

Between the “City of Man” and the “City of God”

Levinas on the Biblical Institution of the “Cities of Refuge” in Talmudic literature (*bMakk* 9b-10a).

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In the present paper I will address Emmanuel Levinas¹ long commentary on a relatively short Talmudic passage dedicated on the Biblical institution of the “cities of Refuge,”² namely asylum cities erected for those who have been cleared by the court for committing murder but were found guilty of manslaughter. Levinas comments on this relatively marginal Biblical institution that is treated at length both in the Palestinian and the Babylonian tractate *Makkot*—which mostly pertains to “lashes,” namely corporal punishment in-

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1 Emmanuel Levinas (1906-1995) was an important French philosopher of Lithuanian origins. Most of his philosophical work, written in French, has been inspired by Edmund Husserl’s phenomenology, Martin Heidegger’s “existentialism,” and, later, by Rabbinic literature—especially by the Talmud.

Levinas’ philosophical education began at Strasbourg University in 1924, where he knew the French philosopher Maurice Blanchot and later became one of the very first French intellectuals to have studied Husserl and Heidegger. After the Second World War, he began teaching at the University of Poitiers in 1961, at the Nanterre campus of the University of Paris in 1967, and at the Sorbonne in 1973, from which he retired in 1979. His two major works, differently received by scholars and philosophers, are: *Totality and Infinity (Totalité et Infini: Essais sur l’Extériorité)*, The Hague-Boston, Martinus Nijhoff, 1961; engl. trans. 1969) and *Otherwise than Being (Autrement qu’être ou au-delà de l’essence)*, The Hague-Boston, Martinus Nijhoff, 1974; eng. trans. 1978). Scholarship on Levinas is immense and, as maintained by Peter Atterton and Matthew Calarco, it virtually divides into three “waves:” (i) a “traditional” one, mostly represented by “phenomenological” commentaries on *Totality and Infinity*; (ii) a “deconstructive” one, mostly represented by Derrida’s reception of Levinas’ *Totality and Infinity* and its followers; (iii) a socio-political one, recently represented by most recent scholarship. On this, see: P. Atterton – M. Calarco (Eds), *Radicalizing Levinas*, New York, SUNY, 2010. For a recent general exposition of his thought, see: M.L. Morgan, *The Cambridge Introduction to Emmanuel Levinas*, Cambridge, Cambridge University Press, 2011.

2 The institution of a “city of Refuge” (*‘ir ha-miqlat*) involves six Levitical towns (Golan, Ramoth, Bosor, Kedesh, Shechem, and Hebron) in ancient Israel in which offenders guilty of manslaughter could go in order to escape blood vengeance and claim the right of asylum. This institution is regulated both in the Priestly Code (Num 35:11-24) and in the Deuteronomic Code (Deut 19:11-13). For a recent discussion on this institution, see: S. Greengus, *Laws in the Bible and in Early Rabbinic Collections. The Legal Legacy of the Ancient Near East*, Eugene Oregon, Cascade Books, 2011, especially pp. 148-163 and related bibliography.

flicted by the whip and, by extension, any other corporal, penal, or monetary punishment in consequence of a specific transgression.³

I assume that Levinas, in his discussion of Talmudic criminal law, is more concerned with its “theological-political” implications rather than with its specific legal character. Levinas indeed reads Talmud not specifically because of its obvious legal content—rather because of the intellectual opportunity that it allows one, like him, who had, in his previous scholarly activity, focused strictly and exclusively on philosophical-phenomenological texts. There is no need here to recall how Levinas had begun reading Talmud within a private Jewish-Gentile intellectual circles and how he eventually decided to publish his weekly seminars in a series of lectures. Here it is more important to acknowledge that Levinas’ interest in Talmudic literature is both chronologically and thematically “secondary” to his interest in phenomenology and especially to his search for a non-Heideggerian way of escaping the “liberal” dichotomy between “individual” and “society.”⁴ Levinas distinguishes himself from other European philosophers—such as, for instance: the exponent of the so called “Ethics of communication.”⁵ On the contrary, he avoids searching for a philosophical foundation for this alternative to “liberal” ideology; instead he turns to Talmudic literature with a rather naive mantra: “Jewish” literature—of which “Talmud” is the exemplification *par excellence*—might help him fight back against “Greek” intellectual tendencies of Western philosophy.

My basic assumption is that Levinas’ “philosophically” motivated interest in Talmud deeply affects his ability to both read its legal units in their integrity and appreciate their specific “Jewishness.”⁶ Therefore, Levinas’ reading of Talmudic literature is susceptible to a basic critique even before being “deconstructed”—as it must be—because of its rigid assumption of a “dichotomy” between “Greek” and “Jewish” thinking. Before addressing Levinas’ reading, it is necessary to provide a comprehensive analysis of the legal unit Le-

3 For a detailed analysis of the treatment of manslaughter early Rabbinic literature and in tractate *Makkot*, see the recent: M. Bar-Asher Siegal, “The Unintentional Killer. Midrashic Layers in the Second Chapter of Mishnah *Makkot*,” in *The Journal of Jewish Studies*, 61, 1, 2010, pp. 30-47. For a recent survey on Rabbinic capital punishment and its evaluation of the use of violence with respect to the use of word, see: B.A. Berkowitz, “Negotiating Violence and the Word in Rabbinic Law,” in *Yale Journal of Law & the Humanities*, 17, 1, 2005, pp. 125-151.

4 On Levinas’ understanding of the social as distinguished from the political, specifically in connection with his interpretation of Talmudic literature, see in particular: A. Herzog, “Levinas on the Social: Guilt and the City,” in *Theory, Culture & Society*, published on line 3 April 2014, pp. 1-17. The difference between “individual” and “society” (or between “ethics” and “political”) can be summarized as follow: “everything that is not ethics is politics” (Herzog, “Levinas on the Social,” p. 5). For a substantial examination of the “political-theological” thought of Emmanuel Levinas in comparison with Leo Strauss’ see in particular: L. Batnizky, *Leo Strauss and Emmanuel Levinas. Philosophy and the Politics of Revelation*, Cambridge, Cambridge University Press, 2006.

5 Namely, the philosophies of K.O. Apel and Jürgen Habermas. On the relationship between deconstruction and the “ethics of communication,” see: F. Dal Bo, *Società e Discorso. L’etica della comunicazione in K.O. Apel e Jacques Derrida*, Milan, Mimesis, 2002.

6 On Levinas as “Jewish interpreter” of the Talmud and his “philosophical” approach, see: L. Kapan, “Israel under the Mountain. Emmanuel Levinas on Freedom and Constraint in the Revelation of the Torah,” in: *Modern Judaism*, 18,1, 1998, pp. 35-46; S. Wygoda, “A Phenomenological Outlook on the Talmud. Levinas as reader of the Talmud,” in: *Phenomenological Inquiry. A Review*, 24, 2000, pp. 117-148; E. Levine, “The Talmud in the Mind of Emmanuel Levinas,” in: *Review of Rabbinic Judaism*, 4, 2, 2001, pp. 249-271; C. Chalier, “Levinas and the Talmud,” in: *The Cambridge Companion to Levinas*, Cambridge, Cambridge University Press, 2001, pp. 112-117; M. Kavka, “Is there a warrant for Levinas’ Talmudic Readings?” in: *The Journal of Jewish Thought and Philosophy*, 14, 1-2, 2006, pp. 153-173; L.L. Edwards, “Extreme Attention to the Real. Levinas and Religious Hermeneutics,” in: *Shofar*, 26, 4, 2008, pp. 26-53.

vinas comments on in the present case: the *sugya* (“Talmudic legal unit”) extant in the Babylonian Tractate *Makkot* 9b-10a. Only as a follow-up will it become possible to demonstrate how Levinas “philosophically” manipulates both text and interpretation of the Talmudic legal units. The present paper is accordingly divided into three parts: 1. A comprehensive analysis of the *sugya*; 2. A critical reading of Levinas’ analysis of (a portion of) the *sugya*; And 3. finally, a drawing of possible the “theological-political” consequences from Levinas’ “philosophical” reading.

