erlösung*, a work too often present in this book to be cited.” TeI 14: “*Le Stern der Erlösung* de Franz Rosenzweig, trop souvent présent dans ce livre pour être cité.” The attentive reader will note a faint critique of ontology already present in this prefatory sentence. Levinas suggests the potential for a text to assimilate its most important external influences, and to re-present them as already-given, self-evident, or common-sense. See Andrew Wilshire, “The Gift of Improvisation: Music, Liturgy and Time in Franz Rosenzweig’s *The Star of Redemption*,” master’s thesis, University of Manchester, 2007.

of *Redemption*,¹²³ a work which opens with the words “In philosophos!” (“To/against philosophers”).¹²⁴

The influence of Martin Heidegger is also felt throughout Levinas’s works.¹²⁵ Levinas struggled in the wake of Heidegger’s complicity in the Third Reich, and, following the war, the suspicions about his anti-semitism.¹²⁶ Levinas writes that “[o]ne can forgive many Germans, but there are some Germans it is difficult to forgive. It is difficult to forgive Heidegger”.¹²⁷ Levinas also frequently connects the themes of Heidegger’s life to those of his philosophy:¹²⁸ Heidegger’s personal political and ethical failings were mirrored by a flawed phenomenology, which he characterised as “obedience to Being”, affirming “the primacy of freedom over ethics”.¹²⁹ Rather than possessing freedom, for Heidegger man is possessed by it.¹³⁰ It is perhaps only in understanding both of these routes into the question of the Other — Husserl’s formal, phenomenological one, and Heidegger’s

¹²³ TI 28; TeI 14.

¹²⁴ Franz Rosenzweig, *The Star of Redemption*, trans. William Hallo (Notre Dame: University of Notre Dame Press, 1985 [1921]), 3.

¹²⁵ See Emmanuel Levinas, “Martin Heidegger and Ontology,” *Diacritics* 26/1 (Spring 1996): 11-32; *Discovering Existence with Husserl*, trans. Richard A. Cohen and Michael B. Smith (Evanston IL: Northwestern University Press, 1998 [1949]). Hereafter abbreviated to DEH; *En Découvrant l’Existence avec Husserl et Heidegger* (Paris: Librairie Philosophique J. Vrin, 2002 [1949]), ch. 10-11. Hereafter abbreviated to DEHH. See also Joanna Hodge, “Ethics and Time: Lévinas Between Kant and Husserl,” *Diacritics* 32/3-4 (Fall-Winter 2000): 107-134.

¹²⁶ See Thomas Sheehan, “A Normal Nazi,” *New York Review of Books* (January 14, 1993); Thomas Sheehan, “Is Heidegger Anti-Semitic?” in *Martin Heidegger: Between Good and Evil*, by Rüdiger Safranski, trans. Ewald Osers (Cambridge MA: Harvard University Press, 1999), ch. 14.

¹²⁷ Emmanuel Levinas, *Nine Talmudic Readings*, trans. Annette Aronowicz (Bloomington IN: Indiana University Press, 1990), 25.

¹²⁸ TI 89: “We [...] are also radically opposed to Heidegger, who subordinates the relation with the Other to ontology”; TeI 88-89: “Nous nous opposons [...] radicalement aussi à Heidegger qui subordonne à l’ontologie le rapport avec Autrui”. Translation altered.

¹²⁹ TI 45; TeI 36.

¹³⁰ TI 45, 68; TeI 36, 63-64.

ethical failure with respect to the Jewish other — that Levinas's task can be properly appreciated.

There is also much to say about Buber, Kierkegaard, Hegel, and about the exchanges that Levinas had with Blanchot, Ricoeur and Derrida during his lifetime. His essays on many of these figures are collected in *Proper Names*.¹³¹ In his lifetime, particularly during his later years, Levinas was a public face of philosophy in France, regularly giving interviews radio and television interviews.¹³² He also wrote essays on Judaism, and commentaries upon Jewish texts; however, I focus in this thesis on his core philosophical works, for reasons I explain presently.¹³³ Levinas is also notable for his engagement with literary works, in particular those by Proust and Dostoevsky.¹³⁴

¹³¹ Levinas, *Proper Names*, includes essays on Martin Buber, Paul Celan, Jacques Derrida, Søren Kierkegaard, Jean Lacroix, Max Picard, Jean Wahl, and Maurice Blanchot, amongst others.

¹³² For transcripts of some interviews, see Emmanuel Levinas, *Éthique et Infini: Dialogues avec Philippe Nemo* (Paris: Fayard/Culture France, 1982); Emmanuel Levinas, *Ethics and Infinity: Conversations with Philippe Nemo* (Pittsburgh PA: Duquesne, 1985); Michaël de Saint Cheron, *Entretiens avec Emmanuel Levinas 1983-1994*, rev. ed. (Paris: Librairie Générale Française, 2010).

¹³³ See Emmanuel Levinas, *Difficult Freedom: Essays on Judaism*, trans Seán Hand (London: Athlone Press, 1990 [1963]); *Difficile Liberté: Essais sur le Judaïsme*. 3rd ed. Paris: Éditions Albin Michel, 1976 [1963]. See below, p. 262, for a list of Levinas's works on Judaism and Jewish texts.

¹³⁴ Emmanuel Levinas, "The Other in Proust," in *Proper Names*, trans. Michael B. Smith (London: Athlone Press, 1996), 99-105. See also Alan Toumayan, "I More Than the Others': Dostoevsky and Levinas," *Yale French Studies* 104, ed. Thomas Trezise (2004): 55-66. Peter Fifield has recently engaged with Levinas's treatment of literature by undertaking a Levinasian reading of the work of Samuel Beckett, noting Levinas's "hostility to literature", and his generally critical attitude towards literary works. See Peter Fifield, *Late Modernist Style in Samuel Beckett and Emmanuel Levinas* (New York: Palgrave Macmillan, 2013). Janine Utell also reads James Joyce through Levinas's philosophy in *James Joyce and the Revolt of Love* (New York: Palgrave Macmillan, 2010).

1.3.4. Critical Responses to Levinas

There is a substantial body of scholarly work devoted to the interpretation, analysis, and understanding of Levinas's general philosophy. I am indebted to the contributions of many authors whose work cannot be extensively discussed here.¹³⁵ I focus on those works of scholarship which have a direct bearing on the concerns of this thesis: language, politics, gender, selfhood, and personhood. These themes form the backdrop for engaging Levinas's philosophy with that of Steiner in the chapters that follow.

a. Language

There are two senses in which language is an important topic in the analysis of Levinas's work. First, language not only is a tool for expressing philosophical ideas, but also constitutes a philosophical problem in its own right. Over the past century, language has become an important topic in dispute across all approaches

¹³⁵ The growth in scholarly attention to Levinas's philosophy has been rapid, particularly since his death in 1995. Important interpretative works on Levinas include: Edith Wyschogrod, *Emmanuel Levinas: The Problem of Ethical Metaphysics*, 2nd ed (New York: Fordham University Press, 2000); Simon Critchley and Robert Bernasconi, eds, *The Cambridge Companion to Levinas* (Cambridge: Cambridge University Press, 2002); Moran, "Emmanuel Levinas: The Phenomenology of Alterity," ch. 10 in *Introduction to Phenomenology* provides a concise exposition with some important critical perspectives; Richard A. Cohen, ed., *Face to Face with Lévinas* (New York: State University of New York Press, 1986); Adriaan Peperzak, *Beyond: The Philosophy of Emmanuel Levinas*. (Evanston IL: Northwestern University Press, 1997); Adriaan Peperzak, *To the Other: An Introduction to the Philosophy of Emmanuel Levinas* (West Lafayette: Purdue Research Foundation, 1993); John Llewelyn, *Emmanuel Levinas: The Genealogy of Ethics* (London: Routledge, 1995); Alphonso Lingis, introduction to *TI*; Bettina Bergo, "Emmanuel Levinas," *Stanford Encyclopedia of Philosophy* (2007), accessed January 31, 2010, <http://plato.stanford.edu/entries/levinas>; Seán Hand, introduction to *The Levinas Reader*; Simon Critchley and Robert Bernasconi, *Re-reading Levinas* (London: Continuum, 1991), focuses on postmodern re-readings of Levinas's philosophy; Bettina Bergo, preface to *Levinas Between Ethics and Politics* (Pittsburgh PA: Duquesne University Press, 2003), thoroughly reviews key works which appeared between 1998-2003.

to philosophy.¹³⁶ Second, as I explain in chapters four and five, Levinas disturbs language just enough for its instability to be witnessed. He seeks to show that language is not merely a systematic structure of reference, but is primordially a relationship of sharing and communication between the self and the Other. In language is not only reference, but also response, and responsibility. This creates the problem for Levinas of how to signify in *language* ideas which themselves challenge whether the coherence that language produces can be philosophically justified. He therefore distinguishes between “the saying” (“le Dire”) and “the said” (“le Dit”). On the one hand, the saying is what takes place in the face-to-face relation with the Other; it is direct communication between two beings. On the other hand, the said is the formal, rationalized, system of language examined by structuralism, and evident in books and dictionaries. In an early scholarly paper on Levinas and politics, Don Awerkamp discusses these aspects of Levinas’s treatment of language. Of the said and the saying (or as Awerkamp translates it, the “speaking”), he writes:

The speaker eludes definition and can never be made a content of the said to be shared in common. And yet the speaker is to be expressed. [...] To meet this problem, Levinas does not make the easy mistake of attempting to make the undefinability of language something which can be said. He does not attempt to define terms which could be used to make common this incommunicability. Rather he wishes to express that which cannot even be defined in the negative manner [...] he wishes to express the indefinable.¹³⁷

Levinas’s intention in distinguishing between the saying and the said is not to differentiate the *formal* differences between, for example, spoken and written

¹³⁶ See Richard Rorty, ed., *The Linguistic Turn: Recent Essays in Philosophical Method* (Chicago and London: University of Chicago Press, 1967).

¹³⁷ Don Awerkamp, *Emmanuel Levinas: Ethics and Politics* (New York: Revisionist Press, 1977), 4.

language. His argument is rather a metaphysical one: the said presupposes the relationship of addressing (the saying) in which language is instituted. Language is itself born of a need for communication, sharing, distribution, or as Levinas calls it, justice. To express in language that which language cannot express is the paradoxical constraint on Levinas's writing, and the reason for his unusual style and his reluctance to provide simple definitions of terms. Instead, he distributes definitions across terms so that they elude the stability to which definitions usually pretend. Regarding the achievements of Levinas's approach to language, Awerkamp remarks that

Levinas's accomplishment [...] does not lie in what he has said.
Perhaps it would be better to say that his accomplishment is in
pointing us beyond what he has said to that which cannot be said.
His accomplishment is what he has unsaid.¹³⁸

Another comparatively early response to Levinas's philosophy was Jacques Derrida's essay "Violence and Metaphysics" (1967).¹³⁹ The publication of this essay in Derrida's "annus mirabilis"¹⁴⁰ significantly raised Levinas's profile, and some of the shifts evident in OB are clearly responses to this essay.¹⁴¹ Derrida's essay can be read as a critique, or alternatively a deconstruction, of TI.¹⁴² Derrida takes Levinas to task for still depending on metaphysical terminology in a work which

¹³⁸ Awerkamp, *Ethics and Politics*, 5.

¹³⁹ Jacques Derrida, "Violence and Metaphysics," ch. 4 in *Writing and Difference* (London and New York: Routledge, 2001 [1967]), 97-192.

¹⁴⁰ Leonard Lawlor, "Jacques Derrida," *Stanford Encyclopedia of Philosophy* (2011). Accessed October 25, 2012. <http://plato.stanford.edu/entries/derrida>. For an exposition of Derrida's background in phenomenology, see also Leonard Lawlor, *Derrida and Husserl: The Basic Problem of Phenomenology* (Bloomington IN: Indiana University Press, 2002).

¹⁴¹ See Robert Bernasconi and Simon Critchley, editors' introduction to *Re-Reading Levinas*, xi-xviii, which addresses the question of how far OB can be read as a response to Derrida's "double reading" or deconstruction of TI in "Violence and Metaphysics". See also Emmanuel Levinas, "Wholly Otherwise," trans. Simon Critchley, in *Re-Reading Levinas*, eds. Critchley and Bernasconi, 3-10.

¹⁴² William P. Simmons also discusses Derrida's critique at some length in *An-archy and Justice* (Oxford: Lexington Books, 2003), 47-60.

attempts to subvert western metaphysics; terminology such as “interiority”, “exteriority”, “ontology”, and “being”. Derrida thus identifies the paradox of still having to use language — a formal system of thematization and representation — in order to articulate a philosophical argument which itself claims to undermine language’s very coherence. Derrida, of course, also faced this problem; he responded with a range of deconstruction techniques to break up the coherence of texts.¹⁴³

Levinas’s mode of writing in OB shifts to produce an enigmatic text which constantly unsays what it says. A number of other writers have also drawn attention to the greater problematization of language in OB, all making the similar point that OB moves further away from conventional metaphysical terminology, and that it seeks to disrupt the integrity of the individual terms that he does use, by establishing clouds or chains of terms. Seán Hand has even argued that the two editions of Levinas’s collection of essays *Difficult Freedom* serve as a deliberate attempt to disrupt the unity of that text. Levinas’s approach to language can be considered to operate, therefore, not only at the level of the text, but also at an inter-textual and meta-textual level.¹⁴⁴

¹⁴³ See, for example: Jacques Derrida, “Declarations of Independence,” *New Political Science* 7/1 (1986): 7-15; Jacques Derrida, *Glas* (Paris: Galilee, 1974).

¹⁴⁴ Seán Hand, “Taking Liberties: Re-situating *Difficile Liberté*”. Keynote paper, International Conference Readings of *Difficult Freedom*, University of Toulouse Le Mirail, July 9, 2010. Accessed October 24, 2012. A recording is available at http://www.akadem.org/sommaire/colloques/lectures-de-difficile-liberte/re-lire-difficile-liberte-08-11-2011-29002_4170.php.

b. Gender

In TO and TI Levinas invokes a concept of “the feminine”; he presents the most sustained account of it in a section entitled “Phenomenology of Eros” in TI.¹⁴⁵ This has proven to be one of the most contested topics amongst scholars of Levinas. It is of importance to this thesis not least because, as Claire Katz argues, Levinas’s account of the feminine may condition his overall philosophical argument; the feminine may even be “the condition for the possibility of the ethical”.¹⁴⁶ This issue has prompted an array of responses. Simone de Beauvoir’s was the earliest: she commented, albeit briefly, on Levinas’s treatment of the feminine in a footnote within *The Second Sex* (1949). She claims that Levinas’s attitude to the feminine essentially casts the feminine as the “other” of masculine subjectivity, from which perspective she claims he writes.¹⁴⁷ Richard A. Cohen contradicts de Beauvoir many years later, and points out that for Levinas the subject is under the mastery of the Other. However, Cohen’s response suffers from the same problem as de Beauvoir’s: namely, that it instrumentalizes and literalizes an area of Levinas’s philosophy which is far more complex than a commentary on the social position of women.

In recent years a number of feminist writers have engaged more thoroughly with this aspect of Levinas’s work. Some of the most substantial

¹⁴⁵ An excellent summary and exposition of this section is provided by Claire Katz, “Reinhabiting the House of Ruth,” in *Feminist Interpretations of Emmanuel Levinas*, ed. Tina Chanter (University Park: Pennsylvania State University Press, 2001), 152-153.

¹⁴⁶ Claire Katz, *Levinas, Judaism and the Feminine: The Silent Footsteps of Rebecca* (Bloomington IN: Indiana University Press, 2003), 89.

¹⁴⁷ Simone de Beauvoir, *The Second Sex*, trans. Constance Borde and Sheila Malovany-Chevalier (London: Cape, 2009 [1949]), 6; *Le Deuxième Sexe* (Paris: Gallimard, 1949), 14-16.

contributions are collected in a volume edited by Tina Chanter.¹⁴⁸ This volume also covers a range of feminist responses, including, on the one hand, those who regard feminism as at least in part finding a non-hegemonic philosophical affirmation of sexual difference; and, on the other hand, those who regard feminism as striving for equality outwith the biological facts of male and female physiognomy.

Stella Sandford attempts to draw some conclusions from the diversity of feminist readings of Levinas. She distinguishes between “appropriative” and “apologetic” feminist readings of Levinas. Both tendencies, she claims, produce “creative reinterpretations of the meaning and the role of the feminine, but [...] they have difficulty claiming to be speaking of the feminine in Levinas’s sense any more”.¹⁴⁹ Sandford argues that nevertheless engagement with the “feminine” in Levinas is constructive, since it illustrates the ambiguity of the “empirical” and the “metaphorical”:

The impossibility of separating out the purely metaphorical form of the idea from its empirical referent not only problematizes the apologetic defence of Levinas, it problematizes the terms involved on both sides, as it were, of the metaphor.¹⁵⁰

Sandford’s conclusion here suggests that, at the very least, Levinas’s difficult invocation of the “feminine”, of a phenomenology which finds gender to be co-foundational to human consciousness, is consistent with his attempt to disrupt the metaphysical opposition of the empirical and the transcendental. This means that, in spite of the problems posed by Levinas’s account of the feminine, his

¹⁴⁸ Tina Chanter, ed., *Feminist Interpretations of Emmanuel Levinas* (University Park: Pennsylvania State University Press, 2001).

¹⁴⁹ Stella Sandford, “Levinas, Feminism and the Feminine,” in *Cambridge Companion to Levinas*, eds. Critchley and Bernasconi, 156-157.

¹⁵⁰ Sandford, “Levinas, Feminism and the Feminine,” 156-157.

philosophy taken as a whole still offers something to feminism, by way of challenging the stability and self-evidence of concepts of sex and gender. Finally, it is pertinent to note, with Bettina Bergo, that “[t]he mediations of eros and fecundity have been dropped entirely” in OB.¹⁵¹ In chapters four and five I consider the significance of Levinas’s quiet shift away from the language of the feminine in his later work. I also explain how Levinas’s difficulty on the subject of gender can be connected to a more general “problem of the self”.

c. Politics

As William P. Simmons notes, there is a great deal of literature concerning Levinas as a philosopher of “ethics”, but interest in a specifically “political” reading of Levinas has recently intensified.¹⁵² In *An-archy and Justice* (2003), and in a journal article based upon it, Simmons argues that Levinas’s positing of the Third alongside the Other is his “theoretical move from ethics to politics”,¹⁵³ and that Levinas accordingly develops an account of justice in OB that is an “oscillation between ethics and politics”.¹⁵⁴ Simmons characterizes Levinasian justice as an oscillation because

[a]lthough the Third universalizes the an-archival relationship with the Other into politics, it does not supplant the original ethical relationship with the Other.¹⁵⁵

¹⁵¹ Bergo, *Levinas Between Ethics and Politics*, 209.

¹⁵² With the exception of Awerkamp, whose *Ethics and Politics* appeared in 1977.

¹⁵³ William P. Simmons, “The Third: Levinas’s Theoretical Move from An-archival Ethics to the Realm of Justice and Politics,” *Philosophy and Social Criticism* 25/6 (1999): 83-104; Simmons, *An-archy*. See above, p. 17, n. 24, for a note on translation.

¹⁵⁴ Simmons, “The Third,” 83.

¹⁵⁵ Simmons, “The Third,” 84.

Simmons goes on to argue that Levinas's description of justice is ultimately a call for the liberal state.¹⁵⁶ While this is sound, for reasons I explain in chapter six, the line of thinking that carries Simmons to his conclusion is dubious. His interpretation of Levinas effectively justifies the liberal state with something resembling a Hobbesian social contract:

politics is necessary because there are those who will refuse to heed the new law, "Thou shall not kill." Levinas is well aware that this commandment is not an ontological impossibility. Many will take Cain's position and shun the responsibility for the Other. Thus, politics is necessary to prohibit murder, in all its forms.¹⁵⁷

Although Simmons is wrong to claim that Levinas accounts for politics as a prohibition of murder, this is not to say that Levinas is ignorant of this function of politics. Indeed, there is a passage in TI which almost amounts to a phenomenology of killing.¹⁵⁸ (I argue in chapter five that Levinas's account of killing itself indicates a "problem of the self".) However, Simmons here inverts the logic of Levinas's position. Levinas claims that justice *creates* the possibility of control, thematization, and reduction; and that war, violence, and murder are possibilities *because* of this attitude of justice. As Simmons accurately states, "the ego must necessarily weigh others in the name of justice, but this process reduces the Other to a cipher".¹⁵⁹ However, it is this reduction of the Other to a cipher, or to an instance of a theme, that first makes it possible for the subject to evade its responsibility-for-the-Other; the possibility of murder presupposes the attitude of justice.

¹⁵⁶ Simmons, "The Third," 98.

¹⁵⁷ Simmons, "The Third," 98.

¹⁵⁸ TI 198; TeI 216.

¹⁵⁹ Simmons, "The Third," 98.

Simmons's reading of Levinas as an oscillation between ethics and justice echoes Bettina Bergo's *Levinas Between Ethics and Politics* (1999). Bergo also contributes to the consensus that Levinas's philosophy thematizes the space between the ethical relation with the Other, and its generalization into politics and concrete justice.¹⁶⁰ Similarly, in his conclusion to *Ethics-Politics-Subjectivity* (1999),¹⁶¹ Simon Critchley writes:

The pre-political opening of the political, and in this sense [...] the anarchic source of the political *arche*, the disorderly ethical root of the political order [...] If ethics without politics is empty, then politics without ethics is blind.¹⁶²

However, in *The Broken Middle: Out of Our Ancient Society*, Gillian Rose criticises the manner in which Levinas's radical opening of the ethical relation as substitution recoils into the familiar "coherence" of conventional political institutions.¹⁶³

passing from being comparable to being unique in the substitution, and from being unique to being comparable, "I" now "among them". Yet this "Peace, peace to the neighbour and the one far-off" ..., this middle, most finely tuned, relapses into the discordant coherence of "the state", "master" and "medicine" ...¹⁶⁴

Here Rose also highlights a problem of the status of the self as a candidate for justice amongst others. I return to this theme in chapter five.

Awerkamp's paper on Levinas and politics, which I introduced earlier, was one of the earliest treatments of the topics of ethics and politics in Levinas's work. He situates Levinas at the end of a long line of philosophers who have chosen one

¹⁶⁰ Bergo's discussion in this book warrants much more attention than can be afforded here. See Bergo, *Levinas Between Ethics and Politics*, ch. 10-12, which are particularly pertinent to the theme of justice.

¹⁶¹ Simon Critchley, *Ethics, Politics, Subjectivity: Essays on Derrida, Levinas, and Contemporary French Thought* (London and New York: Verso, 1999).

¹⁶² Critchley, *Ethics, Politics, Subjectivity*, 282, 283. Original emphasis.

¹⁶³ Gillian Rose: *The Broken Middle: Out of Our Ancient Society* (Oxford: Blackwell, 1992).

¹⁶⁴ Rose, *Broken Middle*, 251.

way or another of separating ethics and politics, and of prioritizing one over the other — beginning with Aristotle’s remark that “[t]he excellence of the good citizen and that of the good man are not in all cases identical”.¹⁶⁵ Awerkamp makes a similar remark to Steiner on the topic of philosophy’s relationship to language;¹⁶⁶ he claims that that Levinas is also attempting clarification and synopsis:

The role of philosophy should be to remedy verbal confusion¹⁶⁷ rather than to acquiesce in it. In seeking to root politics in a specific character of interpersonal relations, Levinas has perhaps discovered what is “common” in the common use of the word [politics], in its use in everyday speech and throughout the history of political philosophy.¹⁶⁸

This question of language, and of its relation to the business of philosophy, is a major theme of my separate analyses both of Steiner and of Levinas, and of chapter six, where I set out Levinas’s critique of Steiner on language.

There are also important works on Levinas and politics in French-language scholarship, much of which is not yet translated. Georges Hansel, a member of Levinas’s extended family, has recently published an expository work, *Politique d’Emmanuel Levinas*, which surveys Levinas’s themes in relation to politics. He starts with Levinas’s response to the “seismism of Hitler”,¹⁶⁹ identifying a connection between his early essay “Reflections on the Philosophy of Hitlerism”

¹⁶⁵ Awerkamp, *Ethics and Politics*, 1. See Aristotle, *The Politics*, trans. Thomas A. Sinclair and Trevor J. Saunders (London: Penguin, 1981), 180-181 (3.4, 1277a12): “ὅτι μὲν οὖν ἐνδέχεται πολίτην ὄντα σπουδαῖον μὴ κεκτηῖσθαι τὴν ἀρετὴν καθ’ ἣν σπουδαῖος ἀνὴρ, φανερόν”

¹⁶⁶ ER 7

¹⁶⁷ Compare with Steiner’s account of linguistic intuitions, and his characterisation of philosophy-as-analysis, to serve the task of establishing which word usages can be consistent with one another. –AW

¹⁶⁸ Awerkamp, *Ethics and Politics*, 2.

¹⁶⁹ Georges Hansel, *Politique d’Emmanuel Levinas* (Paris: Editions du Sandre, 2010), 11: “Le seisme Hitlérien”

(1934) and the development of his later works.¹⁷⁰ Hansel writes, “[w]hat is the essence of Hitlerism? In a word, it consists of defining the life of the mind through a mysticism of the body”.¹⁷¹ Hansel also draws attention to Levinas’s comments in correspondence which accompanies the 1990 re-publication of that essay: “We must ask ourselves whether liberalism is all we need for the authentic dignity of the human subject”.¹⁷² This preface is in tension with Simmons’s claim that Levinas calls for the liberal state. However, Hansel upholds a similar conclusion to Simmons, remarking on

[o]ne important consequence of this need [for justice]: the forms of the State are not all equal. One amongst them is privileged — the liberal, democratic State. [...] Democracy is superior insofar as it has internal mechanisms of renewal, of improvement, of calling in to question its own legislation.¹⁷³

A number of other French-language scholarly works address “the politics of the Other” and Levinas’s idea of “the rights of the Other”.¹⁷⁴ I draw on these in chapter six.

In contrast with Simmons and Hansel, Howard Caygill judges Levinas to be a critic of liberalism in *Levinas and the Political* (2002).¹⁷⁵ He takes a different route to the political reading of Levinas, taking in not only his philosophical works, but also his interviews and more overtly religious and political writings, such as the

¹⁷⁰ Emmanuel Levinas, “Reflections on the Philosophy of Hitlerism,” trans. Seán Hand. *Critical Inquiry* 17/1 (1990 [1934]): 62-71.

¹⁷¹ Hansel, *Politique*, 15: “Quelle est l’essence de l’hitlérisme? Pour le dire en un mot, il consiste à définir la vie d’esprit par une mystique du corps.” My translation.

¹⁷² Levinas, “Reflections,” 63. See Hansel, *Politique*, 18.

¹⁷³ Hansel, *Politique*, 50. See Emmanuel Levinas, *Entre Nous: Thinking-of-the-Other*, trans. Michael B. Smith and Barbara Harshav (London and New York: Continuum, 2006 [1991]), 259-260.

¹⁷⁴ See above, p. 13, n. 2.

¹⁷⁵ Howard Caygill, *Levinas and the Political* (London: Routledge, 2002).

essays which form *Difficult Freedom* (1963).¹⁷⁶ Responding, like Hansel, to Levinas's essay on Hitlerism, Caygill writes:

The core of Levinas's critique of liberalism is found in the claim that "the liberalism of the past few centuries evades the dramatic aspects of such a liberation" [...] it [is] vulnerable to proposals for "community" or "fraternity" opposed to freedom and equality, such as the national, confessional, class and, more ominously, racial fraternities that pervade modernity and are able through their own dramatic narratives of repentance and redemption to exploit the deficit of liberal rationalism.¹⁷⁷

Like Caygill, Horowitz and Horowitz argue in *Difficult Justice* (2006) that Levinas's philosophy amounts to a critique, if not a rejection, of the liberal state.¹⁷⁸

In chapter four of his book, Caygill outlines a political reading of OB which conflicts with the conclusions of Simmons and Hansel. However, his reading demonstrates some of the hazards of mediating Levinas's meta-phenomenological argument through the other areas of his output, which I outlined above. For instance, Caygill is led into a shallow reading of Levinas's phenomenology of the Other and the Third, which results in a projection onto political issues that is too literal:

The abstract positions outlined here in terms of the triad of "I", "other" and "third" gain historical force if we name the "other" and the "third" the "State of Israel" and the "Palestinians".¹⁷⁹

This connection is, of course, an important one, and Levinas's personal comments on the Israel-Palestine problem are legitimate objects of analysis.¹⁸⁰ My point is

¹⁷⁶ Caygill, *Levinas and the Political*, 6.

¹⁷⁷ Caygill, *Levinas and the Political*, 35. See also Zygmunt Bauman, *Modernity and the Holocaust* (Cambridge: Polity Press, 1989).

¹⁷⁸ Asher Horowitz and Gad Horowitz, "Is Liberalism All We Need? Prelude via Fascism," editors' introduction to *Difficult Justice: Commentaries on Levinas and Politics* (Toronto: University of Toronto Press, 2006), 12-23.

¹⁷⁹ Caygill, *Levinas and the Political*, 132.

simply that much of the depth of Levinas's *philosophical* argument is lost when it is directly applied in this way to the problems of concrete political life. Indeed, the difficulty of connecting Levinas's argument to the content of ordinary politics is itself a criticism that must be faced later in this thesis. In general, though, Caygill's mingling of Levinas's political and religious writings with analysis of his phenomenological argument leads to an impression that Levinas's philosophy is more empirical, sociological and even cultural than is really the case. This is not to deny Caygill's claim, which is clearly true, that there are important connections between his religious, political, and philosophical works. It is rather to try and understand how a politics can be found within the heart of his meta-phenomenology. This thesis is intended as a contribution to that task. On the topic of rights, existing scholarship again tends to apply Levinas's thought to the analysis of concrete political rights, such as the development of human rights law.¹⁸¹

Finally, Caygill argues that "[s]ince to a great extent the work of disengagement [from ontology had] already been accomplished in TI, OB focuses on the ethical presentation of the subject [as] [...] 'sensitivity from the first animated by responsibilities'."¹⁸² Again, there is reason to query Caygill on this point. I have mentioned already that Derrida's incisive critique of TI concerned that work's *inadequate* disengagement from ontology and its terminology. Furthermore, Caygill also claims that "[t]he modal disjunction between the 'saying

cont'd]

¹⁸⁰ See Judith Butler, "Unable to Kill: Levinas Contra Levinas," ch. 2 in *Parting Ways: Jewishness and the Critique of Zionism* (New York: Columbia University Press, 2012), 54-68.

¹⁸¹ See Roger Burggraeve, *The Wisdom of Love in the Service of Love: Emmanuel Levinas on Justice, Peace, and Human Rights*, trans. Jeffrey Bloechl (Milwaukee: Marquette, 2002), 104-105, 136; William P. Simmons, *Human Rights Law and the Marginalized Other* (Cambridge: Cambridge University Press, 2011), 85-106.

¹⁸² Caygill, *Levinas and the Political*, 133.

and the said' is not the key to Levinas's thought in OB but rather one of the many paths out of ontology."¹⁸³ This again diminishes the significance of the shift from the ontological language of TI to the foregrounding of language as the primary modality of the ethical in OB, and also suggests a misunderstanding of the co-foundational status of language for phenomenology.

The sheer variety of political readings of Levinas outlined in the last few pages indicates that Levinas's works require a considerable labour of interpretation. Where Simmons and Hansel find in Levinas a defence of the liberal state, Caygill and Horowitz find a critique of it. Whatever philosophy of politics or justice it might be possible to construe from Levinas's works, it is likely to be exactly that: a construal, a new reading based on Levinas's thought. Producing a political manifesto is not Levinas's aim, and insofar as his works can serve one, it is important to recognize that what he attempts is subversive of conventional political creeds, and the necessary attempt to derive norms from his philosophy is, in the final analysis, a paradox.¹⁸⁴

1.4. OUTLOOK

In this thesis, I aim to contribute to scholarly knowledge in three key areas. First, while my study of Steiner's thought has naturally led to some of the same themes as existing scholarship, I venture some original defences of Steiner's account of liberty, as well as some new criticisms. But the major novelty of this thesis is to bring Steiner's work into conversation with a different stream of philosophical

¹⁸³ Caygill, *Levinas and the Political*, 131.

¹⁸⁴ See Hansel, *Politique*, 51.

thought about justice. This approach yields analysis of some of the most deeply embedded presuppositions of Steiner's account of justice-as-rights.

Second, a great deal of scholarship has been produced in response to Levinas's work.¹⁸⁵ In this chapter I have assessed a variety of important contributions on politics and justice, but some of these works have clear weaknesses. Awerkamp, Simmons, and Caygill each instrumentalizes Levinas's philosophy to a different extent, and attempts to turn his thought too quickly in to a set of proposals that can be applied to ordinary political life. This tendency is evident, for example, in Simmons' fairly direct route from Levinas's philosophy of the ethical relation to his claim that Levinas "calls for the liberal state".¹⁸⁶ It can also be detected in Caygill's straightforward reading across from Levinas's philosophical argument to the ethical challenges of international relations, in particular the contemporary *impasse* in Israel-Palestine.¹⁸⁷ Similarly, there is a large body of scholarship, not explicitly addressed in this introduction, which seeks to apply Levinas to myriad social and ethical issues.¹⁸⁸

These "applied" approaches miss a key distinction of Levinas's project, and I distance myself from them. Levinas does not present anything resembling a normative political programme; in spite of his concern with ethics, Levinas is

¹⁸⁵ In particular, much new work followed the numerous conferences held in celebration of the centenary of Levinas's birth. The North American Levinas Society and the Société Internationale pour Recherches Emmanuel Levinas cultivate much new scholarship. In recent years, major international conferences have been devoted to readings of *Difficult Freedom* and *Totality and Infinity*.

¹⁸⁶ Simmons, "The Third," 98.

¹⁸⁷ Caygill, *Levinas and the Political*, 159-203.

¹⁸⁸ Examples include the application of Levinas to medical ethics. See Yasuhiko Murakami, "Phénoménologie de l'Éros' et le Soins du Patient Atteint de Maladie Grave," paper presented at *Totalité et Infini: Une Oeuvre de Ruptures 1961-2011*. International Conference on the Work of Emmanuel Levinas, Bibliothèque de l'Alliance Israélite Universelle, Paris (May 9-11, 2011); Michelle Clifton-Soderstrom, "Levinas and the Patient as Other: The Ethical Foundation of Medicine," *Journal of Medicine and Philosophy* 28/4 (2003): 447-460.

neither enjoining his readers to ethical conduct, nor offering them a set of moral prescriptions. Instead, he seeks merely to describe what he finds to be already underway in the workings of consciousness;¹⁸⁹ to this extent, Levinas remains a phenomenologist.¹⁹⁰ The idea that Levinas can provide direct answers to normative questions is fundamentally misplaced. In this thesis I work through the issues of justice and politics from the philosophical core of Levinas's meta-phenomenological argument about the constitution of subjectivity in general. What Levinas may be able to offer, ultimately, is a means of understanding both the nature and meta-ontological status of normative questions, and the reasons why such questions arise.

Relative to other major themes in his philosophy, such as the feminine or the face, Levinas's notion of "the rights of the Other" is relatively underexplored in English-language scholarship. An incidental aim of this thesis, then, is also to engage French-language scholarship on Levinas, and to introduce some of its perspectives into English-language debates about Levinas.¹⁹¹ I aim to extend scholarship written in both languages by thinking through rights-as-responsibility. I argue that rights express the priority of the Other, and that justice is primordially an attitude distributing the self's moral duties. Critical scholarship will be strengthened by engaging Levinas on a more theoretical level, and by attempting more fully to understand how theories of justice and politics can be related to the core of Levinas's meta-phenomenology.

¹⁸⁹ Paul Davies, "Sincerity and the Ends of Theodicy: Three Remarks on Levinas and Kant," in Critchley et al., *Cambridge Companion to Levinas*, 185.

¹⁹⁰ Levinas reportedly once said in conversation, "don't forget that I'm a phenomenologist". See Yasuhiko Murakami, *Lévinas Phénoménologue* (Grenoble: Editions Jérôme Millon, 2002), 338: "N'oubliez pas que je suis phénoménologue"

¹⁹¹ See above, p. 13, n. 2. I engage with existing French-language accounts of "the rights of the Other", and "the politics of the Other", in the final chapters of this thesis.

There is also a lack of scholarship which offers sustained examination of the connections between empirical philosophy and Levinas's transcendental philosophy. This thesis is a small contribution to bridging that gap in respect of the issue of justice.¹⁹² Indeed, this is imperative for the serious reader of Levinas, given his synoptic and revolutionary aim to subvert a whole tradition of western ontology to the primacy of the ethical relation — to “ethics as first philosophy”.¹⁹³ By undertaking a comparison of Steiner and Levinas, I aim to demonstrate from the heart of Levinas's argument that his meta-phenomenology can elucidate the foundations of consciousness, thought, and justice.

In the course of this chapter, I have briefly introduced the philosophical positions of Hillel Steiner and Emmanuel Levinas, explained my reasons for comparing them, and situated each thinker in his respective transcendental and empirical context. I focused in particular on issues that are most pertinent to this thesis: language, politics, rights, freedom, ethics, justice, gender, personhood, and selfhood. Having also examined key critical responses to their work, and set out the major contributions of this thesis, I now begin with an exposition of Steiner's *An Essay on Rights*.

¹⁹² Outwith the topics of politics and justice, there is engagement between scholars of transcendental and empirical philosophy on the subject of Levinas. See, for example, Hilary Putnam, *Jewish Philosophy as a Guide to Life: Rosenzweig, Buber, Levinas, Wittgenstein* (Bloomington IN: Indiana University Press, 2008), 68-108; Jean-Michel Salanskis, “L'épistémologie de Totalité et Infini,” paper presented at *Totalité et Infini: Une Oeuvre de Ruptures 1961-2011*. International Conference on the Work of Emmanuel Levinas, Bibliotheque de l'Alliance Israélite Universelle, Paris (May 9-11, 2011).

¹⁹³ Emmanuel Levinas, “Ethics as First Philosophy,” in *Levinas Reader*, ed. Hand, 75-87; Emmanuel Levinas, *Ethique Comme Philosophie Première*, ed. Jacques Rolland (Paris: Rivages, 1998 [1984]).

2. Exposition and Analysis of Hillel Steiner's *An Essay on Rights*

Justice is a moral rule assigning equal freedom to each of us
through a structure of rights.

— Hillel Steiner¹

INTRODUCTION

In this chapter I present an exposition of Steiner's *An Essay on Rights*, which I conclude can be summarized as a defence of justice-as-rights (2.1). I then argue that ER's starting point in moral and linguistic intuitions presupposes a conception of intuition as both an individual and an interpersonal structure of induction (2.2). I examine Steiner's method, which is to analyse and refine those intuitions, and claim that it reflects a conception of philosophy-as-analysis. I also assess the methodic role of ER's presentation as a text (2.3). I conclude that Steiner presupposes an unexamined, transcendental conception of the person, and that ER would be inconceivable without a pretheoretical commitment to the moral status, autonomy, and integrity of the person (2.4).²

¹ ER 229

² I am grateful for the comments received in response to my paper on this topic. Andrew Wilshire, "The Rabbit in Hillel Steiner's Hat: The Role of Moral and Linguistic Intuitions in *An Essay on Rights*," paper presented at Manchester Centre for Political Theory (MANCEPT) Research Seminar Series, University of Manchester (February 2011).

Notes on Method

In the exposition that follows, I mirror the chapter structure of ER, and make extensive use of short quotations from Steiner's text. I do this for a number of reasons. First, it keeps the exposition close to the terms and tenor of the original, and reduces the risk of misrepresenting Steiner's argument. Second, it brings to the fore Steiner's style and use of language, which, as I explained in chapter one, is a key theme of this thesis. Third, it shows the role of sequence and structure in the formation of the argument presented in ER. I do, however, cross-reference around ER within that basic structure, as is evident in footnotes. This exhibits the force and direction of Steiner's argument, and the contribution made to that argument by ER's presentation and structure as a text, while still allowing connections between different sections of the text to be brought out *ad hoc*.³

2.1. EXPOSITION OF AN ESSAY ON RIGHTS

2.1.1. Introduction

Steiner begins ER by asking two questions: "What is justice? And what is it for?"⁴ These questions distinguish the definition of justice from whatever values might be pursued under conditions of justice. In the terminology of some moral philosophers, they distinguish the *right* from the *good*; they separate the issue of

³ A chronologically arranged list of Levinas's works can be found in this volume, p. 257.

⁴ ER 1

how it is morally *permissible* to act from how it might be morally *desirable* to act.⁵

For Steiner, it is the fact “that values are not the same for each of us, but the world in which we pursue them is” that causes questions of justice to emerge.⁶ The right and the good arise as distinct concepts because persons have different sets of moral ends, and the fact that multiple persons inhabit a single world means that they “unavoidably restrict one another’s freedom” to pursue those ends.⁷

Justice, claims Steiner, “is about how those restrictions ought to be arranged”.⁸ Towards the end of ER, Steiner settles on a minimal definition of justice as “a moral rule assigning equal freedom to each of us through a structure of rights”.⁹ A right functions by imposing a restriction, or a “duty”, on another person. For example, if Thom has a moral right not to be killed by Joni, then Joni has a correlative duty not to kill Thom. The rule of justice assigns and protects a set of negative personal liberties (rights) by enforcing restrictions (duties) correlative to those rights. What Steiner calls a “set of rights” amounts to a particular arrangement of these liberties and restrictions.¹⁰

Steiner also describes rights as the “elementary particles of justice”.¹¹ although justice theories prescribe different allocations of rights, the fact that they do allocate rights is, Steiner suggests, an inevitable fact of any such theory. For this reason, ER could be said to advance a theory of “justice-as-rights”. However, Steiner claims that certain theories of justice are invalid because they

⁵ See David Ross, *The Right and the Good* (Oxford: Oxford University Press, 2002 [1930]), 1-14; and Robert Audi, *The Good in the Right: A Theory of Intuition and Intrinsic Value* (Princeton: Princeton University Press, 2009), 121-160.

⁶ ER 1

⁷ ER 1

⁸ ER 1

⁹ ER 229

¹⁰ See ER 3-5, where Steiner explains the phrase “set of rights”. My example.

