The Ethics of Imagination: Levinas, Aesthetics and Poiesis in uTOpia

Ryan Fritsch

Faculty of Law

McGill University, Montreal

April 2010

A thesis submitted to McGill University in partial fulfillment of the requirements of the degree of Master of Laws

Abstract

Before Al Gore's 2005 documentary "An Inconvenient Truth" ignited general public concern for the worsening environmental crisis, artists played a crucial role in both exemplifying ecological concerns and in building alternative living and social arrangements. They did so with a sense of "creative responsibility" that formal political and legal institutions seemed incapable of harnessing or acting upon. This thesis looks at how such activist aesthetic movements occurring simultaneously in Toronto and Windsor, Ontario, unleashed a form of "constituent imagination" at once critical, constructive and apparently more responsible than our traditionally "official" systems of responsibility. As these movements crystallized into a contemporary form of utopian thinking characterized by anti-foundationalism, aestheticism, and a deep sense of interconnected responsibility to "invisible others," it is argued that these movements are best understood and analyzed through the ethical philosophy of Emmanuel Levinas. By concretely situating and assessing long-standing limitations within Levinas' philosophy in terms of these activist movements, including the relationship between Levinas' aesthetic and ethical theory, his applicability to globalized scales of political responsibility, and the boundaries of his legal proximity and aesthetics of judgment, the thesis uncovers an "ethics of imagination" that brings Levinas into 21st century law and politics as an an-archic means of conceptualizing the world "otherwise" within the everyday.

Avant d'Al Gore en 2005 documentaire "Une vérité qui dérange" enflammé intérêt général du public pour l'aggravation de la crise de l'environnement, les artistes ont joué un rôle crucial dans les deux illustrant les préoccupations écologiques et dans la construction de logement de rechange et des dispositions sociales. Ils l'ont fait avec un sentiment de "responsabilité créatrice" que les institutions politiques officielles et juridiques semblait incapable d'exploiter ou de s'en servir. Cette thèse examine comment les militants de ces mouvements esthétiques qui se produisent simultanément à Toronto et à Windsor, en Ontario, a déclenché une forme de «l'imagination constituante» à la fois critique, constructive et apparemment plus responsable que notre tradition "officielle" des systèmes de responsabilité. Comme ces mouvements cristallisé en une forme contemporaine de la pensée utopique caractérisée par anti-fondationalisme, esthétisme, et un profond sens des responsabilités reliées aux "autres invisibles», il est soutenu que ces mouvements sont mieux comprises et analysées par la philosophie éthique d'Emmanuel Levinas . Par concrètement situer et d'évaluer les limitations de longue date dans la philosophie de Levinas en fonction de ces mouvements activistes, y compris la relation entre la théorie esthétique et éthique de Levinas, son applicabilité à des échelles mondialisé de la responsabilité politique, et les limites de sa proximité juridique et l'esthétique de arrêt, la thèse révèle une «éthique de l'imagination» qui apporte Levinas en 21e siècle, le droit et la politique comme un moyen an-archique de conceptualiser le monde «autrement» dans le quotidien.

Acknowledgement

This thesis would not have been possible without the enduring love, support and LOLs of Kate Sellar, Kelly Fritsch, and the good humor of my family. Special thanks is owed to my supervisor Professor Desmond Manderson for making space for art in law. And thanks finally to the creativity of those others who made Montreal so much fun: K_Roc, Parksy, Zavotron and Roxanne.

"One thing is sure. The earth is now more cultivated and developed than ever before. There is more farming with pure force, swamps are drying up, and cities are springing up on an unprecedented scale. We've become a burden to our planet. Resources are becoming scarce, and soon nature will no longer be able to satisfy our needs."

Quintus Septimius Florens Tertullianus, c. 200 B.C. [1]

"The twentieth century will be chiefly remembered by future generations not as an era of political conflicts or technical inventions, but as an age in which human society dared to think of the welfare of the whole human race as a practical objective."

Arnold J. Toynbee [2]

"For most of us, design is invisible – until it fails... Every accident provides a brief moment of awareness of real life, what is actually happening, and our dependence on the underlying systems of design... Massive change is not about the world of design; it is about the design of the world."

Bruce Mau[3]

1. Introduction

A. Between Totality and Infinity

At first glance, Chris Jordan's massive oversized canvases appear as a featureless beige panels, pointillist art works with no subject, mere mosaics of background noise and scrambled static to be dismissed and filtered out. But up close, inches away and face-to-face with the works, the flat monotone resolves into striated surfaces of almost infinite depth. Compromising a single vast collage, *Plastic Bags* shows each of the 60,000 individual plastic shopping bags consumed in the United States every five seconds. *Plastic Bottles* depicts two million plastic beverage containers, the number used and discarded in the US

[1] Bruce Mau, *Massive Change* (London: Phaidon Press, 2004), 45.

[2] Arnold J. Toynbee, *A Study of History* (London: Oxford Press, 1947), quoted in Lester B. Pearson's Nobel Peace Prize acceptance speech in 1957, online: http://nobelprize.org/peace/laureates/1957/pearson-lecture.html.

[3] Mau, *supra* 1 at ii, 7, 12.

every five minutes. *Prison Uniforms* depicts 2.3 million inmate jumpsuits, one for each incarcerated person in the U.S. in 2005. *Cell Phones* depicts 426,000 cell phones, the number discarded on a daily basis.

In each of these works, part of a continuing series entitled *Running the Numbers: An American Portrait*, Jordan manipulates vision and scale to translate the cold statistical tally of our collective consumer footprint into an experience at once conceivable and personal. Assembling a collage from tens of thousands of individual photographs into over-sized, intricately detailed prints, Jordan's work gives the viewer a feeling for the weight of our collective action and, implicitly, of their own action. He achieves this by demonstrating the simultaneity that exists between seemingly inconsequential everyday acts of the individual and their cumulative impact. By connecting the abstract and impersonal to the immediate and known, Jordan marks the invisible as something present, tangible, and identical. It is the manifestation of an otherwise unseen reality as it actually is in its reality, a link that precedes the connection. In the face of this experience, in the visceral presence of darkness made visible, "sense-making" trumps "making sense," and questions of rational environmental or social policy emerge only secondarily.

Chris Jordan, *Prison Uniforms*, 10′ x 23', digital print (2007) installed at the Von Lintel Gallery, NY, June 2007, with detail added at inset. Photographs from the artist's website, http://www.chrisjordan.com/current_set2.php.

And indeed there is more to *Running the Numbers* than just ecological agit-prop. Jordan's works demand interaction as an experience or event that is intentionally spatial. The viewer comprehends the work as 426,000 cell phones only when they approach within inches and are able to resolve individually defined cell phones out of the mass: *their* cell phone, the one they identify with and use to anchor themselves within a sea of duplicates. This intimate face-to-face moment with the work is one of both epiphany and paradox. As the massive scale of the work only becomes sensible in a relationship of close proximity, the very notion of "the whole" is problematized at the moment it is at its most concrete. Within the moment one truly appreciates the presence of the whole, one realizes both the impossibility of accounting for all of it and of the obligation to do so. It is a strange experience linking the antipodes of banal consumerism

with an almost infinite global responsibility through a line drawn by personal and collective responsibility.

In Jordan's own words, these works explicate how:

> statistics can feel abstract and anesthetizing, making it difficult to connect with and make meaning of 3.6 million SUV sales in one year, for example, or 2.3 million Americans in prison, or 32,000 breast augmentation surgeries in the U.S. every month... This project visually examines these vast and bizarre measures of our society... Employing themes such as the near versus the far, and the one versus the many, I hope to raise some questions about the roles and responsibilities we each play as individuals in a collective that is increasingly enormous, incomprehensible, and overwhelming.[4]

Jordan's works have an uncanny way of raising such issues by looking out at the viewer. His flat, featureless surfaces belie a passivity that calls the viewer to come closer, only then to overwhelm with the true height and weight of its gaze.[5] Much like the Vietnam Memorial in Washington or the Holocaust Memorial in Berlin, the viewer is drawn into an unexpected relationship of asymmetry: their approach resolves the face of the work but deepens its strangeness. The viewer responds to these feelings, but how? Perhaps surmising an environmental message within Jordan's work they step back and reintroduce a literal and analytical distance: "All those cell phones are not *mine*. All that waste is not my fault." Taking another step back the viewer becomes aware of a fellow gallery patron sharing a similar reaction. Does this third person also own a cell phone? Do they feel a hint of guilt like I do? A small joke is offered to dissipate the dissonance: "Those cell phones couldn't be *ours*, they are much too

---

[4] Chris Jordan, *Running the Numbers: An American Self-Portrait* , "Artists Statement", September 2008. Online: http://www.chrisjordan.com/current_set2.php.

[5] This autonomous consciousness to Jordan's work is particularly explicit in *Ben Franklin* (2007) where a stack of 125,000 one-hundred dollar bills ($12.5 million, the amount spent every hour by the US government on the war in Iraq) is tinted to recreate Franklin's portrait and the famous gaze which follows the viewer from every perspective.

old fashioned." The immediate tension is mitigated but the work continues to call out incessantly: where does the thread of responsibility stop between the one, the pair, the few, the many and of those who are yet to be counted? Am I responsible to all those invisible other cell phone users and they to me, or only the person standing next to me who I can address in the face-to-face?

We may be tempted to pass judgment on this mass of cell phones but, having identified one out of the millions as our own, there persists a sense of exceptionality: despite their similarity, despite being exact copies, each individual cell phone resists thematization. They are not simply interchangeable. Even in their repetition each cell phone remains different, as individual as the individual owners who used them and whose presence we now feel in their very absence. The irony that half a million communication devices have left us mute to explain the responsibility we now feel only sustains the uneasiness that lingers. It is an instantaneous and sublime shudder: the invisible connection between self and other – any other – made visible. Having experienced the presence of these 426,000 "others", the gaze of Jordan's work now follows the viewer from across the room, passively awaiting their return even as they leave through the door.

The feeling of unease lingers in part because Jordan's difficult environmental politics demands a response while simultaneously confounding our ability to respond. He offers no place from which the viewer might stand in judgment. One can step back from the work but know that there is more to it. One can come closer but find no pre-existing scale for analysis other than the question of scale itself. One can offer broad policy prescriptions but find no frame around the canvas to fully grasp a subject that spills over the edge into an infinity of the not-yet-counted. Jordan gives us a conceivable sense of scale between the one and the many only to obliterate it with a hint of yet greater imaginable measures, unseen dimensions, and other parallel scales for

comparison. Accordingly, the scale of responsibility remains ambivalent, the ability to grasp and freeze an individual object for analysis confounded, and the political questions difficult. We stare at the face of his work looking for an edge or a wrinkle but only feel the infinite asymptotic depth of a responsibility without limits and the difficulty in imposing responsibility on others. Ultimately, it is the encounter with these absent other human beings that is our wake-up call.

Jordan explains his work further:

> Finding meaning in global mass phenomena can be difficult because the phenomena themselves are invisible, spread across the earth in millions of separate places... And we fear that if we take the risk of fully opening ourselves to the horrors of our times, we may become overwhelmed and emotionally paralyzed. My own belief is that it is worth connecting with these issues and allowing them to matter to us personally, despite the complex mixtures of anger, fear, grief, and rage that this process entails. Perhaps these uncomfortable feelings can become part of what connects us, serving as fuel for our individual and collective choices as citizens of a new kind of global community ethic.[6]

Jordan's work exemplifies a growing unease in the first decade of the 21st century. Over the last few years, the shock of "the new" has come from neither art or politics, nor science or the social, nor technology or theology, but from accidents revealing the unreality of the economic. It is an urgency located in the banal ubiquity of the everyday itself. Those commonplace and almost inconsequential individual acts cumulatively contributing to global warming, peak oil, peak mineral, a spiraling maelstrom of plastic particles choking the Pacific Ocean,[7] 100 billion plastic shopping bags a year[8] and the fantasy of

[6] Chris Jordan, "Artists Statement", Kopeikin Gallery, September 8 - October 20, 2007. Online: http://kopeikingallery.com/exhibitions/view/running-the-numbers-an-american-self-portrait.

[7] Pacific Ocean currents have collected millions of tonnes of plastic waste into a semi-solid gyre the size of Texas. Passing boaters can freely scoop bucket-fulls of particles with ease, and untold numbers of wildlife die of plastic stuffed gullets. Judith Burns, "Voyage confirms plastic pollution" (BBC: August 27, 2009) http://news.bbc.co.uk/2/hi/science/nature/8225125.stm. See

combustion-engine suburbs have amounted to a "long crisis", an accident that is neither transitory nor liminal but fundamental and foundational.[9] The shock is not that these consequences are occurring as much as they are acts which are so prevalent, so normal and so personally trivial that they don't seem to be happening at all.

The grey obliviousness of this blooming monoculture is paradoxically what Bruce Mau has deemed the highest order of design: to achieve ubiquity, to become banal.[10] The automobile, the freeway, the airport and the office tower – all were invented and developed in the West but adopted the world over.[11] These things are no longer considered extraordinary or unnatural, but merely tedious and placeless. Fire sale riots at the IKEA in Riyadh,[12] Norah Jones somnambulating the Starbucks in Beijing.[13] In its very translucent totality this normalcy refers to its own apotheosis in form and content. In utopia, the rules are invisible.

---

also the documentary *Toxic: Garbage Island* (VBS TV, April 7, 2008), online: http://www.vbs.tv/watch/toxic/toxic-garbage-island-1-of-3.

[8] It is terrifying to note that this is the United States alone! Peter Applebome, "Human Behavior, Global Warming, and the Ubiquitous Plastic Bag" Sept. 30 2007, online: http://www.nytimes.com/2007/09/30/nyregion/30towns.html.

[9] A popular example of this sentiment is found in the best-sellar by James Howard Kunstler, *The Long Emergency: Surviving the End of Oil, Climate Change, and Other Converging Catastrophes of the Twenty-first Century* (New York: Grove Atlantic Press, 2005).

[10] Mau, *supra* 1 at 1.

[11] Mau, *ibid.* at 4.

[12] "Three die in Saudi shop stampede" (BBC: September 1, 2004) http://news.bbc.co.uk/2/hi/middle_east/3618190.stm.

[13] In "Coffeetalk: Starbucks™ and the commercialization of casual conversation" (32 Language in Society (2003) 659-691), anthropologist Rudolf Gaudio discusses how the commoditization of "coffeetalk" within a socio-economic consumerist strata controverts the claim of some sociolinguists that conversation is a "naturally occurring" phenomenon that is ontologically prior to other speech genres; similar studies have argued similarly in the normative acculturation of law students at weekly "coffee house" events sponsored by major commercial law firms: Desmond Manderson and Sarah Turner, "Coffee House: Habitus and Performance Among Law Students" (31 Law & Social Inquiry 3 (September 2006)).

If there is an upside to this down, it is the ample evidence today – experienced as environmental degradation and social monoculture – exemplifying how the conceptual framing of human activity corresponds to its totalizing results.[14] Gone is the frictionless synergy between our material conditions and our epistemological ambitions: at the same time global warming, peak oil, mineral exhaustion and the Pacific gyre have confounded a notion of the Earth as a ground of infinite material capacity and self-renewal, contemporary philosophy has also rejected the notion that the end of history – the end of thought – resides within the comfortable monotheism of infinite growth.[15] The striving Western imaginary in search of its smooth, Manichean, idealized no-place has itself become the danger of thinking and living a totality out of balance. It is a condition in which rational systems begin to manifest irrationality. In its stead is a renewed inquiry into our collective responsibility to the whole of the Earth and humanity as a practical design objective. The problem is ecologic and epistemologic. It is a realization giving rise to two correlates at the heart of a philosophy of design itself.

First, with the environmental consequences of our hitherto translucent normative order becoming increasingly hard to dismiss, we are reminded that design is only invisible until it begins to fail. What was once experienced as a beneficial network of power, ideas and material forces is accelerating towards an unsustainable artificiality. We can, however, take a peek behind the curtain. Douzinas explains this "foundationalist" form of thinking as:

---

[14] Thomas Homer-Dixon, *The Upside of Down: Catastrophe, Creativity, and the Renewal of Civilization* (Toronto: Vintage Canada, 2007).

[15] Francis Fukuyama reflects this growing consciousness, somewhat infamously having penned his Western triumphalist *The End of History and the Last Man* (New York: Free Press, 1992) shortly after the collapse of Soviet communism, only to fall of the sword of self-critique in *Our Posthuman Future: Consequences of the Biotechnology Revolution* (New York: Picadore USA, 2003). Amusingly, Fukuyama comes to rely on a concept of the natural to guide us in this post-human future, ironic for reasons which are apparent *infra*.

> the belief in the existence of a ground, foundation or ideal, discovered or posited by thought, which makes the world into a coherent whole. The belief that being can be totalized is one example of this metaphysical thinking. Foundationalists establish their founding axioms and then follow an internal logic that builds propositions from the necessary interconnections between them… The drive of disciplines, like law and economics, is to posit a knowable object and then to move towards a totality in which that object is located."[16]

By appreciating conceptual frameworks as "forceworks" – as discourses operating in a traditionally metaphysical mode pre-valuing certain considerations over others, and thus compelling a *world order* from a *word order* (a true author-itarian system) – the ecological crisis is revealed, in part, as a crisis in conceiving and enacting totalities, of challenging the metaphysics of thought.[17] It is a question not only of "what is to be done?" but of questioning the form of questioning: the question of the question.

Chris Jordan's work represents an attempt to explicitly problematize the question of "totality" as a question itself, both of material impact and epistemological framing. His works manifest the newly emerging grammar of responsibility by thickening or darkening the invisible order, making it opaque and experiential, allowing those who approach his work to feel ecological concepts like "full-cost accounting," "life-cycle maintenance," "cumulative effects" and the "precautionary principle." Each of these concepts attempt to measure, delineate, predict and parse the material unrealities of an unrestrained ideological monoculture to renew a sustainable balance between competing appetites. They each, in their respective modes, thus appreciate the force

[16] Costas Douzinas and Adam Gearey, *Critical Jurisprudence: The Political Philosophy of Justice* (Oxford: Hart Publishing, 2005), 32, 16.

[17] I adopt the notion of "forcework" from Krzysztof Ziarek, *The Force of Art* (Stanford: Stanford University Press, 2004) and as discussed *infra*. It was Toronto poet bpNichol who penned the formulation "word order = world order" in *The Martyrology, Book 5* (Toronto: Coach House Books, 1982[1994]).

implicit in their act of framing, and of the difficulty in framing, and thus foster a deeper understanding that the balance sheet of any problem is an act of almost infinite accounting.

The second correlate is our response to the crisis of social design as a creative challenge in conceptualizing such acts of infinite accounting. There is an implicit faith in this new grammar to manage "the whole" if only one finds the right place to stand, a position from which to evaluate and judge the big picture. Each new concept of ecological responsibility grasps for a new mode of social, political, legal and economic design that accounts for those "externalities" hitherto under-valued, unimagined, or simply ignored. In Jordan's work the viewer experiences these externalities as "others", those whose presence can be felt and recognized but not entirely grasped. This is an important and inclusive step; it represents a shift in imagining and imaging the *ou-topos*, the not-place of everything in its place, to the *hetero-topos*, the abnormal place, the place where things are misplaced, literally the place of "otherness." How though is "otherness" to be schematized and thematized as a language of design? How can we account for the other as an almost infinite simultaneous branching of relationships emerging from a single cell phone multiplied a million times, or as represented by the human toll of three million prison uniforms. How does one attempt to design heterotopic places? Accounting for others is a dangerous game. There is a very danger in attempting to do so: totalitarian thinking tends to produce clear winners and losers and misery for all.

Shelves are rife with books and articles by Canadian authors who posit an increasingly fine-grained critique of the shared ecological and epistemological crisis but who are often mute to propose concrete solutions beyond this deadlock, the trap of seeking a firm foundation on which to design as between totality and infinity. A number of recent Canadian works from a variety of disciplines, for example, all revert back to a foundational concept of "the

natural" to found a redefined moral and political vision. In social philosophy, authors like Margaret Somerville cite the natural as a combination of biology and culture to refute "other" forms of social relations, not only as a necessity but as a threat to humanistic responsibility, arguing that "if there is no essential human nature, then no technologizing of that nature is dehumanizing."[18] In law, David Boyd recognizes of the natural that "a narrow, legalistic approach relying on an exhaustive array of increasingly complex environmental laws and regulations to mitigate the impacts of growing energy and resource consumption is insufficient to achieve sustainability."[19] Defining a "new role model for Canada", however, finds him taking the very same top-down approach to architect "Canada's notion of progress" including social change, alternatives to GDP, and "dematerialization" of the economy to "recognize the fundamental reality that the Earth has limits."[20] In the economic sphere, the "natural" has been a turn to privilege the middle class by re-situating consumerist value from (excessive) material accumulation to a desire for the fashionable accumulation of intellectual property (the difference between shopping at LensCrafters in the mall and the boutique shops along Queen Street).[21] This rather ancient conceptual resource has even seduced self-avowed anti-utopian realists like urban design guru Jane Jacobs, about whose celebrated *The Death and Life of*

[18] Margaret Somerville, *The Ethical Imagination* (Toronto: Anansi Press, 2006), 97. Canadian ethical philosophers have similarly sought a ground to navigate between the "is" and the "ought", developing ecological ethical concepts like deep green ecology, ecological virtue ethics, and green feminism. See for example Patrick Curry, *Ecological Ethics: An Introduction* (New York: Polity Press, 2005).

[19] David Boyd, *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003), 273.

[20] Boyd, *ibid.* at 307-311, 350.

[21] Richard Florida, *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life* (New York: Basic Books, 2003). See also Jeanne Randolph and Ihor Holubizky, *Ethics of Luxury: Materialism and Imagination* (Toronto: YYZ Books, 2007). Amusingly, as luxury becomes commoditized and confounds the connection to identity-affirming uniqueness, the authentic is increasingly being located in finding old antiques and repurposed junk. As will become apparent in the following chapters, this development merely presages the cultural shift towards a ground-up "do it yourself" ethic anticipated herein.

Great American Cities Mark Kingwell writes as "imposing far too many controversial teleological burdens, all the worse for being hidden behind her celebrated naturalism."[22]

The crisis of today is therefore our very ability to imagine and design the world "otherwise" when irresponsibility itself is found in the classical conceptualization of identity, legality, sociality, politics and economy as a totalizing enterprise with monotheistic aspirations. Trapped between genesis and structure, the offer seems to be competing and incompatible utopias: we can live in an economic paradise at the cost of an ecological one; we can live in a world guided by the natural at the expense of unimagined modes of living. And at the same time these prescriptive philosophies posit such fine – if mutually exclusive – foundational edifices, they seem rather mute to actually propose what steps individuals can take to enact them. As Bruce Mau puts it, the question of social change no longer seems to be "What is to be done?" but the far more fundamental: "Now that we can do anything, what will we do?"[23]

B. Otherwise than Being

This thesis offers a solution to this impasse with an account of a contemporary form of utopian thought that relies neither on a teleological end-point or posits a deterministic foundational beginning. Using the philosophy of Emmanuel Levinas as a post-eschatological guide to interpreting this ecological and epistemological crisis, I do not seek to offer *the* ethical imagination, a single master concept as promoted by the authors above which, by its very definition, pre-defines the range of imagination and thus closes off "unknown unknowns." Rather, the claim is made that it is possible to inter-relate criticality,

[22] Mark Kingwell, "Reading Toronto: Architecture and Utopia" in Jason McBride and Alana Wilcox (eds.), *uTOpia: Towards a New Toronto* (Toronto: Coach House Books, 2005) 58-66 at 64-65. Jane Jacobs, *The Death and Life of Great American Cities* (New York: Vintage Press, 1992).

[23] Mau, *supra* 1 at 15.

constructivism and responsibility through an ethics *of* imagination, one which does not impose forceworks but which makes space for a multiplicity of them through an open concept of social design in which an anti-foundational imagination – from the top-down or the bottom-up – is always speaking. It is a conceptualization of utopian thinking squarely aimed at addressing "our postmodern crisis of the image" by "supplementing forms of poetics… with an ethics of responsibility."[24] This is no effort to impose a new frame around Jordan's works or to distill the most politically expedient beige monotone gloss that can paint over a million individual elements with the same brush. It is a philosophy of non-integration and the asymmetric. It is an attempt to enact a political and legal logic capable of "crowdsourcing" the panoply of "other" voices made present in Jordan's work, and to unleash unimagined emergent properties, generate new algorithms, explore invisible links to make new connections, and recover virtual possibilities from otherwise mundane objects trapped in the normative discipline of their everyday contexts.