1. *The sugya on the “Cities of Refuge” in Tractate Makkot*

In formal terms, a *sugya* usually consists of: 1. A quotation from a source, usually identical with a legal unit or passage from the Hebrew legal codex, the Mishnah, and 2. Its Hebrew-Aramaic commentary, called *Gemara* (Aramaic for “learning”) that may also relay on additional Hebrew material (the so called *baraita*, “external [source]”), probably—but not always certainly—as old as the Mishnah. This typical bipartition of the Talmudic text is fundamental for correctly understanding a *sugya* and its dynamics. These dynamics are quite subtle and often consist of minute dialectics between what (and how it) is commented upon and what is not in fact a comment: that is, what (and how it) is the Mishnaic text commented upon in Hebrew-Aramaic and what (and how other Hebrew texts) are simply quoted in Hebrew. The reasons for this unequal treatment of Mishnaic legal material are complex and cannot be treated here; it suffices to say that only *the fact that* Mishnaic legal material is reported integrally albeit not commented in the *Gemara* makes it significant to the eyes of the legislator. Therefore, the “actual” absence of a Hebrew-Aramaic commentary on the Mishnaic text should not be misinterpreted as a lack of interest—rather be understood as a stylistically, rhetorically or even “economically” (in the sense of “economy of words”) motivated decision. This is indeed the present case.

The *sugya* pertaining to the Biblical institution of the “Cities of Refuge”⁷ consists of two complementary units: an integral quotation from the Hebrew Mishnah (to be found also in *mMakk* 2:4) and a Hebrew-Aramaic Talmudic commentary on it, the so-called *Gemara* (to be found in *bMakk* 9b-10a).

The Mishnah already presupposes that the “Cities of Refuge” are available only to those who killed inadvertently, whereas capital punishment awaits those who killed voluntarily. At this point, the legal issue is how to treat those individuals whose crime is not yet determined by the rabbinic court. The Mishnah provides with a series of norms that consist of: 1. A clear (geographical) identification of the “Cities of Refuge” according to their Biblical standard; 2. A detailed description of the legal proceeding of escorting safely the indicted individual outside the place where the crime was committed and to the nearest “City of Refuge.” Based on these details, the legislator understands that these cities serve the specific purpose of legally providing (either temporary or permanent) protection for the indicted person. The mention of three actors—the indicted, the escorts, and the avenger—also reflects a concrete sense for realism and manifests an interest in what in modern terms would be called: “criminal psychology.” On the one hand, the indicted could be ly-

7 See for instance: A. G. Auld, “Cities of Refuge in Israelite Tradition,” in: *Journal for the Study of Old Testament*, 10, 1978, pp. 26-40.

ing, claiming to have killed inadvertently in order to receive a less severe punishment (temporary exile) or simply to flee; on the other hand, some relatives of the victim could—as it is often the case—be indifferent to the indicted’s innocence and would seek a brutal blood revenge. The “disciples of the Sages”, that is Torah-educated men, are expected to prevent both scenarios from happening by taking the indicted into preventive custody, on the one hand, and by protecting him from any act of violence, on the other hand.

The *Gemara* addresses only partially this relatively short but normatively rich Mishnaic text; indeed, it provides a long commentary but does not examine the text entirely. Exclusively for clarity’s sake, the text of the *Gemara* shall be numbered into four smaller units:⁸

(i) Our Rabbis taught: Moses had set apart three cities on the other side of the Jordan, and corresponding to them Joshua set apart [others] in the land of Canaan. And they were made to correspond on opposite sides like a double row [of trees] in a vineyard; Hebron in Judah, corresponding to Bezer in the wilderness; Shechem in mount Ephraim, corresponding to Ramoth in Gilead; Kedesh in mount Naphtali, corresponding to Golan in Bashan. “And thou shalt divide the border of thy land into three parts” (Deut 19:3) means that they shall form triads; [namely], that the distance from the Darom [southern] boundary to Hebron be similar to that from Hebron to Shechem; and that from Hebron to Shechem similar to that as from Shechem to Kedesh; and that from Shechem to Kedesh similar to that as from Kedesh to the North [boundary]. Were three cities [necessary] in Trans-Jordan [the same as] three cities for the [whole] Land of Israel? — Said Abaye: By reason that manslaughter was rife in Gilead, as it is written: “Gilead is a city of them that work iniquity and is covered with footprints of blood” (Hos 6:8). What is meant by [covered with footprints] ‘akubbah’? — Said Rabbi Eleazar: It suggests that they tracked down victims to slay them. Why are some further apart at one end and closer together at the other? — Said Abaye: Because manslaughter was equally rife at Shechem, as it is written: “and as troops of robbers wait for a man, so doth the company of priests; they murder in the way toward Shechem” (Hos 6:9). What is meant by “the company of priests?” — Said R. Eleazar: They formed themselves into gangs to commit murder as when priests go in groups to the barns at the distribution of priestly dues. But were there no more [than six cities of refuge]? Is it not written: “and to them ye shall add forty and two cities... so all the cities shall be forty and eight cities” (Num 35:6-7)? — Said Abaye: The main six cities afforded asylum with or without cognizance, while the additional cities only afforded asylum knowingly, but not without cognizance. And was Hebron a city of refuge? Is it not recorded: “and they gave Hebron to Caleb as Moses had said” (Jud 1:20)? — Said Abaye: It was the environs he was given, as it is written: “but the fields of the city and the villages thereof gave they to Caleb the son of Jephunneh for his possession” (Jos 21:12). And was Kedesh a city of refuge? Is it not recorded: “and the fortified cities were Ziddim, Zer, Hammath, Rakkath and Chinnereth... and Kedesh...” (Jos 19:35)?

⁸ I am quoting from the famous Soncino English translation.

(ii) And is it not taught: Now these cities [of refuge] are to be made neither into small forts nor large walled cities, but medium — sized boroughs? — Said Rabbi Joseph: There were two places called Kedesh. Rabbi Ashi observed: Such as Seleucia [Ctesiphon] and the Fort of Seleucia. [To turn to] the main text: These cities [of refuge] are to be made neither into small forts nor large walled cities, but medium-sized boroughs; they are to be established only in the vicinity of a water supply and where there is no water at hand it is to be brought thither; they are to be established only in marketing districts; they are to be established only in populous districts, and if the population has fallen off, others are to be brought into the neighbourhood, and if the residents [of any one place] have fallen off, others are brought thither, priests, Levites and Israelites. There should be traffic neither in arms nor in trap-gear there: these are the words of Rabbi Nehemiah; but the Sages permit. They, however, agree that no traps may be set there nor may ropes be left dangling about in the place so that the blood avenger may have no occasion to come visiting there. Rabbi Isaac asked: What is the Scriptural authority [for all these provisions]? — The verse: “and that fleeing unto one of these cities he might live” (Deut 4:42) which means — provide him with whatever he needs so that he may live.