¹¹ ER 2

prescribe allocations of rights that cannot be realized.¹² Some of the rights in the set they prescribe conflict with other rights in that set, rendering at least one right unenforceable. Since the exercise of one right would preclude the exercise of another, the set contains “impossible” rights.¹³ If a theory of justice allows two rights to preclude one another, then one of those rights will turn out not to be a right at all, since the conflict would inevitably be resolved not through a structure of rights, but through an arbitrary judicial decision by a third party.¹⁴ Such a decision unavoidably renders at least one of the conflicting rights unenforceable, effectively extinguishing it. Steiner therefore explains that ER’s “linch-pin” is the principle that

[t]he mutual consistency — or compossibility — of all the rights in a proposed set of rights is at least a necessary condition of that set being a possible one.¹⁵

Yet is it not ordinarily accepted that rights conflict?¹⁶ The problem with allowing this, Steiner argues, is that an intrinsic element of the concept of a right is that it *should be enforceable*.¹⁷ More precisely, a right simply is the power to enforce a

¹² This is evident, for example, in Steiner’s claim that those theories of justice which propose an impossible set of rights are, *ipso facto*, implausible as theories of justice. See ER 3: “Quite a lot of mileage can be got out of [the] compossibility test, which does exemplary service in filtering out many candidate conceptions of justice. A few more can be dismissed by reference to certain formal features of rights, apart from those bearing on compossibility.”

¹³ ER 2-3; 33

¹⁴ ER 3, 101

¹⁵ ER 2

¹⁶ See Frances M. Kamm, “Conflicts of Rights,” *Legal Theory* 7/3 (September 2001): 239-255.

¹⁷ ER 11. See also Immanuel Kant, *The Critique of Pure Reason*, translated by J.M.D. Meiklejohn (Pennsylvania State University: Electronic Classics Series, 2010 [1781]), accessed October 23, 2012, 323: “This action must certainly be possible under physical conditions, if it is prescribed by the moral imperative ought”; Kritik, ed. Valentiner, 480: “Nun muss die Handlung allerdings unter Naturbedingungen möglich sein, wenn auf sie das Sollen gerichtet ist”.

duty in another person that correlated to a claim held by me.¹⁸ In the words of Ronald Dworkin, “rights are trumps”¹⁹ which restrict the liberty of others by requiring enforcement of their correlative duties.

Steiner describes a method which begins with “preliminary conceptual analysis”.²⁰ Only, he suggests, by examining the implications of our conflicting uses of words such as “liberty” and “rights”, can we understand the choices we face when analysing different theories of justice.²¹ The debate over justice frequently means battling with different understandings of the same words, but these different understandings are often mutually exclusive.²² Steiner also articulates a conception of philosophy’s role in such debate: “[t]he philosopher’s brief is to indicate which set of intuitions can be held consistently”.²³ Rather than beginning with technical philosophical definitions, Steiner states that ordinary language must be “the court of first appeal” in the attempt to resolve conceptual inconsistencies.²⁴ His proposed solution to the problem of conflicting “linguistic intuitions” is to select those that we most want a theory of justice to satisfy. We must “expel some of these intuitions from our usage”, and “silence the intuitions they express” in order to achieve a consistent set of conceptual definitions.²⁵

¹⁸ ER 56-57

¹⁹ ER 199. See also Ronald Dworkin, “Rights as Trumps,” in *Theories of Rights* by Jeremy Waldron (Oxford: Oxford University Press, 1984), 153-167.

²⁰ ER 3

²¹ ER 3

²² ER 6-7

²³ ER 7

²⁴ ER 7

²⁵ ER 7

2.1.2. Liberty

Steiner conducts preliminary conceptual analysis of the word “liberty”, and “other cognate terms”.²⁶ (He does not distinguish between the terms “liberty” and “freedom”; they are used interchangeably.)²⁷ Steiner argues for the “pure negative concept of liberty” (PNCL),²⁸ which he defines by way of the following statement:

A person is unfree to do an action if, and only if, his doing that action is rendered impossible by the action of another person.²⁹

Steiner deals with a number of objections to PNCL. Threats, offers, and combinations of them (which he calls “thoffers”) are claimed by some to reduce a person’s freedom.³⁰ Threats, offers, and thoffers are generally intended by the person making them to influence how another person acts, tending to make a particular course of action more or less desirable to the person receiving them. But Steiner maintains that — since it is clear that those who are subject to such inducements remain free in the PNCL sense not to give in — they are distinct from “forcings”, and cannot qualify as preventions.³¹ Threats, offers and thoffers do not, he concludes, reduce persons’ freedom under PNCL.³² For the same reason, neither do rules and laws reduce persons’ freedom, although their physical enforcement does.

²⁶ ER 6-7

²⁷ The word “liberty” also has a more technical meaning in political theory, since it refers to a particular kind of right under Wesley Hohfeld’s typology of jural relations, and has a long history as a synonym of the “privileges” bestowed upon subjects by a sovereign ruler. See Hohfeld, “Fundamental Legal Conceptions”.

²⁸ ER 9

²⁹ ER 8

³⁰ ER 22-32

³¹ ER 12; 30

³² ER 29-30

If not through threats, offers, thoffers, rules, or laws, “how does one person’s action make another’s impossible?”³³ Since PNCL is conceived exclusively in terms of physical obstruction,³⁴ Steiner defines prevention as

a relation between the respective actions of two persons such that the occurrence of one of them rules out, or implies the impossibility of, the occurrence of the other.³⁵

He distinguishes between act-types (for example, eating) and act-tokens (for example, Johnny eating fish and chips in his living room for twenty minutes next Tuesday night).³⁶ Steiner explains that “[s]trictly speaking, the only things we do when we act are act-tokens”.³⁷ An act-token requires the specification of the objects, persons, and spatial and temporal locations which make up that act. Steiner calls this an “extensional description” of an act-token’s components.³⁸ What makes an act-token impossible is ultimately the actor’s “lack of access to or control over at least one of that token’s physical components”. This leads Steiner to conclude that freedom is reducible to the possession of things.³⁹ If the extensional description of the act-tokens of two different persons do not overlap, then neither act-token precludes the possibility of the other: the two actions are compossible. If such an overlap does exist, however, they are impossible.

Since every thing is in someone’s possession,⁴⁰ Steiner argues that “[w]hat I am free to do is a function of the things possessed by me, and what I am unfree

³³ ER 33

³⁴ ER 31-32

³⁵ ER 33

³⁶ My example.

³⁷ ER 34

³⁸ ER 35-36

³⁹ ER 39

⁴⁰ Whether that possession is actual or subjunctive. See ER 41.

to do is a function of the things possessed by others".⁴¹ Steiner labels this principle the "law of conservation of liberty" (LCL), which determines that there can be no absolute increase or decrease in the aggregate amount of pure negative liberty in a society. Therefore a person's total liberty is inversely related to that of others.⁴²

2.1.3. Rights

A set of rights, Steiner argues, prescribes a particular distribution of negative liberties between persons. He presents a defence of the "choice theory" of rights (also known as the "will theory"); and he rejects the "interest theory" of rights (also known as the "benefit theory").⁴³ He holds that rights "entail a restriction on the activities of persons other than the rights' holder or subject".⁴⁴ (By Steiner's definition, persons therefore cannot have rights against themselves.)⁴⁵ The sense in which Steiner uses the term rights is consonant with Hohfeld's description of a claim-right;⁴⁶ such a right correlates with a duty in another person. For example, if one person ("Red") has a right that another person ("Blue") pay him five pounds,

⁴¹ ER 52

⁴² ER 52. LCL has been extensively challenged, as I explained in chapter one of this volume. I return to the issue in chapter three. See Carter, "Respect for Persons," 167-184; Hillel Steiner, "Responses," in AJ, 235-258.

⁴³ ER 57-73

⁴⁴ ER 55

⁴⁵ See Peter Jones, "Human Rights, Group Rights, and Peoples' Rights." *Human Rights Quarterly* 21/1 (February 1999): 94; Joseph Raz, "Liberating Duties," in *Ethics in the Public Domain: Essays in the Morality of Law and Politics*, rev. ed. (Oxford: Clarendon Press, 1994), 33: "Nothing, however, can legitimize the notion of rights against oneself. The very idea is self-contradictory, for rights are essentially interpersonal." Kenneth Shouler argues strongly against this view in "Are There Moral Obligations to Oneself?" (New York: City University of New York, 2007). Accessed November 3, 2012. <http://gradworks.umi.com/32/83/3283211.html>.

⁴⁶ ER 59-65. See also Hohfeld, "Fundamental Legal Conceptions," 710; 716-719.

that right correlatively entails that Blue has a duty to pay Red five pounds.⁴⁷

Steiner thus affirms the view of Glanville Williams that “every right in the strict sense relates to the conduct of another”.⁴⁸

Central to the choice theory’s conception of rights is that a right consists of a claim and a power. For someone to be said to hold a choice theory right, they must be capable of exercising powers of enforcement and waiver over the claim.⁴⁹

Advocates of the interest theory criticize this position for rendering those lacking agency, such as young children or the mentally incapacitated, rightless.⁵⁰

However, Steiner defends the choice theory against this charge, arguing that an arrangement of correlative rights and duties between moral agents can serve to protect the interests of non-agents as third-party beneficiaries.⁵¹ He illustrates the situation of third-party beneficiaries with the following example:

Suppose I am a florist. The order you place with me makes you, and not the bride and groom, the holder of the right correlative to my duty to deliver flowers to their wedding. What if you were to cancel your order? Would I still be said to have that [correlative] duty to deliver? Evidently not.⁵²

The “third-party beneficiary” solution is, claims Steiner, the strongest challenge to the interest theory of rights,⁵³ and one that interest theorists have not yet met.⁵⁴

Steiner also points out that citizens are conventionally third-party beneficiaries of

⁴⁷ ER 59

⁴⁸ Glanville Williams, “The Concept of Legal Liberty,” in *Essays in Legal Philosophy*, ed. Robert Summers (Oxford: Blackwell, 1970), 139. See also ER 74.

⁴⁹ ER 69

⁵⁰ See Matthew H. Kramer, “Rights Without Trimmings,” in *A Debate Over Rights*, ed. Matthew H. Kramer, Nigel E. Simmonds, and Hillel Steiner (Oxford: Oxford University Press, 1998), 7-100.

⁵¹ ER 245-246

⁵² ER 61

⁵³ ER 61-66; see also Hillel Steiner, “Working Rights,” in DR, 284-286; Steiner, “Responses,” 237-242.

⁵⁴ Steiner, “Responses,” 241-242.

a correlative right-duty relationship between other citizens and state officials. For example, in many jurisdictions the duty not-to-assault obtains between an individual citizen and a state official, to whom the correlative right belongs.⁵⁵

Other individual citizens are third party beneficiaries of that arrangement, in that they receive protection from injury, and others are (upon enforcement by the state official) either prevented from committing rights-violations, or punished for committing them. This structure is evident in the fact that state officials have the power to waive enforcement of a duty: for example, a person's duty not-to-assault might be waived under a diplomatic immunity agreement.⁵⁶ Steiner writes that

[e]ven if a constitution disables some more superior official from waiving [such a duty not-to-assault], there must be some still more superior official in a Hohfeldian position to release him from that disability.⁵⁷

Steiner thus maintains that choice theory rights are to be found in criminal law, and that they are typically located in senior state officials.

A set of rights, then, "assigns an interpersonal distribution of freedom"⁵⁸ which gives powers of waiver and enforcement to right-holders.⁵⁹ But, Steiner claims, the general problem of impossibility between rights cannot be eliminated simply by reallocating those rights. Rather, the very "design" of rights must be reformed.⁶⁰ Any theory in which the definition of a right itself does not itself safeguard against impossibility is likely to result in the kinds of conflict

⁵⁵ ER 68-73. My example.

⁵⁶ My example.

⁵⁷ ER 72

⁵⁸ ER 76

⁵⁹ ER 76

⁶⁰ ER 83

described above.⁶¹ To solve this problem, Steiner argues, “[w]e want to know what must be true of a set of rights for it to be a compossible set”.⁶²

What must be true, Steiner explains, is that a set’s constituent rights must be understood as “vested liberties” implying duties of non-interference or forbearance in respect of all the necessary components of an action. “A vested liberty,” Steiner writes, “is one surrounded by an impenetrable perimeter formed by others’ duties”.⁶³ He labels a person’s set of vested liberties their “domain”.⁶⁴ Since freedom is the possession of things,

[t]he rights constituting a person’s domain are [...] easily conceived as *property rights*: they are (time-indexed) rights to physical things. No two persons simultaneously have rights to one and the same physical thing.⁶⁵

Rights must be time-indexed because the same object may figure in the extensional descriptions of many other acts by many other persons: if the same object were to be required for two actions at the same time, those actions would be impossible. This echoes the “traditional Lockean view” that all rights are property rights, or amount to property rights.⁶⁶ In essence, such rights are claims to the non-interference or forbearance of others in respect of the physical components of a person’s vested liberties:⁶⁷ for a person to be under a moral duty, the physical components of the actions required by that duty must in turn be under the control of that person.

⁶¹ ER 101

⁶² ER 88

⁶³ ER 75

⁶⁴ ER 90

⁶⁵ ER 91. Original emphasis.

⁶⁶ ER 93

⁶⁷ ER 93-95

The need for time-indexation of the rights within a person's domain indicates that rights have "a diachronic as well as a synchronic dimension".⁶⁸ The legitimacy of a distribution of freedoms cannot be assessed only on the basis of the arrangement which exists at a given moment in time; it also depends on how that arrangement came about. Thus rights have a "historical dimension of compossibility".⁶⁹ Current rights and duties derive from previous exercises of powers to transfer ownership of things, or of vested liberties to transform those things.⁷⁰ The validity of a person's right to something (their "title" or "entitlement" to it) depends on that title having been received through a prior series of just transfers:

The vindicability of any current right or duty clearly depends upon the vindicability of its original antecedents.⁷¹

Steiner calls this historical dimension of a right its "pedigree".⁷² Yet this "vindication-chain" must logically come to an end; at some point in history, there was an initial act of appropriation which began the chain of title transfers. It is this fact that leads Steiner to state that any set of compossible and vindicable rights implies "a set of *original* rights and duties" from which a present set must derive.⁷³

⁶⁸ ER 103

⁶⁹ ER 103. My emphasis.

⁷⁰ ER 103-106

⁷¹ ER 107

⁷² ER 104

⁷³ ER 107. Original emphasis.

2.1.4. Moral Reasoning

In chapter four of ER, Steiner explores “moral reasoning”. He examines dilemmas within a person’s moral code, and how it is possible to resolve them without implying inconsistent moral judgements.⁷⁴ By way of illustration, Steiner discusses a dilemma first set out in Jean-Paul Sartre’s essay “Existentialism is a Humanism”.⁷⁵ A student is faced with the choice between, on the one hand, going to England to join the Free French Forces, helping liberate France from Nazi rule; and, on the other, staying in France to care for his very ill mother. Steiner argues that the dilemma can be represented as a conflict between two moral rules: the “Patriotism rule” and the “Familial Devotion rule”.⁷⁶

Faced with situations of dilemma, Steiner notes the inadequacy of the “intuitionist” view that “there simply are no rules [...] for selecting among primary or basic moral rules”.⁷⁷ He rejects intuitionist codes as “inherently incomplete”,⁷⁸ on the grounds that they contain no way of resolving dilemmas such as that faced by Sartre’s student. They are therefore liable to produce arbitrary and contradictory moral judgements from one dilemma to the next.⁷⁹ An alternative to this unsatisfactory inconsistency, Steiner claims, is to allow a priority rule to govern conflicts within a person’s moral code. For instance, Sartre’s student could

⁷⁴ ER 109-146

⁷⁵ ER 111; see Jean-Paul Sartre, “Existentialism is a Humanism,” in *Existentialism from Dostoevsky to Sartre*, ed. Walter A. Kaufmann (New York and London: Penguin, 1975), 345-368.

⁷⁶ ER 111-112

⁷⁷ ER 113

⁷⁸ ER 116. Emphasis removed.

⁷⁹ ER 116-117

resolve his dilemma by incorporating this priority rule into his moral code:

“[a]ccord priority to the Patriotism rule over the Familial Devotion rule”.⁸⁰

Steiner also explores the effects of the “size” of actions upon moral decision-making. Even while holding to his priority rule, the student might find it morally dubious to favour a small act of patriotism over a large act of familial devotion. Since rational actors will favour a large good act over a small good act of the same kind, moral rules may be assigned a weighting as well as a ranking.⁸¹ Thus the Patriotism rule can outrank the Familial Devotion rule, while still allowing large acts of familial devotion to be favoured over small acts of patriotism without generating inconsistency.⁸²

2.1.5. Economic Reasoning

Since impossibility cannot be wholly eliminated through the ranking and weighting of a moral code's constituent moral rules, in chapter five of ER Steiner turns to “economic reasoning”. Even a fully ranked and weighted moral code can generate dilemmas between equally valuable but mutually exclusive — or impossible — options. In these situations, Steiner argues, a choice can be determined by economic reasoning about the means to those moral ends.⁸³ Like Rawls,⁸⁴ Steiner introduces the economic concept of an “indifference curve”,

⁸⁰ ER 116

⁸¹ ER 130-131

⁸² ER 125. Steiner likens the priority-rule system to the postulate required by geometry: “A polynomic code's non-inferable priority rules are [...] epistemically similar to a geometry's parallel lines postulate: they are needed but their content is logically indeterminate. Once determined, determinate priority rules are inferable from them, just as the content of many geometrical theorems is inferable from a parallel lines postulate.”

⁸³ ER 147

⁸⁴ Rawls, *Theory*, 37-39.

which charts the exchange value (or “price”) of two goods relative to their abundance or scarcity. As the supply of one good decreases, the amount of the other good required in exchange increases (its price goes up). This relationship is represented as a curve because, Steiner explains, I will sacrifice a disproportionately large amount of an abundant good in exchange for a scarce good; an abundant good is less *valuable* than a scarce one.⁸⁵

Nevertheless, we can still find several moral options placed on a single curve of indifference. How, then, are we to choose between these mutually impossible, but equally valuable, options? Steiner answers with another view conventionally held by economists, namely that rational behaviour favours a balance of goods.⁸⁶ Supposing that the possession of apples and oranges are of equal value to me, when faced with a choice between owning a) two apples and six oranges, and b) four apples and four oranges, I will tend to favour option b).⁸⁷ In other words, Steiner claims that rational choice favours equilibrium or equality. (This anthropology of persons’ preference for a balance of economic goods as analogous to reasoning about moral goods is of great importance, and in chapter six I return to the question of the under which it can be theoretically justified.)

2.1.6. Justice

Moral and economic reasoning provide us with a description of the conditions required for a compossible set of rights. In chapter six of ER, Steiner states that he

⁸⁵ ER 155-158

⁸⁶ ER 159-165

⁸⁷ ER 159-160

“regard[s] such a description as amounting to a principle of justice”.⁸⁸ Yet most attempts to determine a definition or theory of justice have not followed ER’s “elementary particle strategy”. Instead, they have attempted to build a theory out of other values, including impartiality, fairness, and neutrality.⁸⁹ Given this indeterminacy about the concept of justice, Steiner chooses to discuss it in its “native habitat” — situations of deadlock between two adversaries.⁹⁰

The kind of dilemma described in Steiner’s chapter on moral reasoning concerns conflicts between values *within* a person’s moral code. But justice is a rule which applies to *interpersonal* conflict: deadlocks between different persons’ moral codes. In such situations, Steiner explains, “[a] particular act which one person denounces as impermissible the other defends as permissible and even obligatory. No clearer form of opposition exists”.⁹¹ The role of justice, he claims, is to leave the substantive disagreement intact. Justice should not require either of the conflicting parties to reverse their moral priorities, since this would simply mean subverting one person’s moral code *as such* to the moral code of another person.⁹² Rather, the role of justice is to offer a reason, independent of the disagreement itself, for one adversary to stand down and break the deadlock.⁹³

In order for justice to do its work, though, the rule of justice must first feature in the moral code of the two persons in deadlock.⁹⁴ Moreover, if a person’s code is to incorporate such a rule as justice, it must be given “lexically prime”

⁸⁸ ER 188

⁸⁹ ER 188

⁹⁰ ER 188

⁹¹ ER 191

⁹² ER 194

⁹³ ER 193-194

⁹⁴ ER 197-198

status, meaning that it will outrank any other value in cases where it is invoked.⁹⁵ It follows from the lexically prime ranking of the rule of justice-as-rights that “any duty not to violate rights is infinitely weighty and ineligible for trade-offs”.⁹⁶ In other words, “rights are trumps”.⁹⁷ Only in this way can justice break deadlocks. Steiner is now able to expand on his definition: justice is an impartial, lexically prime, freedom-distributing rule.⁹⁸

If justice is a moral rule distributing liberty, why should the distribution be equal? Steiner’s answer is that if the distribution were *unequal*, some substantive principle would be required to govern the nature of that unequal distribution.⁹⁹ The result would be a moralised conception of justice.¹⁰⁰ An equal distribution, Steiner claims, is the logical outcome of the *absence* of such a principle.¹⁰¹ (In chapter six I query whether this justification of equality really does avoid positing equality as a moral principle.)

2.1.7. Original Rights

Having clarified the meaning of rights and justice, Steiner considers what these meanings presuppose: what *original* rights can be deduced. He adopts Kant’s division of the world into “persons” and “things” — owners and ownables.¹⁰² He

⁹⁵ ER 198

⁹⁶ ER 198

⁹⁷ ER 199; Dworkin, “Rights as Trumps”.

⁹⁸ ER 208-223

⁹⁹ ER 214

¹⁰⁰ See above, p. 23.

¹⁰¹ ER 216

¹⁰² See Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. H.J. Paton (New York: Harper Torchbooks, 1964 [1785]), 96: “Beings whose existence depends, not on our will, but on nature, have none the less, if they are non-rational beings, only a relative value as means and are consequently called things. Rational beings, on the other hand, are
[cont’d

argues that this distinction means that persons must own their bodies; “[w]e must be self-owners”.¹⁰³ But how does this lead to ownership of things external to those bodies? Steiner contends that each person has a vested liberty to mix their labour with initially unowned things, and thereby assume ownership of them.¹⁰⁴ However, they have an original right to appropriate only as much of those things as would leave “enough and as good” for others, to use Locke’s phrase.¹⁰⁵ Persons therefore have two original rights, on the basis of which all consequent rights can be explained: the right to self-ownership; and the right to an equal share of initially unowned things.¹⁰⁶

Steiner then explores a paradox. He has argued that persons are self-owners, and that persons therefore own the fruits of their labour. Yet each person is the fruit of someone else’s labour: most obviously that of their parents. So how is self-ownership non-paradoxically possible?¹⁰⁷ Steiner escapes this paradox by noting that persons are not *entirely* the fruit of their parents’ labour. In producing a child, parents mix their labour with germ-line genetic information transmitted from *their* parents.¹⁰⁸ Such genetic information predates the human race, and is therefore part of the pool of “initially unowned things” upon which all have an equal claim.¹⁰⁹

cont’d]

called persons because their nature already marks them out as ends in themselves — that is, as something which ought not to be used merely as a means — and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence)”.¹⁰³

¹⁰³ ER 231

¹⁰⁴ ER 233-236

¹⁰⁵ ER 235; Locke, *Second Treatise*, ch. 5, §33.

¹⁰⁶ ER 236

¹⁰⁷ ER 242

¹⁰⁸ ER 247-248

¹⁰⁹ ER 247

Finally, Steiner denies that there is a natural right of bequest. He agrees with William Harcourt that the rights, powers, and duties attached to the practice of bequest are “a pure creation of the law”.¹¹⁰ Steiner argues that rights of bequest must be rejected because a deceased person, being incapable of exercising the required powers of enforcement and waiver, by definition cannot be a bearer of rights. To distribute the estates of the deceased is to transfer things which are no longer theirs to transfer. Rather, the estates of the deceased should be treated as abandoned, re-joining the pool of natural resources to be redistributed.¹¹¹ Moreover, Steiner argues that these original rights are “global in scope”. Being natural rather than legal, rights to self-ownership and an equal share of initially unowned things are ignorant of international borders;¹¹² they are associated with persons by virtue of their status as moral agents.

2.1.8. Just Redistributions

Following from his argument for the existence of these two original rights, Steiner reaches a number of normative conclusions concerning the redistribution of wealth.¹¹³ Steiner advocates “redress transfers”, which are redistributions to correct injustices caused by encroachments on persons’ original rights through historic over-appropriation. Redress transfers restore just distributions.¹¹⁴ In a

¹¹⁰ ER 252

¹¹¹ ER 249-261

¹¹² ER 262-265

¹¹³ ER 266-282

¹¹⁴ ER 266. Steiner’s view echoes a number of earlier natural rights theorists. See Katherine Fierlbeck, review of *An Essay on Rights*, by Hillel Steiner, *Journal of Politics* 57/4 (1995): 1195-1198. She refers to Thomas Paine’s essay of 1797, “Agrarian Justice,” in which he writes that “It is a position not to be controverted, that the earth, in its natural uncultivated state was, and ever would have continued to be, the common property of the

[cont’d]

world in which all objects have been appropriated, the right to an equal share of initially unowned things amounts to the right to an equal share of their total value.¹¹⁵ Steiner proposes the accomplishment of these transfers through the institution of a “global fund”.¹¹⁶

Steiner again extends this analysis to the “natural resource” of germ-line genetic information involved in the procreation of children. Parents, Steiner argues, owe the value of this genetic material to the global fund. Each person possesses a certain amount of ability-value: the value of their naturally bestowed abilities.¹¹⁷ As Steiner notes, “[e]verything here turns on the isolation of what counts as ‘natural’”.¹¹⁸ Insofar as this ability-value issues from a person’s genetic inheritance, adults who own children with “superior genetic endowments” must redistribute some of the value of these endowments to those less fortunate.¹¹⁹ The effect of redistributing these natural endowments would be to narrow the difference in children’s ability levels; “[a]nd a result of both this and the broader economic redistribution engendering it,” he continues, “would be that their positions at the starting-gate of adult life — the realm of choice-making — would be significantly less unequal”.¹²⁰ Background inequalities which predate a person’s

cont’d]

human race [...] the condition of every person born into the world, after a state of civilization commences, ought not to be worse than if he had been born before that period [...] Every proprietor, therefore, of cultivated land, owes to the community a ground-rent for the land which he holds: and it is from this ground-rent that the fund proposed in this plan is to issue.”

¹¹⁵ ER 272

¹¹⁶ ER 268

¹¹⁷ ER 275-280

¹¹⁸ ER 277

¹¹⁹ ER 277

¹²⁰ ER 280. Steiner’s position, and others similar to it in this respect, are sometimes referred to as “starting-gate” theories. See Bruce A. Ackerman, *Social Justice and the Liberal State* (New Haven: Yale University Press, 1980); and Anne Alstott and Bruce A. Ackerman, *The Stakeholder Society* (New Haven: Yale University Press, 1999).

life as an adult moral agent are to be equalized, meaning that all adults in principle receive an equal portion of initially unowned things, including of the value of germ-line genetic information.

Steiner describes the theory he has advanced as “classical *laissez faire* liberalism of the natural rights based kind”.¹²¹ rather than arguing out of any conception of the good, ER presents a minimal account of the necessary features of a theory of justice: Steiner’s account is one of justice-as-rights. What ER has not attempted to describe, Steiner says, are any reasons for believing in justice. Nor, he concludes, can any such reasons be found.¹²²

2.2. STEINER’S CONCEPTION OF INTUITION

In 2.1 I presented an exposition of ER, in which I set out that Steiner’s primary aim is to describe the necessary conditions of a compossible set of rights, and that he believes such a set of rights to amount to a theory of justice.¹²³ In the remainder of this chapter, I analyse a number of the key features of ER, starting in this section with Steiner’s conception of intuition. Intuition is ER’s point of departure, being addressed both in the introduction and at the beginning of the first substantial chapter.¹²⁴ Here he distinguishes between two kinds of intuition: “moral” and “linguistic”.¹²⁵

¹²¹ ER 281-282

¹²² ER 282

¹²³ Ian Carter also remarks upon Steiner’s attempt to build up a detailed theory from “a concept as general and as vague as ‘justice’”. See Ian Carter, introduction to AJ, xxiii.

¹²⁴ ER 2-3; 6 ff.

¹²⁵ ER 2-9

First, I analyse the role of moral and linguistic intuitions in Steiner's argument, focusing in particular on ER's introduction (2.2.1). Second, while his account of justice is based on the conceptual analysis of linguistic intuitions associated with justice, I argue that ER necessarily issues from an initial *moral* intuition about the nature of justice (2.2.2). Third, Steiner conceives of intuitions as psychological events in individual persons, yet also as being constituted through an interpersonal structure of intuition, and through communities of linguistic and moral conventions (2.2.3). Finally, I argue that a number of important presuppositions are evident in Steiner's conception of intuition. I conclude that Steiner's conception of intuition can be summarized as empirical, psychological and naturalistic (2.2.4).

2.2.1. The Role of Moral and Linguistic Intuitions in ER

a. Characterising Moral Intuitions

Steiner characterizes moral intuitions as “assorted unreflective beliefs about the propriety of various activities”,¹²⁶ they are, in other words, intuitions about moral value. Steiner claims that moral intuitions “tend to be uncomplex”,¹²⁷ are inconsistent with one another,¹²⁸ and are often a source of interpersonal disagreement and deadlock.¹²⁹ As I examine further in 2.2.2, Steiner intuitively justice as a moral “rule” which prescribes an arrangement of liberties and restrictions in

¹²⁶ ER 3

¹²⁷ ER 3

¹²⁸ ER 111-125

¹²⁹ ER 7

a society. On Steiner's conception, justice is called upon when persons disagree over whose freedom should prevail out of such deadlocks:¹³⁰

Questions of justice arise precisely where the moral permissibility of one person's restricting another's freedom is not determined by the comparative merits of the ends to which they are respectively committed.¹³¹

It is because justice concerns situations where persons cannot agree about moral values that Steiner maintains that any definition of justice must remain neutral with regard to persons' moral intuitions,¹³² or in Rawls's phrase, with regard to their "conceptions of the good".¹³³ The rule of justice must not endorse as such persons' beliefs about moral value, but must rather adjudicate conflicts without considering the merits of their moral ends — i.e. without entering substantially into the moral dispute at hand. (Later, I consider the restrictedness of Steiner's idea of justice as presiding over deadlocks of between deadlocked conceptions of the good. In its institutional forms, justice is most often understood to preside over conflicts between good and bad, and to determine judgements and punishments for moral and legal violations in which there is no discernible deadlock; indeed, in which there may be open admission of culpability.)

b. Characterising Linguistic Intuitions

Steiner takes linguistic intuitions to be conceptually distinct from moral intuitions. He characterizes linguistic intuitions as persons' intuitions about "the

¹³⁰ ER 229

¹³¹ ER 1-2

¹³² ER 188-189, ch. 6.

¹³³ Rawls describes persons as possessing "a capacity for a sense of justice and for a conception of the good". See Rawls, *Political Liberalism*, 19. Steiner does not draw the parallel with Rawls himself; this is my interpretation of a similarity.

meanings of words”.¹³⁴ The phrase “linguistic intuitions” appears several times in the first eight pages of the book, but not thereafter.¹³⁵ This fact emphasizes the importance of intuitions as Steiner’s key inductive source — the point of departure, but not the theoretical destination of ER.¹³⁶ However, in the formulation of a theory of justice, why are *linguistic* intuitions a better place to start than *moral* intuitions? Do not linguistic intuitions also tend to be uncomplex, inconsistent with other of our linguistic intuitions, and a source of interpersonal conflict?

First, Steiner works on the assumption that linguistic intuitions are distinct from moral intuitions; and that questions of justice pertain to situations of some form of *moral* deadlock. Discussing and refining the linguistic intuitions associated with justice therefore satisfies the requirement that justice not intervene in the moral substance of those conflicts; conceptual analysis of rights, duties, liberties and restrictions does not, for Steiner, require taking any position with regard to the good.

Second, given that Steiner’s treatment of linguistic intuitions avoids intervening in the substance of conflicts over moral value, Steiner is able to make empirical claims in support of the meanings he selects: he refers to “ordinary language”, “ordinary usage”, and “the way in which normal speakers of that language employ [a] word”.¹³⁷ Steiner does appeal to some empirical authority, in the form of presumed or perceived prevalence of word usage, which is offered in support of certain linguistic intuitions. However, to make reference to the empirical prevalence of particular *moral* intuitions would be to intervene in the

¹³⁴ ER 3

¹³⁵ ER 2, 3, 5, 6-7

¹³⁶ ER 6-8

¹³⁷ ER 7

very conflicts about the good with regard to which Steiner maintains the justice rule must remain neutral.

Third, Steiner examines ER's core terms (rights, duties, liberties and restrictions) on the basis that they relate to the definition of justice as a matter of logical necessity. That rights are a part of any conception of justice is an axiom of Steiner's argument in ER.

2.2.2. Steiner's Intuition of Justice

a. A Minimalistic Intuition of Justice

At the opening of ER, Steiner expresses reservations about being able to establish a definitive conception of justice. Expanding upon ER's opening questions, which I discussed in 2.1, he writes:

What is justice? And what is it for? A principal theme of this book is that, insofar as the first question has an answer, the second does not.¹³⁸

The phrase "insofar as" here suggests Steiner's scepticism about the possibility of answering the question "what is justice?". Yet "insofar as" also indicates that Steiner believes the question can be *partially* answered. This reflects the context of that long and complex dispute about the meaning of justice upon which I remarked in chapter one. Indeed, Steiner makes reference to the number of justice theories engaged in dispute, and the need for "filtering out many candidate conceptions of justice".¹³⁹

¹³⁸ ER 1

¹³⁹ ER 3

Such diversity of justice theories is one factor in Steiner's search for a conception of justice that is no more comprehensive than is logically necessary. He attempts to avoid the usual contentions in debates over justice by working on the basis of a definition which he claims must be implicitly present in all more comprehensively described theories: it is for this reason that he describes rights as the "elementary particles" of justice.¹⁴⁰ This minimal conception of justice is evident in that Steiner does not characterize justice by referring to other moral intuitions or values, such as "fairness" or "desert".¹⁴¹ Rather, he works with a core set of parameters that he takes to be required by any conception of justice (liberty, rights, etc.). One of Steiner's most forceful claims is that anyone theorizing about justice is committed by *logical necessity* to incorporating their account of justice as a compossible set of equal basic rights.¹⁴²

b. No Reasons to be Just

Steiner's minimalistic approach is also reflected in ER's final claim: that no reasons can be found to be just. He does not argue that persons should believe in justice or that they should be just, but merely claims that, if a person's moral code includes justice as one of its values, then justice-as-rights follows from that commitment. Steiner does, however, indicate his own moral commitment to the value of justice, expressing the view that a perfectly just world would be a "better" one.¹⁴³ (There are, it could be argued, also consequential reasons in favour of being

¹⁴⁰ ER 2-3

¹⁴¹ See Rawls, *Justice as Fairness*; Serena Olsaretti, "Debating Desert and Justice," introduction to *Desert and Justice*, ed. Serena Olsaretti (Oxford: Oxford University Press, 2003), 1-24; Jonathan Wolff, "The Dilemma of Desert," in *Desert and Justice*, ed. Olsaretti, 219-232.

¹⁴² ER 3

¹⁴³ ER 1

just, which support the value of justice by reference to its outcomes. For example, it could be argued that a just society is likely to contain less suffering. However, such reasons could not be advanced in favour of being just without also implying a commitment to other values (i.e. the disvalue of suffering); and avoiding such reliance on moral values other than justice itself is one of Steiner's core constraints.)¹⁴⁴

2.2.3. Intuitions as Both Individual and Communal

a. Intuitions as Individual, Psychological Phenomena

Although no explicit reference is made to the psychological nature of intuitions, a number of passages seem to imply a conception of intuitions as psychological events in the minds of individual persons. For example, at the beginning of ER's second chapter, Steiner writes:

Not everyone, it must be admitted, shares Blue's linguistic intuitions here. For that is what they are: linguistic intuitions. A good deal of philosophical debate consists, among other things, in duelling with linguistic intuitions.¹⁴⁵

The fact that linguistic intuitions are not always shared between different persons seems to reflect a conception of their psychological independence. This conception also inheres in the possibility of intuitions becoming weapons in a "duel" over the meanings of words. Insofar as it is psychological, Steiner's conception of intuition

¹⁴⁴ For an example of consequential argumentation about justice in non-philosophical discourse, see John J. Conley, "Against Capital Punishment: A Teleological Argument," *Life and Learning* 9. Accessed March 24, 2013. <http://www.uffl.org/vol%209/conley9.pdf>. Conley has to establish purposes for justice, i.e. other values for which justice stands, in order to make his argument.

¹⁴⁵ ER 6. Hillel affirmed in conversation this interpretation of his conception of intuitions as psychological phenomena.

is also naturalistic: referring not to transcendental intuitions, but to what is in principle available for empirical examination.

This conception is also evident in ER's introduction, where Steiner writes that "[m]y hope, of course, is that [ER] will succeed in capturing a fair proportion of your intuitions".¹⁴⁶ It is also on display in phrases such as "our [...] intuitions", "our several uses of a word", and "our usage".¹⁴⁷ Moreover, it is evident in the fact that Steiner chooses to present some of the most challenging, central parts of his argument in passages of dialogue between fictional characters who are in disagreement; this also indicates a pretheoretical idea of the individual person as the basic site of moral deliberation. I return to the issue of dialogue and interpersonal deliberation in 2.3.

b. Individuals' Intuitions Within an Interpersonal Structure of Intuition

Steiner's conception of intuition presupposes not only that intuitions are individual psychological phenomena, but also that such intuitions are constituted through interpersonal discourse. His references to the authority of ordinary usage as a "first court of appeal" can ultimately be understood only as references to an empirical community of language.¹⁴⁸ The meanings from which Steiner begins are themselves obtained from social communication. Although individuals' moral and linguistic intuitions are routinely the object of interpersonal conflict, what persons have in common on Steiner's conception of intuition is the fact that these intuitions arise in a world of shared meaning through language.

¹⁴⁶ ER 5

¹⁴⁷ ER 7

¹⁴⁸ ER 7

c. Intuitions, Languages and Cultures

Steiner's conception of intuition as both individual and interpersonal also presupposes that their moral and linguistic concepts are conditioned by the communities in which they live.¹⁴⁹ ER is composed in the English language, and its terminology is part of that language. The very business of translating concepts between languages and cultures is a discipline in its own right, and the difficulties and curiosities of attempting such translations, particularly of contentious and socially constituted concepts like justice, are well-documented.¹⁵⁰

It is widely accepted that the conceptual content of different languages is not identical; Quine's description of the "indeterminacy of translation" has been influential in this area.¹⁵¹ The issue of translating justice between languages and cultures also features in Amartya Sen's recent work *The Idea of Justice*. Sen draws upon the Indian ideas of *niti* and *nyaya*,¹⁵² and discusses the extent to which they approximate to the English-language concept of justice while retaining a distinct conceptual existence of their own.¹⁵³

¹⁴⁹ There is empirical evidence for this from the field of psychological science, although, of course, the possibility of meaningful scientific investigation of language is contingent on the Husserlian critique of psychologism and naturalism, which is one of the themes of this thesis. This is a particularly important consideration in the study of language, because language itself forms part of the structure of cognition. Nevertheless, see studies such as: Wendi L. Gardner, Gabriel Shira and Angela Y. Lee, "'I' Value Freedom, but 'We' Value Relationships: Self-Construal Priming Mirrors Cultural Differences in Judgment," *Psychological Science* 10 (1999): 321-326.

¹⁵⁰ Translation studies is now a popular area of research. See, for example: Leena Laiho, "A Literary Work — Translation and Original: A Conceptual Analysis within the Philosophy of Art and Translation Studies," *Target* 19/2 (2007): 295-312. Theo Hermans, "Cross-Cultural Translation Studies as Thick Translation," *Bulletin of the School of Oriental and African Studies* 66/3 (2003): 380-389.

¹⁵¹ W.V.O. Quine, *Word and Object* (Cambridge MA: MIT Press, 1960), 26-79; W.V.O. Quine, "On the Reasons for Indeterminacy of Translation," *Journal of Philosophy* 67/6 (1970): 178-183; see also Patrick Wilson, "Quine on Translation," *Inquiry* 8/1-4 (1965): 198-211.

¹⁵² Amartya Sen, *The Idea of Justice* (London: Penguin, 2009), 20-22.

¹⁵³ Sen, *Idea of Justice*, 412-415.

The necessity, indeterminacy, and qualified possibility of translating between languages and cultures implies a level of basic meaning which is shared between languages — conceptualized and expressed in language, but issuing from something other than language. The nature of language as both shared and not-shared is perhaps reflected in Steiner's concluding agnosticism about finding reasons to be just. Rather than expressing relativism or scepticism about justice, Steiner's concluding remark may reflect an awareness that, even following ER's sophisticated arguments, its conclusions still derive from an intuition of justice which is not necessarily shared by all.

In summary, Steiner's conception of intuition includes both an individual and an interpersonal aspect. Individual intuitions presuppose shared language and shared concepts. Intuitions are phenomena which can be adequately explained only by recognising both of these aspects; individual moral and linguistic intuitions are embedded within an interpersonal structure of intuition. Steiner takes the form of intuitions to be common between different individuals, although the "content" of their intuitions may differ.

2.2.4. The Presuppositions of Steiner's Conception of Intuition

So far, I have argued that for Steiner intuition is the basic source of persons' moral and linguistic ideas, and that these intuitions are psychological, naturalistic, and have both an individual and an interpersonal aspect. Reasoning and theorizing about justice is secondary to intuitions in the sense that it is intuitions which are

reasoned and theorized about.¹⁵⁴ However, Steiner's conception of intuition itself demonstrates further presuppositions.

First, Steiner's postulation of moral and linguistic intuitions presumes prior conceptions of morality and language. Intuitions are either interpreted as being of moral or linguistic content, or they present as being of different types intuitively. Either way, moral and linguistic intuitions can only be understood as such on the basis of a prior conception of morality and language.

Second, Steiner's method presupposes conceptions of reasoning, logic, and consistency. In chapters four and five of ER, Steiner explores "moral reasoning" and "economic reasoning" as means by which to turn vague intuitions about justice into a precise design for a compossible set of rights. On what basis, though, is reasoning brought to bear on intuitions? From where does the fidelity to logic and consistency itself issue? These could be described as "epistemic intuitions".

Third, Steiner's conception of reasoning informs his conception of the philosopher's task as an analytic and computational one.¹⁵⁵

It's assuredly not the job of philosophers to legislate on which linguistic (much less, moral) intuitions we may hold nor, therefore, on what conception of liberty we may employ. They utterly lack the authority to do so. Rather, their brief is the more modest one of indicating which set of intuitions can be held consistently. Intuitions have implications. Conceptions carry logical commitments. And the job of philosophers is to tell us when our several uses of a word like "free" are inconsistent[.]¹⁵⁶

Fourth, this passage shows that there is more to Steiner's conception of the philosopher than computation. In stating that philosophers "utterly lack the authority" to "legislate" on which ideas people may have about morality or

¹⁵⁴ ER 6-9

¹⁵⁵ See Hillel Steiner, "How Free: Computing Personal Liberty," *Royal Institute of Philosophy Supplement* 15 (1983): 73-89.