At the heart of this effort is a proposal that the work of a work of art in contemporary utopianism and in the philosophy of Levinas is something which operates as more than just a metaphor for actualizing this kind of ethical imagination. Utopian thought today is this search for a grammar of design – an ethical aesthetic – that is coherent, critical and constructive while eschewing totalization, metaphysical closure, and teleological justification. It is a grammar designed to instantiate the concrete while keeping open the political and legal to the world of the possible and avoiding the trap of reproducing, reintroducing and reifying author-itarian forceworks. It calls for "a rethinking of "productivism" beyond the metaphysical paradigms of production and power."[25] Against the

[24] Richard Kearney, "Levinas and the Ethics of Imagining" in Dorota Glowacka and Stephen Boos (eds.), *Between Ethics and Aesthetics: Crossing the Boundaries* (New York: SUNY Press, 2002) 108-117, 108.

[25] Ziarek, *supra* 17 at 137.

smooth "no places" of airport terminals and corporate headquarters, the contemporary utopia is about introducing difference, locality and peculiarity. Recognizing the infinite ways a single plastic bag can serve legitimate purposes and wreck ecological destruction, the contemporary utopia is a thinking of excess, a consideration of externalities, a new way of looking and seeing problems from an infinite potential number of simultaneous contexts, connections and consequences without resorting to violently reductive responses. It is a question of locating both idealism and design, the political and legal, against a horizon of the unknowable and beyond the impoverished platitudes of monistic and perfectible constructivism.[26]

Levinas' philosophy seems to speak directly to these ends. His work shifts the foundation of Western philosophical thought – and hence the history and future of utopian political imagination – from a discourse of totality to one of infinity. He does this by locating the "end" of philosophy not in the State or a universal philosophical foundation like the "natural" or Cartesian egology, but in the phenomenological unknowability of the "other" to whom I am responsible even before myself. Like Jordan, Levinas proposes that both immanently direct and indirectly unseen relationships between "others" is the link preceding the connection, an invisible but inherently ethical priority that makes me responsible to the other who appears before me *before me*.[27] This ethics of otherness, of those before me and of those yet-to-come, results in a social imagination which constantly re-conceptualizes the terms by which we define the social "Good" and of responsibility between neighbours. It challenges *a priori* assumptions, interrupts forceworks, and offers the potential to radically recast notions of proximity and causation to more closely reflect the realities of our lived experience in a globalized existence and on a finite Earth. My belief is that where

[26] Rosi Braidotti, *Transpositions* (Cambridge: Polity Press, 2006) at 204-206.

[27] Ziarek, *supra* 17 at 192.

a connection is made between Levinas and the movement which identifies as utopian and aesthetic one will identify an "ethics of imagination" capable of proliferating an unlimited multiplicity of political, legal, economic and personal decisions that live and breathe by an anarchic breeze which, like the wind, can never be commanded nor entirely predicted.

Whether it is possible to bring Levinas forward as inseparable from the core of contemporary utopian discourse is, in my submission, central to addressing some long-standing questions inherent to his philosophy, including his relationship to politics, law and art. In fact, it is asserted that resolving Levinas' long-standing ambivalence with respect to art is the missing element needed to bring his thought from the realm of the philosophical to the political. Gerald Bruns notes that Levinas "frequently found in poetry and art conceptual resources for his thinking" that explains why the ethical in his work was never far removed from the aesthetic.[28] But in what sense the ethical and the aesthetic are united has never been coherently worked out. The challenge of designing between totality and infinity as an aesthetic question, the question of heterotopic politics today, squarely engages with Levinas' eschatological philosophy and draws it into the political and legal realm in a manner without precedent.

Fortunately, this attempt to conceive a form of intentionally open decision making and design is not without precedent. There is today a political movement in Toronto that identifies as both "uTOpian" and aesthetic.[29] Faced

[28] Gerald Bruns, "The Concept of Art and Poetry in Emmanuel Levinas's Writings" in Simon Critchley and Robert Bernasconi, *The Cambridge Companion to Levinas* (Cambridge: Cambridge University Press, 2002) 206-233 at 207.

[29] The roots of the uTOpian movement date back as far as 2003: Michael Barclay, "This is Torontopia" (*Exclaim!*, September 2006, 26-27), 26. By 2005, uTOpia had become something worth recording for posterity. It has been most cohesively documented by a local publisher: Jason McBride and Alana Wilcox (eds.), *uTOpia: Towards a New Toronto* (Toronto: Coach House Books, 2005). The unprecedented success of the first volume resulted in two sequels: Jason McBride and Alana Wilcox (eds.), *The State of the Arts: Living with Culture in Toronto* (Toronto:

with the question of the question of designing the world anew, that another world is necessary, Torontonians sought not to instantiate a new totality or grand vision but instead made way for "constituent imagination" to propose an endless iteration of radically unplanned ideas. The movement found its genesis not in politics, economics or law but in art. Drawing on a multiplicity of environmental, globalized, sustainable, artistic and home-grown philosophies, the ongoing effort is to discover and express a renewed conception of utopian and idealistic thinking that is simultaneously critical and constructive, while also embracing a social futurity beyond ideological, teleological or monistic visions of totality. What began in 2003:

> as a sly wink in the indie music scene, the term "Torontopia" stared appearing on posters, on flyers, in blogs and song titles… Torontopia was/is about re-imagining your city, creating new models, forging new communities, building sustainable institutions, celebrating diversity. It's not foolish enough to boast of a perfect society; it relishes the imperfections, the mundane, the everyday, and in the process inspires art that could be either ephemeral or epic – or both.[30]

At the core of the uTOpian method is a spontaneous, decentralized and entirely unpredictable form of interventionist guerilla art deployed to manifest moments of unintentional encounter within the normalcy of everyday. It is comprised of a vast array of liminal works of public art in parks, on sidewalks, projected against concrete edifices, hidden in alleys, tucked beneath highways, and squeezed between cracks in the pavement. Each work acts like a genius bomb in official space, interrupting the invisible normative order sustaining the urban landscape and world around us with an explosion of possible new connections. Like Jordan's canvases, uTOpian artworks gently draw the passer-by

---

Coach House Books, 2006); Jason McBride and Alana Wilcox (eds.), *GreenTOpia: Towards a Sustainable Toronto* (Toronto: Coach House Books, 2007).

[30] Barclay, *ibid.*

into an unexpected relation of asymmetry, delights them with surprise, introduces the intersection of distant concepts, connects them to hitherto unimagined "others" across virtual conceptual spaces, and leaves a lingering opportunity to think and create the world otherwise by seeing the city and world otherwise. Each work removes an everyday object from its normative forcework and illuminate it with a host of new possible connections and its existence as an infinite number of possible simultaneous instances beyond its official use and intention. Good ideas can emerge from anywhere in a participatory vision of design that is creatively collaborative and intersubjective, and thus more responsible.

Maria Legault, *Free Sugar in the City*, ongoing performance filling holes and cracks in the city with pink icing, Toronto. Photograph from the artist's website, http://www.ccca.ca/performance_artists/l/legault/legault_perf1/city/images/20.jpg

Faced with these new ways of looking and connecting with unseen others by playfully permeating official and disciplined patterns of everyday objects and existence, each work contributed to a TO-ronto that is a vision of constant becoming, a move "to" or "towards", an always active u"TO"pia. These specifically uTOpian works show how a profound form of resistance is achieved

through reusing, repurposing, reconfiguring, reorganizing and redesigning existing places, spaces, objects and relations with nothing more than a new grammar where "world order = word order", this time predicated on unlimited aporetic juxtaposition, virtual simultaneity and re-scaled proximity. Each work shows how there is a "utopian surplus" available in everyday objects if only we know how to look and experience them as such. The works therefore instantiate a vision of utopia without a fixed prior image of it, impart a sense of responsibility and proximity to others without prior relationship, and thus achieve a sense of "design without design."

Now, some seven years after this artistic movement began, broader society is increasingly engaged in the effort of conceiving a law, politics, and economics which falls somewhere within the difficult discourse between metaphysics and ontology. Unsurprisingly then, a dialogue between uTOpia and Levinas is indicative of broader attempts to understand the "question of the question" of design and responsibility as more than a procedural or moral concern. Many are today writing about this "return to the aesthetic" as a way of thinking and democratically activating constituent imagination in a new and infinitely productive form of citizenship that not only provides rights and freedoms but asserts an obligation to create responsibly.[31] In an ethical milieu in which no clear account exists to ground these new demands on responsibility – either ethical realism or relativism, virtue ethics, deontology and the like – the only escape seems to be creativity itself. Art alone has taken up the challenge, recognizing perhaps that in a time of profound irresponsibility the critique posed by art would be the challenge of responsibility itself.

[31] See for example: Jonathan Loesberg, *A Return to Aesthetics: Autonomy, Indifference and Postmodernism* (Stanford: Stanford University Press, 2005); Isobel Armstrong, *The Radical Aesthetic* (Malden, Mass: Blackwell Publishers, 2000); Stevphen Shukaitis and David Graeber (eds.), *Constituent Imagination: Militant Investigations, Collective Theorizations* (Oakland, CA: AK Press, 2007); Alison Ross, *The Aesthetic Paths of Philosophy: Presentation in Kant, Heidegger, Lacoue-Labarthe and Nancy* (Stanford: Stanford University Press, 2007); Ziarek, *supra* 17; Mau, *supra* 1.

Chapter two therefore begins with a primer on Levinas' eschatology in relation to the question of utopia and social imagination. Specifically, it attempts a Levinasian response to the claim repeated since Tertullianis that "another world is necessary." I read this not as a demand or need based in a certainty about "what is to be done," but rather as the expression of a desire "for the outside" – for the externalized, the invisible, the other – that does not quite know what historically self-actualizing terms like "utopia" or "idealism" might mean in the post-modern world and philosophy. Levinas' philosophy guides us in the strange inversion of metaphysics from the pursuit of beautiful, closed, and perfectible concepts of the *transcendent* to a metaphysical *exscendence* of openness and infinity without the messianic.

After establishing the relationship between contemporary utopian thought and the fundamental character of Levinas' philosophy, chapter three begins the task of determining whether the art in uTOpia operates as a Levinasian phenomenology. For Levinas, art is a double-edged sword. Classical art, he asserts, works to re-present things through Platonic metaphysics, as divorced from the world and context, elevated above an in precedence to it, abstracted from the lived experience of the everyday. In this mode, art reinforces hegemonic orthodoxy and normative forceworks, operating akin to a black-letter law that disciplines without listening. As a one-sided conversation, its social function becomes a form of "artistic idolatry" marked as "the supreme value of civilization."[32] Such images "mark a hold over us rather than our initiative" and register in the observer "a fundamental passivity" (CP 13). Because this art has no place in the world, it is stored in museums and galleries

[32] Emmanuel Levinas, *Collected Philosophical Papers* (Pittsburgh: Duquesne University Press, 1998), 12, 13 (hereafter CP). I shall also refer to the following key works of Levinas, designated by the initials of their titles: *Totality and Infinity: An Essay on Exteriority* (Pittsburgh: Duquesne University Press, 1969) (TI); *Otherwise than Being or Beyond Essence* (Pittsburgh: Duquesne University Press, 1981) (OB); *Entre Nous: Thinking of the Other* (New York: Columbia University Press, 1998) (EN); *Existence and Existents* (Pittsburgh: Duquesne University Press, 2001 (1947)) (EE); *Proper Names* (Stanford; Stanford University Press, 1997) (PN).

to protect it. The question for both Levinas and political activism today is how, if at all, we can "retrieve some ethical dimension of *poiesis*," the poetry of making, "from the faceless Civilization of Images that informs our experience?"[33] Art in its more contemporary form in uTOpia provides one reply. Rather than substitute reality for abstractions, activist art has the opposite intent and effect of "darkening" or "thickening" material relationships to present them in their gritty, messy, multi-contextual reality. Jordan's work demonstrates how a single cell phone or plastic bag can be logarithmically expanded from a particular context and seen in its true reality as it may appear to others: one phone among millions, each having a use and a life, each resulting in a limitless number of connections, each contributing to a cumulative environmental footprint, and each as easily dropped in a Toronto gutter as shipped to an illegal waste metals foundry in Nigeria. As a phenomenologist, Levinas appreciates just how a single object implicates an almost infinite number of potential scales and ways of looking: political, gendered, economic, trans-national, ecologic, personal.[34] It is this "simultaneous" character of an object of art that lends uTOpian works their toe-hold in Levinasian phenomenology. Because uTOpian art is predicated (in part) on producing an experience of "interruption" in social and political space without preconceived edges and no prior relationship, and which shows the simultaneous character of an object or relationship in its virtual "other" contexts, it does not re-present things in their absence but seeks to present absence itself as an ethical impulse, open to new virtual possibilities and the call of unseen others. In this way, modern art allows even the casual passer-by to glimpse visions of the world otherwise in a way that contests conceptual closure and

[33] Kearney, *supra* 24 at 109.

[34] As Richard Howitt writes: "The interpenetration of scales and the co-construction of places and identities at several scales parallel the shift between individual, collective and universal notions of self. In analytical terms this involves the interpenetration and co-constitution of social, economic, environmental or political relations at the local and/or national and/or global scale." Richard Howitt, "Scale and the Other: Levinas and Geography" 33 Geoforum (2002) 299-313 at 311.

metaphysical thinking. For Levinas, this "vision" without an "optics" is the appearance of the ethical relation itself:

> The eschatological vision breaks with the totality of wars and empires being understood as a totality, but institutes a relation with the infinity of being which exceeds the totality. The first "vision" of eschatology (hereby distinguishes from the revealed opinions of positive religions) reveals the very possibility of eschatology, that is, the breach of the totality, the possibility of a signification without a context. The experience of morality does not proceed from this vision – it consummates this vision; ethics is an optics" (TI 23).

Appropriately, such art does not need a house to be at home anywhere in the world; its expression and meaning is found on the street, in the subway, on the side of buildings and underneath park benches. Its validity, justification, meaning and authenticity is not linked to where it is situated or what category it constructs and reproduces, but rather the very fact that it is situationist, resists thematization, and recalls those absent others into immanence. It is, to use Levinas' phrase, a "vision without image," (TI 23) and thus shares in the contemporary utopian impulse.

Nevertheless, absence alone is not a sufficient experience of the "other" from which to craft responsible policies or law. Although Levinas may be willing to accept modern art as a means of "thickening" or "darkening" of reality, as shining a more ethical light on objects to reveal their simultaneity and scale, these objects are nevertheless in danger of falling back as reified, idolatrous re-presenters of the absent other. Levinas can not admit to a concept of responsibility that accepts a signifier for the other for this leads to the very abstraction and totalization he is trying to avoid. Even though the art in uTOpia explicitly calls upon my invisible *a priori* relation to invisible things and others, and thus places me in proximity to them, it does so, Levinas claims, as a form of "trace," as a "fall from grace" that threatens to distort the other and destroy the

ethical relation. Levinas instead gives all priority to speaking, to the active, face-to-face engagement in "saying" rather than the reified passivity of "the said." For art to be a saying, it must call out: "here I am, here I am for the other." It must be made available as a form of "substitution," not to stand for an-other in re-presentation but rather willing to sacrifice for the other. The question to be answered here is whether the liminal, temporary, situated character of uTOpian art gives it the quality of a "saying" rather than reifying forcework of the "said." The very fact that uTOpian art is divested of its meaning when taken out of context and placed in an art gallery seems to indicate that, at least on a very local level, it has a surplus of meaning characteristic of a "saying." This, in addition to its necessarily experiential and interactive qualities, lend it the power to facilitate and encourage dialogue within the city in a constant, midrashic re-reading of it.

Chapter four will finally ask what the outer limits of Levinasian proximity will allow. uTOpian art is mostly conceived as a form of interrupting local arrangements which may (or may not) lead to wider considerations. A long-standing challenge of Levinas' philosophy, one which he frequently struggled to articulate, is how one makes the political move from situating responsibility as between face-to-face others, the negotiated "saying" between I and Thou, to extend the priority of responsibility to the third party, the I and the We, and so on to the city, state, and world. uTOpian art seems to heavily cite notions of global responsibility and ecological interdependence, but can a Levinasian "ethics of imagination" stretch as far? As Manderson characterizes it, the concept of responsibility in Levinas is a question of proximity, for:

> It is infinitely deep, not infinitely wide... Responsibility is infinite in the sense that it is insatiable, so to speak, but not in the sense that it is indiscriminate. This is the point that makes Levinas relevant to law, and not merely

> another homily in favor of the universal brotherhood of man.[35]

To explore the question of proximity and responsibility in Levinas, this final chapter shifts its gaze to the Green Corridor project in Windsor, Ontario. Lead by Toronto artists contemporaneous to the emergence of the uTOpian movement in Toronto, the Green Corridor shows an ethical aesthetic at work across municipal, provincial, national and international scales.[36] In its activism and accomplishments, the project provides a very concrete means to examine how the "ethical imagination" interrupts the dialectical *Sturm und Drang* in law between the "is" and the "ought" as a strategy for revealing "cans." These opportunities expose how official systems of designing and monitoring responsibility – municipal plans, municipal review boards, environmental regulations, community consultation – are in fact inferior and less responsible forms of design than the ethical imaginary aesthetic. Entertaining an "ethical imagination" within law helps it reach across foundational grounds that no longer adequately represent reality. It thus accelerates the opportunity for reform insofar as it furnishes law makers with a new grammar of design responsibility. The claim is that this grammar instantiates an intersubjective discourse that converts critical analysis into creative manifestation and posits law as an institution furthering socially responsible "design beyond design." Indeed, legal scholars like Alexandre Lefebvre are demanding the need to "develop more sophisticated ways of stating the problem of creativity in adjudication" beyond the traditional reprehensions of "judicial activism" or "judicial accident."[37] In his view, creativity is typically understood as a faculty

---

[35] Desmond Manderson, *Proximity, Levinas and the Soul of Law* (Montreal: McGill-Queens University Press, 2006), 159-160.

[36] http://www.greencorridor.ca/. The present author was a participant in this project for a year and a half in 2004 and 2005.

[37] Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press, 2008) at xxi.

"extrinsic to the law, as something that could, if perhaps only in principle, be eliminated from it." Instead, "we must come to terms with [creativity] if we are to understand law and adjudication" and appreciate its role in context of the everyday operation of the law.[38] The "ethical imagination" shows how legal discourses dominated by pre-defined rights, entitlements, and forceworks delimiting both the "is" and the "ought" must be combined with a newer sense of obligation and responsibility as a question of participatory and pluralistic citizenship in the heterotopia of otherness.

Time, I would offer, has been kind to the philosophy of Levinas. The development of post-industrial society, along with its ecological footprint and technologies for global change, draw long-standing questions at the heart of Levinas' philosophy into bold relief. Whereas Levinas has hitherto been a necessary adjunct to the question of designing society, a counter-balance to liberalist ideological narratives of triumphant inclusivity and multiculturalism, Levinas' philosophy as an "ethics of imagination" is now poised to emerge as a central component for making responsible choices about social design at any number of microscopic to macroscopic scales.

2. The Question of the Question of Utopia

A. "Another World is Necessary"

Although Levinas himself wrote sparingly about utopia *per se*, his philosophy bears an uncanny synchronicity to the burgeoning ethical aesthetic uTOpia movement in Toronto. As Richard Cohen perhaps best summarized this double-move, by adopting the ontological philosophy of Levinas,

> Philosophy has finally seen through the limits of its own longstanding epistemological bias… [and] Godel has shown the impossibility of a self-enclosed axiological system of mathematics… Two alternatives have opened up for post-

[38] *Ibid.* at xxi – xiii.

> epistemological philosophizing: the aesthetic and the ethical.[39]

To understand this move, however, it is necessary to situate Levinas' philosophy in terms of the development of Western thought. Levinas quite distinctly traced two major movements in Western philosophy: the continuous tradition of metaphysical epistemology begun by Plato, and the move to phenomenological ontology begun by Husserl and Heidegger. The shift in these two antipodes is elegantly exemplified in the development in utopian thought from the Platonic to the uTOpian as conceptualizing a response to the question that "another world is necessary."

For is not every hope and dream for a better world encapsulated in the demand that "another world is necessary," a demand which, in its hesitancy about which world is necessary, is really a question? And hasn't this question already been repeated everyday in the Hellenic tradition? What novelty in material conditions, technology, communications, politics, philosophy or culture presumes that when we ask this question today, at the end of the century of metaphysical political totalities, we mean that the question has somehow changed, is somehow different, will now lead to increased freedoms, greater equality, and less violence simply by being asked and acted upon? What, in other words, is the utopianism of the present, and why does the utopian demand no longer seem satisfactory in itself?

The tension between the demand that "another world is necessary" and the question mark that is "which world?" is the illusory difference between the totalities of utopian and dystopian, wherein the possibility of escape is locked

[39] Richard Cohen, *Ethics, Exegesis and Philosophy: Interpretation after Levinas* (Cambridge: Cambridge University Press, 2001), 12. See also Karen Crawley, *Limited Ink: Interpreting and Misinterpreting Gödel's Incompleteness Theorem in Legal Theory* (Montreal: University of McGill Thesis Dissertation, 2006).

within the demand itself, the demand between jailer and jailed.[40] This dialectic – just one of many – is explicitly between two political worlds linked by a presumed and formal arrow of time: "this one," the present that reads history as the anticipation of the demand, and the "another" that follows after and which is known to respond to the demand. This act of transformation or translation from the past, through the present and towards the future is expressed as the necessity – the *need,* the fulfilling of a lack which is known and experienced – of *the being* of the political present *to become* what is hypothesized or evangelized about the after: the order of the more just or more orderly, more Good or more necessary. This "utopia of the after," the much maligned utopia of calculable and idealistically determined historical teleology, is merely the antithesis to the yearning for the classical or conservative "utopia of the nostalgic." In either vision, in satisfaction of either desire as need to complete the incomplete or return to past grandeur, the unknown future is made a servant of the present to be overcome by itself (just as with the more familiar *re-vision* of history). The unknown future is itself delayed and the possibility of escape or transcendence – freedom, equality, fraternity – is reduced to the political within itself. Or as the neo-conservative Donald Rumsfeld said of the need to violently foreclose dangerously unimagined futures from happening: "there are also unknown unknowns, the ones we don't know we don't know... it is [this] latter category that tend to be the difficult ones."[41]

The demand for "another world" and the necessity that a world be demanded are inseparable in this reading because of the immanentism of the

[40] An acute reading of the utopianism of J.S. Mill and Bentham in light of what follows can be found in chapter one of John Llewelyn, *The Middle Voice of Ecological Conscience: A Chiasmic Reading of Responsibility in the Neighborhood of Levinas, Heidegger and Others* (London: MacMillan Academic Press, 1991).

[41] February 12th, 2002, United States Department of Defense news briefing, in response to questions about phantom linkages between the government of Saddam Hussein and the supply of weapons of mass destruction to terrorists. Transcript available online (last checked June 15th, 2006): http://www.defenselink.mil/transcripts/2002/t02122002_t212sdv2.html .

concept "world" which collapses place and time, as in the Old English root *w(e)ourld* from the German *welt*, into the unifying "age of man." As a philosophical gesture complimenting the political, "man" is posited as a foundation for all questioning where the needs of the ego-logical "I" ground all epistemology and ontology. For Heidegger, "this gesture of foundation... is not novel; it is *the* classical metaphysical gesture with respect to politics that one finds in Plato's *Republic.*"[42] This is a closure of the possibility of "another world" rather than an openness to it because the struggle to find harmony between the "I" and the "We" is reduced to a search for an egology of sameness: the state of nature, the civilized mind, the natural man. It is a search where the future is only open to the present in itself as becoming. The need or necessity that demands "another world" is lost to this one as the mere filling of a lack, whereas the desire to attain a truly other world, an-*other*, one not yet possessed or needed, is collapsed into this need, into the need to present ever more comprehensive vision. Any political questions thus remain trapped in the form of a demand and the question "which world?," and the question of the utopian question, has not yet been asked without already initiating its own answer, without already foreclosing the very unknown future in whose name it speaks and for which it claims a right to as "more just." In other words, the "saying" – the active pursuit of an always distant justice – is reduced to that which has already been "said" about it.