(iii) A Tanna taught: A disciple who goes into banishment is joined in exile by his master, in accordance with the text: “and that fleeing unto one of these cities he might live” (Deut 4:42), which means — provide him with whatever he needs to live. R. Ze’ira remarked that this is the basis of the dictum: Let no one teach Mishnah to a disciple that is unworthy. Rabbi Johanan said: A master who goes into banishment is joined in exile by his Colleague. But that cannot be correct, seeing that Rabbi Johanan said: Whence can it be shown [Scripturally] that the study of the Torah affords asylum? From the verse: “[Then Moses separated three cities...] Bezer in the wilderness... Ramoth... and Golan...” (Deut 4:43), which is followed by, “and this—the law which Moses set before the children of Israel” (Deut 4:44)? — This [discrepancy] is not difficult [to explain]. One [of saying] is applicable to the scholar who maintains his learning in practice, while the other saying is applicable to him who does not maintain it in practice. Or, if you will, I might say that “asylum” means refuge from the Angel of Death, as told of Rabbi Hisda, who was sitting and rehearsing his studies in the school-house and the Angel of Death could not approach him, as his mouth would not cease rehearsing. He [thereupon] perched upon a cedar of the school-house and, as the cedar cracked under him, Rabbi Hisda paused and the Angel overpowered him.

(iv) Rabbi Tanhum ben Hanilai observed: Why was Reuben given precedence to be named first in the appointment of [the cities of] deliverance? Because it was he who spoke first in delivering [Joseph from death], as it is said: “And Reuben heard it and he delivered him out of their hand [and said, Let us not take his life]” (Gen 37:21). Rabbi Simlai gave the following exposition: What is the meaning of the text: “Then Moses separated three cities beyond the Jordan, toward the sun—rising” (Deut 4:41)? It means that the Holy One, blessed be He, said to Moses: Make the sun rise for [in-

nocent] manslayers! Some say [he explained it so]: The Holy One, blessed be He, said to Moses [approvingly]: You made the sun rise for [innocent] manslayers! Rabbi Simlai [also] gave the following exposition: What is the meaning of the verse: “He that loveth silver shall not be satisfied with silver, and who delighteth in multitude, not with increase” (Eccl 5:10)? [this also is vanity]. “He that loveth silver shall not be satisfied with silver” might be applied to our Master Moses, who, while knowing that the three cities beyond the Jordan would not harbour Refuges so long as the [other] three in the Land of Canaan had not been selected, nevertheless said: The charge having come within my reach, I shall give [partial] effect to it, now! [The second part,] “And who delighteth in multitude, not with increase” [means]: Who is fit to teach “a multitude”? — He who has all increase of his own. This is similar to the interpretation given by R. Eleazar [ben Pedath] of: “Who can utter the mighty acts of the Lord: [who can] show forth all His praise” (Ps 102:2) as: Who is fit to utter the mighty acts of the Lord? He [only] who is able to show forth all His praise! But the Rabbis, or some say Rabbah b. Mari, interpreted the same, “who delighteth in multitude has increase” as, Whoever delighteth in the multitude [of scholars] has increase [of scholars], and the eyes of the schoolmen turned on Rabbah the son of Raba. R. Ashi said: It means that whoever loves studying amidst a multitude of [fellow] students has increase, which is to the same effect as what R. Jose ben Hanina said: What is the import, [he asked], of the words, “a sword upon the boasters [*ha-baddim*] and they shall become fools” (Jer 50:36)? May a sword fall upon the neck of the foes of scholar-disciples, that sit and engage in the study of the Torah, “solitary [bad] and apart [b'bad]! Nay, furthermore, such wax foolish! ” (Num 12:11). Holy Writ has here: “and they shall become fools” (Jer 50:36) — and elsewhere it says: “wherein we have done foolishly; nay, furthermore, they also become sinners” (Num 12:11), as it is added there, “and wherein we have sinned” (Num 12:11). If you prefer, [it is derived] from this verse: “The princes of Zoan have become fools” (Is 19:13). Rabina explained [that former passage] thus: Whoever delighteth in teaching a multitude [of scholars] has increase, which is to the same effect as what Rabbi said: Much Torah have I learnt from my Masters, more from my fellow — students and from my disciples most of all! Rabbi Joshua ben Levi said: What is the meaning of the [Psalmist's] words: “Our feet stood within thy gates, O Jerusalem” (Ps 122:2)? [It is this.] What helped us to maintain our firm foothold in war? The gates of Jerusalem — the place where students engaged in the study of Torah! Rabbi Joshua ben Levi said also the following: What is the meaning of the [Psalmist's] words: “A song of Ascents unto David. I was rejoiced when they said unto me: Let us go unto the house of the Lord” (Ps 122:1)? David, address in himself to the Holy One, blessed be He, said: Lord of the Universe! I heard men saying: When will this old man die and let his son Solomon come and build us the Chosen Shrine and we shall go up there [as pilgrims]? and I rejoiced at that. Said the Holy One, blessed be He to him: “A day in thy courts is better than a thousand” (Ps 84:10)! Better to Me one day spent by you in study of Torah than a thousand sacrifices that your son Solomon will [some day] offer before Me, on the altar! (*bMakk* 9b-10a)

The *Gemara* formally consists here of three minor units that are developed at the expense of the legal proceeding for the indicted person—described as second relevant topic in the Mishnah after the geographical localization of the “Cities of Refuge.” It is on account of this first Mishnaic topic (the location of these cities) that the *Gemara* provides most of its hermeneutical material and branches into four different topics: i. Observations on the geographical positions of the “Cities of Refuge”; ii. Details about the urban settings of the “Cities of Refuge” (as a secondary development from the previous topic); iii. Non-legal remarks on the value of studying Torah, and iv. Additional legal remarks on the connection between the “Cities of Refuge” and Jerusalem.

This development is notable especially with respect to the plainer text of the Mishnah and the apparent “neglect” of commenting on the legislation of escorting the indicted person. The *Gemara*’s thematic expansion cannot simply be accounted for as a “Babylonian” formation; on the contrary, it evidently reflects some previous “Palestinian” investigations on the topic, as well as the latter’s tendencies to privilege some topics over other ones.⁹ Several reasons for such a hermeneutical decision can be suggested, included the most obvious one: the Biblical geographical-urban standard for the “Cities of Refuge” was unclear both to the later Palestinian and to the Babylonian rabbinic elites, probably because it represented a remote historical reality.

Besides, the *Gemara*’s “neglect” to comment on the second topic of the Mishnah (i.e., the “disciples of Sages” escorting the indicted person) can neither implicitly nor necessarily be accounted for as a refusal to accept this specific piece of legislation. On the contrary, it should rather be interpreted as a “tacit silence of approval” of the preventive measure of escorting the indicted person. In other words, both the Palestinian and the Babylonian *Gemara* appear to accept without reservation the Mishnah’s legislation and to consider it conclusive. As a consequence of this, the *sugya* manifests quite a simple structure that is neither particularly innovative nor poses complex legal questions. On the contrary, it is rather “descriptive” and “linear,” mostly conforming to the structure of the Mishnah it comments on.

In consequence of this “typological analysis,” the structure of the *sugya* can briefly be summarized as follows: first, it quotes *in toto* the relevant Mishnaic passage; then, it comments on two relevant topics, the first (i) being directly connected to the Mishnaic text and the second (ii) being indirectly connected to it; then, it skips over the legislation of escorting the indicted person, because it considers it as reliable and clear; finally, it proceeds with a gloss on the value of studying Torah (iii), and concludes with discussion of