¹⁵⁶ ER 7. Original emphasis.

language, Steiner endorses, through a political metaphor, the sovereignty of the individual person. There inheres in Steiner's conception of reasoning and philosophy an idea about the authority that persons should and should not exercise over other persons. A trace of a conception of liberalism is found within Steiner's conception of the philosophical task itself. This pretheoretical respect for persons' moral autonomy suggests an additional explanation for Steiner's claim that no reasons can be found to believe in justice.¹⁵⁷

Fifth, Steiner presupposes conceptions of space and time. The definition of the principle of compossibility, which Steiner describes as the "linch-pin" of his argument, requires a conception of time. Compossibility is defined as synchronic compossibility, and refers to the impossibility of two persons having exclusive control of the same thing at the same time. The pure negative concept of liberty (PNCL) and the law of conservation of liberty (LCL) are both synchronic or "time-slice" descriptions of liberty (as I demonstrate in detail in chapter three). By contrast, the *diachronic* legitimacy of such possession must be justified, through the vindication of its historical pedigree as an entitlement that was not gained through the violation of original rights. Furthermore, time serves not only to define persons' rights, but also to limit them: by assigning rights exclusively to living agents, and limiting rights to a particular period of time, Steiner restricts the number of admissible claims on the language of rights.

Sixth, Steiner presupposes space- and time-consciousness. The actions of persons are themselves phenomena which possess duration. Persons, agents, and things are items that can be integrated into a time-indexed structure of rights because the experience of persons is temporalized, consisting of a memory of the

¹⁵⁷ ER 282

past and an anticipation of the future. (I expand on some of these points further in 2.3, where I discuss Steiner's conception of personhood; and I develop them further in chapter six, where I argue that time-consciousness itself is an aspect of the attitude of justice.)

In this section I have argued that Steiner's argument, while beginning with apparently minimal moral and linguistic intuitions, in fact presupposes a number of deeper epistemic presuppositions, or epistemic intuitions. The categories of intuition, morality, language, reasoning, logic, person, and agent are themselves intuitions which implicitly support Steiner's argument in ER. Even to reach the starting point established in ER's introduction requires a number of assertions which invest these intuitions. Steiner's conception of intuition can be summarized as empirical, psychological, and naturalistic.

2.3. STEINER'S METHOD: FROM INCONSISTENT INTUITIONS TO CONSISTENT CONCLUSIONS

2.3.1. Conceptual Analysis of Linguistic Intuitions

In the previous section, I argued that the inductive basis for Steiner's argument in ER is a moral intuition concerning the essential function of justice as a moral rule distributing rights. Secondary to the intuition of justice are linguistic intuitions about those terms which he understands to be related, by logical necessity, to that intuition of justice. Such linguistic intuitions are taken to arise within a structure of intuition that is both individual, and common from one person to the next. Steiner also treats linguistic intuitions as existing within an empirical community of a shared language, as expressed in his references to "ordinary language" and

“ordinary usage”.¹⁵⁸ Steiner takes these linguistic intuitions forward, and subjects them to “preliminary conceptual analysis”.¹⁵⁹ Here I examine this aspect of Steiner’s method.

a. Achieving Consistency as Purpose of Conceptual Analysis

Steiner does not propose analysis of key terms only to document their ordinary-language meanings, or to elucidate them through commentary. His method of conceptual analysis is directed towards a purpose: establishing consistency between intuitions by excluding some of them from the shared lexicon:

To achieve consistency, we have to expel some of these reflections from our usage, to silence the intuitions they express.¹⁶⁰

By “consistency”, Steiner means that multiple understandings of a term should be reduced in order to be left only with a definition under which, for example, a person could not be described as simultaneously “free” and “unfree” to do the same action. Steiner offers a rule according to which this self-consistent set of precise definitions is to be chosen:

in picking and choosing among our intuitions, we should take care to silence only those whose absence from our usage promises to cause us less discomfort than would be the absence of those it continues to reflect.¹⁶¹

¹⁵⁸ The term “language” occurs seven times in ER: four times as part of the phrase “ordinary language”; and once as part of the phrase “everyday language”. “Linguistic intuition” occurs four times, in the passage quoted, and on p. 238. “Intuition”, including as part of the phrase “linguistic intuition”, occurs twelve times, and always in the linguistic sense. I obtained these figures, which are approximate, by conducting a wordsearch of the text.

¹⁵⁹ ER 3

¹⁶⁰ ER 7

¹⁶¹ ER 8

This direction towards a purpose is also evident, for example, in Steiner's expression of the need to reform the "design" of rights.¹⁶² The two citations above represent formulations of the two *interpretative rules* which govern Steiner's method of conceptual analysis. I call these the "consistency rule" and the "sorting rule":

- (1) *Consistency rule*: The intuitions we select should be consistent with one another.
- (2) *Sorting rule*: In any consistent set of intuitions, we should try to retain the intuitions that cause us least discomfort to discard.

Steiner's method of conceptual analysis is to consider multiple common understandings of a term in "ordinary language",¹⁶³ such as the word "free" in chapter two of ER; and then to identify how these usages can be inconsistent with one another (the consistency rule) and to refine usage so as to eliminate inconsistency (the sorting rule). By applying these two interpretative rules to our linguistic intuitions, Steiner seeks to trim away those usages which are inconsistent with our more important ideas about a term. In turn, establishing such conceptions of liberty and rights will permit, he claims, the design of a set of compossible rights. But on what grounds are these interpretative rules postulated? Are they, also, not intuitions of some sort?¹⁶⁴

¹⁶² ER 80-83

¹⁶³ ER 7

¹⁶⁴ See Pieter A.M. Seuran, "Logical Systems and Natural Logical Intuition," International Congress of Linguists CIL-18, Seoul, July 21-26, 2008. Accessed February 1, 2013. http://pubman.mpdl.mpg.de/pubman/item/escidoc:94883:7/component/escidoc:94901/Seuren_Logical-Systems_Seoul_2008.pdf. See also Michael Otte, "Intuition and Logic," *For the Learning of Mathematics* 10/2 (June 1990): 37-43.

b. Consequences of Inconsistency

Steiner also identifies negative consequences of allowing inconsistencies in a moral code. Any moral code which permits inconsistency will produce “ties” of moral value, which will in turn create duty-conflicts, or dilemmas, such as that faced by Sartre’s student. (I return again to this example in chapter three.) Steiner claims that establishing a self-consistent, ranked and weighted moral code eliminates the possibility of such conflicts.

In the case of the moral rule of justice, Steiner offers an additional reason for insisting on the consistency of a moral code, and the lexically prime status of justice within it. He argues that it is intrinsic to the *meaning* of a right that rights are enforceable; or, more precisely, that a right is a claim to the enforcement of a correlative duty in another person.¹⁶⁵ Permitting impossibilities within a set of rights, Steiner argues, would render some of them unenforceable, effectively extinguishing them.

While the given starting point of ER is moral and linguistic intuitions, it is clear that Steiner’s governing analytic/interpretative principle is the consistency rule. Yet why does Steiner select the consistency rule and the selection rule over other possible rules? Why must a moral code be consistent to be plausible? And why should the extent of “discomfort” govern which intuitions are retained and lost in achieving coherence of this kind? I return to assess these questions critically in chapter three.

¹⁶⁵ ER 57: “The idea that rights are things which are exercisable deeply permeates both ordinary language and standard legal usage.”

c. Consistency and Reflective Equilibrium

The sorting rule resembles John Rawls's technique of reflective equilibrium.¹⁶⁶

This is a philosophical technique which evaluates a person's particular intuitions or judgements alongside their more settled beliefs.¹⁶⁷ Rawls introduces it in A *Theory of Justice* as follows:

By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgments and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium.¹⁶⁸

To illustrate the technique of reflective equilibrium, consider an example. Johnny makes an intuitive judgement that "it was not wrong for Thom to steal the loaf of bread", but he also holds a general belief that "it is wrong to steal loaves of bread". The aim of reflective equilibrium is to maintain the coherence or consistency of intuitions and beliefs by modifying either or both. If Johnny applied a technique of reflective equilibrium to his intuitions and beliefs about stealing loaves of bread, he may decide that his intuitive judgement excusing Thom was mistaken, and revisit it; or he may decide that his general rule about the wrongness of stealing loaves of bread needs modification in the light of his particular judgement about Thom. Johnny might then revise his general belief: "it is wrong to steal loaves of bread except when the thief is starving and has no money". Either way,

¹⁶⁶ Rawls, *Theory*, 20; 48-51. Before establishing the term "reflective equilibrium", Rawls wrote of a "decision procedure". See John Rawls, "Outline of a Decision Procedure for Ethics," *Philosophical Review* 60/2 (1951): 177-97.

¹⁶⁷ Norman Daniels, *Justice and Justification: Reflective Equilibrium in Theory and Practice* (Cambridge: Cambridge University Press, 1996); Norman Daniels, "Reflective Equilibrium," *Stanford Encyclopedia of Philosophy* (2011). Accessed February 1, 2011. <http://plato.stanford.edu/entries/reflective-equilibrium>.

¹⁶⁸ Rawls, *Theory*, 20.

this method aims towards equilibrium, or consistency, between intuitions and beliefs.¹⁶⁹ Steiner's method is more restricted than Rawls's, in that he focuses on discarding only *linguistic* intuitions. His solution to conflicting *moral* intuitions, as I explained in 2.1, is to establish a system of lexical ranking within a moral code. Nevertheless, the principle of assessing intuitions, with the intention of modifying them to form a coherent set of intuitions, is similar to Rawls's technique.

2.3.2. Steiner's Presentation of ER as Text

I have so far identified that Steiner's inductive starting point is in moral and linguistic intuitions, which in turn presupposes a conception of intuition and a number of epistemic intuitions concerning analysis, reasoning, and consistency. In this section, I take a further step back, and consider how ER is presented as a text. I argue that Steiner's choices of sequence, structure, themes, style, and lexicon all demonstrate his empirical philosophical approach. Some of the points which follow are entirely obvious, but I remark upon them here because, considered together, they further illustrate important presuppositions underpinning the substance of Steiner's argument.

a. Argumentative structure. ER is a structured text, which moves from an inductive opening (in intuitions) through to normative conclusions ("just redistributions"). It is divided into chapters, each of which is subdivided thematically. Each chapter has short passages at its beginning and end, which frame the argument it contains. Steiner's strategy is to begin with what is broadly

¹⁶⁹ Klemens Kappel, "The Meta-Justification of Reflective Equilibrium," *Ethical Theory and Moral Practice* 9/2 (April 2006): 132-134.

agreed, or “uncontroversial”,¹⁷⁰ and from that position to persuade the reader that normative conclusions follow from reasoning about what is broadly agreed.

b. Dialogue between author and reader. ER is presented as dialogic in two senses. First, Steiner writes in the first person singular and plural, which reflects the broader tension in his argument between regarding language phenomena both as rooted in the experience of the individual, and as shared and constituted communally. Appeals to ordinary language and common sense, which presume the reader’s assent,¹⁷¹ are routinely accompanied by the terms “us”, “we”, and “our”. More controversial points, upon which Steiner invites the reader’s agreement, are often presented alongside “me”, “I”, and “my”.¹⁷² Steiner’s use of the first person gives the text an informal and conversational feel which contrasts with its technical lexicon.

c. Dialogue as part of exposition. Second, Steiner presents many of his arguments with long passages of fictional dialogue between two or more persons, and, some of the time, in conversation with a computer named Evaluator.¹⁷³ Certain values inhere in the presentation of these dialogues. The facts that fictional agents are placed into a conversation, and into a discourse in which language and terms are shared and mutually comprehensible, presuppose their community with one another. Although the content of these dialogues is disagreement, it is disagreement against the background of a common world in which morality and justice are meaningful. Their utterances are also characterised as being those of persons who are rational, reasonable, deliberative, and sharing a basic structure of thought: they will alter their opinions based upon

¹⁷⁰ ER 9

¹⁷¹ ER 8

¹⁷² This is true of the whole text, but see, for example, ER 1-5.

¹⁷³ See ER, ch. 4.

the objections of Evaluator, once Evaluator's objections are explained and demonstrated to be rationally sound. An indication of respect for persons and their autonomy also inheres in the turns that these fictional characters take to speak, during which other characters are implicitly engaged as silent listeners. These conversations take time, requiring mutual patience, and argumentative progress is made through this interpersonal deliberative process.

d. *Minimalism*. In 2.1 I argued that Steiner's starting point is a minimalistic moral intuition of justice. This minimalistic approach, based on a formal analysis of what Steiner takes to be the "elementary particles" of a more comprehensive theory of justice (i.e. one which specifies a particular distribution of compossible rights), forms a large part of the authority of Steiner's argument.¹⁷⁴ However, this minimalism applies across ER's presentation as a text. Such minimalism is also evident in his reductive lines of argument, such as taking one form of freedom to stand in place of those Steiner discards:

I find it especially difficult to let go of the idea that persons are free to do what they actually do. They're also free to do many of the things they don't do and would never consider doing.¹⁷⁵

Steiner thus takes a necessary condition of one kind of freedom — unobstructedness — to stand in for all the senses of freedom. The key strategy here is to continue using the overall term "freedom" to express only one of its senses; and this applies, similarly, to the language of rights (which in Steiner's sense excludes many ordinary senses of the word), duties (which refer only to duties correlative to rights), and persons (which typically stands in for a subset of persons, i.e. moral agents).

¹⁷⁴ Steiner's attempt to seek a plausible and synoptic conception of justice using only minimal and uncontroversial premises is effectively an application of Occam's razor.

¹⁷⁵ ER 8

e. *Axioms and assertions.* In ER's introduction, Steiner sets out a number of axioms and assertions. As noted earlier in this chapter, this somewhat reduces the force of Steiner's apparent minimalism, as some of these assertions are significant and controversial. Indeed, for all the argumentative sophistication of ER, perhaps its most important statements are found in the introduction. It is there, at ER's opening, that Steiner sets out the epistemic conditions under which he presumes ER to operate. Examples of such assertions include:

The elementary particles of justice are rights.¹⁷⁶

Rights are the items which are created and parcelled out by justice principles.¹⁷⁷

Particular applications of a [justice principle yielding contradictory judgements] would too frequently drive us to say "Leave it to the judge/the legislator/heaven to sort this one out." And they, after all, seem sufficiently busy already.¹⁷⁸

contrary to what some have suggested, it's simply untrue that exploring the meanings of words can furnish little assistance in assessing these competing theories[.]¹⁷⁹

there's simply no necessary connection between the factors motivating the choice of an analysandum and the content of its analysis. A misanthrope is perfectly capable of delivering a philosophically respectable account of benevolence, a coward of courage, and so forth.¹⁸⁰

These assertive starting points are key to how ER's argument unfolds. Matthew Kramer has also noted the work that assertions accomplish in the early pages of ER, challenging in particular the last of these quotations.¹⁸¹

¹⁷⁶ ER 2. Emphasis removed.

¹⁷⁷ ER 2

¹⁷⁸ ER 3

¹⁷⁹ ER 3

¹⁸⁰ ER 4

¹⁸¹ See Kramer, "Consistency," 203.

f. *Analysis*. In ER, Steiner narrates a process of analysis based on these explicit axioms and assertions, as well as on implicit epistemic intuitions about reasoning, logic, and consistency, noted a little earlier. The use of dialogue, in both of the senses described above, also serves this analytic purpose. Questions and objections are often raised from a second-person perspective,¹⁸² and the argument moves on through these exchanges. Thus the structure of rational thought is itself represented as dialogic. Steiner also explicitly sets out a conception of philosophy-as-analysis, writing that “the job of philosophers is to tell us when our several uses of a word [...] are inconsistent”.¹⁸³

g. *Physical analogies*. Steiner illustrates his points by using physical analogies. For example, he repeats Charles Taylor’s illustration of the pure negative conception of liberty (PNCL) with the analogy of the freedom of a lever’s movement.¹⁸⁴ Elsewhere, the analogy of physical size is used in support of the idea of ranking competing moral values, or ranking competing instances of the same value: he states that “bigger is better” when it comes to moral actions.¹⁸⁵ Similarly, Steiner claims that since “all big things are made from small ones”,¹⁸⁶ justice itself is made up of “particles” in the form of rights.¹⁸⁷ Furthermore, he labels his method the “elementary particle strategy” of justice.¹⁸⁸ He also writes of persons’ “bundles” of basic property rights, to mean their rights to such holdings.¹⁸⁹ Further examples of Steiner’s use of physical analogies include:

¹⁸² There are many examples, but the line of questioning on ER 137 is a good one.

¹⁸³ ER 7

¹⁸⁴ ER 9

¹⁸⁵ ER 130

¹⁸⁶ ER 2

¹⁸⁷ ER 2

¹⁸⁸ ER 2, 188

¹⁸⁹ ER 231

the formal or characteristic features of rights [...] constrain the possible content of justice principles in much the same sense as architectural precepts must be informed by the properties of the construction materials they orchestrate.¹⁹⁰

the linch-pin of this essay's argument is that the mutual consistency — or compossibility — of all the rights in a proposed set of rights is at least a necessary condition of that set being a possible one.¹⁹¹

These physical analogies impose quasi-spatial constraints on what are non-spatial categories, i.e. moral value. While it may be true that “all big things are made from small ones”, it is debatable whether justice or rights can meaningfully be considered analogous to physical things. Moreover, as I explore in depth in the next chapter, Steiner presents an entirely physicalist conception of liberty and ownership, stating that “[f]reedom is the possession of things”.¹⁹²

In summary, Steiner's presentation of ER as a text also points to what is less explicit in ER: the conception of personhood which underpins it. Argumentation, persuasion, dialogue, reasoning, reasonableness, analysis, assertion, analogies, language, and morality all contribute to ER's presentation as text, and all point in various ways to a pretheoretical, transcendental conception of the person.

2.4. STEINER'S TRANSCENDENTAL CONCEPTION OF THE PERSON

In this chapter, I have so far argued that ER presupposes a pretheoretical conception of intuition (2.2), and that Steiner's method is one of analysis and

¹⁹⁰ ER 2

¹⁹¹ ER 2. Original emphasis.

¹⁹² ER 39

selection in pursuit of consistency, to which ER's structure and presentation as a text contribute (2.3). In this section, I contend that all the aspects of Steiner's argument discussed so far indicate a transcendental conception of the person as an autonomous being with intrinsic moral status.

2.4.1. Steiner's Conception of the Person

I have already remarked upon several ways in which Steiner's conception of the person is evident through the analysis of his conception of intuition, his account of consistency, and his presentation of ER as a text. It is now possible to set out further details of Steiner's presuppositions about personhood.

a. Persons as separated and autonomous. This is evident in Steiner's conception of persons' intuitions as being variable from person to person. "Person" itself expresses a separation and an instance of "persons". Persons' autonomy, morally and physically, is evident in Steiner's tracing of decision-making procedures and deliberative conversations, and in the notion of agency (moral and physical) which for Steiner distinguishes rights-bearing persons.

b. Persons as interpersonal, social, political. The relationship of correlative rights and duties, and the existence of moral duties in general, presupposes an interpersonal or social relation — a world of at least two persons. The understanding of certain common-sense rights (such as a child's right to life) as a relation of correlative rights and duties between a state official and a citizen also presupposes the context of a state (or at least of a legal enforcer or guarantor of natural and contractual rights). There is ambiguity about the distinction between moral and legal rights — a question which I address in the next chapter.

c. *Persons as psychological.* Persons have moral and linguistic intuitions, and these arise as psychological events in individuals. Persons' intuitions are in principle available to objective empirical description, analysis, and interpersonal comparison and deliberation, on account of this naturalistic and psychologistic conception of intuition. Intuitions are psychological facts, not foundational assumptions underpinning facticity.

d. *Persons as physical and embodied.* Persons' freedom is conceived in purely factual, physical terms: obstruction by other persons. A person is (negatively) free to do an act so long as no-one else obstructs that act. Persons also own their physical bodies, and it is upon this right to physical self-ownership that all other rights are predicated. Conceived entirely in terms of entitlement to physical objects, "freedom is the possession of things".¹⁹³

e. *Persons as owners of self and things.* Persons live within a mode of ownership, both of their own bodies and of the things of the world. Persons' rights are ultimately rights to own physical property, and those rights to own physical property mean duties of non-interference in that property by others. Ownership is characterised as "being in control" of something, which implies agency. (In chapter three, I consider whether this undermines Steiner's claimed foundation in the pure negative concept of liberty (PNCL), since the very possibility of rights presumes a conception of the person as capable of action.)

f. *Persons as moral:* It is axiomatic in ER that, while justice may or may not feature in a person's set of values, or moral code, persons in general do have such moral codes, and that their thought is structured according to a consistent

¹⁹³ ER 39

structure of moral and linguistic intuitions. Persons are presented as moral beings, which again implies a positive capacity for (moral) action.

g. Persons as (potential) holders of rights and correlative duties: Persons who are agents can possess rights, because they are capable of exercising the powers attached to their assigned rights. Yet persons who are not agents cannot hold rights or correlative duties.

h. Persons as having temporalized consciousness of self, world and others: Possessing an ordered moral code that can be articulated, reflected upon, discussed, and refined, implies a conception of persons as conscious beings with memory, imagination, and persistence of self-identity. It is on the basis of a separation between self, others, and world, that conflicts over value, ownership, and rights, are possible.

i. Persons as deliberative, rational, and reasonable. Steiner's extensive conversational passages convey persons as deliberative, rational, and reasonable, submissive to the demands of reason in resolving personal and interpersonal moral dilemmas.

j. Persons as non-rationally inclined towards justice. While Steiner asserts that no reasons can be found to be just, ER is nevertheless addressed to an audience for whom justice is presumed to be conceptually meaningful. Indeed, he specifically claims that it is possible for someone who does not believe in justice to conduct an analysis of the concept, in the same way that a coward can conduct an analysis of courage.¹⁹⁴

¹⁹⁴ ER 4. This claim is challenged in Kramer, "Consistency".

2.4.2. The Ambiguity of “Persons” and “Things”

In ER, a conception of the person is evident on almost every page. Amongst ER's key terms, “person” appears around 500 times — second only in frequency to the term “rights”, which is used around 650 times. Steiner uses the term “person” significantly more frequently than some of ER's more obvious key terms. For example, “language” and “linguistic”, combined, occur just ten times; “agent” around twenty times; “intuition” around 25 times; “justice” around 200 times; and “moral” and “morality”, combined, around 400 times.¹⁹⁵ However, unlike many of these other terms, “person” is a concept which does not receive any sustained discussion or conceptual analysis of its own. Direct consideration of the term is limited to Steiner's reference to Kant's moral philosophy, at the start of ER's chapter seven, on original rights.

I suppose we could do worse than to begin [...] by following Kant and provisionally adopting his classification of all items as either persons or things.¹⁹⁶

Accordingly, Steiner also distinguishes between “owners” and “ownables”.¹⁹⁷

However, it eventuates that in ER these concepts do not map neatly onto the categories of “persons” and “things”. Steiner's discussion of original rights leads him to abbreviate self-ownership in certain ways: for instance, by claiming that the germ-line genetic material, out of which persons are physically formed, is not in their exclusive possession,¹⁹⁸ and by maintaining that children are partially owned *qua* thing until they reach the point of natural (or legal) majority.¹⁹⁹

¹⁹⁵ I obtained these figures, which are approximate, by performing a wordsearch of the text.

¹⁹⁶ ER 230. See above, p. 81, n. 102.

¹⁹⁷ ER 229-230

¹⁹⁸ ER 266-282

¹⁹⁹ ER 248, 275

2.4.3. The Ambiguity of “Persons” and “Agents”

Understanding Steiner’s use of the concept “person” requires commenting immediately upon another term he uses: “agent”. There is tension between these two terms, not least because much of the time Steiner seems to use the term “person” to mean “agent”.²⁰⁰ To consider Steiner’s first court of appeal, ordinary usage, I take it to be a widespread intuition about personhood that non-agents (such as babies, young children, and those lacking mental capacity) are typically considered persons. These persons are also typically regarded as warranting respect, which is due to them not on account of agency (which they lack), or even on account of their potential agency, but rather on account of their status as persons.²⁰¹ In some cases, respect for a non-agent’s moral status as a person requires disregarding their agency or autonomy. For example, a parent might obstruct a child from performing an action which would cause them harm. But the absence of agency, or of physical or mental autonomy, does not ordinarily reduce the measure in which non-agents are considered persons.

Steiner’s account of rights holds, unequivocally, that only agents can possess rights. A problem with this is that excluding non-agents from the economy of rights (except insofar as non-agents can be third-party beneficiaries of a right-duty relationship between two agents) is that it effectively restricts a class of persons (non-agents) from having any natural rights outwith a legal system. Non-agents have no claims on justice, and at least until a legal system compels agents to treat non-agents in a certain way, on Steiner’s view it is meaningless to describe non-agents using the language of rights. But the way it is commonplace

²⁰⁰ ER 52

²⁰¹ See Carter, “Respect for Persons.” See also Andersson, “Potential Agents”. I discuss both of these texts in chapter three.

to think about certain basic rights seems not to derive from the agency of individuals, but rather from the respect that is due to them as persons, or, in Kant's terms, as ends in themselves.²⁰² The language of rights is often applied especially to non-agents, to express non-agents' moral entitlement to protection against actions which would exploit their vulnerability. (I return to this point in chapter three, in which I address the problem of counterintuition in ER.)

CONCLUSION

In one of the endorsements printed on the dust cover of *An Essay on Rights*, Brian Barry writes:

Those who are persuaded [by ER] will have learned a lot; those who are unpersuaded will learn a lot by being forced to figure out where the rabbit was introduced into the hat.²⁰³

This remark indicates the most powerful and puzzling quality of Steiner's argument in ER: his ability to argue from the most minimal of starting points in a few unpromising moral and linguistic intuitions, through to controversial and counterintuitive normative conclusions. In this chapter I have shown that Steiner's starting point is less minimal than it would first seem. Having set out an exposition of ER as an account of justice-as-rights (2.1), I next presented a systematic analysis of Steiner's starting point in intuition (2.2), his method of

²⁰² See Immanuel Kant, *Grounding for the Metaphysics of Morals*, 3rd ed., trans. James W. Ellington (Indianapolis IN: Hackett, 1993), 30: "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end"; *Grundlegung zur Metaphysik der Sitten*, ed. J.H. von Kirchmann (Berlin: Verlag von L. Heimann, 1870 [1785]), 53-54: "Handle so, daß du die Menschheit sowohl in deiner Person, als auch in der Person eines jeden anderen jederzeit zugleich als Zweck, niemals bloß als Mittel brauchest."

²⁰³ ER, back cover.

conceptual analysis and ER's presentation as a text (2.3), and I concluded by arguing that ER presupposes a transcendental conception of the person (2.4).

Steiner takes persons to be autonomous beings for whom intuitions arise as independent, thinking individuals. Persons have moral and linguistic intuitions, and share a common framework of intuition. Their thinking in general, and their moral thinking in particular, is guided to some extent by a community of culture, language, and moral conventions. Persons intuit the contents of moral values and the meanings of words within the context of such a community. The person who experiences intuitions is thus an autonomous, conscious, deliberative being, capable of experiencing, representing, and reflecting upon its intuitions. The person is self-conscious, already occupying an interpersonal world in which it understands itself as an autonomous agent. Although intuitions arise in ER as the text's empirical, psychological, naturalistic starting point, intuitions inescapably presuppose a transcendental constitution of the human person. Pretheoretical epistemic intuitions provide ER with stable foundations, and govern the form and content of Steiner's argument. In the next chapter, I argue for the existence of a number of problems in ER, all of which arise out of these pretheoretical presuppositions.

3. The Problems of Consistency and Counter-intuition in Steiner's *An Essay on Rights*

INTRODUCTION

In chapter two, I presented an exposition and analysis of Steiner's *An Essay on Rights*. I concluded that his argument is built on a number of epistemic intuitions or presuppositions, all of which are associated with a pretheoretical conception of the person, which pervades ER. In this chapter, I build on the analysis already presented, and level a number of critical points at Steiner's position. All of these concern this conception of the person, and how it relates to his account of liberty, rights, and justice.

First, I argue that the pure negative conception of liberty (PNCL) is more restricted than is immediately evident, because it describes only interpersonal restrictions on freedom (3.1). Second, I explore difficulties with the law of conservation of liberty (LCL), which has previously received critical attention from several scholars. I defend Steiner against some of these criticisms, but argue that LCL can hold only in a modified form, and only if the indexicality of persons' freedoms is disregarded (3.2). Third, I examine Steiner's insistence on the self-consistency of persons' moral codes, and demonstrate both that resorting to an indifferent decision procedure in cases of dilemma neither implies nor generates moral preferences. I also show that some dilemmas simply cannot be resolved through Steiner's method, and that this fact reduces the force of his compossibility test (3.3). Fourth, although Steiner admits of the need for analytic

outcomes which run counter to some of ER's opening intuitions, I argue that counterintuition still represents a serious problem for ER. In particular, I suggest that insisting on agency as a necessary condition for holding rights indicates a lack of clarity concerning the respective character of moral claims, which attach to persons, and legal powers, which attach to agents (3.4).

3.1. A CRITIQUE OF THE PURE NEGATIVE CONCEPT OF LIBERTY (PNCL)

3.1.1. The Pure Negative Concept of Liberty (PNCL)

Liberty is one of the concepts required by Steiner's intuition of justice, and about which he attempts to establish consistency of usage.¹ PNCL is the product of Steiner's conceptual analysis of liberty.² Steiner claims that PNCL is specified in such a way as to imply nothing about a person's positive liberty. It makes no reference to someone's inclination, desire, or intention to perform an action. Such considerations Steiner terms the "eligibility" of a particular action.³ Furthermore, Steiner presents PNCL as referring neither to a person's general capacity for action,⁴ nor to whether a person's actions are freely willed. PNCL permits Steiner

¹ As well as freedom, since Steiner uses these terms interchangeably. See ER 6-54.

² PNCL is not unprecedented, but Steiner's is one of the most thorough recent defences of it. See Hobbes, *Leviathan*, 139 (ch. 21; §1): "Liberty, or freedom, signifieth (properly) the absence of opposition; (by opposition, I mean external impediments of motion)"; Locke, *Second Treatise*, 17-18 (ch. 4); Ronald Dworkin, *Taking Rights Seriously* (Cambridge MA: Harvard University Press, 1977), 259-265; David Miller, "Constraints on Freedom," *Ethics* 94 (October 1983): 66-86.

³ See above, p. 70, and ER 10-21.

⁴ See Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (London: Oxford University Press, 1969). Steiner does, of course, restrict rights to agents — but that does

[cont'd]

to remain agnostic with regard to the free will-determinism problem in philosophy and ethics,⁵ and to remain independent of persons' varying attitudes and preferences.

Excluding as it does these considerations of positive liberty, PNCL is a concept of liberty which refers only to the obstructedness or unobstructedness of a person to do a particular action at a particular moment in time. He writes that PNCL "is uncontroversially an empirical or descriptive" concept.⁶ It refers only to those obstructions that would, if present, physically obstruct a person from acting in a particular way. For example, if Joni uses her car to block Leonard's driveway, Leonard is on the terms of PNCL *unfree* to get his car out of the garage: his doing so is obstructed. Conversely, if there is nothing blocking his driveway, Leonard is *free* to get his car out of the garage: his doing so is unobstructed. These assessments would be true, Steiner claims, even if Leonard is asleep in bed, and has no intention of driving the car that day.

In this section, I challenge PNCL from a number of angles. First, I query Steiner's assumptions about what constitutes an obstruction (3.1.2). Second, I show that PNCL describes only interpersonal freedom (3.1.3). Third, I argue that PNCL presupposes positive freedom, in that Steiner conceives of obstructions precisely, and necessarily, as obstructions to possible actions (3.1.4).

cont'd]

not preclude, on the terms of PNCL, a description of the negative freedom of persons lacking capacity.

⁵ See Robert Kane, ed., *The Oxford Handbook of Free Will*, 2nd ed. (Oxford: Oxford University Press, 2011).

⁶ ER 9

3.1.2. What Makes an Obstruction?

To illustrate PNCL, Steiner refers to a lever's freedom of movement:

Charles Taylor is not mistaken in identifying this conception as the one which is also at work when scientists and engineers refer to the "freedom of some physical object, say a lever".⁷

Steiner's subscription to this metaphor indicates that PNCL is a physicalist conception.⁸ it describes the physical freedom of a physical body, and nothing else. Consider a similar analogy to PNCL, involving a number of marbles on a tray. The marbles' relative positions would cause them to obstruct one another in certain ways, if they were to move about the tray. Yet a description of those positions, Steiner would claim, does not imply anything about whether or how they might move.⁹ These two analogies warrant some closer analysis.

What is actually meant when we describe the freedom of a lever, or the manner in which marbles on a tray might obstruct one another? A straightforward interpretation of the lever's freedom might be that it is unobstructed from moving in a particular designated manner, should some external force act upon it. Is the lever's freedom not comprehensible, therefore, only in the context of its potential for an action? Does the lever's freedom not obtain its meaning through its potential to be acted upon? This leads to converse questions: is the lever's resting state not construable as its being obstructed from moving? This might not be through the physical presence or action of another body. Other physical forces, such as gravity, may cause it to remain stationary. Indeed, the "action" of gravity perhaps defines the very idea of being in a resting

⁷ ER 9. Steiner is responding to Charles Taylor, "What's Wrong with Negative Liberty," in *Philosophy and the Human Sciences: Philosophical Papers 2* by Charles Taylor (Cambridge: Cambridge University Press, 1985 [1979]), 211-229.

⁸ ER 16

⁹ I am grateful to Hillel for suggesting this analogy.

state. More fundamentally, do not the lever's mechanical design, the atomic constitution of the elements of its construction, and the properties of the materials out of which it is formed, such as density, weight, flexibility, and environmental factors, such as temperature and humidity, all contribute to our understanding of what it *means* for the lever to be free? Similar factors apply to the marbles on the tray: are they not obstructed from moving, not only by the presence of the other marbles, but by the fact that no force is setting them in motion?

The lever can be described as free only because we have a prior understanding of what the lever is free to *do*: in a sense, what freedom is *valuable* in the lever. A judgement about the lever's freedom is an evaluation; the lever can be said to be obstructed or unobstructed only once an interpretative judgement about the action from which it is obstructed or unobstructed has been made.

3.1.3. Forms of Unfreedom

Following from this analysis, it might be asked: how many different kinds of obstruction are there? And which of them are covered by Steiner's conception? First, there is a form of obstruction which obtains between two objects, such as between the marbles in the example above. Second, a person might obstruct an object. Third, an object might obstruct a person. For example, the aftermath of a natural disaster, such as a flood, might obstruct someone from leaving their house due to the mass of impassable water outside.¹⁰ This form of obstruction has not

¹⁰ Note here the implicit opposition in ordinary language between a "natural" disaster and, presumably, a disaster caused by human action. This itself illustrates the person/nature dualism which Steiner repeats in his account of persons and things. See ER 229-236.

(necessarily) come about through the actions or omissions of other persons.¹¹

Fourth, someone who is physically incapacitated may be obstructed from performing many actions through the limitations of their own body. Again, this form of obstruction also has no (necessarily) interpersonal qualities, but rather issues from a person's own physical capacity. Fifth, the consequences of someone's own actions might be to place obstructions in the way of future actions. For example, if Thom deliberately jumps down a well, he obstructs himself from attending the meeting at which he is due. The same would be true if he merely fell down the well accidentally. Again, this is an obstruction which has not been brought about through an interpersonal act. Sixth, persons can use objects to obstruct other persons. Seventh, persons can obstruct other persons by placing their bodies in the way of an action. These seven forms of obstruction are summarized in Figure 1 (below), with accompanying examples for illustration.

Out of these conceivable forms of obstruction, Steiner's PNCL captures only a subset. PNCL is narrowed down, not merely to the unfreedoms of persons (which would encompass F2, F4, F5, F6 and F7), but to the unfreedoms of persons which have been brought about by the actions of other persons (only F6 and F7). In short, PNCL is a conception not of negative liberty in general, but only of interpersonal negative liberty:

Broadly speaking, [PNCL] suggests that a person is unfree to do an action if, and only if, his doing that action is rendered impossible by the action of another person.¹²

¹¹ I include the qualifier "necessarily" since the actions or omissions of persons might become relevant in such a situation if, for example, they had been contracted to build effective flood defences.

¹² ER 8

Figure 1: Forms of unfreedom

-
- F1.** Object obstructs an object
A marble on a tray obstructs another marble, if it were to be set in motion in a particular direction.
 - F2.** Object obstructs a person
A flood obstructs Joni from leaving her house.
 - F3.** Person obstructs an object
Merle stands in front of a football to obstruct its path into the goal.
 - F4.** Person obstructed by their physical incapacity
Edith's dancing is obstructed by paralysis.¹³
 - F5.** Person obstructs their body
 - a. Voluntary
Thom deliberately falls down a well in order to obstruct himself from attending his meeting.
 - b. Involuntary
Thom accidentally falls down a well, and is therefore obstructed from attending his meeting.
 - F6.** Person obstructs another person using an object
 - a. Voluntary
Leonard is obstructed from driving his car, because Joni deliberately blocked him in his garage.
 - b. Involuntary
Leonard is obstructed from driving his car, because Joni accidentally blocked him in his garage, believing him to be on holiday.
 - F7.** Person obstructs another person using their own body
 - a. Voluntary
Dolly is obstructed from entering a store, because the security guard is standing in the doorway.
 - b. Involuntary
Dolly is obstructed from entering a store, because the security guard is standing in the doorway to stop a shoplifter from leaving.

¹³ Since such paralysis could have been caused by the actions of another person, let Edith's incapacity be the result of an autoimmune neurodegenerative condition, the development of which was in no way prompted by the actions of others.

For Steiner, freedom is a relation between persons. Not only is the object of description the person, who is either free or unfree to do something; that freedom or unfreedom is in turn *determined* by whether the obstruction was a consequence of another person's action.

3.1.4. Morally Relevant Obstructions

Why is PNCL restricted to obstructions which result from interpersonal actions? After all, an accurate assessment of the distribution of unfreedoms between persons in a society would, it would seem, at least require consideration to be given to the number of persons trapped in their houses by floods at any one time (F2). An important factor here is that Steiner presupposes a fully appropriated world. He claims that everything is in someone's possession.¹⁴ Suppose that Leonard is trapped in his house not, like Joni, by a flood, but by a fallen tree. In a fully appropriated world, trees are invariably in someone's possession. They might be an individual's private property, or they might be owned by the local council. In these situations, an F2-type obstruction becomes an F5-type obstruction. However, there remain obstructions on persons which cannot be accounted for within Steiner's economy of appropriation. For example, when Joni is trapped in her house by the flood, she is not obstructed through the actions of persons, nor by any objects which others own.

Such forms of obstruction remain, then, outside the scope of PNCL. The classes of obstruction which PNCL describes seem to be only *morally relevant* ones: PNCL describes only those interpersonal freedoms and unfreedoms relevant to

¹⁴ ER 38-42. Steiner distinguishes "actual" from "subjunctive" possession, as I explain in the next section.

Steiner's initial conception of justice-as-rights. PNCL is determined, in other words, by Steiner's background intuition of justice as "a moral rule assigning [...] freedom".¹⁵

Questions of justice arise precisely where the moral permissibility of one person's restricting another's freedom is not determined by the comparative merits of the ends to which they are respectively committed.¹⁶

Since justice is an interpersonal relation, obstructions which have not come about through an interpersonal action are excluded from PNCL. It could therefore be described as a *moralised* conception of liberty (in a sense distinct from that used G.A. Cohen):¹⁷ it describes only freedoms and unfreedoms brought about through the actions of persons upon other persons.

3.1.5. PNCL Presupposes Positive Liberty

What, then, does the analysis presented in the previous sections amount to? What is clear is that PNCL is defined as *the negative freedom to act without obstruction by the actions of others*. While PNCL implies no position on questions of free will, it does require that persons have positive liberty in the form of agency. Under PNCL, the freedom of persons is meaningful and separable from the freedom of objects precisely because it is assumed that persons are agents. PNCL does not describe unobstructedness alone; it describes unobstructedness to act in certain ways. This

¹⁵ ER 229

¹⁶ ER 1-2

¹⁷ See G.A. Cohen, *Karl Marx's Theory of History: A Defence* (Princeton NJ: Princeton University Press, 2000 [1978]); *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995), 62-79. Cohen criticizes Nozick's "moralized" conception of liberty.

is evident in Steiner's explanation of the relation between freedom and the possession of things:

Being free to do an action is,¹⁸ we've seen, being in (actual or subjunctive) possession of its physical components. And everything is in someone's such possession.¹⁹

Just as the lever discussed above can be described as free only if someone has a prior understanding of how the lever can be acted upon, so a person can be described as free only once they are understood as possessing autonomous agency.

3.2. A CRITIQUE OF THE LAW OF CONSERVATION OF LIBERTY (LCL)

3.2.1. The Law of Conservation of Liberty (LCL)

It is on the basis of PNCL that Steiner postulates the law of conservation of liberty (LCL). Steiner defines LCL as follows:

What I am free to do is a function of the things possessed by me, and what I am unfree to do is a function of the things possessed by others. My total liberty, the extent of my freedom, is inversely related to theirs. If I lose possession of something, someone else gains it and thereby gains the amount of freedom (whatever it is) which I've lost.²⁰

Steiner holds that liberty cannot be maximized or minimized, since a freedom in one person entails an unfreedom in another: if I am free to perform a particular action at a particular moment, it follows, Steiner claims, that others are unfree to

¹⁸ i.e. being unobstructed from doing that action. –AW

¹⁹ ER 52. My emphasis.

²⁰ ER 52

perform actions with the same physical, spatial and temporal components.

Although technological advances may have increased the repertoire of freedoms available to us, Steiner explains, in equal measure they must increase the number of unfreedoms:²¹ net freedom is always a zero-sum.²²

By way of illustration, suppose that Elton and Edith are the only inhabitants of a two-person world. In this world, there are also only two things: a pen, and a pad of paper. If Elton has the pen and paper, then Edith does not: she is obstructed from having them. Whoever has pen and paper at any moment in time restricts the other person from their use for the duration of that possession. On the terms of LCL, these are the possible scenarios:

Figure 2: Steiner's Law of Conservation of Liberty (LCL)

1. Edith has pen and paper (+2 freedoms)
 Elton has neither (-2 freedoms)
 = 0 net freedoms
2. Edith has pen (+1), but not paper (-1)
 Elton has paper (+1), but not pen (-1)
 = 0
3. Edith has paper (+1), but not pen (-1)
 Elton has pen (+1), but not paper (-1)
 = 0
4. Edith has neither (-2)
 Elton has pen and paper (+2)
 = 0

²¹ ER 43-44

²² ER 54

This illustrates what Steiner has called the “bivalence” of liberties on PNCL: each freedom correlates with an unfreedom in another person.²³ However, does such bivalence hold in a world containing more than two persons?