Such a politics of closure is experienced today as the paralysis of the classical concept of utopia. "Vision" and "revision" have been discredited (even in their secular formulations) as impossible and violently self-referential structural ends – the "comprehension that encompasses" (TI 34) – while preferentially remaining expedient over an ongoing and open-ended *process* of the apparently formless and subjectively arbitrary "visionary." The "need" for

[42] Simon Critchley, *The Ethics of Deconstruction* (London: Blackwell, 1992), 203 (hereafter ED).

justice and the "desire" to attain it have been conflated into a political simulacrum that grotesquely pantomimes its own malnourishment, that feeds on its own agony and procreates by accumulating itself like capital or poverty,[43] and which effaces the positivity of a relationship that comes "from remoteness, from separation, for it nourishes itself, one might say, with its hunger" (TI 34). Negator and negated are inmates of the same institution, "posited together, form[ing] a system... negating while taking refuge in what one negates" (TI 41). Politics, in this formulation, is locked in an endless iteration between perfect structure and perfect anarchy, between total objects and total relativisms, between the self and self-same, and lacking in precisely the *otherness* of the Other. The expressive hope for "an-other world" is rendered politically inert no matter how strongly it is demanded. It is reduced to an intuitive yearning that shares a truly utopian desire to access that which is excluded from politics, that which has *no-place* and as absent in it, but which is unable to re-present these absent actors without totalizing them in this very utopianism as vision. How is the impasse between the no-place of idealistic totality and the no-place of political exclusion, of non-represented absence, to be crossed? How is utopia to exceed itself?

B. Levinas and the an-other as an-arche

When we speak the language of responsibility to beginnings, ends and the idealistic possibility of "others" beyond the violence of metaphysic foundation, we are speaking with Emmanuel Levinas. For Levinas, the possibility of the utopian can only be thought where metaphysical questions about ideal social conditions can not go: beyond "being" in itself. Building on the phenomenology of Husserl and the ontology of Heidegger, Levinas finds that metaphysical thinking and the history of utopian imagination since Plato has been an ontological effort to reduce human happiness to a theme or scheme

[43] Jacques Derrida, "Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas" in *Writing and Difference* (trans. Alan Bass) (Chicago: University of Chicago Press, 1978(1967)), 79-153 at 79-80.

capable of encompassing all relations between the individual "I" and the social "We." Though there have been a wide variety of historically postulated ontological permutations on this theme – not the least of which are those "third terms" such as the Spirit of Hegel, the Being of Heidegger, the Good in Plato or Categorical Reason in Kant – all have argued from and towards an essentialism and naturalism of an "I" capable of constituting philosophical and political foundations in their selfhood (TI 43). In turn, the sameness of an "I" as common to all people (or absent in non-persons) can be invoked to command limits on freedom and equality within the "We," and also offers a ground from which the alien and other can be colonized, disciplined, and measured for authenticity. In time, these commands are reified into commandments, normative foundations from which an authority can assess the subjectivity of others from an "outside" no-place that privileges their perspective. Any attempt to conceive utopian societies is a claim to be speaking from an "outside" whose imagination is, in fact, firmly rooted in a framework of reducing every other to the same, including competing metaphysical foundations. Societies of such utopianism become societies of that which has already been "said" rather than open to the active process of "saying," societies of totality that have characterized the worst violence of the 20th century, and which similarly threaten the 21st century on a global scale. This is politics left to itself, the closure of metaphysics, claiming to be at once totalizing and outside of itself (TI 300; 212-14; OB 156-62). Idealism completely carried out reduces all ethics to politics. As Levinas notes:

> Thematization and conceptualization, which moreover are inseparable, are not peace with the other but suppression or possession of the other... Ontology as first philosophy is a philosophy of power... Universality presents itself as impersonal; and this is another inhumanity (TI 46).

The innovation in Levinas' thought, and why he is so incredibly important to the question of the question of utopia in our age, is his phenomenological insight that metaphysics does not begin with the onto-ego-logical *need* of the

demanding "I" to fulfill what is identified as a lack in its metaphysical system (just as every utopian account from Plato to Thomas More begins as social critique). Instead, metaphysics is inexorably intertwined with a desire for the "I" to exceed itself with something not yet possessed or known: the "other."

> The metaphysical other is other with an alterity that is not formal, is not the simple reverse of identity, and is not formed out of resistance to the same, but is prior to every initiative, to all imperialism of the same... The absolutely other is the Other. He and I do not form a number. The collectivity in which I say "you" or "we" is not a plural of the "I" (TI 38-9).

Although Levinas shares Heidegger's phenomenological belief (contra Aristotle) that contemplation of Being is through the sensory experience of an inexhaustible existentialism of everyday life,[44] he finds that the desire for the other is necessarily pre-eminent to Being itself because the experience of the self is only made possible through the other. Any attempt by the self to encapsulate or subtend the other (as Sartre argued was possible in *Being and Nothingness*) is to commit the Heideggerian error in which "Being is inseparable from the comprehension of Being... [and so] precisely mark[ing] the apogee of a thought in which the finite does not refer to the infinite" (CP 52). Levinas finds Heidegger's philosophy as reproductive of metaphysical violence because it reduces experience to Being, to something that can be subsumed and grasped in totality and known in the finite. Levinas exemplifies this distinction as the difference between "need" and "desire." To need something is to know it *a priori* and thus to experience it as a hunger or lack that demands ingestion and digestion to be satisfied. Conversely, desire is a want for the unknown, marked as the experience of the distance between two beings. It is a passion maintained in the permanence of that distance, and finds satisfaction in that distance. Being-

[44] A useful example of which are the lengthy contemplations of everyday objects and phenomenon in Marcel Proust, *In Search of Lost Time Volume I: Swann's Way* (trans. D.J. Enright) (New York: Modern Library, 1992).

as-need becomes the embodiment of the authentic and excellent. Levinas sees this as flawed as not all experience can be known. Levinas' is thus a philosophy of limits, of infinite experiences that resist the grasp of the I: death, insomnia, exhaustion.

Among these experiences, the originary limit experience at the heart of Levinas' philosophy is the emergence of the "I." Levinas' gesture to the infinite and unknowable as simultaneous to the emergence of the "I" is instructively similar in form to the Cartesian relation between the cogito and God. At the end of his *First Meditation,* Descartes describes the "I" as a prisoner locked in a dark jail, a primordial state in which no light is capable of illuminating even a notional awareness of the self. How this a priori state can be known by the non-conscious goes unexplained. Nevertheless, the *Third Meditation* provides the means of escape when the "I" is made aware of the existence of God as the idea of the infinite that already exists within the human mind. For both Descartes and Levinas, the presence of the infinite in the mind is placed and received with a non-intentional passivity that is passivity itself, "the pure passivity that precedes freedom is responsibility. But it is a responsibility that owes nothing to my freedom; it is my responsibility for the freedom of others" (CP 136). In turn, interiority has a relationship to alterity that is both non-violent and irreducible (TI 210-12). It is the distance between the self and the inability to fully grasp or comprehend the infinite which produces being (TI 210). But this comprehension is not a proof of the existence of God so much as it is an acknowledgment of a presence in the mind that is a fundamental rupture or exception in all categorical thinking.[45] What then is this rupture?

For Levinas, to call this rupture "God" is a phenomenological impossibility because the "I" can neither contain the infinite within itself nor experience the

[45] Hilary Putnam, "Levinas and Judaism" in Simon Critchley (ed.) *Cambridge Companion on Levinas* (London: Cambridge University Press, 2002), 42.

inexperienced (CP 53-54; 160-62; TI 48-54). Instead, Levinas places the God of Descartes in the Other, s/he to which any first shout of "I am here! Look at me!" from out of the primordial "*il y a*" is addressed, and whose response is always a surprise from outside of my experience alone. The other takes on the role of the sacred, infinite, unknowable, but nevertheless experiential as a face-to-face relation. The Other as God resists the ability to posit a place to stand or a perspective of the "outside," an approach most clearly enunciated in the utopian context by St. Augustine's perfectible City of God as the choice above the corrupt and banal City of Man. Man instead becomes the site of infinity:

> In thinking infinity the I from the first *thinks more than it thinks.* Infinity does not enter into the *idea* of infinity, is not grasped; this idea is not a concept. The infinite is the radically, absolutely, other. The transcendence of infinity with respect to the ego that is separated from it and thinking it constitutes the first mark of its infinitude. The idea of infinity is then not the only one that teaches what we are ignorant of. It has been *put* into us. It is not a reminiscence. It is experience in the sole radical sense of the term: a relationship with the exterior, with the other, without this exteriority being able to be integrated into the same... Experience, the idea of infinity, occurs in the relationship with the other. The idea of infinity is the social relationship (CP 54).

The Other who "dominates me in his transcendence is thus the stranger... to whom I am obligated" (TI 215). The encounter with the other can not be reduced to Husserl's intentionality thesis between the *noesis* (the intentional gaze) and the *noema* (the objects that I give my intention to) because there is more to this person than simply their face or simply an absolutely relative subjectivity. This "excess" or "surplus" of the face-to-face encounter – an excess that occurs in all subjective experience – always resists my categories or vision of it because it can not be reduced to a totalizing representation. It calls into question the "I" and the same (TI 195). The face is merely a visage for an unknowable ego inside. Lived experience itself is infinite. "The way in which the

other presents himself, exceeding the idea of the other in me, we here name the face... The face of the Other at each moment destroys and overflows the plastic image it leaves me" (TI 50-1). The face-to-face is a final and irreducible relation which no concept could cover. But because this encounter is mutually constituting it is non-violent, and as such "maintains the plurality of the same and the other" (TI 203) and "makes possible the pluralism of society" (TI 291). For Levinas, "The relationship with the Other… puts me into question, empties me of myself… The I loses its sovereign coincidence with itself."[46]

What comes of this encounter is not a demand for vision but rather the necessity of language. The unknowability of the other resists any attempt to cast an image of it and eludes one's ability to grasp it whole (OB 78). Instead, it demands that I address myself to it. Levinas calls this conversation between others "ethics," the "speech that proceeds from absolute difference... [and] cuts across vision" (TI 194-95). The quest for utopia is thus located in an ethical discourse of the infinite where the idea of perfection:

> "exceeds conception, overflows the concept; it designates distance: the idealization that makes it possible is a passage to the limit, that is, a transcendence, a passage to the other absolutely other. The idea of the perfect is an idea of infinity... it is not reducible to the negation of the imperfect; negativity is incapable of transcendence. Transcendence designates a relation with a reality infinitely distant from my own reality, yet without this distance destroying this relation and without this relation destroying this distance" (TI 41-2).

This ethical discourse exposes how "idealism completely carried out reduces all ethics to politics" in which the Other and I are reduced to merely playing the role of "moments in a system, and not that of origin" (TI 216-17). This is the key to Levinas' thought as politics. Plato's *Republic* was "both a critique of

[46] Emmanuel Levinas, "The Trace of the Other" (1963) in Mark C. Taylor (ed.), *Deconstruction in Context* (Chicago: University of Chicago Press, 1986), 350-53.

the polity of Athens and a utopian constitution for a polis to come in the future"[47] predicated as it was on the metaphysics of eternal forms. But "being is not a totality… Being is always a becoming."[48] It is an anti-foundational foundationalism. It does not exist in either the conservative "there was" or the liberal "there will be." Rather, for Levinas, the messianic and the eschatological, like the ethical itself, invite "not a question of the future, but a disturbance or interruption of the present… The Messiah is not a postponement into the distance future of a current problem: on the contrary, "le Messie, c'est Moi.""[49] Without this constant source of resistance, multiplicity loses its meaning, and all language, politics, and discourse merely contributes to its own absorption by the universal State. "The introduction of the new into a thought, the idea of infinity, is the very work of reason. The absolutely new is the Other" (TI 219).

To summarize then, Levinas shows how the expression of utopia as immanent in the world and expressed as a necessity leaves politics to itself at precisely the moment that one wants most clearly to over-come it. This anti-foundational gesture does not lead to an absolute relativism however because the Other, while infinitely unknowable but experienced by me, is unavoidably placed in a relationship with me. My relationship to the Other is a phenomenological limit experience, "further away than any external world and deeper than any interiority."[50] It is an eschatology without a messiah, a relationship that is ethics itself, and is maintained through our mutually constitutive presence as phenomenologically traceable entities. No vision of the face of the other will suffice as a complete representation that does their difference justice. Instead, we call on language in its infinite malleability and

[47] Douzinas, *supra* 16 at 36.

[48] *Ibid.* at 16.

[49] Manderson, *supra* 35 at 76.

[50] Ian Buchanan and Gregg Lambert, *Deleuze and Space* (Toronto: University of Toronto Press, 2005) at 6.

fallibility to express our needs and desires. Because there is always a reduction that occurs between what one spontaneously "says" and is historically "said" to have communicated, language always over-flows and betrays itself, resisting any attempt to adequately translate, represent and contain the other. The ethics of alterity is thus a call to achieve relations with others that are excluded from common communion: communication, community, and comity. This call is felt as a desire for the infinite, for *an-arche*, for a responsibility and justice that exists simultaneously between all Beings and which asks us to consider existence otherwise than Being reduced to some colonizing principle. This call for that which is "to come" rather than to that which is posited or presumed is the reform of utopia as a metaphysics of the infinite rather than the total. This call, which is not known as a pre-defined need or lack but as a desire for the unknown, as a desire "for the outside," must thus be addressed to everyone, to all the others. It is the true possibility of an anti-foundationalist political plurality that resists any gambit to merely obscure foundations and envelope the other, as we might characterize the intersubjective discourse ethics of Jurgen Habermas rooted, as it is, in Enlightenment rationalism.[51] Levinas':

> foundation of pluralism does not congeal in isolation the terms that constitute the plurality. While maintaining them against the totality that would absorb them, it leaves them in commerce or in war. At no moment are they posited as causes of themselves (TI 221).

This opens up the possibility of social discourse to a playful, heterogeneous, creative and radical imagination. Only that which is "to come" can hope to "over-come," to exceed the future as futurity itself made present. The very work of reason is the idea of infinity, and only the infinite Other is the absolutely new idea.

[51] An extended discussion of Levinas in relation to Habermas and Gillian Rose can be found in Manderson, *supra* 35 at 73-83.

Legal scholar Costas Douzinas writes that "religion was the first institutional response to the need to link humanity with absolute otherness."[52] As the shift in Western society has gradually pulled towards secular notions of the sacred, in which the experience of the other and the experience of post-ideological identity politics of the subjective are the central manifestations of the unknowable,[53] the need to find a compatible form of critical utopianism (and a politics and law to match) has emerged as a relatively common request in contemporary Continental political and legal philosophy. However, most of these accounts leave us dangling with the question alone. For Douzinas and Geary, the conversation about utopian thought begins and ends with the likes of aesthetic Kantians like Ernst Bloch and Theodore Adorno, and situated consequently within a discourse of rights. Although they recognize the need and potential of "the postmodern utopia to shelter human relations from reification" they base the utopian potential of critical theory as directed at:

> turning human rights from governmental triumphalism and diplomatic somnambulism into utopian hope [as] the greatest contribution of our political culture to the new millennium. Human rights can fill the non-place of the postmodern utopia… [while recognizing that] human rights are both the malady and its cure. [54]

Present philosophies of "the end," they write, "are accompanied by the powerful utopian imagination of human rights which the new order has positivised, tamed and co-opted to a large extent, but which retains a huge

---

[52] Douzinas, *supra* 16 at 14.

[53] Somerville, *supra* 18 at 53-63. For Richard Rorty and Gianni Vattimo, the end of metaphysics presages not the end of religion but the emergence of a "secular sacred." See Richard Rorty and Gianni Vattimo, *The Future of Religion* (New York: Columbia University Press, 2005).

[54] Douzinas, *supra* 16 at 105. Douzinas and Gearey discuss the utopian tradition up to the advent of critical theory at 97-106. See also Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart Publishing, 2000); Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2006).

creative ad explosive potential." [55] In contrast, however, one preeminent human rights lawyer in Ontario put the predicament to me thusly: "Am I just maintaining the achievements of history? We've enumerated the grounds of discrimination. I feel like nothing new is being invented."[56]

In effect, the same question posed by Bruce Mau, not "what now" but "now that we can do anything, what will we do?" is a question law and politics have yet to ask of itself. Indeed, the "question that killed Critical Legal Studies" was "what now?"[57] As Manderson characterizes this dangerous lack of imagination:

> … the first order of business in a law school is a crash course in disillusionment… Legal education suffers in this respect from a fatal flaw: it is vigorously critical of legal forms and analyses, but it frequently lack any theoretical framework that would help our students work towards a better system or a better way of explaining it.[58]

Douzinas himself makes a gesture towards the exit but doesn't describe the way out:

> In a wider sense, law and literature has been called upon to ground a political order… [but] law and literature, as received by the academy, as practiced to date, is another form of restricted jurisprudence… infested by a rash of themes that have been generated by a particular set of problems within liberal thinking. [59]

---

[55] Douzinas, *supra* 16 at 99.

[56] Kate Sellar, in conversation with the author.

[57] Richard Michael Fischl, "The Question That Killed Critical Legal Studies" 17 Law & Social Inquiry 4 (Autumn, 1992), 779-820. See also Adam Gearey, *Law and Aesthetics* (Portland: Hart Publishing, 2001) at 25 - 49 on the question of Critical Legal Studies in particular.

[58] Manderson, *supra* 35 at 100.

[59] Douzinas, *supra* 16 at 336.

One merely repeats this gesture by "privileging a different sense of the literary." [60] For Douzinas, as for Ziarek, "this is an exemplification of our general theme: that the critical haunts the orthodox."[61] To the extent that ethical themes appear, "they have been carefully filtered to remove anything that might damage the ability of literary thinking to save the law from its perceived rigidity."[62]

Recalling Cohen at the outset of this chapter, the direction of "post-epistemological philosophy" appears not to be the ethical or the aesthetic, but the ethical aesthetic. Manderson and Critchley seem to share the same opinion, characterizing this impulse as "the necessary instability of ethics:"

> It is not a place or an abode or any promised stability of rules but something rather more uncomfortable: the scruples under our feet that keep us on the hop... But although ethics is not therefore reducible to a legal system or a politics – *pace* [Gillian] Rose – it can still be informed and questioned by it – *pace* [Jacques] Derrida. The result is a "certain creative antagonism" in which the political life that thinks only of the social whole and weighs things only in its own terms and by the use of its own self-sufficient calculus or grammar is held up to (and held up by) the self-questioning gaze of our particular relationship with each and ever other. Law is not ethics, certainly; ethics is rather the scruple that constantly discomforts law and impels it to move.[63]

Levinas himself wrote only sparingly about the notion of utopia, less about adapting his philosophy into politics, and very little on the question of aesthetics. Finding all three expressed and operational in a contemporary sense of uTOpia means tracing the development and appearance of the "absolutely

---

[60] *Ibid.* at 337.

[61] *Ibid.*

[62] *Ibid.*

[63] Manderson, *supra* 35 at 83, citing in part Critchley, *supra* 42 at 233.

new Other" as the "certain creative antagonism" in politics and law as from the face-to-face encounter, through aesthetics, and into Levinas' account of language as a meditation between the saying and said.

C. Being in Heterotopia: Phenomenology, Language and Aesthetics

If it is only the "absolutely new" which is the Other, one whom I encounter in face-to-face proximity, how then does one introduce "the new" into politics, and how does one use politics to generate the new? The infinitude of phenomenological experience and responsibility and the ethics of alterity recast the concept of utopia as a strategy for displaying "cans" rather than "oughts" and opposes it to the "pragmatopian" and teleological "is." But if the ethics of alterity is non-thematizable by definition, then how does one translate it into a political methodology capable of mobilizing groups and institutions to act, or which is capable of having conversations not between the I and Thou but between the multiple and We? "What meaning" Levinas asked, "can community take on in difference without reducing difference?" (OB 154). Can this utopia be made a politics?

Two avenues present themselves to this effort. In the first instance, the question of the question of politics, as posed by Philippe Lacoue-Lebarthe and Jean-Luc Nancy in the 1980's, wonders if politics doesn't already contain the sort of discourses of rupture and deconstruction that Levinas exemplifies as ethics itself and which defines a reinvigorated utopian impulse. The second instance is to consider the creativity of utopia for instantiating alternative political responses outside of established foundations as a sort of aesthetic-ethical gesture. It is in this later conception that Levinas' philosophy reforms utopia as an ethical style of thinking which takes on the character of a pervasive – almost pneumanal – anarchic breeze that is always gently blowing.

On the first point, Simon Critchley's *The Ethics of Deconstruction* is most helpful. Critchley questions whether deconstruction, which bears a closeness to

Levinas' effort to continually upset the "said" with the irreducible surplus of language, "fails to thematize the question of politics as a question – that is, as a place of contestation, antagonism, struggle, conflict and dissension on a factual or empirical terrain" (ED 189-90). The answer to this question is "no" insofar as deconstruction, like Levinas' "saying," exposes how questioning as the origin of thinking can be identified with the ontological Being of Heidegger. By exposing this question, deconstruction raises the "question of the question" and so places thinking in relation to the Other. However, this passage through the undecidable does not offer any substantive political content other than to note the very madness that is the moment of decision making (ED 199-200). For Lacoue-Lebarthe and Nancy, deconstruction has "re-treated" politics (*la politique*) but has failed to "re-trace" its essence (*le politique*) into something otherwise than metaphysics (ED 206-7; 214-15).

The same opinion is shared by Levinas. In one of his earliest and most famous essays, Jacques Derrida took Levinas to task over the relationship between language and being in *Totality and Infinity*.[64] Levinas asserts that it is only the face of the other which transcends all signifying systems and allows the other to express itself. Such language of phenomenological proximity:

> which precedes linguistic signs, is actually an ethical language of the face as "original expression," as the "first word – you shall not kill." This is a language which explodes the "neutral mediations of the image" and imposes itself on us in a manner irreducible to the form of its manifestation.[65]

But for Derrida, language provides all the surplus necessary to over-come forcework configurations of epistemology or power as expressions which are always internally contradictory and contentious. In this view, a utopianism is

[64] Derrida, *supra* 43.

[65] Kearney, *supra* 24 at 113, citing Levinas, TI 157, 173.

never complete on its own terms; there will always be some conceptual crack in the foundation that can cause the whole edifice to fall under a deconstructivist critique. As such, Derrida contested the primacy Levinas accorded to the "face to face" encounter in *Totality and Infinity* as the only source of otherness. Levinas replied by writing *Otherwise than Being and Beyond Essence* as a defense of the phenomenological encounter.[66] The important issue here is "how Levinas himself is to retrieve an ethical poetics from a deconstructive discourse on imagination."[67]

This is not a question Levinas has had more success squarely confronting than any other critical philosophy. My feeling is that the positive and radically transformative strength in Levinas' work is demonstrated through a return to aesthetics. Levinas has already revealed that ethics is non-thematizable and that a face can never substitute as a total representation of the other who exists behind it. "Ethics is an optics" he writes, "but it is a 'vision' without image" (TI 23). This resistance is reproduced in the distance between the saying and the said as a reduction. However, Levinas' aesthetics are almost entirely preoccupied with the reduction of reality to its representative shadow, and he rarely explores the optics of ethics beyond the need for his iconoclastic resistance to idolatrous images.[68] In so doing, I argue, he misses out on a key externality that is increasingly confronting humanity: that our entire living environment is the product of our own design and the phenomenological experience of the

[66] Levinas also accounts for deconstructive thinking in a contemporaneous essay entitled "Ideology and Idealism" (1973) in Sean Hand (ed.), *The Levinas Reader* (Oxford: Blackwell, 2001), 235-248.

[67] Kearney, *supra* 24 at 113.

[68] Levinas' main aesthetic treatise is one of his earlier works, penned in reaction to reading Heidegger's "Origin of the Work of Art" and with a growing uneasiness for Heidegger's adoption of the National Socialist party: "Reality and its Shadow" in *Collected Philosophical Papers, supra* 32 at 1-14. Levinas continued writing about art, in part, in one of his earliest books, *Existence and Existents* (Pittsburgh: Duquesne University Press, 2001(1948)). Levinas would only return to the aesthetic themes decades later: Francoise Armengaud, "On Obliteration: Discussing Sacha Sosno" Art & Text 33 (Winter 1989) at 30-32.

existential is now to a great extent the work of Others. In the face of this hypertrophic force of totality, the ethical imperative is to ensure that infinity remains something open, that the impossible remains a practicable outcome of the everyday.