9 For clarity’s sake it is not possible to examine here the “Palestinian” treatment of the “City of Refuge.” The homonymous tractate *Makkot* from the Palestinian Talmud reports a legislation partially similar to the one extant both in the Mishnah and in the Babylonian Talmud but it also introduces notable legal and narrative innovations: i. Differences in the exact geographical location of the “Cities of Refuge” (*jMakk* 7, 31d); ii. Some remarks on the sexual (ab)use of a (non-Jewish) female prisoner by her jailer and on her “formal conversion to Judaism” (*jMakk* 7, 31d; cf. *bQidd* 21b and Tosfot on *bQidd* 21b); iii. The issue of punishment and the personification of the “female” Wisdom with respect to “the Holy, be He blessed” (*jMakk* 7, 31d); iv. A short homely on prayers (*jMakk* 7, 31d); v. A short homely on the notion of “divine speech” (*dibbur*) (*jMakk* 7, 31d); vi. Some juridical details on the simultaneous activity of several “Cities of Refuge” (*jMakk* 7, 31d); vii. Two discussions on the legal content of *mMakk* 12 (*jMakk* 7, 32a); viii. The issue of rent money to the Levite (*jMakk* 7, 32a); ix. Sparse remarks on the surroundings of the “Cities of Refuge” (*jMakk* 7, 32a; cf. *mSot* 5:5). On tractate *Makkot* in the Palestinian Talmud, see the several remarks in: H.W. Guggenheimer, *The Jerusalem Talmud. Tractates Sanhedrin, Makkot, and Horaiot*, Berlin, De Gruyter, 2010, especially pp. 417-472.

the act of studying Torah, and the risks of forgetting it, so that someone ends up being either a sinner or an ignoramus (iv). None of the topics introduced by the *Gemara* are particularly innovative, mostly recovering previous Hebrew legal material, quoting it as *baraitot*. In particular, the elements of the legal unit (iii) are only poorly connected to the main topic through a relatively unconvincing, tendentious exegesis of a Scriptural verse, as will be examined later. With an uncommon ending about Jerusalem, the *sugya* concludes and the Talmudic text proceeds to discuss another Mishnaic passage.

2. Levinas reading Tractate Makkot on the “Cities of Refuge”

Levinas’ commentary¹⁰ at first appears to be formally as linear as the *sugya*: a large quotation from the text, a series of argumentations, and a conclusion.

Yet, despite its formal linearity, the content of Levinas’ commentary is surprisingly distant from the legal issue at stake and rather is a continuation of his previous lecture, held the night before (BV: 37): a commentary on Tractate *Menahot* (BV:13-33).

Levinas starts with a relatively long quotation from the Talmud discussing upon the Biblical institution of the “Cities of Refuge” (BV:34-36) but he unexpectedly ends his commentary with the metaphorical act of “entering Jerusalem:” that is, accessing “a humanity of the Torah” (BV:52). Levinas’ underlying assumption evidently is that the “Cities of Refuge” are there to provide asylum to those who inadvertently killed but also to “exile” them from the earthly as well heavenly “city of God:” Jerusalem. Therefore, although he himself immediately admits that “the name of Jerusalem does not appear until towards the end [of the text]” (BV:36), Levinas assumes that the whole *sugya* is *implicitly* speaking of the Holy City, since its very beginning. Someone’s ability to acknowledge it is not simply a matter of hermeneutics and intellect; it also requires a “moral commitment” to the text itself:

it is a completely different mode or potential of spirituality, a new attention to the human, and placed, as it were, above humanism which will enlighten us in the Jerusalem of the Torah, which is perhaps defined as a consciousness more conscious than consciousness (BV:38).

My main contention about this statement is that Levinas’ final remarks on the “humanitarianism” of the Torah simply do not result from his admittedly powerful hermeneutical “imagination”—rather from his tendentious treatment of the Talmudic text.

Firstly, it may be noted that Levinas does not quote the entire *sugya* (*bMakk* 9b-10a) but only a portion of it; precisely when the *Gemara* begins discussing the geographical location of the “Cities of Refuge” (*bMakk* 10a). One should not innocently assume that Levinas intends to quote a *shorter* portion of the *sugya* for economy’s sake. Since he quotes an already very long passage from the Talmud, it is unreasonable to assume that he in-

¹⁰ Levinas’ long commentary on the Babylonian tractate *Makkot* was originally published in French: E. Levinas, *L’Au-delà du Verset. Lectures et Discours Talmudiques*, Paris, Minuit, 1982. Here I follow the English translation: E. Levinas, *Beyond the Verse. Talmud Readings and Lectures*, Bloomington, Indiana University Press, 1994 (hence = BV).

tends to save time and space by removing a few lines that are extant in the previous *folio* (*bMakk* 9b). On the contrary, I assume that Levinas has intentionally decided not to report this very portion from the *sugya* (namely, the full quotation from the Mishnah and the beginning of its contextual Hebrew-Aramaic commentary) exactly because of its content: the legal procedure for escorting the indicted person to the nearest “City of Refuge”. The removal of this portion of text implies, by extension, both the removal of the very Mishnaic source the *Gemara* comments on (in terms of form) and the removal of the legal proceeding for the indicted person (in terms of content). This kind of choice requires further consideration but will for the time being be justified by Levinas’ “organic reading” of the Talmudic text. The Talmudic *folio* is, according to this reading, not interpreted as a historical-linguistic composite text that assembles Hebrew juridical sources with later Hebrew-Aramaic remarks, and also introduces additional Hebrew legal material (*baraitot*). On the contrary, Levinas conceives of the Talmud *folio* as an “organic text”, regardless of its various historical-linguistic layers, and interprets it exactly for what it allegedly appears to be: a sort of infinite flawless “speculative dialogue” between the rabbis—or what Levinas himself calls, in the previous lecture: “the harmony of the various themes evoked” (BV:15).

Secondly, the removal of the first portion of the *text* compromises the already examined argumentative unit of the *sugya*, and its removal has the notable effect of unbalancing the entire legal unit. On the one hand, Levinas provides with a mutilated discussion on the “Cities of Refuge,” by neglecting some details about this Biblical institution and the rabbis’ understanding of it. On the other hand, he takes this mutilated text for a “complete text,” according to the above mentioned sense of “tradition.” This has a further consequence: reading together discrete logical elements of the *sugya*, namely the urban characteristics of the “Cities of Refuge” and the penultimate “gloss” on studying Torah. Overseen is then the specific function of each discrete element: the urban characteristics of the “Cities of Refuge” belong to the main topic of discussion; the exaltation of studying Torah provides with a devotional ending to an otherwise extremely dry legal subject. Yet, the mutilation of the *sugya* imbalances its argumentative structure as well, and produces a sort of conceptual “attraction” between the surviving parts of the legal unit. In other words, the geographical and urban details of the “Cities of Refuge,” as already mentioned, are intended as (legal) preliminaries to the (ethical) core of the text—which deals with a student of the sage’s sanctity in devoting himself to studying Torah. This indeed is a “projection” of the *Gemara*’s legal argumentations unto its final “priestly gloss.” Such a hermeneutical gesture should not simply be interpreted as a “mechanical” consequence of dismantling the otherwise well-balanced original structure of the *sugya*. Although the removal of the first part does actually have a functional consequence, this “projection” of legal matters unto ethical matters has another, more subtle nature.

My assumption is that Levinas deliberately removed the initial part of the *sugya* for this exact purpose: producing this “implosion” of legal and ethical issues. If this assumption is correct, Levinas took this exegetical decision in character with his master’s hermeneutical guidelines. This habit of conflating legal and ethical matters was indeed an interpretative method taught by the so-called “Monsieur Chouchani”—a mysterious, still unidentified Talmudic genius, who used to live as a tramp, and who introduced Levinas to Talmud in a

series of private lessons, from 1947 to 1951.¹¹ “Monsieur Chouchani,” as many of his few selected students from the post-war French intelligentsia as well as Levinas himself recall, fundamentally maintained that the Talmud should not be simply treated as a “legal” text-book but rather as Judaism’s spiritual prism—it would then be a textual world that perfectly and encyclopaedically combine every aspect of human spiritual life. This is tantamount to saying, in more formal Talmudic terms, that “Monsieur Chouchani” assumed that both “legal texts” (*halakhah*) and “non-legal texts” (*aggadah*) should be treated as equally possessing the truest spiritual inspiration; therefore, in practical terms, an appropriate way of reading Talmud would ignore the “formal” distinction between “legal” and “non-legal” texts focus rather on their congruence in “content.”