3.2.2. Engaging with Existing Criticisms of LCL

A number of scholars have challenged Steiner's zero-sum claim and the conception of bivalent liberty which underpins it. His early formulations of LCL were criticised by Michael Taylor, who noted that, since there can be unowned things, not all unfreedoms are bivalent.²⁴ Steiner engages with this point in ER, and addresses it by distinguishing between “actual” and “subjunctive” possession.²⁵ Simply put, actual possession describes the relation between a person and a thing which is under that person's exclusive control at that moment in time; subjunctive possession describes the relation between a person and a thing which, although not in a person's actual possession, would come in to their possession if at some future time they were to act upon it.

However, further criticisms followed this formulation of LCL in ER. Ian Carter devotes several pages to refuting LCL in *A Measure of Freedom*,²⁶ and claims in AJ that “LCL is almost certainly not valid”.²⁷ In his response, Steiner seems to be

²³ See Hillel Steiner, “Freedom and Bivalence,” in *Freedom, Power and Political Morality: Essays for Felix Oppenheim*, ed. Ian Carter and Mario Ricciardi (London and New York: Palgrave, 2001), 57-68; see also Matthew H. Kramer, *The Quality of Freedom* (Oxford: Oxford University Press, 2003), 219, 272-276, 360-362.

²⁴ See Michael Taylor, *Community, Anarchy and Liberty* (Cambridge: Cambridge University Press, 1982), 153-154. Cited in ER, 39.

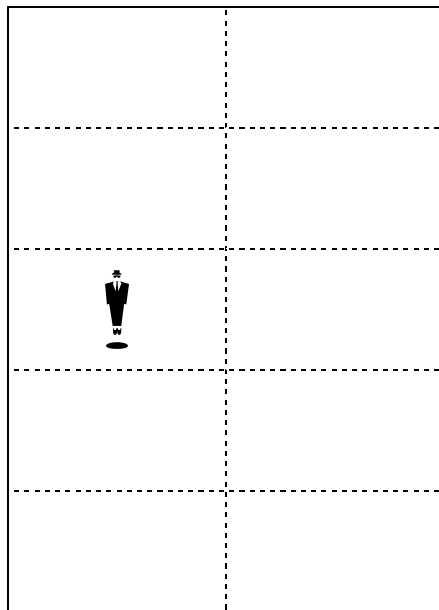
²⁵ ER 39-41

²⁶ Ian Carter, *A Measure of Freedom* (Oxford: Oxford University Press, 1999), 259-264.

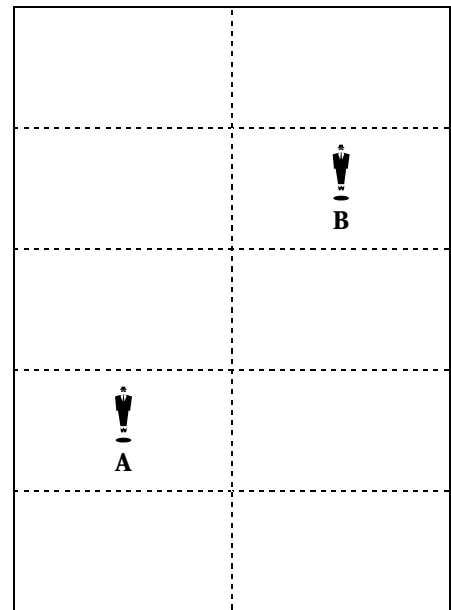
²⁷ Carter, “Respect for Persons,” 174.

half way to accepting that LCL does not hold.²⁸ Carter sets out an example which challenges Steiner's zero-sum claim. Suppose that a room is divided into ten equal spatial units. A person can occupy only one of these units at any one time. When the room is occupied by one person, Carter claims, they are free to occupy any of the units (i.e. they are unobstructed from possessing them). This generates ten freedoms and no unfreedoms. However, when the room is occupied by two persons, Carter claims that each of them is free to occupy any of the units which is not occupied by the other person. This generates eighteen freedoms (i.e. nine each) and two unfreedoms. Carter's example is illustrated in Figure 3:

Figure 3: Carter's critique of LCL



One person in the room is free to occupy any of the ten units
Total net freedoms: +10



Persons A and B are each free to occupy nine units (all except that occupied by the other person)
Total net freedoms: +18

²⁸ Steiner, "Responses," 251.

Nevertheless, this situation is one for which Steiner's description of actual and subjunctive possession seems to account. What Carter is essentially describing is a case in which Person A and Person B each has actual possession of one thing (the unit in which they stand), and (at least one of them) has subjunctive possession of (some of) the other units.²⁹

Like actual possession, subjunctive possession cannot be ascribed to more than one person for any one time. [...] Of course, it's often difficult to predict which of many possible worlds will become actual. But there's no possible world in which two (or more) such attempters can both be unprevented.³⁰



Steiner claims here that, were persons A or B to attempt to move to another unit, they either would or would not face an obstruction from the other person. Although it might be impossible to predict which of A or B will take possession of one of the unoccupied sections, what is clear is that, by definition, only one of them could be successful.³¹ Figure 4 illustrates two possible time-indexed descriptions of the actual and subjunctive possession of the ten units:

²⁹ ER 41

³⁰ ER 41

³¹ ER 39-41



Figure 4: A defence of Steiner against Carter's critique of LCL

b	b
b	 B
a	b
 A	a
a	a

Person A has actual possession (A) of one unit, and subjunctive possession (a) of a further four: 5 freedoms, and 5 unfreedoms.

Person B has actual possession (B) of one unit, and subjunctive possession (b) of a further four: 5 freedoms, and 5 unfreedoms.

Total net freedoms: 0

a	a
a	 B
a	a
 A	a
a	a

Person A has actual possession (A) of one unit, and subjunctive possession (a) of a further eight: 9 freedoms, and 1 unfreedom.

Person B has actual possession (B) of one unit, and subjunctive possession of none: 1 freedom, and 9 unfreedoms.

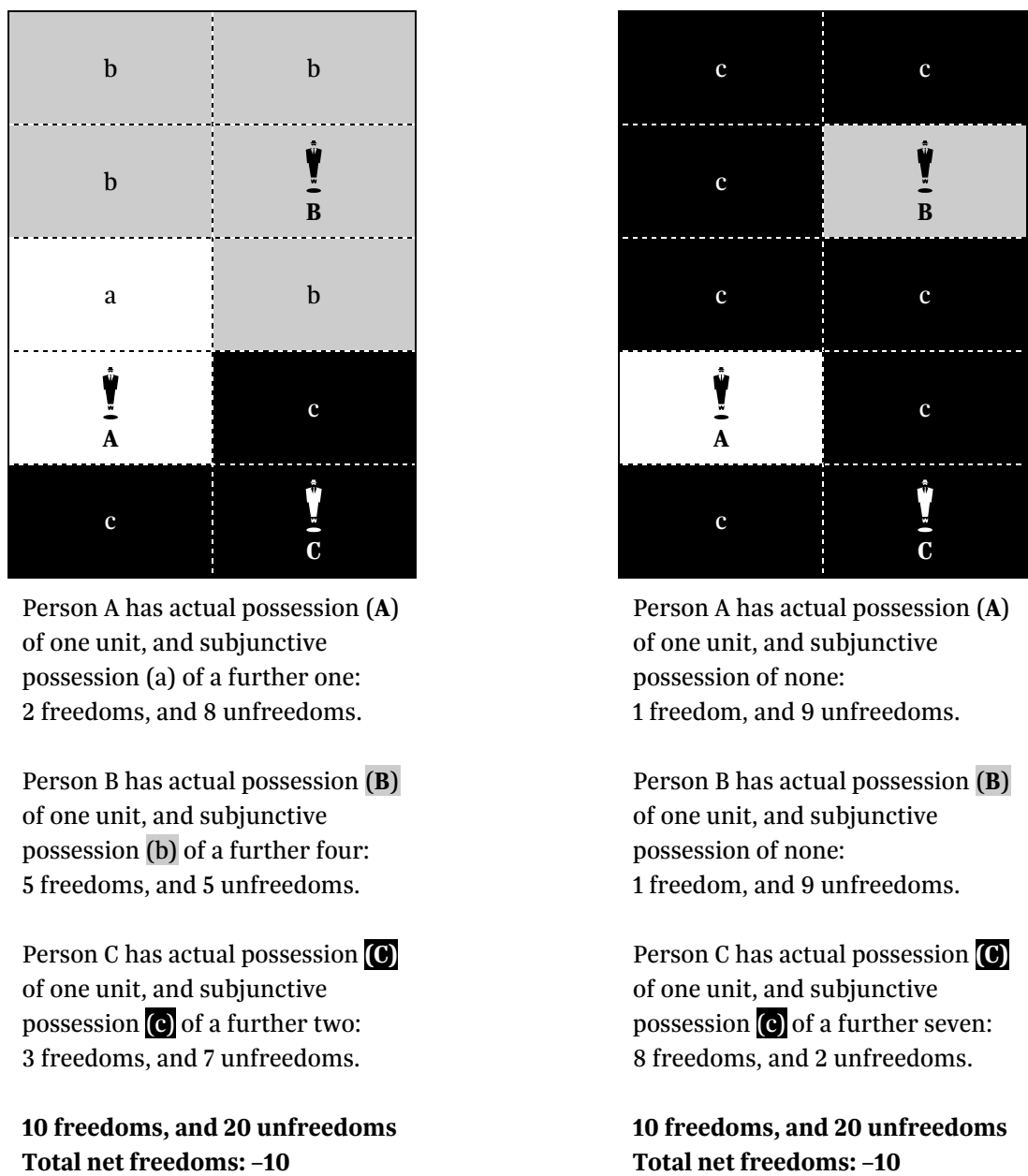
Total net freedoms: 0

Of course, there is no way of predicting in an abstract illustration what Person A or Person B would do in the event that the other person attempt to take into their actual possession one of the unoccupied units.³² The first distribution in Figure 4 might be the result of a prior understanding between them that they would share the sections in the room equally; the second distribution might be the result of the greed of Person A, or the indifference of Person B. But the important point here is

³² Steiner acknowledges this counterfactual aspect. See ER 41, n. 46. See also Kramer, *Quality*, 209-214.

that it is possible to represent Carter’s example in such a way that it satisfies, rather than violates, LCL. It also, I think, answers to a similar criticism of LCL set out by Matthew Kramer.³³

Figure 5: A more equal and a less equal distribution of liberty



³³ Kramer, *Quality*, 209-215.

This series of illustrations (Figures 5-7) shows that Steiner is correct to describe “the constant-sum character of liberty”,³⁴ but wrong to claim that a “quest for greater personal liberty is a zero-sum game”.³⁵ Aggregate freedoms do remain constant, but only for as long as the number of persons and things in the world remains unchanged. The greater the number of persons who occupy a world, the greater the number of unfreedoms those persons possess towards others. Similarly, the greater the number of things that can be possessed by those persons, the greater the number of freedoms. On Steiner’s conception of freedom as the possession of things, then, the rise in unfreedoms must progressively exceed the rise in freedoms (see Figure 6). This demonstrates an important feature of Steiner’s LCL: that it produces a synchronic description of freedoms. It describes the simultaneous relations between all persons and all things at a particular moment in time.

³⁴ ER 54

³⁵ ER 54

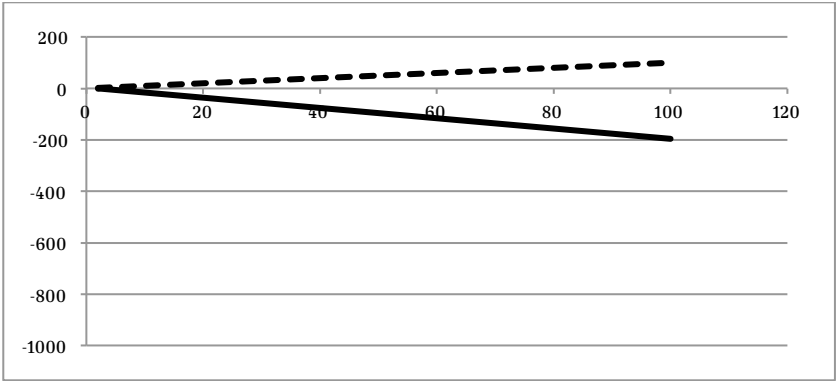
**Figure 6: Progressive growth of net unfreedom
in a more populated world**

Two-person world			Three-person world		
things	unfreedoms	net freedom	things	unfreedoms	net freedom
1	1	0	1	2	-1
2	2	0	2	4	-2
3	3	0	3	6	-3
4	4	0	4	8	-4
5	5	0	5	10	-5
6	6	0	6	12	-6
7	7	0	7	14	-7
8	8	0	8	16	-8
9	9	0	9	18	-9
10	10	0	10	20	-10

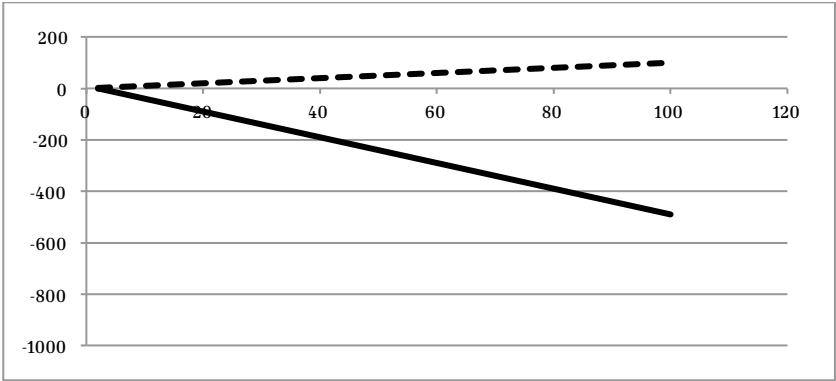
Ten-person world			100-person world		
things	unfreedoms	net freedom	things	unfreedoms	net freedom
1	9	-8	1	99	-98
2	18	-16	2	198	-196
3	27	-24	3	297	-294
4	36	-32	4	396	-392
5	45	-40	5	495	-490
6	54	-48	6	594	-588
7	63	-56	7	693	-686
8	72	-64	8	792	-784
9	81	-72	9	891	-882
10	90	-80	10	990	-980

The general form of the equation represented here and in
Figure 7 is: $N \text{ net freedom} = (F \text{ freedoms} - (P \text{ persons} * T \text{ things}))$

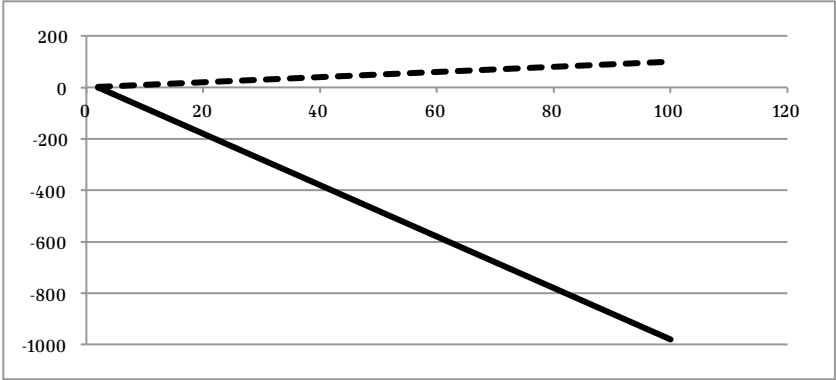
Figure 7: Total net freedoms vs. total freedoms



a. In a world containing two things



b. In a world containing five things



c. In a world containing ten things

x-axis: P persons
y-axis: F freedoms
- - - - F freedoms
———— N net freedoms
(freedoms – unfreedoms)

3.2.3. A New Critical Perspective on LCL: The Indexicality of Freedom

Suppose there is a world populated by four persons: Governor, Citizen A, Citizen B, and Citizen C. In this world there are eight things: four pens, and four pads of music manuscript. The four persons are composers, and for some time, each of them has enjoyed possession of one pen and one pad of paper, leaving them free to write their music (i.e. they are unobstructed from doing so). However, Governor recently suffered an attack of megalomania, and exercised what Citizens A, B, and C have come to call *The Great Pen and Paper Confiscation*. Consider Figure 8. Citizens A, B, and C indisputably lose a freedom. But does Governor gain a further three?

Figure 8: The Great Pen and Paper Confiscation (I)

Before confiscation			
Governor	Citizen A	Citizen B	Citizen C
Owens 1 pen and 1 pad of paper	Owens 1 pen and 1 pad of paper	Owens 1 pen and 1 pad of paper	Owens 1 pen and 1 pad of paper
Is free to compose Governor's music	Is free to compose Citizen A's music	Is free to compose Citizen B's music	Is free to compose Citizen C's music

After confiscation			
Governor	Citizen A	Citizen B	Citizen C
Owens 4 pens and 4 pads of paper	Owens nothing	Owens nothing	Owens nothing
Is free to compose Governor's music	Is obstructed from composing Citizen A's music	Is obstructed from composing Citizen B's music	Is obstructed from composing Citizen C's music

On the merits of Figure 8, no: when Governor confiscates the pads and pens, thereby obstructing Citizens A, B, and C from composing their music, Governor does not gain that freedom. Governor merely gains the physical objects which for them would have invested a freedom to compose *their* music. How might Steiner defend LCL against this argument? In Figure 9, the same example is presented differently, and perhaps more along the lines of PNCL. It shows how a freedom, once specified in a particular way, can be reduced to the possession of a particular object. On this view, for as long as the objects themselves persist, Governor gains the three freedoms which Citizens A, B, and C lose.

Figure 9: The Great Pen and Paper Confiscation (II)

Before confiscation			
Governor	Citizen A	Citizen B	Citizen C
Owns pen 1 and pad 1	Owns pen 2 and pad 2	Owns pen 3 and pad 3	Owns pen 4 and pad 4
Is free to compose music using pen 1 and pad of paper 1 Is unfree to compose music using pens 2, 3, 4, and pads 2, 3, 4	Is free to compose music using pen 2 and pad 2 Is unfree to compose music using pens 1, 3, 4, and pads 1, 3, 4	Is free to compose music using pen 3 and pad of paper 3 Is unfree to compose music using pens 1, 2, 4, and pads 1, 2, 4	Is free to compose music using pen 4 and pad of paper 4 Is unfree to compose music using pens 1, 2, 3, and pads 1, 2, 3

After confiscation			
Governor	Citizen A	Citizen B	Citizen C
Owns pens 1, 2, 3, 4 and pads of paper 1, 2, 3, 4	Owns nothing	Owns nothing	Owns nothing
Becomes free to compose music with pens 1, 2, 3, 4 and pads of paper 1, 2, 3, 4 Has no unfreedoms	Has no freedoms Becomes unfree to compose music using pens 1, 2, 3, 4, and pads 1, 2, 3, 4	Has no freedoms Becomes unfree to compose music using pens 1, 2, 3, 4, and pads 1, 2, 3, 4	Has no freedoms Becomes unfree to compose music using pens 1, 2, 3, 4, and pads 1, 2, 3, 4

This is not, however, the end of the matter. For the key difference between the two illustrations in Figure 8 and Figure 9 is that the former recognizes the *indexicality* of the actions by which PNCL is defined. By “indexicality”, I mean the fact that a person is *necessarily* the performer of their own action. For example, by definition, only Citizen A can perform the action “write Citizen A’s music”. Citizen A’s being the performer of that action is straightforwardly a *part* of the specification of the act-type concerned.³⁶ As I showed in 3.1, PNCL is defined as the freedom of a person to do a particular action. However, unlike the physical components of an action (the pen and paper), the action *itself* (writing Citizen A’s music) is not an object that can be transferred to someone else.

Strictly, what PNCL describes is not a person’s unobstructedness from doing an action, but their unobstructedness from doing *their* action; and a full specification of all actions requires a recognition that the identity of the actor is a *part* of the definition of that negative freedom. (Indeed, this idea is latently present in Steiner’s conception of self-ownership.) An indexical description of freedom recognises that freedom does not remain the same when it is transferred to someone else: Citizen A’s freedom to compose *Citizen A’s music* is not transferred but destroyed. LCL can be upheld only as a description of the distribution of things, and not as a distribution of freedoms. On this view, freedom is not the possession of things, although the possession of things is a necessary condition for freedom; on an indexical description such as that demonstrated above, freedom is the accomplishment of a *relation* between a person and the things in that person’s possession.

³⁶ I discussed Steiner’s concepts of “act-type” and “act-token” above, p. 70. See ER 33-37.

In this section I have discussed critically some of the major criticisms levelled at LCL by other scholars, and shown how Steiner can to a certain extent be defended against them. However, I also showed that Steiner's claim that LCL is a zero-sum game is false, and that, the more persons and things in a society, the more significantly the number of unfreedoms in that society exceeds the number of PNCL freedoms. Steiner would be correct to claim, though, that the total net freedoms in a society remain constant for as long as the numbers of persons and things remain constant. An unequal distribution does not increase or diminish total freedom. Finally, I argued that a different line of criticism can be taken against LCL. I demonstrated that, in the modified form I have set out, LCL only holds if we ignore the indexical, or personal, quality of the freedoms that are gained and lost when the possession of things is gained and lost. The transfer of a thing from one person to another changes the (type of) actions in which that thing can be used; an unequal distribution of things between persons, on this view, extinguishes rather than transfers these indexically-defined negative liberties.

3.3. A CRITIQUE OF STEINER'S CONCEPTION OF CONSISTENCY IN A MORAL CODE

3.3.1. Dilemmas, Moral Codes and Inconsistency

In chapter two, I explained that Steiner argues in favour of establishing the self-consistency, or compossibility, of a person's moral code, and that this is to be achieved through ranking and weighting the values within that code.³⁷ Failing to

³⁷ ER 112

do so, Steiner argues, inevitably runs the risk of creating moral dilemmas such as that faced by Sartre's student. I return to this example now.

As Steiner presents it, the student's dilemma is between two moral rules: the Patriotism rule, and the Familial Devotion rule.³⁸ In addition to ranking and weighting the two rules relative to one another, Steiner suggests, the relative "size" of the acts involved is also important.³⁹ So, if the student had to choose between a small act of familial devotion (e.g. buying his mother a packet of cough sweets) and a large act of patriotism (e.g. fighting on the front line), the student could conclude that the larger act is the more valuable. Similarly, a large act of familial devotion (e.g. saving his mother's life) might trump a small act of patriotism (e.g. flying a flag). However, it is also possible that the relative size of the two options, combined with their relative rank and weight, makes them mutually indifferent: both options are still returned as being *equally* valuable. Steiner therefore turns to "economic reasoning" and finds that a resolution can be achieved through seeking a balance of goods. (The basis upon which Steiner posits the normative authority of this "balance of goods" argument is an important question, to which I return in chapter six.) Steiner claims that the eventual decision of Sartre's student in resolving this dilemma will implicitly reveal that he ranks one principle over the other. However, this can be challenged.

³⁸ See above, p. 77; ER 111-146.

³⁹ ER 134-136

3.3.2. Arbitrary Resolutions in Morally Non-Relevant Preference Dilemmas

During his extensive discussion of the ranking and weighting of values within a moral code, Steiner remarks in a footnote that he chooses to

ignore the uninteresting fact that polynomic codes, and perhaps mononomic ones too, could contain a rule mandating a tie-breaking decision procedure such as coin-flipping.⁴⁰

Before tackling directly the problem faced by Sartre's student, consider what might happen if a tie of values were to be broken in the manner Steiner ignores. The following example is similar in structure to that of Sartre's student, but concerns a trivial, non-interpersonal, and non-moral dilemma. Suppose that Joni has run out of breakfast cereal. As it happens, so has the local supermarket — apart from one box of corn flakes, and one box of shredded wheat. Joni likes corn flakes just as much, but no more, than she likes shredded wheat, and many years of trying to decide which she likes better have availed no settled preference. All other considerations being equal, and given that her funds restrict her purchase to a single box of cereal, how is she to decide which to purchase? She resolves to flip a coin: heads-up for corn flakes, and tails-up for shredded wheat. She also resolves to abide by the course of action prescribed by the result of the coin-flip. The coin lands heads-up, and, true to her commitment, she buys the corn flakes.

Three questions need to be answered concerning Joni's dilemma, and the manner in which she resolved it. First, does the result of the coin-flip imply that Joni prefers corn flakes over shredded wheat? The answer must be no: after all, she resorted to flipping the coin precisely *because* she had no preference between

⁴⁰ ER 126, n. 24; see also ER 134, 142, 144. Steiner does briefly consider coin-flipping in his chapter on moral reasoning, but only to reject it again as an "unreasonable" solution to the general problem of ties of moral value. See ER 142.

the two, and the coin-flip, being an indifferent arbiter which generated a random result,⁴¹ could not have been influenced by such a preference even had one existed. Second, does the result of the coin-flip *generate* a preference? In other words, does the fact that this decision procedure mandated the purchase of corn flakes establish that in all similar future dilemmas between corn flakes and shredded wheat, Joni will now prefer corn flakes, and not only be compelled to select them over shredded wheat, but also to actually *prefer* them? Again, no: the coin-flip was performed in order to resolve this *particular* dilemma, not to resolve Joni's lack of a *general* preference between the two. Third, supposing I am right that Joni's equal favour for corn flakes and shredded wheat is not disturbed by the deployment of an arbitrary decision procedure to resolve this particular dilemma, what does this example tell us about Joni's preferences? If she retained her present ranking of breakfast cereals, a similar dilemma may recur;⁴² and when it does, she will again need an arbitrary method of resolving the problem. It would seem, then, that another of the rules in Joni's set of cereal preferences must be that *dilemmas between equally preferred options should be resolved by way of an indifferent arbiter*, as Steiner suggests in the footnote cited above.

Entertaining as Joni's dilemma between two equally delicious breakfast cereals may have been to her fellow shoppers, it was all just a bit of fun. After all, the inconsistency of her ranking of breakfast cereal preferences is not of any consequence, and she was completely untroubled by the likelihood that the dilemma she faced might recur. However — returning to the *moral* dilemma faced

⁴¹ Random, that is, for the purposes of this example.

⁴² Steiner, of course, claims that the recurrence of a dilemma is impossible, since the original instance of the dilemma would produce a general preference, precluding, on Steiner's account future dilemmas between the same moral values (or breakfast cereals). It is precisely this claim which I dispute in this section. See ER 118-119.

by Sartre's student — if the incoherence of a person's set of breakfast cereal preferences is unproblematic, and can be satisfactorily resolved by flipping a coin, why would flipping a coin not be a satisfactory solution to the dilemma of Sartre's student?

In ER, Steiner claims that the eventual choice of Sartre's student would imply or generate a moral preference.⁴³ But I have shown that resorting to an indifferent decision-procedure, such as flipping a coin, can resolve dilemmas without implying or generating such a preference. The dilemma of Sartre's student could be resolved by such a method without implying anything about the relative priority of the Patriotism rule and the Familial Devotion rule, and without generating any such priority. So why is this possibility ignored in ER? Steiner hints at an answer:

Note that Sartre's student was not (merely) deciding what to do, but rather what he *ought* to do. His judgement was to be a moral one of the form "I ought to do A," and neither a prediction ("I shall do A") nor an expression of resolve ("I will do A").⁴⁴

Steiner's distinction between a non-moral and a moral decision here is important, as it connects the requirement for self-consistency with exclusively *moral* deliberations. By flipping a coin, perhaps Sartre's student would cease to make a distinctively *moral* decision. Indeed, the student would cease to make a decision at all, and would instead allow the coin to make that decision. However, actions that he taken on the basis of the coin's decision surely still have the same moral value in and of themselves, even if the decision procedure did not have a moral quality. In ER's introduction, Steiner also expresses an aversion to such arbitrary

⁴³ ER 111

⁴⁴ ER 111

decisions, although he does not offer an *argument* for why arbitrary decisions are undesirable:

Any justice principle that delivers a set of rights yielding contradictory judgements about the permissibility of a particular action either is unrealizable or (what comes to the same thing) must be modified to be realizable. Particular applications of such a principle would too frequently drive us to say, "Leave it to the judge/the legislator/heaven to sort this one out." And they, after all, seem sufficiently busy already.⁴⁵

Arbitrary decisions are, then, seen as problematic in moral dilemmas in a way that they are not in non-moral dilemmas. This suggests that the requirement for consistency itself issues from assumptions about the character of a distinctively moral decision. I return to this theme in chapter six, and argue that Steiner's insistence on the consistency of a moral code is *itself* a moral requirement issuing from an attitude of justice, and not merely a neutral, logical value. Already within Steiner's distribution and ranking of values within a person's moral code, an attitude of justice is in evidence.

3.3.3. Compossible Sets of Values Can Still Generate Dilemmas

Given that Steiner establishes that the self-consistency of a moral code is possible through ranking and weighting values within a code, and through economic reasoning, is there any kind of moral decision which these techniques, by definition, cannot resolve? Even after all of Steiner's strategies for eliminating ties have been deployed, is it possible that some ties will remain? And if so, how are those ties to be broken?

⁴⁵ ER 3

First, consider again Joni's dilemma in the supermarket. Suppose that, instead of having to choose between a box of corn flakes and a box of shredded wheat, Joni must instead choose between the two remaining boxes of corn flakes, which are identical to one another.⁴⁶ This dilemma cannot be resolved by resort to her set of general preferences, since, by definition, the two boxes are equally preference-satisfying. Second, consider that Leonard faces a moral dilemma: each of his twin siblings requires a kidney transplant,⁴⁷ and he is the only person who can provide a tissue match.⁴⁸ Being able to donate only one kidney, Leonard must choose which one of his siblings will receive the transplant.⁴⁹ Rather than having to choose between two impossible but separate moral values, as was the case with Sartre's student, Leonard's predicament results from a clash of two instances of the same moral value.

He can find no rational basis on which to choose one over another of his siblings: ranking and weighting fail because each moral option is an equally-sized instance of the same value. Economic reasoning also fails, because both options fall at exactly the same point on an indifference curve; no balance of goods is possible. And yet Leonard has resolved to donate to one of his siblings. How should he resolve the dilemma?⁵⁰ In such a situation, an arbitrary decision procedure, such as flipping a coin, can be a means of breaking the dilemma without violating

⁴⁶ In whatever relevant aspects are necessary for this example to do its work.

⁴⁷ Kidney-donation is an example to which Steiner alludes: ER 137, 176.

⁴⁸ I have no idea whether this situation is in fact clinically possible.

⁴⁹ This example presumes that Leonard's moral code is such that he is not morally committed to sacrifice his life by donating both kidneys. Even if he were so committed, however, the scenario could be modified to place him in a trilemma where he must choose which two of his triplet siblings should receive the transplants.

⁵⁰ "Sophie's choice" could also be presented as a similar case. See William Styron, *Sophie's Choice* (New York: Random House, 1979).

the moral equivalence of the two impossible actions. The dilemma here is not between values, but between persons.

Finally, following from these examples, it is worth reiterating that in his pursuit of fully ranked and self-consistent moral codes, Steiner explicitly commits to the premiss that the moral good of an action can be quantified, and that more good is better than less: he states that “bigger is better” when it comes to moral acts.⁵¹ The formation of such a moral code presupposes that a person should always do the action that is most valuable. Consistent moral codes serve to maximize good. However, this being the case, it is clear that competing actions which involve ties of moral value are *equally* good-maximizing. Leonard acts optimally regardless of which sibling he donates a kidney to.

Furthermore, dilemmas typically occur in the context of many other less valuable or less preferred options. For instance, Leonard could presumably have escaped the dilemma by choosing a third moral option with an inferior ranking, such as sweeping up leaves on his street. Similarly, Joni could have escaped having to choose between the two boxes of corn flakes by leaving the shop empty-handed, and instead stopping at a well-known fast food restaurant for a less preference-satisfying breakfast. While flipping a coin is indeed an arbitrary decision procedure, nevertheless it can be a way of *respecting* the moral equivalence of two options, while still breaking the inertia of a dilemma and producing a preference-maximizing or good-maximizing outcome.

In this section I have argued that, contrary to Steiner's claims in ER, the resolution of dilemmas by arbitrary means neither necessarily implies priorities between the values in the dilemma, nor necessarily establishes such priorities, nor

⁵¹ ER 130

implies the incoherence or incompleteness of the moral code that generates the dilemma. It is not necessarily true that in all circumstances making a choice between competing moral options implies a moral ranking, or that choosing at random between equally valuable options constitutes a non-moral or morally sub-optimal choice. Sartre's student, faced with the same dilemma a number of times, may make different choices on each occasion. This inconsistency would not necessarily imply any incoherence within his moral code, but rather the *equivalence* of the values within that code. If a moral code can generate dilemmas even when it is entirely self-consistent, is a self-consistent moral code is either morally necessary, or practically possible? Finally, Steiner's aversion to transferring a decision to an arbiter (as illustrated in the coin-flipping illustration) to resolve moral dilemmas may indicate the intrinsic value of autonomy and deliberation in the formation of moral choices. Indeed, a person's retaining rational control over their moral judgements is perhaps part of Steiner's conception of moral agency.

3.4. THE PROBLEM OF COUNTERINTUITION

I set out in chapter two that Steiner's inductive point of departure is from a moral intuition of justice, and linguistic intuitions associated with it. He analyses these intuitions according to a consistency rule and a sorting rule. While Steiner openly acknowledges counterintuition, claiming that "consistency is surely worth its price in counter-intuitiveness," he is also clear that "we don't want to pay over the odds for it".⁵²

⁵² ER 8

In this section I argue that the counterintuitive results of Steiner's account of justice-as-rights are indeed expensive enough for them to pose a problem. I first examine the choice theory and interest theory of rights in a little more detail, and explain that the choice theory requires subscription to a counterintuitive conception of rights (3.4.1). I then consider Anna-Karin Andersson's proposed modification to the choice theory to incorporate *potential* agents as holders of rights. I argue that Andersson's thesis leaves intact the problem of counterintuition identified in Steiner (3.4.2). Finally, I claim that this problem can be understood as the result of a lack of conceptual clarity about moral rights, and the structure of legal rights which makes it possible to codify, supplement, and enforce such moral rights (3.4.3).

3.4.1. Persons and Rights: Choice Theory and Interest Theory

Steiner has devoted much energy to developing the choice theory of rights, as opposed to the interest theory. He defends it both in *ER* and in *A Debate Over Rights* (1998), a book in which Steiner collaborates with Matthew H. Kramer and Nigel E. Simmonds.⁵³ Each co-author defends a different theoretical perspective on the debate.⁵⁴ Choice theorists, whom Steiner defends, hold that a right consists of a "claim" and a "power".⁵⁵ A claim is what is perhaps most often meant by a "right" in ordinary language. For instance, the moral right not-to-be-killed (the "right to life") is a claim on the conduct of others. On the choice theory, a person can be considered a right-holder only if they have the capacity to exercise moral agency

⁵³ ER 59-73. Also known as the "will theory" and the "benefit theory" respectively.

⁵⁴ Hillel Steiner, "Working Rights," in *DR*, 233-302.

⁵⁵ ER 69-70

(which Steiner understands as a power of choice) to waive or enforce such claims.⁵⁶ The choice theory therefore holds that anyone lacking such agency, such as the unborn, young children, or those lacking mental capacity, by definition cannot hold rights. Why, though, must the claim and the power constitutive of a particular right both reside in the same person? For example, could Dolly not grant to an agent powers over the sale and purchase of her stocks and shares, without thereby compromising her exclusive claim to those stocks and shares? Steiner's likely reply here is that, although such delegations are possible, they presuppose that the power has been transferred by an agent within whose control the power initially resided; and that, moreover, Dolly can still revoke the delegated powers, and return them to her own control.⁵⁷ There are some rights, however, which seem not to fit this description. For example, the natural right-not-to-be-killed is, under many legal systems, codified into law which transfers the power of enforcement associated with that right to a state official. That transfer has not, factually speaking, been voluntarily transferred, except insofar as social contract considerations *presume* certain natural rights to be transferred to the state.⁵⁸

By contrast, interest theorists hold that being able to exercise such powers is not necessary for a person to be considered a right-holder, and that it is rather someone's interest in or benefit from something that is key to whether they can be considered a bearer of a particular rights. In that a right not-to-be-killed is in a child's basic interests, interest theories uphold it. The interest theory has the attraction of appealing to more of our intuitions and usages of the term "rights"

⁵⁶ ER 226

⁵⁷ See also ER 71-72, where Steiner explains the reasoning about third-party beneficiaries: "[u]nwaivable immunities (eventually!) entail waivable ones".

⁵⁸ This is Hobbes' idea of Leviathan: a sovereign state to which citizens sacrifice their natural rights in exchange for civil peace.

than the choice theory. For instance, unlike the choice theory, it preserves the common intuition that children have basic rights. However, this inevitably leads to conflicts of rights, since the interests of persons can conflict.⁵⁹ Criticising the interest theory, Steiner also argues that, since non-agents cannot enforce their own putative rights, in effect such arrangements simply modify the rights of agents, within whose power those “rights” fall.⁶⁰ Once implemented, Steiner claims, the interest theory would simply result in an expansion of the rights and duties of those that are able to exercise such powers.

3.4.2. The Rights of Non-Agents: Children and the Unborn as Potential Agents

As I have already indicated, the difference between the choice theory and the interest theory can helpfully be illustrated by reference to the debate over whether or not children have rights. Interest theorists claim that, since children have an interest in being cared for, they therefore have a right to be cared for. Choice theorists claim that, since children are not agents and could not enforce their putative claim to care, children do not have such a right. This claim is often considered counterintuitive *prima facie*, since one of the most common usages of the word “rights” is to refer, not to a persons’ powers to enforce their moral claims on others, but rather to the claims that other persons are perceived to have — particularly those lacking such powers through incapacity of some kind. Indeed, Anna-Karin Andersson notes that this position has been described as an

⁵⁹ Jeremy Waldron, “Rights in Conflict,” *Ethics* 99/3 (April 1989): 503-519.

⁶⁰ Steiner, “Working Rights,” 283-302.

“embarrassment” for libertarianism,⁶¹ and she herself claims to find such a theoretical position “repugnant”.⁶²

However, Steiner does offer an explanation of how the choice theory can protect the interests of children within a structure of rights-based relationships between adult agents: they can be “third-party beneficiaries” of such an arrangement.⁶³ For example, under many legal systems parents have a statutory legal duty to care for their child; yet that duty is owed not to the child, but to the state. Under such arrangements, Steiner suggests, it is a state official who possesses the claim correlative to the parents’ duty; and, therefore, it is a state official who has the power to waive or enforce that duty. The state official has a right from which a child benefits, but the child is merely a third-party beneficiary of an arrangement between the state and the child’s parents. The problem with Steiner’s account of children (and other non-agents) as third-party beneficiaries, however, is that it describes an arrangement which can only obtain within a legal system, supported by a government or other structure of enforcement.⁶⁴ The choice theory is, as Steiner demonstrates, equipped to serve the interests of children by treating them as third-party beneficiaries of a right-duty relationship between moral agents; but this creates a problem of counterintuition, because the status of children as *themselves* holders of claims against others is denied.

⁶¹ Jan Narveson, *The Libertarian Idea* (Ontario: Broadview Press, 2001 [1988]), 269. Quoted in Andersson, “Potential Agents,” 13.

⁶² Andersson, “Potential Agents,” 13.

⁶³ ER 73

⁶⁴ Nozick’s *Anarchy, State, and Utopia* is something of an experiment in thinking through how the state might have emerged, quasi-historically, from security unions of individuals who enforced one another’s rights. See Nozick, *Anarchy*, 3-148 (pt. 1, “State-of-Nature Theory, or How to Back into a State Without Really Trying”).

The rights of the unborn, and the rights of persons to abort the unborn, remain contentious topics of debate in law, politics, and moral philosophy.⁶⁵ Compared to the difficulties concerning children's rights, the theoretical problems are more complex in the case of the rights of the unborn. This is for two reasons. First, the putative moral status of the unborn is typically physically intertwined with the moral status of the unborn's mother. Interacting so intimately, the putative rights of one body necessarily obviate some putative rights in the other body. Second, the status of the unborn introduces further complications into the question of personhood, which has been a key theme of the past two chapters: a key consideration in debates about abortion is whether prenatal human beings are, or are not, persons.

There is not space here to rehearse here the general moral and political debate over the status of the unborn. I do, however, here examine Andersson's recent thesis on the topic in a little detail, since she argues against choice theorists' rejection of the rights of children and the unborn.⁶⁶ However, Andersson deviates from the conventional lines of argument between choice and interest theorists. She claims that children and the unborn are holders of basic negative rights to "certain physical integrity and aid" by virtue not of their interest in those things, but of their *potential* to become autonomous agents in future.⁶⁷ In support of this argument, Andersson identifies that it is common to regard persons as agents, and holders of rights, even when they are temporarily unable to exercise moral or physical powers (for example, when they are asleep, intoxicated,

⁶⁵ See Hillel Steiner, "The Rights of Future Generations," in *Energy and the Future*, ed. Douglas MacLean and Peter Brown (Totowa NJ: Rowman and Littlefield, 1983), 151-165.

⁶⁶ Andersson, "Potential Agents."

⁶⁷ Andersson, "Potential Agents," 13.

or comatose).⁶⁸ She argues that persons continue to be holders of rights because of an expectation that they will be able to exercise them at a later moment in time, i.e. because they have the potential to exercise those powers in future. Similarly, she argues that the unborn have basic rights against adults on the basis that they are moving towards autonomous agency.

From within the rationale of the choice theory, Andersson attempts to resolve the problem of counterintuition concerning that theory's inability to admit children and the unborn as holders of rights against others. However, there is one clear objection to Andersson's potentiality thesis. She explores how the potential for agency might be defined, referring to persons' "normal development", and implies that there are some who, lacking this, will be judged not to be potential agents.⁶⁹ But this leaves intact the problem of counterintuition concerning the rights of those children and unborn who are *not* potential agents: for example, those who have no prospect of surviving long enough to become autonomous persons. Do terminally ill children, who will certainly not survive to become agents, on that basis lack rights while they are alive? Do not intuitions about the rights of children concern their rights as children in the present, not as what they might (or might not) become in the future?

By remaining within the constraints of the choice theory's governing criterion of agency, Andersson's thesis merely restricts the problem of counterintuition to the class of persons who lack *both* agency *and* a potential for agency. By attempting to uphold it, Andersson effectively further undermines the idea that agency is a necessary condition to have claims against others by

⁶⁸ Andersson, "Potential Agents," 71-74.

⁶⁹ Andersson, "Potential Agents," 62-75.

demonstrating that even adding consideration for *potential* agency does not satisfactorily account for many basic intuitions about rights.

One further point arises from Andersson's thesis. Earlier, I noted that PNCL and LCL provide only a synchronic, time-slice account of freedoms and unfreedoms in a society. Yet, as Andersson shows, there is a concealed diachrony in regarding a person's status as an agent as persistent even when they are temporarily lacking in agency: for example, on account of being asleep. ER idealizes the variable agency of persons into a synchronic label and into a general rule about persons' status as agents. On a synchronic view, persons are either "moral agents" or they are not; PNCL and LCL take no account of the fact that, empirically, persons' agency might depend on the time of day. On a diachronic view, concepts such as "agent" resemble more of a categorial judgement about a person's status than about their empirical capacities.