Simultaneous to this new reality, the question of "design" is also dominating the post-industrial economy. The intellectual property invested in an object often greatly exceeds the use value of the object, which is demoted to a secondary characteristic of the object's legitimacy and authenticity. Economies are shifting to economies of the creative, where objects and products don't count nearly as much as their design content and fashionability. Cities of the present, long the primary site for utopian imagination, have embraced this shift with zeal.[69]

Levinas' aesthetic philosophy in part helps us resist domination by calling upon the lived experience of others to contest the unreality of these trends, but it misses out on an important aspect: artistic creativity as keeping open the space in which his relational ethics is most powerful (cf. TI 84). The unaccountable excess between the active and ethical process of "saying" versus the reductive and representative practice of the "said" produces what Wayne Hudson calls the "utopian surplus."[70] This surplus, which is found in all cultural materials as a by-product of artistic creation, helps to generate utopian practices constituted of both reason (critique) and imagination (re-creation or re-iteration) because it recognizes that the "saying" of an artist is immediately betrayed as a "said" once it has been expressed as some phenomenological object. The artist, naturally, recognizes this effect and as a corollary of it is compelled to move on

[69] Compare to Richard Florida, *supra* at 21, who was recently awarded a $50,000,000 research grant to bring him to the University of Toronto and, presumably, institutionalize the uTOpian impulse.

[70] Wayne Hudson, *The Reform of Utopia* (Aldershot: Ashgate, 2003), 2-4.

and create yet more works. Thus, as a constructivist political program, this utopianism:

> depends on establishing simple institutional arrangements across a very large number of organizations that make the consideration, evaluation and redesign of proposals for reform a normal part of organizational life... even though no overall utopia can ever be achieved.[71]

All activity thus remains a contemporary enterprise, but with the important addition of a utopian impulse which de-formalizes time itself, and which exceeds "time and narrative" as a form of anti-foundational resistance.[72] According to Levinas, the "time" of universal history remains as the ontological ground in which particular existences are lost (TI 55), and it is only when "man truly approaches the Other he is uprooted from history" (TI 52). The aesthetic utopian impulse as ethics posits phenomenological moments in the system which are not designed to reconstitute it but rather transcend it iteratively and with the intention to be later exceeded. The utopianism in Levinas is not the temporalized promise of an ideal end or ultimate social being but time as marking interruption, as the creation of new spaces for negotiating between others, as a series of *entre-temps*. The instantiation of constructivist moments as the "saying" thus conflict with other such moments, and never seek to provide "the answer" to manifold problems other than to offer another conflicting response from outside a predominant and conventional normative dialectic. These moments promote awareness of the ethical other and choices for the

[71] *Ibid.* at 6.

[72] Here a useful comparison between Levinas' post-structuralism and Marxist structuralism is made in a consideration of Ernst Bloch's notion of time in utopia. A foreshadowing of Paul Ricouer's *Time and Narrative*, Bloch's notion of time nonetheless re-inscribes Marxist historicism back into his systematic imagination rather than freeing it from it. The very first words of Bloch's *Spirit of Utopia*, for example, begins with a formulation that is indictable according to the theory presented here: "I am. We are. And that is enough." A sustained consideration of resistance and aesthetics is found in Isobel Armstrong, *The Radical Aesthetic, supra* 31. Another useful comparison to Levinas would be Herbert Marcuse's *Eros and Civilization* in relation to Levinas' central notion of 'desire.'

different kinds of perfection that exist within specific contexts and which expose otherwise self-referential foundational claims and methods so often concealed by the social simulacrum. The result is the abandonment of either metaphysics or idealism as a monism – particularly in the sense of the "national aestheticism" that Heidegger claimed was immanent and collective – in favour of dis-aggregation and plurality which "opens the way for the utopian organizational perspective of non-uniformitarian community" of "critical cultures" and "a tensional conception of citizenship as a set of distributed comportments rather than a single ethic."[73] This is perhaps what we can say Levinas was referring to as the "relation without relation" (TI 271) where the "ethics as optics" is revealed ultimately as an *ethical style of thinking*.[74] This goes right to the heart of Levinas' philosophy, which questions "the semantics of the verbal form "to be" – inevitable stations of Reason – as the ultimate authorities in deciding what is meaningful" (EN 198).

In the following two chapters, each of these components – the "utopian surplus" of material reality and the way they encourage the linguistic "saying/said" to transpire are both examined in detail. Chapter three focuses on this material surplus or excess as a phenomenological form of "simultaneity." In uTOpia, the simultaneity of objects in their multiple relational scales is purposely exploited to create moments of interruption, moments where objects are "freed

[73] Hudson, *supra* 70 at 27-28; 77-79; 92-94.

[74] Where would we locate this effort in the taxonomy of ethics as a philosophy? Probably in meta-ethics if anywhere. Levinas is emphatic that it is the relationship between Others that is ethical, and not that an ethics is a product of that relationship. As the other is infinite, the ethics of it is a first philosophical principle. For a worthwhile look at the relationship between ethics and imagination, see Nathan Tierney, *Imagination and Ethical Ideals: Prospects for a Unified Philosophical and Psychological Understanding* (New York: SUNY Press, 1994). See also Elif Cirakman, "Levinas' Disruptive Imagination: Time, Self and the Other" 83 Analecta Husserliana (2004) 91–115. Others have speculated that art can mediate the breach between ethics and ontology: Jean Greisch, "Ethics and Ontology: Some "Hypocritical" Considerations" (trans. Leonard Lawler) 20 Graduate Faculty Philosophy Journal (1998), 41-69.

of the world."[75] In Levinasian terms, "the mode or way in which the artwork stands out from other objects"[76] is a form of art that evokes alterity rather than acts as a representative image that merely subverts form. In this way, art acts as a form of "interrogative design" in which each passer-by becomes moment of critique and reconstruction of official space. The later part of this chapter then takes up what exactly is at stake with this "troubling of the subject"[77] by examining how the trace to these absent others provokes a relationship of the "saying" over the "said," a relation which not only reduces the opportunity for reification and instantiates the ethical relation of the face-to-face, but which also imbues the encounter with an ethical dilemma that calls on me to respond. Resolving these relationships will show how the art in both uTOpia and Levinas coalesce into an ethics of imagination, a form of interruption that necessarily calls on the self and the other to critique and create critical structures out of the everyday.

3. uTOpian Aesthetics: Simultaneity and the Trace of the Other

A. Face to face with the work of art in uTOpia

The aesthetic tension in Levinas' philosophy emerges as between his phenomenological priority of the face of the other and its various potential forms of re-presentation. For Levinas, language, as well as art, is a fall from pure experience and thus the ethical. Anything else detracts from this originary relationship. As Jill Robbins notes:

> For Levinas, ethics is this putting into question of the self, the interruption of self arising in the encounter with the face of the other. The face is the concrete figure for alterity… the face's mode of presentation is described as

[75] Bruns, *supra* 28 at 209-210.

[76] Matthew Sharpe, "Aesthet(h)ics: On Levinas' Shadow" 9 text theory critique 29-47 (2005) at 32-33.

[77] *Ibid*.

> an exceeding… The face is an active surplus over the plastic image that would enclose it.[78]

The primacy of phenomenological experience in Levinas' philosophy places him in a contentious relationship with anything that would detract from that experience, namely, language and art. As discussed earlier, what comes of the encounter with alterity is not a demand for vision but rather the necessity of language. The unknowability of the other resists images of it, eludes one's ability to grasp it whole (OB 78) and instead demands that I address myself to it. Levinas calls this conversation between others "ethics," the "speech that proceeds from absolute difference... [and] cuts across vision" (TI 194-95).

It is this chief quality to his thought that finds Levinas characterizing art and images "as divesting things of their forms so that things cannot be made present as they are in cognition."[79] Art and ethics in Levinas' sense can be thought of:

> as fields in which disclosures of formlessness occur: in art, the amorphous power of being; in ethics, the Other who call me to responsibility. Each – possession in the case of art and revelation in the case of ethics – grips the individual, in the one instance dissolving, in the other singularizing individuality by positing the Other in her uniqueness.[80]

As Cohen writes, the aesthetic can very easily cause a Levinasian conception of heterotopia to fall back into the reification of indirect and abstracted relations:

---

[78] Jill Robbins, "Tracing Responsibility" in Adriaan T. Peperzak, *Ethics as First Philosophy: The Significance of Levinas for Philosophy, Literature and Religion* (New York: Routledge Press, 1995) 173-183 at 175.

[79] Edith Wyschogrod, "The Art in Ethics: Aesthetics, Objectivity and Alterity in the Philosophy of Emmanuel Levinas" in Adriaan T. Peperzak, *Ethics as First Philosophy: The Significance of Levinas for Philosophy, Literature and Religion* (New York: Routledge Press, 1995) 137-148 at 137-138, citing Levinas, *Existence and Existents* at 52-57.

> Ethics in contrast to aesthetics, has to do with the invisible… Of course, our aesthetic sensibilities would rather not be hampered, bothered, disturbed, restricted by moral responsibilities and obligations – the aesthetic is precisely this "rather not", this looking the other way, averting the eyes, refusing the other.[81]

Cohen characterizes aesthetics as the merely sensual "temptation of temptation." "There need be nothing wrong with beauty," he writes, rather:

> it is "idol worship" in the love of beauty, the love of the show above all, which is at fault… When aesthetics takes itself for a world it becomes precious, as in Huysmans, or both precious and precocious, as in Heidegger and Derrida, or fascist, its true moral face.[82]

This later sense is the greatest danger Levinas is avowed to avoid. In his earliest meditation on aesthetics and the image, written shortly after his break with Heidegger, Levinas argues that:

> art substitutes images for being. The image is not a transparent sign pointing toward objects through which objects become intelligible; instead, images are the double of object, resemble them, in the sense that shadows resemble things. This duality of thing and image is born in resemblance… As a non-object, the image lies outside the world, is not in time… The image is trapped and cannot free itself for the world of action.[83]

Both Levinas and the artists in uTOpia are opposed to the mimetic quality of abstracted re-presentation. Whereas for the former such re-presentation displaces the ethical, for the later it represents the reproduction of a totalizing normative order out of balance. Where art attempts to act politically, to "give a

---

[80] *Ibid.* at 139.

[81] Cohen, *supra* 39 at 14.

[82] *Ibid.* at 16.

[83] Wyschogrod, *supra* 79 at 138, citing Levinas, CP 5-12.

face to things" that would make them ethically exigent, it achieves the opposite. It is the concept or representation before the reality, an alleviation of the "weight of brute matter, its heaviness of being-there" as the sin of obliteration for Levinas. French artist Sacha Sosno perhaps captures this idea best. His works confound classical notions of beauty by replacing the sculpted face with a geometric form. In so doing, the connection between the metaphysical abstraction of beauty as a teleological or foundationalist account of reality and the roots of such in Platonic formalist modes of thinking is made explicit. It also viscerally demonstrates the violence of such thinking in its ability to obliterate particularity: the face of the other. Instead, the other becomes the site for normative reproduction, a being to be disciplined, grasped, possessed and pre-possessed by master concepts, rather than a person to be addressed. Art in its mimetic, re-presentative mode is a violence.

Sacha Sosno, *Squared Head,* bronze sculpture, 60 x 38 x 35 cm, 1985. Image from the artists website, http://www.sosno.com.

For Levinas, Sosno's work exemplifies how "the perfection of the beautiful imposes silence without caring about anything else. It is the guardian of silence. It lets happen. Here aesthetic civilization has its limits…"[84]

Like Chris Jordan, both Levinas and uTOpia grasp for a sense of vision that is not pre-possessive, that works phenomenologically to present things as they actually are in their material coarseness, their full weight and density. The "doubling of the image" detracts from this phenomenological reality – but also points the way beyond it. For as Gerald Bruns finds, there is a double-meaning to representation in Levinas' account of aesthetic re-presentation. In the experience of specifically modern art, Levinas' account of materiality is significantly different in that it breaks from Kantian aesthetics of form and beauty. "Modernist art," Bruns asserts,

> is no longer an art of the visible (which is why it is difficult for many people to see it as art)… In Levinas, both materiality and the beautiful are reinterpreted in terms of the proximity of things, taking proximity to be something like an alternative to visibility… [thus raising] an understanding of the relationship between poetry and the ethical as analogous forms of transcendence in the special sense that Levinas gives to the term… [and thus] an unheard-of modality of the otherwise than being.[85]

Here, the traditional inter-twining of Levinas' philosophy of language in discussing writers like Blanchot or Mallarme with a broader conception of art opens the door to more visual forms which are not *a priori* fixations but which must be approached in their materiality and brute presence. Bruns goes on to argue that between language and the image stands poetry. In poetry:

> the materiality of language is now regarded as essential, no longer part of a distinction of letter and spirit but now the essence of poetry as such… the basic units of the poem

[84] Armengaud, *supra* 68 at 30-32.

[85] Bruns, *supra* 28 at 207, citing in part Levinas, *Proper Names*, *supra* 32 at 46; Gerald L. Bruns, *On the Anarchy of Poetry and Philosophy* (New York: Fordham University Press, 2006) at 176.

> include not only the letters of the alphabet but also the white space of the printed page, the fold in its middle, and the typographical arrangements that the letters inscribe… What this means is that poetic language is not just an inert mass, not merely a blank or opaque aesthetic "veil of word"; rather it is a discursive event that interrupts the logical or dialectical movement of signification and thereby opens up a dimension of exteriority or worldlessness – a world without things, or perhaps one should say: things free of the world.[86]

As Levinas figures it, the modern work of art "opens up the possibility of existence without being because it makes everyday things present by extracting them from the perspective of the world."[87] The idea is that in art our relation to things is no longer one of knowing and making visible. Art does not represent things, it materializes them; or, as Levinas would prefer, it presents things in their materiality and not as representations. This is a liberation of art, freeing "represented objects [from] their servile function as expressions" and instead having the intention "to present reality as it is in itself, after the world has come to an end" (EE 55,56).

On this analysis, "modern art can no longer be conceived as an art of the visible… This emancipation of singularity from the reduction to an order of things is the essence of Cubism, whose break-up of lines of sight materializes things in a radical way."[88] In Cubism, one can no longer make the objectivist turn and claim to be able to completely grasp or enclose the objects presented. There is always some dimension which eludes the limits of immediate perception, an excess that exemplifies the darkness or coarseness of matter as it actually is in reality.

Levinas calls this thickening or darkening of materiality its "simultaneity:"

---

[86] Bruns, *supra* 28 at 209-210.

[87] *Ibid.* at 211, citing Levinas, EE at 52.

[88] *Ibid.* at 211-212.

> I recently saw an exhibition of paintings [in which] Lapicque creates a space that is above all a realm of simultaneity… Space does not accommodate things; instead through their erasures, things delineate space. The space of each object in turn is divested of its volume, and from behind the rigid line there begins to emerge the line as ambiguity. Lines shed the function of providing a skeleton and become the infinite number of possible connections.[89]

This is the essence of activist art in uTOpia as it is in the work of Jordan. Its ability to surreptitiously implant itself in the smooth normative order of a street or office building lobby to produce interruption starts with the understanding that "the everyday, even at its most banal levels, is in fact utterly remarkable"[90] when revealed in the multiplicity hidden behind official normative context. One of the commencements of art, Levinas opines, is this very function of elevating material objects not above or beyond this world as metaphysical objects of transcendence, but as objects which connote the utopian surplus, the desire for the exscendence of the outside. Such art "is to think the real in its image… it is being which is heavy, tangible, solid, good to hold, usable and useful, disengaged of its burdens or of its ontological properties in order to let itself be contemplated. This contemplation is a *dis-inter-estedness*."[91]

One exemplary project in uTOpia of this simultaneous quality of the "ethical aesthetic" considered the ways in which "public washrooms are crucial spaces where all manner of things that are policed out of so-called public spaces can find some sort of refuge."[92] At one point the City of Toronto threatened to install automated public toilets that were self timed, cost-per-use, self-cleaning

[89] Levinas, "The Transcendence of Words" (1949) in Sean Hand (ed.), *The Levinas Reader* (Oxford: Blackwell, 1989) 37-58; 146-147.

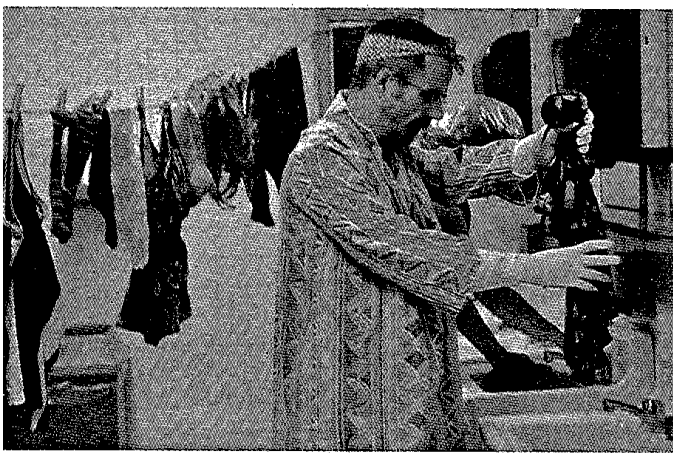
[90] Ian Buchannan, "Space in the Age of Non-Place" in *Deleuze and Space* (Toronto: University of Toronto Press, 2005), 16-35 at 26.

[91] Armengaud, *supra* 68 at 34.

[92] McBride, *supra* 29 at 195.

UFOs for increased social control. In response, artists launched the Public Washroom Project. Using humor, design, fictional and biographical stories, they demonstrated how automated toilets would artificially reduce the lack of public space in the city for the body and its complexity of multiple needs. Approached in these terms, public washrooms can be seen as

> more than just places to piss. They are places where bodily needs meet social desires. They are political spaces, where all sorts of activities, both obvious and unanticipated, can take place. Public washrooms are places of refuge, or nourishment and of contemplation. They are makeshift spaces for cleaning, cuddling, feeding, medicating, laundering, breast-feeding, shaving debating, fucking and crying.[93]



[93] *Ibid.* at 194.

Planning Action, Public Washroom Project installation. From Jason McBride and Alana Wilcox (eds.), uTOpia: Towards a New Toronto (Toronto: Coach House Books, 2005) at 203.

Without this sort of consideration, the "definition of "public" becomes "exclusive." Such discipline "reveals how the attempt to control the space of public washrooms is simultaneously an effort to control the politics in and of those spaces."[94] To contest this forcework, the Project looked at the object of the washroom in its simultaneity to reach across abstraction and individual perspectives in the attempt to capture a more holistic and responsible image of the structure. The Public Washroom Project "prioritizes our embodiment in all its complexity and diversity in our built form as a starting point for a new, open and democratic practice of public space."[95] By considering activities that would be "out of place" in disciplined official space, the Project sought to make place that would contest this abstraction and violence. In so doing, the Project asked the question of Toronto otherwise:

> what would Toronto be like if we actually prioritized our embodiment in all its complexity and diversity in built form? That is not for us to answer, but to walk towards… It is a politics of openness, embodiment, materiality, inclusivity and radical democracy.[96]

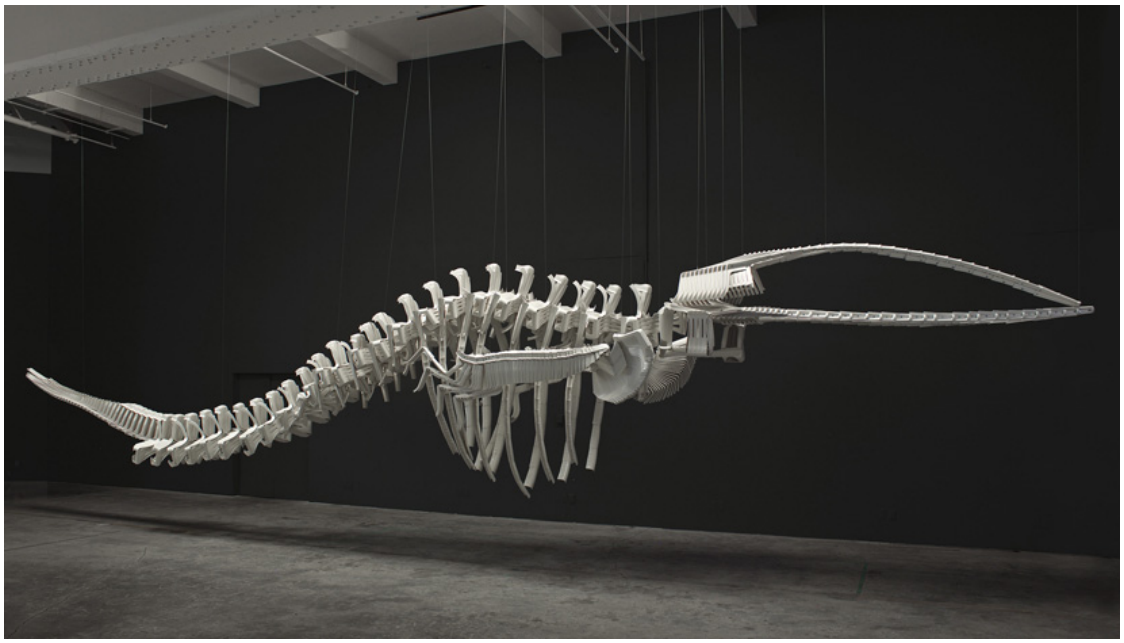
A similar uTOpia work is found in the way Toronto artist Brian Jungen recovers the simultaneous qualities of banal everyday objects to demonstrate their worth and connection to identities of the other. Jungen starts with a simple premise in which he re-contextualizes consumer products to give them new meaning. He starts with a loaded palette — Air Jordan sneakers or instantly recognizable and ubiquitous plastic lawn chairs — and reconfigures them into coveted, spiritual Aboriginal symbols. In *Ceatology* (2002) for example, Jungen

[94] *Ibid.* at 201.

[95] *Ibid.* at 198.

[96] *Ibid.* at 202.

constructs a 40-foot whale skeleton. From afar the skeleton looks skeletal — bleached, massive, and naturalistic, an "authentic symbol" representative of Aboriginal culture and values, perhaps the result of a successful hunt or the sensible scavenging of material resources freely given by nature. But up close the work reveals itself as made from pieces of white plastic lawn furniture, cut up and meticulously arranged to form a replica of the real thing, flippers and all.



Brian Jungen, "Ceatology" (2002), plastic chairs, 41' 8". Image from the Carrion Jeffries Gallery online: http://www.catrionajeffries.com/b_b_jungen_work_23.html.

These "bones" can be viewed on many levels. On the one hand, the viewer has been tricked, their sense of the "authentic" revealed as little more than pat cliché and cultural stereotype. And with trickery afoot, the viewer now comprehends the pun in this anthropological "seat-ology." Now a whole wave of simultaneous potential interpretations pour forth: is this a sculpture about the ecological, interrogating the very petroleum industry whose by-products and waste choke the oceans and kill wildlife with uncontained oil spills? How does it relate to the innovative and imaginative function of objects taken out of their normative context? How does this subvert the conventions of museum display by challenging notions of worth and value, and of the literal and figural plasticity

of the image? And ultimately, how does this all come together as an questioning and invoking Aboriginal identity and class, this new mythological creature displacing the living one, and with aboriginals living amongst the new bounty freely given by "nature", an excess of plastic chairs and cheap lawn furniture? In elevating everyday objects out of their traditional situatedness, the simultaneity of art in uTOpia allows for the reconfiguration and reuse of objects that is at once critical and constructive of wholly new orders of being and relations to the other. These bones are just as at home on the beach where plastic detritus washes-up as they would be washed-up in downtown Toronto, the rib cage forming the struts of a homeless shelter for a displaced inner-city nomad. This simultaneity in content and context is not only the exercise if poetic imagination but opens:

> to conversation with the other… is already one that allows the face to exceed the plastic form of the image representing it. Such poetic imagination responds to the surprises and demands of the other. It never presumes to fashion an image adequate to the other's irrecuperable transcendence. An ethical imagination, consequently, would permit "the eye to see through the mask, an eye which does not shine but speaks.""[97]

Both Public Washrooms and Ceatology demonstrate the viability of a Levinasian aesthetic in uTOpia. Both ask what it is to participate "in the moment when the work of art frees things from the conceptual grasp of the subject and returns them to the brute materiality of existence."[98] The participatory experience "is continuous with the experience of the *il y a*… [in which] things present in their materiality (like things in the night) as invisible, ungraspable," having multiple dimensions that only interactivity can reveal in a face-to-face

[97] Kearney, *supra* 24 at 111, citing TI 38.