Thirdly, it is exactly for the sake of this alleged “congruence” between “legal” and “non-legal” texts that Levinas here avoids the assumption (or even to mention) of the historical dynamics behind the several historical-linguistic layers in the Talmud. In so doing, he appears to treat Talmudic texts not so differently from the way he would treat Platonic dialogues—except that the former would allegedly reach an “other” (*autre*) level of “ethics,” which the latter are incapable of. Such “otherness” is, in Levinas’ eyes, precisely the ability of *installing* “ethics” in a “speculative” text: ultimately, accessing “a humanity of Torah” (BV:52). Yet, such an interest for “Talmudic ethics” suggests a “devotional” reading of the text. There is certainly a sort of latent “devotional” inspiration in Levinas’ commitment with the Talmud, primarily as a self-educated Talmud scholar and also as a devout disciple of “Monsieur Chouchani;” nevertheless, this is hardly the foremost source of interest in the Talmud for Levinas, who is concerned with the intrinsic limits of a philosophically-ontologically founded “ethics.” When Chouchani (and Levinas with him) assumes that *halakhah* and *aggadah* are collapsed into one in Talmudic hermeneutics, he implies that “over-interpreting” a legal text is not necessarily a minus—rather a prerequisite for being able to read a “deeper” spiritual teaching between the lines. Legal interpretation usually uncovers “over-interpretation” as a manipulative act of reading what semantically is not in the text. On the contrary, Talmudic hermeneutics in Chouchani’s (and thus Levinas’) eyes presupposes such over-interpretation as the ultimate aim of installing the (otherwise semantically “absent”) “ethical” nuances into the Talmudic text. Yet, the theological-political costs for installing ethics into Talmudic reasoning are exorbitant since they require Levinas to ignore specific legal issues, as already remarked, but also to manipulate both the legal and moral Talmudic vocabulary.¹²

11 Monsieur Chouchani (?-1968?), most probably a French adaptation of *Shushani*, “a person from Shushan,” was a sobriquet for a still unidentified Jewish individual, who appeared to have an encyclopedic knowledge and who taught a small and selected number of distinguished students in the post-war France, including E. Wiesel, E. Levinas, and other prominent intellectuals. For an investigative report on this enigmatic individual, see: S. Malka, *Monsieur Chouchani: L’énigme d’un maître du XXe siècle*, Paris, Lattès, 1994; see also: E. Wiesel, “The Wandering Jew,” in: *Legends of Our Time*, New York, Avon Books, 1968, pp. 121–142 and id., “The Death of My Teacher,” in: *One Generation After*, New York, Random House, 1970, pp. 120–125; see also the website dedicated to him: <http://www.chouchani.com/>.

12 For a “theological-political” reading of Talmudic legal unites that doesn’t involve a lexical and hermeneutical manipulation of the text, see: F. Dal Bo, “‘Du solltest dich verfolgen lassen.’ Eine theologisch-politische Auslegung vom Talmudischen Traktat Baba Kamma 93a,” in: *Täter und Opfer. Verbrechen und Stigma im europäisch-jüdischen Kontext*, Würzburg, Königshausen & Neumann, 2014, pp. 69–96.

3. “Theological-political” consequences of Levinas’ reading of Tractate Makkot

My contention is that Levinas’ reading of Tractate *Makkot* depends on his philosophical-phenomenological presuppositions rather than on the text per-se. This affects his perception of this particular segment of Talmudic literature; apparently, one could conclude that this *sugya* is mostly concerned with instituting the “Cities of Refuge,” whereas Levinas argues that this text revolves around the ultimate question of earthly as well as heavenly “justice.” In this respect, Levinas’ exegesis is not simply an examination of a *sugya*; it is a reaction against a philosophically-founded “ethic,” under the presupposition that “ontology” would be incapable of real “ethics.” This impossibility has a specific reason: “ethics” requires a specific commitment, i.e. someone’s ability to choose a moral position between “right” and “wrong;” on the contrary, “ontology” would be more concerned with dictating a sort of general theory of being (“onto-logy”), that is a potentially neutral (and therefore not specifically engaged) “theory.” In other words, Levinas argues for the necessity to infuse “ethics” into Talmudic reasoning but he neither banally presupposes nor absolutely rejects the assumption that legal reasoning is in principle dry, abstract and therefore not responsive to ethical issues. He assumes rather that legal reasoning falls exactly in between the *ability* and the *inability* to respond ethically.

This “neutrality” is exactly what Levinas protests against in philosophy and ontology. Yet, his protest is not motivated, in the first place, by (Jewish) theological expectations—rather by a very complex reception of Heidegger’s ontic-ontological difference: namely, the fundamental distinction between “Being” (*das Sein*) and “beings” (*die Seienden*).¹³ Provided that the *ontic* condition pertains to every human “being” (*Seiende*) that “is” in the world, Levinas’ conclusion is not, as one might expect, that it would be necessary to “transcend” to a properly *ontological* level, asking “what” this “actually being” in the world “is,” as Heidegger maintained in his *Seinsgeschichte* (“History of Being”); on the contrary, Levinas’ conclusion rather is that an *ontological* level is fundamentally alien to moral commitment, exactly because “ethics” intrinsically pertains to the *ontic* dimension of man but does not pertain to *ontology* as such. In this respect, when applied to Talmudic reasoning, Levinas’ argument against ontology and his claim for “ethics” betrays a sort of “Pauline flavour” with respect to the Jewish Law. Levinas does not suggest any opposition between “spirit” and “Law.” Yet he seems nevertheless inclined to admit that “Law” is susceptible to being “inert” to “ethics”—as long as it is interpreted according to legal-philosophical categories and not according to “proper” Talmudic hermeneutics. The latter is exactly “over-interpreting” the Talmudic text beyond its historical-linguistic limits. Accordingly, Levinas could maintain that there is no need to preserve the integrity of a *sugya* as long as the legal text is analyzed “thematically” rather than “ethically;” conversely, there is need to dismantle the integrity of the *sugya* as long as the legal text is analyzed “ethically” rather than “thematically.”

Yet, the costs for such a radical hermeneutics are exorbitant. Analyzing a text becomes a simple act of exegesis rather than a personal ethical commitment with it. In the particu-

¹³ On the difficult rendering into English the lexical and morphological distinction between *Sein* and *seiend*, see, for instance, the recent: B. Cassin (Ed.), *Dictionary of Untranslatables: A Philosophical Lexicon*, Princeton, Princeton University Press, 2014, pp. 1209ss.

lar case of Talmudic literature, a commitment to the text essentially involves the very definition of (human as well as divine) “justice.” Therefore, in Levinas’ eyes, the price for analyzing a *sugya* shall be paid in concrete “theological-political” terms.

Yet, my accounting for Levinas’ hermeneutics should not necessarily be seen positively. On the contrary, there are five main “theological-political” consequences that can be drawn from his hermeneutics: i. The implicit devaluation of the “disciples of the Sages,” who are the major focus of the Mishnah; ii. A semantic levelling of Talmudic juridical vocabulary; iii. The excessive emphasis on the importance of the “non-legal” material; iv. The employment of *de facto* anti-pharisaic (!) stereotypes; v. Finally, the support of an “hyper-humanistic” positive evaluation of “culture” (and not necessarily of “Jewish culture” only). These five aspects are reciprocally interconnected. Yet, for clarity’s sake, they will be discussed separately.

i. As already mentioned, Levinas removes the Mishnah entirely and part of the *Gemara* as well from the text quoted at the beginning of his commentary. This removal implies, in Levinas’ eyes, the negligible importance of these textual portions for his main assumption: the necessity of installing “ethics” into legal-philosophical reasoning.