3.4.3. The Problem of Counterintuition as a Problem of Moral vs. Legal Rights

As I suggested earlier, the choice theory is able to protect the interests of children as third party beneficiaries only within the context of a legal system which institutes duties between agents, and a state or other agency to enforce these duties. Steiner's account of third party beneficiaries, which he develops in a discussion of citizens' duties in criminal law, shows that Steiner's conception of rights is essentially a *legalistic* one.

This indicates a paradox. Steiner describes his theory as being “of the natural rights-based kind”.⁷⁰ These natural rights, or as Steiner calls them, “original rights”, are to self-ownership and an equal share of the value of initially unowned natural resources. These rights, being original, are *presupposed* by legal rights. And yet the legal structure of third-party beneficiaries which Steiner describes seems to undermine aspects of these original rights. For instance, the natural or original right to self-ownership entails a right not-to-be-killed (since a person’s being killed — or at least, being killed against their will — violates self-ownership). And yet, on Steiner’s model of third-party beneficiaries, citizens do not have such a legal right; they are rather third-party beneficiaries of duties owed by others to the state (or, more precisely, to some senior state official). This indicates that there are both moral and legal conceptions of rights at work in ER. On this view, legal rights codify presupposed moral rights into a structure of enforcement; but they codify them in such a way as to divest individuals of certain natural claims.

Some questions can be raised concerning children’s supposed inability to exercise moral powers. First, is it actually true that children generally lack moral agency? It is hard to deny that it is true for babies and very young children, who literally cannot undertake autonomous actions. It is less obvious, though, that this applies to older children: the capacity for moral deliberation is clearly far more developed in an eight-year-old than in a one-year-old — indeed, some jurisdictions establish the age of criminal responsibility at eight.⁷¹ Second, why is moral agency more relevant than physical agency? Early natural rights theorists such as Locke

⁷⁰ ER 282

⁷¹ For example, at the time of writing, the legal age of criminal responsibility in Scotland is eight: persons of that age and over are presumed to be legal agents accountable for their actions.

and Hobbes assert that there is a natural right to protect one's own life. In a Hobbesian state of nature, relatively young children lacking advanced powers of moral deliberation might nevertheless be able *physically* to defend their natural right not-to-be-killed, particularly if armed with a weapon. Conversely, in view of their inability to exercise physical powers, does a morally capable but physically weak or incapacitated adult therefore *lack* the right not-to-be-killed?

The analysis of the problem of counterintuition in Steiner's account of justice-as-rights presented here shows that Steiner's conception of rights is essentially a *legal* one. It emphasises the location of powers of enforcement in a state structure over the location of the natural moral claims out of which that structure is generated. Indeed, Steiner explicitly accepts and expands upon Wesley Hohfeld's scheme of jural relations, which was an attempt to analyse and clarify the usage in legal contexts of ordinary language terms, such as "right", "liberty", "power", "immunity", etc.⁷² The problem of counterintuition in Steiner is ultimately that it does not address our understanding of rights in the moral sense.

Indeed, persons' use of the language of "children's rights" is often in spite of an understanding that children do not directly have their own *legal* rights. The assertion of a child's right not-to-be-killed does not usually imply a claim that the child itself possesses the *legal* agency to seek legal redress. Rather, the concept of children's rights denotes an entitlement that is specifically intuited as belonging to the *child*. While the child may in legal terms be only the third-party beneficiary of a correlative right-duty relationship between a state official and adult citizens, in moral terms this legal arrangement is made because we believe children have natural claims against others. These moral claims would not change in the

⁷² Hohfeld, "Fundamental Legal Conceptions."

absence of a legal assignation of rights and duties. Rather, it may be because we first have a moral commitment to the natural rights, not of agents, but of persons, that we institute legal arrangements to secure their protection.

CONCLUSION

In this chapter I set out a critique of Steiner's ER from four separate but related angles. In 3.1 I examined the pure negative concept of liberty (PNCL) and identified it as a moralized conception of liberty, in that it describes only morally-relevant obstructions placed in the way of a person's actions by other persons. In 3.2 I defended Steiner against certain criticisms of the law of conservation of liberty (LCL), but claimed that LCL can hold only in a modified form. In 3.3, I interrogated some of Steiner's claims about the nature of consistency, and the method of achieving consistency from an inductive starting point in moral and linguistic intuitions. In 3.4 I concluded that the counterintuitive nature of many of ER's conclusions are sufficiently problematic to constitute a "problem of counterintuition". I return to these issues in chapter six, where I consider how they relate to a comparative reading of Steiner and Levinas. In particular, this will lead to the two different inductive and philosophical approaches which lead both Steiner and Levinas to the norm of interpersonal equality.

4. Justice-as-Responsibility: Emmanuel Levinas's Meta-Phenomenology

Respect for the person — infinite responsibility for the Other —
imposes itself on thought with the power of primordial
coordinates.

— Emmanuel Levinas¹

In this chapter, I first present an exposition of Levinas's philosophy of justice-as-responsibility (4.1). This exposition is rooted in his two major philosophical statements, *Totality and Infinity* (1961) and *Otherwise than Being or Beyond Essence* (1974). My aims are to tread a path through the difficult terms, structure and style of Levinas's texts, and to explain his overarching philosophical claim: that all consciousness presupposes the metaphysical ethical relation with the other person, whom Levinas often terms the Other ("l'Autre" or "Autrui"). Second, I argue that Levinas's account of the subject's "prehistory" of exposure to the Other is his response to the problem of intersubjectivity in Husserl's phenomenology,² and suggest that Levinas's approach can be understood as meta-phenomenology (4.2). Third, I contend that Levinas's subversive strategy of "unsaying" his own text, derives from the meta-phenomenological need to witness, within language,

¹ Levinas's reply to a letter from José Etcheveria after Levinas delivered a paper to the *Société Française de Philosophie* on 27 January 1962. See Emmanuel Levinas, "Transcendence and Height," in *Emmanuel Levinas: Basic Philosophical Writings*, ed. Adriaan T. Peperzak, Simon Critchley and Robert Bernasconi (Bloomington IN: Indiana University Press, 1996), 32; Emmanuel Levinas, "Transcendence et Hauteur," *Bulletin de la Société Française* 3 (1962): 112-113.

² OB 117: "in the 'prehistory' of the ego posited for itself, a responsibility speaks." AE 186: "dans la « préhistoire » du Moi posé pour soi, parle une responsabilité." Translation altered.

to the ethical relation of responsibility-for-the-Other, which language presupposes. This reinforces my claim that the status of language is therefore crucial to Levinas's meta-phenomenology (4.3).³

Notes on Method

Before proceeding to the exposition of Levinas's thought, a few notes are due concerning the method employed in this chapter. First, Levinas was active as a philosopher for over sixty years, and this chapter deals with works from across that period.⁴ The exposition that follows has been produced by considering the diversity of these works, and abbreviating them into a single, synchronic statement of Levinas's philosophical argument as I understand it. My priority in using this strategy is to convey the major themes and overall force of that argument. I therefore defer to later sections discussion of the nuances, inconsistencies, ambiguities, and shifts that can be identified through a chronological reading of Levinas's works.⁵

Second, this strategic aim is the same as in chapter two: to present a synchronic summary of the philosophical argument at hand. However, the

³ The term "meta-phenomenology" is not an innovation of mine, but is used to describe Levinas's project less frequently than the term "ethics". See Llewelyn, *Genealogy*, 106; Hent de Vries, *Minimal Theologies: Critiques of Secular Reason in Adorno and Levinas* (Baltimore MD: Johns Hopkins University Press, 2005), 359-360; Chung Chin-Yi, "Reflections on Derrida's Metaphysical Phenomenology," *Luvah* 1 (Spring 2012). Accessed April 7, 2013. <http://luvah.org/pdf/one/reflections-on-derridas-metaphysical-phenomenology.pdf>.

⁴ A chronologically arranged list of Levinas's works can be found in this volume, p. 257.

⁵ Primary amongst these deferred themes are gender and language. In chapter one, I outlined some of the background to the issue of "the feminine" in Levinas. I present a critique of this and other related themes in chapter five. Although I include Levinas's account of the Saying and the Said in 4.1, I analyse the issue of language in further detail later in this chapter.

approach I use in order to achieve this in the case of Levinas is, of necessity, different to that taken in the case of Steiner. In chapter two, it was possible to represent Steiner's argument by focusing almost exclusively on the interpretation of the single work, *An Essay on Rights*. Levinas's texts, however, do not present arguments which are as neat or self-contained as ER. He deliberately uses terms in such a way that they perpetually elude definition, and his frequent and oblique references to a range of other philosophical positions demands a kind of intertextual interpretation that is not required by ER. Indeed, as I explain in 4.4, it is one of Levinas's aims to bring this need for interpretation to the surface of his texts.⁶ (In chapter six, however, I argue that such interpretation is just as necessary for an understanding of ER, but that it is accomplished passively, through ordinary language, reasoning, and the engagement of the reader in dialogue.)

Third, as well as bearing the initial cost of overlooking important changes in Levinas's works, producing a synchronic summary of his philosophical argument means presenting it with a level of *prima facie* coherence which, for reasons discussed in 4.4, Levinas deliberately resists. His later works seem to be the most authoritative philosophical statements, because they provide demonstrable development of themes that were poorly integrated in earlier works. In particular, the connection between justice and the third party (or "the Third", as I have translated it),⁷ is set out fully in OB in a way that was lacking in TI. Nevertheless, owing to the manner in which Levinas constantly interposes the themes of his philosophy, it is only possible to grasp the scope of Levinas's philosophical argument by examining the full range of his works, from his

⁶ See OB 169-170; AE 262-263.

⁷ See Alphonso Lingis, translator's introduction and note to OB, xxi-xxii.

beginnings in Husserlian phenomenology to his mature account of justice-as-responsibility.

Fourth, the unconventional lexicon and style of Levinas's texts create difficulties when translated into English. When referring to key works, I quote English translations in body text, and provide the French in footnotes. I also indicate in footnotes where I have made alterations to published translations. There is particular difficulty with the translation into English of Levinas's terms "l'autre", "l'Autre", "autrui", and "Autrui".⁸ It is not possible, even within a single work, to identify absolute consistency of meaning between Levinas's many uses of these terms;⁹ indeed, I argue in 4.4 that this inconsistency is an important and deliberate way for Levinas to "unsay" his texts. Nevertheless, there is a generally sustained contrast evident between "l'autre" and "autrui", although it is by no means uniform. The former typically denotes alterity, or otherness, in general. This could be understood as the phenomenological other: the objective world into the centre of which the subject finds itself thrown.¹⁰ The latter tends to refer to the other person, connoting the neighbour or the "other one". As Adriaan Peperzak notes, these are not firm definitions, and Levinas presents certain

⁸ Alphonso Lingis has produced the only published translations into English of Levinas's two most substantial works, *Totality and Infinity* and *Otherwise than Being*. He remarks upon the peculiar difficulties of translating into English both in an introduction to OB, and in an immediately subsequent note on the translation of "essence". See Lingis, translator's introduction to OB, xlv-xlv; xlvii.

⁹ See the note on translation in John Llewelyn, *Emmanuel Levinas: The Genealogy of Ethics* (London: Routledge, 1995), xii.

¹⁰ Levinas refers in his early works to Heidegger's idea of "thrownness" ("Geworfenheit"). See TO 45: "One must understand *Geworfenheit* as the 'fact-of-being-thrown-into'... existence." TA 25: "Il faut traduire *Geworfenheit* par le « fait-d'être-jeté-dans »... l'existence." Ellipsis original. Translation altered. See also Martin Heidegger, *Being and Time*, trans. John Macquarrie and Edward Robinson (New York: Harper & Row, 1962 [1927]), 295 (II.i; §50). He implicitly rejects the idea of subjectivity as thrownness in TI 152: "Man [...] does not find himself brutally cast forth and forsaken in the world." TeI 162: "L'homme [...] ne s'y [le monde] trouve pas brutalement jeté et délaissé".

formulations which deliberately defy schematization (such as “l’absolument Autre, c’est Autrui”).¹¹ These cases are particularly difficult to convey well in translation.¹² As a result, Peperzak chooses to translate “autrui” as “the human other”. Although I do not follow Peperzak’s convention, I capitalise “the Other” when used in this sense of “the other person”, and the inclusion of the French alongside the English should reduce ambiguity.

Fifth, and finally, since the presentation of Levinas’s texts is of such central importance to his philosophical argument, I have attempted to convey something of their composition and style in the exposition that follows. This is evident in such techniques as shifting terminology, repetition, paraphrasing, comma-splicing, hyphenation (“com-prehension”, “re-presentation”), the obscuring of attribution (no “Levinas argues...”), the disavowal of authorial voice (no “I now argue...”), and the use of assertive structures over deductive ones. Such mimicry can only accomplish so much in a short summary such as that presented in 4.1, but I hope it serves to demonstrate what is under discussion in my later treatment of language in Levinas (4.4).

¹¹ TI 39; TeI 28: “The absolutely other is the Other.”

¹² Adriaan T. Peperzak, preface to *Emmanuel Levinas: Basic Philosophical Writings*, ed. Adriaan T. Peperzak, Simon Critchley and Robert Bernasconi (Bloomington IN: Indiana University Press), xv.

4.1. EXPOSITION OF LEVINAS'S META-PHENOMENOLOGY

4.1.1. The Self/Same and the Other, or Metaphysics

Philosophy witnesses to the relation between the self/same (“le Même”) and the Other (“l’Autre/Autruï”). The term “self/same” here expresses the ambiguity of “le Même”.¹³ It is both the self as the identity of the ego, and the same as the site of synthesising consciousness.¹⁴ It denotes the subject’s identification with itself as the inescapable site of its own being, as the centre of its world.¹⁵ This is the self/same’s “at-home-with-itself”,¹⁶ the “simple presence of self to self”.¹⁷ This self-presence is the “transcendental ego” of Husserl’s phenomenology, which must always be presupposed and which implicitly accompanies all experience.¹⁸ It echoes Kant’s “I think [that] must be able to accompany all my representations”.¹⁹ It affirms a self that cannot be refuted, similar to the indubitable existing of

¹³ TI 31; TeI 19: “Le même et l’autre.” Lingis’s translation favours the term “the same”.

¹⁴ See Colin Davis, *Levinas: An Introduction* (Cambridge: Polity Press, 1996), 3. See also Husserl on consciousness as passive synthesis in Edmund Husserl, *Analyses Concerning Passive and Active Synthesis: Lectures on Transcendental Logic*, trans. Anthony J. Steinbock (Dordrecht: Kluwer Academic, 2001 [delivered 1920-1926]), 39-274 (pt. 2).

¹⁵ See Emmanuel Levinas, “On Escape,” in *On Escape/De l’Évasion*, trans. Bettina Bergo (Stanford: Stanford University Press, 2003 [1935]), 49-73. This is one of Levinas’s earliest essays. In it he remarks upon consciousness as “the need for escape” (56) from the subject’s inwardness: “a getting out of oneself, an ecstasy” (61). His later, more substantial works on ethics, the Other, and infinity are prefigured in the announcement: “It is a matter of getting out of being by a new path” (73). See also Jacques Rolland, “Getting Out of Being by a New Path,” introduction to Levinas, *On Escape*, 3-48.

¹⁶ TI 37; TeI 26: “le « chez soi ».”

¹⁷ TI 35; TeI 24: “une simple présence de soi à soi”

¹⁸ See Husserl, *Crisis*, 170-172 (pt. 3; §50); Husserl, vol. 1 of *Ideas*, 75-78 (pt. 2, ch. 2; §37).

¹⁹ Kant, *Critique*, trans. Müller, 745; *Kritik*, ed. Valentiner, 151 (pt. 2, §16): “Das Ich denke muss alle meine Vorstellungen begleiten können[.]” Translation corrected. See also TI 136, 188-189; TeI 143-144, 204-206.

Descartes' "I think, therefore I am".²⁰ The self/same "lives from..." the world and its elements:²¹ breathing, eating, grasping, possessing, transforming, and consuming.²² The self/same is the site of the phenomenological consciousness that constitutes a world of time and objects for itself, assimilates them as experience through re-presentation, and thus brings them into the comprehension and control of the self/same, satisfying its needs.²³

Yet the self/same's relation with the world does not take philosophy beyond the life of the conscious subject, and the structure of its relation with the perceptual or "hyletic" other of sense-impressions investigated by Husserl.²⁴ Husserl's study leaves open the question of the intersubjective relation.²⁵ What the self/same cannot assimilate is the "absolutely Other", or the Other.²⁶ The self/same is separate from the Other; it is on account of their separation that it and the Other have their being. The identity of the self/same, and its relation with the Other, presuppose their prior separation. This relation with the Other is the core concern of Levinas's philosophy, and is reflected in the titles of four of his major works. *Time and the Other* presents time as the mode through which the

²⁰ Descartes, *Meditations*, 23-30 (second meditation): "cogito ergo sum". See TI 86, 92-93: "In the Cartesian *cogito*, that first certitude (but which, for Descartes, already rests on the existence of God), there is an arbitrary halt which is not justified of itself. Doubt with regard to objects implies the evidence of the exercise of doubt itself"; TeI 83, 93-94: "Il y a dans le *cogito* cartésien, certitude première (mais qui, pour Descartes, repose déjà sur l'existence de Dieu), un arrêt arbitraire, qui ne se justifie pas par lui-même." Translation altered.

²¹ TI 110; TeI 112-113: "Vivre de..."

²² On breathing ("respirer"), see TI 110, 114; TeI 113, 117-118, and OB 180-183; AE 276-279.

²³ TI 129; TeI 134-136

²⁴ Husserl, vol. 1 of *Ideas*, 203-210 (pt. 3, ch. 2; §§85-86), 236-340 (pt. 3, ch. 4; §97).

²⁵ TIHP 150-151

²⁶ TI 33; TeI 21: "Le désir métaphysique tend vers tout autre chose, vers l'absolument autre." Original emphasis.

self/same relates to the Other.²⁷ *Totality and Infinity* paraphrases the relation: “totality” names the product of a constitution by consciousness of a system of spatialized, temporalized representations to the self/same. “Infinity” is the absolutely Other, that which escapes the systematization and limitation of consciousness, that which cannot be thematized or grasped; it is “exteriority”. *Otherwise than Being or Beyond Essence* reiterates the metaphysical relation.²⁸ “Essence” and “Being” refer to the totalizing operations of consciousness described by Husserl and Heidegger.²⁹ The beyond, or the “otherwise”, are that which cannot be integrated into the sealed “at-home” of the self/same.³⁰ *Outside the Subject* thematizes this relation as one between the subject (self/same) and that which cannot be assimilated by, or integrated into, the subject, i.e. the outside, the exterior, the absolutely Other. The transcendence of the metaphysical relation is absolute: “there is no physics in metaphysics”.³¹

4.1.2. Interiority, Separation, “Living from...” and Enjoyment

The relation with the Other requires the interiority and separation of the self/same. This separation is the “interiority” or “inwardness”³² that contrasts

²⁷ Emmanuel Levinas, *Time and the Other*, trans. Richard A. Cohen (Pittsburgh: Duquesne University Press, 1987 [1947]). Hereafter abbreviated to TO; *Le Temps et l'Autre* (Montpellier: Fata Morgana, 1979 [1947]). Hereafter abbreviated to TA.

²⁸ OB 3; AE 13: “Passer à l'autre de l'être, autrement qu'être.” Original emphasis.

²⁹ In his mature works, Levinas occasionally identifies explicitly how he regards his philosophical orientation with regard to the phenomenology of Husserl and Heidegger. See TI 29, 67; TeI 15, 63 for passages on Husserl, and TI 46, 67-68; TeI 36-37, 63 for passages on Heidegger. See also DEH ch. 10-11; DEHH ch. 10-11.

³⁰ See above, p. 161, n. 16.

³¹ TO 51; TeI 31: “il n'existe pas de physique en métaphysique.”

³² TI 109, 152; TeI 111, 162: “intérieurité”, “intimité”.

with the “exteriority” or “elsewhere” of the Other.³³ The solitary needs of the self/same are met in “living from...” the elements of the world — a mode of being felt as satisfaction and pleasure. “The I exists as separated in its enjoyment”.³⁴ The self/same is that which has an inward life, which hungers and eats, enjoying food and land and landscape.³⁵

We live from “good soup”, air, light, spectacles, work, ideas, sleep, etc. ... These are not objects of representations. We live them.³⁶

Both physically and cognitively, the self/same brings the elements into itself, assimilating them, consuming them, rendering them part of the self/same, and divesting them of their otherness or “alterity”.³⁷

By contrast, the relation with the Other is characterised as a desire that cannot be satisfied.³⁸ Perpetually elsewhere, the Other is that which cannot be assimilated into the self/same’s conscious re-presentations.³⁹ The self/same’s relation with the Other thus exceeds the elemental and the objective; it is

³³ TI 33; TeI 21: “extériorité”, “ailleurs”.

³⁴ TI 63; TeI 57: “le moi existe comme séparé par sa jouissance”. TI 63: “In separation — which is produced in the psychism of enjoyment, in egoism, in happiness, where the I identifies itself — the I is ignorant of the Other. But the Desire for the Other, above happiness, requires this happiness, this autonomy of the sensible in the world, even if this separation is deducible neither analytically nor dialectically from the Other.” TeI 57: “Dans la séparation — qui se produit par le psychisme de la jouissance, par l’égoïsme, par le bonheur, où s’identifie le Moi — le Moi ignore Autrui. Mais le désir de l’Autre, au-dessus du bonheur, exige ce bonheur, cette autonomie du sensible dans le monde, même si cette séparation ne se déduit ni analytiquement, ni dialectiquement de l’Autre.” Translation altered.

³⁵ TI 33; TeI 19: “comme le pain que je mange, comme le pays que j’habite, comme le paysage que je contemple”

³⁶ TI 110; TeI 112: “Nous vivons de « bonne soupe », d’air, de lumière, de spectacles, de travail, d’idées, de sommeil, etc. ... Ce ne sont pas là objets de représentations. Nous en vivons.” The ellipsis is original. Translation altered.

³⁷ TI 38; TeI 27: “l’altérité”

³⁸ TI 33; TeI 21: “Le désir métaphysique tend vers tout autre chose, vers l’absolument autre.” Original emphasis.

³⁹ TI 117; TeI 121.

“metaphysics”,⁴⁰ the relation with “exteriority”,⁴¹ or “transcendence”.⁴² The notion of the transcendence of the Other is, nevertheless, not theological.⁴³ The separated being is atheist by virtue of its very separation: belief in God presupposes interiority and inwardness.⁴⁴

4.1.3. The Epiphany of the Face of the Other, or the Ethical Relation

The relation with the Other cannot be assembled into a temporal formulation. The self/same does not predate the Other, and the Other does not predate the self/same. Instead, the relation is formed as a “past that has never presented itself”.⁴⁵ The relation with the Other is the condition for the possibility of temporality and history, not itself an instant in time. “The trace of a past in the face is not the absence of something not-yet-revealed, but the an-archy of what has never been present”.⁴⁶

The priority of the Other is also found not in historical precedence or anteriority, but rather in being struck by the “epiphany” or manifestation of the face of the Other, which bears the trace of “infinity”.⁴⁷ The trace of infinity in the face is that which cannot enter into conscious experience, that which slips away without themes. It is that which cannot be represented to consciousness nor

⁴⁰ See p. 164, n. 38.

⁴¹ TI 262; TeI 293: “l’extériorité définit l’étant comme étant”

⁴² TI 40; TeI 29: “La « pensée », « l’intériorité », sont la brisure même de l’être et la production (non pas le reflet) de la transcendance.”

⁴³ TI 289-290; TeI 321-322.

⁴⁴ TI 48, 53-60; TeI 40, 45-54; OB 161; AE 250.

⁴⁵ OB 144; AE 227: “un passé [...] qui ne s’était jamais présenté.” Translation altered.

⁴⁶ OB 97; AE 155: “La trace d’un passé dans le visage n’est pas l’absence d’un encore non-révéle, mais l’an-archie de ce qui n’a jamais été présent[.]” Translation altered.

⁴⁷ TI 215; TeI 236: “L’asymétrie de l’interpersonnel.” TI 51; TeI 43: “l’épiphanie même du visage”.

assimilated by the self/same. The idea of infinity in the self/same consists of “an overflowing of the idea by its ideatum”.⁴⁸ The idea of infinity in me, which was first identified by Descartes,⁴⁹ is “a thought that thinks more than it thinks”.⁵⁰ “What remains ever exterior to thought is thought in the idea of infinity”.⁵¹ The face-to-face situation reveals the Other as “my master”,⁵² “the teacher”,⁵³ who is “higher than me”.⁵⁴ It is thus that the self/same, as separated and atheist, finds itself in relation with that which transcends and commands: “The dimension of the divine opens out of the human face.”⁵⁵

The relation with the Other in the face-to-face situation is not proposed, but commanded: “The face is what forbids us to kill”.⁵⁶ The self/same is struck by this command, passively, as an “undergoing”, and as responsibility.⁵⁷ The self’s identity is discovered in the face-to-face as the one that is responsible-for-the-Other: subjectivity is established as a “being-subject-to”.⁵⁸ This is not passivity in the ordinary sense, which is defined as the negation of actions that are already possible, but is rather a radical passivity prior to all agency.⁵⁹ The “do not kill me” of the face institutes a relationship and commands a response, drawing the self

⁴⁸ TI 27; TeI 13: “le débordement de l’idée par son ideatum”

⁴⁹ René Descartes, “The Principles of Philosophy,” in *Meditations and Other Metaphysical Writings*, rev. ed., trans. Desmond M. Clarke (London: Penguin, 2000), 121-122 (§§24-28).

⁵⁰ TI 62; TeI 56: “une pensée qui à tout instant pense plus qu’elle ne pense.” Original emphasis.

⁵¹ TI 25; TeI 10: “Dans l’idée del’infini se pense ce qui reste toujours extérieur à la pensée.”

⁵² TI 72; TeI 68: “La justice consiste à reconnaître en autrui mon maître”.

⁵³ TI 100; TeI 102: “l’enseignant”.

⁵⁴ TI 291; TeI 324: “plus haut que Moi”.

⁵⁵ TI 78; TeI 76: “La dimension du divin s’ouvre à partir du visage humain.” Translation altered. See the above note on translation of “face”, p. 17, n. 22.

⁵⁶ Levinas, *Ethics and Infinity*, 86; *Ethique et Infini*, 80: “le visage est ce qui nous interdit de tuer.”

⁵⁷ OB 53; AE 90: “un subir”

⁵⁸ This is an alternative translation of “un subir”. See previous note.

⁵⁹ See Benda Hofmeyr, “From Activity to Radical Passivity: Retracing Ethical Agency in Levinas,” *MonoKL — Mono Kurgusuz Labirent* (2010): 97-117.

out of interiority and into a consciousness that is always already “hostage” to rights of the Other.⁶⁰

4.1.4. Substitution, Signification and Language

As hostage, the self/same's freedom arises as the freedom to fulfill responsibilities:

It is on account of the condition of being hostage that there can be pity, compassion, forgiveness and proximity in the world. Even the little that we find, even the simple “After you, sir”.⁶¹

The ethical relation with the Other is founded by the epiphany of the face-to-face situation. Yet this relation is not one of empathy for an “alter ego”, which would already presuppose self-consciousness and self-knowledge.⁶² Rather, the relation with the Other opens the possibility of a reflective attitude in which the self forms an identity with itself. The face-to-face does not result from empathy, but institutes the ego as an “obsession” by the Other.⁶³ In the proximity of substitution, “I am summoned as someone irreplaceable. By the Other and for the Other, but without alienation: I am inspired”.⁶⁴ Otherwise than the in-spiration of substitution, the self/same has “no identity”.⁶⁵ The ethical relation of responsibility of the self/same for the Other is “having-the-Other-in-my-skin”.⁶⁶

⁶⁰ OB 160-161; AE 250. See also Levinas, “Rights of the Other;” Levinas, “Droits d’Autrui.”

⁶¹ OB 117; AE 186: “C’est de par la condition d’otage qu’il peut y avoir dans le monde pitié, compassion, pardon et proximité. Même le peu qu’on trouve, même le simple « après-vous-Monsieur ».” Translation altered.

⁶² TI 67; TeI 63.

⁶³ OB 115; AE 182: “l’obsession”. See also the whole of “Substitution”: OB 99-129; AE 156-205.

⁶⁴ OB 114; AE 181: “ma substitution à l’autre [...] pour laquelle, irremplaçable, je suis assigné. Par l’autre et pour l’autre, mais sans aliénation: inspiré”. Translation altered.

⁶⁵ Emmanuel Levinas, “No Identity” in *Emmanuel Levinas: Collected Philosophical Papers*, trans. Alphonso Lingis (Dordrecht: Martinus Nijhoff, 1987), 141-151.

⁶⁶ OB 115; AE 181: “avoir-l’autre-dans-sa-peau”. Translation altered.

Language, or “the Said”, issues out of the ethical relation established by the epiphany of the face of the Other.⁶⁷ The Said is founded by the pre-original “Saying” of the addressing of the commandment by the Other in the face-to-face situation. Language bears the trace of this address: it is ex-pression, a sharing in common terms, a communication between one and the Other. “The-one-for-the-other” of language — the substitution of interchangeable terms in a structure of discourse — is not the beginning of the ethical life, but rather the rationalization of the an-archy⁶⁸ of ethical substitution.⁶⁹

Language does not exteriorize a representation pre-existing in me: it puts in common a world hitherto mine. Language sets in motion the entry of things into a new ether where they receive a name and become concepts[.]⁷⁰

In substitution, “justice is shown from the first, born from the signifyingness of signification, from the-one-for-the-other of signification”.⁷¹ The structure of signification in language presupposes the ethical relation. Representations, concepts, and terms are “scattered” out of the Saying as the self/same’s response to the commandment of responsibility-for-the-Other. And for the Third, who interrupts the Saying.

⁶⁷ OB 169-171; AE 262-266.

⁶⁸ OB 99-102, 117; AE 156-162, 184: “invertit l’arché en anarchie”

⁶⁹ OB 159; AE 247-248.

⁷⁰ TI 174; TeI 189: “Le langage n’exteriorise pas une représentation préexistant en moi — il met en commun un monde jusqu’alors mien. Le langage effectue l’entrée des choses dans un éther nouveau où elles reçoivent un nom et deviennent concepts[.]”

⁷¹ OB 159; AE 247-248: “la justice, née, ainsi, de la signifiante de la signification, de l’un-pour-l’autre de la signification.” Translation altered.

4.1.5. The Third, Distribution and Justice: Politics and the State

Yet the “extra-ordinary engagement of the Other with the Third” disturbs the relation of proximity, or obsession, or substitution, or Saying, which is between the self and the Other.⁷² The self sees that the Third, or the “third party”,⁷³ is the Other’s Other.⁷⁴ This situation requires a distribution, between the Other and the Third, of the self/same’s responsibility-for-the-Other. The need for distribution is a need for justice. The self’s unlimited responsibility in substitution must be shared out; the Other’s commitment to the Third

calls for control, a search for justice, society and the State,
comparison and possession, thought and science, commerce and
philosophy, and outside of anarchy, the search for a principle.⁷⁵

Out of a need for justice between the Other and the Third, the self/same must objectify, conceptualize, thematize, summarize, assess, reason, analyse, and decide. Ration-ality rations responsibility, and compares the incomparables of the

⁷² TI 265: “It excludes the third party, it remains intimacy, dual solitude, closed society, the supremely non-public.” TI 297: “Il exclut le tiers, il demeure intimité, solitude à deux, société close, le non-public par excellence.” In this passage Levinas is addressing the theme of the feminine, but given his insistence that “the feminine is the Other” (“[l]e féminin, c’est l’Autre”) in TI, I think it is safe to make this interpretation. See TI 256-266; TI 286-299. See also OB 160: “[Consciousness] is the entry of the Third — permanently — into the intimacy of the face-to-face.” Translation altered; AE 249: “[La conscience] est l’entrée du tiers — entrée permanente — dans l’intimité du face-à-face.”

⁷³ See above, p. 16, n. 24.

⁷⁴ OB 157: “The Third is other than the neighbour, but also an other neighbour, and also a neighbour of the Other, and not simply his fellow man. What then are the Other and the Third for one another?” AE 245: “Le tiers est autre que le prochain, mais aussi un autre prochain, mais aussi un prochain de l’Autre et non pas simplement son semblable. Que sont-ils donc l’autre et le tiers, l’un-pour-l’autre?” Translation altered.

⁷⁵ OB 161; AE 251: “L’extra-ordinaire engagement d’Autrui à l’égard du tiers en appelle au contrôle, à la recherche de la justice, à la société et à l’Etat, à la comparaison et à l’avoir, à la pensée et à la science, et au commerce et à la philosophie, et, hors l’anarchie, à la recherche d’un principe. La philosophie est cette mesure apportée à l’infini de l’être-pour-l’autre de la proximité et comme la sagesse de l’amour.” Translation altered.

Other and the Third.⁷⁶ “The foundation of consciousness is justice”,⁷⁷ and “[c]onsciousness is born as the presence of the Third”.⁷⁸

The Third arises as the horizon of a society in which the self can eventually become a candidate for justice. The subject is formed out of the self/same as the agent of justice between the Other and the Third. The subject's subjectivity, consciousness, self-consciousness, arises as an attitude of justice. Yet the subject presides not over its own need for justice with the self or the Third, nor over an antagonism between the Other and the Third. The subject arises as a need to distribute its own responsibility. The self/subject becomes a candidate for justice only through the generalization or “universalization” of responsibility into language, society, institutions, laws, and a state.⁷⁹ “Thank God that I am an Other for the others”; that “as a subject incomparable with the Other, I am approached as an other like the others, that is, ‘for-myself’”.⁸⁰ Whatever ethical status the self/subject might come to possess, it is secondary, derivative of the subject's prior identity as an agent of justice. Justice is responsibility-for-the-others.

Yet through consciousness, conceptualization, and distribution arises the possibility of conflict, of finding in the Other an enemy.⁸¹ By contrast with the

⁷⁶ OB 158; AE 247: “la comparaison de l'incomparable”

⁷⁷ OB 160; AE 249: “Le fondement de la conscience est la justice.”

⁷⁸ OB 160; AE 249: “La conscience naît comme présence du tiers.” Translation altered to reflect the definite article used in the French (“le”).

⁷⁹ TI 300; TeI 334: “le rapport métaphysique [...] aspire à l'Etat, aux institutions, aux lois qui sont la source de l'universalité”.

⁸⁰ OB 158; AE 247: “« Grâce a Dieu » je suis autrui pour les autres.” “sujet incomparable à Autrui, je suis abordé en autre comme les autres, c'est-a-dire « pour moi ».”

⁸¹ See Emmanuel Levinas, “Ethics and Politics,” interview with Shlomo Malka and Alan Finkelkraut in *The Levinas Reader*, ed. Seán Hand (Oxford: Blackwell, 1989), 289-297: “The other is the neighbour, who is not necessarily kin, but who can be. And in that sense, if you're for the other, you're for the neighbour. But if your neighbour attacks another neighbour or treats him unjustly, 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, who is just and who is unjust”; originally

[cont'd]

“ethical impossibility of killing” in the face-to-face, consciousness opens the door to violence, war and murder.⁸² The state both awakens and violates freedom.⁸³

War remains a “permanent possibility” because of the capacity of consciousness to totalize, to identify in the other a type, an enemy, and a target.⁸⁴

4.2. LEVINAS’S PHILOSOPHY AS A RESPONSE TO THE PROBLEM OF INTERSUBJECTIVITY

In 4.1, I presented an exposition of Levinas’s philosophy, and set out his argument for justice-as-responsibility. On Levinas’s account, consciousness arises as an attitude of justice, and the subject is formed as an agent of distribution between the Other and the Third. In this section, I argue that Levinas’s philosophy should be understood as an attempt to formulate a response to the problem of intersubjectivity, which he identified in and through Husserl’s phenomenology. (4.2.1). Levinas’s positing of the “an-archy”, “prehistory”, or “priority” of the ethical relation of responsibility-for-the-Other is his response to this problem. In that he investigates alterity as the condition of possibility for consciousness, I suggest that his philosophy could be described as “meta-phenomenology” (4.2.2).

cont’d]

published as “Israel: Ethique et Politique,” *Les Nouveaux Cahiers* 71 (1983): 1-8: “L’autre, c’est le prochain, pas nécessairement le proche, mais le proche aussi. Et dans ce sens-là, étant pour l’autre, vous êtes pour le prochain. Mais si votre prochain attaque un autre prochain ou est injuste avec lui, que pouvez-vous faire? Là, l’altérité prend un autre caractère, là, dans l’altérité peut apparaître un ennemi, ou du moins là se pose le problème de savoir qui a raison et qui a tort, qui est juste et qui est injuste.” For analysis of these remarks, which were made during an interview, see: Caygill, *Levinas and the Political*, 159-198; and Gil Anidjar, *The Jew, the Arab* (Stanford: Stanford University Press, 2003), 3-39.

⁸² TI 87; TeI 86: “l’impossibilité éthique [...] de le tuer”

⁸³ TI 176; TeI 191-192: “[L’Etat] réveille [la personne] à une liberté qu’il viole aussitôt.”

⁸⁴ TI 21; TeI 5: “la possibilité permanente de la guerre”

4.2.1. The Problem of Intersubjectivity in Husserl's Phenomenology

In chapter one, I introduced the background to Levinas's philosophy in Husserlian phenomenology. I explained that Husserl conceives of phenomenology as a method for describing the essential structures of subjective consciousness. This description is to be achieved through the phenomenological reduction, or "epochē", which is a reflective, theoretical attitude in which truth-assigning judgements about experiences are suspended, so that the content and structure of those experiences can be described as they arise in consciousness.⁸⁵

In his doctoral thesis (1930), Levinas argues that Husserl's phenomenology rests on a "theory of intuition".⁸⁶ Caygill notes that in its final chapters "Levinas's dissatisfaction with Husserl, but at the same time his unease with the language of Heidegger, become most apparent".⁸⁷ Levinas concludes TIHP by reporting that Husserl's attention was turning towards the intersubjective relation, and he notes that this posed some challenges for the task of phenomenology:

Concrete being is not what exists for only one consciousness. In the very idea of concrete being is contained the idea of an intersubjective world [...] The reduction to an *ego*, the *egological* reduction, can be only a first step toward phenomenology. We must also discover "others" and the intersubjective world. A phenomenological intuition of the life of others, a reflection by *Einfühlung*⁸⁸ opens the field of transcendental intersubjectivity and completes the work of the philosophical intuition of subjectivity.⁸⁹

Towards the end of his career, Husserl investigates the topic of intersubjectivity further — most notably in his *Cartesian Meditations*, which were published after

⁸⁵ See above, p. 40, for further introduction to Husserl's phenomenology.

⁸⁶ TIHP 121-151

⁸⁷ Caygill, *Levinas and the Political*, 23.

⁸⁸ "Einfühlung" (roughly) means "empathy". –AW

⁸⁹ TIHP 150-151

Levinas's completion of TIHP. Indeed, such was Levinas's enthusiasm for the dissemination of Husserl's work on the intersubjective relation that the *Cartesian Meditations* were published in a French translation by Levinas in 1931, almost twenty years prior to their publication in German in 1950. In the fifth *Meditation*, Husserl both claims that "the objective world as an idea [...] is essentially related to intersubjectivity", and explores the constitution of objects as having intersubjective validity (i.e. being valid also for others).⁹⁰ In spite of these developments, however, Husserl's account of how consciousness relates to others never departed from the notion that others are apprehended in consciousness as a special class, or "species", of object.⁹¹

In *The Other* (1965), Michael Theunissen investigates the problem of intersubjectivity and the Other in the phenomenological approaches of Husserl, Heidegger, Sartre and Buber.⁹² Levinas's absence from Theunissen's study is noticeable, but not surprising, given that *The Other* appeared only four years after Levinas's *Totality and Infinity*, and two years prior to Derrida's essay "Violence and Metaphysics", which significantly raised Levinas's profile.⁹³ Theunissen does refer to Levinas, but only as an interpreter of Husserl and Buber, and not as a figure with an independent philosophical perspective on the problem of

⁹⁰ Edmund Husserl, *Cartesian Meditations: An Introduction to Phenomenology*, trans. Dorion Cairns (Dordrecht: Kluwer Academic, 1950 [1931]), 107 (med. 5; §§42-62). See also Matheson Russell, *Edmund Husserl: A Guide for the Perplexed* (London: Continuum, 2006), 162-179.

⁹¹ Michael Theunissen, *The Other: Studies in the Social Ontology of Husserl, Heidegger, Sartre and Buber*, trans. Christopher Macann (Cambridge MA: MIT Press, 1984 [1977]), 62.

⁹² To the extent that Heidegger, Sartre and Buber coincide with Husserlian phenomenology. See Theunissen, *The Other*.

⁹³ See above, p. 48.

intersubjectivity.⁹⁴ In one passage, Theunissen focuses on the problem of Husserl's account of how the alter ego enters into conscious experience.⁹⁵ He claims that Husserl's account of "pairing" as an explanation for the ego's apperception of the Other is paradoxical:

On the one hand, [pairing] precedes and makes the experience of the alien body possible; on the other hand, it succeeds the experience of the alien body and is made possible by it.⁹⁶

Theunissen also explains that Husserl himself came up against this problem,⁹⁷ but that at the time it was inadequately explored by scholars of Husserl:

Husserl's interpretation of the analogizing apperception of the Other's body becomes problematic. According to §51 of *Cartesian Meditations*, and on the basis of the peculiarity that the primally institutive original is present in it, this apperception [of the Other's body] is supposed to be a special case of "pairing". The entire Husserl literature has uncritically accepted this. In contrast, I would like first of all to venture the negative thesis that, on the basis of Husserl's presuppositions, analogizing apperception of the Other's alien body cannot be thought of as pairing.⁹⁸

Joel Smith, working within an empirical approach to philosophy, also considers whether a naturalized explanation of Husserl's transcendental account of the intersubjective relation can be found.⁹⁹ Smith, like Theunissen, notes that "[t]he account of intersubjectivity offered by Husserl in the fifth *Cartesian Meditation* falls foul of the problem of perceived similarity".¹⁰⁰ Smith draws on empirical

⁹⁴ Theunissen refers to *Discovering Existence with Husserl and Heidegger* (1949), and his essay "Martin Buber and the Theory of Knowledge" (1963), which Levinas contributed to an edited volume about Buber. See Levinas, *Proper Names*, 17-35.

⁹⁵ Theunissen, *The Other*, 62-64.

⁹⁶ Theunissen, *The Other*, 63. See also Husserl, *Cartesian Meditations*, 112-113 (med. 5, §51).

⁹⁷ Theunissen, *The Other*, 64.

⁹⁸ Theunissen, *The Other*, 62.