[98] Bruns, *supra* 28 at 213.

experience.[99] Modern art, with its "premium on the fragmentary, is an art of derangement; it does not produce harmony and repose but dissonance and anxiety… This is part of what it means to say that modern art is no longer an art of the visible."[100] The very darkening of being in Levinasian aesthetics is a laying bare rather than a deceiving, an experience of "the limits of the human, which for Levinas means the limits of the ethical."[101]

A similar, if not literal uTOpian proposal leveraging phenomenological simultaneity and its capacity to cast light on the subverted is exemplified by *Flashlight*. Installed in the Toronto Sculpture Garden from May to September 2005, "this sculptural ensemble proposes that playful personal interaction is a source of power that is parallel to the natural power of the sun under which we are all equal."[102] A large LED sign proclaiming "Everybody's got a little light under the sun" was hung over a geodesic climbing dome along with a motorized disco ball. Both the sign and motor are powered either through passive solar collectors or exercise bikes installed on the edge of the site. These bikes are connected to invisible generators that power the disco ball and LED sign when ridden by participants. As described by the artist, a:

> cosmic system comes into contact with a second system that is social in nature… To enter a public park is to enter into this social system, this constellation of personal interests expressed by behaviour and structured by law. For some of us, this experience of entering a public park is free of troubles and conducive to leisure, fun and relaxation; for others of us, this experience is frequently

[99] *Ibid*.

[100] *Ibid*.

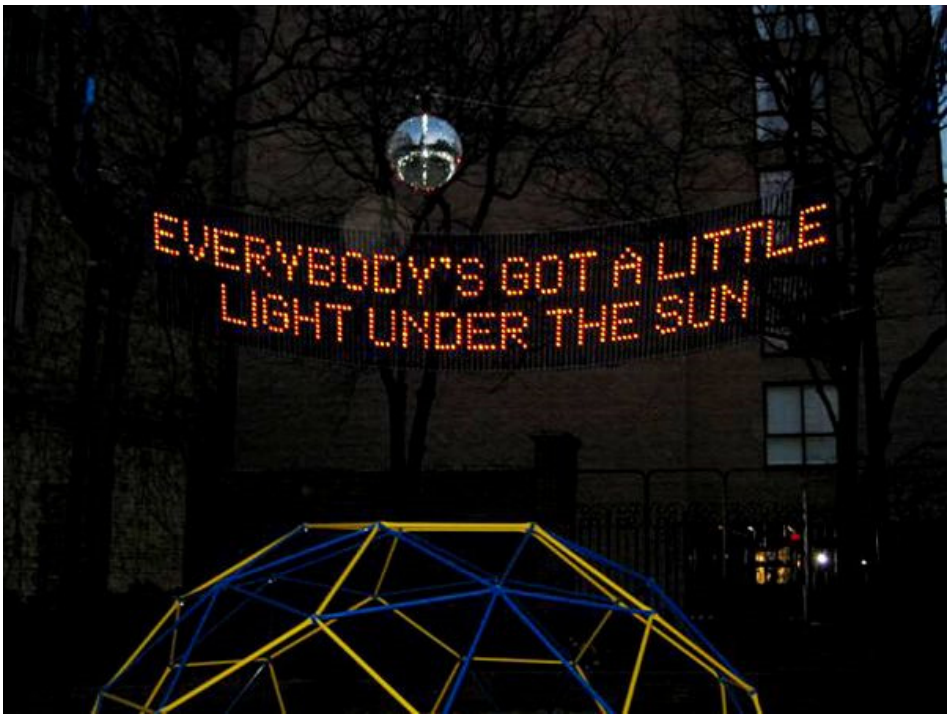
[101] *Ibid.* at 219-220.

[102] *Ibid.* at 212.

> vexing, even intolerable. These two systems are meant to touch upon each other in *Flashlight*.[103]

The cosmic system that projects from above interacts with the social system that projects from below. When the LED sign and disco ball are placed in motion, they evoke a third, now-emergent presence: funk culture of the 1970s.

> Funk is primarily an experience; it is something you perceive – not by observing it at a distance but by taking part in it with others. The experience of funk can certainly produce a high, but a high that comes fro below. It is a high that emerges from our bodies in action, and from the lowest part in harmonic music – the rhythmic bass.[104]



Luis Jacob, *Flashlight*, 2005; LED signage, geodesic dome playground equipment, disco ball, image bank, Muskoka chairs, bicycle pedals, solar panels on steel pole, electrical generator, sand. From http://www.torontosculpturegarden.com/LuisJacob.htm.

> *Flashlight* engages with the understanding that public space has become a fiction, that "our experience of being social is fictional in a way that today is eminently common and everyday. More and more, this is what re recognize as

[103] *Ibid.* at 212-213.

[104] *Ibid.* at 214.

> public space – the staging of the commons, the management of the experience of being with others, the fiction of being public.[105]

In counter balance, the geodesic dome marks "a spherical non-site, a place holder that designates the possibility for something to happen."[106] In this unregulated, undefined "non-site" the opportunity for the ethical imagination is manifest as a form of creative participatory play, "a performance within the confines of the city and its routines." It succeeds because it involves and evokes the third person. In this case that person is "funk", which:

> must be born freakishly… it calls for a collective act of cultural misappropriate and transformative botched rehearsal… the third system of funk arises in this context to appear almost like the non-conformism of artistic autonomy and freedom, and not quite as an affirmation of a bureaucratized notion of "arts in the community."[107]

By recovering the simultaneous potential of the park as both desolate inner-city wasteland and funk-tacular light in the darkness, utopian "placemaking" is characterized as an interruptive ethical act that contests the settled relations of official space with the multiplicitous needs and desires of being. We intuit that "we could not be, indeed would not be, if we did not have a place to be."[108] As Buchanan writes, Heidegger's central conception of *Dasein* is as "there-being", man as a "place-being" and "constituting place", not a "being in place."[109] And yet it is this fear we encounter in the modern-day non-places, those spaces like malls, airports and office towers that could be in Toronto or Shanghai. The post-modernity of these frictionless passageways resist dwelling

[105] *Ibid.* at 215.

[106] *Ibid.* at 216.

[107] McBride *supra* 29 at 216.

[108] Buchanan *supra* 50 at 1.

[109] *Ibid.*

and habitability "not because they are too different but because they are too familiar, their lack of difference disconcerting to us because after having traveled so great a distance… we feel we deserve an encounter with otherness."[110]

As humankind has created this placelessness, the *ou-topia* not-place of everything in its place, as opposed to the *hetero-topos*, the abnormal place, the place where things are misplaced, literally the place of "otherness," it reveals how the:

> problem of habitation… can also be regarded as a problem of recognition under the regime of representation – as the state in which the modern subject no longer recognizes the space in which it is located… the problem of a sensation of space that has fallen from its rails, a problem that they early on defined as the globalizing tendency expressed by increasing deterritorialisation that is approach an almost absolute point.[111]

Placelessness reduces the desire for the outside.[112] This placelessness, exemplified by the air conditioned causeways of Las Vegas or an international airport, are emblematic of cities which "resist dwelling not because they are too different but because they are too familiar."[113] Such post-modern cities "are frequently characterized as leaving their visitors disappointed because they do not bestow a lasting sense of having been there… a travel that is written under erasure – one has gone there without being there."[114] This is a world without others, a world without strangeness, the phenomenological order of the spectacularly familiar.

---

[110] Ian Buchanan, "Space in the Age of Non-Place" in Ian Buchanan and Gregg Lambert, *Deleuze and Space* (Toronto: University of Toronto Press, 2005) 16-35 at 22.

[111] Ian Buchannan and Greg Lambert, "Deleuze and Space" in *Deleuze and Space* (Toronto: University of Toronto Press, 2005), 1-16 at 6-7.

[112] Buchannan *supra* 50 at 4.

[113] *Ibid.* at 22.

uTOpia documents the "re-colonization" of official space with efforts like laneway housing, green roofs, and the occupation and repurposing of "official spaces" like public washrooms and parks. As such, many of these interventions exist in a permanent state of irony – a safe place for critique – as they are more responsible than the official systems of responsibility grant. Making place is the making of an *entre-temps* outside of the immanentism of the normative world. Each located observer and participant in these material works "is the opening of a fold, a world folded around its contemplations and rhythms."[115] This echoes Levinasian descriptions of the works of Henry Moore, wherein the two intertwined figures of *Moon Head* (1964) are:

> only an inch or two apart but not quite touching, they create a space between them that is charged with energy of their absence, like the breath of desire… the curvature of inter-subjective space so as to capture the sense in which the weight of others itself constitutes our own mass, so as to suggest that the presence of the other does not just impinge on me but forms my gravity and bends the very space between us."[116]

Contrary to moral agency (the person as a rational, law abiding agent, for example, to Kant) "the Other is transcendence in Levinas, not immanence."[117] As an ethical intervention, an ethics of imagination interrupting the smooth space of totalizing design, the "work of the work of art is non-violent, or rather disposes us towards things in a non-violent way, disclosing them in their strangeness and earthliness."[118]

---

[114] *Ibid.*

[115] *Ibid.* at 12.

[116] Manderson, *supra* 35 at 176-77.

[117] Cohen, *supra* 39 at 7.

[118] Bruns, *supra* 28 at 221.

Levinasian art in uTOpia thus introduces us to the possibility of an infinite ethical interruption whose "relations whose terms do not form a totality."[119] He is always focused on "the future [avenir] [as] the not-yet-come… the drive toward the future is a relation with utopia and not a march toward a predetermined end of history in the present, which is obscure. Time is pure hope. It is even the birthplace of hope."[120]

Even in this ecstatic sense of Levinasian art, there is always the danger of falling back into reification, of the image displacing the reality. Returning to the work of Sosno, Levinas comments that "I nonetheless wonder whether this ethical condition of the aesthetic is not immediately compromised by those joys of the beautiful which engross and alienate the generosity that has made these joys possible."[121] In this sense, recalling the absence of the other through material works of art is not itself sufficient to keep alive the ethical in the aesthetic. Levinas may be willing to accept modern art as a means of "thickening" or "darkening" of reality, as shining a more ethical light on objects to reveal their simultaneity and scale, yet these objects are nevertheless in danger of falling back as reified, idolatrous re-presenters of the absent other. Even though the art in uTOpia explicitly calls upon my invisible *a priori* relation to invisible things and others, and thus places me in proximity to them, it does so, Levinas claims, as a form of "trace," as a "fall from grace" that threatens to distort the other and destroy the ethical relation. Levinas instead gives all priority to speaking, to the active, face-to-face engagement in "saying" rather than the reified passivity of "the said." For art to be a saying, it must call out: "here I am, here I am for the other." It must be made available as a form of

[119] Howitt, *supra* 34 at 301, citing Levinas, TI at 39.

[120] Levinas, "Another thinking of death: Starting from Bloch" in *God Death and Time* Stanford: Stanford University Press, 2000 [1993] (trans. Bettina Bergo) pp 92-96 at 95.

[121] Armengaud, *supra* 68 at 34.

"substitution," not to stand for an-other in re-presentation but rather willing to sacrifice for the other. The question to be answered here is whether the liminal, temporary, situated character of uTOpian art gives it the quality of a "saying" rather than reifying forcework of the "said," and therefore if art is a different way of being a face.

B. From Trace to the Saying/Said: The Presence of Absence

"There are different ways of being a face" says Levinas when discussing Sosno's representation of obliteration against the "express anguish, anxiety and tears of the people"[122] who wait in line at the entrance gate of the Lubyanka prison in Moscow. They too are obliterated faces by the bureaucracies who have taken the lives of their loved ones. Levinas wonders "Can Sosno's obliteration, by means of a square placed over the face, by its brutal negation, have the same signification, the same profundity" of the lived experience of these others?[123] In answering this question we must ask ourselves what the work of art represents and how it relates to a lived experience of an embodied person. Does the uTOpian work do this?

Levinas' notion of the saying and the said is most explicitly worked out in *Otherwise than Being*. As described earlier in Chapter 2, to be a saying without the reification of the said, which is representation, books, etc., is to "thematize the said, but signifies it to the other, a neighbour, with a signification that has to be distinguished from that borne by words in the said, This signification to the other occurs in proximity" (OB 46). Saying is "an exposure to the other," a "risky uncovering of oneself, in sincerity, the breaking up of inwardness and the abandon of all shelter, exposure to traumas and vulnerability" (OB 48). Saying

[122] *Ibid.* at 38.

[123] *Ibid.* at 38.

"approaches the other by breaking through the noema involved in intentionality, turning inside out" (OB 48).

uTOpian works of art seem to grasp at this sense of unintentionality. In one particular work, "Public space and city streets are often the only space where unintentional and subconscious artists meet."[124] Such unintentional art emerges at any point and are thus "all about paying attention to the world you live in." [125] This work, *Broken Lines,* is about "two people knowing each other but not meeting: the guy who painted the street lines on the street level and the guy who went underground and screwed the manhole back together unaligned. Art is a conversation."[126] Such "Unintentional art reminds us of an obvious message in a secret way: life is art, art is life – especially when we're not looking… When the Toronto Transportation Services workers make mistakes, or when others take note of their mistakes, these reflective guides become unintentional art."[127]

The spontaneity of these encounters is equally as important as a form of conversation. Intentional attempts to post corporate graffiti through "guerilla marketing" have been met with fierce public resistance and condemnation, as if graffiti was recognized intuitively as once of the most democratic and public forms of culture we have and a legitimately illegitimate way to reclaim the commons from "public space" otherwise than through politics or economics. The legitimacy of these liminal works seems to rest in the fact that they always reference outsiders. The most infamous example was in May of 2007 when car manufacturer Audi placed promoted one of its models by populating the city with 50 "TT" statues in public spaces, each six feet high and 15 feet long. The

[124] Nadja Sayej, "Leaving their mark: street art in Toronto" in Jason McBride and Alana Wilcox (eds.), *The State of the Arts: Living with Culture in Toronto* (Toronto: Coach House Books, 2006) 168-175 at 168.

[125] *Ibid.* at 173.

[126] *Ibid*.

[127] *Ibid.* at 170.

public was outraged and the city ordered the statutes immediately removed. [128] Another example were tagged "X's" placed around town by Marc Ecko to promote a clothing line and video game about tagging. The City of Toronto ordered the corporate parent to remove the tags from around town.[129]

This gives the works of art in uTOpia, as well as Levinas' philosophy, as importantly out of place: they come to us from the outside, from the unexpected. We normally find that art is out of place in this world and so create special places for it – museums. But is this not the art of the said? uTOpian works are always works of the "to come". They are meant to be liminal and fleeting, and thus to resist the said and to be at home anywhere in the world. The very fact that uTOpian art is divested of its meaning when taken out of context and placed in an art gallery seems to indicate that, at least on a very local level, it has a surplus of meaning characteristic of a "saying." This, in addition to its necessarily experiential and interactive qualities, lend it the power to facilitate and encourage dialogue within the city in a constant, midrashic re-reading of it.

uTOpian works capture this liminal quality, as if built only to be torn down so as to never be a site of reification, only interruption, like a spoken conversation. The 640x480 Video Collective, for example, places these concepts at the centre of their work *Inconsequential Moments Memorialized*. Fake commemoration plaques were placed in inauspicious places around Toronto. Each plaque recorded an banal occurrence of the everyday: a random snippet of conversation, a record of two kids playing pranks.

---

[128] See "Audi tees off Toronto residents with botched TT ads" (May 19 2007) at http://www.autoblog.com/2007/05/19/audi-tees-off-toronto-residents-with-botched-tt-ads/.

[129] See: Adam Vaughan, "The root of the problem" in Jason McBride and Alana Wilcox (eds.), *The State of the Arts: Living with Culture in Toronto* (Toronto: Coach House Books, 2006) 200-209 at 205.

640x480 Video Collective, *Inconsequential Moments Memorialized*, Series of 11 plaques placed in various locations around Toronto with corresponding YouTube video and geotags (Toronto, 2006). Image online at: http://torontoist.com/2007/12/banal_events_me.php.

In addition to being subverted by its very context and form, each plaque further undid its own self-centeredness by using blog-like meta-tags at the bottom of each sign, connoting that even this frozen fixity of a banal moment is itself dignified by inter-connection to related events and issues, absent yes, but forming part of the conversation. Almost in the way of a conversation starter, of the link that proceeds the content. These works of art again recall Levinas' discourse across language and art, citing how:

> Blanchot's words operate as intentional signifiers of a self which undoes its own self-centeredness, exceeds its own ontological ipseity, out of concern for something other, something beyond the said or the sayable, the imaged or the imaginable – what Levinas describes as a "first concern for justice."[130]

As one participant artist put it, "Torontopia is not about waiting for permission of fitting into existing models. What's exciting about Torontopia is that the only way to participate in that experience is to do something for

[130] Kearney, *supra* 24 at 115; Levinas, "The Transcendence of Words" (1949) in Sean Hand (ed.), *The Levinas Reader* (Oxford: Blackwell, 1989) 150.

yourself… There aren't many non-participants."[131] The subversion of "official space" has produced whole new and surprising oxymoron's like "guerilla gardening" while popular games like Fototag and Manhunt allow Torontonians to "re-engage with their urban space."[132]

Barclay cites Toronto artist Katarina Collins who expresses the sense that this is not a determinative utopia, but a utopian methodology tied to infinite conversation:

> The term Torontopia seemed like a fantastic shorthand for all the things I had been experiencing. It really signified this new attitude I had about the city, which was not in fact a utopia, but it had the potential to be whatever any of us wanted to mould it into… The whole Torontopia idea was supposed to be a meaningful call to arms. It is meant for people to respond to and get to work – not to read about it and bask in it."[133]

Like Levinas, "utopia" can never stop being read and re-read. It is concerned here with a "self-negating imagination – one might even be tempted to add, self-deconstructing imagination. For at issue is a functioning of images which debunks its own claim to representational presence."[134]

In these respects, both the unintentional, the liminal, and the infinitely re-readable, Levinas admits that art can supply a face (EN 232, 262).[135] A face obsesses and shows itself between transcendence and visibility / invisibility (OB 158). Viewers of such faces, writes Kearney, "can respond to such an image in a purely sensational or voyeuristic fashion. But they can equally respond to it as a

---

[131] Barclay, *supra* 29 at 27.

[132] *Ibid*. at 26.

[133] *Ibid*.

[134] Kearney, *supra* 24 at 113.

[135] Kevin Hart, "Ethics of the Image" in Jeffrey Bloechl and Jeffrey Kosky, *Levinas Studies Vol 1* (Pittsburgh: Duquesne Press 2005) 119-138 at 135.

naked face crying out in destitution. The choice of response is our, but it is never ethically neutral. It is a response, one way or another, to the ethical cry of an-other."[136] As Levinas puts it himself, "In proximity the other obsesses me according to the absolute asymmetry of signification, of the one-for-the-other" (OB 158).

This art does work like the saying / said, contesting, to some extent, the apparent anthropomorphism of Levinas' location of otherness. Other theorists have explained that achieving a heterotopia of interconnected responsibility is in fact tied to breaking with this anthropocentrism:

> This move away from the Kantian vision of an ethics that obliges people, and especially women, natives and others, to act morally in the name of a transcendent standard or a universal moral rule is not a simple one… [it is] a forceful answer to the complexities of our historical situation: it is a move towards radical immanence against all Platonist and classical humanistic denials of embodiment, matter, and the flesh. What is at risk, however, in nomadic ethics is the notion of containment of the other… the impossibility of mutual recognition [means that it must be superseded by] mutual specification and mutual co-dependence… in a nomadic ethics of sustainability. This is against both the moral philosophy of rights and Levinas' tradition of making the anthropocentric Other into the privileged site and inescapable horizon of otherness." [137]

How far then can one extend this apparent diffusion of the other, of proximity, without falling back into the dangerous terrain of re-presentation and reification? For Levinas, the question of how far proximity extends from the saying before it turns into the said is an effort to "conceptualize geographical

[136] Kearney, *supra* 24 at 116.

[137] Braidotti, *supra* 26 at 158.

scale as an event, a process, a relationship of movement and interaction rather than a discrete 'thing.'"[138] In Levinas' formulation,

> The contemporaneousness of the multiple is tied about the diachrony of two: justice remains justice only, in a society where there is no distinction between those close and those far off, but in which there also remains the impossibility of passing by the closest. The equality of all is borne by my inequality (OB 159).

However, this move to sociality and justice is fraught with the risk of reification and idolization, of fixing the saying within the said:

> Justice requires contemporaneousness of representation. It is thus that the neighbour becomes visible, and, looked at, presents himself, and there is also justice for me. The saying is fixed in a said, is written, becomes a book, law and science (OB 159).

Such a question of scale, and its relation to the preoccupation of law with prescribing prior responsibility, is addressed in the final chapter.

4. Proximity and Responsibility: Levinas and the Scale of the Political

A. Proximity and Scale

Globalization is the understanding that invisible lines of responsibility define the challenge of politics today.[139] The challenge is serious. Environmental law shows how traditional structures of political responsibility do not address this new reality, a reality which is complex, multivariate, diffuse, transnational, interconnected, and without any specific location. In some ways, our global

[138] Howitt, *supra* 34 at 304.

[139] Parts of this final chapter are adapted from an earlier publication: Ryan Fritsch, "The Joyous Environmentalism: Fostering Creative Democratic Discourses in Law and Community" 18 W.R.L.S.I. 1 (November, 2004) 1-35. Reproduced with permission.

society itself has become a work of magic for which no one quite understands how it all works.[140]

The previous chapter showed how "the saying" operates through art to impact scales which are beyond the phenomenological priority of the "face to face" and might operate on the level of the neighbourhood or city, and created political groups capable of exercising ethical imagination to effect practical and concrete change (and foster yet further change in the process). The work of Richard Howitt seeks to extend this notion further by exploring the limits of Levinasian proximity in relation to larger political and legal scales.

Scale has existed as a concept in the social sciences that typically reflects the settled relations of an "indisputable hierarchy of scales – global, national, regional and local – leading to simplistic representations of globalization as imposing a developmental trajectory on people and places."[141] In Howitt's contention, Levinas' development of an aesthetic "vision without image" can "open a window on the plurality that Levinas alludes to – the infinite within the immediate," [142] the global within the local. As we have already seen, this relationship recalls Levinas' search for a phenomenological proximity which is "further away than any external world and deeper than any interiority."[143] But in Howitt's contention, this simultaneity and these invisible lines of responsibility constitute a two-way relationship that allows them to operate through mutual entanglement over any number of scales. The character of being both further away and deeper than any interiority reflects for Howitt how "scale boundaries are better represented as interfaces, and that it is not only larger scale entities (global or national) that contain smaller scale entities, but that the larger scale

[140] Chris Cleave, *Little Bee* (Toronto: Anchor Canada, 2009) at 219.

[141] Howitt, *supra* 34 at 305.

[142] Howitt, *supra* 34 at 302.

[143] Buchanan, *supra* 50 at 6.

entities are at the same time contained within smaller scale entities." [144] Locality and proximity, in this configuration, is a concept of the interstitial *entre-temps* itself, operating neither hierarchically or unidirectionally but simultaneously. It isn't just at the proximate level of direct experience that Levinas' ethics operates, but through the:

> "interpenetration of scales and the co-construction of places and identities at several scales [which] parallel the shift between individual, collective and universal notions of self. In analytical terms this involves the interpenetration and co-constitution of social, economic, environmental or political relations at the local and/or national and/or global scale."[145]

This infinite immediacy "mediates relationships across space and time at vast scales, while retaining an embodiment and emplacements that is concrete, local and specific."[146] When combined with productivism, the resulting shift in scale "implies precisely the plurality, proximity and engagement that Levinas draws our attention to."[147] Reflecting on Jordan's work once more, "the other and the elsewhere are implicated in each other, and their transcendence does not, in Levinas' view, involve a negation of the distance, of alterity, but its confirmation and maintenance."[148]

As Howitt writes, "but this window is not the window of a microcosm into a larger reality. Indeed, that is not the nature of scaled relationships. Rather it is the window of emplacement and embodiment as experience – the simultaneity of personal and societal experience."[149] And as a question of relationships, it is a

[144] Howitt, *supra* 34 at 305-306.

[145] *Ibid.* at 311.

[146] *Ibid.* at 302.

[147] *Ibid.* at 305-306.

[148] *Ibid.* at 306.