Yet, it is surprising that Levinas has actually refrained from commenting on a very important piece of legislation. The Mishnah which Levinas’ commentary removed attributes an incomparable ethical and political role to the “disciples of the Sages:” their ability to install and protecting social justice by escorting the indicted person to his/her refuge. In so ruling, the Mishnah achieves three simultaneous goals: firstly, it provides a straightforward rationale to an otherwise incomplete Biblical institution (since the “Cities of Refuge” are not fully treated in Scripture, they require supplementary legal clarification, according to the rabbis’ coeval socio-political situation); secondly, it installs into the legal reasoning the very “ethics” Levinas assumes it is lacking and he is willingly to introduce by means of his manipulative hermeneutics; thirdly, it implicitly maintains that such a role *has to be* played by the “disciples of the Sages” and not by any other secular foreign authority.¹⁴ Indeed, the Mishnah entitles the “disciple of the Sages” a double obligation: the prevention of both *abuse of justice* (by the indicted, who could falsely declare that he killed inadvertently, when he actually intended to kill the victim) and *extralegal violence* (by the avenger, who could simply seek brutal vengeance). Accordingly, it is as though the Mishnah stated that the “disciples of the Sages” are “social protectors” and the Torah is the “moral Agency” that makes them available to the world as such.

If this analysis is correct, then why would Levinas remove such a brilliant piece of legislation? Indeed, it is difficult not to suspect that Levinas did so exactly because this Mishnaic ruling would have offered, in exquisitely Jewish-rabbinic form, that very “ethical content” that he himself would rather introduce through his “Jewish-philosophical” commentary. Yet, this should not be misunderstood for a case of “intellectual jealousy;” it is rather a question of opportunity. Levinas is seeking to transcend the “ethnically circum-

¹⁴ I owe this latter suggestion to Prof. Dr. Micha Brumlik (Zentrum für Jüdische Studien Berlin-Brandenburg). It should be remarked, though, that Roman Empire had no “police force,” especially entitled to repress and prevent social disorders; military forces and soldiers played a major role, especially in the Provinces, in policing and maintaining the social order. Besides, many evangelical episodes, such as, for instance, the riot against Paul as reported in Acts 21:27-40, evidence that Roman territories were far from being fully submitted to the *pax romana*. For the complex history of Roman law enforcement, see: Chr. J. Fuhrmann, *Policing the Roman Empire. Soldier, Administrations, and Public Order*, Oxford, Oxford University Press, 2011.

cribed” perimeter of Jewish Law and to accomplish an innovative combination of Judaism and philosophy: that is to say, to achieve a less “ethnocentric” hermeneutics that still claim for themselves “Jewishness;” in other words, he seeks to achieve a “philosophical Jewishness” that is neither entirely “Jewish” (as Talmudic hermeneutics), nor entirely “gentile” (as philosophical hermeneutics). This sort of hermeneutics can be defined, in less scrupulous terms, as a sort of “Pauline exegesis” of the Talmud: neither against *Jewish* nor in favour of *Gentile* hermeneutics; neither against *Talmudic* nor in favour of *philosophical* hermeneutics. The “fruits” of this “Pauline exegesis” of the Talmud are “Pauline” as well, since Levinas seeks a *Jewish* content, on the one hand, but also the “generalization” of this content for the *Gentile* masses, on the other hand.

With respect to this, Levinas has removed the Mishnah from his commentary exactly with the purpose of neutralizing the “theological-political” potentialities of an “all-Jewish” legislation. On the contrary, his hermeneutics implicitly maintains that every “theological-political” suggestion to be found in the Talmud should be “translated” both in “Hebrew” and “Greek,” provided that it is “transferrable” from the Jewish to the Greek world.

ii. A collateral yet unavoidable cost for thus “generalizing” the content of Talmudic legislation is a semantic levelling of its otherwise very specific juridical vocabulary. From a juridical point of view, the “passage” from a Jewish-specific to a (Gentile) generic vocabulary requires a cross-cultural comparison between the respective juridical systems. Hence, such a juridical point of view necessarily implies a process of *translation* from a Jewish to a Gentile conceptuality. This is an unnoticed, albeit necessary, linguistic process in Levinas’ interpretation of this *sugya*. Just as there is no overt justification for removing the “ethical” jurisprudence on the “disciples of the Sages,” so too there is no overt justification for “translating” the Talmud’s conceptuality into a Gentile one; or, in other words, for expressing the Jewish-specific legal content of the Talmud in non-Jewish-specific ethical terms. This process goes unnoticed although it is structured in two implicit and consequent steps in Levinas’ exegesis: at first, there is the assumption that there is a “closeness” between murder and manslaughter, for they are both an art of “killing” (voluntary and inadvertently, respectively); then, there is the assumption that such a closeness indeed accounts for a “solution of continuity” with respect to the Torah’s claim for the purest form of “justice.” In the Torah’s absolute claim for “justice,” there is no difference between killing by will or by mistake; discussing it is only an academic project. For clarity’s sake, these two steps shall be examined carefully and separately, since they involve a manipulation of the highly sophisticated Talmudic vocabulary.

Although Levinas makes no mention of this, the present *sugya* provides with an accurate set of terms for defining someone guilty of “killing” another person. In light of the circumstances of this event, both the Palestinian and the Babylonian *Gemara* apply to two fundamentally different definitions for the indicted: the Biblical term *rotzeah* (“killer”) and the eloquent circumlocution *horeg nefesh be-shegagah* (whoever “kills someone inadvertently”). At first sight, these terms seem to require no explanation: the *rotzeah* clearly designates someone who has voluntarily killed someone else, either as a murderer or as an assassin; the circumlocution *horeg nefesh be-shegagah* very obviously designates someone who is culpable of manslaughter. Yet, the present *sugya* notably refrains from using these two expressions—the first one probably being too “emphatic” because of its

Biblical lineage and the second one being too “long” for the Talmud’s proverbial economy of words. Therefore, not surprisingly, are these two expressions replaced with two technical terms, respectively: *mezid* (“wilful wrongdoer”) and *shogeg* (whoever “acts inadvertently”). This terminological replacement plays an important role in Talmudic reasoning and also in its implicit “ethics.” It is not intended for rhetorical purposes, as a means for emphasizing the moral issues at stake. On the contrary, with respect to the emphatic Biblical term and the first, long circumlocution, the terms *mezid* and *shogeg* strike one for their stringency and dryness. They seem to express the firm belief that there is only one wrongdoing in the God’s given world, “killing;” the latter manifests itself in two forms: the voluntary and the involuntary. Since it is under these two fundamental if not ontological categories that *every* legal case should fall, even the act of killing someone should thus be judged. There are no “murderers” and “manslaughters” in the first place, rather “wilful” and “inadvertent” wrongdoers. This is indeed a kind of neutrality Levinas would surely protest against. Yet, it should not be misunderstood for indifference to the ethical issues involved; on the contrary, in my opinion, ethical issues are thereby elevated to a higher ground: namely, the ontological confrontation between voluntary and involuntary transgression, since they both implicitly cause the same “ontological” disturbance in God’s world, despite their fundamental “ontic” difference in will and intentions. Besides, a person’s culpability without having committed a crime, like the unjustified sufferings of Job, are a great theoretical distress for the rabbis who need to square the erratic world with God’s Law.

Yet, Levinas does not appreciate this admittedly very sophisticated conception of “transgression.” He is more concerned with contrasting every human act against to God’s (or the Torah’s) absolute claim for “justice.” This contrast results in two imperceptible yet decisive steps. First of all, Levinas juxtaposes the two legally differentiated categories of “murder” and “manslaughter” and asks a tendentious rhetorical question:

[the Talmud maintains] that there would be no absolute solution of continuity between the race of manslaughterers and that of murderers proper. Is our responsibility limited by negligence and lack of care? Are we conscious enough, awake enough, men already men enough? (BV:39).