⁹⁹ Joel Smith, "Can Transcendental Intersubjectivity Be Naturalised?" *Phenomenology and the Cognitive Sciences* 10/1 (2011): 91-111.

¹⁰⁰ Smith, "Transcendental Intersubjectivity," 109.

evidence from developmental psychology and neuroscience,¹⁰¹ but concludes that a naturalized explanation along these lines “fails to count as a theory of intersubjectivity at all”, because the problem of how the subject identifies its similarity to the other person cannot be answered naturalistically.¹⁰² In any event, Husserl would regard a naturalized account of intersubjectivity as invalid: such an account would be to Husserl a form of skepticism, as it seeks to explain consciousness via the natural attitude, even though it is the natural attitude that is the *accomplishment* of consciousness.

4.2.2. Levinas’s Account of the Relation with the Other as a Meta-Phenomenology

Levinas continues Husserl’s investigation of the intersubjective relation, but not as a “regional ontology”, which in Husserl’s phenomenology refers to the description of a particular area of consciousness.¹⁰³ In TIHP he concludes that Husserl fails to account for the “personality” of consciousness, or for the historical and social constitution of an intersubjective world:

He never discusses the relation between the historicity of consciousness and its intentionality, its personality, its social character. [...] The historicity of consciousness does not appear as an original phenomenon, because the suprahistorical attitude of theory supports, according to Husserl, all our conscious life. The admission of representation as the basis of all acts of consciousness undermines the historicity of consciousness and gives intuition an intellectualist character. [...] Consequently, despite the revolutionary character of the phenomenological reduction, the revolution which it accomplishes is, in Husserl’s

¹⁰¹ Smith, “Transcendental Intersubjectivity,” 91.

¹⁰² Smith, “Transcendental Intersubjectivity,” 108.

¹⁰³ Husserl, vol. 1 of *Ideas*, 18-23 (pt 1, ch. 1; §§9-10).

philosophy, possible only to the extent that the natural attitude is theoretical.¹⁰⁴

Levinas claims that the intellectualism of phenomenology (by which he means its preoccupation with the investigation of the laws and objects of science and logic) also leads Husserl to a deficient account of how the subject apperceives the other subject, not as a species of object, but precisely as another subject with its own conscious life.¹⁰⁵ For Levinas, the problem of intersubjectivity requires not some modification or extension of phenomenological method, but rather an investigation outwith the egological limits of phenomenology to what is “otherwise than” phenomenology, or beyond that which can be consciously synthesized.¹⁰⁶ Only by exceeding the subjectivist, intellectualist constraints of phenomenology can a new path out of the problem of intersubjectivity be found.¹⁰⁷

Levinas begins to tread this path in his works *Existence and Existents* and *Time and the Other* (both published in 1947).¹⁰⁸ In TO, he spells out what was implicit in his conclusion to TIHP: that if “[t]he Other is known through sympathy, as another (my)self, as the alter ego”¹⁰⁹ then “the relationship with the Other becomes impossible”,¹¹⁰ because the Other would thus become the mere instance of an objective theme: already reduced, reciprocal, interchangeable. Therefore Levinas explicitly rejects Husserl’s account of the Other as an alter ego: “the Other is in no way another myself, participating with me in a common existence”.¹¹¹ The

¹⁰⁴ TIHP 156-157.

¹⁰⁵ TIHP 156-157.

¹⁰⁶ TI 44: “Philosophy is an egology.” TeI 35: “La philosophie est une égologie.”

¹⁰⁷ See Levinas, “On Escape,” 49-73; Rolland, “Getting Out,” 3-48.

¹⁰⁸ Husserl, *Cartesian Meditations*, med. 5 (§§42-62).

¹⁰⁹ TO 83; TA 74-75: “L’autre est connu par la sympathie, comme un autre moi-même, comme l’alter ego.”

¹¹⁰ TO 83; TA 75: “la relation avec l’autre devient impossible.”

¹¹¹ TO 75; TA 63: “l’autre n’est en aucune façon un autre moi-même, participant avec moi à une existence commune.”

Other, rather than being a special kind of object, is for Levinas a break in the coherent stream of experience, a rupture in categorial intuition, which transcends and in-forms consciousness. Earlier in TO, Levinas directly addresses what this means for the task of phenomenology:

In positing the present as the mastery of the existent over existing, and in seeking in it the passage from existing to the existent, we find ourselves at a level of investigation that can no longer be qualified as experience. And if phenomenology is only a method of radical experience, we will find ourselves beyond phenomenology.¹¹²

By interrogating the very subjectivity of the “existent”, which for phenomenology is the origin which cannot but be assumed, Levinas exceeds the constraints of Husserl’s method. Levinas can, therefore, be described as undertaking *meta-phenomenology*, since he investigates the *conditions* under which the phenomenological method operates. For instance, where Husserl analyses time-consciousness, and produces a rigorous description of the mechanisms of retention and protention which, through passive synthesis, serve up a stream of temporalized experience to the conscious subject, Levinas posits temporalization as the very *mode* of the intersubjective or “ethical” relation.¹¹³ In TO, Levinas posits time not as a part of the objective world, but as the modality in which a world can be conceptualized, rationalized and shared.¹¹⁴ Levinas’s meta-phenomenology works behind the scenes of the phenomenological reduction, investigating the

¹¹² TO 54; TA 34: “En posant le présent comme la maîtrise de l’existant sur l’exister et en cherchant le passage de l’exister à l’existant, nous nous trouveron au-delà de la phénoménologie.”

¹¹³ See Rudolf Bernet, “Levinas’s Critique of Husserl,” in *The Cambridge Companion to Levinas*, edited by Simon Critchley and Robert Bernasconi (Cambridge: Cambridge University Press, 2002), 82-99.

¹¹⁴ See also Hodge, “Ethics and Time,” 125-131.

conditions of possibility, not only for the phenomenological method, but for all thinking.

4.3. LEVINAS AND LANGUAGE: FROM SAYING AND SAID TO UNSAYING THE SAID

Having established Levinas's philosophy as a response to the problem of intersubjectivity in Husserl, I now consider how Levinas's treatment of language — both as an issue of philosophy, and as his means of philosophical expression — is crucial to his meta-phenomenology. I first explore Levinas's ideas of “sensibility”, “exposure”, and “signifyingness” as indicating a meaningfulness prior to the conscious structures of meaning-bestowal and meaning-fulfillment described by Husserl (4.3.1). I then analyse the presentation of Levinas's texts, focusing on his choices of structure, style, and terms (4.3.2). Finally, I argue that Levinas's use of language subverts and resists its way of assembling terms into an adequate structure of signifier and signified, of sense and reference. This “unsaying” is the most radical technique of meta-phenomenology, prefiguring deconstruction (4.3.3).

4.3.1. Openness and Sensibility as Meaningfulness Prior to Intentionality

“Sensibility” assumes a growing importance in Levinas's later works.¹¹⁵ By sensibility, Levinas does not mean the sense-perception, or the intentional,

¹¹⁵ See Lingis, translator's introduction to OB, xi-xl; OB 14-15, 61-98. Levinas was developing his themes of sensibility, vulnerability, passivity, exposure, etc. in essays published in the years leading up to OB. These include “Freedom and Command” (1953, whose account of
[cont'd

already-meaningful intuitions which are constituted in consciousness out of sense-perceptions.¹¹⁶ Instead, sensibility is the subject's prior "openness" to what is outside the subject, its passive undergoing of experience, its vulnerability to the contact of the other-than-itself.¹¹⁷ This idea is already present in Husserl, who conceives the receiving of hyletic data (which are, roughly understood, "sense-impressions")¹¹⁸ as distinct from the intentional operations of consciousness which constitute subjective experience out of these sensations.¹¹⁹ Yet in these sense-impressions Levinas finds in the subject's receptivity to sensation a radical passivity which is older than temporalized consciousness: "sensibility, prior to all will, action, declaration, all taking up of positions, is vulnerability itself".¹²⁰

The intentionality of consciousness is dependent, Levinas claims, upon its "capacity to be struck" by something outside itself.¹²¹ Irina Poleshchuk summarises Levinas's deviation from Husserl:

[B]eing affected, I am already in the world and I am already participating in the world [...] Despite the fact that Husserl admits hyletic data at the foundation of intentionality, he underestimates the constituting role of the passivity of experience.¹²²

cont'd]

the undergoing of political tyranny also informs sections of TI), "Substitution" (1968, which was later revised and incorporated into OB), "No Identity" (1970), and "Meaning and Sense" (1972).

¹¹⁶ Lingis, translator's introduction to OB, xxx.

¹¹⁷ Levinas, "No Identity," 145-146.

¹¹⁸ Husserl, vol. 1 of *Ideas*, 203-210 (pt. 3, ch. 2; §§85-86), 236-340 (pt. 3, ch. 4; §97).

¹¹⁹ See TIHP 126-129 on consciousness as animation of hyletic data; see also the second of three designations of "openness" described by Levinas in "No Identity," 145.

¹²⁰ Levinas, "No Identity," 146.

¹²¹ Emmanuel Levinas, "Freedom and Command," in *Collected Philosophical Papers*, ed. Lingis, 16.

¹²² Irina Poleshchuk, "Temporality of the Face-to-Face in Levinas' Ethics," doctoral thesis, University of Helsinki, 2009, 119, 122.

Consciousness, which generates the presence of self to self, animates a prior contact with the other through sensibility. Levinas describes this in DEH as “receptivity of an ‘other’ penetrating the ‘same’, ‘life’ and not ‘thought’”.¹²³

Similarly, he writes in OB:¹²⁴

Sensibility is exposedness to the other. [...] In the having been offered without any holding back, it is as though the sensibility were precisely what all protection and all absence of protection already presuppose: vulnerability itself. [...] as soon as [consciousness] falls back into contact, it reverts from grasping to being grasped, like in the ambiguity of a kiss.¹²⁵

Before assuming the unity of a self, consciousness must first be struck by something external. The assembled, meaningful world of objects constituted in consciousness depends upon a meaningfulness that begins outside, or with the Other:

The Other who faces me [...] is sense primordially, for he gives sense to expression itself, for it is only by him that a phenomenon as a meaning is, of itself, introduced into being.¹²⁶

By finding consciousness to depend upon the prior meaningfulness of the relation with the Other, Levinas claims that “[c]onsciousness loses its first place”,¹²⁷ and is supplanted by “ethics as first philosophy”.¹²⁸ His account of the meaningfulness prior to intentional consciousness returns philosophy to the Platonic “good

¹²³ See Emmanuel Levinas, “Intentionality and Sensation,” ch. 9 in DEH, 135-150. Levinas, *Entre Nous*, 144.

¹²⁴ See Irina Poleshchuk, “From Husserl to Levinas: The Role of Hyletic Data, Affection, Sensation and the Other in Temporality,” *Problemos* 76 (2009): 112-133.

¹²⁵ OB 75; AE 120: “La sensibilité est exposition à l’autre. [...] Avoir-été-offert-sans-retenue, comme si la sensibilité était précisément ce que toute protection et toute absence de protection supposent déjà: la vulnérabilité même. [...] la sensibilité retombe en contact — elle retourne, comme à travers l’ambiguïté du baiser.”

¹²⁶ Emmanuel Levinas, “Meaning and Sense,” in *Collected Philosophical Papers*, ed. Lingis, 95.

¹²⁷ Levinas, “Meaning and Sense,” 97.

¹²⁸ Levinas, “Ethics as First Philosophy.”

beyond being”,¹²⁹ but “in a new way”.¹³⁰ Language, which in Husserl is itself implicated in the constitution of meaning, must instead be “envisioned [...] out of the revelation of the Other”.¹³¹ It is this re-envisioning of language — as a secondary thematization or rationalization of the primary meaningfulness found in sensibility — that leads Levinas to posit the distinction between Saying and Said, which I introduced in 4.1.¹³² In the Saying, “[t]he one who is called is called upon to speak”.¹³³ the pre-original ethical commandment instigates language. And it is because of this re-envisioning (or perhaps re-locution) of the philosophical status of language that the manner in which philosophy is expressed becomes both crucial and problematic.

4.3.2. The Presentation of Levinas’s Texts

In this section, I set out a number of ways in which Levinas responds to this problem of expression in his own philosophical works. This is not an exhaustive account of Levinas’s compositional techniques, but it represents an illustrative sample of them (presented in no special order). In the next section, I draw together these themes with some concluding comments on the structure, style, and terms of his texts.

¹²⁹ OB 95; AE 151: “[le] Bien au-delà de l’être”. See Plato, *The Republic*, trans. Desmond Lee, rev. ed. (London: Penguin Books, 1987), 239-249 (pt. 7, §5; 6.502c-6.509a). See especially p. 248 (6.508a): “what gives the objects of knowledge their truth and the knower’s mind the power of knowing is the form of the good.” (Editorial section heading: “The Good as Ultimate Object of Knowledge”). See also Plato, *Platonis Opera*, ed. John Burnet (Oxford: Oxford University Press, 1903), 6.508a: “τοῦτο τοίνυν τὸ τὴν ἀλήθειαν παρέχον τοῖς γινώσκομένοις καὶ τῷ γινώσκοντι τὴν δύναμιν ἀποδιδόν τὴν τοῦ ἀγαθοῦ ἰδέαν φάθι εἶναι.”

¹³⁰ Levinas, “Meaning and Sense,” 101.

¹³¹ Levinas, “Meaning and Sense,” 101.

¹³² OB 5-7; AE 16-20: “[l]e Dire et le Dit”

¹³³ Levinas uses the verb “appeler”, which I translate here as “calling”. See TI 69; TeI 65: “L’interpellé est appelé à la parole”. Translation altered.

a. *Comma-splicing*. Levinas often runs several clauses or sentences together, separating (and thereby connecting) them with only a comma. This is usually an attempt to say the same thing in different ways; but it also plays on the fact that “to say the same thing in different ways” results in the saying of different things. In a rare explication of his writing strategy, Levinas explains at the beginning of OB:

We have tried to analyze this relation [of proximity] without resorting to categories that dissimulate it. Proximity as saying, contact, sincerity of exposure, a Saying prior to language, but without which no language, as a transmission of messages, would be possible.¹³⁴

In order to resist in language the dissimulation, or concealment, of the pre-original ethical relation, Levinas must duplicate, and thus obfuscate, ordinary language concepts. In this way Levinas performs another dissimulation — of the ordinary stability of statements and propositions — and thus “unsays” language.¹³⁵ In another example of this strategy, the identity of the subject is diffused across many terms:

In responsibility the self/same, the I, it's me, summoned, provoked, as irreplaceable, and thus accused as unique in the supreme passivity of one that cannot slip away without fault.¹³⁶

The use of comma splicing draws attention to the dependence of terms upon one another in language, and their tendency towards assembly into predicative

¹³⁴ OB 16; AE 32: “Relation que nous avons essayé d’analyser sans recourir aux catégories qui la dissimulent. Proximité comme dire, contact, sincérité de l’exposition; dire d’avant le langage, mais sans lequel aucun langage, comme transmission de messages, ne serait possible.” Translation altered.

¹³⁵ On “unsaying”, see OB 181: “an incessant unsaying of the Said”; AE 278: “un incessant dédit du Dit”. Translation altered. “Dédire”, which is usually translated, for economy’s sake, as “unsaying”, means something more like “going back on one’s word”.

¹³⁶ OB 135; AE 212-213: “Dans la responsabilité le Même, le Moi, c’est moi, assigné, provoqué comme irremplaçable et ainsi accusé comme unique dans la suprême passivité de celui qui ne peut se dérober sans carence.” Translation altered.

structures. Here Levinas distributes meaning across terms and clauses, disassembling them, hinting rather than stating. In this way, the reader is also drawn into the labour of philosophical thought, not through the comprehension of a propositional or deductive Said, but through glimpsing the relation of the Saying which underwrites it.

b. *Dislocation of terminology.* In a related strategy, Levinas takes words out of their expected contexts, and puts them into unusual collocations. In Figure 10, below, I set out a few of these clusters of juxtaposed terms. Often in the course of a text, or of a chapter, the combinations of terms change, so that the potential for diachronic instability of meaning is shown. In *Ethics-Politics-Subjectivity*, Simon Critchley claims that this diffusion of terms

begin[s] to construct a linguistic chain [...] These terms function as what Hent de Vries would call “non-synonymous substitutions”, and what I have elsewhere called “palaeonymic displacements”.¹³⁷

Yet Levinas's terms, presented in chains such as these, come to substitute for one another. They designate and share meanings without being defined. Thus each word in a chain can come to “carry across” the meaning of others: the operation of language as meta-phor is thus highlighted. The reader comes to “know” what Levinas's terms “mean”, but in a manner distinct from ordinary knowledge and meaning. Again, through this strategy Levinas disturbs the security of ordinary language.

¹³⁷ Critchley, *Ethics-Politics-Subjectivity*, 265

Figure 10: Some representations of Levinas's chains of terms

substitution	anarchy
obsession	primordial
hostage	prehistory
accusation	anachrony
persecution	past-that-has-never-presented-itself
sensibility	the-one-for-the-other
exposure	signification
vulnerability	signifyingness
passivity	Said
nudity	
proximity	the Third
commandment	theme
Saying	thematization
ethics	consciousness
responsibility	assembly
undergoing	synchrony
the-other-in-my-skin	system
substitution	State
maternity	terms
desire	totality
	tyranny
other	Subject
the other	Same
the Other	self
exteriority	needs
outside	solitude
infinity	interiority
visage	living from...
face	enjoyment
face-to-face	separated
neighbour	inwardness
most-high	null-site
feminine	

c. *Rhetorical questions.* Levinas asks questions at regular intervals, not to lead to answers, but rather as an alternative to making claims:

Does not coherent discourse, wholly absorbed in the said, owe its coherence to the State, which violently excludes subversive discourse?¹³⁸

His approach is to interrogate rather than refute. By opening questions and leaving them open, his texts resist totalization, i.e. formation into a coherent whole. Where ontology persistently seals up the Other in the language of the Said, Levinas's texts resist closure, merely inviting further interrogation. His rhetorical questions also help to form intertextual structures. For instance, his question at the opening of TI is returned to at the very conclusion of OB:

Does not lucidity — the mind's openness upon the true — consist in catching sight of the permanent possibility of war?¹³⁹

For the little humanity that adorns the earth, a relaxation of essence to the second degree is needed: *in the just war waged against war, to tremble — and to shudder — at every instant because of this very justice.*¹⁴⁰

Levinas does not ask these questions as a rhetorical tool to introduce an answer. Rather, these questions “put an idea out there”.

d. *Assertions.* Levinas's texts oscillate between rhetorical questions on the one hand, and assertions on the other. An example of this alternation between question and assertion can be found at the very opening of OB:

¹³⁸ OB 170; AE 263: “Le discours cohérent s’absorbant tout entier dans le Dit — ne doit-il pas sa cohérence à l’Etat qui exclut, par la violence, le discours subversif?”

¹³⁹ TI 21; TeI 5: “La lucidité — ouverture de l’esprit sur le vrai — ne consiste-t-elle pas à entrevoir la possibilité permanente de la guerre?” Translation altered.

¹⁴⁰ OB 185; AE 283: “Pour le peu d’humanité qui orne la terre, il faut un relâchement de l’essence au deuxième degré: *dans la juste guerre menée à la guerre, trembler — encore frissonner — à tout instant, à cause de cette justice même.*” Original emphasis. Translation altered.

If transcendence has meaning, it can only signify the fact that the event of being, the *esse*, the essence, passes over to what is other than being. But what is being's other? Among the five "genera" of the Sophist a genus opposed to being is lacking, even though since the Republic there has been question of what is beyond essence. And what can the fact of passing over mean here, where the passing over, ending at being's other, can only undo its facticity during such a passage? [paragraph break] Passing over to being's other, otherwise than being.¹⁴¹

This oscillation forms a rhythm of saying and unsaying, claim and retraction.

Along similar lines, Levinas makes frequent references to the figures and traditions of western philosophy, but without the conventional support of formal references. This approach connects to Levinas's search for a philosophical synopsis that is nevertheless not an attempt at closure of philosophical discourse.¹⁴²

e. *Hyphenation*. Levinas frequently plays on words and fragments them into their constituent parts. Unlike Derrida, however, he does not generally play on words ironically, or in order to bring out contradictions between usages of those terms. Instead, he is almost always directing our attention to a meaning that is concealed by the transparency of ordinary usage: hidden either in a historic usage (such as words with Greek or Latin roots), or in the formation of words themselves (for example, "com-prehension" translated from the French "com-

¹⁴¹ OB 3; AE 13: "Si la transcendance a un sens, elle ne peut signifier que le fait, pour l'événement d'être — pour l'esse —, pour l'essence, de passer à l'autre de l'être. Mais l'autre de l'être qu'est-ce à dire? Parmi les cinq « genres » du Sophiste manque le genre opposé à l'être; bien que dès la République il soit question de l'au-delà de l'essence. Et que peut signifier ici le fait de passer, lequel, aboutissant à l'autre de l'être, ne pourrait au cours de ce passage que défaire sa facticité? [paragraph break] Passer à l'autre de l'être, autrement qu'être."

¹⁴² See OB 20: "Should we not think with as much precaution of the possibility of a conclusion or a closure of the philosophical discourse? Is not its interruption its only possible end?" AE 38: "Ne faut-il pas penser avec autant de précaution à la possibilité d'une conclusion ou d'une fermeture du discours philosophique? L'interruption n'en est-elle pas la seule fin possible?"

prendre”, which draws attention to comprehension as “taking-together”, or as “unifying”),¹⁴³ or through hidden components of a word (for example, the way he takes apart the word “essence” in the quotation given above).

The strategy of hyphenation serves to invite the reader to read again. Such double-reading disrupts the synchrony of the text. It requires the reader to stop, re-read, and com-prehend otherwise. This is another route by which Levinas introduces ambiguities into his texts. He evokes multiple meanings in a single term, meanings that can only be understood diachronically. This achieves, in language, something similar to Wittgenstein’s famous duck-rabbit illustration:¹⁴⁴ it is possible to see it as one of two things, but not both at the same time.¹⁴⁵ The meta-phorical structure of the Said, and its “secret diachrony”, is thus demonstrated.¹⁴⁶

f. *Disavowal of authorial voice.* Levinas also writes in an unusual voice, particularly in his later texts. He disavows his voice as author, almost entirely eliminating personal and possessive pronouns. Vladimir Biti, drawing on the work of Hayden White, has described Levinas as writing in the “middle voice”.¹⁴⁷ He writes that by “[u]sing the middle voice the modernist narrative foregrounds, in the place of represented reality, the discursive activity itself”.¹⁴⁸ Similarly, discussing Levinas and Derrida, John Llewelyn understands the middle voice as

¹⁴³ See TI 22, 38, 158.

¹⁴⁴ Ludwig Wittgenstein, *Philosophical Investigations*, trans. G.E.M. Anscombe, 3rd ed. (New York: Macmillan, 1967), 193-196. I am grateful to Hillel Steiner for drawing duck-rabbit to my attention.

¹⁴⁵ See Ludwig Wittgenstein, vol. 2 of *Remarks on the Philosophy of Psychology*, trans. C.G. Luckhardt and M.A.E. Aue (Oxford: Blackwell, 1980), §515-517.

¹⁴⁶ OB 7; AE 20: “une diachronie secrète”

¹⁴⁷ Vladimir Biti, “History, Theory and the Middle Voice,” *Arcadia — International Journal for Literary Studies*. 38/2 (October 2003), 354-358. See also Hand, “Taking Liberties.”

¹⁴⁸ Biti, “Middle Voice,” 355.

“neither simply active nor simply passive”.¹⁴⁹ Similarly, Patrick Sheil has also suggested that Levinas writes in a “subjunctive mood”.¹⁵⁰

g. The non-thematization of the Other. “The Other” is, for reasons that I have set out, at the centre of Levinas’s philosophy. Yet Levinas writes about the Other without ever fixing a definition; indeed, what must be “represented” in Levinas’s writing is the Other’s very evasion of representation. He uses the terms “l’autre”, “l’Autre”, “autrui”, and “Autrui” to “refer” to the Other. It “signifies” the other person. But, as an-archy, it does not signify, or rather, the Other signifies only itself, and thus cannot become an object of re-presentation. Levinas’s multiplication of terms here symbolizes the Other’s absolute resistance to becoming a sign in a structure of language. (It is perhaps, therefore, that the Other approaches me as a proper name.)¹⁵¹

4.3.3. Said Otherwise: Levinas’s Texts as Their Own Unsayings¹⁵²

The strategies Levinas uses in composing his texts, some of which I explored in 4.3.2, amount to what he calls an “unsaying” of the Said. It is a strategy of going-back-on-his-word,¹⁵³ of disturbing the structure and terms of thematized language enough for the Saying prior to language to shine through. David F. Ford describes how Levinas

¹⁴⁹ John Llewelyn, *Appositions of Jacques Derrida and Emmanuel Levinas* (Bloomington IN: Indiana University Press, 2002), 47.

¹⁵⁰ Patrick Sheil, *Kierkegaard and Levinas: The Subjunctive Mood* (Farnham, England and Burlington VT: Ashgate, 2010).

¹⁵¹ Anecdotally, see Levinas, *Proper Names*.

¹⁵² “Autrement Dit” (“Said Otherwise”) is the title of the final section of OB.

¹⁵³ See above, p. 182, n. 135.

contorts language in order to articulate a subjectivity which is so radically passive that it is not possible to conceive of a time when it was not under an absolute obligation [...] Levinas reaches for terminology that can express the drastic discontinuity between this “election” to responsibility and “being”.¹⁵⁴

Levinas’s study of this election to responsibility-for-the-Other — which is the condition of possibility for language, consciousness, and justice — can be expressed in language only by means of a “betrayal”.¹⁵⁵ The challenge that Levinas faces as a writer is to attempt to articulate conditions of possibility for all cognition, but to do so in the cognitive language of the Said which, by definition, betrays the attempt. Writing constantly imposes concepts and objectifications upon that which is not conceptual or objective, i.e. the Other. Levinas’s texts attempt to unsay this betrayal by subverting the structures through which language ensures its own stability. Alphonso Lingis summarises Levinas’s technique in his introduction to OB:

The thought succeeds in formulating itself without being set forth in predicative assertions. Constructions by participial clauses avoid the very use of the copula. Where he elides the verb to be, Levinas is forced to write in clauses rather than in sentences [...] Again and again the procedure is to juxtapose formulations in apposition, as though the movement is not to reduce but to disimplicate.¹⁵⁶

Levinas writes against the grain of language in order to hint at the pre-original, pre-linguistic situation of the face-to-face, in which terms are not yet assembled and themes are not yet set. This method of unsaying, which is the most crucial strategy of his meta-phenomenology, perhaps explains his proximity to certain literary works. Outside philosophy, a number of works of modernist literature

¹⁵⁴ David F. Ford, “On Substitution,” in *Facing The Other: The Ethics of Emmanuel Levinas*, edited by Seán Hand (Richmond: Curzon, 1996), 25.

¹⁵⁵ OB 6; AE 18: “une trahison”

¹⁵⁶ Lingis, translator’s introduction to OB, xlv.

attempt a similar linguistic task to Levinas. For example, James Joyce's *Ulysses* (1922) or Marcel Proust's *In Search of Lost Time* (1913-1927) are deliberately obscure texts which challenge language as a medium of re-presentation.¹⁵⁷ As a reading experience, the difficulty of the style, structure, and terms that Levinas must use in order to achieve this unsaying is extremely hard to break through. Such obscurity provokes a proper suspicion in critical minds. As the scientist Peter Medawar once put it in *Pluto's Republic*,

In all territories of thought which science or philosophy can lay claim to, including those upon which literature has also a proper claim, no one who has something original or important to say will willingly run the risk of being misunderstood; people who write obscurely are either unskilled in writing or up to mischief.¹⁵⁸

Yet in this chapter I have shown that the difficulty of Levinas's texts is a necessary, and deliberate, strategy to permit the articulation of a philosophy that can witness to the ethical relation of responsibility-for-the-Other without thematizing it. Levinas describes this as "subversive discourse".¹⁵⁹ To be added to the two that Medawar gives, there is at least a third conceivable reason for writing "obscurely": in order to introduce into language, using language, an account of the very nature of language as a system which assembles experience into a structure of signs, and reduces it to the totality of a closed system. "In totalizing being, discourse *qua* Discourse thus belies the very claim to totalize".¹⁶⁰ By manifesting language, in language, as the reductive system that it is, Levinas takes philosophy to the

¹⁵⁷ See James Joyce, *Ulysses* (Ware: Wordsworth Classics, 2010 [1922]); Marcel Proust, *In Search of Lost Time*, 6 vols. (London: Penguin, 2003 [1913-1927]); see also Levinas, "The Other in Proust"; Fifield, *Late Modernist Style in Samuel Beckett and Emmanuel Levinas*; Toumayan, "'I More Than The Others': Dostoevsky and Levinas"; Utell, *James Joyce and the Revolt of Love*.

¹⁵⁸ Peter Medawar, *Pluto's Republic* (Oxford: Oxford University Press, 1982), 52.

¹⁵⁹ OB 170; AE 263: "le discours subversif"

¹⁶⁰ OB 171; AE 264: "En totalisant l'être, le discours comme Discours apporte ainsi un démenti à la prétention même de la totalisation."

threshold of what is otherwise than language: the ethical relation of responsibility-for-the-Other.

CONCLUSION

In this chapter, I first presented an exposition of Levinas's philosophy (4.1). I then argued that his philosophy is a response to the problem of intersubjectivity, which he identified through Husserl's phenomenology. I suggested that Levinas could be understood as developing "meta-phenomenology" (4.2). I focused in some detail upon the growing importance of language in Levinas's later works (4.3), and examined Levinas's account of sensibility as openness to the Other, language as the thematization of this pre-original plane of meaningfulness. I presented some of the compositional strategies used by Levinas, and argued that they amount to a method of constantly "unsaying" the thematization and synchronization of the Said.

5. The Problems of Skepticism and the Self in Levinas's Meta-Phenomenology

INTRODUCTION

In the previous chapter, I characterised Levinas's philosophy as a meta-phenomenology responding to the problem of intersubjectivity in Husserl. I argued that Levinas posits the ethical relation of responsibility-for-the-Other, and the attitude of justice which issues from the interruption by the Third, as the conditions of possibility for thematization, consciousness, and language. In this chapter, I continue to engage directly with Levinas's key texts, from three critical angles. I present these not always as systematic refutations of particular points, but rather in Levinas's mode of interrogation that I described in 4.3. Unsayings what is said, questioning and asserting, advancing and retracting: I set out problems in Levinas's meta-phenomenology within the tenor of Levinas's texts, just as in chapter three I set out problems in Steiner's philosophy within the tenor of ER. I place the critical angles which follow into the context both of scholarship introduced in chapter one, and of a number of other critical works, which I introduce along the way.

I first examine the methodic problem of skepticism in Levinas's meta-phenomenology, and argue that there is a paradox in his method (5.1). In keeping with the origin of Husserlian phenomenology, he works from the analysis of subjective consciousness; but this is in conflict with his eventual assertion of the meta-phenomenological priority of the Other, out of an encounter with which

subjectivity is itself formed. I ask whether Levinas should be regarded as a skeptic, and query whether Husserl would regard Levinas as producing valid philosophy. Second, I examine the ethical problem of the self: both in the sense of how the self can be self-interested, with responsibilities to itself; and in the sense of how the self, which Levinas presents as agent of justice, can itself become a candidate for justice amongst the others (5.2). I argue that Levinas's positing of the Third alongside the Other produces some of these problems, and speculate that a less problematic account of justice-as-responsibility can be found in the face-to-face relation, understood as mutuality and reciprocity. Third, I argue that the difficult themes of evil and the feminine in Levinas can be interpreted as manifestations of these problems of skepticism and the self (5.3).

5.1. THE SELF DISCOVERED: THE METHODIC PROBLEM OF SKEPTICISM

As I showed in chapter four, Levinas both continues and breaks with Husserlian phenomenology. In TO he suggests that the investigation of sensibility as exposure-to-the-Other takes philosophy beyond it: "if phenomenology is only a method of radical experience, we will find ourselves beyond phenomenology".¹ By way of contrast, he reportedly once said in conversation, "don't forget that I'm a phenomenologist".²

¹ TO 54; TA 34: "si la phénoménologie n'est qu'une méthode d'expérience radicale, nous nous trouverons au-delà de la phénoménologie."

² Murakami, *Lévinas Phénoménologue*, 338. See above, p. 63, n. 190.

5.1.1. The Paradox of Levinas's Method

In this meta-phenomenological paradox, Levinas investigates the conditions under which a world can become available for phenomenological inspection. How does subjective consciousness, which Husserlian phenomenology studies, come into being? Husserl's starting point is the experience of the life of the subject: it is a method which seeks to describe in the fullest way possible how subjective consciousness is structured. As such, what Husserl cannot renegotiate is its absolute grounding in the experience of the subject. The phenomenological reduction must by definition be performed from the perspective of the subject, in which "the I think must be able to accompany all my representations".³

Steeped in the discipline of this approach, Levinas seeks a way out of the problem of intersubjectivity — which seemed to him to go beyond the very limits of egological philosophy — from *within* subjectivity. It is for this reason that Levinas describes ethics in terms of sensibility, "the-Other-in-my-skin",⁴ the face-to-face encounter. The relation with the Other, intersubjectivity, thus remains connected to the experience of the subject. Levinas does not simply postulate the pre-original priority of the Other, but argues that a trace of evidence for this priority can be found in the ordinary life of subjective experience, in the face-to-face relation.⁵ As I explained in chapter four, the face is for Levinas a rupture in the constituting, thematizing work of consciousness; it exceeds thematization. There is always more of the face than can be thematized; it is an overflowing, an infinity, a thought that thinks more than it thinks.⁶ The face of the Other is also a

³ Kant, *Critique*, trans. Müller, 745; *Kritik*, ed. Valentiner, 151. See ch. 4, n. 19.

⁴ OB 115; AE 181: "avoir-l'autre-dans-sa-peau". Translation altered.

⁵ TO 79; TA 68-69.

⁶ TI 62; TeI 56.

visible rupture in the stream of objective life: even in the subject's ordinary, objectivised relation with the face or gaze of the Other as a theme of perception, it still betrays the trace of the Other's infinity. His parable of the face-to-face encounter signifies the whole ambiguity of Levinas's project, as concerning both the concrete life of the subject (in the everyday face-to-face situation) and the relation with the infinity of the Other, which remains exterior to experience; it is "a past that has never presented itself".⁷ It is with the notion of the "trace" that Levinas seeks to posit the transcendental within the empirical: "The trace left by the infinite is not the residue of a presence; its very glow is ambiguous".⁸ He describes the paradox as "transcendence in immanence".⁹ The face of the Other, although immediately entering into experience as a theme (as the *idea* of a "face"), still bears a trace of infinity, resisting thematization and, as height, commanding responsibility.

But is the enigma of the face as a trace of infinity really a way out of the paradox of investigating what Husserl finds to be beyond the scope of investigation, i.e. the otherwise than subjectivity? Levinas's philosophy *begins* in the method of reflection upon the life of the transcendental subject, but concludes by finding the origin of subjectivity "outside the subject". Levinas's argument for the radical priority of the Other is not a deliberative priority, in the sense of choosing to do the right thing by the other person, or of putting the needs of the Other before my own, or even of fulfilling my duties before demanding my rights. Certainly, Levinas finds these empirical behaviours to issue from the relation with exteriority; but the relation with exteriority does not itself consist of behaviours.

⁷ OB 144; AE 227: "un passé [...] qui ne s'était jamais présenté." Translation altered.

⁸ OB 12; AE 27: "La trace laissée par l'Infini n'est pas le résidu d'une présence; sa lueur même est ambiguë."

⁹ OB 8; AE 21: "transcendant dans l'immanence"

It consists of the very opening of the possibility of space and time as a field within which orientation for-the-Other through actions and works is first made possible. Before the relation with the Other is rationalized and temporalized into a set of moral priorities, it is a radical, meta-phenomenological prior-ity which subverts the subject's very subjectivity as the origin of its own representations. Levinas claims that the ethical relation with the Other is the condition of possibility for the subjectivity of the subject.

5.1.2. Levinas's Earlier Account of the Subject

Across Levinas's works, there is a clear shift from the phenomenology of the life of the subject, which was his focus in TIHP, TO, and TI, towards a skeptical annihilation of the life of the subject in his later works, particularly in OB and the shorter essays that preceded it. In TO, the continuity with Husserlian phenomenology is clear: Levinas's focus is held by the task of describing the relation with the Other out of the subject's experience of time. Incidentally, the presentation of the text is also relatively conventional compared to later texts such as OB. In TO he gives an account of the subjective life of "solitude" and "enjoyment", and discusses how a theoretical principle of unity (which is required for mathematics, science, and empiricism more broadly) must derive from the subject's experience of its own unity as a being:

If solitude in this study has initially been characterized as the indissoluble unity between the existent and its existing, it thus does not result from some presupposition about the other. It does not appear as a privation of a previously given relationship with the Other. It results from the work of hypostasis. Solitude is the very unity of the existent, the fact that there is something

existing starting from which existence occurs. The subject is alone because it is one.¹⁰

In TO, Levinas attributes an *original* status to the subject with regard to its consciousness. Here the subject still has methodic primacy; the phenomenological other arises beneath the sovereignty of a self which is first alone:

A solitude is necessary in order for there to be a freedom of beginning, the existent's mastery over existing — that is, in brief, in order for there to be an existent. Solitude is thus not only a despair and an abandonment, but also a virility, a pride, and a sovereignty.¹¹

As in TI, Levinas describes the mode of the self/same in its solitude as one of “enjoyment”. Explicitly contradicting Heidegger, who considers “the world as an ensemble of tools”, Levinas describes “the world [as] an ensemble of nourishments”.¹² In its solitude, the self/same experiences objects not as instruments for a task, but as things to be enjoyed and absorbed for its solitary satisfaction: “To stroll is to enjoy the fresh air, not for health, but for the air”.¹³ He makes a similar point in respect of suffering, claiming that, in suffering, the self experiences its irrevocable allegiance to itself: “In suffering there is an absence of all refuge. It is the fact of being directly exposed to being.”¹⁴ All of these aspects of the self's separation and originality are expanded upon, but otherwise repeated, in TI. Levinas's descriptions in TO and TI move phenomenological description away from the objectivist intellectualism of phenomenology, and into the life of the

¹⁰ TO 54; TA 35: “Le sujet et seul, parce qu'il est un.”

¹¹ TO 54-55; TA 35: “Il faut une solitude pour qu'il y ait liberté du commencement, maîtrise de l'existant sur l'exister, c'est-à-dire, en somme, pour qu'il y ait existant. La solitude n'est donc pas seulement un désespoir et un abandon, mais aussi une virilité et une fierté et une souveraineté.”

¹² TO 62; TA 45: “avant d'être un système d'outils, le monde est un ensemble de nourritures.”

¹³ TO 63; TA 46: “Se promener, c'est prendre l'air, non pour la santé, mais pour l'air.” See also Awerkamp, *Ethics and Politics*.

¹⁴ TO 69; TA 55: “Il y a dans la souffrance une absence de tout refuge. Elle est le fait d'être directement exposé à l'être.”

elements. But, importantly, such a description of the experience of the elements is consistent with phenomenological reduction as a reflection on subjective consciousness. Many of the themes identified in TO, such as solitude and enjoyment, are repeated and expanded upon in TI. TI preserves Levinas's notion of the originality of the self/same as the being that is in relationship with the world because it is first separated from the elements, which it "lives from..."¹⁵

A further theme in TO which reinforces the originality of the life of the self/same, and its allegiance to itself prior to the exposure to the other person, is that of death. Levinas presents death as an alterity bearing upon the life of the solitary subject:

Just as with death, I am not concerned with an existent, but with the event of alterity, with alienation. The other is not initially characterized as freedom, from which alterity would then be deduced; the other bears alterity as an essence.¹⁶

He posits the life of the self/same as already bearing the meaning of its own relation with the event of death, of Heidegger's being-towards-death. This alterity gives the self/same an identity in the midst of the elements, but outwith the relation with the other person, and still prior to subjectivity.

In part four of TO, and similarly in section three of TI, Levinas moves beyond analysis of the modes of subjective phenomenality, and describes the relationship between time and the Other. I explained in chapter four that for Husserl, temporality is the mode within which all other modes arise: to experience an objective world is to experience objects as temporalized through a constant

¹⁵ TI & TeI, sections I & II.

¹⁶ TO 87-88; TA 80: "Tout comme pour la mort, ce n'est pas à un existant que nous avons affaire, mais à l'événement de l'altérité, à l'aliénation. Ce n'est pas la liberté qui caractérise l'autre initialement, don't ensuite se déduira l'altérité; c'est altérité que l'autre porte comme essence."

stream of retention and protention. Through time-consciousness the presence of self to self is achieved. However, Levinas re-casts time-consciousness not as an internal accomplishment, but as the mode of relating to exteriority, or the Other. Indeed, far from being an alter ego “like me”, what makes the relation with the Other asymmetrical is precisely that the Other is an Other and not me — a subjectivity and yet radically alienated from the solitude of my own subjectivity, a solitude and separation which *only the subject knows*. The relation with the Other as asymmetry already requires subjectivity:

alterity appears as a nonreciprocal relationship [...] The Other is what I myself am not. The Other is this, not because of the Other's character, or physiognomy, or psychology, but because of the Other's very alterity. It can be said that the intersubjective space is not symmetrical.¹⁷

In TO and TI Levinas asserts that what is experienced in the face of the Other is not simply other in the phenomenological sense of being an object of experience, but is rather a being which is “absolutely Other”, and which slips away from experience. Nevertheless, in these early works the phenomenological sense remains: that the relation with exteriority is still the relation of a subject with that exteriority. Levinas's statement “the Other is what I myself am not” already implies a subjective consciousness. In his early works, Levinas's account of the relation with the Other seems not to deliver a challenge to the status of the self as the original site of phenomenological experience, but rather generates a more nuanced argument about how the subject's relation with Other out of an elemental subjectivity.

¹⁷ TO 83-84; TA 75-76: “l'altérité apparaît comme relation non réciproque [...] [Autrui] est ce que moi, je ne suis pas. Il l'est non pas en raison de son caractère, ou de sa physionomie, ou de sa psychologie, mais en raison de son altérité même. On peut dire que l'espace intersubjectif n'est pas symétrique.”

Levinas's meta-phenomenological insight here, answering to the problem of intersubjectivity he found in Husserl, may be this: the subject which consumes and enjoys the elemental other can become a subjectivity with consciousness, thematization, and language only because the Other draws it out of its solitude and into the relation of responsibility.¹⁸ However, arising as such a subjectivity would from an elemental subjectivity, it is not clear why the subject's being drawn out from its solitude, being made subject-to, and engaged in the ethical relation, should have to lead to the revoking of subjectivity which Levinas sets out in OB.