[149] *Ibid.* at 310.

challenge to envision how the global heterotopia can "be oneself, accept one's intimate others, and nurture the future."[150]

This approach marks a departure for the philosophical limits typically ascribed to Levinas' philosophy of responsibility. For Manderson:

> When Levinas speaks of responsibility as infinite, he does not mean that it extends equally over everything it encounters, like some kind of monstrous sump of duty. He means that it continues to demand from us in ways that fuel our aspirations and our striving while giving us no grounds for complacency. It is infinitely deep, not infinitely wide… Responsibility is infinite in the sense that it is insatiable, so to speak, but not in the sense that it is indiscriminate.[151]

To demonstrate whether this contemporary utopian ethical imagination is capable of operating across much greater scales than hitherto examined, and how it may inform legal judgment, this final chapter shifts its gaze to the Green Corridor project in Windsor, Ontario. Lead by Toronto artists contemporaneous to the emergence of the uTOpian movement in Toronto, the Green Corridor shows an ethical aesthetic at work across municipal, provincial, national and international scales.[152] In its activism and accomplishments, the project provides a very concrete means to examine how the "ethical imagination" interrupts the dialectical *Sturm und Drang* in law between the "is" and the "ought" as a strategy for revealing "cans." These opportunities expose how official systems of designing and monitoring responsibility – municipal plans, municipal review boards, environmental regulations, community consultation – are in fact inferior and less responsible forms of design than the ethical imaginary aesthetic. Entertaining an "ethical imagination" within law helps it reach across

---

[150] *Ibid.* at 310-311.

[151] Manderson, *supra* 35 at 159.

[152] http://www.greencorridor.ca/. The present author was a participant in this project for a year and a half in 2004 and 2005.

foundational grounds that no longer adequately represent reality. It thus accelerates the opportunity of reform insofar as it furnishes law makers with a new grammar of design responsibility across the scales of identity, locality, nationality and globality which today define the search for proximity.

B. Imagining a Green Corridor: Creative Community

The Green Corridor project began as an initiative of Toronto environmental artist Noel Harding.[153] Late in 2003, Harding was contacted by local union representatives who wondered if he could reproduce in Windsor the success of his innovative Elevated Wetlands reclamation project along the Don Valley Highway outside of Toronto, Canada's largest sub/urban sprawl of some five million residents. For that project, Harding combined native phyto-remediative plants and otherwise toxic industrial waste into a water filtration system that simultaneously emulated and integrated with the surrounding wetlands. Through the interdisciplinary combination of scientific research, artistic concerns for beauty, social communication and meaning, and a sensitivity to the otherwise conflicting ecological and transportation contexts, Harding was able to echo the threatened workings of the surrounding wetlands by combining them with the very products that would destroy it. In so doing, he showed how two incommensurable opposites could be sustained and beautifully united, and raised the awareness of passing drivers as to the impact of their otherwise liminal and easily externalized industrial footprint.[154]

---

[153] Examples of Harding's work and a curriculum vitae are available on his website: http://www.noelharding.ca. The Green Corridor project maintains a website at: http://www.greencorridor.ca.

[154] Articles about the project have appeared in a variety of sources: Ruth Walker, "Molars, Mastodons, or Plastic Flowerpots?" Christian Science Monitor (19 November 1998), online: http://search.csmonitor.com/durable/1998/11/19/p13s1.htm; and Glen Helfand "Mutant Marshlands" Wired Magazine (7.01 January 1999), online: http://www.wired.com/wired/archive/7.01/eword.html?pg=2.

In considering the invitation, Harding immediately recognized the unique challenge that the Huron Church Road / Ambassador Bridge corridor in west Windsor presented. The corridor, a five kilometer stretch of four-lane road ending in a customs processing area and bridge interchange, has become the single busiest gateway between Canada and the United States. With increasing trade, the bridge now accounts for 30% of all goods traded between Canada and the United States, processing over 10,000 semi-trucks daily and tens of millions of vehicles annually.[155] The various human contexts within walking distance of this corridor – residential, historical, commercial, industrial, aboriginal, public institutional, recreational, and ecological – are unambiguously subordinated to the demands of commercial utility. The Huron Church line bisects a vast array of contexts as it makes its way down to the Detroit River. It divides the historical neighborhood of Sandwich from high schools, the University of Windsor, the Assumption cathedral and graveyard, student residences, sports facilities, a major shopping center, a customs area, and the Detroit River river-front greenway. Despite all of these engaging elements, there are no appreciable public spaces in the area and no appreciable public desire to be in the area. Land values are low, pollution is high, and the area has a general look of disrepair and degeneration. This divide is an active machine. An area rich in natural splendor, history and public institutions is disturbed by the endless groan and grind of trucks, coated in their carcinogenic and asthmatic soot, and perforated by landscapes on an inhuman scale. The "social geography" becomes fractured. Deconstructionists would read this acontextuality, this imposition of one interest

[155] For more statistics on automotive pollution in the Huron Church corridor and its implications for the health of area residents, please see the Ontario Ministry of Environment, Preliminary Air Quality Assessment related to Traffic Congestion at Windsor's Ambassador Bridge by Dr. Gerald Diamond & Michael Parker, (Toronto: Ministry of the Environment, 2004), online: http://www.ene.gov.on.ca/envision/techdocs/4624e.htm. The conclusions of this report that moving trucks pose little risk to particulate matter levels and that idle trucks pose little greater danger has been widely criticized by environmental scientists, groups and political parties alike, who claim that it insufficiently considered that particulate matter levels are highest hundreds of meters away from their originating source, and that in any case, any level of particulate matter has serious health consequences.

over all others, this artificial and forced paradigm for development as nothing short of a violence, a harm, from which the existence of the residents and community as a whole past, present and future must be recovered.

Clearly, Harding had found a challenge which traditional urban design and environmental models had failed. As an artist, he harbored a vision for the area that raised it above the functionalist, banal and harmful. As an environmentalist (or at least someone sensitive to the fact that natural ecological features were being violated and ignored), he wanted to follow principles of sustainability and environmental justice through an approach cogniscent of the overlapping and reinforcing ecological, industrial and urban systems along the corridor. As a member of the public, he sought a means by which these concerns could not only be articulated but heard, implemented and sustained in a way that was beneficial to all.

Harding found an appreciative ear for these concerns in the University of Windsor School of Visual Arts' Prof. Rod Strickland. Strickland had already been meeting with university, research, and faculty heads to explore the possibility of forming an innovative interdisciplinary art and science research center. Having concluded with the goal to start operationalizing this project through the development of positive educational components, Harding's vision for the corridor emerged as a natural fledgling project. Building on the success of the Elevated Wetlands project meant not only raising public awareness for the creative and substantive potential of multidisciplinary approaches, but the parallels between that and the Windsor project demonstrated a need to create an epistemological approach to urban design, environment and public participation whose process could be emulated everywhere.

The resulting "course that wasn't a course" was hosted in the School of Visual Arts during the winter 2004 semester. It drew students from the widest possible range of disciplines: environmental science, biology, engineering,

computer science, visual arts, law, business and economics, communications, history and creative writing. It was through the conscious combination of these various disciplines under an aesthetic process capable of mediating competing values that Harding hoped to exceed the traditionally dichotomous and partisan thinking already entrenching perspectival responses to the crisis of the corridor and in anticipation of adversarial and pragmatic legal battles to come.

The experience of the Green Corridor closely resembles that in uTOpia. Like the projects in uTOpia, the Green Corridor examples the possibility of creative public participation in urban and environmental planning in a new and innovative way. However, this is an aesthetic ethical intervention on a much grander scale. In this instance, the effort is to reconfigure a social, political, economic and legal space in a permanently interactive way. Metaphorically similar to the experience of proposing a major political and legal project in uTOpia, "We started with a perfectly rational idea: we wanted to build a sustainable house. But there's an entire bureaucracy that seems designed to prevent that."[156] The experience of law before the aesthetic ethical presented "the great irony of our city: the official plan of 2002 stresses density and sustainability but bureaucratic entanglements tend to counter any sense of innovation."[157]

The Green Corridor example takes postmodernist concerns for creativity and novelty, multidisciplinarity, critical insight, subjective self-reflection and procedural self-awareness, and applies them to the imposition of the Huron Church corridor in a way that consciously seeks to augment existing modes of governance instead of working against them.[158] As a result, critical and

[156] McBride, *supra* 29 at 76.

[157] *Ibid.* at 77.

[158] Harding had explicitly proclaimed the Green Corridor project a "postmodern" one (speech at Green Corridor Public Open House and Reception, April 21st, 2004). And on numerous occasions in class, he also stressed that the Green Corridor project remain an "apolitical" one

postmodernist insights are capable of producing judgment and decisions necessary for creating practical projects while simultaneously producing new forms of democratic participation, substantive equality (between any foundational claims or difference) and inclusion across any number of scales. In this way, projects like the Green Corridor show how Levinas is "inescapably concerned with intersubjective space as it is constructed at multiple scales from the intimate to the infinite metaphysical in time and space."[159] Like Levinas, the Green Corridor "applied a very contemporary understanding of space as simultaneously a concept of separation and relation… that offers a view of embodiment, emplacement and place-making."[160]

Triggering a discourse across an almost infinite number of potential scales and ways of looking – political, gender, economic, environmental[161] – these scales of proximity and relation in effect allows for communication and political action to occur across foundational difference by centering the unknowability (or faith) at the heart of any claim as a central fact, rather than as an obscured one. Previous canonical knowledge and moral authority remain as necessary reference points (indeed, they may well be more important than before), but

---

that consciously eschewed traditional "environmentalist" characteristics, identifiers and modes. This was often a point of friction between himself and participating students, many of whom felt uncomfortable working towards an uncertain and undefined goal and collective identity that only emerged by engaging with the process over the course of months. In individual students projects, it was particularly difficult for many of them to deconstruct and rearticulate the various corridor contexts without already having comparative values (such as economy, or efficiency, or environmentalism) determined apriori.

[159] Howitt, *supra* 34 at 300.

[160] *Ibid.* at 300-301.

[161] *Ibid.* at 311.

they are now the baseline for possibility and recombinant creativity rather than its teleological end. [162]

A vital element of such a project is to posit this unknowability with an artistic authority. By locating a project like the Green Corridor in the School of Visual Arts, the "madness of the decision" that postmodernity has identified as being at the heart of modernist structures[163] is returned to the artists (from whom it was taken by Socrates).[164] Artists have a unique relationship to notions of judgment, justification, motive, utility, knowledge, being, object and subject across a panoply of potential scales because an aesthetic discourse requires such social modes to be put on display for all to consider. Engaging object and subject in communication about these issues evidences attempts at resonance and the contingency of both the claim and the relationship it has to the viewer.[165] In many ways, art is a search for transcendent truth that it recognizes as eternally absent. In Nietzsche's formulation, "art is greater than truth."[166] It is this "ethic of aesthetics" of both creativity and contingency that allows art to explore all

[162] This allusion to the huge range of variation possible from the common mechanism of DNA foreshadows the aesthetic forms of fugue and fractal, as discussed in Manderson, *supra* note 35 at 177-89, and *infra*.

[163] Jacques Derrida, "Force of Law: The Mythical Foundation of Authority", in Drucilla Cornell *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992) argues that modernist structures conceal the unknowability at the heart of their foundational claims through the functionalist marriage of "is" and "ought" and the language of positivistic author-ity.

[164] For Socrates, poets and artists were mere phantom imitators of an objective reality knowable through rationality. Poets and artists "don't lay hold of the truth; rather, as we were just now saying, the painter will make what seems to be a shoemaker to those who understand as little about shoemaking as he understands, but who observe only colors and shapes... The maker of the phantom understands nothing of what is but rather what looks like it is." Allan Bloom, *The Republic of Plato* (Boulder: Perseus Publications, 1991), §601a-b.

[165] For an investigation into object/subject communication of Heidegger and Hegel, please see Manderson, *supra* note 35 at 12-23. Peter Schlag, "The Problem of the Subject" 69 Texas Law Review 7 (2007), 1627-1743, criticizes Critical Legal Studies as relying too heavily on a object / subject relationship that is oppositional and endlessly recursive. Aesthetics, on the other hand, seeks to unite and rearticulate the object / subject relationship as mutual and sustaining, without grounding judgment in either.

[166] Freidrich Nietzsche, Will to Power (New York: Vintage Press, 1968), §853.

possible insights without incurring the performative burden of asserting one over another (as does law). That "the completion of today's work" is merely the precondition for future expressions is a radical departure from existing paradigms, which desire to posit certainty and finality, and whose built projects desire to communicate a settled permanence: "the arena of environmental right is filled with a wise variety of contentious issues, all of which must be settled in order to come up with a concrete proposal."[167]

It is this notion of choosing between any number of modernist dichotomies, exacerbated by rights-based paradigms, that bedevils public participation in environmental considerations.[168] This, in turn, forces scales of proximity to fall back to established taxonomies. In an aesthetic program, moral questions are no longer located in official discourses and with author-itative knowers, but in subjective actors, who are mutually entitled to engage in the same ethical communicative process of creation. To this end, the Green Corridor has consciously attempted to include under its aesthetic modus all possible stake holders, including federal, provincial and municipal government (especially the planning department of the later), area institutions (commercial businesses, the university, the customs office), and interested community groups (Sandwich Community Health Centre, Citizens Environmental Alliance, Great Lakes Institute for Environmental Research, and local residents). Simultaneously, the Green Corridor has avoided aligning itself with any of these perceptibly political actors, instead maintaining an aesthetically ethical orientation that (surprisingly?) is rarely inquired about. It would seem that most parties read themselves into the

[167] Elaine Lois Hughes et al., *Environmental Law and Policy* (3rd Edition) (Toronto: Edmond Montgomery Publications Limited, 2003), 433.

[168] The cursory discussion of a rights-based approach in the law textbook *ibid*. at 433 immediately shows how this discourse is dependent on liberal-capitalistic notions of personal property, social contract, and the "productive" use of land, and problematical because the inability to adjudicate between relativist positions means that "tough" decisions along the hierarchy of rights are reduced to these notions (typically utilitarianism). Creative environmental projects are thus precluded from the public negotiation process once more.

creative potential of the Green Corridor project. This implicit comfort with the process speaks to its potential.

In this configuration, the viewer can no longer honestly assume an object / subject relationship to the piece; they now have to contend with the assumptions that put them at ease with the piece at a distance, and which put them at disease up close. The "political is articulated within the realm of the seductive... convention draws the viewer into complicity, who thus becomes part of the modes of operation."[169] Environmental projects such as the Elevated Wetlands similarly engage all members of a community. By drawing them in via an engaging aesthetic expression (whimsy and a toy-like plasticity in this case), they are further drawn into conversation about the meaning of the piece, their relationship to it, and hence their relationship to the differences they are now made aware of. This process collapses subject/object, universal/relative, epistemology/ontology dichotomies and demands not conflict but further creativity from those so engaged.

Even in the international context then, the face-to-face opportunities evidenced by the Green Corridor function on a simultaneous erotic and distant scale. Levinas' starting point for discussing the infinite is instructive. He doesn't seek to accrete one scale upon another. Instead, "without seeking to accrete one scale upon an-others, without asserting a hierarchical structures, Levinas writes of infinity "I think the erotic relationship furnishes us with a prototype of it. Here again we see the paradoxical characteristic of scale being emphasized, with the characteristic of the largest scales becoming accessible through the smallest."[170]

---

[169] Jessica Sarrazin, "The Poetic and Beautiful as Subversive" (Lecture presented to the Feminist Research Group Inter-Actions: Transcending Barriers Through Feminist Research, May 7-8, University of Windsor [unpublished]).

[170] Howitt, *supra* 34 at 303.

As an example of a new public participatory model operating across scales, the Green Corridor sought to include as many micro-level communities as possible within the focus on the specificity and particularity of the Huron Church corridor. It is a "bottom-up process of local decisions made without any drawn plans"[171] which shifts the historical "duty to create a novel morality [which had] been placed predominantly on the sovereign individual… Values must be created anew; this is not the task of the lone individual, but of collective political and cultural action."[172] With Harding as the aesthetic muse demanding fugal and dialectical creativity from his participants, who represent a wide variety of social situatedness, the project is kept from assuming old political positions. This is not to say that these don't exist. But they are re-imagined as the contingent and perspectival claims that critical theory has shown them to be. The effect is that at some point, everyone will have their say and contribute a piece of themselves to the project. Violence, disagreement, universalism and banality are all avoided because foundational epistemologies are subject to an aesthetic critique, a critique which requires not only multidisciplinary justificatory accounts of public works but of inward reflection of the subject participants themselves. This is often the desire of critical theories like feminism, but it is only an artistic process which "must endlessly perform the act of its own definition."[173] The result of this critique, when applied to the situated knowledge of the participants and in encouraging cross-colonization, is the proliferation of innovation, responsibility, and face-to-face communication that makes for strong, vibrant, and desirable communities.

---

[171] Paul A. Harris, "To See with the Mind and Think through the Eye: Deleuze, Folding Architecture and Simon Rodia's Watts Towers" in Ian Buchanan and Gregg Lambert, *Deleuze and Space* (Toronto: University of Toronto Press, 2005) 36-60 at 53.

[172] Douzinas, *supra* 16 at 33.

[173] Gearey, *supra* 57 at 59. A wider account of the subjective actor to this process is Gearey, 56-60; 64-76.

In this way, the pith and substance of the class is associated with Levinasian relations to otherness as a rupture of the subject's power, a stoppage in the circulation of power and its operations. As Ziarek writes, "The relation in which the subject acknowledges and welcomes the other is characterized by an evacuation of power: it is a relation that transpires "otherwise" than through power."[174] The facilitation of different modes of encounters and exchange with the other:

> should not be conceived as a symbolic representation but as a performative articulation. It should not 'represent' (frame ironically) the survivor or the vanquished, not should it 'stand in' or 'speak for' them. It should be developed with them and it should be based on a critical inquiry into the conditions that produced the crisis… This transformation happens not through manipulation, intervention (speaking for the other) or making (a new representation of the other) but through releasing existing relations from the grip of power and enabling a different dynamic.[175]

This evidences the beginnings of a true heterotropic polity. Unlike classical Western utopianism, in which "philosophy and ethics share a common attitude towards the world, which reduces the distance between self and other and makes what is different look the same… to reveal the structure of reality by developing universal theories and claiming that the world follows the laws of theoretical necessity,"[176] the scale of proximity of the ethical imagination refuses to let the self-same reduce the production of knowledge to the situated ego. Just as Levinas finds that art has a double-meaning, the later of which is a darkening or thickening of the material to break through the world of false re-presentation, activists address themselves to varying scales of the political as

[174] Ziarek, *supra* 17 at 136.

[175] *Ibid.* at 136, quoting in part Wodiczko, *Critical Vehicles* at 46.

[176] Douzinas, *supra* 16 at 316.

ready-made surfaces, as the "neoconservative overlay," a "dominant cartography," the "unconscious dynamics of the geopolitical order" or the need for "ruptures in symbolism."[177]

Fully realized, this heterotopic vision without image is the "poiesis of proximity," the exercise of "the faculty of the imagination… making it possible for the subject to discern and gain access to the contingent realities of social existence and how ordinary experience is constructed."[178] Operating across scales of the ethical, it:

> refers to the process of re-singularized universes of subjectivation, or self-styling… [it] leads us to a very dynamic vision of the subject as a self-organizing or "autopoietic system…" Disparate orders of magnitude are thus brought into communication, to create the meta-stability which is the precondition of individuation. The system achieves stability while avoiding a closure: it engenders self-organization with high levels of creativity or autonomy from the flow of forces… An autopoietic machine is defined not in terms of the components or their static relations, but by the particular network of processes (relations) of production.[179]

This ethical imagination achieves a "sustainability" that is "beyond social constructivism" while engaging with "planetary responsibility for the future."[180] This posits a heterotopian horizon against which the individual subject is resituated from geopolitics to geopoetics, in proximity to the local and global, and thereby "finds the modes and scales of intervention and turning them into

---

[177] Brian Holmes, "Continental Drift: Activist Research, From Geopolitics to Geopoetics" in Stevphen Shukaitis and David Graeber, *Constituent Imagination: Militant Investigations, Collective Theorization* (Oakland, California: AK Press, 2007) 39-43 at 41.

[178] Braidotti, *supra* 26 at 163.

[179] *Ibid.* at 125.

[180] *Ibid.* at 204-206.

lived experience, [which] are the pathways for intellectual activism in the contemporary world system."[181]

Another clear aspect in which local actions come into contact with far-reaching relationships of proximity is the "do it yourself" culture. DIY culture surges from the bottom-up and, by definition, can never be anticipated or predetermined in its awareness of both subjective locality and simultaneous proximity. It is a means of:

> re-approaching power… while experimenting with other forms of social organizing… Through involvement in and expansion of DIY culture, participants have constructed alternatives that are more than symbolic – the have created space for empowerment, non-alienating production, mutual aid, and struggle. DIY is not simply a means of spreading alternative forms of social organizing or a symbolic example of a better society; it is the active construction of counter-relationships... DIY is the struggle of the collective individual against the production of its subjectivity…[182]

The sense of responsibility in this configuration continues to be uniquely Levinasian. As these kinds of "artworks call into question the very determination of relationality in terms of power… art transforms the power-bound space of social relations, letting this transformative event continue to reverberate in society, and sending the echo of non-power, and thus of the possibility of a radical "otherwise", through the social domain."[183] This aesthetic ethical critique of power puts the other in his proper place, as in Levinas, "above" me, at a great

---

[181] Brian Holmes, "Continental Drift: Activist Research, From Geopolitics to Geopoetics" in Stevphen Shukaitis and David Graeber, *Constituent Imagination: Militant Investigations, Collective Theorization* (Oakland, California: AK Press, 2007) 39-43 at 39.

[182] Ben Holtzman and Craig Hughes, "Do It Yourself… and the Movement Beyond Capitalism" in Stevphen Shukaitis and David Graeber, *Constituent Imagination: Militant Investigations, Collective Theorization* (Oakland, California: AK Press, 2007) 44-61 at 44-45, citing Antonio Negri and Michael Hardt, *Empire* (Cambridge: Harvard University Press, 2000) at 195-197.

[183] Ziarek, *supra* 17 at 123.

height, which the dominant image of society has removed him or her from, out of sight and out of mind. This is a reformulation of the Hegelian idea of the end of art: "what ends is not art but aesthetics, that is, the governing optics through which art is seen as an object of subjective aesthetic experience and as a cultural commodity."[184]

If we look to the existing legal and political environmental and urban design regimes, this sense of creative public participation - this leveraging of postmodern innovation against modernist stability, authority and obedience - is completely lost. The rest of this paper will be an attempt to take up Gearey's challenge to "mend the breach" between modernist and postmodernist concerns and create a "dialogue [that could] contend with a complex set of conjunctures and disjunctures between two different traditions."[185]

C. The Experience of Aesthetic Polity

After the class had been formed and convened, students immediately sought the direction and certainty of concrete expectations. Harding had trouble communicating the potential of an aesthetic program as a political action, even to the artists who predominantly constituted the class. Harding repeated often that

> "we live in a postmodern age that requires postmodern approaches to problems and contexts. We [the Green Corridor] can't be for anyone or anything. We are not political - we must be expressly apolitical."[186]

[184] Krzysztof Ziarek, "The Work of Art in the Age of Its Electronic Mutability" in *Walter Benjamin and Art* (New York: Continuum Press, 2005) 213-214.

[185] Gearey, *supra* note 57 at 55.

[186] Noel Harding, speaking to the Green Corridor class, Feb. 12, 2004.

In this way, Harding recalls Ziarek, who writes that in the ethical aesthetic creates a participatory entre-temps within art and between the simultaneous material reality it embodies:

> Because art as events exceeds and calls into question the constitution of art as an aesthetic object, the event is neither aestheticized nor politicized, certainly not in the sense of becoming a vehicle or means for political or ideological critique.[187]

This sense of facilitating an inclusive process rather than progressing an agenda allows as many perspectives as possible rather than limiting or excluding possibilities based on truth and identity claims. Manderson describes this turn thusly:

> "modernism encourages fear the thought of unpredictable movement, and we see this fear all around us: in the fear of social change, the fear of drugs, the hatred of immigration. The new aesthetic, on the contrary, sees the beauty of turbulence... there is a beauty to dissonance and an order to change, though it is not an order that can ever be predicted..."[188]

This central tenant of an aesthetic process defined the course and caused many students to drop out within a matter of weeks. In attempting to regularize the practice of an aesthetic style of thinking, Harding quickly sought to extinguish the modernist notions that traditionally define expectation, identity, and judgment in the educational process. Traditional social categorizations as an "environmental group" or as a "class" were consciously discarded. Notions of a "course" and of the "student / teacher" paradigm were also eschewed – no one was to be in charge and decisions were to be made on aesthetic concerns for valid expressions, which alternately exemplify certain aspects over others in an interactive and open-ended process.