Then Levinas takes a step further and overtly collapses these two categories into one, assuming that “murder” and “manslaughter” are not simply interrelated, since there is a “solution of continuity” between them:

the continuity in the scale of murderers is affirmed from now on by this detail. As I was saying earlier, this idea will be expressed in a more direct manner: there would be only one race of murderers, whether the murder is committed unwittingly or intentionally. Our conscience is not yet wholly conscience. It is a twilight (BV:43).

Such an exorbitant “solution of continuity” between “murder” and “manslaughter” is hard-earned through manipulating the *sugya* and compromising its integrity. This is particularly evident with Levinas’ emphatic connection of “legal” to “non-legal” material.

iii. Levinas’ excessive emphasis of the importance of “non-legal” material is manifested, as already remarked, by his unwarranted claim that the present *sugya* intends to speak of “Jerusalem,” as a symbol for both earthly and heavenly justice—or the justice to-come.¹⁵ This occurs, in his opinion, in two different ways: implicitly and explicitly. I shall address this difference carefully.

Implicit in Levinas’ hermeneutic method is the argument that the text is not speaking obliquely or indirectly about a topic. More radically, it means that *there is* a topic and that the interpreter himself has the “responsibility” of making it evident and explicit. This involves not only hermeneutical skills in the strictest sense of the world but especially also some “ethical” skills. In Levinas’ eyes, the Talmud cannot be content merely filling in details on the “Cities of Refuge,” which are a remote, possibly only theoretical institution of the past. This is a moral impossibility, since Talmud is the Judaism’s most brilliant prism. *Therefore*, a supplementary, “ethical” meaning must lay somewhere, within the lines of the *sugya*.

Consequently, explicit in Levinas’ hermeneutic method is a hermeneutically accomplished overt sense of the text. Explicit should not be mistaken for a “literal, self-evident” meaning, what Talmudic terminology would designate as *peshat* (“simple meaning”). Explicit is, in Levinas’ perspective, evidently the best fruit of an exegesis of the implicit text: therefore, what is explicit necessarily is to be “ethical.”

These preliminary remarks clarify well why Levinas assumes, quite unexpectedly, that the real core of the present *sugya* is not the so called “Cities of Refuge”—rather the ultimate humane and divine “justice,” represented by both by the earthly and by the heavenly Jerusalem. In other words, when Levinas begins reading his Talmudic extract, he has already put it into an ethical perspective, as evident from this seemingly innocuous quotation:

at the last, the beginning of the Talmudic extract that we have chosen gives us the sense of the problems faced in the cities in which men like ourselves live (BV:38).

While maintaining that the Biblical “Cities of Refuge” describe our coeval Western society, Levinas has already installed a theological dialectics that projects the “legal material” of the *sugya* onto its “non-legal material:” namely, the legal description of the “Cities of Refuge” on to the final “priestly gloss” on the glory of studying Torah. In so doing, Levinas clearly assumes that the (legal) content of the “Cities of Refuge” *has to* be contrasted with

15 When elaborating here on Levinas’ notion of “heavenly justice” and its connection to the future, I am implicitly referring to Derrida’s reception and especially his assumption that Levinas’ *Totality and Infinity* is a “treatise on hospitality”—as he will overtly claim in his *Adieu to Emmanuel Levinas*. Yet Levinas’ connection between “ethics” (as source of “justice”) and “politics” is deeply aporetic, since the moral, conceptual, and theological distance between these two dimensions requires a strategic move that fundamentally consists in a creative use of concepts, rather than traditional and conservative political positions. In this respect, Levinas’ theological politics shall also be juxtaposed, in dialectical terms, also to Hannah Arendt’s assumption that “ethics”—as a sort of collective name for “judgment” and “behavior”—has constantly to negotiate openness to “law” and “justice.” On these themes, see: S. Chritchley, *The Ethics of Deconstruction. Derrida and Levinas*, Edinburg, Edinburg University Press, 1999. On Arendt’s “ethics,” see: A. Topolski, “In Search of a Political Ethics of Intersubjectivity. Between Hannah Arendt, Emmanuel Levinas, and the Judaic,” in: *HannahArendt.net*, 1, 4, 2008 (published online).

the (ethical) content of Jerusalem, emphatically assumed to be “the unavoidable antechamber of the heavenly Jerusalem” (BV:37).

This hermeneutic is imbued with an awkward assumption that “legal” and “non-legal” material are equivalent and should be treated indifferently as both eloquent and meaningful. The technical consequences of this assumption blur the distinction between the hermeneutical rules for expounding a “legal” and those for explaining a “non-legal” text. As a consequence, extralegal connections between legal matters can be accepted as a form of interpreting the Talmud creatively: that is, through “imagination” rather than “rigor.” It is indeed such a leniency that allows Levinas to accept the unfounded connection between the “legal” description of the “Cities of Refuge” and the “non-legal” exaltation of studying Torah. This critical passage reads as follow:

Whence can it be shown [Scripturally] that the study of the Torah affords asylum? From the verse, [Then Moses separated three cities...] Bezer in the wilderness... Ramoth... and Golan..., which is followed by, and this—the law which Moses set before the children of Israel? — This [discrepancy] is not difficult [to explain]. One [of his sayings] is applicable to the scholar who maintains his learning in practice, while the other saying is applicable to him who does not maintain it in practice (*bMakk* 10a)

Levinas takes for granted the genuine character of this connection between the “legal” and the “non-legal” material of the *sugya*. He laconically justifies the present Talmudic exegesis on the basis of the chronological sequence of the quoted Scriptural verses:

Because these two verses from Deuteronomy 4:43 and 44 follow on from each other and begin in an analogous way, and because the former indicates the first city that Moses has chosen as a city of refuge, the latter should indicate another city of refuge. Now the plain meaning of verse 4:44 consists in naming the Torah of Moses (BV:44).

In truth, Levinas’ explanation for the *Gemara*’s introduction of this “priestly gloss” is slightly inconsistent. In this passage the *Gemara* bluntly relies on a textual sequence of Scriptural verses but it is actually relying on a different meaning attributed to the second verse from Deuteronomy. Indeed, the *Gemara* not only removes the Scriptural verse from its context but it also attributes a different meaning to it; more properly, the *Gemara* attributes a different deictic value to the feminine demonstrative pronoun *zot* (“this”) that introduces the verse “this is the Torah which Moses set before the sons of Israel” (Deut 44:4). Whereas the pronoun, in its original context, refers to the *whole corpus* of norms mentioned earlier, the *Gemara* reduces the quotation to the expression “this is the Torah” and so *reduces* the pronoun to the latter topic: the “City of Refuge;” as a consequence, the *Gemara* artificially maintains that the pronoun “this” alludes to act of *instituting* the “Cities of Refuge,” so that the verse should be interpreted as follows: “this is the Torah” means “instituting a city of refuge is the Torah.”

Yet, Levinas neither notices the flow from the *halakhah* on the “Cities of Refuge” to the *aggadic* “priestly gloss,” nor remarks on its relatively “modest” hermeneutical quality, not even raising the suspicion that such an awkward gloss might possibly reflect a later histo-

rical-linguistic layer in the redaction of the text, exactly because of the juxtaposition of a *halakic* and an *aggadic* segment. On the contrary, Levinas willingly accepts this connection, not because he is persuaded by its hermeneutic brilliance, but rather because it would manifest, as he himself wants it to, that there is a sort of *implicit* will in the Talmudic text: “the hermeneutic of the *Gemara* wants the Torah of Moses to be a city of refuge” (BV:44).