5.1.3. Is Levinas a Skeptic?

Although Levinas's philosophy is a continuation of Husserl's investigation of the problem of intersubjectivity, which occupied him during his final years of work, it is doubtful that Husserl would recognise Levinas's approach as valid philosophy.

Dermot Moran notes a "deep unclarity at the heart of his work".¹⁹

What is the status of Levinas's claims about the primacy of the other? Are they phenomenological discoveries, uncovering neglected phenomena of our social life, falsifiable empirical claims? Or are they idealisations, a fantasy picture of what ethical relations with others ought to be? [...] In what sense does my obligation follow from the presence of the other?²⁰

Moran criticises Levinas's "downright contradictory [...] claims about the nature of this so-called non-disclosive encounter with the face", and concludes that "[i]t is entirely unclear how this phenomenology of alterity can be a phenomenology at all".²¹ Phenomenology is rooted in the analysis of the experience of subjective

¹⁸ TO 77-79; TA 65-67.

¹⁹ Moran, *Introduction*, 352.

²⁰ Moran, *Introduction*, 351.

²¹ Moran, *Introduction*, 352.

consciousness. But Levinas's meta-phenomenology seems, by positing the priority of the Other, to refute that very foundation.

As I noted in chapter one, Husserl rejects skepticism as self-refuting and relativistic: denying the ground on which it stands. Phenomenological method is defined by this refutation, which distinguishes phenomenology from empirical psychology. In OB Levinas repeatedly claims that skepticism will always be with philosophy; it "is not separable from scepticism, which follows it like a shadow it drives off by refuting it again once on its footsteps".²² He describes "the permanent return of scepticism"²³ and "the truth of scepticism".²⁴ There is no doubt that Levinas sets up this paradox deliberately. He finds skepticism, as a betrayal, in the language of phenomenology: "Language is already scepticism".²⁵ But where does it leave Levinas's method? Does Levinas's philosophy avoid the hazards of skepticism? Or does he, breaking with Husserl, no longer regard skepticism as a hazard? Is Levinas's philosophy a deliberate work of skepticism, setting out how language at every turn skeptically betrays the objects of its significations?²⁶

²² OB 168; AE 260: "La philosophie ne se sépare pas du scepticisme qui la suit comme une ombre qu'elle chasse en le réfutant pour la retrouver aussitôt sur ses pas."

²³ OB 171; AE 265: "Le retour permanent du scepticisme"

²⁴ OB 168; AE 261: "la vérité du scepticisme"

²⁵ OB 170; AE 263: "Le langage est déjà scepticisme."

²⁶ See Darren Ambrose, "Levinas and Ancient Skepticism," unpublished paper. Accessed April 20, 2013. <http://www.scribd.com/doc/33922235/Darren-Ambrose-Levinas-and-Ancient-Skepticism>; Darren Ambrose, "Levinas, Illeity and the Persistence of Skepticism," *Pli: Warwick Journal of Philosophy* 17 (Summer 2006). Accessed on April 20, 2013. <http://www.scribd.com/doc/33920878/Darren-Ambrose-Levinas-Illeity-and-the-Persistence-of-Skepticism>; Robert Bernasconi, "Skepticism in the Face of Philosophy," in *Re-Reading Levinas*, ed. Robert Bernasconi and Simon Critchley (Bloomington IN: Indiana University Press, 1991), 149-161; Peter Atterton, "Levinas's Skeptical Critique of Metaphysics and Anti-Humanism," *Philosophy Today* (Winter 1997): 491-506; Jan De Greef, "Skepticism and Reason," in *Face to Face with Levinas*, ed. Richard A. Cohen (Albany: State University of New York Press, 1986), 159-179. See also Brian Schroeder and Silvia Benso, *Levinas and the Ancients* (Bloomington IN: Indiana University Press, 2008).

Is Levinas a skeptic? He devotes the final pages of OB to a discussion of skepticism and reason,²⁷ and notes that skepticism would be self-contradictory only if language were not already a “betrayal” of the Saying:

The skeptical discourse, which states the rupture, failure, impotence, or impossibility of disclosure, would be self-contradictory if the saying and the said were only correlative, if the signifyingness of proximity and the significant known and said could enter into a common order, if the saying reached a full contemporaneousness with the said, if the saying entered into essence without betraying the diachrony of proximity, if the saying could remain saying by showing itself to be knowledge, that is, if thematization entered into the theme in the form of a memory.²⁸

Scott F. Aikin and J. Aaron Simmons have considered this passage, and find that the status of language in Levinas holds the key to understanding Levinas’s position with regard to skepticism.²⁹ Returning also to the criticisms levelled at Levinas by Derrida in “Violence and Metaphysics”³⁰ — which concerned Levinas’s use of the language of ontology in TI — they argue that Levinas’s meta-phenomenology of the ethical relation can overcome some of its critics by being understood not as a set of propositions, but as a phenomenology of the condition of subjectiveness as “trusting”:

The problem according to the Derridean dilemma was that otherism is presented in the context of philosophy as a thesis demonstrated, a proposition known. The difficulty arises from

²⁷ OB 165-171; AE 256-266.

²⁸ OB 168; AE 261: “Le discours sceptique qui énonce la rupture ou l’échec ou l’impuissance ou l’impossibilité du discours, se contredirait, si le Dire et le Dit n’étaient que corrélatifs, si la signifiante de la proximité et la signification sue et dite pouvaient entrer dans un ordre commun; si le Dire obtenait une pleine contemporanéité avec le Dit; si le Dire entraînait dans l’essence sans trahir la diachronie de la proximité, si le Dire pouvait rester dire en se montrant savoir, c’est-à-dire si la thématisation entraînait dans le thème en guise de souvenir.”

²⁹ Scott F. Aikin and J. Aaron Simmons, “Levinasian Otherism, Skepticism, and the Problem of Self-Refutation,” *The Philosophical Forum* 40/1 (2009): 29-54.

³⁰ Derrida, “Violence and Metaphysics.”

the operations of demonstrating and knowing. Trusting, however, functions differently since it is not transparent. [...] the following are the proper means of adopting the right stance toward otherism:

(20) I trust that the other is absolutely other.

(21) I trust that ethics is beyond being.³¹

On this view, Levinas's philosophy would describe trust as the modality in which the subject approaches the Other, rather than mimicking the assertive mode of ontology, which is what both Derrida and Moran find problematic. If the ethical relation were described not as a quasi-ontological "cause" or condition of possibility, but simply as the basic attitude of subjective consciousness, Moran's frustration with the stream of "repetitive, dogmatic assertions" that he finds in Levinas might more readily be overcome.³²

Nevertheless, the concern remains that Levinas's philosophy must still be built upon the presupposition that the self is the home of consciousness; all Levinas's descriptions are still performed from the site of a subject. Even the positing of the radical pre-original priority of the Other over the subject is still arrived at by the reasoning of this very subjectivity, and is indeed "deduced" from a rupture in subjective experience: the trace of infinity which strikes the subject in the face-to-face situation.

³¹ Aikin and Simmons, "Levinasian Otherism," 49-50.

³² Moran, *Introduction*, 352.

5.2. DIS-INTERESTED AND DERIVED: THE ETHICAL PROBLEM OF THE SELF

The problem of skepticism, which concerns the methodic status of the subject in Levinas's meta-phenomenology, is reflected in another problem concerning the ethical status of the self. His positing of the ethical relation as prior to consciousness and as foundation of subjectivity leads him to describe, particularly in OB, the self's "infinite responsibility" for the Other. Because, for Levinas, the conscious life of the subject is derived from its exposure to the Other as responsibility-for-the-Other, there are serious questions to be considered about the status of the self as itself an object of ethics.

5.2.1. The Problem of the Self's Responsibility-To-Itself-For-Itself

Does Levinas's positing of the Other as prior to the subject come at the expense of a deficient account of the ethical status of the self? Levinas often characterises the self as "dis-interested", an idea he summarises in this passage from "Substitution":

To be oneself, otherwise than being, to be dis-interested, is to bear the wretchedness and bankruptcy of the Other, and even the responsibility that the Other can have for me. To be oneself, the state of being a hostage, is always to have one degree of responsibility more, the responsibility for the responsibility of the other.³³

Evident here is the extreme ethical load which Levinas's philosophy places on the self. The self is, on Levinas's account, not only responsible for the Other, but

³³ OB 117; AE 185-186: "Être-soi, autrement qu'être, se dés-intéresser c'est porter la misère et la faillite de l'autre et même la responsabilité que l'autre peut avoir de moi: être soi — condition d'otage — c'est toujours avoir un degré de responsabilité de plus, la responsabilité pour la responsabilité de l'autre."

responsible for the Other's responsibility for me. This leads Levinas to some extreme formulations: he describes subjectivity itself as "persecution", "accusation", "expiation-for-another".³⁴ In TO Levinas asserts the "asymmetry" of the ethical relation with the Other, and in OB seems to arrive at a completely one-sided relation, where the self is nothing but "hostage", "persecuted", "victim".

For Levinas the subject possesses "infinite responsibility" for the Other: I am responsible for the other's responsibility for me; I am responsible for my own persecution; with each duty I assume, I assume still more duties. In Levinas's description of the ethical relation, the subject has "no identity"; it is a pre-subject, unselfconscious, a separated being but not yet an agent. With the epiphany of the face of the Other, I am constituted as a being with responsibility, but not yet with self-consciousness. The subject is pure responsibility. I am called upon to give the Other the bread out of my mouth without reflection or calculation. I am called upon to serve the Other's needs because they command fulfillment, not because serving the Other's needs serves me. Levinas's insistence on the "asymmetry" of the ethical relation is unequivocal, and indeed disavows the notion of mutuality or equality. It is the radiation of a commitment to the Other prior to self-ownership, self-awareness, or self-interest; a seeing of the Other and recognising of the Other's ethical status prior to seeing myself, or the possibility of seeing my self as a being analogous to the Other. How, in this context, is self-interest to be understood? Does Levinas's account of disinterest, infinite responsibility, and the radical asymmetry of the ethical relation, produce a problem concerning responsibility for the self? Does Levinas's meta-phenomenology evacuate the self of worth?

³⁴ OB 125-126; AE 199-200: "être accusé", "expiation pour autrui".

Hilary Putnam has argued that “the ‘asymmetry’ of the ethical relation need not be carried as far as Levinas carries it”.³⁵ He points out a repeated formula in Levinas’s writing, in which a radical and extreme statement is followed by a vague, retractive one:

“This condition or unconditionality of being a hostage will then at least be an essential modality of freedom, the first, and not an empirical accident of the freedom, proud in itself, of the ego.” — Immediately followed by: “To be sure — but this is another theme — my responsibility for all can and has to manifest itself also in limiting itself. The ego can, in the name of this unlimited responsibility, be called on to concern itself also with itself. The fact that the other, my neighbour, is also a third party with respect to another, who is also a neighbour, is the birth of thought, consciousness, justice and philosophy”.³⁶

Putnam claims that Levinas’s use of this formula “simultaneously restate[s] his ‘utopian,’ his ‘unlimited’ vision of human responsibility and reassure[s] us that in practice it is not so utopian after all”. While this criticism must be understood in the context of Levinas’s strategy of unsaying, which I described in the previous chapter, Putnam nevertheless draws attention to the paradox that Levinas simultaneously annihilates the self’s claim to justice in his motif of “infinite responsibility” (which he claims causes me to bear the Other’s responsibility even for my own persecution), and makes imprecise reference to unspecified countervailing considerations which apparently legitimate an interest in the self’s welfare through a “limiting” of responsibility.

But Putnam’s criticism does not go far enough. The problem is that Levinas fails to provide a full enough account of the self across his whole philosophical project. Given Levinas’s phenomenological background, it is surely a deficiency that Levinas does not properly address a key part of the *experience* of

³⁵ Putnam, *Jewish Philosophy*, 97-98.

³⁶ Putnam, *Jewish Philosophy*, 98. Putnam is quoting Levinas from OB 128; AE 203-204.

the self: namely that the self can be *self-interested*; and, moreover, that not all forms of self-interest are equal. Self-interest can be either ethical or unethical in quality. It is not simply a question of “my responsibility for all [...] limiting itself,”³⁷ as Levinas puts it. It is a question of also experiencing another sort of responsibility: the responsibility to myself for myself. Why, if the ethical relation is one of infinite, asymmetrical responsibility-for-the-Other, would I “limit my responsibility to others”, for example by ensuring I get enough sleep at night? The implied ethical standards of Levinas’s philosophy seem impossibly high, and if they were to be practised, would be a certain route to the self’s physical and psychological degradation.

Often in our ordinary moral life we weigh our own well-being against our duties to secure the well-being of others. Often I must decide, however difficult the decision is, to secure my own well-being at the expense of what I consider to be a lesser responsibility to another person. Such deliberations are not necessarily experienced as selfish or narcissistic, and they are indeed experienced as distinct from selfish or narcissistic acts, which we can at least appreciate as such with hindsight. Levinas seems to miss a whole class of moral actions where I am treated as a candidate for just or moral action, whose interests must be weighed against the interests of others. Along the same lines, Putnam goes on to make a broader criticism of Levinas: namely that Levinas subsumes the whole of human experience and motivation under the category of “ethics”, and implicitly dismisses the possibility that humans have motivations other than ethics.

Levinas fails to spell out coherently how the self can figure in ethical calculations, in spite of his attempt to give a comprehensive and synoptic

³⁷ OB 128; AE 203-204: “ma responsabilité pour tous peut et doit se manifester aussi en se limitant.”

philosophical account of the day-to-day life of the self with the Other. Indeed, we are bound to say that this is a serious shortcoming in a philosophical project so expansive, synoptic, and ambitious. If Levinas is truly still aiming at a phenomenology of human life, expanded to the relation with the Other taken as condition of possibility for all consciousness, he should surely take seriously all aspects of our moral reasoning, including the way we include our selves in that reasoning.

This problem could be made to disappear by claiming that all care for self is motivated by the need to be fit and well to serve the needs of the Other. This is surely true to an extent. But this would still imply that my own welfare has no intrinsic value, and that it is to be treated as having only instrumental value for the good it can provide for the Other. This is again inadequate to experience. I experience myself as valuable, indeed as of equal value to others. Even in sacrificing my life for the Other I do not renounce the equality of my claim. Levinas may be pointing us to the radical truth that I understand my own value only by analogy to the value of the Other, thus upholding the priority of the Other; but it does not change the fact that I have experience of my own value all the same. Levinas's insistence on my responsibility for my own persecution simply seems like a philosophical step too far, since it annihilates the very substance of the subjectivity it seeks to describe. Levinas's account of the asymmetry and infinity of the ethical relation also raises the question of how Levinas explains unethical conduct — particularly the extremes of evil. I return to this issue in 5.3, where I consider some of the manifestations of the problem of the self in other areas of his philosophy.

5.2.2. The Problem of the Self as Candidate in Justice: Questions Revising Levinas

Levinas's growing ambivalence about the status of the self is evident in the expanded account of justice which he provides in OB, as compared with TI. In this work, Levinas argues that the face-to-face encounter with the Other is interrupted by the Third:³⁸ seeing that the Other is committed to the Third, conflicting demands are placed upon my infinite responsibility, and the possibility of division arises as a need for distribution.³⁹ However, the problem remains that the self does not figure in Levinas's account of this rationing, although he does move towards an account of the self's status in justice. Justice is the attitude of limitation, but it remains a limitation in order to distribute responsibility between the Other and the Third. Nevertheless, through the generalization of the justice that must obtain between the Other and the Third, the self can come to figure, but only "thanks to God", only through the hope that the others will also treat me as an Other.⁴⁰ Although subjective consciousness arises out of this need for distribution, the self can attain only a derivative status in it, in the measure that the others treat me as an Other and generalize responsibility into institutions, state, and society.

The debasement of the status of the self in the ethical relation leads to further questions. Levinas's account of interruption of the ethical relation by the Third amounts to an explanation of how justice comes about, of how there arises a need for distribution and consciousness, of how we come to be in a world in such a way that it can be distributed and shared. But is this sharing-out not already

³⁸ OB 128; AE 203-204.

³⁹ OB 16; AE 32.

⁴⁰ OB 158; AE 247. See above, p. 170, n. 80.

present in his notion of giving to the Other “the bread out of my own mouth [...] a gift of my own skin”?⁴¹ Is not a portion of self-consciousness and self-worth already present in his account of the ethical relation with the Other? If conceived as an explosive awareness of the self and its equality with the Other to whom I am responsible and whom I must not kill, can the ethical encounter with the Other not serve as a more economical explanation for the need for justice and consciousness? Is justice not primordially justice between self and Other? Alongside his claims that the status of the self in justice arises simply because the others happen to treat me as an Other, Levinas also offers a different way of understanding how the self comes to figure in justice:

[J]ustice can be established only if I, always evaded from the concept of the ego, always desituated and divested of being, always in non-reciprocable relationship with the Other, always for the Other, can become an Other like the others. Is not the Infinite which enigmatically commands me, commanding and not commanding, from the Other, also the turning of the I into “like the others” for which it is important to concern oneself and take care? My lot is important. But it is still out of my responsibility that my salvation has meaning, despite the danger in which it puts this responsibility, which it may encompass and swallow up, just as the State issued from the proximity of the neighbour is always on the verge of integrating him into a we, which congeals both me and the neighbour.⁴²

On this view, the self's status is presented as a *condition* of the institution of justice. Again, this hints at the opening of justice not via the Third, but out of the

⁴¹ OB 138; AE 217: “donner à l'autre en arrachant le pain à sa bouche et en faisant don de sa peau.”

⁴² OB 161; AE 250-251: “la justice ne peut s'établir que si Moi — je — toujours évadé du concept du Moi, toujours désitué et destitué de l'être, toujours pour-Autruï, je peux me faire, autre comme les autres. L'Infini que, énigmatiquement, me commande — commande et ne commande pas — à partir de l'autre, n'est-il pas aussi le retournement du je en « comme les autres » dont il importe de se soucier et de prendre soin? Mon sort importe. Mais c'est encore à partir de ma responsabilité que mon salut a un sens, malgré le danger qu'il fait courir à cette responsabilité qu'il risque d'englober et d'engloutir; tout comme l'Etat issu de la proximité du prochain qui est toujours sur le point d'intégrer en nous figeant et moi et mon prochain.”

face-to-face situation with the Other which, while non-reciprocal, a contact across a distance, proximity, is nevertheless *mutual*. Does not the Saying already imply a mutuality of command and response? Do I not experience in the resistance of the Other the resistance that the Other finds in me? Is not the command “do not kill me” also undergone also by the Other in the face-to-face encounter? Does not the recognition that I find in the Other’s recognition of me immediately become my recognition of my self? Does the Other not look back at me? While I recognise my own status through my first having been struck by the status of the Other, am I and the Other not immediately caught up in a revolution of mutuality across an asymmetry, the reciprocation of difference? Does not equality arise as an equality across the revolution of alterity in the *eye-to-eye*? Does not equality presuppose difference and separation?

Does Levinas’s meta-phenomenology require the problematic account of the Third? While he presents his account of justice as serving a distribution of responsibility between the Other and the Third, its most important function is to provide the grounds for generalization and universalization which can render consciousness, and ultimately establish the self as a candidate for justice. Could not the need for Levinas’s philosophy of the Third be eliminated if justice were to be instituted primordially between the Other and the self? Does not sharing begin with the first language of the Saying between the self and the Other? In the face-to-face situation, rather than seeing the Other committed to a Third, do I not see that the Other is committed to me? Can the generalization of responsibility not issue out of the initial mutuality and intersubjective reflection of the *eye-to-eye*? Do I not discover my own status as valuable through seeing the value that the Other sees in me? This solution, upon which I merely speculate here, would answer to the problem of “pairing” or “perceived similarity” in Husserl’s account

of the alter ego, without skeptically undermining the subject as the original site of its subjectivity. It would preserve the quality of the face-to-face as the encounter which establishes the ethical status of the Other and of myself.

Is there not a mutuality hiding within the idea of “infinite responsibility”? And is not the notion of a self with moral status hidden within that idea? My being-responsible-for-the-Other’s-responsibility-for-me produces an infinity only because the Other is already taken to be in a mutual situation of responsibility towards me. Mutual responsibility seems to be presupposed even in the act of conceptualizing my responsibility. Can we not envisage an ethical relation built upon an equality and mutuality which issues from separation and asymmetry? Can we not assent to the principle of the ethical relation spontaneously bringing about cognition, distribution, responsibility, world — but out of a need, not for a distribution between the Other and the Third, but for a distribution between the Other and the self? Is this not the “intimacy, dual solitude, closed society, the supremely non-public” of the relation between two which “excludes the Third”?⁴³ Is it not the first generalization, through which responsibility is universalized into a society in which the Third, and through which the far-off and the unknown, “the stranger, the widow, and the orphan, to whom I am obligated”,⁴⁴ can be accounted for?

⁴³ TI 265; TeI 297: “Il exclut le tiers”

⁴⁴ TI 215; TeI 236: “l’étranger, la veuve et l’orphelin envers qui je suis obligé.”

5.3. MANIFESTATIONS OF THE PROBLEMS OF SKEPTICISM AND SELF

5.3.1. Difficult Theodicy: Evil as a Problem of the Self

An important factor in understanding Levinas's philosophical motivations, and the trajectory his philosophy takes, is his experience of the Nazi genocide of Jews and other maligned groups during World War II. Levinas alludes to this connection in the preface to TI, which opens with the words "Everyone will readily agree that it is of the highest importance to know whether we are not duped by morality";⁴⁵ and he explicitly mentions it in the French-language dedication⁴⁶ at the beginning of OB:

To the memory of those who were closest among the six million assassinated by the National Socialists, and of the millions on millions of all confessions and all nations, victims of the same hatred of the other man, the same anti-semitism.⁴⁷

Levinas situates his philosophy, then, in a context that demands the address of not only "positive" questions about the ethical relation with the Other (i.e. the subject constituted as responsible for the Other), but also of "negative" ethical questions (i.e. how is it that the subject *omits* to do good to the Other, and indeed does more than omitting, but is actively hateful, does evil, violence and murder to the Other?) Given this context, Levinas's philosophical account of evil is strikingly thin: neither TI nor OB devotes any sustained attention to the topic. Although Levinas

⁴⁵ TI 21; TeI 5: "On conviendra aisément qu'il importe au plus haut point de savoir si l'on n'est pas dupe de la morale."

⁴⁶ There is also a Hebrew dedication.

⁴⁷ OB v; AE 5: "A la mémoire des êtres les plus proches parmi les six millions d'assassinés par les nationaux-socialistes, à côté des millions et des millions d'humains de toutes confessions et de toutes nations, victimes de la même haine de l'autre homme, du même antisémitisme."

uses some of the moral language associated with the topic of evil, he does not give a coherent account of how the subject comes to do evil. For instance, in spite of having asserted “the impossibility of murder”,⁴⁸ he presents what amounts to a meta-phenomenological description of it in TI:

Murder still aims at a sensible datum, and yet it finds itself before a datum whose being can not be suspended by an appropriation. It finds itself before a datum absolutely non-neutralizable. The “negation” effected by appropriation and usage remained always partial. The grasp that contests the independence of the thing preserves it “for me”. Neither the destruction of things, nor the hunt, nor the extermination of living beings aims at the face, which is not of the world. They still belong to labour, have a finality, and answer to a need. Murder alone lays claim to total negation. Negation by labour and usage, like negation by representation, effect a grasp or a comprehension, rest on or aim at affirmation; they can. To kill is not to dominate but to annihilate; it is to renounce comprehension absolutely. Murder exercises a power over what escapes power. It is still a power, for the face expresses itself in the sensible, but already impotency, because the face rends the sensible. The alterity that is expressed in the face provides the unique “matter” possible for total negation. I can wish to kill only an existent absolutely independent, which exceeds my powers infinitely, and therefore does not oppose them but paralyzes the very power of power. The Other is the sole being I can wish to kill.⁴⁹

In the paradox of the “ethical impossibility of committing this murder”, Levinas deliberately sets out the ambiguity of murder, as something resisted by the Other, not by physical force, but through the trace of infinity which summons the self in the face of the Other.⁵⁰ He presents murder as aiming not at the alterity of the Other, but at the physical matter of the Other’s being. But is this more than a rhetorical flourish? Does murder really escape the Other’s substance? Does not murder act upon it by violating it and robbing it of its life? Does it not aim

⁴⁸ TI 47; TeI 38: “impossibilité de meurtre”

⁴⁹ TI 198; TeI 216.

⁵⁰ TI 171; TeI 185: “l’impossibilité éthique de commettre ce meurtre.”

precisely at the Other in its alterity? He, better than most, knew that murders are committed. Murder might be rendered ethically impermissible through the ethical relation, and the resistance felt in exposure to the Other might be great; but however strong that resistance, killing remains a practical possibility. Indeed, the commandment “do not kill me” is meaningful only in a situation where killing is not an “impossibility”, but a threat.

The question to be put to Levinas is, therefore: what causes the subject to break down the resistance of the Other, to create a “servile soul”?⁵¹ Not only that, but how does the self come to wish such things on the Other? If the subject has no identity prior to its responsibility-for-the-Other, or, in justice, prior to its role as an agent of distribution between the Other and the Third, how can the privation of responsibility into murder take place? What is it that perverts the will for-the-Other into a will that would kill? In this account of subjectivity as ethical through-and-through, where is the space for evil, or even a more modest malevolence, or even a little neglect or misanthropy? If “the Other is the sole being I can wish to kill”, how is it that I come to formulate such a wish?

Levinas suggests that it is the totalizing tendency of rationality and consciousness, which is concomitant of the attitude of justice, that turns the subject away from the infinity of the Other, and thematizes the Other into an object of thought, use, and exploitation. But even this is not enough. For a very bad, or an evil, act seems to require something more than the privation of good. Can murder be understood without an account of the motivation of the one who murders? Can we understand murder to be murder without an account of the subject, and the fact that a subject can initiate actions out of a bad will, out of not

⁵¹ TI 229; TeI 254: “âme d’esclave”

simply neglect, but out of a deliberate attempt to harm and inflict pain? The murderer knows that the pain the Other will experience is not a pain felt by the world of objects. Murder and torture precisely still aim at the Other in the Other's subjectivity.

What is required is a stronger account of the self, and of self-interest, through which these phenomena can at least be accounted for as issuing from selfishness or self-gratification. Yet this would require a recognition of what Levinas disputes: the self's concern for itself, the self figuring in the self's own calculations, an account of the self not only as the responsibility of the one that substitutes itself for the Other, but also a will with an allegiance to itself. Levinas's mature account of ethics and justice, in short, requires a reconnection to the phenomenology of separation, solitude, and enjoyment, which were so foundational in TO and TI.

While Levinas reasserts Plato's primacy of the good beyond being,⁵² he fails to provide a phenomenology of the bad within being. In this deficiency Levinas's inadequate account of the self is again found. All of this means that Levinas does little more than rehearse the classic problem of evil: in a world allegedly underpinned by good, how is "evil" possible?

5.3.2. Division by Infinity: The Feminine as a Problem of the Self

Levinas's remarks on gender are spread throughout his philosophical works and are striking for being difficult to reconcile with Levinas's main claims: the pre-original ethical priority of the Other, and the Other's antecedence to all categories.

⁵² TI 293; TeI 326.

His earliest published comments on the feminine appear in TO; here he clearly states his view of the phenomenological significance of the feminine:

Sex is not some specific difference.⁵³ It is situated beside the logical division into genera and species. This division certainly never manages to reunite an empirical content. [...] The difference [...] carves up reality in another sense and conditions the very possibility of reality as multiple, against the unity of being proclaimed by Parmenides.⁵⁴

This account of sexual difference threatens problems for Levinas's meta-phenomenology. As I explained in chapter four, Levinas posits the absolute primacy and alterity of the Other as preceding all categories; it is, rather, the exposure to the Other that founds conceptuality and makes categories possible. The question therefore arises whether Levinas is essentializing the feminine, and creating out of it an object and a category. In *The Second Sex* (1949), Simone de Beauvoir criticizes the view that

[The woman] is defined and differentiated with reference to man and not he with reference to her ; she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute — she is the Other.⁵⁵

In a footnote to this passage, which has received much attention from Levinas scholars,⁵⁶ she remarks upon Levinas's comments in *Time and the Other*:

⁵³ i.e. relating to species –AW

⁵⁴ TO 85; TA 77: “Le sexe n’est pas une différence spécifique quelconque. Il se situe à côté de la division logique en genres et en espèces. Cette division n’arrive certes jamais à rejoindre un contenu empirique. [...] La différence [...] découpe la réalité dans un autre sens et conditionne la possibilité même de la réalité comme multiple, contre l’unité de l’être proclamée par Parménide.” See TO 84-90 and TA 77-84 for more of Levinas's discussion of gender and “eros”.

⁵⁵ Simone de Beauvoir, *The Second Sex*, trans. H.M. Parshley (London: Vintage, 1997 [1949]), 14-16; de Beauvoir, *Deuxième Sexe*, 16: “[La femme] se détermine et sa différencie par rapport à l’homme et non celui-ci par rapport à elle; elle est l’inessentiel en face de l’essentiel. Il est le Sujet, il est l’Absolu: elle est l’Autre.”

⁵⁶ See Chanter, *Feminist Interpretations*.

I suppose that Lévinas does not forget that woman, too, is aware of her own consciousness, or ego. But it is striking that he deliberately takes a man's point of view, disregarding the reciprocity of subject and object. When he writes that woman is mystery, he implies that she is mystery for man. Thus his description, which is intended to be objective, is in fact an assertion of masculine privilege.⁵⁷

Writing in 1979, in a preface to the reprint of TO, Levinas reiterates that

Femininity — and one would have to see in what sense this can be said of masculinity or virility; that is, of the differences between the sexes in general — appeared to me as a difference contrasting strongly with other differences, not merely as a quality different from all others, but as the very quality of difference.⁵⁸

This is a significant comment, as it shows Levinas did not take the opportunity of disavowing his early remarks on the feminine, or indeed of responding directly to de Beauvoir's criticisms. This is all the more remarkable, given that the term is completely absent from his 1974 work OB (although other gendered terms are used, such as "maternity", which serves as a metaphor for substitution, or the-Other-under-my-skin). By contrast, the term "feminine" occurred in TI a total of thirty-five times, and is also included in a section heading.⁵⁹ In a footnote to the passage in TO, and responding to de Beauvoir's comments, Richard A. Cohen defends Levinas:

⁵⁷ de Beauvoir, *Second Sex*, trans. Parshley, 16; de Beauvoir, *Deuxième Sexe*, 16: "Je suppose que M. Lévinas n'oublie pas que la femme est aussi pour soi conscience. Mais il est frappant qu'il adopte délibérément un point de vue d'homme sans signaler que la femme est mystère, il sous-entend qu'elle est mystère pour l'homme. Si bien que cette description qui se veut objective est en fait une affirmation du privilège masculin."

⁵⁸ TO 36; TA 14: "La fémininité — et il faudrait voir dans quel sens cela peut se dire de la masculinité ou de la virilité, c'est-à-dire de la différence des sexes en général — nous est apparue comme une différence tranchant sur les différences, non seulement comme une qualité, différente de toutes les autres, mais comme la qualité, différente de toutes les autres, mais comme la qualité même de la différence."

⁵⁹ Section heading D.2. There are twenty-eight instances of "feminine", and seven instances of "femininity". I obtained these figures, which are approximate, by conducting a wordsearch of the text.

De Beauvoir takes Levinas to task for allegedly assigning a secondary, derivative status to women: subject (he) as absolute, woman as other. The issue is important but certainly not as simple as de Beauvoir, in this instance, makes it out to be, because for Levinas the other has a priority over the subject.⁶⁰

However, I think Cohen misses at least part of de Beauvoir's point here. Cohen suggests that Levinas's commitment to the philosophical integration of sexual difference would be cancelled out by the insistence that the female "Other" has a "priority" over the male "subject". Cohen is, of course, right to note that Levinas does indeed postulate such a priority in the ethical relation with the Other. But this priority would be contradicted if Levinas were simply to identify the masculine with subjectivity, and the feminine with the Other. It would imply that the feminine, or the woman, would be incapable its own subjectivity, and that hence for the woman there is no Other and no such priority. If true, it would be indistinguishable from however many centuries of "benevolent" sexism, attacked by de Beauvoir, which sees women (however chivalrously) as especially needful of care and as suited to a domestic environment. De Beauvoir essentially suggests that Levinas's account of subjectivity would be deficient if sexual categories were incorporated into it. It would contradict his assertion that the face-to-face encounter with the Other simply commands me to infinite responsibility as hostage; instead, in the face-to-face encounter the subject would have already experienced the Other-as-a-category, i.e. the Other-as-feminine or the Other-as-masculine.

However, Levinas explicitly states in this passage from TO that he is not endorsing sexual difference as an objective distinction (offering reassurances that this is "not some specific difference", and sits beside the "genera and species"

⁶⁰ TO 85, n. 69

which are constituted in consciousness). Instead, sexual difference is found in the very primordially of the relation with the Other, a difference prior to themes. In TI, Levinas's account of the feminine is complicated by his reference to "woman", which is difficult to understand except in this empirical and specific sense:

the Other whose presence is discreetly an absence — an absence out of which the welcome *par excellence* of hospitality is accomplished, a welcome which marks out the very field of intimacy — is the Woman. The woman is the condition for contemplation, the interiority of the Home, and dwelling.⁶¹

There may be a difficulty of translation here, though, in that by "la femme" Levinas may also mean "wife" rather than (or at the same time as) "woman". In this case his reference would be to the gendered modality of the relationship between the self/same and the Other, rather than to the physiognomy of those who figure in that relationship. This interpretation of Levinas's remarks on gender is supported by another passage, in which he separates the question of physical sex from the "dimension of femininity", i.e. femininity as the subject's mode of openness to the Other:

The feminine has been encountered in this analysis as one of the cardinal points of the horizon in which the inner life takes place — and the empirical absence of the human being of "feminine sex" in a dwelling nowise affects the dimension of femininity which remains open there, as the very welcome of the dwelling.⁶²

Here the feminine is presented as issuing from the "inner life", out of the solitude and sensibility of the self/same a primordial world of elements. It would thus

⁶¹ TI 155; TeI 166: "Et l'Autre don't la présence est discrètement une absence et à partir de laquelle s'accomplit l'accueil hospitalier par excellence qui décrit le champ de l'intimité, est la Femme. La femme est la condition du recueillement, de l'intériorité de la Maison et de l'habitation." Translation altered.

⁶² TI 158; TeI 169: "Le féminin a été rencontré dans cette analyse comme l'un des points cardinaux de l'horizon où se place la vie intérieure — et l'absence empirique de l'être humain de « sexe féminin » dans une demeure, ne change rien à la dimension de fémininité qui y reste ouverte, comme l'accueil même de la demeure."

describe the modality of the self/same's relation to its dwelling, and would connect to the ethical relation with the Other as subjectivity opening up as a dwelling for the Other, subjectivity as the-Other-in-my-skin. The feminine would thus be another term substituting for responsibility-for-the-Other: responsibility as passivity, vulnerability, receptiveness to the Other. The "very welcome of the dwelling" would, on this reading, have nothing to do with a woman's place in the home. The feminine would rather describe the self/same's openness to the Other, its modality of receiving the Other into its own subjectivity, understood as hospitality, or host-age. Here the logic of Levinas's other claims about gender seems to be reversed: rather than experiencing the feminine as an actual bodily presence of someone *categorically* different from myself, which is the fear of Simone de Beauvoir, the feminine would rather name the self/same and its asymmetrical relation host-age to the Other, into which the subject is thrown in the face-to-face.

The proper interpretation of Levinas's remarks is not clear. Even on the reading I present here, the use of the term "feminine" as shorthand for the passivity and vulnerability of the subject certainly conveys a conservative view of gender. But this concerns only Levinas's choice of this term as a metaphor for the passivity of the self/same in substitution. It does not necessarily follow that his use of the term "feminine" in this way necessarily leads to a systematic involvement of sexual difference in his philosophy. However, what this discussion of gender in Levinas's philosophy has shown is that it arises because of the problem of the self. It is his failure sufficiently to connect his meta-phenomenological account of the subject's prehistory in the ethical relation, to experience of subjectivity as *lived*, that permits de Beauvoir to raise her objections, and for the reply to be as unclear as it remains.

CONCLUSION

In this chapter I argued that two major problems can be identified in Levinas's meta-phenomenology. First, I argued that Levinas's method seems both to work from the originality of subjective consciousness as the basis for phenomenology, and also to refute the very originality of that subjectivity by positing the meta-phenomenological priority of the ethical relation with the Other. Second, I claimed that an ethical problem of the self is found in Levinas's accounts of infinite responsibility-for-the-Other. I drew attention to the absence of a proper account in Levinas's works of how the self can be self-interested, and how those interests can also be experienced not as selfishness but as responsibilities to the self. I also challenged the need for Levinas's positing of the Third, and questioned whether justice, distribution, mutuality, and equality cannot be found already in the face-to-face relation. Third, I explored the problems of evil and the feminine in Levinas's major works, and suggested that they are connected to the problem of the self.

6. The Rights of the Other: Levinas's Meta-Phenomenology as a Critique of Steiner's *An Essay on Rights*

Justice consists in recognizing in the Other my master. Equality among persons means nothing by itself; it has an economic meaning, presupposes money, and already rests on justice.

— Emmanuel Levinas¹

6.1. TAKING STOCK

Before proceeding to a critical discussion of connections between Steiner and Levinas, I first take stock of the analysis presented so far. I initially situated two accounts of justice — justice-as-rights and justice-as-responsibility — within the context of a long and varied philosophical debate over justice. I also placed Steiner and Levinas within two contemporary streams of philosophy: on the one hand, empirical philosophy, which is focused on the investigation and analysis of evidence and concepts; and on the other, transcendental philosophy, which is concerned with accounting for the conditions of possibility of the positive sciences.

The analysis which followed, both of Steiner and of Levinas, demonstrated the importance of these background philosophical approaches to their inductive

¹ TI 72; TeI 68-69: “La justice consiste à reconnaître en autrui mon maître. L'égalité entre personnes ne signifie rien par elle-même. Elle a un sens économique et suppose l'argent et repose déjà sur la justice[.]” Translation altered.

assumptions, analytic methods, and conclusions. Although they share many central themes — which I examine in detail in the next section — their approaches to them are radically different. Both thinkers start out from a conception of intuition, which leads to a shared problem of induction. On the one hand, Steiner conceives both of intuitions as psychological phenomena which occur in individual persons, and of intuition as an interpersonal structure of induction which is similar between persons. It is on the basis of analysis and reasoning about a moral intuition of justice-as-rights, and of a discussion of ordinary linguistic intuitions, that ER proceeds to its normative conclusions. On the other hand, Levinas's argument begins in a phenomenological account of intuition, which regards intuition not as a psychological or empirical part of the world, but as the means of constituting out of sensation an objective world which can be studied within an empirical or natural attitude.

The points of analysis and criticism which I directed at the arguments of Steiner and Levinas can all be understood as connecting to the intrinsic inductive, epistemic, or methodic difficulties of the two philosophical approaches in question. In the case of Steiner, I found that ER rested on uncertain foundations, in conceptions of personhood and agency that are not theoretically accounted for nor exposed to conceptual analysis. The autonomous status of the person in Steiner's philosophy instead forms a background presupposition, or epistemic intuition, on the basis of which his argument proceeds. I presented criticisms of Steiner's accounts of liberty, in the form of the pure negative conception of liberty (PNCL) and the law of conservation of liberty (LCL). It was in these aspects of ER that I found the pretheoretical conception of personhood to inhere most strongly, PNCL and LCL presuppose that liberty is itself defined as the freedom of persons from obstruction by the (effects of the) actions of other persons. I also examined

the problems of consistency and counterintuition in ER, and suggested that Steiner's counterintuitive denial that children or the incapacitated can be considered bearers of rights results in part from a conflation of moral and legal rights. Steiner concludes ER by stating that he believes no reasons can be found to be just. By conceptualizing justice as a moral intuition amongst other moral intuitions, which in Steiner's approach have an empirical and psychological nature, he shows that the empirical account of justice is able to treat it only as a moral value that *might* figure in persons' sets of values. The empirical approach presents justice as an individual moral preference. This raises the question: what, then, of Steiner's description of justice as a rule with global scope, which presides in institutions, which is consolidated in a state, and which *regulates* persons' moral preferences through a structure of rights? If there are no reasons to be just, how can justice as a rule, prescribing a global distribution of an equal share of natural resources and a set of equal basic liberties, be supported?

In the case of Levinas, I found that he develops meta-phenomenology as a response to the problem of intersubjectivity in Husserl. He posits the other person, or the Other, as breaking through the thematization of consciousness and presenting itself as face. Out of the face-to-face situation with the Other, the subject is constituted as responsibility, which in-vests the freedom of the subject. But this relation is interrupted and disturbed by the presence of the Third, to whom the subject sees that the Other is committed. I argued that for Levinas the subject's sensibility, its openness to the outside and to the ethical relation, generates a meaningfulness prior to consciousness, out of which language is formed. In some of his texts, and particularly in OB, Levinas employs strategies to unsay the Said of language. However, in Levinas the problem of equality arises differently: here there is a problem of how the self can come to be counted as

equal to the Other in justice. I set out criticisms both of Levinas's paradoxical method, which both presupposes subjectivity and undermines it, and of his deficient account of the self. I also found connections between these criticisms, and the problematic themes of evil and the feminine.

Up to this point, I have at intervals indicated issues to which I return in this chapter. I gather these issues together in the next section, and engage the positions of Steiner and Levinas in critical conversation, structured thematically (6.2). In this section my text oscillates between the modality of analytic transparency found in Steiner's work, and the modality of interrogation and unsaying found in Levinas's work. Following this critical conversation, I conclude by proposing a reformulation of these two accounts of justice into a conception of rights-as-responsibility, or the rights of the Other (6.3).

6.2. SHARED THEMES IN STEINER AND LEVINAS IN CRITICAL CONVERSATION

6.2.1. Intuition and the Problem of Induction

Two conceptions of intuition can be found in Steiner and Levinas. Steiner works on the basis of empirical moral and linguistic intuitions, which are characterised as persons' psychological ideas about moral value and the meanings of words. He rationalizes these into moral codes, and forms them into a set of linguistic intuitions that can be consistently held. Steiner's is an empirical, psychological, and naturalistic conception, which treats intuitions as the zero-point of moral induction. For Steiner, intuitions occur in individuals, but in the context of an interpersonal structure of discourse through which intuitions can be shared,

reasoned about, and modified. Linguistic intuitions, therefore, also require a community of language. While persons' intuitions routinely differ, what Steiner presupposes to be consistent is a shared structure of conceptualization, thinking, and reasoning, as well as a plane of human meaningfulness that can transcend language and culture.