---

[187] Ziarek, *supra* 184 at 214.

Another early and consistent criticism of many of the students expressed discontent at working towards what they knew not. Comments from even visual arts students like "if I knew what I was working towards maybe I would be able to do it" emphasized that even artists have become accustomed to working within established epistemologies with their standard vocabulary and grammar systems, or that their perception of the project as a properly political one precluded them from thinking that their regular artistic process could be applied or had a place. These are exercises in canonical reproduction at worst, or fugal variance at best. The implications of this demonstrates one weakness of this process. Mediocre students and those students with little self-motivation struggled to find a place in the class, which quickly assumed guidance from the brightest students that seemed to "get" Harding's vision, or were at least capable of working within its ambiguity.

The identity of the group was contentious: on one hand, the students wanted to celebrate their participation and form a typical corporate identity. Harding strenuously refused to the point that even post-grad Communications students were left wondering at the viability of the project at all. So to whom then did the project belong? In effect, the project belonged to aesthetic ethics. Out of the projects early work to understand the various contexts existent in the area, the particular aesthetic that emerged was an attempt to create projects that considered all those contexts at once, to materialize as great a range of absent others as conceivable – a task which is ethical and proximate in its impossibility, like Marcel's unfulfilled desire for Albertine. This was enhanced by the multidisciplinarity of the participants, which allowed for the latest innovations and conceptual thinking across various disciplines. More importantly however, the aesthetic discourse allowed students to bring the essentials of their

[188] Manderson, *supra* note 35 at 183.

discipline to the project in a way that fundamentally oppositional disciplines – science versus poetry for example – could come together in singular expressions.

Such "poetic communities" describes the avant-garde grasp as an instance of the an-archic community:

> where the work of art is apt to be less a formal object than an event or experience or, indeed, *an alternative form of life*. What is our relationship to poetry when the poem is no longer the object of a solitary aesthetic experience but rather presupposes the social conditions of theatre?[189]

The strength of these conceptions is that they reflect a truth capable of resonating with the general public. Two examples of the Green Corridor imagining process were put to the public during an open-house with great enthusiasm. Each demonstrated the appeal of a "ethics of imagination" in operation as recalling invisible relationships from between discreet categories. One example is the notion of an "Eco-Hotel" beneath or hanging from the bridge. Such a structure would simultaneously reinforce the idea of the bridge as a gateway, providing lodging for visitors while teaching them about its off-the-grid power generation, its use of bridge water and pollution-sucking native plants to keep the river and ground water clean. It would also provide for artist studios to create functioning public spaces. All this is by way of reclaiming the wasteland beneath the Ambassador Bridge.

Another example is found in the solar power sunflower field. Sunflowers are excellent phyto-remediators, while solar panels produce energy without pollution, noise, or aesthetic impact. Combining the two in a unified "solar field" doubly reinforces the idea of reducing pollution while showing that industry and nature can coexist harmoniously. Such projects coincide and reinforce the wide project to green roofs, create a continuous pedestrian greenway along Huron

[189] Gerald L. Bruns, *On the Anarchy of Poetry and Philosophy* (Fordham UP, 2006) at xxvi.

Church, provide live pollution feedback and data to passing motorists, build a greened pedestrian overpass that looks like a verdant hill over the road, etc.

As regards law, this process re-centers legal discourse around the subjective. Instead of providing decidability based on claims to certainty that are nonexistent, responsibility is returned to face-to-face participants who no longer require the law to inform them what to do. The provision of subjective actions engenders a sense of responsibility. The aesthetic cycle of creativity ensures public expression, though mediated in relation to the greater whole.

D. Levinas Before the Law: "Responsible Authorities" and "Official Plans"

A useful demonstration of the possibility that an ethical imagination holds for environmental assessment and environmental law on the whole is well illustrated by the Green Corridor's early experience with this legal process.

The current legal framework for public participation in environmental projects is divided into three broad categories across municipal, provincial and federal jurisdictions: environmental rights, civil liability to recover environmental harm, and environmental standards setting and regulation.[190] By examining the relationship between the Green Corridor project and environmental regulation and design at the federal and municipal levels, it is hoped that elements of a reproducible aesthetic model will emerge with sufficient clarity to encourage further change. After these existing legal regimes are held up to an aesthetic light, the paper will conclude with a reexamination of the Green Corridor project to uncover ambiguities, strategies and a course for future action.

As an initial objective of the Green Corridor shifted from greening the roof of the School of Visual Arts to taking up the challenge of a new pedestrian

[190] The present author is experienced in environmental law, having articled for EcoJustice (formerly the Sierra Legal Defense Fund), Canada's foremost environmental law reform non-governmental organization.

overpass proposed as a result of multiple pedestrian deaths along the heavily trucked Huron Church corridor, they confronted not only the environmental assessment process but also the momentum and velocity these projects have as they navigate the approvals process. After discovering that money had been set aside to build a pedestrian overpass within a matter of months, Harding began to court the construction team, the city planners, architects and construction company as to a heterotopic vision for a green corridor, with the bridge serving as a seed project to proliferate others and exercise imagination once again. Although all parties were open to the idea in principle, the federal environmental assessment was immanent. Harding found that the environmental assessment process could not be engaged conversationally, but rather forced him into an adversarial stance. It had no interest in a qualitative vision but rather in scientific, objective data about traffic rates, construction cost, and precise placement. It was an inherently utilitarian approach that, while purporting to be environmental, had little actual orientation to the creation of socially and environmentally sustainable outcomes. Its immediate focus on avoiding environmental harm did little to confront the fact that the harm has already been done. The assessment process provided no creative engagement as to how one might undo this damage. Harding found that the formality of the assessment process "worked from the details out - it has no orientation to the creative vision or transformative possibility" typified by aesthetic concerns.[191] Indeed, Harding was frustrated by demands that approval for the green bridge project, which has numerous precedents in urban areas around the world, would have to be prefaced by a whole range of highly detailed design documents, including survey data, a whole range of proposals encompassing "best to worst" scenarios, and the like. Harding repeatedly commented that "its the principle, its the idea of the bridge that is important."[192] He didn't see himself in relation to the engineering

[191] Noel Harding, personal communication, May 11th 2004 [on file with author].

[192] *Ibid*.

details, which he felt were better worked out actively by the technocrats who were instead passively situated as his judges. Harding viewed his role as one who would confabulate and conflate ideas, concepts, and aesthetics into a ethical vision commensurable within a wider vision directed at the whole neighborhood context, its historical contexts, its institutional context, the environmental context, and the notion of what should be done. The translation of this vision into the legitimating language of the legal-bureaucratic assessment functionally categorized its constituent parts, objectified them according to policy goals, and, likely, will decide them based on a priori assumptions about the rightness of economic, utilitarian morality. Without the a priori and tacit cooperation of the other stake holders to adopt the green corridor principles, Harding felt that his vision would have no chance in the environmental assessment process.[193] Alternatively, he feels as an artist that the environmental assessment process should explicitly adopt his aesthetic-ethical style of thinking to the environmental projects they consider. In this way, one would apply existing protocols and codified concerns as a floor from which to begin building greater things, and not a ceiling of normative ends in themselves. The basic environmental requirements would a *de minimus* scientific foundation for creative projects that explicitly consider the multidisciplinary context sensitivity and which seek to combine them in innovative and endlessly successive iterations. This scientific foundation would only be one of many situated knowledges reevaluated and built upon with each successive project. Without such considerations, the relationship of the *CEAA* to goals of not only sustainability but the reinvigoration of existing urban spaces is severely questionable.

These issues were magnified when the Green Corridor group encountered the City of Windsor Official Municipal Plan. Under the *Ontario*

[193] *Ibid*.

Planning Act,[194] each municipality has to prepare and submit an Official Development Plan for approval by the Ontario Municipal Board.[195] Official City Development Plans are 20-year plans mandated and approved by the provincial government acting under the Ontario Planning Act. The Plan is a formal, legalized framework for contemporary and future development. The city is obligated by law to carry out all the objectives, goals and standards set out in this plan. The city can not pass by-laws or approve developments that are contrary to the Plan either substantively or in spirit. Reviews of the plan are to be at least once every five years.

The Municipal Plan designates Special Planning Areas, of which Sandwich and Huron Church are two separate examples, which can supersede the Official Development Plan. So far, the Official Plan, Part II (Special Planning Areas) (SPA), contains very little substantive detail in regards to SPA Sandwich and Huron Church. This design vacuum is guided only by the principles set-out in Part I of the Plan itself. These principles themselves do not provide a mechanism for providing their content. Further, it provides no guidance on how the principles are to be filled out. As typified the experience in uTOpia, the Green Corridor found that:

> One of the drawbacks is that the new Official Plan places a lot of emphasis on maintaining the neighbourhoods and all those sort of things. The kind of language it's got in there make it very difficult to deal with things that are not precisely in line with the street-oriented historic nature of the town.[196]

While on one hand this accords a group like the Green Corridor an active role, it practically requires a group like the Green Corridor. Without such a group,

---

[194] *Ontario Planning Act*, R.S.O. 1990, c. P.13.

[195] *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28.

[196] McBride, *supra* 29 at 87.

"Special Planning Areas" fall back into the hands of reified legal exclusion, a dead-zone of legal exclusionary space where there is "no room under the sun" for public participation. This is utopianism at its worst, wherein:

> Good Ideas supplant what is actually there, even when what is actually there is wonderful and worth preserving. Thinking about big-picture principles can lead to overlooking the importance of historical accident, of mess and specificity, and trying instead to clean everything up. It's easy to get caught up in ideas about making everything special and to forget the importance of the everyday.[197]

The principles of "making everything special" are at best guidelines whose implementation is likely to proceed in a artificial, acontextual manner that reflects the isolated interests of lobbyists rather than holistic communities and environmental concerns. And without a group like the Green Corridor consciously seeking to unify stake holders at all levels under one apolitical highly contextual and multidisciplinary design process, the results are otherwise left to bureaucratic mediation to decide.

Left to itself, the likelihood of such artificially selective development is found in the contradictory claims the principles make. For example, there is great emphasis placed on pedestrian-level development,[198] balancing between vehicular traffic and cycle routes,[199] designation of the Huron Church corridor as a Civic Way,[200] the creation of linkages between "special areas" such as public

---

[197] *Ibid.* at 129.

[198] City of Windsor Official Plan (online: <http://www.citywindsor.ca/000423.asp>, §7.2.3.1 ("Council shall require all proposed developments and infrastructure undertakings to provide facilities for pedestrian movement wherever appropriate") and 8.4.

[199] Ibid., §7.1.5 (directing that all modes of transportation should play a balanced role) and 7.2.1.8 (requiring the establishment and maintaining of city-wide walking and cycling network).

[200] Ibid., §8.11.2.12-13 (defining Huron Church as a "civic way" that should (a) promote and present an attractive and unifying image of Windsor; (b) maintain a sense of welcome and arrival for travelers).§8.11.2.13 calls for "(a) enhancing the public rights-of-way along major entry points into Windsor consistent with a highly attractive and distinctive image using unifying elements such as landscaping, fixtures and boulevards and median treatments; and (b)

institutions and greenways like the Detroit River,[201] international gateway objectives,[202] and development on a human scale and with the creation of public spaces in mind.[203] But these are in direct contrast to other principles such as sections calling for cogniscence of environmental concerns and goals,[204] the classification of Huron Church as a main arterial throughway,[205] and concern for "aesthetic principles."[206] How these distinct goals are to be met are not outlined in the Official Plan. Accordingly, we would say that in lacking an ethical imagination, the Official Plan has no way to responsibly and ethically incorporate the proliferation and simultaneity of potential scales that it intersects with. Does the Official Plan need to be amended to create a new, special classification for the Huron Church corridor, given that it is a highly specific site that needs to be sensitive to historical, environmental, aesthetic, residential, thematic, international gateway and public space contexts? Given the emphasis upon development on a human scale, increasing friendliness to pedestrian and cycle flows, and creating attractive and desirable public spaces, how can the Huron Church corridor be modified to better serve not only trucking traffic but also the immediate residential and university communities? Given that Huron Church and the Ambassador Bridge cut through numerous bicycle paths and natural pedestrian flows between residential and major institutional zones, and that it

---

protecting and enhancing significant views and vistas, public space [such as the university] and heritage resources [such as Sandwich street, which is classified as a Heritage Area] along the way." See also Schedule G to the Official Plan.

[201] Ibid., §8.2.2.1(b)(i) (defining "international gateways" as something which should provide "(i) interconnected landscape features, such as trailways, bike routes, Riverside Drive, etc.; (ii) emphasis on the distinctive neighborhoods like Sandwich…; (iii) natural areas").

[202] Ibid., §8.2.2.1 - 5.

[203] Ibid., §8.1.2 (calling for human-scale development projects).

[204] Ibid., §section 3 and 8.5.

[205] Ibid., §7.2.2.2 (road classification scheme).

[206] Ibid., §8.2.2.5 (further definition of the role, function and principles for international gateways).

would be a natural corridor linking inland parks and nature zones to the river front greenbelt, could Huron Church be addressed as a Greenway Linkage route? The likely outcome to these kinds of disparate questions without an over-arching vision or creative process is the manufacture of a "crisis" of design. Such a crisis moment forces decisions to be made irresponsibly and without regard to the complexity and nuance required in both urban design and environmental innovation. It also legitimates the outcome.

As governments have anticipated and allowed this phenomenon to gradually assume its current stature, a crisis moment has been building in which ecological, social, and economic concerns have been pitted as binaristic and incommensurable goals. As introduced at the beginning of this thesis, this is the forced choice between competing utopias: the economic versus the ecologic, the trap between genesis and structure, a competition between totalities, the grey monoculture that builds only placelessness devoid of character and context. Predictably, the inhabitants of such spaces are partisan groups such as the Canadian Transit Company (the Ambassador Bridge is privately owned and operated), the Canadian Trucking Alliance, DaimlerChrysler Canada and the Windsor Chamber of Commerce who have advocated redevelopment principles that would effectively expand existing infrastructural paradigms into highway extensions,[207] while environmental, residential and historical groups are crying foul over the increased fouling such initiatives would bring to their

[207] The "Windsor and District Chamber of Commerce Transportation Policy Statement", November 2003 (available at: http://www.windsorchamber.org/PDFfiles/Transportation%20Policy%20Statement.pdf) predictably advocates for infrastructural upgrades that "redefine the operation of the corridor and maximize the function for corridor throughput or facilitation" in part by reassigning financial responsibility for Huron Church to the Province (page six to eight). The ultimate goal is to position Windsor-Detroit as a "Global Transportation Hub" (page 12). Concern for the quality of life for local residents gets one paragraph on page 18, where "grade separations" along major roads are offered as ways to commensurate commercial needs with quality of life concerns. It is this author's opinion that what the chamber really wants is the facilitation of trade and commerce, but that these are not necessarily ends in themselves, i.e., if broader concerns can be integrated then they "might as well."

neighborhoods. None of this process of articulation however does anything to commensurate or synthesize these equally important contexts. And indeed, because these entities are forced into articulating merely their own viewpoint, no means or mechanism by which these contexts could be creatively integrated is fostered. It is precisely the opposite metaphysics of transcendent at work from the ethical aesthetic. uTOpian works instantiate a contingent horizon of the relational not as an "ultimate outer boundary" but as a:

> scaled spatial field… [that] changes with the subject's movement, or with a shift to another seeing subject… The co-location of mutually perceiving subjects in cultural landscapes, with their institutional, environmental, economic and social complexities creates relationships that are always and complexly placed but are not place-bound. Intersubjective space, therefore, needs always to be contextualized as an ethical space…[208]

While (legally binding) municipal planning documents posit broad development goals that seek to integrate the various contexts, they remain largely rhetorical in nature because they fail to provide for the creativity necessary to do this. Similarly, the Nine-Point plan stating the federal and provincial plans for the area reflects international trade concerns with little provision for local sustainability. If these nine points are the bones, Minister comments left no uncertainty as to what form its flesh would take:

> Collaboration with the private sector, the community and local governments will ensure that infrastructure investments improve access to the border crossings as quickly as possible, for the quality of life of the community... This initiative is very much part of the overall Canada-U.S. strategy to make the border safe and effective for trade... initiatives intended to improve the efficiency of the Windsor Gateway... in addressing the concerns at our busiest border crossing, we know how important it is for

[208] Howitt, *supra* 34 at 302.

> industry to have efficient border crossings to keep and create jobs...[209]

What the ethical imagination changes is the fundamental orientation of the legal imagination. In a rather infamous line, courts have commented that "I cannot understand why any event which does happen is not foreseeable by a person of sufficient imagination and intelligence."[210] Instead, the ethical imagination in law would reconfigure this exercise of invisibility and a priori responsibility into a form that turns the metaphysics of law on its head: "I cannot understand why an event which has not happened is not foreseeable by a legality of sufficient imagination and intelligence." As Alexandre Lefebvre describes it, creativity is typically understood as a faculty "extrinsic to the law, as something that could, if perhaps only in principle, be eliminated from it." Instead, "we must come to terms with [creativity] if we are to understand law and adjudication" and appreciate its role in context of the everyday operation of the law.[211] The "ethical imagination" shows how legal discourses dominated by rights and entitlements and the "is" and the "ought" must be combined with a newer sense of obligation and responsibility as a question of participatory and pluralistic citizenship in the heterotopia of otherness.[212]

Probably the best form that could be recognized here is to engage the city with the implications of the principles it has posited on the local level. Manderson notes that:

---

[209] Government of Canada, "Canada and Ontario Announce Next Steps at Windsor Gateway", May 27 2003. Online: http://www.infrastructure.gc.ca/bif/publication/news_releases/2003/20030527windsor_e.shtml.

[210] Manderson, *supra* 35 at 111, citing *Sutherland Shire Council v. Heyman* (1985) 157 CLR 424, 495.

[211] Lefebvre, *supra* 37 at xxi – xiii.

[212] On this notion of citizenship and otherness, see Charles Blattberg, "Political Philosophies and Political Ideologies" 15 Public Affairs Quarterly 3 (July 2001), 193-217.

> "social communities often seem to be expected to position themselves in one of two characteristic ways: by assimilating or through the creation of kinds of ghettos. Both are static conceptions which limit social change... the aesthetics of critical pluralism is not about preserving intact the hermetic integrity of any particular community. On the contrary, beauty lies in their conjunction... The result is a vibrancy and anticipation which is worth celebrating not just in spite of but because there is no predicting where it will end up."[213]

Local aesthetic groups focusing on their specific neighborhood contexts could be the primary interface between municipal, provincial and federal governments as the synthetic way of bringing disparate interests together under one ethical aesthetic process. Successful works would only come out of the fullest contextual appreciation of neighborhoods, histories, and environments.

Public participation wouldn't be a feature of the environmental assessment and design process; it would be the core of it. Further, the aesthetic process has shown its validity once more in this municipal context. Recent discussions with city planner Jim Yanchula lead to an agreement that existing definitions of the Huron Church corridor as a major arterial throughway and "civic way" could be hybridized with other designation to allow a unity of contexts and concepts, and the possibility of projects otherwise unconsidered and unimagined.[214] Yanchula had to remind Green Corridor participants, in fact, that as citizens it was their right and duty to confront the city on such matters. The city further agreed that such an effort could likely lead to urban revitalization as "seed projects" such as greening the roof of nearby educational institution buildings, creating a showcase "off the grid" home, or building a green pedestrian overpass would pave the way to heightened awareness and activity.

---

[213] Manderson, *supra* note 35 at 182-3.

[214] Jim Yanchula, City of Windsor Urban Planner, Roundtable discussion with the Green Corridor class, University of Windsor, February 12, 2004.

At the municipal level itself, such projects have not been seriously considered because of their diasporic nature, lack of an over arching plan, and lack of a creative mechanism to conceive and execute such projects as a situated political actor more suited to licensing and funding than creating.

5. Conclusion

For Levinas, politics "at intimate scales is about embodiment; more widely, it is about horizons, emplacement, coexistence and simultaneity; most widely it is about infinity, cosmology and transcendence."[215] In an aesthetic sense, projects such as the Green Corridor are never finished. They remain in a constant state of redefining the ambit of their responsibility and emphasis as physical, geographical, ecological, social, economical, political and technological contexts themselves shift. Again, priority and decision making is based on the aesthetic process: not "what is the best single expression" but "what are the range of expressions possible?" This avoids the artificial selectivities that compel violence of all kinds, eschews notions of objective universality, and reorients political processes around the exploration of subjective concerns. An essential component to this process is multidisciplinarity, which challenges settled and conventional knowledge-producing systems to recast their range of phenomenon in new and unexpected ways. Empiricism becomes not a positivistic end in itself, but rather one artistic tool through which systems of understanding and expression can more deeply and subtly understand phenomenon and their causes. Canons of knowledge remain vitally important as points of reference, though they lose their power. The ethically of this process is that it promotes, proliferates and protects true difference, which is now afforded a means of intersubjective communication and responsibility. The "other" is no longer a threatening source of fear, but a necessary source for self-

[215] Howitt, *supra* 34 at 301.

understanding and communication. Binaristic dichotomies collapse as the aporetic, ethical and aesthetic are united.

This prefaces the means for critical insights to enjoy successful interventions into modernity. And here we find the value, crux and importance of the Green Corridor example as the ethical imagination in utopia: it brought the experienced marginalization of a wide-variety of contexts and identities to modernity on their own terms and was, it appears, successful. Whether or not it will also be a successful test-case of changing institutional practice in a sustainable and systematic way remains to be seen. However, it has maintained its apolitical orientation while building alliances across multiple scales of responsibility and engaged a myriad of unseen others. This call to the other has resulted in positive momentum as the Green Corridor comes to actualizing its first expressions in a green roof atop the University of Windsor student residences and in pulling together municipal, provincial, federal and institutional parties in creating a green pedestrian overpass.

The Green Corridor project shows how these two camps can be commensurate through an aesthetic discourse. By building political connections, the Green Corridor has found a way to licensee an environmental and urban design vision outside of the bureaucratic hierarchy and categorization. This allows the Green Corridor to maintain its post-modernist orientation and creative grammar. Green Corridor effectively seeks to remove the power to make decisions from bureaucratic exclusivity, allowing it to indulge in its multidiscipline approach with a maximum of creative and innovative freedom. At the same time however, bureaucratic review exists as a means of ensuring that certain baseline needs are satisfied and procedural concerns addressed. An aesthetic political process then is not a replacement, but a mode of thinking and a participatory model that collapses relativisms while maintaining a basis for justificatory decision making across true difference.

Bibliography

Works of Art

640x480 Video Collective, "Inconsequential Moments Memorialized," Series of 11 plaques placed in various locations around Toronto with corresponding YouTube video and geotags (Toronto, 2006). Available at: http://torontoist.com/2007/12/banal_events_me.php.

Harding, Noel. http://www.noelharding.ca.

-----. Green Corridor, Various Construction Projects (Windsor, Ontario; 2004-present).

-----. Elevated Wetlands, (Toronto, Ontario, 1999). http://www.toronto.ca/archives/acquisitions_fonds1236_noelharding.htm.

Jacob, Luis. "Flashlight" LED signage, geodesic dome playground equipment, disco ball, image bank, Muskoka chairs, bicycle pedals, solar panels on steel pole, electrical generator, sand (Toronto, 2005). Available at: http://www.torontosculpturegarden.com/LuisJacob.htm.

Jordan, Chris. *Running the Numbers: An American Self-Portrait* , "Artists Statement", September 2008. Online: http://www.chrisjordan.com/current_set2.php.

Jordan, Chris. "Artists Statement", Kopeikin Gallery, September 8 - October 20, 2007. Online: http://kopeikingallery.com/exhibitions/view/running-the-numbers-an-american-self-portrait.

Jordan, Chris. Running the Numbers: An American Self-Portrait Series (2006-2007).

-----. "Cell Phones," 60" x 100", digital print (2007).

-----. "Plastic Bottles," 60" x 120", digital print (2007).

-----. "Prison Uniforms," 10' x 23', digital print (2007).

Jungen, Brian. "Ceatology" plastic chairs (2002).