It is exactly this allegedly “will” of the text that leads to the more controversial assumption in Levinas’ exegesis: a *de facto* anti-pharisaic (!) interpretation of genuinely Talmudic moral-legal concepts. In order to appreciate this, two more steps in the investigation of Levinas’ “theological-political” presuppositions shall be taken into account: the notion of “will” and the mixed notion of “half-innocence and half-guilt” (BV:40).

iv. Levinas’ assumption that the text “has” a “will” that someone is expounding, when it is not interpreted in blunt “structuralist” but rather in rigorous “theological” terms, depends on his above-described presupposition: the text has a “will” because it is “alive” and as such has an “intention” if not even a “consciousness.”

This latter notion is crucial in Levinas’ thought and can simultaneously be interpreted both according to its German and according to its French meaning: on the one hand, “consciousness” as *Bewußtsein* designates a state of “being conscious” and it is therefore neutrally connected to “ontology,” the phenomenologically defined condition of dealing with “Being;” on the other hand, “consciousness” as *la conscience humaine* (“human consciousness”) consists in one’s (ethical) ability to open up and devote oneself to the “other one,” that is a fundamentally different “Being” from one transcendent, but rather its “ontic” specification as an individual. This interconnection of “consciousness” and “conscience” (or this interconnection of *Bewußtsein* and *conscience humaine*) is the truest form of “intentionality” in Levinas’ eyes: “the incarnation of consciousness is therefore comprehensible only if, over and beyond adequation, the overflowing of the idea by its ideatum, that is, the idea of infinity, moves consciousness,” whereas “infinity is characteristic of a transcendent being as transcendent; the infinite is the absolutely other.”¹⁶ It is then to this “infinite consciousness” that every interpreter of the Talmud should appeal, in order to be able to understand its most proper, “ethical” teachings.

The consequences of this seemingly innocent, devotional remark on the “will” of the Talmudic text, is as “Pauline” as Levinas’ intention of “translating” Judaism into philosophical terms is. There is indeed a consequent train of thoughts: if a text has a “will,” then it itself may be “intransigent” and it does require extreme devotion to its ethics and morality; therefore, such a text might “want” the most rigorous “justice” and be discontent with a legal hermeneutics that frees the indicted from the charge of “murderer” by reducing it to “manslaughter.” Such a secular pronouncement protects “a half-innocent or a half-guilt, which is innocence but nevertheless also guilt” (BV:40).

v. When Levinas assumes a solution of continuity between “murder” and “manslaughter,” he installs a *de facto* anti-pharisaic (!) interpretation of a genuinely Talmudic moral-legal concept and he does so in favour of an “hyper-humanistic” positive evaluation of “culture.” This polemic is extremely complex and depends on the assumptions that ordinary Talmudic pronouncements may be “hypocritical;” that the Talmudic text “wants” to

16 E. Levinas, *Totality and Infinity. An Essay on Exteriority*, Berlin, Springer Science and Business Media, 1979, pp. 27 and 49.

be more ethical than a mere piece of jurisprudence; and finally that such a need for “justice” opposes any secular juridical intellectual “correctness” and requires a superior ethical-juridical rationale.

Levinas’ assumption that ordinary Talmudic pronouncements may be “hypocritical” is as harsh as it is surprising but is very clearly stated in one key passage of his commentary:

and while it is a necessary defense against the barbarity of heated blood, dangerous states of mind, and threatening disorder, is not civilization – our brilliant and humanist Graeco-Roman civilization, our wise civilization – a tiny bit hypocritical, too insensitive to the irrational anger of the avenger of blood, and incapable of restoring the balance? (BV:40).

In his reading, Levinas assumes that the secular juridical distinction between “murder” and “manslaughter” opposes their respective “solution of continuity.” Far from providing freedom to those who didn’t *intend* to kill, such a pronouncement produces a juridical monster in Levinas’ eyes: the juridically clear yet morally unclear condition of someone, who is simultaneously “guilty” and “innocent” – that is, who is “half-innocent and half guilty” (BV:40).

Yet, in so commenting, Levinas severely undermines the Talmudic juridical concept of *shogeg* (whoever “acts inadvertently”) and projects it against the “moral” presuppositions that are latently antinomic. Instead of appreciating the juridical distinction between “voluntary transgression” and “inadvertent transgression,” as sophisticatedly maintained by the Talmud, Levinas demands an ethical stubbornness that requires either absolute justice or secular compromises. The “theological-political” price for this maximalist assumption is the implicit rejection of secular (that is, Talmudic-secular) jurisprudence as “hypocritical,” in favour of transcendent (that is, Talmudic-transcendent) “justice.”¹⁷ This opposition is very clear in this oblique remark on the coeval “Cities of Refuge,” that is modern Western civilization:

the cities in which we live and the protection that, legitimately, because of our subjective innocence, we find in our liberal society [...] against so many threats of vengeance fearing neither God nor man, against so many heated forces” (BV:40).

It is necessary to read this passage carefully. Here Levinas objects to “our subjective innocence,” in light of “our objective guilt.” In other words, Levinas does not define the condition of *shogeg* in juridical but rather in gnoseological terms; a *shogeg* is not someone

¹⁷ In the present occasion it is not possible to expound in detail Levinas’ latent gnostic argumentation: namely, his assumption that “justice” is inherently transcendent with respect to the world and therefore hardly coincident with the legal system of “jurisprudence.” On the latent antinomic tendencies in Judaism, see for instance: G. Scholem – More specifically, Levinas’ “gnostic” position shall also be compared with Carl Schmitt’s “Gnosticism,” as claimed by R. Groh (*Arbeit an der Heillosigkeit der Welt. Zur Politischen-Theologischen Mythologie und Anthropologie Carl Schmitts*, Frankfurt, Suhrkamp, 1998) and R. Faber (*Politische Dämonologie: Über Moderne Marconismus*, Würzburg, Königshausen und Neumann, 2007). On Levinas’ argumentation against Schmitt, see: A. Botwinick, “Same/other versus friend/enemy. Levinas contra Schmitt,” in: *Telos. Critical Theory in the Contemporary*, 132, 2005, pp. 46-63 and O. Hidalgo - C. Karabadjakov, “The Other as Friend or Enemy? Emmanuel Levinas, Carl Schmitt, and the Refused Mediation between Ethics and Politics,” in: *Philosophisches Jahrbuch*, 1, 116, 2009, pp. 115-137.

whose unwillingness has been juridically proven but rather someone whose state of “conscience” (in the double meaning mentioned before) is deficient: a *shogeg* has provoked an undesired effect on reality (according to juridical categories) without *intending* to. Yet, this discrepancy wouldn’t prove someone’s (subjective) innocence but rather his imperfect “conscience,” and consequently his inability to be deeply “ethical,” since there is no correspondence between “will” and “effect.” When conceived in terms of “consciousness,” then, this discrepancy between “will” and “effects” should not be absolved as *shogeg* but rather brought to “justice,” in its strictest sense: brought in front of the Torah’s intransigent sense for “absolute justice,” that is “a complete justice [which] is a call for absolute vigilance” (BV:46).

On account of these specific gnoseological assumptions, Levinas seems to object to secular jurisprudence, since the latter only seeks “correctness,” just as intellect does when it tries to “know” the outer world. Therefore, a “righteous” jurisprudence would be a sort of *adequatio legis ad rem* (“conformity of the law to thing”), the act of “put[ting] itself in phase with the causality of the world” (BV:46), a sort of gnoseological-epistemological adhesion of law to the matter of fact. Therefore, the condition of a *shogeg* together with the secular jurisprudence that has conceived it should rather be rejected in name of a deeper jurisprudence, a deeper sense for “justice” that is the product of a higher conscience. However, it is my contention, that intellectual life in its deepest sense should never be misunderstood for such an abysmally underrated act of understanding that is ultimately confused with violence.