In chapter two, I also noted that Steiner's method bears important similarities to Rawls's technique of reflective equilibrium. I argued that Steiner's commitment to analysis, reasoning and selection are epistemic intuitions. In an article on "the problem of induction" and its relation to reflective equilibrium, Harman and Kulkarni note that "it is hard to be in reflective equilibrium if you cannot believe your methods of reasoning are reliable".² Steiner's (and Rawls's) method of achieving consistency both indicates such a "belief" in these intuitions, and also excludes these intuitions from the body of settled beliefs that can be revised. John Mikhail has also commented on this paradox. He writes that Rawls's theory "originally derived from an influential account of the philosophical method of justifying principles of inductive inference".³ Other recent scholarship on reflective equilibrium has also queried whether the technique can really be understood to resolve this problem of induction. Jared Bates has argued for the circularity of the technique: "naturalized reflective equilibrium is [...] itself an inductive method".⁴ Bates's point is that the method of reflective equilibrium is itself part of the set of intuitions from which the method of reflective equilibrium seeks to establish independence.

² Gilbert Harman and Sanjeev R. Kulkarni: "The Problem of Induction." *Philosophy and Phenomenological Research* 72/3 (May 2006): 573.

³ John Mikhail: "Rawls' Concept of Reflective Equilibrium and its Original Function in A Theory of Justice". *Washington University Jurisprudence Review* 3/1 (2010): 1-30.

⁴ Jared Bates: "The Old Problem of Induction and the New Reflective Equilibrium". *Dialectica* 59/3 (2005): 347.

By way of contrast, Levinas's philosophy is initiated as a phenomenological investigation of how other persons are intuited by consciousness, as well as how the world is intuited as intersubjectively valid — as a world of shared objects. But he soon moves away from the analysis of the theory of intuition in phenomenology. In the problem of intersubjectivity he finds the limits of intuition, and posits the Other as that which transcends the thematizations of consciousness. The Other arises not as an intuition, but as the presence of a face, as the one that resists the powers of consciousness to reduce and thematize, and the one that commands the subject to responsibility and institutes language in the commandment "do not kill me". Levinas finds that the Other is not intuited as an alter ego, as Husserl claims, but rather that the Other is the transcendental condition of possibility for intuition in general. Intuition re-presents the world to the subject as a spatio-temporal field into which the subject is thrown as an agent of distribution and justice.

These two conceptions of intuition, the one empirical and psychological, and the other transcendental and meta-phenomenological, could hardly contrast more strongly. In ER ordinary language intuitions serve up the content of reasoning about justice, through concepts of liberty, freedom, and rights. They issue from a language which is presumed to be adequate to the themes of justice, rights, and freedom. They serve to limit and define conceptual meanings. By contrast, in Levinas's meta-phenomenology, intuition is no longer the format of the simply given. It is already the accomplishment of the ethical relation and of justice; it is already the product of a consciousness that has thematized the world and made it available for sharing, for possession and dispossession, for giving and receiving. Intuition is not a zero-point of experience, as it is for empirical philosophy, but is already experience in-vested through the sensibility,

vulnerability, and exposure to the Other. Sensibility, the prior an-archic meaningfulness of contact, of being touched, is what, on Levinas's account, permits meaningfulness to be assembled into the concepts and intuitions with which Steiner works.

This contrast between empirical and transcendental conceptions of intuition shows that a problem of induction is shared between these two philosophical approaches. In Steiner, I identified a range of pretheoretical presuppositions, including a transcendental conception of the person, intuitions about justice, the intuition of ordinary language as adequate to what it denotes, and epistemic intuitions about consistency and equality. The foundations of these ideas is indeterminate in the empirical approach; they form background conditions rather than objects of analysis. In Levinas, the problem of induction presents in his critique of Husserl's theory of intuition, which he describes as intellectualist, and within which he cannot find a way of accounting for the extraordinary status of the Other in consciousness. The inductive basis for Levinas's departure from the method of phenomenology is the trace of infinity witnessed, but not experienced or thematized, in the face-to-face situation. This trace is the sole connection between Levinas's radical philosophical claims, and the structure of intuitions that constitute an empirical reality. The problem of induction persists in Levinas's meta-phenomenology. In OB Levinas presents meta-phenomenology as an unsaying of the naturalized, thematized language of the Said. But the question remains: by moving outside the structure of phenomenological reduction which safeguarded Husserl against skepticism, does Levinas himself refute the very subjectivity which his account implicitly presupposes? The contrast between Steiner's and Levinas's conceptions of intuition here provide important perspectives on recent accounts of

intersubjective apperception, recognition, and respect in empirical philosophy. I return to these themes below, in discussion of personhood and the Other.

6.2.2. Language and the Problem of Expression

Language is a central theme for both Steiner and Levinas. I showed in chapters four and five that Levinas seeks to destabilise ordinary language by unsaying the Said, by subverting the structure of terms through which language congeals into a closed system of signs. Steiner, by contrast, seeks to render that network more stable than ordinary language, by excluding for the purposes of justice the natural inconsistencies and ambiguities that exist within and between terms. In chapters two and three I set out Steiner's conception of philosophy as the analysis of concepts in pursuit of consistency. The result is a set of self-consistent definitions and a set of compossible rights. An "unsaying" of ER would focus on the unclarified foundational presuppositions that I identified earlier. The interrogation of conditions of possibility, such as the transcendent conception of persons as valuable and autonomous in ER, is the crucial task of Levinas's method of unsaying. Since the Said bears the trace of the Saying (which is the relation of face-to-face address between the self and the Other), the Said is betrayed in every use of language. In ER the Saying is found, not in its presentation of dialogues, but in the interpersonal constitution of terms, in the reference to the authority of "ordinary language", of the language placed in me by the Other.

In Steiner and Levinas, expression itself is problematized. Steiner seeks to fix terms by identifying the necessary elements of their meaning: for example, he reduces unfreedom to physical obstruction, freedom to unobstructedness, and justice to rights. Steiner seeks a consensus of terms, or as Levinas describes it, "a

togetherness and a contemporaneousness”.⁵ But this reduction of ordinary language to the necessary meanings of terms conceals the social constitution of language, its constant shifting of terms through time. Is the philosophy of justice doomed to dogmatism? In using language to reach to what is prior to language, does philosophy merely re-produce the terms of its own situation in time?

6.2.3. Analysis and Descriptions

There is a methodic similarity between Steiner and Levinas, although it is not immediately apparent. Steiner’s method is analytic, in that he begins with the evidence of what is already believed (moral and linguistic intuitions), and works reductively, in an attempt to discover the principles, or presuppositions, that logically support those intuitions. This search for logical origins is most evident in chapter seven of ER, on “original rights”. Here Steiner argues that justice, understood as a compossible set of equal basic liberties, presupposes two, more basic, rights: one to persons’ ownership of their bodies (self-ownership), and another to the ownership of an initially equal share of unowned natural resources. Steiner finds in his reductive analysis of the concept of rights, which radically excludes all other moral values, the essence of justice as a sharing out of the world.

Levinas, meanwhile, is an heir to Husserl’s phenomenological method, which uses a similar but more radically conceived technique of logical reduction. As I explained in chapters one and four, Husserl’s phenomenology analyses what are taken to be the most basic units (or particles) of experience, namely,

⁵ OB 16; AE 33: “Il faut donc une comparaison entre les incomparables et une synopsis; mise ensemble et contemporanéité; il faut thématization, pensée, histoire et écriture.”

“consciousness-acts”. Under the phenomenological reduction, which is also called “bracketing”, or “epochē”, those consciousness-acts become available to reflection and description. Through this method, Husserl sought to identify the essential structures of consciousness which constitute the “life-world” of conscious experience.⁶ In spite of his methodic paradoxes, which I explored in 5.2, Levinas remains a phenomenologist in that he seeks to set out the foundational presuppositions of all cognition. Levinas departs from Husserl, though, in conceiving of logic and reason as attitudes which are derived from the ethical relation and the relation with the Third, spun out of the need to think through justice.

6.2.4. The Person and the Other

Both Steiner and Levinas draw on the philosophy of Immanuel Kant in their concern with the natural or foundational autonomy of the individual person. In chapter seven of ER, Steiner subscribes to Kant’s description of the world as divided into “persons and things”.⁷ He also identifies ER as a natural-rights based theory. Similarly, Levinas, like his teacher Edmund Husserl, is a Kantian in that the autonomous self is recognised to be a permanently-present presupposition of our experiencing or acting.

Steiner and Levinas share a Kantian commitment to the moral status and dignity of the person as the basic unit of moral concern. This is in contrast to some formulations moral philosophy, such as utilitarianism, which rejects the moral status of persons as ends-in-themselves. However, Levinas attempts to identify a

⁶ See Husserl, *Crisis*, 48-53 (pt. 2, §9h); 155-157 (pt 3, §44).

⁷ See above, p. 81, n. 102.

justification or account for the Kantian view, which for Steiner is simply axiomatic, within subjective experience and the way that the subject constitutes not only an objective but also an ethical world. It is in this area of the intersubjective relation, of how the self relates to the other person, that some of the most promising connections between empirical and transcendental philosophy are emerging. Stephen Darwall argues that an account of moral responsibility requires a “second-person” perspective in which the status of others is recognized:

In feeling guilt, he feels not just that you have the authority to hold him responsible. He holds himself responsible; he takes a second-person perspective on, and so implicitly makes a demand of, himself.⁸

Darwall distinguishes between “recognition respect” and “appraisal respect”: the former being the respect that I pay to the other person in virtue of his simple presence to me as a person; and the latter being the respect that I pay to him on account of my opinion of him. Darwall also comments on the idea that second-person interests must as part of justice reflect self-interest, and that denial of one or the other is implausible.⁹ However, his argument remains at the empirical level, and does not reach into the kind of foundational explanations for why we offer respect to others at all.

Ian Carter’s contribution to *The Anatomy of Justice*, “Respect and the Basis of Equality”, questions on what basis it is we do, or should, regard and treat others as equals. He notes that such equality is axiomatic in Rawls’s *A Theory of Justice*, but that political philosophy has hardly queried the basis for regarding others as

⁸ Stephen Darwall, “Précis: The Second Person Standpoint,” *Philosophy and Phenomenological Research* 81/1 (July 2010): 228.

⁹ Darwall, “Précis,” 228.

equals. In some posthumously published papers, G.A. Cohen also considers the basis of equality.¹⁰ Concluding “Notes on Regarding People as Equals”, Cohen writes

What do we acknowledge when we nod at a stranger in the street, without smiling? Can we represent that as a case of respecting without any friendliness? Is what’s acknowledged when we acknowledge a stranger the answer to what it is to regard people as equals?¹¹

In another essay from the same collection, Cohen “explores modes of finding oneself in the other”. He writes that in the cases of “accepting the given, of valuing the valuable, and of valuing the valued, the subject is at peace with the object”.¹² At the end of a distinguished career as an analytic philosopher of equality, justice, and self-ownership, it is of note that Cohen is still, in one of his final writings, querying the basis for regarding others as equals.¹³ Cohen also comes close to some of Levinas’s most characteristic motifs. Specifically, the kind of respect or “resistance” experienced in the face of the Other, the ethical obligation presented by the stranger as Other, and even the “after you, sir” of responsibility.¹⁴

How does Cohen’s notion of “finding oneself in the Other”, which could as readily be one of Levinas’s motifs, relate to ER? In chapter three, I argued that for Steiner ownership is an interpersonal relation of freedom-from-obstruction, and remarked a number of times upon his assertion that “freedom is the possession of things”. In that case, however, self-ownership still depends on the relation between subjects. Self-ownership issues not from the fact of embodiment, but as

¹⁰ G.A. Cohen, “Notes on Regarding People As Equals,” in *Finding Oneself in the Other* (Princeton PA: Princeton University Press, 2013), 193-200.

¹¹ Cohen, “Notes,” 200.

¹² G.A. Cohen, “Rescuing Conservatism: A Defense of Existing Value,” in *Finding Oneself*, 143.

¹³ G.A. Cohen, *Self-Ownership, Freedom and Equality*, (Cambridge: Cambridge University Press, 1995).

¹⁴ OB 117; AE 186: “même le simple « après-vous-Monsieur ».”

the capacity to resist others. On Levinas's account, this resistance is first encountered in the face of the Other, who asserts self-ownership in the ethical commandment "do not kill me" that the face signifies. Self-ownership, the assertion of autonomy in the midst of others, presupposes the relation with the Other, already implies a justice in which the self counts.

In chapter three I also noted the ambiguity of persons and agents in ER. The issue of children's rights has been much discussed in the disagreement between choice theorists and interest theorists of rights, and Andersson raises the even more difficult issue of the rights of "potential agents", including the unborn. In testing the limits of personhood and agency, Andersson draws attention to the manner in which our intuition of moral rights often extends to persons irrespective of their agency. Steiner focuses on agency because he takes it to be a requirement of a person's holding a right that they are able to exercise the power to enforce or waive that right. While the need for this is clear in a structure of legal rights, it is less clear that it is a requirement in an account of moral rights. Levinas describes the attitude of justice as opening up the possibility of laws, institutions and a state. Does not the structure of legal rights described by Hohfeld codify prior intuitions about what persons are entitled to *qua* persons, rather than *qua* agents? Does the state not take upon itself to enforce the moral rights of those who cannot enforce their own? Does not a structure of third party beneficiaries in a set of legal rights distribute, to those who can exercise it, responsibility for the others — "the stranger, the widow, and the orphan"¹⁵ — who cannot?

¹⁵ TI 215; TeI 236: "l'étranger, la veuve et l'orphelin envers qui je suis obligé."

6.2.5. Justice, Consistency and Equality

Steiner and Levinas are both motivated by the difficulty of defining justice, and in their own ways present a synoptic and minimalistic account of it. In the introduction to OB, Levinas describes the need for a “synopsis”, writing that “[t]here must be a justice among incomparable ones [...] Should we not think with as much precaution of the possibility of a conclusion or a closure of the philosophical discourse?”¹⁶ The account of justice-as-responsibility which Levinas produces is fittingly synoptic, defining justice no more closely than as a distribution of responsibility between the Other and the Third.

In the case of Steiner, it is partly the indeterminacy of justice which causes him to declare agnosticism about its definition, and to attempt instead only a minimal conception of its necessary features. Indeed, Steiner conceives of justice as itself offering a synopsis of diverse persons, by integrating them into a system of rights, under the auspices of which they are at liberty to pursue their own moral ends. In ER Steiner describes the native habitat of justice as situations of interpersonal deadlock. Steiner’s account of justice-as-rights advocates justice as an equal distribution of a shared world. On Steiner’s view, justice itself is a rule which respects the autonomy of others, giving them reasons to stand down from a dispute rather than to reverse their moral priorities. Furthermore, Steiner’s “elementary particle strategy” of examining the nature of rights is also a form of synopsis. This strategy seeks to avoid implicating any moral values other than justice (such as fairness or desert) into his theory. Rather, justice is analysed minimally, in terms of what he takes to be its necessary features. Steiner defines

¹⁶ OB 16, 20; AE 33, 38: “Il faut donc une comparaison entre les incomparables [...] Ne faut-il pas penser avec autant de précaution à la possibilité d’une conclusion ou d’une fermeture du discours philosophique?”

justice as a compossible set of equal rights, since justice necessarily distributes rights (and, in equal measure, duties), rights must be enforceable, by definition.

Steiner's justification for equality is a negative one. He does not advance equality as a principle or as a moral norm. Instead, he argues that any distribution other than an unequal one would require a principle according to which the inequalities should be arranged. Equality thus figures in ER, not as a principle, but as the absence of one. However, does this not already characterise justice as neutrality, as a perspective of withdrawal, impartiality, and synopsis? From Levinas's perspective, the negative justification of equality in Steiner's argument already requires a world which has been ap-portion-ed in consciousness, a world in which the terms "inequality" and "equality" have meaning precisely as the relation between separated ones. Equality, inequality, and neutrality still preside over a world of multiples between which there is a possibility of distribution. Is there not a sense in which Steiner's negative account of equality preserves, in its withdrawal of the principle, the dignity and autonomy of the persons over which it rules? Is equality not itself the absence of a principle, which would institute order and hierarchy? Steiner's approach, which aims to preserve the neutrality of justice with regard to persons' moral values, depends upon a conception of neutrality as dis-interest. Equality is the equation of two separate terms across a distance. That the subject can think equality as dis-interest ex-poses consciousness as an attitude of justice even before it can think in terms of reasons and causes. It is not a question, as Steiner thinks, of finding reasons to be just; it is a question of finding justice already at work in reason-ing and ration-ality. Justice understood as the very activity of consciousness more readily accounts for justice as concretized in the institutions of the state, law, politics, and a justice system. The possibility of justice as an institutional or corporate value is unaddressed in

ER. It is also not clear that such an idea could be accounted for by Steiner's conception of justice, which is not as "the first virtue of institutions",¹⁷ but rather as a moral value that may, or may not, figure in individuals' moral codes.

However, the analysis presented in 3.3 challenged Steiner's notion that all moral dilemmas could be resolved through ranking, weighting, and economic reasoning. It led to the heart of Levinas's motif of justice as the "comparison of incomparables". In Leonard's dilemma, where he must choose to donate a kidney to one of his two twin siblings, the "comparison of incomparables" described by Levinas is illustrated in concrete terms. This situation constitutes a dilemma in the way that choosing between identical boxes of cereal does not; it is the moral nature of the dilemma which creates the need for comparison, consistency, and distribution. Beneath the need for consistency of moral codes in ER is not the neutrality of a logical principle, as Steiner would argue, but rather the need for a consistency between others whose autonomy I must respect. For Levinas, consistency arises in the attitude of justice prior to its abstraction as logic: the search for justice is "the search for a principle".¹⁸ The plurality of persons is ration-alized into the plurality of values in a moral code; justice thus preserves the dis-interest of responsibility in the midst of a world of others who command me to be the agent of justice between them.

¹⁷ Rawls, *Theory*, 3.

¹⁸ OB 161; AE 251: "à la recherche d'un principe"

6.3. THE RIGHTS OF THE OTHER, OR DIFFICULT LIBERTARIANISM

Without sharing and without reciprocity, can we still speak of equality and fraternity?

— Jacques Derrida¹⁹

As I explained in chapter four, Levinas's meta-phenomenology is a response to the problem of intersubjectivity in Husserl's phenomenology. Levinas sets out a philosophy in which the Other is not intuited, but is the very reason and inspiration for the in-tuitions which in-form subjective consciousness. The theory of intuition in Husserl, and the conception of intuition in Steiner's ER, both presuppose a transcendental conception of the person. Steiner works from Kant's division of the world into persons and things, while Husserl describes the structures of subjective consciousness and their constituting of a world of objects that are transcendental to consciousness. Yet both Husserl and Steiner, in different ways, fail to account for this transcendence of the person in their accounts of subjectivity and rights.

Steiner's method in ER is to establish consistency: of linguistic intuitions, of moral codes, and of sets of rights. Yet why is such consistency important? I demonstrated in chapter three that inconsistencies can be of no concern in non-moral sets of values or preferences. Consistency and compossibility is important in ER precisely because it is consistency between persons. The very attitude of justice (out of which, Levinas might speculate, morality comes to be rationalized)

¹⁹ Jacques Derrida, *The Politics of Friendship*, trans. George Collins (London: Verso, 2005 [1994]), 296.

is the attitude which first establishes the world as divisible and countable. The intuition of number presupposes the Other and the Third, who must be counted in justice, and equality. The notion of a balance of goods, to which Steiner refers in his account of economic reasoning, introduces the attitude of justice into ER by another route. The principle of a balance of goods which, Steiner claims, can assist in resolving moral dilemmas, issues from a social science: economics. For Levinas, economy is a modality of the social relation, of the ethical relation with the Other.²⁰ In the analysis of persons' economic behaviour, a balance of goods describes rather than prescribes persons' moral choices. Why, then, would persons seek a balance of goods to begin with? Is this not already an attitude of distribution, perhaps even of sharing the goods of the world with others? Justice as a sharing out of natural resources, and as an equal distribution of basic liberties, form the two key conclusions of Steiner's argument.

Although creating new problems, the reversal which Levinas accomplishes in rethinking not only justice, but philosophy in its entirety, is extremely powerful. He disturbs the conventional direction and order of our thinking about philosophical questions. Assumptions about the perceptual givenness of the world to the sovereign subject persisted right into Husserl's phenomenology, although it was Husserl who conceived of the radical description of the structure of consciousness to which things are given. Building on, and departing from, Husserl's account of intersubjectivity, Levinas discovers the Other not as a phenomenon but as a break in phenomenality, as a trace of transcendence-in-immanence.

²⁰ TI & TeI, section II.

To be conscious is *already* to be concerned with the other person, already to recognise in the Other a precedence and a height, already to approach the Other in an attitude of respect and under the burden of responsibility. But what is problematic in Levinas's philosophy, as I explained in chapter five, is the hyperbole²¹ of the extreme passivity and asymmetry of the relation with the Other, leading to the debasement of the self in the ethical relation, and the derivative status of the self in justice.

The relation with the Other can, however, be posited as the condition of possibility for consciousness without leading to the annihilation of the subject. I speculated in 5.2 that a revision of Levinas's meta-phenomenology could find justice already in the relation with the Other. Out of the elemental subjectivity of the separated being, which Levinas describes in TO and TI, the self/same is accused by the gaze of the Other and commanded to responsibility. Yet, in the eye-to-eye, do I not also cognize his cognition of me? Is not re-cognition, therefore, mutually accomplished? And does not Levinas's account of "infinite responsibility" — in which I always have one responsibility more than the Other, since I remain responsible for the Other's responsibility for me — imply such an exchange, a reciprocity within responsibility? My responsibility can only be infinite in the manner Levinas claims, if the Other is also understood as being under a correlative burden of responsibility for me.

In this modification, the priority of the Other is upheld. It is still on the basis of the ethical relation, in which the subject finds itself in the Other, that the subject is brought to self-consciousness. If the relation with the Other is understood as a mutual response to one another, but as one which immediately

²¹ OB 184; AE 264.

becomes mutual and reciprocal, is Levinas's account of the Third not rendered redundant? Already in the face-to-face situation with the Other there must be distribution, justice, and sharing.

In 1985, Levinas published an essay entitled "The Rights of Man and the Rights of the Other", which appeared in the collection *The Indivisibility of Human Rights*.²² Levinas explores how the structure of rights itself is founded by the ethical relation of responsibility:

In responsibility, which is, as such, irrecusable and non-transferable, I am instituted as non-interchangeable: I am chosen as unique and incomparable. My freedom and my rights, before manifesting themselves in my opposition to the freedom and rights of the other person, will manifest themselves precisely in the form of responsibility, in human fraternity.²³

This is one of the few passages in which Levinas works through his meta-phenomenological argument in more practical terms. Rights, he claims, are primordially the rights of the Other, in that it is out of the relation of responsibility-for-the-Other that I can become a bearer of rights for myself.

Siméon Clotaire Mintoume has also written on Levinas's philosophy, concluding that one of its principal teachings is that morality consists of the "defence of the the rights of the other man":

The novelty of Levinas is found in the affirmation according to which the rights of man are such that they are first the rights of the other man [...] it is a question of insisting on the fact that the law and political power find their legitimacy in the defence of the

²² Levinas, "The Rights of Man," 91-98; "Les Droits de l'Homme," 157-170.

²³ Levinas, "The Rights of Man," 98; "Les Droits de l'Homme," 169-170: "Dans la responsabilité qui, comme telle, est irrécusable et incessible, je suis instauré comme non-interchangeable: je suis élu comme unique et incomparable. Ma liberté et mes droits avant de se montrer dans ma contestation de la liberté et des droits de l'autre homme se montreront précisément en guise de responsabilité, dans la fraternité humaine."

rights of each person, and above all in the rights of the other person, those who are unable to defend their own rights[.]²⁴

Here Levinas sets out the heart of his critique of liberalism, from which I have attempted to derive his critique of Steiner's *An Essay on Rights*. Levinas is not engaged in the refutation of liberalism as a political system. The institutions of the state situate persons as equal before a law, respecting their alterity by assigning them domains of liberty in which their autonomy and moral status is respected. His critique is rather to be found in liberalism's understanding of itself. The assertion of natural rights, which Levinas identifies in Grotius and Pufendorf,²⁵ is a reaching out for the "original right",²⁶ which is found in the Other's claim upon me. The structure of justice-as-rights in which the self can figure as an equal — in which equality itself is discovered as the mutuality of the self and the Other — is founded by the passivity of the self/same's first exposure to the Other in sensibility, substitution, and responsibility. Justice-as-rights presupposes justice-as-responsibility.

²⁴ Mintoume and Baccarini, *L'Ethique Comme Philosophie Première*, 59: "La nouveauté de Levinas se situe dans l'affirmation selon laquelle les droits de l'homme ne sont tels que s'ils sont d'abord les droits de l'autre homme [...] il s'agit d'insister sur le fait que la loi et le pouvoir politique ne trouvent leur légitimité que dans la défense des droits de chaque personne et surtout dans la défense des droits de l'autre homme, celui qui est incapable par lui-même de défendre ses droits[.]" My translation. See also Dekens, *Politique de l'Autre Homme*, 27-38.

²⁵ Levinas, "The Rights of Man," 94; "Les Droits de l'Homme," 163.

²⁶ Levinas, "The Rights of Man," 91; "Les Droits de l'Homme," 159: "le droit originel"

7. Conclusion

7.1. SUMMARY

In chapter one, I introduced two thinkers of justice who present two different outlooks on justice: Hillel Steiner's justice-as-rights, and Emmanuel Levinas's justice-as-responsibility. I identified Steiner with an empirical (or "analytic") philosophical method, and Levinas with a transcendental (or "continental") one. In ER, Steiner argues that justice is a moral rule assigning persons basic equal rights, including rights to self-ownership and to an equal share of the value of initially unowned natural resources. Justice is a set of interpersonal relationships of correlative rights and duties. In a range of works, including *Totality and Infinity* and *Otherwise than Being*, Levinas investigates the conditions of possibility for consciousness, and argues that consciousness arises as an attitude of justice, seeking a distribution between the Other and the Third. In the remainder of chapter one, I explored some of the key philosophical context for the work of both thinkers, and examined their critical reception amongst scholars.

My argument proceeded by presenting an exposition, analysis and critique of each thinker. I began in chapter two by setting out the argument of ER. I deliberately repeated Steiner's chosen structure, and thus aimed to emphasise the importance of structure and order upon his account of justice-as-rights, permitting a rational journey from the inductive opening of moral and linguistic intuitions through to ER's normative conclusions. I addressed a number of themes

in more depth. I contended that Steiner's starting point in moral and linguistic intuitions implies not only a conception of intuition itself, but also points to deeper epistemic intuitions about reasoning, logic, consistency, equality, and personhood. I argued that Steiner's conception of intuition has both an individual and an interpersonal aspect, and that it is naturalistic, psychological, and empirical. I examined Steiner's method, and claimed that the epistemic intuition of a consistency rule and a sorting rule are the key determinants of the route Steiner's argument takes. I concluded that Steiner presupposes an axiomatic, transcendental conception of personhood in ER, which is not subjected to any form of analysis.

In chapter three I made a number of critical arguments about ER. First, I argued that the pure negative conception of liberty (PNCL) describes only a relatively small class of unfreedoms. It does not describe obstructions to action in general, but rather only describes what Steiner calls "preventions": obstructions placed in the way of a person's actions which have come about through the actions of another person. PNCL, I concluded, is defined as interpersonal unfreedom. I then addressed Steiner's law of conservation of liberty (LCL), and engaged with a number of existing critical responses to this area of Steiner's work. While Steiner can be defended against some of these criticisms, what is clear is that LCL can hold only in a modified form, that recognises that a constant sum of net freedoms in a society depends upon a constant number of persons and things. LCL also hold only holds if we disregard that negative liberties by *definition* attach to particular persons, and that different distributions of things do not transfer freedoms, but destroy the freedoms of some and create new freedoms in others. Next, I claimed that, in spite of Steiner's search for consistency through ranking, weighting, and performing economic reasoning about moral codes, ties of moral value

nevertheless cannot be completely eliminated. Although he concedes in AJ that such ties remain possible within consistent moral codes, he maintains that such ties cannot be a part of a system of justice, since it is precisely the role of the justice rule to enforce rights. Impossibilities, he maintains, would therefore invalidate a set of rights. However, this effectively means that the role of justice is to provide consistency to an underlying set of impossible moral claims.

In chapter four I presented an exposition of Emmanuel Levinas's philosophical argument for justice-as-responsibility. Levinas, responding to the problem of intersubjectivity in Husserl, finds in the Other not a special kind of object, but a trace of infinity which breaks through the themes of consciousness and presents itself as face. Meta-phenomenology investigates the conditions of possibility, not only for phenomenology, but for all thinking. Building on this, I presented an analysis of the issue of language in Levinas's meta-phenomenology. The Said of discourse, in which terms come to figure in a structure of signification, presupposes a prior Saying. The Said bears the trace of this Saying, which is the command addressed from the Other to the self/same. Language arises not as representation, but as responsibility, the self/same's first sharing of its world. I argued that Levinas's texts exhibit a strategy of unsaying, which, through a variety of strategy, attempts constantly to reverse the concealment in language of the foundational responsibility-for-the-Other.

In chapter five I directed a number of critical points at Levinas's philosophical argument. First, I considered whether there is a methodic problem of skepticism in Levinas's later philosophical works. His departure from the confines of the phenomenological reduction places his philosophy in the paradoxical position of both depending upon the originality of subjective experience, and undermining that originality by positing the an-archic relation

with the Other, and annihilating the subject in OB. I queried whether Husserl would, as a result of this reversal, regard Levinas as engaged in skepticism. I also argued that is an ethical problem of the self in Levinas's meta-phenomenology. His postulation of the ethical relation as asymmetry, responsibility, and substitution leaves no space for an account of how the self can be interested in its own well-being. It also leads to the derivative status of the self as a candidate for justice. Justice is first an attitude of the subject, which must distribute its responsibility between the Other, and the Third to whom the Other is committed. It is only if the others treats me as an Other that I come to figure in justice as an equal. I concluded chapter five by speculating that these problems could be overcome by finding the instigation of the attitude of justice, not in the relation between the Other and the Third, but in the mutuality of the face-to-face situation. In such a revision of Levinas, the self, struck by the an-archic presence of the face of the Other, sees that the Other sees me, and brings me to consciousness out of the need for a distribution between the Other and the self.

In chapter six, I first took stock of these arguments, and then placed a number of connected themes in Steiner and Levinas into a critical conversation. Here the importance of the methodic differences between empirical and transcendental philosophical approaches became clear; but it also demonstrated that these approaches respond in different ways to similar problems. Primary amongst these remains the intersubjective relation: how it is that the self and the Other comes to be regarded as equals. I concluded that Levinas's critique of liberalism is found not in a refutation of liberal state, which respects persons' autonomy, and transforms their alterity into equal liberties. It is on the basis of a prior relation of responsibility-for-the-Other that the self/same is drawn out of its solitude and into the consciousness of subjectivity. In this way I become a free

agent and can exercise rights, but already under the accusation of responsibility, of respecting the rights of the Other. Rights are primordially the rights of the Other.

7.2. IMPLICATIONS AND FUTURE DIRECTIONS

In this section, I examine the implications of my argument for our understanding of the two accounts of justice which I have treated in this thesis, and possible directions for future research. I then consider how these translate into implications and future directions for our understanding of the relationship between empirical and transcendental philosophical approaches more broadly.

7.2.1 Steiner and Levinas: Implications and Future Directions

In this thesis, I have shown that common issues can be identified in the philosophical arguments of Hillel Steiner and Emmanuel Levinas. A range of pretheoretical intuitions about reasoning, logic, consistency, personhood, and time form the background to the progress of Steiner's argument in ER. Steiner's method is apparently minimalistic because so many matters are settled pretheoretically, as indicated in ER's introduction. I have also shown, through the critical comparison in chapter six, that Steiner and Levinas can be form critical perspectives upon one another as critiques of one another. Levinas's broad brush in respect of justice, which produces sentences like "consciousness is justice", offers nothing in the way of practical or procedural philosophy about the nature of justice. Levinas's failure to connect with the procedures of justice would be a

fruitful direction for further research. One way of reading ER back in to Levinas is to put it to Levinas that the *definition* of justice that requires an account of just procedures and outcomes. Alternatively, what I think this thesis has also shown is that Levinas's philosophical works are not intended as normative or procedural texts, and to attempt to derive norms or procedure from them is to miss Levinas's most important point: that ethics is already latent in every human thought and action; even in acts which negate the Other, through the act of killing, Levinas claims that I ultimately affirm the Other, since "the Other is the only being I can wish to kill".¹ Even evil is an ethical category and presupposes the ethical relation.

And yet, of course, Levinas also levels a powerful critique at Steiner. Levinas's account of primordial ethical responsibility, of a world of consciousness animated by exposure to the Other and by the passive command to responsibility-for-the-other, is a tantalising portrait of human consciousness as always already involved in an interpersonal world of communication and responsibility. That Steiner turns to linguistic intuitions for guidance is telling, since without the interpersonal relation there could be no ethics, no relation of justice, no relation of rights and duties, no language, and — for Levinas — no consciousness. Rights and duties are an interpersonal relation, and presuppose an attitude that is already ethical.

A further accomplishment of this thesis is to have brought together the language of rights from two different streams of philosophy. Levinas uses the language of rights, albeit infrequently. Placing Levinas in discussion with empirical theories of rights, with accounts of justice which ruthlessly analyse and refine our ordinary thinking of rights, such as Steiner's ER, is helpful in clarifying

¹ TI 198; TeI 216: "Autrui est le seul être que je peux vouloir tuer."

what exactly is at stake both in our wider discussions about rights as political societies, but also in Levinas's invocation of the language of rights.

Rejecting Levinas's account of the Third, and upholding infinite responsibility as necessarily mutual and reciprocal, enables us to understand rights as first issuing from an exposure to the Other, of an initial awareness of my responsibility-for-the-Other. I have rights only in so far as the Others treat me as having rights: "Thank God that I am an Other for the others".² But this does not require the intervention of a Third. Already between I and the Other is a distribution. My status comes from the Other, but I cannot deny my status except out of a prior understanding of my value for-the-Other. This is what I mean by "the rights of the Other". It does not dispute the equality of the rights-duties relation which Steiner expertly describes. But this equality is present from the earliest moment in the relation with the Other, and does not require the intervention of the Third.

This account also proposes ways out of problems in Levinas's philosophy. For example, his philosophy is extremely deficient in describing how it is that I come to treat myself as an equal. Indeed, his discussion of this is limited to more or less one line about responsibility "limiting itself" under conditions of justice. But he does not explain why, even in a situation with multiple others, I should come to view myself as one of the others. Being faced with a number of others does not necessarily bring me to awareness that I am like them in moral status, any more than the bivalent relation with the Other necessarily brings me to such a view. But what is clear is that, in our ordinary experience, we do experience ourselves as having a moral status approximating to that of others. To explain this

² OB 158; AE 247. See above, p. 170, n. 80.

phenomenon, while upholding Levinas's claim to the priority of the relation with the Other, need not require the positing of the Third.

Rejecting Levinas's account of the Third may also point to directions in resolving Levinas's problematic account of gender. Levinas writes of the feminine as conditioning the very possibility of existence as multiple. But does not the relation between me and the Other, in which I see in the gaze of the Other his concern for me, explain this consciousness of multiplicity with more economy, and with fewer problems, than his account of the feminine? His invocation of the feminine plays a radically different role to his invocation of maternity in OB. Where maternity functions as a metaphor for "the Other under my skin", for my bearing of responsibility for the Other, the feminine serves to actually thematize my experience of the Other into the conceptuality of gender. This seems to be straightforwardly at odds with Levinas's philosophical approach, which is to regard all conceptualization as the *result* of a prior ethical relation. The recognition of qualities, such as gender, must follow the recognition of the Other as Other.

Scholarly engagement with Steiner's ER has focused on intensional aspects of Steiner's argument, rather than on its transcendent foundations in a philosophy of the person and its intrinsic value. Some scholars have, however, reached out to these foundational issues.³ The body of secondary literature about Levinas's philosophy is formidable, and there are countless themes to be drawn out of his work. In this thesis, I have focused on how the major contours of Levinas's overall philosophical argument can be read as a philosophy of politics and justice — to a certain extent aiming to compensate for the specialization about Levinas's

³ de Wijze, "Recalibrating Steiner"; Kramer, "Consistency"; Carter, "Respect for Persons".

constituent themes which is already common in extant scholarship. A productive undertaking for future research would be to examine the relationship between Levinas's thinking of justice-as-responsibility in relation to these diverse constituent themes.

7.2.2. Empirical and Transcendental Philosophy

In chapter one of this thesis, I set out the view that comparing the philosophical arguments of Steiner and Levinas, while of intrinsic interest as a debate over justice, is also an exercise which rehearses the broader divergence between philosophical methodologies which emerged during the twentieth century. Writing in his 1993 book *Origins of Analytical Philosophy*, Michael Dummett remarked:

Frege was the grandfather of analytical philosophy, Husserl the founder of the phenomenological school, two radically different philosophical movements. In 1903, say, how would they have appeared to any German student of philosophy who knew the work of both? Not, certainly, as two deeply opposed thinkers: rather as remarkably close in orientation, despite some divergence of interests.⁴

Indeed, in spite of often being credited as the “grandfathers” of the two streams of philosophy often called analytic and continental, the areas of research in which Frege and Husserl were both working was extremely similar. Indeed, they had both studied the mathematics and philosophy of Brentano and Bolzano, figures from the generation before them. Although the degree of separation between these two traditions is today striking, it is apposite to remind ourselves that only a century ago these traditions emerged from a common philosophical problem:

⁴ Michael E. Dummett, *Origins of Analytical Philosophy* (London: Duckworth, 1993), 26.

namely the issue of the status of logical laws and logical propositions, and the relation between these and the being that thinks those laws and propositions.

What this thesis cannot do, of course, is settle these huge questions of “analytic” and “continental”, empirical and transcendental, philosophies. But what I hope the preceding chapters have demonstrated is that, at least in the case of Steiner and Levinas, we can identify two attempts at tackling the same problem of the foundations of knowledge, of consciousness, of ethics, and of justice. Where Steiner attempts to bracket off foundational questions, Levinas addresses nothing but foundational questions. Reading Levinas as a critique of Steiner reveals that, while foundational questions are bracketed off from the text of ER, many foundation presuppositions about the nature of intuition, language, society, philosophy, are still present, and generate ambiguities at the heart of ER’s terminology (such as persons and agents).

I have shown in this thesis that the “problem of induction” has not been eliminated by empirical approaches to philosophy. In the course of researching this thesis, it was put to me that Levinas’s philosophy requires nothing short of a leap of faith from the reader, such is his distance from anything resembling an empirical method or inductive grounding. And yet, by chipping away at the apparently secure foundations of an argument such as Steiner’s, we can see that many of the same leaps of faith are required of the reader. Although Steiner brings the categories of morality and justice into physical territory, by reducing the definition of freedom to “the possession of things”, and by explaining moral problems through physical analogies and illustrations, to work with them still requires accepting ethical categories which, unlike physical objects, are simply not empirically available to experience. The moral status of persons, which the rule of justice must presuppose, cannot be perceived empirically.

Although Steiner's reference to the "moral agency" of (most) persons could be derived from an empirical observation of persons' behaviours and decision processes, what cannot be empirically derived is why persons' empirical agency and capacity for deliberation should result in them being considered self-owners or as possessing intrinsic moral status. If artificial intelligence proves possible, and indeed if it proves possible to define artificial intelligence in a satisfactory manner, there will be serious challenges to Steiner's account of rights, since persons' moral status cannot be justified except through a transcendental conception of personhood.

By contrast, Levinas's meta-phenomenology poses its own problem of induction. In chapter five I identified what could be interpreted as amounting to an inductive paradox, or in Husserl's sense, to skepticism. Levinas continues, to a certain extent, the business of phenomenology, in that he is investigating the conditions of possibility for the essential structures of consciousness. However, whereas Husserl's method was rooted in an analysis of the experiences of the ego, Levinas arrives at a position where he claims what makes experience possible is that which escapes experience: alterity, exteriority, the absolutely Other, the Other. We are left with the difficult question: if what Levinas describes by his definition escapes experience, what exactly is the inductive basis for his claims?⁵ This does not amount to asking what is the *empirical* basis for his claims, since I explained in chapters one, four and five how Husserl and Levinas are working outwith naturalistic empirical observation, outwith the "natural attitude". I explored in chapter four how the resistance of Levinas's text to assembly, to

⁵ I am indebted to Philip Alexander for alerting me to this question in clear terms following my paper "Emmanuel Levinas: Towards a Political Reading," paper presented at Manchester University Centre for Jewish Studies (MUCJS) Research Seminar, University of Manchester (October 2008).

coherence, to stability of terminology, are the result of his attempts at unsaying philosophy, at allowing the preconditions of consciousness in the relation with the Other to become apparent. Yet this still requires a leap of faith from the reader. Levinas's claims, while *being* themselves positive claims (such as the positing of the encounter with the face of the Other prior to the possibility of consciousness), cannot be supported through deductive argument, since the language of the Said reduces reasoning to what can be assembled in the structure, relationship and repeatability of terms.

The question of how Levinas reaches his conclusions from Husserlian phenomenology is a difficult and controversial one. However, the question of how Steiner reaches his conclusions has just as much foundational indeterminacy. Levinas's philosophy requires a leap of faith, but so does Steiner's. Yet the manner in which Steiner's epistemic intuitions are brought into play through common sense and ordinary language merely makes the Steinerian leap of faith less obvious and less controversial. We could even say that Levinas is ultimately *articulating* the leap of faith that is inherent in Steiner's method.

The possibility of the leap of faith ordinarily associated with *transcendental* philosophy being a shared factor in both empirical and transcendental methodologies is a promising area for further research, especially given that attempts to find naturalistic answers to the kinds of question raised by Husserl a century ago (such as the problem of the apperception of the other person, and Husserl's work in the Fifth Cartesian Meditation on the alter ego and pairing) remain unsuccessful. Difficulties in the empirical grounding of mathematical intuitions of number also lend support to Levinas's account of "ethics as first philosophy": his account of the ethical relation is able to explain mathematics and geometry as derivative of the ethical relation, where conventional ontological

(empirical) approaches have failed to ground these deeper epistemic, world-constituting intuitions.

This thesis also brought the empirical philosophy of justice into direct conversation with the transcendental philosophy of justice. There is clearly great potential for further research into the relationship between empirical and transcendental philosophical approaches, particularly with regard to the extent to which these apparently schismatic philosophical methods are often addressing the same concerns and problems. From the point of view of the philosophical interpretation of Levinas, a pressing task is to examine the relationship between his thought and hard core issues of empirical philosophy, such as the philosophy of mathematics and number. The subversion of mathematics and geometry to ethics-as-first-philosophy is the inevitable consequence of Levinas's reversal of philosophy: to find in the relation between numbers the trace of the primordial relation between separated beings, persons, is the tantalising but elusive contention of Levinas's work.

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