Jungen, Brian. "Shapeshifter" plastic chairs (2000).

Legault, Maria. "Free Sugar in the City" ongoing performance filling holes and cracks in the city with pink icing (Toronto, 2003-present). Available at:

http://www.ccca.ca/performance_artists/l/legault/legault_perf1/city/images/20.jpg.

Mark, Kelly. “Broken Line #1” Giclee print on cold pressed watercolor paper 12" x 9.5" (Toronto, 2003). Available at: http://www.ireallyshould.com/BrokenLineSeries12.html.

Planning Action Committee, “Public Washroom Project installation.” Mixed media installation sculpture, Toronto (2004). Cited in Jason McBride and Alana Wilcox (eds.), *uTOpia: Towards a New Toronto* (Toronto: Coach House Books, 2005) at 203.

Titarenko, Alexi. “Untitled (Crowd 2)” part of the “City of Shadows” series, digital print (New York, 1992-94). http://www.alexeytitarenko.com/city2.html.

Legislation

Canadian Environmental Assessment Act, S.C. 1992, c. 37.

City of Toronto. *Creative City Planning Framework: A Supporting Document to the Agenda for Prosperity: Prospectus for a Great City* (Toronto: City of Toronto, 2008). Online: http://www.toronto.ca/culture/pdf/creative-city-planning-framework-feb08.pdf.

City of Windsor. *Official Plan* (Windsor: City of Windsor, 2003). Online: http://www.citywindsor.ca/000423.asp.

Ontario *Environmental Assessment Act*, R.S.O. 1990, c. E.18.

Ontario Planning Act, R.S.O. 1990, c. P.13.

Ontario Municipal Board Act, R.S.O. 1990, c. O.28.

Books

Adorno, Theodor (trans. Robert Hullot-Kentor). *Aesthetic Theory* (Minneapolis: University of Minneapolis Press, 1997 [1970]).

Arendt, Hannah. *Eichmann In Jerusalem: A Report on the Banality of Evil* (London: Penguin Press, 2006 [1963]).

Armstrong, Isobel. *The Radical Aesthetic* (Malden, Mass: Blackwell Publishers, 2000).

Bataille, Georges. *The Unfinished System of Non-Knowledge* (Minneapolis: University of Minnesota Press, 2001 [1973]).

Bauman, Zygmunt. *Does Ethics Have a Chance in a World of Consumers?* (Cambridge, Mass.: Harvard University Press, 2009).

Beardsworth, Richard. *Derrida and the Political* (New York: Routledge Press, 1996).

Beals, Corey. *Levinas and the Wisdom of Love: The Question of Invisibility* (Waco, Texas: Baylor University Press, 2007).

Berlin, Isaiah. *The Crooked Timber of Humanity* (New Jersey: Princeton University Press, 1990).

Berlin, Isaiah. *Political Ideas in the Romantic Age: Their Rise and Influence on Modern Thought* (New Jersey: Princeton University Press, 2008).

Bloch, Ernst. *The Utopian Function of Art and Literature* (Cambridge, Mass.: MIT Press, 1989).

Bloch, Ernst. The Spirit of Utopia (Stanford: Stanford University Press, 2000).

Bloch, Ernst. *The Principle of Hope, Vol. 1, 2 and 3* (Cambridge, Mass.: MIT Press, 1995).

Bloechl, Jeffrey and Jeffrey Kosky. *Levinas Studies Vol. 1* (Pittsburgh: Duquesne University Press, 2005).

Bloechl, Jeffrey and Jeffrey Kosky. *Levinas Studies Vol. 2* (Pittsburgh: Duquesne University Press, 2005).

Bloom, Allan. *The Republic of Plato* (Boulder: Perseus Publications, 1991).

Boyd, David. *Unnatural Law: Rethinking Canadian Environmental Law and Policy* (Vancouver: UBC Press, 2003).

bpNichol. *The Martyrology, Book 5* (Toronto: Coach House Books, 1982[1994]).

Braidotti, Rosi. *Transpositions* (Cambridge: Polity Press 2006).

Brown, Lester R. *Eco-Economy: Building an Economy for the Earth* (New York: W. W. Norton & Company, 2001).

Buchanan, Ian and Gregg Lambert. *Deleuze and Space* (Toronto: University of Toronto Press, 2005).

Bruns, Gerald. *Tragic Thoughts at the End of Philosophy: Language, Literature, and Ethical Theory* (Evanston, Ill.: Northwestern University Press, 1999).

Bruns, Gerald. *On the Anarchy of Poetry and Philosophy: A Guide for the Unruly* (New York: Fordham UP, 2006).

Cazeaux, Clive (ed.), Continental Aesthetics Reader (New York: Routledge, 2000).

Cohen, Richard. *Ethics, Exegesis and Philosophy: Interpretation after Levinas* (Cambridge: Cambridge University Press, 2001).

Coleman, Jules. *The Practice of Principle: In Defense of a Pragmatist Approach to Legal Theory* (New York: Oxford University Press, 2003).

Conklin, William. *The Invisible Origins of Legal Positivism* (New York: Springer Press, 2001).

Conklin, William. *The Phenomenology of Modern Legal Discourse* (Aldershot: Ashgate Press, 1998).

Cornell, Drucilla. *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992).

Couture, Jocelyne and Kai Nielson. *On the Relevance of Metaethics: New Essays on Metaethics* (Calgary: University of Calgary Press, 1996).

Crawley, Karen. *Limited ink : interpreting and misinterpreting Gödel's incompleteness theorem in legal theory* (Montreal: University of McGill Thesis Dissertation, 2006).

Critchley, Simon and Peter Dews. *Deconstructive Subjectivities* (New York: SUNY Press, 1996).

Critchley, Simon and Robert Bernasconi. *The Cambridge Companion to Levinas* (Cambridge: Cambridge University Press 2002).

Critchley, Simon. *Ethics of Deconstruction* (London: Blackwell, 1992).

Curry, Patrick. *Ecological Ethics: An Introduction* (New York: Polity Press, 2005).

DeLanda, Manuel. *A New Philosophy of Society: Assemblage Theory and Social Complexity* (New York: Continuum Press, 2006).

Deleuze, Gilles and Felix Guattari (trans. Brian Massumi). *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis: University of Minnesota Press, 1987).

Derrida, Jacques (trans. Geoffrey Bennington). *The Truth in Painting* (Chicago: University of Chicago Press, 1987).

Derrida, Jacques. *Writing and Difference* (trans. Alan Bass) (London: Routledge, 1978).

de Saadaleer, Ernesto. *Environmental Principles: From Political Slogans to Legal Rules* (New York: Oxford University Press, 2002).

Diamantides, Marinos (ed.), *Levinas, Law and Politics* (New York: Routledge, 2007).

Diamond, Dr. Gerald & Michael Parker. *Preliminary Air Quality Assessment related to Traffic Congestion at Windsor's Ambassador Bridge* (Toronto: Ontario Ministry of the Environment, 2004), online: http://www.ene.gov.on.ca/envision/techdocs/4624e.htm.

Douzinas, Costas and Adam Gearey, *Critical Jurisprudence: The Political Philosophy of Justice* (Oxford: Hart Publishing, 2005).

Douzinas, Costas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart Publishing, 2000).

Douzinas, Costas and Lynda Nead (eds.). *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999).

Dworkin, Ronald. *Law's Empire* (Cambridge, Mass.: Belknap Press, 1986).

Farber, Daniel A. and Suzanna Sherry. *Desperately Seeking Certainty: The Misguided Quest for Constitutional Foundations* (Chicago: University of Chicago Press, 2004).

Florida, Richard. *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life* (New York: Basic Books, 2003).

Fukuyama, Francis. *The End of History and the Last Man* (New York: Free Press, 1992).

Fukuyama, Francis. *Our Posthuman Future: Consequences of the Biotechnology Revolution* (New York: Picadore USA, 2003).

Galeano, Eduardo. *Notes from Nowhere: We are Everywhere: The Irresistible Rise of Global Anticapitalism* (London: Verso, 2003).

Gearey, Adam. *Law and Aesthetics* (Portland: Hart Publishing, 2001).

Goodrich, Peter and Mariana Valverde. *Nietzsche and Legal Theory: Half-Written Laws* (New York: Routledge, 2005).

Guyer, Paul. *Values of Beauty: Historical Essays in Aesthetics* (Cambridge: Cambridge University Press, 2005).

Habermas, Jurgen (trans. William Rehg). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, Mass.: MIT University Press,1998).

Hand, Sean, *The Levinas Reader* (Malden, Mass: Wiley-Blackwell Publishers, 2001).

Hart, HLA. *The Concept of Law 2nd Ed.* (London: Clarendon Press, 1961).

Hegel, G.W.F (trans. H.B. Nisbet). *Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1991).

Homer-Dixon, Thomas, *The Upside of Down: Catastrophe, Creativity, and the Renewal of Civilization* (Toronto: Vintage Canada, 2007).

Hudson, Wayne. *The Reform of Utopia* (Aldershot: Ashgate, 2003).

Hughes, Elaine Lois et al. (eds.). *Environmental Law and Policy* (3rd Edition) (Toronto: Edmond Montgomery Publications Limited, 2003).

Hutchens, B.C. *Jean-Luc Nancy and the Future of Philosophy* (Montreal: McGill University Press, 2005).

Jacobs, Jane. *The Death and Life of Great American Cities* (New York: Vintage Press, 1992).

Jacoby, Russell. *Picture Imperfect: Utopian Thought for an Anti-Utopian Age* (New York: Columbia University Press, 2005).

Kingwell, Mark. *Concrete Reveries: Consciousness and the City* (Toronto: University Of Toronto Press, 2008).

Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2006).

Kunstler, James Howard. *The Long Emergency: Surviving the End of Oil, Climate Change, and Other Converging Catastrophes of the Twenty-first Century* (New York: Grove Atlantic Press, 2005).

Kunstler, James Howard. *Geography Of Nowhere: The Rise And Decline of America's Man-Made Landscape* (New York: Free Press, 1994).

Lefebvre, Alexandre. *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press, 2008).

Levinas, Emmanuel. *Collected Philosophical Papers* (Pittsburgh: Duquesne University Press, 1998).

-----. *Totality and Infinity: An Essay on Exteriority* (Pittsburgh: Duquesne University Press, 1969).

-----. *Otherwise than Being or Beyond Essence* (Pittsburgh: Duquesne University Press, 1981).

-----. *Entre Nous: Thinking of the Other* (New York: Columbia University Press, 1998).

-----. *Existence and Existents* (Pittsburgh: Duquesne University Press, 2001 (1947)).

-----. *Alterity & Transcendence* (trans. Michael Smith) (New York: Columbia University Press, 1999 [1995]).

-----. *God, Death, and Time* (trans. Bettina Bergo) (Stanford: Stanford University Press, 2000 [1993]).

-----. *Proper Names* (trans. Michael Smith) New York: Columbia University Press, 1996).

Llewelyn, John. *The Middle Voice of Ecological Conscience: A Chiasmic Reading of Responsibility in the Neighborhood of Levinas, Heidegger and Others* (London: MacMillan Academic Press, 1991).

Llewelyn, John. *The Hypocritical Imagination: Kant and Levinas* (New York: Routledge, 1999).

Loesberg, Jonathan. *A Return to Aesthetics: Autonomy, Indifference and Postmodernism* (Stanford: Stanford University Press, 2005).

Manderson, Desmond. *Songs without Music: Aesthetic Dimensions of Law and Justice* (Berkeley: University of California Press, 2000).

Manderson, Desmond. *Proximity, Levinas and the Soul of Law* (Montreal: McGill-Queens University Press, 2006).

Manuel, Frank E. and Fritzie P. *Utopian Thought in the Western World* (Cambridge: Harvard University Press, 1979).

Manuel, Frank E. *Utopias and Utopian Thought* (New York: Houghton Mifflin Co, 1966).

Bruce Mau, *Massive Change* (London: Phaidon Press, 2004).

May, Todd. *Reconsidering Difference: Nancy, Derrida, Levinas, Deleuze* (Pennsylvania: Pennsylvania UP, 1997).

McBride, Jason and Alana Wilcox (eds.). *uTOpia: Towards a New Toronto* (Toronto: Coach House Books, 2005).

McBride, Jason and Alana Wilcox (eds.). *The State of the Arts: Living with Culture in Toronto* (Toronto: Coach House Books, 2006).

McBride, Jason and Alana Wilcox (eds.). *GreenTOpia: Towards a Sustainable Toronto* (Toronto: Coach House Books, 2007).

Moran, Dermot. *Introduction to Phenomenology* (New York: Routledge, 2000).

More, Thomas (trans. Paul Turner). *Utopia* (London: Penguin Classics, 1965).

Nancy, J.L. *Being Singular Plural* (Stanford: Stanford University Press, 2000).

Nancy, J.L. *Multiple Arts: The Muses II* (Stanford: Stanford University Press, 2006).

Nietzsche, Freidrich. *Will to Power* (New York: Vintage Press, 1968).

O'Leary, Timothy. *Foucault and the Art of Ethics* (New York: Continuum Press, 2002).

Peperzak, Adriaan (ed.). *Ethics as First Philosophy: The Significance of Emmanuel Levinas for Philosophy, Literature and Religion* (New York: Routledge, 1995).

Proust, *In Search of Lost Time Volume I: Swann's Way* (trans. D.J. Enright) (New York: Modern Library, 1992).

Randolph, Jeanne and Ihor Holubizky. *Ethics of Luxury: Materialism and Imagination* (Toronto: YYZ Books, 2007).

Robbins, Jill. *Altered Reading: Levinas and Literature* (Chicago: University of Chicago Press, 1999).

Ross, Alison. *The Aesthetic Paths of Philosophy: Presentation in Kant, Heidegger, Lacoue-Labarthe and Nancy* (Stanford: Stanford University Press, 2007).

Ross, Stephen David. *The Gift of Beauty: The Good as Art* (New York: SUNY Press, 1996).

Rose, Gillian. *Dialectic of Nihilism: Post-Structuralism and Law* (New York: Wiley-Blackwell Publishers, 1984).

Scarry, Elaine. *On Beauty and Being Just* (New Jersey: Princeton University Press, 2000).

Shukaitis, Stevphen and David Graeber (eds.). *Constituent Imagination: Militant Investigations, Collective Theorizations* (Oakland, CA: AK Press, 2007).

Somerville, Margaret. *The Ethical Imagination* (Toronto: Anansi Press, 2006).

Suits, Bernard. *The Grasshopper: Games, Life and Utopia* (Buffalo: Broadview Press, 2005).

Tierney, Nathan. *Imagination and Ethical Ideals: Prospects for a Unified Philosophical and Psychological Understanding* (New York: SUNY Press, 1994).

Toynbee, Arnold J. *A Study of History* (London: Oxford Press, 1947).

Weinberger, David. *Everything is Miscellaneous: The Power of the New Digital Disorder* (New York: Henry Holt and Co., 2007).

Wyschogrod, Edith. *Emmanuel Levinas: The Problem of Ethical Metaphysics* (Toronto: Scholarly Book Services Inc., 2000).

Ziarek, Krzysztof. *The Force of Art* (Stanford: Stanford University Press, 2004).

Chapters in Books

Bruns, Gerald. “The Concept of Art and Poetry in Emmanuel Levinas’s Writings” in Simon Critchley and Robert Bernasconi, *The Cambridge Companion to Levinas* (Cambridge: Cambridge University Press 2002) 206-233.

Crignon, P. “Figuration: Emmanuel Levinas and the Image” in Thomas Trezise (ed.), *Encounters with Levinas* (New Haven: Yale University Press, 2004).

Derrida, Jacques, "'Eating Well' or the Calculation of the Subject: An Interview with Jacques Derrida" in Who Comes After the Subject? eds. Cadava, Connor, & Nancy, New York: Routledge, 1991, p 96-119.

Derrida, Jacques. ‘Violence and Metaphysics’ in *Writing and Difference: An Essay on the Thought of Emmanuel Levinas* (trans. Alan Bass) (London: Routledge, 1978).

Diamantedes, Marinos, “Editor’s Introduction: Responsibility in the Wake of the Subjects Demise: The Appeal and Danger of Levinas’ Ethical Anarchy” 1-31 in Diamantedes (2007)

Hart, Kevin. “Ethics of the Image” in Jeffrey Bloechl and Jeffrey Kosky, *Levinas Studies Vol 1* (Pittsburgh: Duquesne Press 2005) 119-138.

Kearney, Richard. “Levinas and the Ethics of Imagining” in Dorota Glowacka and Stephen Boos (eds.), *Between Ethics and Aesthetics: Crossing the Boundaries* (New York: SUNY Press, 2002) 108-117.

Kingwell, Mark. “Reading Toronto: Architecture and Utopia” in Jason McBride and Alana Wilcox (eds.), *uTOpia: Towards a New Toronto* (Toronto: Coach House Books, 2005) 58-68.

Levinas, Emmanuel. “The Trace of the Other” (1963) in Mark C. Taylor (ed.), *Deconstruction in Context* (Chicago: University of Chicago Press, 1986), 350-53.

-----. “Ideology and Idealism” (1973) in Sean Hand (ed.), *The Levinas Reader* (Oxford: Blackwell, 2001), 235-248.

-----. “Another thinking of death: Starting from Bloch” in Emmanuel Levinas, *God Death and Time* (Stanford: Stanford University Press, 2000 [1993]) (translated by Bettina Bergo) 92-96.

Levy, Ze’ev, “Emmanuel Levinas on Secularization in Modern Society” in *Levinas Studies Vol. 1* (2005) 19-35.

Putnam, Hilary. “Levinas and Judaism” in Simon Critchley (ed.) *Cambridge Companion on Levinas* (London: Cambridge University Press, 2002).

Robbins, Jill. “Tracing Responsibility” in Adriaan T. Peperzak, *Ethics as First Philosophy: The Significance of Levinas for Philosophy, Literature and Religion* (New York: Routledge Press, 1995) 173-183.

Sayej, Nadja. “Leaving their mark: street art in Toronto” in Jason McBride and Alana Wilcox (eds.), *The State of the Arts: Living with Culture in Toronto* (Toronto: Coach House Books, 2006) 168-175.

Slaughter, Marty, “Levinas, Mercy and the Middle Ages”, in M. Diamantides, ed., Levinas, Law, Politics (2007) 49-70.

Werhane, Patricia H., “Levinas’s Ethics: A Normative Perspective without Metaethical Constraints” 59-67 in Peperzek (1995).

Wyschogrod, Edith. “The Art in Ethics: Aesthetics, Objectivity and Alterity in the Philosophy of Emmanuel Levinas” in Adriaan T. Peperzak, *Ethics as First Philosophy: The Significance of Levinas for Philosophy, Literature and Religion* (New York: Routledge Press, 1995) 137-148.

Ziarek, Krzysztof, “The Work of Art in the Age of It’s Electronic Mutability” in Andrew Benjamin (ed.) Walter Benjamin and Art 209-225.

Articles

Editor, “In Praise of Good Maps: Theory, History and the Signs of the Times”, Upping the Anti (A Journal of Theory and Action) 6 (May 2008), 19-34.

Abensour, Miguel, "To Think Utopia Otherwise," Graduate Faculty Journal 20/21, 1/2 (1998), 251-279.

Applebome, Peter. “Human Behavior, Global Warming, and the Ubiquitous Plastic Bag” Sept. 30 2007, online: http://www.nytimes.com/2007/09/30/nyregion/30towns.html.

Armengaud, Francoise, “On Obliteration: Discussing Sacha Sosno” Art & Text 33 (Winter 1989), 30-41.

Barclay, Michael. “This is Torontopia” (*Exclaim!*, September 2006, 26-27).

Bauman, Zygmunt, "The World Inhospitable to Levinas" Philosophy Today 43(2) Summer 1999; 151-167

Bergkamp, Lucas, “Allocating Unknown Risk: Liability for Environmental Damages Caused by Deliberately Released Genetically Modified Organisms” (2000).

Blattberg, “Political Philosophies and Political Ideologies” 15 Public Affairs Quarterly 3 (July 2001), 193-217.

British Broadcasting Corporation, “Three die in Saudi shop stampede” (1 September, 2004) http://news.bbc.co.uk/2/hi/middle_east/3618190.stm.

Brown, Jeffrey W., "What Ethics Demands of Intersubjectivity: Levinas and Deleuze on Husserl," International Studies in Philosophy 34(1) (2002): 23-37.

Burns, Judith. “Voyage confirms plastic pollution” (BBC: August 27 2009) Online: http://news.bbc.co.uk/2/hi/science/nature/8225125.stm.

Chalier, Catherine, 'The Messianic Utopia' translated by Andrew Slade, Graduate Faculty Journal, 20/21, 1/2, 1998, 281-296.

Cirakman, Elif. “Levinas’ Disruptive Imagination: Time, Self and the Other” 83 Analecta Husserliana (2004) 91–115.

Faber, Roland, "De-Ontologizing God: Levinas, Deleuze, and Whitehead" in Process and Difference: Between Cosmological and Poststructuralist Postmodernisms, Catherine Keller (ed.) (Albany: SUNY, 2002), 209-234.

Fischl, Richard Michael. “The Question That Killed Critical Legal Studies” 17 Law & Social Inquiry 4 (Autumn, 1992), 779-820.

Greisch, Jean. “Ethics and Ontology: Some “Hypocritical” Considerations” (trans. Leonard Lawler) Graduate Faculty Philosophy Journal 20-21 (1998) 41-69.

Guadio, Rudolph. “Coffeetalk: Starbucks™ and the commercialization of casual conversation” (32 Language in Society 5 (2003), 659-691).

Hansel, Joelle, 'Utopia and Reality: The Concept of Sanctity in Kant and Levinas,' Philosophy Today, 1999; 43(2), 168-175.

Helfand, Glen. “Mutant Marshlands” Wired Magazine (7.01 January 1999), online: http://www.wired.com/wired/archive/7.01/eword.html?pg=2.

Holmes, Brian. “Continental Drift: Activist Research, From Geopolitics to Geopoetics” in Stevphen Shukaitis and David Graeber, *Constituent Imagination: Militant Investigations, Collective Theorization* (Oakland, California: AK Press, 2007) 39-43.

Howitt, Richard. “Scale and the Other: Levinas and Geography” Geoforum 33 (2002) 299-313.

Kearney, Richard, "Levinas and the Ethics of Imagining" in Between Ethics and Aesthetics: Crossing the Boundaries, Glowacka, Dorota (ed.) (Albany: SUNY, 2002), 85-96. From: Poetics of Modernity, Kearney 1995.

Lee, Marie, “Regulatory Solution for GMOs in Europe: The Problem of Liability” (2003) 13 JELP 311.

McNaughton, Jodi, “GMO Contamination: Are GMOs Pollutants under the Environmental Management and Protection Act?” (2003) 66 Sask. L. Rev. 183.

Manderson, Desmond and Sarah Turner, “Coffee House: Habitus and Performance Among Law Students” (31 Law & Social Inquiry 3 , 649–676 (September 2006)).

Minkkinen, Panu, “The Expressionless: Law, Ethics, and the Imagery of Suffering” Law and Critique, Vol. 19, No. 1, 2007 (SSRN).

Mount, Ian. “Manufacture and Sell Anything -- In Minutes” Wired Magazine, 16.04, (March 24, 2008), online: http://www.wired.com/techbiz/it/magazine/16-04/bz_instapreneur.

Peters, Gary, “The Rhythm of Alterity: Levinas and Aesthetics,” 82 Radical Philosophy 1997, 9-16.

Robbins, Jill, “Aesthetic Totality and Ethical Infinity: Levinas on Art,” L'Esprit Créateur, 35, 3, 1995, 66-79.

Schlag, Pierre. "The Problem of the Subject" 69 Texas Law Review 7 (2007), 1627-1743.

Sharpe, “Aesthet(h)ics: On Levinas’ Shadow” 9 text theory critique 29-47 (2005).

Walker, Ruth. “Molars, Mastodons, or Plastic Flowerpots?” Christian Science Monitor (19 November 1998), online: http://search.csmonitor.com/durable/1998/11/19/p13s1.htm.

Wehrs, Donald R., 'Levinas and Sterne: From the Ethics of the Face to the Aesthetics of Unrepresentability,' In Proximity: Emmanuel Levinas and the Eighteenth Century, ed. Melvyn New with Robert Bernasconi and Richard A. Cohen, Lubbock, Texas: Texas Tech University Press, 2001, 141-165.